



PLANNING AND ZONING COMMISSION MEETING

May 17, 2022

10:00 AM

City Council Chambers

Agenda

- 1. Call to Order**
- 2. Roll Call**
- 3. Agenda Approval**
 - A. Approval of the Downtown Square Commission agenda for May 17th, 2022
- 4. Minutes Approval**
 - A. Approval of minutes from April 19, 2022
- 5. Public Comment**
- 6. Old Business**
 - A. Election of Officers
 - B. Review and Approve Downtown Square Commission Rules and Regulations
- 7. New Business**
 - A. Review Sidewalk Use/Patio Agreements and Regulations
 - B. Review Outdoor Smoking Regulations
 - C. Review Downtown Parking
 - D. Review Bicycle and Mobility Regulations
- 8. Comments**
- 9. Adjourn**



DOWNTOWN SQUARE COMMISSION MEETING

April 19, 2022

10:00 AM

City Council Chambers

Minutes

1. Call to Order

The meeting was called to order at 10:04

2. Roll Call

Present: Amanda Ripperger, Jamie Parrott, Rob Keller, Kamie Haynes, Erica Roberts, Tim Bryan

Staff: Charlie Dissell, Miranda Chadwick

3. Agenda Approval

Kamie made a motion to approve the agenda for the April 19, 2022 meeting. Amanda seconds the motion. Unanimously approved.

4. Public Comment

5. Old Business

6. New Business

A. Election of Officers

It is decided that the Election of Officers will be put on May's agenda.

B. Review Downtown Square Commission Rules and Regulations

Possible rules and regulations that were brought up.

Guidelines for the fencing and furniture options are available.

Possible design standards for the signage that is on the square.

What can be done about smoking on the square and the disposal of cigarette butts.

C. Review Upcoming Work Plan Items

An item of interest would be the Harrison sign.

7. Comments

8. Adjourn

The meeting is adjourned at 10:55



MEMORANDUM

To: Planning and Zoning Commission
From:
Date: May 17, 2022
Subject: Election of Officers

Recommendation:

Attachments: None



MEMORANDUM

To: Planning and Zoning Commission
From:
Date: May 17, 2022
Subject: Review and Approve Downtown Square Commission Rules and Regulations

Recommendation:

Attachments: 1. DSC Rules and Regulations_20220419



DOWNTOWN SQUARE COMMISSION

Rules and Regulations

Section 1: Creation. Pursuant to the provision of statutes and regulations of the *Iowa Code*, Chapter 30 of the Code of Ordinances of Indianola, Iowa, and as hereinafter set forth, there is hereby created and established a Downtown Square Commission consisting of nine (9) members appointed by the City Council. All members of the Downtown Square Commission meeting shall serve without compensation.

Section 2: Membership and Terms of Office. While City residency is not required, the Downtown Square Commission members shall be residents, property owners and/or business owners within the Downtown Square and shall not hold any elective office in the City government. The Downtown Square shall be considered those properties and businesses located within the Original Town Plat of Indianola, which is located on lands north of 2nd Avenue, east of C Street, south of Clinton Avenue, and west of Jefferson Way. The term of office of the members of the Downtown Square Commission shall commence on July 1 and shall be three years. Provided, however, that the initial Downtown Square Commission members shall be appointed with three members appointed to three-year terms, three members appointed to two-year terms and three members appointed to a one-year term so the terms of three members will expire each year. Vacancies shall be filled in the same manner as the original appointee for the unexpired term.

Section 3: Officers. The Downtown Square Commission shall annually elect a Chairperson and a Vice-Chairperson from among its members at first calendar meeting of the year. The Chairperson and Vice Chairperson shall not be a member whose term expires in the same year. The immediate prior Chairperson shall serve as the Past-Chairperson. The Chairperson shall preside at meetings of the Downtown Square Commission. The Vice-Chairperson shall act in the absence or incapacity of the Chairperson. The Past-Chairperson shall act as an advisor Chairperson/Vice-Chairperson. The Past-Chairperson shall act in the absence or incapacity of the Vice-Chairperson.

Section 4: Quorum. A majority of the current membership of the Downtown Square Commission shall constitute a quorum and a quorum shall be required to conduct the business of the Downtown Square Commission. Actions on items reviewed by the Downtown Square shall require a majority vote of the Downtown Square Commission membership present at the meeting. At the request of a member of the Downtown Square Commission and with approval of the Chairperson, the City may make provisions for members of the Downtown Square Commission to participate in a meeting via a conference call or other telecommunication device.

