

AGENDA

Finance and Economic Development Committee Meeting

Thursday October 9, 2014

5:30 p.m. – 6:50 p.m.

South Conference Room

- 1. Call to Order**
- 2. Approval of the August 14, 2014 meeting minutes**
- 3. Development Updates – 15 minutes**
- 4. Economic Development Element of the Comprehensive Plan – 15 minutes**
- 5. Pacific Highway South Land Use Designations (240th Node) – 15 minutes**
- 6. Pacific Highway South Policy Discussion (272nd Node) – 15 minutes**
- 7. Adult Entertainment/Uses Code Discussion – 10 minutes**
- 8. Committee member comments – 10 minutes**

MINUTES – FINANCE AND ECONOMIC DEVELOPMENT COMMITTEE MEETING

August 14, 2014

South Conference Room

21630 11th Avenue South, Des Moines, WA

Council Members

Chair Matt Pina

Jeremy Nutting

Jeanette Burrage

City Staff

Tony Piasecki – City Manager

Michael Mathias – Asst. City Manager

Dan Brewer – PBPW Director

Denise Lathrop – Community Development Mgr

Grant Fredricks – Consultant

Laura Techico – Senior Land Use Planner

1. Call to Order

The meeting was called to order at 6:04 p.m. by Chair Matt Pina

2. Approval of the June 12, 2014 Meeting Minutes

Minutes approved as submitted.

3. Development Updates

PBPW Director Brewer provided drafts of the updated Development Activity map and Potential Development map. The following projects were discussed:

- Blueberry Lane – A conditional clearing and grading permit is scheduled to be issued soon.
- DMCBP – Panattoni has broken ground on the project.
- Artemis Hotel – Construction is well under way and progressing smoothly. A 1,000 Cubic Yard concrete pour is scheduled for the week of August 25th. Building plans for the next phase of the building permit have been submitted and are under review.
- Woodmont Vista – Building permit applications have been submitted for all nine lots of this subdivision located at South 260th Street and 16th Avenue South.

4. Discussion of letter from Mr. Bruce Lorig

City Manager Piasecki provided a summary of the letter that was provided by Bruce Lorig. The committee asked that staff look into the possibility of developing a scope of work for a consultant to evaluate some of the ideas and thoughts from Mr. Lorig, namely the potential to create a more pedestrian friendly environment; restriping or rechannelizing the roadways to reduce the feel of an auto-oriented thoroughfare; and investigate opportunities to see what could be done to create more parking in the downtown. There was some discussion about the possibility of working on the development of a parking in-lieu fee program.

5. Status report on and discussion of proactive code enforcement in the City's commercial areas.

PBPW Director Brewer presented a summary of the responses received from the proactive code enforcement efforts. Results showed that less than 15% responded to the first letter, and that so for less than 20% responded to the second letter. Work continues to send out follow up letters. The goal is compliance – not citations. Brewer reported that staff is working with a number of properties on compliance issues. Some properties are unwilling to cooperate, and citations will be mailed out soon.

6. Committee Member Comments

None.

The next regular meeting is scheduled for October 9th, 2014, from 5:30-6:50 p.m. in the South Conference room.

Adjourned at 6:52 p.m.

Respectfully submitted by:

Dan Brewer, Planning, Building and Public Works Director

DRAFT

FINANCE & ECONOMIC DEVELOPMENT COMMITTEE

October 2, 2014

DRAFT: ECONOMIC DEVELOPMENT ELEMENT (COMP PLAN UPDATE)

This item provides draft policies for the economic development element of the Comp Plan..

BACKGROUND

Economic Element as a part of a Comprehensive Plan.

The Washington Growth Management Act (GMA) emphasizes county-wide coordination of economic development planning, and economic development is one of the elements of a growth management comprehensive plan (see RCW 36.70A.070 (7)). The requirement for an economic development element was conditioned on the availability of state funds, which have not been provided to date. Many jurisdictions have, however, prepared an economic element of their comprehensive plan. Local governments have prepared other types of economic development plans, including strategic action plans and plans targeted at downtown areas. [MRSC]

Additionally, an Economic Development Element can be utilized as the basis for an Economic Development Strategic Plan that emphasizes a specific set of actions and strategies to actions achieve the policies established in the Economic Development Element.

[Note: This Element will be formatted consistent with Comp Plan update structure]

GOAL

City Council has established the following goal related to economic development;

“Promote economic stability, growth, and vitality.”

These DRAFT policies are designed to support that Council goal.

DRAFT POLICIES

Increase the self-reliance of the City by diversifying revenue streams, reducing dependence on property tax, and increasing revenues generated from retail sales and commercial economic activity.

Reduce retail leakage within the City by identifying those sectors where the City is underserved by retail business and increasing our competitive advantage to attract new retail development and customers.

Increase opportunities for higher density, urbanized development focusing on mixed-use projects.

Encourage and leverage the value of public/private partnerships.

