

CHAPTER 125

ADULT ENTERTAINMENT BUSINESSES

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125.01 PURPOSE AND INTENT. It is the purpose of this chapter to regulate sexually oriented businesses and related activities 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 of adult cabaret 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. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials.

125.02 DEFINITIONS. The following terms are defined for use in this chapter.

1. “Adult cabaret” means a commercial establishment that regularly features:
 - A. Persons who appear in a state of nudity; or
 - B. Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
 - C. Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.
2. “Nudity” or “state of nudity” means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breasts without a fully opaque, complete covering of the breasts below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state, even if completely and opaquely covered.
3. “Permittee” means a person in whose name a permit to operate an adult cabaret has been issued, as well as the individual listed as an applicant on the application for a permit.
4. “Specified anatomical areas” means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

5. "Specified sexual activities" means and includes 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 or sodomy;
 - C. Masturbation, actual or simulated; or
 - D. Excretory functions as part of or in connection with any of the activities set forth in subsections A through C above.

125.03 STANDARDS OF CONDUCT AND OPERATION.

1. Adult cabaret businesses are regulated as follows:
 - A. The following standards of conduct must be adhered to by entertainers and employees of any adult cabaret business while on the premises.
 - B. No employee or entertainer shall be unclothed or in such less than opaque and complete attire, costume or clothing so as to expose to view any specified anatomical area, except when such entertainer or employee is on a stage separated from any and all customers by a window or other partition which is maintained free of holes or other structural openings which would permit physical contact between such entertainer and employee and any customer within the viewing area and customers are not permitted within four (4) feet of the window or other partition. However, a single opening in such window or partition, allowing for payment for entertainment, by a customer to the entertainer, shall be permitted and at this point customers are permitted within two (2) feet of the window or other partition to allow customers to reach the opening. An entertainer on stage may not expose to view any portion of the pubic region, anus, buttocks, vulva, or genitals at any time during the performance.
 - C. No employee or entertainer shall perform anywhere on the premises:
 - (1) Any specified sexual activities; or
 - (2) The displaying of any specified anatomical area, except as provided for in paragraph B of this subsection.
 - D. No employee or entertainer who is either not separated from any and all customers as provided in paragraph B of this subsection, or in an area of the premises not open to customers shall be unclothed or in less than opaque and complete attire, costume or clothing as described in paragraph B of this subsection.
 - E. No employee or entertainer shall knowingly touch any specified anatomical area of another person, or knowingly permit another person to touch any specified anatomical area of such employee or entertainer; or no employee or entertainer shall knowingly fondle or caress any specified anatomical area of another person, whether such area is clothed, unclothed, covered or exposed, or knowingly permit another person to fondle or caress

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any specified anatomical area of such employee or entertainer, whether such area is clothed, unclothed, covered or exposed.

F. No entertainer shall be visible from any public place during the hours of his or her employment, or apparent hours of his or her employment, while such entertainer is unclothed or in such attire, costume or clothing to expose to view any specified anatomical area or while performing any entertainment, either while clothed or unclothed.

G. No entertainer shall solicit, demand or receive any payment or gratuity from any customer for any act prohibited by this chapter.

H. No entertainer shall receive any payment or gratuity from any customer, except through an opening in the window or partition separating such entertainer from a customer, as described in paragraph B of this subsection.

2. At any adult cabaret business, the following are required:

A. A sign, on which upper-case letters are at least two inches high and lower-case letters are at least one inch high, shall be conspicuously displayed in the common area at the principal entrance and shall read as follows:

*THIS ADULT ENTERTAINMENT BUSINESS
IS REGULATED BY THE CITY OF LE MARS, IOWA.
ENTERTAINERS ARE:*

- 1. Not permitted to engage in any type of sexual conduct on the premises or in prostitution;*
- 2. Not permitted to be unclothed or in such less than opaque and complete attire, costume or clothing so as to expose to view any portion of the breasts below the top of the areola, or any portion of the pubic region, buttocks and/or genitals, except when separated from customers by the window or partition between the entertainer and customers.*
- 3. Not permitted to receive any payment or gratuity from any customer, except through an opening in the window or partition separating such entertainer from a customer.*

B. Neither entertainment nor any photograph, drawing, sketch or other pictorial or graphic representation thereof displaying any specified anatomical area shall be visible from a public place.

