

CHAPTER 8

ADULT ENTERTAINMENT ESTABLISHMENTS

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4-8-1: RATIONALE AND FINDINGS:

A. Purpose: It is the purpose of this chapter to regulate adult entertainment establishments in order to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult entertainment establishments within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor 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. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

B. Findings And Rationale: Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports provided to the city council, and on findings, interpretations, and narrowing constructions incorporated in the cases of City of Littleton v. Z.J. Gifts D-4, L.L.C., 541 U.S. 774 (2004); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); City of Erie v. Pap's A.M., 529 U.S. 277 (2000); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Young v. American Mini Theatres, 427 U.S. 50 (1976); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); California v. LaRue, 409 U.S. 109 (1972); N.Y. State Liquor Authority v. Bellanca, 452 U.S. 714 (1981); and Sensations, Inc. v. City of Grand Rapids, 526 F.3d 291, 2008 WL 2097410 (6th Cir. May 20, 2008); Fantasyland Video, Inc. v. County of San Diego, 505 F.3d 996 (9th Cir. 2008); Farkas v. Miller, 151 F.3d 900 (8th Cir. 1998); Jakes, Ltd. v. City of Coates, 284 F.3d 884 (8th Cir. 2002); BZAPS, Inc. v. City of Mankato, 268 F.3d 603 (8th Cir. 2001); SOB, Inc. v. County of Benton, 317 F.3d 856 (8th Cir. 2003); Scope Pictures v. City of Kansas City, 140 F.3d 1201 (8th Cir. 1998); Excalibur Group v. City of Minneapolis, 116 F.3d 1216 (8th Cir. 1997); ILQ Invs. v. City of Rochester, 25 F.3d 1413 (8th Cir. 1994); Ambassador Books & Video v. City of Little Rock, 20 F.3d 858 (8th Cir. 1994); Alexander v. Minneapolis, 928 F.2d 278 (8th Cir. 1991); John Doe v. Minneapolis, 898 F.2d 612 (8th Cir. 1990); Thames Enters. v. St. Louis, 851 F.2d 199 (8th Cir. 1988); Heideman v. South Salt Lake City, 348 F.3d 1182 (10th Cir. 2003); United States v. Evans, 272 F.3d 1069 (8th Cir. 2002); United States v. Mueller, 663 F.2d 811 (8th Cir. 1981); United States v. Frederickson, 846 F.2d 517 (8th Cir. 1988); Ctr. for Fair Public Policy v. Maricopa County, 336 F.3d 1153 (9th Cir. 2003); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999); World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); North Avenue Novelties, Inc. v. City of Chicago, 88 F.3d 441 (7th Cir. 1996); Williams v. Morgan, 478 F.3d 1316 (11th Cir. 2007); Z.J. Gifts D-2, L.L.C. v. City of Aurora, 136 F.3d 683 (10th Cir. 1998); H&A Land Corp. v. City of Kennedale, 480 F.3d 336 (5th Cir. 2007); Illinois One News, Inc. v. City of Marshall, 477 F.3d 461 (7th Cir. 2007); Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860 (11th Cir. 2007); Green v. City of St. Paul, 1999 WL 376099 (8th Cir. 1999); Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County, 274 F.3d 377 (6th Cir. 2002); Fantasy Ranch, Inc. v. City of Arlington, 459 F.3d 546 (5th Cir. 2006); G.M. Enterprises, Inc. v. Town of St. Joseph, 350 F.3d 631 (7th Cir. 2003); Richland Bookmart, Inc. v. Nichols, 137 F.3d 435 (6th Cir. 1998); Spokane Arcade, Inc. v. City of Spokane, 75 F.3d 663 (9th Cir. 1996); MRM, Inc. v. City of Davenport, 290 N.W.2d 338 (Iowa 1980); City of Lincoln v. ABC Books, Inc., 470 N.W.2d 760 (Neb. 1991); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); People ex rel. Deters v. Effingham Retail #27, Inc. d/b/a The Lion's Den Adult Superstore, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); Reliable Consultants, Inc. v. City of Kennedale, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005); and based upon reports concerning secondary effects occurring in and around adult entertainment establishments, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Ft. Worth, Texas - 2004; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; Jackson County, Missouri - 2008; New York, New York Times Square - 1994; and the Report of the Attorney General's working group on the regulation of sexually oriented businesses, (June 6, 1989, State of Minnesota),

the city council finds:

1. Adult entertainment establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, traffic, noise, urban blight, litter, and sexual assault and exploitation.