Section 5: Meetings. The Downtown Square Commission shall meet monthly on the third Tuesday of each month at 10:00 AM, or on call, in the Indianola City Council Chambers. However, the Chairperson, as needed, may revise the time and/or place of meeting, or may call a special meeting, and such changes noted in accordance with the notification procedures contained herein. The Chairperson may request from the Mayor a meeting with the City Council to discuss the Downtown Square Commission's proceedings and activities, suggestions for policy and ordinance revisions and other items relating to the Downtown Square Commission's duties.

Section 6: Meeting Cancellation

A Downtown Square Commission meeting may be canceled due to a lack of substantive agenda items to be addressed, meeting location scheduling conflicts, emergency conditions, inclement weather, or other acts of nature beyond the City's control. It is the responsibility and prerogative of the Chairperson of the Downtown Square Commission to cancel such meeting, and the Chairperson will notify the Community and Economic Development Director or his/her designee who will assume responsibility for notifying the media and persons affected by the cancellation, posting notice of the cancellation as appropriate, and rescheduling the meeting as appropriate. If a scheduled meeting is canceled, the Chairperson may schedule a special meeting of the items scheduled to be conducted at the canceled meeting shall be deferred until such rescheduled meeting.

Section 7: Procedure of Meetings. The Downtown Square Commission shall follow the following procedure for each meeting.

1. Call to Order

- a. The Chairperson calls the meeting to order.

2. Roll Call

- a. The recording secretary states each member's name, who responds in turn with "present".

3. Approval of Agenda

- a. The Chairperson determines if there are any changes or additions to the draft agenda. The Chairperson calls for a vote by roll call and the recording secretary calls each name, and the vote is recorded.

4. Approval of minutes

- a. The Chairperson determines if there are any changes or additions to the draft minutes. The Chairperson calls for a vote by roll call and the recording secretary calls each name, and the vote is recorded.

5. Public Comments

- a. This is time for members of the public present to address to Downtown Square Commission regarding matters not on the agenda. Also, correspondences received by staff regarding items not on the agenda are brought forth to the Downtown Square Commission at this time. The Chairperson shall limit comments to matters that are within the Commission's jurisdiction that are not repetitive or duplicative of other comments. The Chairperson reserves the right to limit the amount of time each person may speak during public comments.

6. Old Business

- a. This includes review of motions and business not settled at the last meeting when it was adjourned.
- b. If there is old business, each item is acted upon individually.

7. New Business

- a. At this point, the Downtown Square is considering new business. Each item listed on the agenda is addressed separately.
 - i. After all questions are answered, the Chairperson will ask for a motion. Once a motion has been stated, the Chairperson asks for a second to the motion. After motion has been made and seconded, the Chairperson restates the motion for the record.
 - ii. The motion may be changed through an amendment. If no amendments are proposed, and the discussion has ended, the Chairperson calls for a vote by roll call and the recording secretary calls each name, and the vote is recorded.
 - iii. Once the recording secretary has completed roll call vote, the Chairperson announces the results.
- b. The same procedure is used for the next new business item.

8. Comments

- a. This item on the agenda allows the Downtown Square Commission members to note any announcements or offer comments regarding items not on the agenda.

- b. This item on the agenda allows the staff to note any announcements or offer comments regarding items not on the agenda.

9. Adjournment

- a. The Chairperson asks if there is any further business, and if not, the Chairperson may adjourn the meeting. If the Downtown Square Commission wishes to adjourn the meeting before all business is completed, the meeting must be adjourned by motion, and a second is required.

Section 8: Amending Motions. Motions can be amended only by the following:

- 1) Inserting or adding a word, phrase, or sentence.
- 2) Striking out a word, phrase, or sentence.
- 3) Striking out and inserting (substituting) words, phrases, sentences, or paragraphs.

After a main motion has been made and seconded, any member can propose an amendment, after being recognized by the Chairperson, by stating, "I move to amend the motion by...". Each proposed amendment must be seconded by another member to proceed. If there is a statement, the Chairperson states the main motion and the amendment, so members will understand how the proposed amendment will change the main motion. The Chairperson then ask for Downtown Square Commission discussion on the proposed amendment. After the discussion has ended, a vote on the proposed amendment is taken. A roll call vote is then taken, and the Chairperson announces the outcome of the vote.

Section 9: Ex-parte Contacts. Any contact through e-mail, phone, in-person, or in such similar fashion that a Downtown Square Commission member may have with a party involved, or potentially involved, in a matter before the Downtown Square Commission and outside of the meeting is known as an "ex-parte" contact. Any substantive information or facts that a Downtown Square member may receive during those contacts that relates to the matter at hand shall be made a part of the public record so that it can be available for consideration or challenge by all interested parties. This shall be done by way of a public statement by the Downtown Square member prior to the presentation of the matter under consideration at the Downtown Square Commissions meeting.