Continue to provide expedited review and streamlined permitting services to foster confidence in the development community and assure the City is known as a good business partner.

Continue to coordinate economic development efforts within our region to increase the value of regional integration and assets including SeaTac and the Port of Seattle.

Focus on strategies to integrate sustainable development through design, energy efficiency, environmental mitigation and project development.

Foster strategies to support local small business, and retention and expansion of local businesses, in addition to business attraction activities.

Invest in infrastructure improvements to foster economic development and increase opportunities for walkability, recreation, and definition of economic development district boundaries (for example, the Marina District).

Invest in public amenities that help create a vibrant, recreation-oriented, healthy destination city, and that include quality education facilities, and activities for the community.

Support and work with schools, colleges and local companies to foster a well-trained and educated workforce.

Establish destination branding and economic development for the Marina, Redondo, Pacific Highway and the downtown, maximizing our current assets, (for example the Marina) to generate economic activity.

Pacific Highway South Corridor Work Program
Council Finance and Economic Development Committee Meeting
October 11, 2014

Council Directive (January 9, 2014): Focus planning on the *South 240th Street/Highline Community College Node*.

Guiding Principles:

- ✓ Economic Development Top Priority
- ✓ Respond to opportunities - “Highline Place”
- ✓ Leverage investments to benefit and simplify our process
- ✓ Be Aggressive: Complete in under 12 months

Goals and Outcomes: Transform the South 240th Street/Highline Community College Node (S 240th Street/HCC Node) from lower density, auto-oriented strip development to a mixed use employment/activity center that capitalizes on the opportunities provided by Highline Community College and the multi-million dollar public transportation investments that will be made in this corridor over the next decade in order to foster economic development, increase revenues and job opportunities, and provide more housing choices. Key outcomes include but are not limited to:

1. Land uses that increase revenues, job opportunities, and housing choices.
2. Consistent development standards along the border between Des Moines and Kent.
3. Land uses and regulations that capitalize on Highline Community College, Rapid Ride and Sound Transit’s Link Extension investments.
4. Leverage work being completed by others to inform our process.

Approach: By the fall of 2014, update zoning and development regulations around the South 240th Street/Highline Community College Node:

1. Build upon Envision Midway planning work.
2. Immediately revise regulations in support of specific projects when those projects have the potential to achieve the full economic potential of their properties while advancing the City’s development vision of the corridor. Use these changes to inform further planning.
3. Evaluate potential to expand commercial and multi-family uses up to ½ mile west of Pacific Highway S, based on vacant and re-developable land, improvement value/land value, proximity to College/employment, and proximity to transit.
4. Evaluate opportunities to further modify and improve land use, zoning, and development regulations in a way that will foster economic growth that best fits the area.
5. Engage the community throughout the planning process via public open houses, City website, City Currents and periodic press releases.

Schedule:



Moving Forward:

Based on the work program established in January 2014, Council recommended a phased approach to evaluating the Pacific Highway S Corridor from Kent Des Moines Road to S 272nd Street, focusing on the Pacific Highway S/S 240th Street Node first. More recently Council has expressed a desire to move forward on the planning efforts further south on the corridor to S 272nd Street. Administration would like to get confirmation that moving forward on the planning for the S 272nd Node is the one land use policy issue that the Committee will want to work on next year.

First, staff recommends completing the planning for the Pacific Highway S/S 240th Street Node that was initiated early 2014. At a minimum, staff recommends that Council consider establishing Comprehensive Plan land use designations and goals/policies/strategies regarding future vision for this area based on a preferred land use concept. The Council could also establish the zoning for this area or wait to rezone until planning for the remainder of the corridor is complete.

Planning for the remainder of the corridor can be accomplished in several ways:

Option 1: Consider changing the zoning regulations for the commercial properties evaluated during the Envision Midway, similar to the process that was followed to create the T-C Transit Community Zone. The remaining area to be considered includes those properties zoned C-C Community Commercial between S 252nd Street and S 272nd Street.

Option 2: Similar to what is currently being done at the S 240th Street Node, looking at a larger subarea around the S 272nd Street Node and possibly around S 260th Street Node to identify opportunities to expand the commercial land supply. This would include developing land use options for consideration by citizens, stakeholders and Council and establishing Comprehensive Plan land use designations and goals/policies/strategies regarding future vision for this area. Upon completion of this work, Council would have the option of adopting corresponding zoning regulations for this area. It is likely the zoning designations would be similar to what would be developed at the Pacific Highway S/S 240th Street Node.

Pacific Highway South Corridor (240th Node)

*Council Finance and Economic Development Committee Meeting
October 9, 2014*

Summary of Community Input from October 1st Public Workshop

Overview

The purpose of the workshop was to provide an overview of the subarea planning process and to introduce three land use concepts that reflected input from the March 26th Open House and the June 12th Council Finance and Economic Development Committee meeting. Staff provided an overview of the planning work completed to date, shared input from the March 26th open house, and solicited feedback on the three land use concepts. There were 15 members of the public that participated in the workshop.