C. The 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 one foot-candle as measured at the floor level, and such illumination must be maintained at all times that any customer is present in or on the premises.

125.04 PERMIT REQUIRED.

1. It is unlawful for a person to operate an adult cabaret business without a valid permit issued by the City.

2. An application for a permit must be made on a form provided by the City. The application must be accompanied by a sketch or a 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 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 inches.
3. The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the Le Mars Code Enforcement Officer, Fire Department, Building Official and Zoning Official.
4. If a person who wishes to operate an adult cabaret business is an individual, he or she must sign the application for a permit as applicant. If a person who wishes to operate an adult cabaret business is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of an adult cabaret business or as the entity that wishes to operate such a business, each individual having a ten percent (10%) or greater interest in the corporation must sign the application for a permit as applicant.
5. The fact that a person possesses other types of State or City permits and/or licenses does not exempt said person from the requirement of obtaining an sexually oriented business permit.
6. Application for a permit, whether original or renewal, must be made to City Hall by the intended operator of the enterprise. Applications must be submitted by hand delivery to City Hall during regular working hours. Application forms shall be supplied by City Hall. The intended operator shall be required to give the following information on the application form:
 - A. The name, street address (and mailing address if different) and Iowa driver's license number of the intended operator;
 - B. The name and street address (and mailing address if different) of the owner;
 - C. The name under which the establishment is to be operated and a general description of the services to be provided;
 - D. The telephone number of the establishment;
 - E. The address and legal description of the tract of land on which the establishment is to be located;
 - F. If the establishment is in operation, the date on which the owner acquiring the establishment began operations as an adult cabaret business at the location for which the permit is sought; and
 - G. If the establishment is not in operation, the expected start-up date (which shall be expressed in number of days from the date of issuance of the permit). If the expected start-up date is to be more than ten (10) days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected

delay and a statement of the owner's time schedule and plan for accomplishing the same.

H. Statement that the applicant has not been convicted of a felony or released from confinement for conviction of a felony, whichever event is later, within five (5) years immediately preceding the application, or has not been convicted of a misdemeanor or released from confinement for conviction of a misdemeanor, whichever event is later, within two (2) years immediately preceding the application, where such felony or misdemeanor involved sexual offenses, prostitution, sexual abuse of a child or pornography and related offenses, as defined in the Code of Iowa, Federal law, or the statutes of any other state, or controlled substance or illegal drugs or narcotics offenses, as defined in the Code of Iowa, Federal law or the statutes of any other state, or has not been convicted of a municipal ordinance violation or released from confinement for conviction of a municipal ordinance violation, whichever event is later, within two (2) years immediately preceding the application, where such municipal ordinance violation involved indecent exposure, prostitution or the possession or sale of controlled substances or illegal drugs or narcotics.

7. The application shall be accompanied by the following:
 - A. Payment of the application fee in full.
 - B. If the establishment is an Iowa corporation, a certified copy of the articles of incorporation, together with all amendments thereto.
 - C. If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in the State, together with all amendments thereto.
 - D. If the establishment is a partnership formed under the laws of the State, a certified copy of the certificate of partnership, together with all amendments thereto.
 - E. If the establishment is a foreign partnership, a certified copy of the certificate of partnership and the qualification documents, together with all amendments thereto.
 - F. Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed.
 - G. If the persons identified as the fee owners of the tract of land in paragraph F are not also the owners of the establishment, then the lease purchase contract, purchase option contract, lease option contract or other document evidencing the legally enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the establishment for the purpose of the operation of the establishment.
 - H. The items in paragraphs B through G above shall not be required for a renewal application if the applicant states that the documents previously furnished the City with the original application or previous renewals thereof remain correct and current.

8. The application shall contain a statement under oath that:
 - A. The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and
 - B. The applicant has read the provisions of this chapter.
9. A separate application and permit shall be required for each sexually oriented business.