Section 10: Conflict of Interest. A Downtown Square Commission member shall abstain if the member believes there is a conflict of interest, particularly if the conflict is of a direct financial nature or otherwise. A member who elects to abstain from voting shall discuss the reason for the abstention with the Downtown Square Commission prior to the presentation of the matter under consideration. During the presentation and discussion of the matter under consideration, a member who plans to abstain from voting should remove him/herself from the proceedings and from taking any action on the issue or attempting to persuade any other member of the Downtown Square Commission to act in any specific direction. Downtown Square Commission members may not receive any type of gift for their own personal use or enjoyment related to transaction of their official Downtown Square Commission duties.

Section 11: Continuances. The Downtown Square Commission may continue an item until the next scheduled meeting to enable additional testimony to be heard, a site visit, or for other good cause by an affirmative vote of a majority of the members present and voting.

Section 12: Removal of Downtown Square Commission Members. Downtown Square Commission members are appointed by the City Council and may be removed at any time in accordance with Section 5.09 of the Code of Ordinances of Indianola, Iowa. The Chairperson may recommend to the City Council that a Downtown Square Commission member be removed for failure, (1) to attend three consecutive meetings or (2) to attend at least 1/2 of the meetings within any 12-month period.

Section 13: Notification Procedures. Notice of the time and place of the meetings shall be posted in the display case at the north entrance of City Hall and shall also be posted on the City's website. Notice shall be

posted no later than twenty-four hours before the scheduled meeting, but every effort shall be made to post the agenda once it has been finalized by staff and meeting packets have been dispersed to the Commission. If a member of the news media has filed a request for notice with the city, they should also be notified in the same manner as outlined in this section.

ADOPTED: May 17, 2022

_____, Chairperson

Charlie Dissell,
Director of Community & Economic Development

DRAFT



MEMORANDUM

To: Planning and Zoning Commission
From: Charlie Dissell, Community and Economic Development Director
Date: May 17, 2022
Subject: Review Sidewalk Use/Patio Agreements and Regulations

Recommendation:

Attachments:

1. Sidewalk Regulations
2. 2022 The BrickHouse Agreement 5 year term
3. Sidewalk Use Agreement_DRAFT

CITY COUNCIL POLICY

Sidewalk Agreements

Staff has the authority to enter into sidewalk agreements with square businesses, which will include the following:

- Hold harmless agreement
- City as a “name insured” on a \$1,000,000 (where no liquor license is involved)
- 50 cents per square foot of occupied space
- Term agreed to annually Any agreements that are “outside” the conditions above will be brought to council for consideration.

Adopted by City Council on June 21, 2004.

135.06 SIDEWALK USE FOR BUSINESS PURPOSES. It is unlawful to park, store or place, temporarily or permanently, any machinery or junk or any other goods, wares, and merchandise of any kind upon any street or alley for the purpose of storage, exhibition, sale or offering same for sale without permission of the Council, or to engage in a business of selling and delivery of same from a vehicle or other mobile conveyance on any public streets, sidewalks, alleys or rights-of-way except when such an area is closed with the permission of the Police Chief. Provided, however, tables, chairs and displays associated with the adjoining business shall be allowed in the C-3 zoning (Central Business District) subject to the following:

1. Permitted on all sidewalks provided there remains a free walking path with a minimum walking surface of five feet (5') in width.
2. Allowed during business hours only.
3. Provide proof of public liability insurance for such sign in the amount of One Hundred Thousand Dollars (\$100,000).

136.17 SIDEWALK MERCHANDISE DISPLAY. It is unlawful for a person to place upon or above any sidewalk, any goods or merchandise for sale or for display in such a manner as to interfere with the free and uninterrupted passage of pedestrians on the sidewalk; in no case shall more than three (3) feet of the sidewalk next to the building be occupied for such purposes.

Provided, however, tables, chairs and displays associated with the adjoining business shall be allowed in the C-3 zoning (Central Business District) subject to the following:

1. Permitted on all sidewalks provided there remains a free walking path with a minimum walking surface of five feet (5') in width.
2. Allowed during business hours only.
3. Provide proof of public liability insurance for such sign in the amount of One Hundred Thousand Dollars (\$100,000).

136.18 SIDEWALK SALES STANDS. It is unlawful for a person to erect or keep any vending machine or stand for the sale of fruit, vegetables or other substances or commodities on any sidewalk without first obtaining a written permit from the Council. Provided, however, tables, chairs and displays associated with the adjoining business shall be allowed in the C-3 zoning (Central Business District) subject to the following:

1. Permitted on all sidewalks provided there remains a free walking path with a minimum walking surface of five feet (5') in width.
2. Allowed during business hours only.
3. Provide proof of public liability insurance for such sign in the amount of One Hundred Thousand Dollars (\$100,000).