Summary of Small Group Discussion

The community members were divided up into three working groups. The focus of their discussion was to evaluate the three land use concepts and determine if one emerged as a preferred concept. The questions posed to each group were:

- What is your vision for the 240th Street corridor? Housing? Commercial? Streetscape?
- What amenities/services would you like to see in this area?
- What type of jobs would you like to see in this area?
- Would you like to see more open space in the area?
- Would you like to see this area take on a specific identity?
- Should the location of the LLR station be a determining factor in the development of this area?
- What housing types are missing in this area?
- What housing types are appropriate for this area?
- What transportation system improvements are needed along 240th Street or other roads?
- What pedestrian connections are missing in this area?

Connectivity for pedestrians and vehicles within to Pacific Highway from the neighborhood was a reoccurring topic among all the groups. The discussion of connectivity pointed towards the lack of access to Pacific Highway South without taking S 240th Street. In addition, all of the groups felt that S 240th Street was not a pedestrian friendly environment which is a key to having a lively community. The proposed location of the Link Light Rail was considered by all groups to be very important and a catalyst for change. However, each group also pointed out that Highline College was an important destination and could serve as a catalyst for redevelopment and growth in and of itself.

There were general observations about the need for attractive pedestrian environments that supports a community atmosphere where people can sit, rest and talk. It is also important to create a student friendly place to encourage Highline College students to remain in the area in-between classes and purchase goods and services as well.

There was general consensus among the groups that increased density is good along S 240th Street and closer to Pacific Highway. However, they would like to limit the increased density further west by

transitioning from high to medium to low density housing types. All three groups felt very strongly that design was fundamental in ensuring that higher density housing is compatible when placed in/adjacent to an existing single family neighborhood.

Last, each group embraced the idea of a “shopfront street” along S 240th Street and 26th Avenue South. They each had recommendations and questions, but overall felt that the concept was positive for the neighborhood.

The bulleted summary from each small group discussion follows:

Group 1

- A combination of all concepts was favored but were drawn towards land use concept 1 and 3, with the addition of the “shopfront street” idea.
- Want to consider if the “shopfront street” will complete with downtown Des Moines stores?
- Highline College would benefit from more amenities in walking distance, specifically for its international students who currently need to own a car or bus to purchase their goods.
- Design standards are VERY important when increasing density.
- Really liked the “shopfront street” idea, however, perhaps scale it back to just the one block on S 240th Street and keep it the same on 26th Avenue S.
- Questioned where will those who drive to the stores on 26th Avenue S park?
- Need to consider safety with the increased pedestrian activity and density.
- Like the idea of having more access points to Pacific Highway for cars, bikes, and pedestrians.

Group 2

- Focus lighter uses (such as a coffee shop) on S 240th Street and heavier uses on Pacific Hwy S.
- Safer pedestrian/auto infrastructure on S 240th Street – student crossing:
 - Install lighted crosswalks across S. 240th Street
 - Street lighting
 - Walkways
- Ensure adequate parking for light rail and development.
- Preferred - Land Use Concept 2:
 - Opens up transportation connections for adjacent residences, instead of only S 240th Street
 - Ensure the TC-T development is compatible with existing housing and has adequate off street parking
 - Transition from townhouse > duplex > single family
 - Ensure that LLR station location has reasonable pedestrian access to campus
 - Design is important

Group 3

- The location of the LLR station is critical:
 - Highline College is a destination that brings students, employees and visitors to the area
 - LLR part of infrastructure and key element – creates access to college
- Highline College can be a catalyst for redevelopment with or without LLR station:
 - Need to capture students and employees that are spending money in Kent
 - Having an activity node west of Pac Hwy allows for neighborhood placemaking and cohesion with Highline College
- Potential for higher density and commercial on S. 240th Street but unsure if market could support commercial on 26th Avenue S.

- No cars on 26th Avenue S – creates a pedestrian only space for people to gather, shop and play.
- Supportive of pedestrian friendly/complete streets.
- Lighted crosswalks needed across S 240th Street to provide safe access into neighborhood.
- Like the buffer to single family with Parkside Park in Land Use Concept 3.
- Keep areas safe and pleasant
- Priority: Residents > Employees > Students

Next steps:

- Staff will look to combine all of the feedback from the community into a modified land use concept.
- Staff will seek concurrence from the Committee and Council.
- Staff will prepare land use designations for incorporation into the update of the Comprehensive Plan.

TABLE 18.52-010B

COMMERCIAL ZONE PRIMARY USES

Use is: P: Permitted P/L: Permitted, but with special limitations CUP: Conditional use review required UUP: Unclassified use review required	N-C	I-C	B-P	C-C	D-C	H-C	PR-C	T-C
Accessory buildings and uses (as described in the applicable zone)	P	P	P	P	P	P	P	P
Admin, support services	P/L _[3]		P	P/L _[16]	P/L _[22]		P	P
Adult family homes				P	P		P	P
Adult entertainment facilities							P/L _{[46][67]}	
Adult theaters						P/L _[35]	P/L _{[46][67]}	

35. Adult Motion Picture Theaters. This regulation applies to all parts of Table 18.52.010B that have a [35]. Adult motion picture theaters are prohibited within 500 feet of the property lines of churches, schools, preschool through high school, public facilities, adult entertainment facilities, or other adult motion picture theaters.