2. Each of the foregoing negative secondary effects constitutes a harm which the city has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this chapter, exists independent of any comparative analysis between adult and nonadult businesses. Additionally, the city's interest in regulating adult entertainment establishments extends to preventing future secondary effects of either current or future adult entertainment establishments that may locate in the city. The city finds that the cases and documentation relied on in this chapter are reasonably believed to be relevant to said secondary effects.

The city hereby adopts and incorporates herein its stated findings concerning the secondary effects of adult entertainment establishments and the legislative record documents supporting same. (Ord. 69-08, 10-20-2008)

4-8-2: DEFINITIONS:

For purposes of this chapter, the words and phrases defined hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

ADULT BOOKSTORE OR ADULT VIDEO STORE: A. A commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas"; or "sexual devices" as that term is defined in this section.

B. A "principal business activity" exists where the commercial establishment:

1. Has a substantial portion of its displayed merchandise which consists of said items; or
2. Has a substantial portion of the wholesale value of its displayed merchandise which consists of said items; or
3. Has a substantial portion of the retail value (defined as the price charged to customers) of its displayed merchandise which consists of said items; or
4. Derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items; or
5. Maintains a substantial portion of its interior business space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in interior business space maintained for the display, sale, or rental of said items); or
6. Maintains at least five hundred (500) square feet of its interior business space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in "interior business space" maintained for the display, sale, or rental of said items) and limits access to the premises to adults only; or

7. Offers for sale or rental at least two thousand (2,000) of the foregoing items and limits access to the premises to adults only; or

8. Maintains an "adult arcade", which means any place to which the public is permitted or invited wherein coin operated or slug operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas".

ADULT CABARET: A nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly features persons who appear seminude. Appearing live in a state of nudity in a sexually oriented business is prohibited per subsection [4-8-16A](#) of this chapter; no business shall avoid classification as an adult cabaret by offering or featuring nudity.

ADULT ENTERTAINMENT ESTABLISHMENT: An "adult bookstore" or "adult video store", an "adult cabaret", an "adult motion picture theater", or a "seminude model studio".

ADULT MOTION PICTURE THEATER: A commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five (5) persons for any form of consideration.

CHARACTERIZED BY: Describing the essential character or quality of an item. As applied in this chapter, no business shall be classified as an adult entertainment establishment by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

CITY: Dubuque, Iowa.

EMPLOY, EMPLOYEE, AND EMPLOYMENT: Describe and pertain to any person who performs any function related to an adult entertainment establishment on the premises of the establishment, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

ESTABLISH OR ESTABLISHMENT: Shall mean and include any of the following:

- A. The opening or commencement of any adult entertainment establishment as a new business;
- B. The conversion of an existing business, whether or not an adult entertainment establishment, to any adult entertainment establishment; or
- C. The addition of any adult entertainment establishment to any other existing adult entertainment establishment.

HEARING OFFICER: An attorney, not otherwise employed by the city, who is licensed to practice law in Iowa, and retained to serve as an independent tribunal to conduct hearings under this chapter.

INFLUENTIAL INTEREST: Any of the following: a) the actual power to operate the adult entertainment establishment or control the operation, management or policies of the adult entertainment establishment or legal entity which operates the adult entertainment establishment; b) ownership of a financial interest of thirty percent (30%) or more of a business

or of any class of voting securities of a business; or c) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the adult entertainment establishment.

LICENSEE: A person in whose name a license to operate an adult entertainment establishment has been issued, as well as the individual or individuals listed as an applicant on the application for an adult entertainment establishment license. In the case of an "employee", it shall mean the person in whose name the adult entertainment establishment employee license has been issued.

NUDITY OR A STATE OF NUDITY: The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

OPERATOR: Any person on the premises of an adult entertainment establishment who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated an adult entertainment establishment whether or not that person is an owner, part owner, or licensee of the business.

PERSON: Individual, proprietorship, partnership, corporation, association, or other legal entity.