125.05 ISSUANCE OF PERMIT.

1. The City shall approve the issuance of a permit to an applicant within 30 days after receipt of an application unless the City finds one or more of the following to be true:
 - A. An applicant is under eighteen (18) years of age.
 - B. An applicant or an applicant's spouse is overdue in the payment to the City of taxes, fines or penalties assessed against said applicant or spouse or imposed in relation to an adult cabaret business.
 - C. An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the application form.
 - D. An applicant is residing with a person who has been denied a permit by the City to operate an adult cabaret business within the preceding twelve (12) months, or residing with a person whose permit to operate an adult cabaret business has been revoked within the preceding twelve (12) months.
 - E. The premises to be used for the adult cabaret business has not been approved by the Code Enforcement Office, Fire Department, Building Official and Zoning Official as being in compliance with applicable laws and ordinances.
 - F. The permit fee required by this chapter has not been paid.
 - G. An application of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.
2. The permit, if granted, shall state on its face the name of the person to whom it is granted, the expiration date and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the adult cabaret business that it may be easily read at any time.
3. The Le Mars Code Enforcement Office, Fire Department, Building Official and Zoning 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. The certification shall be promptly presented to the City.
4. In the event that the City determines that an applicant is not eligible for a permit, the applicant shall be given notice in writing of the reasons for the denial within forty-five (45) days after the receipt of the application by the City, provided that the applicant may request, in writing, that such period be extended for an

additional period of not more than ten (10) days at any time before the notice is issued in order to make modifications necessary to comply with this chapter.

5. An applicant may appeal the decision of the City regarding a denial to the Council by filing a written notice of appeal with the Clerk within fifteen (15) days after the applicant is given notice of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The City may submit a memorandum in response to the memorandum filed by the applicant on appeal to the Council. After reviewing such memoranda, as well as the City's written decision, if any, and exhibits submitted to the City, the Council shall vote either to uphold or overrule the City's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the Clerk receives the notice of appeal. However, all parties shall be required to comply with the City's decision during the pendency of the appeal.

6. The Police Chief shall conduct a background investigation of all applicants, including a check of the applicant's background by the Department of Criminal Investigation.

125.06 FEES. The annual fee for an adult cabaret business permit is five hundred dollars (\$500.00). This fee is to be used to pay for the cost of the administration and enforcement of this chapter.

125.07 INSPECTION. An applicant or permittee shall permit representatives of the Police Department or other City or State departments or agencies to inspect the premises of an adult cabaret business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

125.08 EXPIRATION OF PERMIT.

1. Each permit shall expire one year after the date of issuance and may be renewed only by making application as provided herein. Application for renewal should be made at least thirty (30) days before the expiration date and when made less than 30 days before the expiration date, the expiration of the permit will not be affected.

2. When the City denies renewal of a permit, the applicant shall not be issued a permit for one year from the date of denial. If, subsequent to the denial, the City finds that the basis for denial of the renewal permit has been corrected or abated, the applicant may be granted a permit if at least ninety (90) days has elapsed since the date the denial became final.

125.09 SUSPENSION. The City shall suspend a permit for a period not to exceed thirty (30) days if it is determined that the permittee or an employee of a permittee has:

1. Violated or is not in compliance with any section of this chapter;
2. Become impaired or intoxicated through the use of alcoholic beverages or controlled substances while on the adult cabaret business premises.

125.10 REVOCATION.

1. The City shall revoke a permit if a cause of suspension in Section 125.09 occurs and the permit has been suspended within the preceding twelve (12) months.
2. The City shall also revoke a permit if it is determined that:
 - A. A permittee gave false or misleading information in the material submitted during the application process.
 - B. A permittee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises.
 - C. A permittee or an employee has knowingly allowed prostitution on the premises.
 - D. A permittee or an employee knowingly operated the adult cabaret business during a period of time when the permittee's permit was suspended.
 - E. A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sexual conduct to occur in or on the premises.
 - F. A permittee is delinquent in the payment to the City or State for any taxes or fees past due.
 - G. The owner or operator of the establishment knowingly allowed a person under eighteen (18) years of age to enter an establishment.
 - H. There was a change of owner or operator for which a transfer application was not filed in a timely manner.
3. When the City revokes a permit, the revocation shall continue for one year, and the permittee shall not be issued an adult cabaret business permit for one year from the date 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 permit if at least 90 days has elapsed since the date the revocation became effective.

125.11 TRANSFER OF PERMIT. A permittee shall not transfer the permit to another, nor shall a permittee operate an adult cabaret business under the authority of a permit at any place other than the address designated in the application.

