

CHAPTER 128

ADULT ENTERTAINMENT FACILITIES

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128.01 PURPOSE. It is recognized that adult entertainment facilities have certain objectionable side effects which render these facilities incompatible with residential and family-oriented uses, when the adult facilities are located directly adjacent to such uses. This chapter seeks to ensure that residential and family-oriented uses and adult entertainment facilities will be located in separate and compatible locations.

128.02 DEFINITIONS. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *Adult Entertainment Facilities* includes but is not limited to the following:
 - A. *Adult bookstore* means an establishment having as the primary portion of its stock in trade, books, magazines and other periodicals which are substantially devoted to the depiction of specified sexual activities and specified anatomical areas.
 - B. *Adult business* means any business or establishment where a specified sexual activity or specified anatomical area is displayed.
 - C. *Adult motel* means a motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
 - D. *Adult movie theatre* means any theatre, arcade or similar establishment where an enclosed building or open air facility is used for presenting material in the form of motion picture film, video tape or similar means which is substantially devoted to the depiction of specified sexual activities and specified anatomical areas, for observation by persons therein.

- E. *Adult news rack* means any coin-operated machine or device which dispenses material substantially devoted to the depiction of specified sexual activities and specified anatomical areas.
- F. *Adult nightclub* means any club, cabaret, nightclub, bar, restaurant or similar establishment where an enclosed building or open air facility is used for live performances which are characterized by the exposure of specified sexual activities and specified anatomical areas, for the observation by persons therein.
- G. *Adult entertainment cabaret* means a public or private establishment that is licensed to serve food and/or alcoholic beverages, which features topless dancers, strippers, male or female impersonators or similar entertainers.
- H. *Body shop or model studio* means any public or private establishment which describes itself as a body shop or model studio; or where, for any form of consideration or gratuity, figure models who display “specified anatomical areas” are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons paying such consideration or gratuity, or where for any form of consideration or gratuity, nude and seminude dancing, readings, counseling sessions, body painting and other activities that present materials distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” are provided for observation by or communication to persons paying such consideration or gratuity.
2. *Specified anatomical area* means less than completely and opaquely covered human genitalia, mature human buttocks, and a mature human breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state – even if completely and opaquely covered.
3. *Specified sexual activities* means any of the following conditions:
- A. Human genitals in a state of sexual stimulation or arousal.
 - B. Acts or representations of acts of human masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation.
 - C. Fondling or erotic touching of human genitalia, pubic region, buttock or female breast.
 - D. Minors engaged in a prohibited sexual act or simulation of a prohibited sexual act.
 - E. Excretory functions as part of or in connection with any activities set forth in subsections (A) through (D) of this definition.

128.03 LOCATION OF ADULT ENTERTAINMENT FACILITIES.

1. Prohibited Locations. No person, whether as principal or agent, clerk or employee, either alone or for any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own or operate any Adult Entertainment Facilities in the following locations:

A. In any residential area of the City, including upon any sidewalk abutting upon such residential area.

B. Within 2,000 feet of any residentially zoned or used property, or any property designated on the City's Comprehensive Plan as residentially oriented.

C. Within 2,000 feet of any parcel of real property upon which is located any of the following facilities:

(1) An elementary school, junior high or senior high school.

(2) A church, which conducts religious programs.

(3) Park or recreational facilities operated and improved by the City, County, County Conservation Board or State.

(4) Federal, State, County, City or special district governmental offices.

(5) Supermarket or convenience market primarily engaged in the sale of food or fuel.

(6) Restaurant, fast-food or food establishment catering to family trade.

D. Within 2,000 feet of any other adult entertainment facility, as defined herein. For the purpose of this section, *adult news rack* means a single coin-operated device and not a machine with a double or triple dispensing capacity.

2. Measurement of Distance. The distance between any two adult entertainment facilities shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any adult entertainment facilities and any religious institution, school or public park, government office, supermarket, restaurant or any property designated for residential use or used for residential purposes shall be measured in a straight line, without regard for intervening structures, from the closest property line of the religious institution, school, public park, government office, supermarket, restaurant or property designated for residential use or used for residential purposes.