PREMISES: The real property upon which the adult entertainment establishment is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult entertainment establishment, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for an adult entertainment establishment license.

REGULARLY: The consistent and repeated doing of an act on an ongoing basis.

SEMINUDE MODEL STUDIO: A place where persons regularly appear in a state of seminudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of seminudity did so in a class operated:

- A. By a college, junior college, or university supported entirely or partly by taxation;
- B. By 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
- C. In a structure:
 1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a seminude person is available for viewing; and
 2. Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.

SEMINUDE OR STATE OF SEMINUDITY: The showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

SEXUAL DEVICE: Any three-dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

SPECIFIED ANATOMICAL AREAS: Means and includes:

A. Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED CRIMINAL ACTIVITY: Any of the following specified crimes for which less than five (5) years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

A. Vice offenses (Iowa Code chapter 725);

B. Obscenity offenses (Iowa Code chapter 728);

C. Assault offenses (Iowa Code chapter 708);

D. Sexual abuse offenses (Iowa Code chapter 709);

E. Money laundering offenses (Iowa Code section 706B.2);

F. Controlled substances offenses (Iowa Code chapter 124, Div. IV);

G. Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or

H. Any offense committed in another jurisdiction that, had the predicate act(s) been committed in Iowa, would have constituted any of the foregoing offenses.

SPECIFIED SEXUAL ACTIVITY: Any of the following:

A. Intercourse, oral copulation, masturbation or sodomy; or

B. Excretory functions as a part of or in connection with any of the activities described in subsection A of this definition.

SUBSTANTIAL: At least thirty five percent (35%) of the item(s) so modified.

TRANSFER OF OWNERSHIP OR CONTROL: Of an adult entertainment establishment shall mean any of the following:

A. The sale, lease, or sublease of the business;

B. The transfer of securities which constitute an influential 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.

VIEWING ROOM: The room, booth, or area where a patron of an adult entertainment establishment would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction. (Ord. 69-08, 10-20-2008)

4-8-3: LICENSE REQUIRED:

A. Business License: It shall be unlawful for any person to operate an adult entertainment establishment in the city without a valid adult entertainment establishment license.

B. Employee License: It shall be unlawful for any person to be an "employee", as defined in section [4-8-2](#) of this chapter, of an adult entertainment establishment in the city without a valid adult entertainment establishment employee license, except that a person who is a licensee under a valid adult entertainment establishment license shall not be required to also obtain an adult entertainment establishment employee license.

C. Application: An applicant for an adult entertainment establishment license or an adult entertainment establishment employee license shall file in person at the office of the city manager a completed application made on a form provided by the city manager. An adult entertainment establishment may designate an individual with an influential interest in the establishment to file its application for an adult entertainment establishment license in person on behalf of the establishment. The application shall be signed as required by subsection D of this section and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection, accompanied by the appropriate licensing fee:

1. The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.
2. Current business address or another mailing address for the applicant.
3. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
4. If the application is for an adult entertainment establishment license, the business name, location, legal description, mailing address and phone number of the adult entertainment establishment.
5. If the application is for an adult entertainment establishment license, the name and business address of the statutory agent or other agent authorized to receive service of process.
6. A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a "specified criminal activity" as defined in this chapter, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
7. A statement of whether any adult entertainment establishment in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to a court order of closure or padlocking.
8. An application for an adult entertainment establishment license shall be accompanied by a legal description of the property where the business is located and 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 shall 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 inches ($\pm 6''$). Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this chapter shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations.

The information provided pursuant to this subsection shall be supplemented in writing by certified mail, return receipt requested, to the city manager within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

D. Signature: A person who seeks an adult entertainment establishment employee license under this section shall sign the application for a license. If a person who seeks an adult entertainment establishment license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks an adult entertainment establishment license is other than an individual, each person with an influential interest in the adult entertainment establishment or in a legal entity that controls the adult entertainment establishment shall sign the application for a license as applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.