SECTION 165.04 ZONING REGULATIONS GENERAL PROVISIONS

H. Use of Public Right-of-Way. No portion of the public road, street or alley right-of-way shall be used or occupied by an abutting use of land or structure for storage or display purposes or to provide any parking or loading space required by this chapter, or for any other purpose that would obstruct the use or maintenance of the public right-of-way. Provided, however, tables, chairs and displays associated with the adjoining business shall be allowed in the C-3 zoning (Downtown Mixed-Use Zoning District) subject to the following:

1. Permitted on all sidewalks provided there remains a free walking path with a minimum walking surface of five (5) feet in width.
2. Allowed during business hours only, unless specifically authorized by the City of Indianola as part of an approved sidewalk agreement.
3. Provide proof of public liability insurance for such sign in the amount of \$100,000.00.

SECTION 165.04 ZONING REGULATIONS GENERAL PROVISIONS

4.B FENCES AND WALLS in Industrial and Commercial Districts.

1. In industrial zoning districts, fences and walls not exceeding eight (8) feet in height are permitted within the limits of the side and rear yard.
2. Fences within a commercial district, within the front yard of an industrial district, or exceeding eight (8) feet in height in industrial districts, may be permitted by special exception of the Board of Adjustment or by City Council approval as part of a site plan application.
3. As part of a sidewalk use agreement or any other outdoor seating area, fences not exceeding four (4) feet in height are permitted, and shall be constructed of wrought iron, aluminum, wood, polyvinyl chloride (PVC).
4. Fences and walls shall be built wholly on the owner's property.

165.05.5. STANDARDS FOR ALL ZONING DISTRICTS

E. Outdoor Sales and Displays for Commercial and Retail Businesses

- (1) Outdoor Displays and Sales and Outdoor Food and Beverage Service Areas for Permanent Businesses:
 - a. Appropriately zoned, retail properties may define limited areas within their site for permanent and/or intermittent outdoor display and sales (i.e., pumpkins, plants, lawn and garden goods), including outdoor seating areas for food and beverage service, subject to the provisions contained herein.

- b. All outdoor display and sales and food and beverage service areas must be clearly defined and detailed on a site plan (or sketch plan if proposed for an existing site) and obtain approval as part of a site plan process or otherwise obtain site plan approval from the City. All other City Code requirements for seasonal and temporary uses must be met.
 - c. Said areas shall be hard surfaced and not exceed five percent (5%) of the total site area, cannot not be located upon any parking stalls or drive aisles, and must be situated immediately adjacent to the retail establishment or tenant space which shall have exclusive use of said areas. Off-site businesses/non-tenants shall not be allowed to utilize these areas.
 - d. Outdoor display areas shall be located no closer than 10 feet from any property line or street right-of-way and may not be located within any street or driveway vision triangle, required buffer, or required open space area.
 - e. The layout of any outdoor display, sales, and seating areas shall be designed so to not create a traffic hazard or congestion and shall allow for the safe and unimpeded flow of pedestrian traffic, including exiting from the building. A minimum five feet (5') of clearance shall be maintained along all sidewalks and walking paths/pedestrian routes.
 - f. Outdoor food and beverage service areas are required to have a permanent barrier or fence, that is a minimum three feet (3') tall, enclosing the outdoor seating area. The permanent barrier or fence shall be architecturally consistent and appropriate with the level of finish and appearance of the adjacent retail building.
 - g. No detached or freestanding signage shall be permitted except as may be allowed by the City's Sign Code.
3. Public Sidewalk Usage (C-3 Zoning District Only): Businesses located within the C-3 zoning district may place tables, chairs and displays associated with the adjoining business subject to the provisions of Chapter 165.04, Section H of this code.

167.27 SIDEWALK SIGNS. The intent of this section is to permit sidewalk signs within the C-3 zoning (Central Business District) subject to the following conditions:

- 1. Signs are permitted on all sidewalks provided there remains a free walking path with a minimum walking surface of five feet (5') in width.
- 2. Sign shall not exceed nine (9) square feet in area.
- 3. Sign shall not exceed five (5) feet in height.
- 4. Signs are allowing during business hours only.
- 5. Provide proof of public liability insurance for such sign in the amount of One Hundred Thousand Dollars (\$100,000).