46. Arts, Entertainment, and Recreation. This regulation applies to all parts of Table 18.52.010B that have a [46]. Adult entertainment facilities and adult motion picture theaters are prohibited north of South 216th Street and within 500 feet of the property lines of churches, common schools, day care centers, public facilities, or other adult entertainment facilities or adult motion picture theaters.

67. Adult Entertainment Facilities. This regulation applies to all parts of Table 18.52.010B that have a [67]. Adult entertainment facilities are subject to the additional standards of chapter [18.160](#) DMMC and chapter [5.48](#) DMMC.

Chapter 18.160 ADULT ENTERTAINMENT FACILITY ZONING

Sections

- [18.160.010](#) Title.
- [18.160.020](#) Findings of fact.
- [18.160.030](#) Adult entertainment facilities prohibited in certain areas.
- [18.160.040](#) Amortization of any nonconforming use.
- [18.160.050](#) Conflicts.

18.160.010 Title.

This chapter shall be entitled “Adult Entertainment Facility Zoning.” [Ord. 1591 § 352, 2014.]

18.160.020 Findings of fact.

- (1) The City Council is committed to protecting the general welfare of the City through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses while preserving constitutionally protected forms of expression.
- (2) The City has made a detailed review of the national record, including studies from the cities of New York, Indianapolis, and Los Angeles, the police records of various cities, and court decisions regarding adult entertainment uses, including adult retail establishments. The City Council finds that adult entertainment uses, including adult retail establishments, require special supervision from public safety agencies in order to protect and preserve the health, safety, and welfare of the patrons and employees of said business as well as the citizens of the City.
- (3) The City Council finds that concerns about crime and public sexual activity generated and/or occurring within or near adult entertainment and adult retail establishments are legitimate, substantial and compelling concerns of the City which demand reasonable regulation.
- (4) The City Council finds that adult entertainment and adult retail establishments, due to their nature, have secondary adverse impacts upon the health, safety, and welfare of the citizenry through increases in crime and opportunity for spread of sexually transmitted diseases.
- (5) There is convincing documented evidence that adult entertainment and adult retail establishments have a detrimental effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading of quality of life and property values and the spread of urban blight.

Reasonable regulation of the location of these facilities will provide for the protection of the community, protect residents, patrons, and employees from the adverse secondary effects of such facilities.

(6) The City recognizes that adult entertainment and adult retail establishments, due to their very nature, have serious objectionable operational characteristics, particularly when located in close proximity to residential neighborhoods, day care centers, religious facilities, public parks, schools, and public facilities open to families, such as post offices and medical clinics, and thereby having a deleterious impact upon the quality of life in the surrounding areas. It has been acknowledged by courts and communities across the nation that state and local governmental entities have a special concern in regulating the operation of such businesses under their jurisdiction to ensure the adverse secondary effects of the establishments are minimized.

(7) This chapter is intended to protect the general public health, safety, and welfare of the citizenry of the City through the regulation of the location of adult entertainment and adult retail establishments. The regulations set forth herein are intended to control health, safety, and welfare issues, the decline in neighborhood conditions in and around adult entertainment and adult retail establishments, and to isolate dangerous and unlawful conduct associated with these facilities.

(8) It is not the intent of this chapter to suppress any speech activities protected by the First Amendment to the United States Constitution, or Article 1, Section 5 of the Washington State Constitution, but to enact content-neutral legislation which addresses the negative secondary impacts of adult entertainment and adult retail establishments.

(9) It is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the City Council recognizes that state and federal law prohibits the distribution of obscene materials.

(10) The City Council, at its duly advertised public hearing on September 13, 2001, considered the subject matter of adult entertainment and adult retail establishments, at which public hearing the City Council received comments from the public on that subject matter, which the City Council believes to be true, and which, together with the findings heretofore set forth, form the basis for the adoption of the ordinance codified in this chapter. [Ord. 1591 § 353, 2014.]

18.160.030 Adult entertainment facilities prohibited in certain areas. 

(1) Adult entertainment facilities as defined in this Title are prohibited:

- (a) Within 1,000 feet of any Residential Zone or any single-family or multiple-family residential use;
- (b) Within 1,000 feet of any public or private elementary or secondary school;

- (c) Within 1,000 feet of any day care center for children, nursery, or preschool;
- (d) Within 1,000 feet of any church or other facility or institution used primarily for religious purposes;
- (e) Within 1,000 feet of any public park or public facility open to families, including post offices, City Hall, and medical clinics; and
- (f) Within 1,000 feet of any other adult retail use.