E. Information Confidential: The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the office of the city manager on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by court order. (Ord. 69-08, 10-20-2008)

4-8-4: ISSUANCE OF LICENSE:

A. Business License: Upon the filing of a completed application for an adult entertainment establishment license, the city manager shall immediately issue a temporary license to the applicant if the completed application is from a preexisting adult entertainment establishment that is lawfully operating in the city and the completed application, on its face, indicates that the applicant is entitled to an annual adult entertainment establishment license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within twenty (20) days of the filing of a completed adult entertainment establishment license application, the city manager shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The city manager shall issue a license unless:

1. An applicant is less than eighteen (18) years of age.
2. An applicant has failed to provide information required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.
3. The license application fee required by this chapter has not been paid.
4. The "adult entertainment establishment", as defined in section [4-8-2](#) of this chapter is not in compliance with the interior configuration requirements of this chapter or is not in compliance with locational requirements of this chapter or the locational requirements of any other part of the this code.
5. Any adult entertainment establishment in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- a. Been declared by a court of law to be a nuisance; or
- b. Been subject to an order of closure or padlocking.

6. An applicant has been convicted of or pled guilty or nolo contendere to a "specified criminal activity", as defined in section [4-8-2](#) of this chapter.

B. Employee License: Upon the filing of a completed application for an adult entertainment establishment employee license, the city manager shall immediately issue a temporary license to the applicant if the applicant seeks licensure to work in a licensed adult entertainment establishment and the completed application, on its face, indicates that the applicant is entitled to an annual adult entertainment establishment employee license. The temporary license shall expire upon the final decision of the city to deny or grant an annual license. Within twenty (20) days of the filing of a completed adult entertainment establishment employee license application, the city manager shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The city manager shall issue a license unless:

1. The applicant is less than eighteen (18) years of age.
2. The applicant has failed to provide information as required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.
3. The license application fee required by this chapter has not been paid.
4. Any adult entertainment establishment in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to an order of closure or padlocking.
5. The applicant has been convicted of or pled guilty or nolo contendere to a "specified criminal activity", as defined in section [4-8-2](#) of this chapter.

C. License Contents; Posting; Kept On Person: The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for an adult entertainment establishment, the address of the adult entertainment establishment. The adult entertainment establishment license shall be posted in a conspicuous place at or near the entrance to the adult entertainment establishment so that it may be read at any time that the business is occupied by patrons or is open to the public. An adult entertainment establishment employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing. (Ord. 69-08, 10-20-2008)

4-8-5: FEES:

The initial license and annual renewal fees for adult entertainment establishment licenses and adult entertainment establishment employee licenses shall be as follows: a) one hundred dollars (\$100.00) for the initial fee for an adult entertainment establishment license and fifty dollars (\$50.00) for annual renewal; b) fifty dollars (\$50.00) for the initial adult entertainment establishment employee license and twenty five dollars (\$25.00) for annual renewal. (Ord. 69-08, 10-20-2008)

4-8-6: INSPECTION:

Adult entertainment establishments and adult entertainment establishment employees shall permit the city manager and his or her agents to inspect, from time to time on an occasional basis, the portions of the adult entertainment establishment premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the adult entertainment establishment is occupied by patrons or is open to the public. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections. (Ord. 69-08, 10-20-2008)

4-8-7: EXPIRATION AND RENEWAL OF LICENSE:

A. Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in section [4-8-5](#) of this chapter.

B. Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected. (Ord. 69-08, 10-20-2008)

4-8-8: SUSPENSION:

A. The city manager shall issue a written notice of intent to suspend an adult entertainment establishment license for a period not to exceed thirty (30) days if the adult entertainment establishment licensee has knowingly violated this chapter or has knowingly allowed an employee or any other person to violate this chapter.

B. The city manager shall issue a written notice of intent to suspend an adult entertainment establishment employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly violated this chapter. (Ord. 69-08, 10-20-2008)

4-8-9: REVOCATION:

A. Notice Of Violation: The city manager shall issue a written notice of intent to revoke an adult entertainment establishment license or an adult entertainment establishment employee license, as applicable, if the licensee knowingly violates this chapter or has knowingly allowed an employee or any other person to violate this chapter and a suspension of the licensee's license has become effective within the previous twelve (12) month period.

B. Reasons For Revocation: The city manager shall issue a written notice of intent to revoke an adult entertainment establishment license or an adult entertainment establishment employee license, as applicable, if:

1. The licensee has knowingly given false information in the application for the adult entertainment establishment license or the adult entertainment establishment employee license;
2. The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the adult entertainment establishment;
3. The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the adult entertainment establishment;
4. The licensee knowingly or recklessly operated the adult entertainment establishment during a period of time when the license was finally suspended or revoked;

5. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the adult entertainment establishment; or

6. The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to consume alcohol or appear in a state of seminudity or nudity on the premises of the adult entertainment business.