**THE SPORTS PAGE, INC., d/b/a THE BRICKHOUSE
PUBLIC RIGHT-OF-WAY LEASE AGREEMENT**

THIS LEASE made and entered into this ____ day of _____, 2022, by and between the City of Indianola, Iowa, a municipal corporation (hereinafter referred to as “City”) and The Sports Page, Inc., d/b/a The BrickHouse (hereinafter referred to as “Lessee”), witnesseth:

WHEREAS, the City is the titleholder of certain real estate situated in Indianola, Warren County, Iowa, which real estate is commonly known as the downtown square; and

WHEREAS, the City is desirous of leasing a portion of the real estate to the Lessee for outdoor dining purposes; and

WHEREAS, said portion of the real estate is not likely to be needed for municipal purposes within the term of this lease;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Lessee agree as follows, to wit:

1. PREMISES. The City leases unto Lessee and Lessee leases from the City certain real property in the City of Indianola, Warren County, Iowa, hereinafter referred to as the “Leased Premises,” and more particularly described as an area 40’ x 16’ immediately adjacent to the curb in front of 107 N. Buxton Street. The Lessee may increase the total area of the Leased Premises on a temporary basis to accommodate special events at the restaurant, but only with prior written permission of the City Manager and the Chief of Police. Anytime the Lessee arranges for entertainment on the Courthouse grounds, Buxton Street between Ashland and Salem Avenues shall be closed to vehicular traffic and the Lessee shall give the City at least five (5) business days notice of such an event.

Notwithstanding anything contained elsewhere in this Agreement, Business Owner agrees that upon 7 days written notice it will remove structures and relinquish the space to allow for the Square Streetscape Project.

2. TERM. Unless sooner terminated as herein provided, the term of this Lease shall be from April 1, 2022, to and including September 30, 2022.
3. CONSIDERATION. Intentionally omitted.
4. USE OF PREMISES. Lessee may use the Leased Premises for purposes of a patio, walk and outdoor café which may be covered or uncovered. An “Outdoor Café” is defined, for the purposes of this Lease, as any group of tables and chairs, and authorized decorative and accessory devices, situated and maintained upon the public space on the downtown square for use in connection with the consumption of food and beverages sold to the public from, or in, an adjoining indoor restaurant, or other indoor business selling

food for consumption on the premises. Lessee shall not use or knowingly permit any part of the Leased Premises to be used for any unlawful purpose. The following restrictions shall apply to Lessee's use of the Leased Premises:

- a. All outdoor dining furniture, including tables, chairs, umbrellas and authorized accessory items, shall be readily movable and such items shall not be stored or used upon the sidewalk, street or adjacent parking areas. Umbrellas must be secured with a minimum base of not less than sixty (60) pounds.
- b. Barriers separating patrons from the pedestrian and vehicle traffic on the remainder of the square shall delineate the outdoor café. There shall be no more than one (1) break in the barrier to allow entrance to the outdoor dining area from the restaurant.
- c. Lessee must restore the premises to a good and safe condition consistent with the use of the premises as a public way.
- d. The outdoor preparation of food is prohibited. All exterior surfaces within the outdoor café shall be easily cleanable and shall always be kept clean by the Lessee. Restrooms for the café shall be provided in the adjoining indoor restaurant, or other indoor business selling food for consumption on the premises, and the café seating shall be counted in determining the restroom requirements of the indoor restaurant, or other indoor business selling food for consumption of the premises.
- e. Overnight trash and refuse storage for the outdoor café shall not be permitted within the outdoor dining area, and the Lessee shall remove all trash and litter as they accumulate. The Lessee shall be responsible for maintaining the outdoor dining area, including the square surface and furniture and adjacent areas in a clean and safe condition.
- f. The hours of operation are limited to between 6:00 A.M. and 12:00 Midnight. All outdoor music and/or entertainment shall cease at 10:00 P.M.
- g. The City shall have the right and power, acting through the City Manager or his designee to prohibit the operation of the outdoor café at any time because of anticipated or actual problems or conflicts in the use of the square area.
- h. Prior to October 1st of each year, Lessee shall remove all tables, chairs, barriers, other furniture, fixtures and decking from the Leased Premises and shall restore the Leased Premises to a good and safe condition consistent with the use of the premises as a public way.

5. **DUTY TO MAINTAIN AND RIGHT TO INSPECT.** Lessee has inspected the Leased Premises and leases it "as is." Lessee shall have the duty, at Lessee's sole expense, to maintain and repair the Leased Premises and keep same in as good a condition as when Lessee took possession thereof, except for the effects of ordinary wear and tear and depreciation arising from lapse of time or damage without fault or liability of Lessee; to remove debris from the Leased Premises and debris emanating from the leased premises which has migrated to adjoining areas, to cut or remove any weeds growing on the Leased Premises and to immediately provide City with notice of any damage to the Leased Premises or of the development of any dangerous condition on

the Leased Premises. City shall have the right to reasonably enter and inspect the Leased Premises.

