

enforcement shall have the discretion to stop any event from occurring if it is found that such event is occurring without a valid permit in place.

127.16 REAPPLICATION. No applicant may request a permit if the applicant is found to have been in violation of any of the provisions of this chapter within the past year.

(Chapter 127 added by Ord. 06-09 – Mar. 10 Supp.)

CHAPTER 128

SEXUALLY ORIENTED BUSINESSES

128.01 Purpose and Findings
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128.01 PURPOSE AND FINDINGS.

1. Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. It is neither the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

2. Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community the general welfare, health, morals and safety of the citizens of the City will be promoted by the enactment of this chapter.

128.02 DEFINITIONS.

1. “Adult arcade” means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”

2. “Adult bookstore,” “adult novelty store” or “adult video store” means a commercial establishment which, as one of its principal

purposes, offers for sale or rental for any form of consideration any one or more of the following:

- A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; or
- B. Instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as an adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of to “specified sexual activities” or “specified anatomical areas.”

3. “Adult cabaret” means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- A. Persons who appear in a state of nudity or semi-nude; or
- B. Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
- C. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or of “specified anatomical areas.”

4. “Adult motel” means a hotel, motel or similar commercial establishment which:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; and has a sign visible from the

- public right of way which advertises the availability of this adult type of photographic reproductions; or
- B. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
5. “Adult motion picture theater” means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”
6. “Adult theater” means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”
7. “Employee” means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
8. “Escort” means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
9. “Escort agency” means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
10. “Establishment” means and includes any of the following:
- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- C. The additions of any sexually oriented business to any other existing sexually oriented business; or

D. The relocation of any sexually oriented business.

11. "Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

12. "Nude model studio" means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. The definition of nude model studio does not include a proprietary school licensed by the State of Iowa or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

A. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and

B. Where in order to participate in a class a student must enroll at least three days in advance of the class; and

C. Where no more than one nude or semi-nude model is on the premises at any one time.

13. "Nudity" or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

14. "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

15. "Semi-nude" or "semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition includes the entire lower portion of the human female breast, but does not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

16. "Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

17. "Sexually oriented business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

18. "Specified anatomical areas" means:

A. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

B. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

19. "Specified criminal activity" means any of the following offenses: prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries; and for which:

A. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

B. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

C. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of

two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

20. "Specified sexual activities" means any of the following:
 - A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
 - B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
 - C. Excretory functions as part of or in connection with any of the activities set forth in A and B above.
21. "Substantial enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date the ordinance codified in this chapter takes effect.
22. "Transfer of ownership or control" (of a sexually oriented business) means and includes any of the following:
 - A. The sale, lease, or sublease of the business;
 - B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
 - C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

128.03 CLASSIFICATION. Sexually oriented businesses are classified as follows:

1. Adult arcades;
2. Adult bookstores, adult novelty stores, or adult video stores;
3. Adult cabarets;
4. Adult motels;
5. Adult motion picture theaters;
6. Adult theaters;
7. Escort agencies;

8. Nude model studios; and
9. Sexual encounter centers.

128.04 LICENSE REQUIRED.

1. It is unlawful:
 - A. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this chapter.
 - B. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the City pursuant to this chapter.
 - C. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.
2. An application for a license must be made on a form provided by the City.
3. All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the City to determine whether the applicant meets the qualifications established in this chapter.
4. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following subsection and each applicant shall be considered a licensee if a license is granted.
5. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:
 - A. If the applicant is:
 - (1) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age;

(2) a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

(3) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

B. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state (i) the sexually oriented business's fictitious name and (ii) submit the required registration documents.

C. Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this chapter, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

D. Whether the applicant, or a person residing with the applicant, has had a previous license under this chapter or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

E. Whether the applicant or a person residing with the applicant holds any other licenses under this chapter or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.