3. Permitted Areas. Adult Entertainment Facilities in the City of Dyersville must be a permitted use in accordance with the provisions of the Zoning Code.

128.04 EXTERIOR DISPLAY. No adult entertainment facility shall be conducted in any manner that permits the observation of any material depicting, describing or

relating to “specified sexual activities” or “specified anatomical areas” by display, decoration, sign, show window or other opening from any public way or from any property not licensed as an adult entertainment facility. Furthermore, all on-site signage shall conform to all restrictions defined in the City of Dyersville Code of Ordinances.

128.05 VIEWING AREA.

1. It is unlawful to maintain, operate or manage or permit to be maintained, operated or managed any adult theatre or arcade in which the viewing areas are not viewable from a continuous main aisle or are obscured by curtain, door, wall or other enclosure. For the purpose of this section, *viewing area* means the area where the patron or customer would ordinarily be positioned while watching the performance, picture show or film.
2. It is unlawful for more than one person at a time to occupy any individually partitioned viewing area or booth.
3. It is unlawful to create, maintain or permit to be maintained any holes or other openings between any two booths or individual viewing areas for the purpose of providing viewing or physical access between the booth or individual viewing areas.
4. The opening to the viewing area shall be from the main aisle.

128.06 ADULT NEWS RACKS.

1. Identification of News Racks. The owners of adult news racks shall have their names, addresses and telephone numbers clearly visible on each news rack located within the City. If the identification is not clearly visible, that shall be grounds for immediate impoundment of the news rack by the City.
2. Nonconforming Uses. The provisions of this Code of Ordinances dealing with nonconforming uses are not applicable to the location of adult news racks existing on the effective date of the ordinance codified in this chapter, but thereafter the location of adult news racks shall be subject to the provisions of this Code of Ordinances.
3. Impoundment. Any Police Officer or Enforcement Officer of the City may impound an adult news rack found in violation of this chapter after the following actions:
 - A. A notice of violation has been affixed to the adult news rack stating the section of this chapter which has been violated and stating that the adult news rack will be impounded if the violation is not abated within seven (7) days.
 - B. A notice of violation has been sent by certified mail, return receipt requested, to the owner of the adult news rack as identified on the news rack, if readable, stating the section of this chapter which has been violated and stating that the adult news rack will be impounded if the violation is not abated within seven (7) days.
 - C. The violation has not been abated within seven (7) days after the posting of the notice of violation or the mailing of the certified letter, whichever occurs later.
 - D. The Police Department or other Enforcement Officer has presented to any magistrate affidavits or other evidence sufficient to show prima facie violation of the chapter.
 - E. A magistrate has issued a written order permitting the impounding of the adult news rack pursuant to this chapter.
4. Filing of Complaint. Whenever an adult news rack is impounded, a complaint for violation of Section 128.03 must be filed within fourteen (14) days of the impounding. If a final appealable decision in such action is not rendered within sixty (60) days after the date of filing this action, the complaint shall be dismissed; provided, however, no complaint shall be dismissed because a final appealable decision was not rendered within sixty (60) days of the filing of the action if the defendant named herein is responsible for extending the judicial determination beyond the allowable time.
5. Redemption after Impoundment. The person who provides sufficient proof of ownership of such adult news rack may have such news rack, together

with all moneys, if any, impounded, returned immediately after the filing of the complaint for violation of Section 128.03 upon application to the Police Department or other Enforcement Officer. The person who provides sufficient proof of ownership of such adult news rack may have the contents of such news rack returned upon the date that a final appealable decision in such action is rendered or upon the date the action is dismissed, upon application to the Police Department or the Enforcement Officer.

6. Minimal Distance Violations. It is recognized that adult news racks may be jostled or inadvertently moved minor distance by third persons with a resulting violation of the provisions of Section 128.03. Notwithstanding any other provision of this chapter, such minimal distance violation, not exceeding five (5) feet, shall not constitute a violation of this chapter, and the City's Police Department or other Enforcement Officer shall notify the owner of the adult news rack by certified, return receipt requested, mail of the minimal distance requirements. Notwithstanding the provisions of the section, all adult news racks shall comply with the encroachment permit provisions of the Code of Ordinances.