6. TAXES. During the Lease term, Lessee shall be responsible for payment of all personal property taxes on property located on the Leased Premises and for any real estate taxes assessed against the Leased Premises.
7. CONVENANT OF QUIET ENJOYMENT. Lessee, upon payment of the rental herein reserved and upon performance of all the terms of this Lease, shall always during the Lease term and during any extension thereof peaceably and quietly enjoy the Leased Premises without any unreasonable disturbance from City, its agents or employees.
8. COMPLIANCE WITH LAW. Lessee at its sole expense shall comply with all laws, orders and regulations of federal, state and municipal authorities, and with any direction of any public officer, pursuant to law, which shall impose any duty upon the City of Lessee with respect to the Leased Premises. Lessee, at its sole expense, shall obtain all licenses or permits which may be required for the conduct of its business within the terms of this Lease, or for the making of repairs, alterations, improvements or additions. Must show proof that more than 50% of business sales are from the sale of food.
9. UTILITIES AND OTHER SERVICES. Lessee shall pay all charges for gas, electricity, light, heat and power, and telephone and other communication service used, rendered, or supplied upon or in connection with the Leased Premises, and shall indemnify the City against any liability or damages on such account.
10. HOLD HARMLESS. Lessee shall indemnify, protect, save and hold harmless the City from and against any and all liability, losses, and damages to property or bodily injury or death to any person, including payments made under workers' compensation laws, and including damages caused by or arising out of any act of negligent omission of Lessee, its officers, agents, employees or contractors, happening or done in, on or about the Leased premises, or arising out of or in any way connected with the tenancy, use or occupancy thereof, or any part thereof, by Lessee or any person claiming through or under Lessee. Lessee's obligation to indemnify, save, protect and hold harmless shall include the obligation to pay all reasonable expenses incurred by the City in defending itself with regard to any of the aforementioned claims, including all out-of-pocket expenses such as attorney's fees and the value of any services rendered by lawyers for the City or any other officers or employees of the City.
11. INSURANCE AND INDEMNIFICATION AGREEMENT. Lessee agrees to keep in force during the term of this Lease comprehensive general liability insurance coverage in the amount of \$2,000,000 combined single limit, with insurance underwriters authorized to do business in the State of Iowa satisfactory to the City. Such insurance shall be provided on an occurrence basis and not on a claim made basis, and shall include coverage for premises

and operations liability, and including independent contractors and for products-completed operations. The City shall be named as an additional insured on the insurance policy and the policy shall provide on its face that it may not be canceled except after at least thirty (30) days written notice to the City. The City Manager of the City, taking into account the financial resources of Lessee, risk involved to the City and to the general public, as well as other salient factors, shall approve the amount of the deductible. Lessee shall file with the City Clerk of the City a certificate of insurance, which clearly discloses on its face coverage in conformity with all of the foregoing requirements, and if requested by the City, the Lessee shall additionally submit a certified copy of the policy to the City.

12. TERMINATION OF LEASE AND DEFAULTS OF LESSEE. This Lease Agreement shall terminate upon expiration of the Lease Term. Upon default of payment of rental or upon any other default of Lessee in accordance with the terms and provisions of this Lease Agreement, this Lease may, at the option of City, be canceled and forfeited; provided, however, before any such cancellation and forfeiture, the City shall give Lessee written notice specifying the default, or defaults, and stating that this Lease will be canceled and forfeited ten (10) days after the giving of such notice, unless such default or defaults are remedied within such grace period. In addition, the City shall have the right to terminate or cancel this Lease prior to the expiration of the demised term upon a determination by the Indianola City Council that the Leased Premises are required for a public purpose and upon giving Lessee at least thirty (30) days written notice stating the intent to so terminate or cancel this Lease. If the City so terminates or cancels this Lease by giving thirty (30) days written notice, there shall be no damages except for prepaid rents, if any, which shall be refunded by the City upon request by Lessee on a pro rata basis.
13. SURRENDER OF PREMISES AT TERMINATION. Lessee agrees that upon termination of this Lease, Lessee shall surrender and deliver the Leased Premises in good and clean condition, except for the effects of ordinary wear and tear and depreciation arising from lapse of time or damage without fault or liability of Lessee.
14. REMOVAL OF FIXTURES. Lessee shall have the right at termination of this Lease, if Lessee is not in default thereof, to remove any fixtures or equipment which Lessee has installed in the Leased Premises other than fixtures installed to replace those which were in the Leased Premises immediately prior to commencement of the Lease term, providing Lessee fully repairs any and all damages caused by removal. Any such fixtures or improvements which remain on the Leased Premises after the date of termination shall be considered abandoned and thereafter may be removed or disposed of at the discretion of the City without the city incurring any liability therefor. However, at the termination of this Lease, Lessee shall remove any fixtures placed on the Leased Premises by Lessee and restore the Leased Premises to its original condition if the City so directs.