As used herein, the distances shall mean the straight-line distance between the edge or corner of the property on which the adult retail use is located to the nearest edge or corner of the property of another adult retail use or any of the sensitive uses set forth above.

(2) Exception. Adult entertainment facilities, as defined in this Title, shall be permitted within the PR-C Zone:

- (a) So long as such uses are located within a building that fronts Pacific Highway South and obtains its access exclusively from such highway; and
- (b) So long as such uses are located no less than 500 feet from any other adult entertainment or adult retail use. [Ord. 1591 § 354, 2014.]

18.160.040 Amortization of any nonconforming use.

Any adult entertainment, activity, use, or retail use located within the City limits on the effective date of the ordinance codified in this section that is made nonconforming by this chapter shall be terminated within one year; provided, however, that such termination date may be extended upon the approval of an application filed with the City within 120 days of the effective date of the ordinance codified in this section requesting an extension of such one-year amortization period. The decision on whether or not to approve any extension period and the length of such period shall be based upon the applicant clearly demonstrating extreme economic hardship based upon an irreversible financial investment or commitment made prior to the effective date of the ordinance codified in this section, which precludes reasonable alternative uses of the subject property. [Ord. 1591 § 355, 2014.]

18.160.050 Conflicts.

In the event of a conflict between this chapter and any other provision of this code, this chapter applies and supersedes. [Ord. 1591 § 356, 2014.]

Chapter 5.48 ADULT ENTERTAINMENT

Sections

- [5.48.010](#) Definitions.
- [5.48.020](#) License for business required – Fee.
- [5.48.030](#) License for managers and entertainers required – Fee.
- [5.48.040](#) Due date for license fees.
- [5.48.050](#) Renewal of license, registration, or permit – Late penalty.
- [5.48.060](#) License applications.
- [5.48.070](#) Manager on premises.
- [5.48.080](#) License nontransferable.
- [5.48.090](#) License – Posting and display.
- [5.48.100](#) License – Name of business and place of business.
- [5.48.110](#) Adult entertainment business license – Revocation.
- [5.48.120](#) Permit – Revocation or suspension.
- [5.48.130](#) License – Sale, transfer, or relocation.
- [5.48.140](#) Standards of conduct and operation.
- [5.48.150](#) Business hours.
- [5.48.160](#) Public nuisance.
- [5.48.170](#) Violation – Penalty.
- [5.48.180](#) Additional enforcement.
- [5.48.190](#) Minimum age of patrons – Violation – Penalty.

5.48.010 Definitions.

(1) Use of Words and Phrases. As used in this chapter, unless the context or subject matter clearly requires otherwise, the words or phrases defined in this section shall have the indicated meanings.

(2) “Adult entertainment” includes adult entertainment facilities defined in the zoning code and an exhibition or dance of any type conducted in premises where the exhibition or dance involves a person who is unclothed or in such attire, costume, or clothing as to expose to view any portion of the breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals.

(3) "Employee" means all persons, including entertainers and independent contractors, who work in or at or render services directly related to the operation of a public place of amusement, that offers, conducts, or maintains adult entertainment.

(4) "Entertainer" means a person who provides adult entertainment within a public place of amusement as defined in this section whether or not a fee is charged or accepted for the entertainment.

(5) "Entertainment" means an exhibition or dance of any type, pantomime, modeling, or any other performance.

(6) "Manager" means a person appointed by the operation who manages, directs, administers, or is in charge of, the affairs and/or the conduct of any portion of any activity involving adult entertainment occurring at any place offering adult entertainment.

(7) "Operator" means a person operating, conducting, or maintaining an adult entertainment business.

(8) "Public place of amusement," "public amusement/entertainment," and "public entertainment" mean an amusement, diversion, entertainment, show, performance, exhibition, display, or like activity, for the use or benefit of a member or members of the public, or advertised for the use or benefit of a member of the public, held, conducted, operated or maintained for a profit, either direct or indirect. [Ord. 1050 § 1, 1993: Ord. 746 § 2, 1988.]

5.48.020 License for business required – Fee.

(1) No public place of amusement, including but not limited to places which offer adult entertainment, shall be operated or maintained in the city unless the owner or lessee thereof has obtained a license from the city clerk; provided, however, that it is unlawful for an entertainer, employee, or operator to knowingly work in or about, or to knowingly perform any service directly related to the operation of an unlicensed public place of amusement/entertainment.

(2) The annual fee for such a license is \$750.00.

(3) This license expires annually on December 31st and must be renewed by January 1st.

(4) There is no prorating of the fee.

(5) The applicant must be 18 years of age or older. [Ord. 746 § 3, 1988.]

5.48.030 License for managers and entertainers required – Fee.

- (1) No person shall work as a manager or entertainer at a public place of amusement offering adult entertainment without having first obtained a manager's or an entertainer's license from the city clerk pursuant to DMMC [5.48.060](#).
- (2) The annual fee for such a license shall be \$200.00.
- (3) This license expires annually on December 31st and must be renewed by January 1st.
- (4) There will be no prorating of the fee.
- (5) The applicant must be 18 years of age or older. [Ord. 746 § 4, 1988.]