128.07 DISPLAY OF LICENSE AND PERMIT.

1. Every licensee shall display a valid license in a conspicuous place within the adult entertainment facility so that the same may be readily seen by persons entering the premises.
2. All persons required under this chapter to obtain an adult entertainment employee permit pursuant to this chapter must display on request during the hours of operation of such business and identification card provided by the City police department containing the legal name and date of birth of the employee.

128.08 PROHIBITED EMPLOYMENT OF MINORS. It shall be unlawful for any adult use licensee or his/her manager or employee to employ in any capacity within the adult entertainment facility any person who is not at least 21 years of age.

128.09 ILLEGAL ACTIVITIES ON PREMISES. No licensee or any officer, associate, member, representative, agent or employee of such licensee shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the licensed premises which is prohibited by any ordinance of the City or law of the State or the United States.

128.10 INSPECTION.

1. An applicant or licensee shall permit Mayor, the City Administrator, the police department, fire department or any other designated agents to inspect the premises of the adult entertainment facility for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

2. A person who operates an adult entertainment facility or his/her agent or employee violates this chapter if he/she refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

128.11 LICENSE AND PERMIT FEES.

1. Adult Entertainment Facility License. The license fee for an adult entertainment facility establishment shall be one thousand five hundred dollars (\$1,500.00) per year, or any part thereof.
2. Employee Permit. The permit fee for any persons purporting to engage in the providing of goods or services to the public in connection with the adult entertainment facility shall be two hundred and fifty dollars (\$250.00) per year, or any part thereof.
3. Payment of Fees; Refunds. All fees are payable to the City Clerk's office upon application and are nonrefundable.

128.12 ADULT ENTERTAINMENT FACILITIES LICENSE.

1. Adult Entertainment Facility License Required. It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City, the operation of an adult entertainment facility, without first having obtained a separate license from the City.
2. Application for an Adult Entertainment Facility License. Any person desiring a license to operate an adult entertainment facility shall file a written application with the City Clerk's office on a form to be furnished by the City Clerk's office. The applicant shall accompany the application with a tender of the correct license fee, as provided in Section 128.11 and shall, in addition, furnish the following personal information concerning the manager or other person principally in charge of the operation of the business:
 - A. Name, complete residence address and residence telephone number, including area code.
 - B. Written proof of age consisting of a birth certificate.
 - C. Height, weight and color of hair and color of hair and eyes.
 - D. Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application regarding the applicant's request for a license.
 - E. The applicant shall keep and maintain liability insurance in an amount of at least one million dollars (\$1,000,000.00) and shall provide evidence of such insurance upon application for or renewal of each license.

- F. Written declaration by the applicant, under penalty of perjury, that the information contained in the application is true and correct, with such declaration being duly dated and signed at the City Clerk's office.
3. Approval of Application.
- A. Upon receiving the application for an adult entertainment facility license, the Mayor and/or designated agent shall preliminarily review the application and shall within fourteen (14) days refer the copies of such application to the City Administrator, the police department, fire department, zoning department or any other designated agents.
- B. These officials and/or designated agents shall within 30 days inspect the premises proposed to be operated as an adult entertainment facility or, in case of the police department, conduct a background investigation of the applicant and all such officials shall make recommendations to the Mayor and/or designated agent concerning the premises' and the applicant's compliance with the matters coming within the jurisdiction of the aforesaid officials and/or designated agents.
- C. Within ten days of receiving the recommendation of the aforesaid officials and/or designated agents, the Mayor and/or designated agent will render his/her approval or denial of the application to the City Council. The City Council must give final approval prior to any issuance or denial of license.
4. Issuance or Denial of Adult Entertainment Facility License. The Mayor and/or designated agent shall issue an adult entertainment license within ninety (90) days of receipt of the application, unless he/she finds the following:
- A. The correct license fee has not been tendered to the City and, in the case of a check or bank draft, honored with payment upon presentation.
- B. The operation, as proposed by the applicant, if permitted would not comply with all applicable laws, including, but not limited to, the City's zoning, building and health regulations.
- C. The applicant has knowingly made any false, misleading or fraudulent statement of fact in the application for the permit or in any document required by the City in connection therewith.
- D. The applicant has operated an adult entertainment facility and has had a license denied, revoked or suspended for any of the causes set forth in subsections (a) through (c) of this section by the City or any other State or local agency.