NOTICES. Notices as provided for in this Lease Agreement to the City shall be deemed sufficient if sent by certified mail with return receipt to the City Clerk, City of Indianola, City Hall, 110 N. First Street, Indianola, Iowa 50125. Notices as provided for in this Lease Agreement to Lessee shall be deemed sufficient if sent by certified mail with return receipt requested to The BrickHouse, 107 North Buxton Street, Indianola, Iowa, 50125.

15. RIGHT TO ASSIGN AND SUBLEASE. Lessee may sublet all or portions of the Leased Premises for the remainder of the term only in conjunction with the sale and as a part of the transfer of the adjoining indoor restaurant business, to be operated at the same location, and only with the prior written approval of the Indianola City Council, which approval shall not be unreasonably withheld. The covenants, conditions and terms of this Lease Agreement shall be binding on Lessee’s successors and assigns.
16. This Lease Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, the parties to this Lease Agreement have hereunto set their hands on this day and year as first above written.

CITY OF INDIANOLA, IOWA

By: _____
Stephanie Erickson, Mayor

ATTEST:

Jackie Raffety, City Clerk

THE SP GRILL, INC.
d/b/a BRICKHOUSE TAVERN

By: _____
Joe Ripperger

By: _____
Amanda Ripperger

SIDEWALK/PUBLIC RIGHT-OF-WAY USE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____ 2022, by and between the City of Indianola, Iowa (hereinafter called the "City"), whose address is 110 N 1st Street, Indianola, Iowa 50125, and _____ (hereinafter called the "Business Owner"), whose address is _____, Indianola, Iowa 50125.

WITNESSETH THAT:

1. PREMISES AND TERM. The City, in consideration of the agreements and conditions herein contained, on the part of the Business Owner to be kept and performed, grants the right unto the Business Owner to place tables, chairs, displays and bike racks upon the sidewalk adjacent to the following described real estate, situated in Warren County, Iowa, to wit:

which, more particularly, includes the space and premises as may be shown on "Exhibit A", if and as may be attached hereto, for a term of one (1) year, commencing at midnight of the day previous to the first day of the term, which shall be on the ____ day of _____ 2022, and ending at midnight on the last day of the term, which shall be on the ____ day of _____ 2023, upon the condition that the Business Owner performs as in this Agreement provided.

Notwithstanding anything contained elsewhere in this Agreement, Business Owner agrees that upon 7 days written notice it will remove structures and relinquish the space to allow for the Square Streetscape Project.

2. PERMIT FEE. 50 cents per square foot of occupied space.

3. POSSESSION. Business Owner shall be entitled to possession on the first day of the term and shall yield possession to the City at the time and date of the close of the term, except as herein otherwise expressly provided.

4. USE OF PREMISES. Business Owner shall use the premises as an outdoor patio and bicycle parking area, during business hours only. The use is permitted provided there remains a free walking path with a minimum walking surface on the sidewalk of five (5) feet in width.

5. FENCING. As part of a sidewalk use agreement or any other outdoor seating area, all fencing shall be subject to the approval of the Community Development Director. Fences not exceeding four (4) feet in height are permitted, and shall be constructed of wrought iron, aluminum, wood, or polyvinyl chloride (PVC). Wood fences should be constructed of treated lumber, cedar, redwood, or similar types of wood that are resistant to decay. The frame of a fence, including posts, rails, and supports shall

be placed on the inside of the fence. Decorative features such as individual posts, brick or stone columns, and similar features constructed as part of a fence or wall shall be allowed to exceed the maximum fence height by no more than twelve (12) inches. The use of materials such as corrugated or sheet metal, chicken wire, woven wire, temporary construction fencing, snow fencing, or similar materials shall not be permitted. Business owner agrees that no fencing shall be placed in the street. Business Owner agrees that upon the termination of this Agreement Business Owner shall remove any and all fencing and shall restore the premises to its preexisting condition.

6. ASSIGNMENT. This Agreement shall not be assigned, or any part thereof, without the written consent of the City.

7. CARE AND MAINTENANCE OF PREMISES.

(a) Business Owner accepts said property in its present condition. Business Owner shall, after taking possession of said premises and until the termination of this Agreement, at its own expense, care for and maintain said premises in a reasonably safe and serviceable condition. Business Owner will not permit or allow said premises to be damaged or depreciated in value by any act or negligence of the Business Owner, its agents or employees.

