

## WINDSOR HEIGHTS, IOWA

**CHAPTER 59****ADULT ENTERTAINMENT FACILITIES**

59.1 PURPOSE. In adopting this chapter, it is recognized that adult entertainment facilities have certain objectionable side effects which render these adult facilities incompatible with residential and family-oriented uses, when the adult facilities are located directly adjacent to such uses. This ordinance seeks to ensure that residential and family-oriented uses, and adult entertainment facilities will be located in separate and compatible locations. It is a subject of legitimate concern for the City to use its zoning power to preserve the quality of life, preserve the City's neighborhoods, and to meet effectively the increasing encroachments of urbanization upon the quality of life within the City.

59.2 DEFINITIONS. As used in this chapter, the following terms shall have the following meanings:

- A. "Specified Sexual Activities" means:
1. human genitals in a state of sexual stimulation or arousal;
  2. acts of human masturbation, sexual intercourse or sodomy;
  3. fondling or other touching of human genitals, pubic region, buttock or female breast; and
  4. minors engaged in a prohibited sexual act or simulation of a prohibited sexual act.
- B. "Specified Anatomical Areas" means:
1. less than completely and opaquely covered:
    - a. human genitals;
    - b. human buttocks;
    - c. human female breast below a point immediately above the top of the areola; and
  2. human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- C. Adult Entertainment Facilities shall include but not be limited to the following:

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1. "Adult Newsrack" means: any coin-operated machine or device which dispenses material substantially devoted to the depiction of specified sexual activities and specified anatomical areas.
2. "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.
3. "Adult Movie Theater" means: any theater, arcade, or similar establishment where enclosed building or open air facility is used for presenting material in the form of motion picture film, video tape or other similar means which is substantially devoted to the depiction of specified sexual activities and specified anatomical areas for observation by persons therein.
4. "Adult Nightclub" means: any club, cabaret, nightclub, bar, restaurant or similar establishment where an enclosed building or open air facility is used for live performance which is characterized by the exposure of specified sexual activities and specified anatomical areas for observation by persons therein.
5. "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.
6. "Adult Business" means: any business or establishment where a specified sexual activity or a specified anatomical area is displayed.

59.3 LOCATION OF ADULT BOOKSTORES, MOVIE THEATERS, NIGHTCLUBS, MOTELS, ADULT BUSINESSES, AND NEWSRACKS. No person, whether as principal or agent, clerk or employee, either for himself or any other person, or as an officer of any corporation, or otherwise, shall place, maintain, own or operate any adult bookstore, adult movie theater, adult nightclub, adult motel, adult business, or adult newsrack in the following locations.

A. Locations.

1. In any residential area in the City of Windsor Heights including upon any sidewalk abutting upon such residential area;
2. Within one thousand (1,000) feet of any residentially zoned or used property, or any property designated on the City's Comprehensive Plan as residentially oriented.

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3. Within one thousand (1,000) feet of any parcel of real property upon which is located any of the following facilities:
  - a. An elementary school, junior high school, or senior high school;
  - b. A church which conducts religious programs;
  - c. Park or recreational facilities operated and approved by the City of Windsor Heights, Polk County, the Polk County Conservation Board, the State of Iowa, or a not-for-profit institution;
  - d. Federal, state, county, city or special district governmental offices;
  - e. Supermarket or convenience market primarily engaged in the sale of food;
  - f. Restaurant, fast-food or food establishment catering to family trade.
4. Within two thousand (2,000) feet of any other adult entertainment facility, as defined in Section 59.2 "Adult Newsrack" for the purpose of this section means a single coin-operated device, and not a machine with double or triple dispensing capacity.

B. Measurement of Distance. The distance between any two (2) 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 to intervening structures, from the closest property line of the adult entertainment facilities to the closest property line of the religious institution, school, public park, government office, supermarket, restaurant or the property designated for residential use or used for residential purposes.

C. Viewing Area.

1. It is unlawful to maintain, operate or manage or permit to be maintained, operated or managed any adult theater or arcade in which the viewing areas are not visible from a continuous main aisle or are obscured by a curtain, door, wall, or other enclosure. For purposes of this Section, viewing area means the area where a patron or customer would ordinarily be positioned while watching the performance, picture, show or film.
2. It is unlawful for more than one (1) person at a time to occupy any individually partitioned viewing area or booth.