C. Appeal Of Relevant Conviction: The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license; provided, that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

D. Term Of Revocation: When, after the notice and hearing procedure described in this chapter, the city revokes a license, the revocation shall continue for one year and the licensee shall not be issued an adult entertainment establishment license or adult entertainment establishment employee license for one year from the date revocation becomes effective. (Ord. 69-08, 10-20-2008)

4-8-10: HEARING; LICENSE DENIAL, SUSPENSION, REVOCATION; APPEAL:

A. Notice And Request For Hearing, Procedures:

1. When the city manager issues a written notice of intent to deny, suspend, or revoke a license, the city manager shall immediately send such notice, which shall include the specific grounds under this chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the city manager for the respondent. The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the city manager, a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the city manager's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth day after it is issued, and shall be subject to the provisions of subsection B of this section.

2. If the respondent does make a written request for a hearing within said ten (10) days, then the city manager shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The city shall provide for the hearing to be transcribed.

3. At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross examine any of the city's witnesses. The city manager shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a final written decision, including specific reasons for the decision pursuant to this chapter, to the respondent within five (5) days after the hearing.

4. If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the thirtieth day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the city to

immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the city manager shall contemporaneously therewith issue the license to the applicant.

B. Court Action To Challenge Decision: If any court action challenging a licensing decision is initiated, the city shall prepare and transmit to the court a transcript of the hearing within thirty (30) days after receiving written notice of the filing of the court action. The city shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any adult entertainment establishment that is lawfully operating as an adult entertainment establishment, or any adult entertainment establishment employee that is lawfully employed as an adult entertainment establishment employee, on the date on which the completed business or employee application, as applicable, is filed with the city manager. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of any denial, suspension, or revocation of a temporary license or annual license, the city manager shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the adult entertainment establishment or to continue employment as an adult entertainment establishment employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city's enforcement. (Ord. 69-08, 10-20-2008)

4-8-11: TRANSFER OF LICENSE:

A licensee shall not transfer his or her license to another, nor shall a licensee operate an adult entertainment establishment under the authority of a license at any place other than the address designated in the adult entertainment establishment license application. (Ord. 69-08, 10-20-2008)

4-8-12: HOURS OF OPERATION:

No adult entertainment establishment shall be or remain open for business between two o'clock (2:00) A.M. and eight o'clock (8:00) A.M. on any day. (Ord. 69-08, 10-20-2008)

4-8-13: EXHIBITION OF SEXUALLY EXPLICIT FILMS ON PREMISES:

A. Requirements: A person who operates or causes to be operated an adult entertainment establishment which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image producing device, a film, videocassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:

1. Each application for an adult entertainment establishment license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, videocassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches ($\pm 6"$). The city manager may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

3. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

4. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.

5. It shall be the duty of the operator to post conspicuous signs in well lighted entry areas of the business stating all of the following:

a. That the occupancy of viewing rooms less than one hundred fifty (150) square feet is limited to one person.

b. That specified sexual activity on the premises is prohibited.

c. That the making of openings between viewing rooms is prohibited.

d. That violators will be required to leave the premises.

e. That violations of these regulations are unlawful.

6. It shall be the duty of the operator to enforce the regulations articulated in subsections A5a through A5d of this section.

7. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this subsection must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this subsection remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

B. Failure To Fulfill Duties: It shall be unlawful for a person having a duty under subsection A of this section to knowingly fail to fulfill that duty.

C. Entering Occupied Viewing Room: It shall be unlawful for any person to knowingly enter a viewing room less than one hundred fifty (150) square feet in area that is occupied by any other person.

D. Make Opening Between Viewing Rooms: It shall be unlawful for any person to knowingly make any hole or opening between viewing rooms.