E. The applicant principally in charge of the operation of the business is under twenty-one (21) years of age.

F. The applicant is a person who is not of good moral character and reputation in the community in which he/she resides.

G. The applicant has been convicted of any the following offenses, unless upon investigation the Mayor and/or designated agent finds that such convictions occurred at least ten years (10) prior to the date of the application, that the applicant has had no subsequent convictions and has shown evidence of rehabilitation sufficient to warrant the public trust:

(1) A felony under federal laws or the laws of this or any other state.

(2) Prostitution, soliciting for a prostitute, pandering, keeping a place of prostitution, patronizing a prostitute, pimping, obscenity, selling harmful material or having a tie in the sale of obscene publications to distributors, under the laws of this state or equivalent laws or codes of the United States or any other state or city, or any other crime or misdemeanor opposed to decency and morality.

H. The City Council has denied the license.

5. License Administration.

A. Term of License.

(1) Each license shall be issued for one year beginning January 1 and said license will expire on December 31 after it was issued and may be renewed only by making application as provided in this chapter. Application for renewal shall be made to the City Clerk 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) If the Mayor and/or designated agent deny renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to denial, the Mayor and/or designated agent find that the basis for denial of the license has been corrected or abated, the applicant may be granted a license.

B. Suspension.

(1) The Mayor and/or designated agent may suspend a license for a period not to exceed ninety (90) days if, after a hearing pursuant to subsection (5)(F) hereof, it determines that a licensee or an employee of a licensee:

- (a) Violated or is not in compliance with any section of this chapter;
- (b) Refused to allow an inspection of the adult entertainment facility premises as authorized by this chapter; and/or,
- (c) Knowingly permitted gambling by any person on the adult entertainment facility premises.

(2) If the licensee or an employee of the licensee has been found guilty in a court of law or under the City's code hearing procedures, of a violation of this chapter, no hearing is necessary prior to suspension of the license under this subsection.

C. Revocation.

(1) The Mayor and/or designated agent shall revoke a license without a hearing provided by subsection (5)(F) hereof, if a cause of suspension in subsection (5)(B) above occurs and the license has been suspended within the preceding twelve (12) months, or if the licensee is convicted of any specified criminal activity.

(2) The Mayor and/or designated agent shall revoke a license if it determines, after such a hearing, that a licensee or an employee of a licensee:

- (a) Gave false or misleading information in the material submitted during the application process;
- (b) Has knowingly allowed possession, use or sale of a controlled substances on the premises;
- (c) Has knowingly allowed prostitution on the premises;
- (d) Knowingly operated the adult use during a period of time when the licensee's license was suspended;
- (e) Has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the licensee premises;
- (f) Is delinquent in payment to the city, county or state for any taxes or fees past due;
- (g) Has knowingly or intentionally facilitated another in the commission of the offense of public indecency.

(3) If the Mayor and/or designated agent revoke a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult entertainment facility license for one (1) year from the date the revocation became effective. If subsequent to revocation, the Mayor and/or designated agent find that the factual basis for the revocation did not occur, the applicant may be granted a license.

(4) After denial of an application, or denial or a renewal of an application, or suspension or a revocation of any license, the applicant or licensee may seek prompt judicial review of such action in any court of competent jurisdiction.

D. Transfer of License. A licensee shall not transfer his/her license to another nor shall a licensee operate an adult entertainment facility under the authority of a license at any place other than the address on the license.

E. Business Records. The Mayor and/or designated agent may direct an adult entertainment facility establishment to file a verified report with the City showing the licensee's gross receipts and amounts paid to employees during the preceding calendar year. In addition, all adult entertainment facilities shall maintain and retain for a period of five (5) years the names, addresses and ages of all persons employed, including independent contractors, by the licensee.