125.12 LOCATION RESTRICTIONS. An adult cabaret business shall be permitted only as a conditional use in any B-3 zoned commercial district, provided that:

1. The adult cabaret business may not be operated within 1,200 feet of:
 - A. A church, synagogue or regular place of religious worship;
 - B. A public or private elementary or secondary school or licensed day care center;
 - C. A boundary of any residential district;
 - D. A public park;
 - E. Federal, State, County, City or special district governmental offices;

F. In any residential area in the City.

2. For the purpose of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an adult cabaret business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship or public or private elementary or secondary school or to the nearest boundary of an affected public park, residential district or residential lot, or licensed day care center.

125.13 EXTERIOR PORTIONS OF ADULT CABARET BUSINESSES.

1. It is unlawful for an owner or operator of an adult cabaret business to allow activities of the establishment to be visible from a point outside the establishment.

2. It is unlawful for the owner or operator of an adult cabaret business to allow the exterior portion of the adult cabaret business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings or pictorial representations of any manner except to the extent permitted by the provisions of this chapter.

3. It is unlawful for the owner or operator of an adult cabaret business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to an adult cabaret business if the following conditions are met:

A. The establishment is a part of a commercial multi-unit center; and

B. The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

C. Nothing in this chapter shall be construed to require the painting of an otherwise unpainted exterior portion of an adult cabaret business.

125.14 SIGNAGE.

1. Notwithstanding any other City ordinance, code or regulation to the contrary, it is unlawful for the owner or operator of any adult cabaret business or any other person to erect, construct, or maintain any sign for the adult cabaret business other than the one primary sign and one secondary sign, as provided herein.

2. Primary signs shall have no more than two display surfaces. Each such display surface shall:

A. Not contain any flashing lights;

B. Be a flat plane, rectangular in shape;

C. Not exceed 75 square feet in area; and

D. Not exceed 10 feet in height or 10 feet in length.

3. Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

4. Each letter forming a word on a primary sign shall be of solid color and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
5. Secondary signs shall have only one display surface. Such display surface shall:
 - A. Be a flat plane, rectangular in shape;
 - B. Not exceed 20 square feet in area;
 - C. Not exceed 5 feet in height and 4 feet in width; and
 - D. Be affixed or attached to any wall or door of the enterprise.
6. The provisions of paragraph A of subsection 2 and of subsections 3 and 4 shall also apply to secondary signs.

125.15 PERSONS YOUNGER THAN EIGHTEEN PROHIBITED.

1. It is unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of an adult cabaret business at any time that the adult cabaret business is open for business.
2. It shall be the duty of the operator of each adult cabaret business to ensure that an attendant is stationed at each public entrance to the adult cabaret business at all times during regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the adult cabaret business. It shall be presumed that an attendant knew a person was under the age of 18 unless such attendant asked for and was furnished:
 - A. A valid operator's commercial operator's or chauffeur's driver's license reflecting that such person is 18 years of age or older; or
 - B. A valid personal identification certificate issued by the State reflecting that such person is 18 years of age or older.

125.16 CONSUMPTION OF ALCOHOLIC BEVERAGES PROHIBITED. The permittee of an adult cabaret business shall not allow the possession or consumption on premises by any person of any alcoholic beverage, wine, or beer. No person shall possess or consume any alcoholic beverage, wine, or beer on the premises of any adult cabaret business.

125.17 NOTICES.

1. Any notice required or permitted to be given by the City or any City office, division, department or other agency under this chapter to any applicant, operator or owner of an establishment may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit, or transfer application that has been received by the City, or any notice of address change that has been received by the City. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the City shall cause it to be posted at the principal entrance to the establishment.

2. Any notice required or permitted to be given to the City by any person under this chapter shall not be deemed given until and unless it is received in the office of the City.
3. It is the duty of each owner who is designated on the permit application and each operator to furnish a notice to the City in writing of any change of residence or mailing address.

125.18 INJUNCTION. A person who operates or causes to be operated an adult cabaret business without a valid permit or otherwise violates this chapter is subject to a suit for injunction as well as prosecution for criminal violations.

125.19 EXEMPTIONS. It is a defense to prosecution under this chapter that a person appearing in a state of nudity did so in a modeling class operated by:

1. A proprietary school licensed by the State of Iowa or a college, junior college or university supported entirely or partly by taxation; or
2. A private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

A theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances may request temporary permits for regulated activities, if such activities are proved to be for limited engagements of two months or less. Temporary permits must be applied for 60 days in advance to City Hall and provide a detailed description of the activity or performance.