F. The single classification of license for which the applicant is filing.

- G. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.
 - H. The applicant's mailing address and residential address.
 - I. A recent photograph of the applicant(s).
 - J. The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.
 - K. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
 - L. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within 1,000 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
 - M. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the licensing requirements.
6. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the City the following information:
- A. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
 - B. Age, date, and place of birth;
 - C. Height, weight, hair and eye color;

- D. Present residence address and telephone number;
 - E. Present business address and telephone number;
 - F. Date, issuing state and number of driver's permit or other identification card information;
 - G. Social Security number; and
 - H. Proof that the individual is at least eighteen (18) years of age.
7. Attached to the application form for a sexually oriented business employee license, as provided above, shall be the following:
- A. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.
 - B. A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
 - C. A statement whether the applicant has been convicted of a specified criminal activity as defined in this chapter and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

128.05 ISSUANCE OF LICENSE.

1. Upon the filing of said application for a sexually oriented business employee license, the City shall issue a temporary license to said applicant. The application shall then be referred to the appropriate City departments for an investigation to be made on such information as is contained on the application. The application process shall be

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completed within thirty (30) days from the date the completed application is filed. After the investigation, the City shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- A. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- B. The applicant is under the age of eighteen (18) years;
- C. The applicant has been convicted of a “specified criminal activity” as defined in this chapter;
- D. The sexually oriented business employee license is to be used for employment in a business prohibited by local or State law, statute, rule or regulation, or prohibited by a particular provision of this chapter; or
- E. The applicant has had a sexually oriented business employee license revoked by the City within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section 128.09.

2. A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the City that the applicant has not been convicted of any specified criminal activity as defined in this chapter or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 128.06.

3. Within 30 days after receipt of a completed sexually oriented business application, the City shall approve or deny the issuance of a license to an applicant. The City shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- A. An applicant is under eighteen (18) years of age.
- B. An applicant or a person with whom applicant is residing is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.

C. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

D. An applicant or a person with whom the applicant is residing has been denied a license by the City to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

E. An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this chapter.

F. The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.

G. The license fee required by this chapter has not been paid.

H. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.

4. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to Section 128.03. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

5. The health department, fire department, and the building official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the City.

6. A sexually oriented business license shall be issued for only one classification as found in Section 128.03.

128.06 FEES.

1. Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$175.00 non-refundable application and investigation fee.

2. In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or

renewal) shall pay to the City an annual non-refundable license fee of \$175.00 within thirty (30) days of license issuance or renewal.

3. Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual \$100.00 non-refundable application, investigation, and license fee.

4. All license applications and fees shall be submitted to the City.

128.07 INSPECTION.

1. An applicant or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning Department, or other City departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

2. A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business.

128.08 PROHIBITED ACTIVITIES. It is unlawful for a sexually oriented business licensee to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations:

1. It is a violation of this chapter for a patron, employee or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

2. It is a violation of this chapter for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition.

3. It is a violation of this chapter for any employee who appears semi-nude in a sexually oriented business to knowingly or intentionally, in a sexually oriented business, touch a customer or the clothing worn by a customer.

4. It is a violation of this chapter for any person to sell, use or consume alcoholic beverages on the premises of a sexually oriented business.

A sign in a form to be prescribed by the Clerk of the Clerk's office and summarizing the provisions of subsections 1, 2, 3 and 4, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

128.09 EXPIRATION OF LICENSE.

1. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 128.04. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.
2. When the City denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the City finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted, a license if at least ninety (90) days have elapsed since the date denial became final.

128.10 SUSPENSION. The City shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

1. Violated or is not in compliance with any section of this chapter;
2. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

128.11 REVOCATION.

1. The City shall revoke a license if a cause of suspension in Section 128.10 occurs and the license has been suspended within the preceding twelve (12) months.
2. The City shall revoke a license if it determines that:
 - A. A licensee gave false or misleading information in the material submitted during the application process;
 - B. A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - C. A licensee has knowingly allowed prostitution on the premises;
 - D. A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - E. Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or

F. A licensee is delinquent in payment to the City, County, or State for any taxes or fees past due.

3. When the City revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented business license for one year from the date the revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

4. After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

128.12 TRANSFER OF LICENSE. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

(Chapter 128 added by Ord. 04-10 – Mar. 10 Supp.)