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3. It is unlawful to create, maintain or permit to be maintained any holes or other openings between any two (2) booths or individual viewing areas for the purpose of providing viewing or physical access between the booth or individual viewing area.
4. The opening to the viewing area shall be from the main aisle.

59.4 IDENTIFICATION OF NEWSRACKS: Each owner of an adult newsrack shall have his, her or its name, address and telephone number clearly visible on each newsrack located within the City. If the identification is not clearly visible that shall be grounds for immediate impoundment of the newsrack by the City.

59.5 IMPOUNDING OF ADULT NEWSRACKS:

A. Impoundment:

1. The provisions of the Windsor Heights City Code dealing with nonconforming uses shall not be applicable to the location of adult newsracks existing on the effective date of this ordinance, but thereafter the location of adult newsracks shall be subject to the nonconforming use provisions of the Windsor Heights City Code.
2. An adult newsrack found in violation of this chapter may be impounded by any police officer or code enforcement officer of the City after the following actions have occurred:
  - a. A notice of violation has been affixed to the adult newsrack stating the section of this chapter which has been violated and stating that the adult newsrack 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 newsrack as identified on the newsrack, if readable, stating the section of this chapter which has been violated and stating that the adult newsrack will be impounded if the violation is not abated within seven (7) days.
  - c. The violation has not been abated within seven (7) days of the posting of the notice of violation or the mailing of the certified letter, whichever occurs later.
  - d. The Police Department or Code Enforcement Office has presented to any magistrate affidavits or other evidence to show a prima facie violation of this chapter.

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e. A magistrate has issued a written order permitting the impounding of the adult newsrack pursuant to this chapter.

3. Whenever an adult newsrack is impounded a complaint for violation of Section 59.3 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 from the filing of the action, the complaint shall be dismissed; provided, however, that 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 therein is responsible for extending the judicial determination beyond the allowable time limit.

4. The Person who provides sufficient proof of ownership of such adult newsrack may have such adult newsrack, together with all monies, if any, impounded, returned immediately after the filing of a complaint for violation of Section 59.3 upon application to the Police Department. The person who provides sufficient proof of ownership of such adult newsrack may have the contents of such newsrack 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.

59.6 CRIMINAL VIOLATIONS AND PENALTIES: Any person, corporation or other legal entity who violates or resists the enforcement of any provisions of this Chapter, upon conviction shall be (1) fined not more than one hundred dollars (\$100); (2) imprisoned in jail not to exceed thirty (30) days; or (3) penalized by a combination of such fine and imprisonment for each offense. Each day that a violation is permitted to exist constitutes a separate offense.

59.7 CIVIL VIOLATIONS AND PENALTIES:

1. Any person, corporation or other legal entity who violates or resists the enforcement of any of the provisions of this Chapter shall be guilty of a municipal infraction punishable by a civil penalty of one hundred dollars (\$100) for the initial offense and two hundred dollars (\$200) for each repeat offense. Each day that a municipal infraction occurs constitutes a separate offense. Any person, corporation or other legal entity who violates this Chapter after having previously been found guilty of violating the Chapter provision at the same location or at a different location shall be guilty of a repeat offense.

2. Seeking a civil penalty as authorized in this section does not preclude the City from seeking alternative relief, including an order for abatement for injunctive relief, from the court in the same action or as a separate action.

59.8 ENFORCEMENT: In case any building, structure or sign is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any building structure, sign or land is used in violation of this Chapter, the City Attorney, in addition to other remedies, shall institute any proper action or proceedings in the name of the City to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or

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abate such violation, to prevent the occupancy of the building, structure or land, or to prevent any illegal act, conduct business or use in or about the premises.

59.9 MINIMAL DISTANCE VIOLATIONS: It is recognized that adult newsracks may be jostled or inadvertently moved minor distances by third persons with a resulting violation of the provisions of Section 59.3. Notwithstanding any other provisions of this chapter, such a minimal distance violation, not exceeding five (5) feet, shall not constitute a violation of this chapter, and the City's Police Department shall notify the owner of the adult newsrack by certified, return receipt requested, mail of the existence of the minimal distance requirements. Notwithstanding the provisions of this section, all adult newsracks shall comply with the encroachment permit provisions of the Windsor Heights City Code.

59.10 PERMITTED AREAS: The areas in the City of Windsor Heights in which adult entertainment facilities are permitted is defined in Section 59.3.

59.11 SEVERABILITY CLAUSE: If any section, provisions, or part of this chapter shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.