F. Hearing. Upon a written allegation that licensee has violated any provision of this chapter, the licensed premises shall immediately suspend all business pending a hearing conducted by the Mayor and/or designated agent upon seven (7) days' notice to the licensee; provided, however, that no hearing shall occur later than fifteen (15) days from the date of suspension of business operations.

6. Adult Entertainment Facilities—Restrictions. All dancing and other performances shall occur on a stage intended for that purpose which is separate and apart from the general public and unobstructed from all horizontal views within the building. No dancing or other performances shall occur closer than three (3) feet to any patron. In addition, no performer shall fondle, caress or otherwise touch any patron and no patron shall fondle, caress or otherwise touch any performer. No patron shall directly pay or give any gratuity to any performer and no performer shall solicit any pay or gratuity from any patron. Gratuities may be indirectly given to performers by placing the gratuity on the stage.

7. Hours of Operation. No adult entertainment facility shall be open for business between 1:00 a.m. and 1:00 p.m., seven (7) days per week.

128.13 ADULT ENTERTAINMENT EMPLOYEE PERMIT.

1. Required; Application; Issuance; Term.

A. Any person, including but not limited to a licensee and a performer, who actually engages in the providing of goods or services to the public in connection with the adult entertainment facility shall file an application for an adult entertainment employee permit with the police department upon a form provided by the police department and shall tender the correct permit fee, as provided in Section 128.11 to the City Clerk who shall issue a receipt which shall be attached to the application filed with the police department.

B. The application for an adult entertainment employee permit shall contain substantially the same information as the application for an adult entertainment facility license under Section 128.12 of this chapter, except for personal information concerning the manager or other person principally in charge of the operation of the business and the keeping and maintenance of liability insurance.

C. The Mayor, City Administrator, Police Chief, and/or designated agents may issue an adult entertainment employee permit within fourteen (14) days following the application, unless he/she finds that the applicant would not have been eligible for an adult entertainment permit under the terms of Section 128.12(4) of this chapter.

D. Every adult entertainment employee permit issued pursuant to this section will terminate at the expiration of one year from the date of its issuance and/or from the date the employee is no longer employed with the adult entertainment facility licensee, whichever comes first unless sooner revoked.

2. Revocation or Suspension.

A. Any adult entertainment employee permit may be revoked or suspended by the Mayor and/or designated agent if the Mayor and/or designated agent shall find the following:

(1) That the permittee has violated any of the provisions of this chapter regulating adult entertainment facilities.

(2) The permittee has knowingly furnished false or misleading information or withheld relevant information on any application for any license or permit required by this chapter or knowingly caused or suffered another to furnish or withhold such information on his/her behalf.

B. Any adult entertainment employee permit shall be revoked by the Mayor and/or designated agent if the Mayor and/or designated agent shall find that the permittee has committed any of the offenses listed in Section 128.12(4) of this chapter.

C. The Mayor and/or designated agent in revoking or suspending an adult entertainment employee permit shall give the permit holder written notice specifying the grounds therefor. Such person may within

ten (10) days of such revocation or suspension file a written request with the Mayor and/or designated agent for a public hearing before the Mayor and/or designated agent at which time the permittee may present evidence bearing upon the question.

D. The Mayor and/or designated agent may in his/her discretion conduct such hearing concurrently with a hearing pursuant to Section 128.12(5) of this chapter for the adult entertainment facility license, unless it shall appear that such a joint hearing would prejudice the rights of the licensee or the permittee involved.

3. Licensee's Duty to Ensure Employees Have Permits. It shall be the responsibility of the licensee for the adult entertainment facility or the employer of any persons purporting to engage in the providing of goods or services to the public in connection with the adult entertainment facility to ensure that each such person shall first have obtained a valid adult entertainment employee permit pursuant to this chapter.

4. Transfer of Permit. A permittee shall not transfer his/her permit to another nor shall a permittee operate under the authority of a permit at any place other than the address on the application.

5. Employee Permit Restrictions. All permittees must be fully clothed while off the dance floor and/or stage and while amongst the patrons. Furthermore, all permittees must wear no less than G-strings and pasties while on the dance floor and/or on the stage. Pasties are not to be see through.

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