5.48.040 Due date for license fees.

All licenses required by DMMC [5.48.020](#) must be issued and the applicable fees are due and payable to the city clerk at least 14 calendar days before the opening of the adult entertainment business. [Ord. 746 § 5, 1988.]

5.48.050 Renewal of license, registration, or permit – Late penalty.

A late penalty shall be charged on all applications for renewal of a license, received later than 10 calendar days after the expiration date of such license. The amount of such penalty is fixed as follows:

- (1) For a license requiring a fee of \$.50 or more, but less than or equal to \$200.00, 20 percent of the required fee;
- (2) For a license requiring a fee of more than \$200.00, 10 percent of the required fee. [Ord. 746 § 6, 1988.]

5.48.060 License applications.

For the purposes of this chapter, the words "license" and "permit" shall be considered coextensive terms.

(1) Public Adult Entertainment License. All applications for a public amusement/entertainment license for places which offer adult entertainment shall be submitted in the name of the person or entity proposing to conduct such public amusement/entertainment on the business premises and shall be signed by such person and notarized or certified as true under penalty of perjury. All applications shall be submitted on a form supplied by the city clerk, which shall require the following information:

- (a) The name, home address, home telephone number, date and place of birth, driver's license number, if any, and Social Security number of the applicant if the applicant is an individual;
- (b) The business name, employer identification number, address, and telephone number of the establishment;

(c) The names, home and business addresses, telephone numbers, and Social Security numbers of any partners, including limited partners, corporate officers, shareholders who own 10 percent or more of the business, or other persons who have a substantial interest or management responsibilities in connection with the business, specifying the interest or management responsibility of each. For the purpose of this subsection "substantial interest" means ownership of 10 percent or more of the business, or any other kind of contribution to the business of the same or greater size;

(d) Terms of any loans, leases, secured transactions, and repayments therefor relating to the business;

(e) Addresses of the applicant for the five years immediately prior to the date of application;

(f) A description of the adult entertainment or similar business history of the applicant; whether such person or entity, in previously operating in this or another city, county, state, or country has had a business license revoked or suspended, the reason therefor, and the activity or occupation subsequent to such action, suspension or revocation;

(g) Any and all criminal convictions or forfeitures other than parking offenses or minor traffic violations including dates of conviction, nature of the crime, name and location of court and disposition for each owner, partner or corporation for the seven-year period preceding the date an application is filed with the city;

(h) A description of the business, occupation, or employment of the applicant for the three years immediately preceding the date of application;

(i) Authorization for the city, its agents, and employees to seek information to confirm any statements set forth in the application;

(j) Supplemental identification and/or information necessary to confirm matters set forth in the application.

(2) Manager or Entertainer License. A separate license shall be obtained for each and every establishment at which the applicant will practice. All applications for a manager's or entertainer's license shall be signed by the applicant and notarized or certified to be true under penalty of perjury. All applications shall be submitted on a form supplied by the city clerk, which shall require the following information:

(a) The applicant's name, home address, home telephone number, date and place of birth, fingerprints taken by the Des Moines police department or a law enforcement agency as approved by the chief of police, Social Security number, and any stage names or nicknames used in entertaining;

(b) The name and address of each business at which the applicant intends to work;

(c) The applicant shall present documentation that he or she has attained the age of 18 years. Any of the following shall be accepted as documentation of age:

(i) A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth; or

(ii) A state-issued identification card bearing the applicant's photograph and date of birth; or

(iii) A valid passport bearing the applicant's photograph and date of birth;

(d) A complete statement of all convictions of the applicant for any misdemeanor or felony violations in this or any other city, county, state, or country, except parking violations or minor traffic infractions, for the seven-year period preceding the date an application is filed with the city;

(e) A description of the applicant's principal activities or service to be rendered;

(f) Resident addresses and telephone numbers for five years immediately prior to the date of application specifying the period of residence at each address;

(g) The name and address of employers or individuals or businesses for whom the applicant was an employee or independent contractor for the three-year period immediately prior to the date of application, including the period of employment;

(h) Supplemental information and/or identification deemed necessary by the clerk or her or his designee to confirm any statements set forth in the application;

(i) Authorization for the city, its agents and employees to investigate and confirm any statements set forth in the application.

(3) If any person or entity acquires, subsequent to the issuance of a public amusement/ entertainment license for places offering adult entertainment, a substantial interest in the licensed premises, immediate notice of such acquisition shall be provided in writing to the city clerk, and in no event not later than 21 days following such acquisition. Further, the person or entity acquiring such an interest shall furnish to the city clerk such equivalent information as if they were an applicant for an original license under this chapter. The information required to be provided pursuant to this subsection shall be that information required pursuant to subsections (1) and (2) of this section.