E. Allowing Opening To Remain: It shall be unlawful for an operator to knowingly allow to persist any hole or similar opening in the wall of any viewing room. (Ord. 69-08, 10-20-2008)

4-8-14: LOITERING; LIGHTING REQUIREMENTS:

A. Loitering Prohibited; Monitoring Premises: It shall be the duty of the operator of an adult entertainment establishment to: 1) ensure that at least two (2) conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; 2) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and 3) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

B. Lighting Requirements: It shall be the duty of the operator of an adult entertainment establishment to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

C. Failure To Fulfill Duty: It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

D. Barrier In Parking Lot: No adult entertainment establishment shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way. (Ord. 69-08, 10-20-2008)

4-8-15: APPLICABILITY TO EXISTING BUSINESSES:

All preexisting adult entertainment establishments lawfully operating in the city in compliance with all state and local laws prior to the effective date hereof, and all adult entertainment establishment employees working in the city prior to the effective date hereof, are hereby granted a de facto temporary license to continue operation or employment for a period of ninety (90) days following the effective date hereof. By the end of said ninety (90) days, all adult entertainment establishments and adult entertainment establishment employees must conform to and abide by the requirements of this chapter. (Ord. 69-08, 10-20-2008)

4-8-16: CONDUCT REGULATIONS:

A. Nudity; Sexual Activity: No patron, employee, or any other person shall knowingly or intentionally, in an adult entertainment establishment, appear in a state of nudity or engage in a specified sexual activity.

B. Seminudity: No person shall knowingly or intentionally, in an adult entertainment establishment, appear in a seminude condition unless the person is an employee who, while seminude, remains at least six feet (6') from all patrons and on a stage at least eighteen inches (18") from the floor in a room of at least six hundred (600) square feet.

C. View From Operator Stations: The interior of the premises of any adult entertainment establishment which regularly features persons who appear seminude shall be configured in such a manner that there is an unobstructed view, by a direct line of sight from a fixed operator's station, of every area of the interior premises, excluding restrooms, to which any patron is permitted access for any purpose. If the premises has two (2) or more operator's

stations, then such view shall be from at least one of the operator's stations. An operator's station shall not exceed thirty two (32) square feet of floor area. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises.

D. Touching Of Customers: No employee who regularly appears seminude in an adult entertainment establishment shall knowingly or intentionally touch a customer or the clothing of a customer while on the premises of an adult entertainment establishment.

E. Alcoholic Beverages: No person shall sell, use, or consume alcoholic beverages on the premises of an adult entertainment establishment.

F. Minors: No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult entertainment establishment.

G. Compliance Required: No operator or licensee of an adult entertainment establishment shall knowingly violate or fail to comply with the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.

H. Regulations Posted: A sign in a form to be prescribed by the city manager, and summarizing the provisions of subsections A, B, C, D, E and F of this section shall be posted near the entrance of the adult entertainment establishment in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

I. Separate Restrooms: An adult entertainment establishment shall provide separate male and female restrooms for and to be used by employees which shall be separate from restrooms provided for and used by nonemployees. This requirement shall not apply to an adult entertainment establishment that neither has live entertainment nor provides prepared food or allows beverages (including alcoholic beverages) other than sealed nonalcoholic beverages for individual retail sales. (Ord. 69-08, 10-20-2008)

4-8-17: SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LICENSEE LIABILITY:

This chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this chapter. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the adult entertainment establishment licensee for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act. (Ord. 69-08, 10-20-2008)

4-8-18: FAILURE OF CITY TO MEET DEADLINE NOT TO RISK APPLICANT/LICENSEE RIGHTS:

In the event that a city official is required to act or to do a thing pursuant to this chapter within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the city official under this chapter, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the city of an applicant or licensee's application for an adult entertainment establishment license or an adult entertainment establishment employee's license (including a renewal), the license shall be deemed granted and the business or

employee allowed to commence operations or employment the day after the deadline for the city's action has passed. (Ord. 69-08, 10-20-2008)

4-8-19: NUISANCE DECLARED:

An adult entertainment establishment established, operated, or maintained in violation of any of the provisions of this chapter shall be, and is, declared to be a public nuisance. The city may, in addition to, or in lieu of any remedy set forth in this chapter, commence an action to enjoin, remove, or abate such nuisance in the manner provided by law. (Ord. 69-08, 10-20-2008)

4-8-20: SEVERABILITY:

This chapter and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this chapter. (Ord. 69-08, 10-20-2008)