(4) Copies of an application shall, within five calendar days of receipt thereof, be referred by the city clerk to the city manager, chief of police, planning, building, fire district, or other appropriate departments. The departments shall, within 30 business days, inspect the application, the premises proposed to be operated as an adult entertainment place and shall make written verification to the city clerk that such premises complies with the codes of the city. No license may be issued without such verification. The application shall also be referred to the police department for a criminal records check and verification of the information provided by the applicant on the application for a license.

(5) Upon completion of the investigation and review by the departments, a review of the recommendations and verifications, and a determination that all matters contained in the application are true and correct and that this chapter has been complied with, the city clerk shall issue such license applied for in accordance with the provisions of this chapter; provided, however, that the applicable license fee, together with any delinquent fees that may then be due, shall first be paid to the city.

(6) Temporary License for Adult Entertainer or Manager of Adult Entertainment Operation. An applicant for an adult entertainer's license or manager's license shall be issued a temporary license upon receipt of a complete license application and fee. Said temporary license will automatically expire on the fourteenth day following the filing of the complete application and fee, unless the city manager has failed to approve or deny the license application in which case the temporary license shall be valid until the city manager approves or denies the application, or until the final determination of any appeal from a denial of the application. In no event may the city manager extend the application review time for more than an additional 20 days. [Ord. 1295 § 2, 2001: Ord. 746 § 7, 1988.]

5.48.070 Manager on premises.

A licensed manager shall be on the premises of a public place of amusement at all times that adult entertainment is being provided. [Ord. 746 § 8, 1988.]

5.48.080 License nontransferable.

No license or permit shall be transferable. [Ord. 746 § 9, 1988.]

5.48.090 License – Posting and display.

(1) Every adult entertainer shall post his or her permit in his or her work area so it is readily available for public inspection.

(2) Every person, corporation, partnership, or association licensed under this chapter shall display such license in a prominent place. The name of the manager on duty shall be prominently posted during business hours. [Ord. 746 § 10, 1988.]

5.48.100 License – Name of business and place of business.

No person granted a license pursuant to this chapter shall operate the adult entertainment business under a name not specified in his/her license, nor shall he/she conduct business under any designation or location not specified in his/her license. [Ord. 746 § 11, 1988.]

5.48.110 Adult entertainment business license – Revocation.

Any license issued for an adult entertainment business may be revoked or suspended by the city council after notice of not less than 10 calendar days, and a subsequent hearing for good cause, or in any case where any of the provisions of this chapter are violated, or where any employee of the licensee is engaged in any conduct which violates any state or local laws or ordinances at licensee's place of business and of which the licensee has actual or constructive knowledge. Such permit may also be revoked or suspended by the city council after notice and hearing, upon the recommendations of the city health official that such business is being managed, conducted, or maintained without regard to proper sanitation and hygiene. [Ord. 746 § 12, 1988.]

5.48.120 Permit – Revocation or suspension.

An adult entertainment manager or entertainer license issued by the city clerk shall be revoked or suspended where it appears that the holder has procured such license by fraud, material misstatement, or omission or by other deceptive means, or has committed an act in violation of this chapter. [Ord. 746 § 13, 1988.]

5.48.130 License – Sale, transfer, or relocation.

Upon sale, transfer, or relocation of an adult entertainment business, the license therefor shall be null and void; provided, however, that upon the death or incapacity of the licensee or any colicensee, any heir or devisee of a deceased licensee, or any guardian of an heir or devisee of a deceased licensee may continue the adult entertainment for a reasonable period of time not to exceed 60 calendar days to allow for an orderly renewal of the license, if such new licensee fulfills all requirements of this chapter. [Ord. 746 § 14, 1988.]

5.48.140 Standards of conduct and operation.

(1) The following standards of conduct must be adhered to by employees of any public place of amusement which offers, conducts, or maintains adult entertainment:

(a) No employee or entertainer shall be unclothed or in such attire, costume, or clothing so as to expose to view any portion of the breast below the top of the areola or of any portion of the pubic region, anus, buttocks, vulva, or genitals except as provided for in subdivision (e) of this subsection and subsection (3)(c) of this section.

(b) No employee or entertainer mingling with the patrons shall be unclothed or in such attire, costume, or clothing as described in subdivision (1) of this subsection.

(c) No employee or entertainer shall encourage or knowingly permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus, or genitals of any other person.

(d) Except as provided in subdivision (e) of this subsection and subsection (3)(c) of this section, employees or entertainers not in conformance with subdivision (a) of this subsection shall not perform acts of or acts which simulate:

(i) Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts which are prohibited by law; or

(ii) The touching, caressing, or fondling of the breasts, buttocks, or genitals; or

(iii) The displaying of the pubic region, anus, buttocks, vulva, or genitals.

(e) No employee or entertainer shall be unclothed or in such attire, costume, or clothing so as to expose to view any portion of the breast below the top of the areola, or any portion of the pubic region, vulva, or genitals, anus and/or buttocks exposed to view except upon a stage at least 18 inches above the immediate floor level and removed at least six feet from the nearest patron.

(f) No employee or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection.

(g) No employee or entertainer shall remain in or upon the public place of amusement who exposes to public view any portion of his or her genitals or anus except as expressly provided for in subdivision (e) of this subsection and subsection (3)(c) of this section.

(h) No entertainer of any place offering adult entertainment shall be visible from any public place during the hours of his or her employment, or apparent hours of his or her employment, on the premises.

(i) No entertainer at a place offering adult entertainment shall demand or collect all or any portion of a fee from a patron for entertainment before its completion.

(j) A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

THIS ADULT ENTERTAINMENT ESTABLISHMENT IS REGULATED BY THE CITY OF DES MOINES;
ENTERTAINERS ARE:

- a. Not permitted to engage in any type of sexual conduct;
- b. Not permitted to be unclothed or in such attire, costume or clothing so as to expose to view any portion of the breasts below the top of the areola, any portion of the pubic region, buttocks, genitals or vulva and/or anus except upon a stage at least eighteen inches from the immediate floor level and removed at least six feet from the nearest patron; and
- c. Not permitted to demand or collect all or any portion of a fee from a patron for entertainment before its completion.

(2) At any public place of amusement which offers, conducts, or maintains adult entertainment, the following are required:

- (a) Admission must be restricted to persons of the age of 18 years or more; and
- (b) Neither the performance nor any photograph, video, drawing, sketch, or other pictorial or graphic representation thereof displaying any portion of the breasts below the top of the areola or any portion of the pubic hair, buttocks, genitals, and/or anus may be visible outside of the public place of amusement so licensed.
- (c) Sufficient lighting shall be provided in and about the parts of the premises which are open to and used by the public so that all objects are plainly visible at all times.

(3) This chapter shall not be construed to prohibit:

- (a) Plays, operas, musicals, or other dramatic works which are not obscene;
- (b) Classes, seminars, and lectures held for serious scientific or educational purposes; or
- (c) Exhibitions or dances which are not obscene.

(4) For purposes of this chapter, an activity is "obscene" if:

- (a) Taken as a whole by an average person applying contemporary community standards the activity appeals to a prurient interest in sex;
- (b) The activity depicts patently offensive representations according to Des Moines community standards of:
 - (i) Ultimate sexual acts, normal or perverted, actual or simulated; or

(ii) Masturbation, fellatio, cunnilingus, bestiality, excretory functions, or lewd exhibition of the genitals or genital area; or violent or destructive sexual acts, including but not limited to human or animal mutilation, dismemberment, rape or torture; and

(c) The activity taken as a whole lacks serious literary, artistic, political, or scientific value.

(5) For purposes of this chapter, an activity is “dramatic” if the activity is of, relating to, devoted to, or concerned specifically or professionally with current drama or the contemporary theater. [Ord. 746 § 15, 1988.]

5.48.150 Business hours.

No public entertainment shall be conducted between the hours of 2:30 a.m. and 10:00 a.m. [Ord. 746 § 16, 1988.]

5.48.160 Public nuisance.

An adult entertainment business operated, conducted, or maintained contrary to the provisions of this chapter or a law of the city or state shall be, and the same is, unlawful and a public nuisance and the city attorney may, in addition to or in lieu of prosecuting a criminal action under this chapter, commence an action or actions, for the abatement, removal, and enjoinder thereof, in the manner provided by law; and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such reliefs as will abate or remove such adult entertainment business, and restrain and enjoin any person from operating, conducting, or maintaining an adult entertainment business contrary to the provisions of this chapter. [Ord. 746 § 17, 1988.]

5.48.170 Violation – Penalty.

(1) No person, except those persons who are specifically exempted by this chapter, whether acting as an individual owner, operator, employee, or agent or independent contractor for the owner, employee, or operator, or acting as a participant or worker in any way directly or indirectly who works in or operates an adult entertainment business, or any of the services defined in this chapter shall conduct the same without first obtaining a license or permit, and paying a fee to do so, from the city.

(2) A violation of or failure to comply with this section is a class 1 civil infraction. [Ord. 1009 § 41, 1993; Ord. 746 § 18, 1988.]

5.48.180 Additional enforcement.

Notwithstanding the existence or use of any other remedy, the city may seek legal or equitable relief to enjoin any acts or practices which constitute or will constitute a violation of any business license ordinance or other regulations adopted in this code. [Ord. 746 § 19, 1988.]

5.48.190 Minimum age of patrons – Violation – Penalty. 

(1) No person under the age of 18 years shall loiter in or about, or be found in a public place of amusement offering adult entertainment.

(2) No person shall allow a person under the age of 18 years to enter or remain upon the premises where adult entertainment is offered.

(3) A violation of or failure to comply with this section is a class 1 civil infraction.

(4) If a greater minimum age is specified by state law then such provision shall prevail as to enforcement of state law.

[Ord. 1009 § 42, 1993: Ord. 746 § 20, 1988.]