(b) Business Owner will be responsible for maintaining the sidewalk/public right-of-way and shall keep the same free from ice, snow and other debris. Business Owner shall further not allow trash of any kind of accumulate on said premises.

8. SURRENDER OF PREMISES AT END OF TERM. Business Owner agrees that upon the termination of this Agreement Business Owner shall surrender, yield up and deliver the premises in good and clean condition, except the effects of ordinary wear and tear and depreciation arising from lapse of time, or damage without fault or liability of Business Owner.

9. INDEMNITY AND LIABILITY INSURANCE. Business Owner shall protect, indemnify and save harmless the City from and against any and all loss, costs, damage and expenses occasioned by, or arising out of, any accident or other occurrence causing or inflicting injury and/or damage to any person or property, happening or done, in, upon or about the premises, or due directly or indirectly to the use or occupancy thereof, or any part thereof, by the Business Owner or any person claiming through or under the Business Owner. The Business Owner further covenants and agrees that Business Owner shall at Business Owner's expense procure and maintain casualty and liability insurance in a responsible company or companies authorized to do business in the State of Iowa, in amounts not less than \$1,000,000.00 for any one person injured, and \$1,000,000 for any one accident, and with the limits of \$100,000 for property damage, protecting the City against such claim, damages, costs or expenses on account of injury to any person or persons, or to any property belonging to any person or persons, by reason of such casualty, accident or other happening on or about the demised premises during the term of this Agreement.

Certificates or copies of the policies, naming the City, and providing for thirty (30) days' notice

to City before cancellation shall be delivered to the City within twenty (20) days from the date of the commencement of the term.

10. CHANGES TO BE IN WRITING. None of the covenants, provisions, terms or conditions of this Agreement to be kept or performed by City or Business Owner shall be in any manner modified, waived or abandoned, except by a written instrument duly signed by the parties and delivered to the City and Business Owner. This Agreement contains the whole agreement of the parties.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in the day and year first above written.

The City of Indianola, Iowa, City	
By: _____ Stephanie Erickson, Mayor	By: _____ _____, Registered Agent/Owner
Attest: By: _____ Jackie Raffety, City Clerk	



MEMORANDUM

To: Planning and Zoning Commission
From:
Date: May 17, 2022
Subject: Review Outdoor Smoking Regulations

Recommendation:

Attachments:

1. Smokefree Air Act Chapter 142D
2. Smokefree Air Act Administrative
3. Smokefree Air Act Signage rules.

CHAPTER 142D

SMOKEFREE AIR ACT

142D.1	Title — findings — purpose.	142D.6	Notice of nonsmoking requirements — posting of signs.
142D.2	Definitions.		
142D.3	Prohibition of smoking — public places, places of employment, and outdoor areas.	142D.7	Nonretaliation — nonwaiver of rights.
142D.4	Areas where smoking not regulated.	142D.8	Enforcement.
142D.5	Declaration of area as nonsmoking.	142D.9	Civil penalties.

142D.1 Title — findings — purpose.

1. [This chapter](#) shall be known and may be cited as the “*Smokefree Air Act*”.
2. The general assembly finds that environmental tobacco smoke causes and exacerbates disease in nonsmoking adults and children. These findings are sufficient to warrant measures that regulate smoking in public places, places of employment, and outdoor areas in order to protect the public health and the health of employees.
3. The purpose of [this chapter](#) is to reduce the level of exposure by the general public and employees to environmental tobacco smoke in order to improve the public health of Iowans. [2008 Acts, ch 1084, §1](#)

142D.2 Definitions.

As used in [this chapter](#), unless the context otherwise requires:

1. “*Bar*” means an establishment where one may purchase alcoholic beverages, as defined in [section 123.3](#), for consumption on the premises and in which the serving of food is only incidental to the consumption of those beverages.
2. “*Business*” means a sole proprietorship, partnership, joint venture, corporation, association, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered; and private clubs.
3. “*Common area*” means a reception area, waiting room, lobby, hallway, restroom, elevator, stairway or stairwell, the common use area of a multiunit residential property, or other area to which the public is invited or in which the public is permitted.
4. “*Employee*” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, or a person who provides services to an employer on a voluntary basis.
5. “*Employer*” means a person including a sole proprietorship, partnership, joint venture, corporation, association, or other business entity whether for-profit or not-for-profit, including state government and its political subdivisions, that employs the services of one or more individuals as employees.
6. “*Enclosed area*” means all space between a floor and ceiling that is contained on all sides by solid walls or windows, exclusive of doorways, which extend from the floor to the ceiling.
7. “*Farm tractor*” means farm tractor as defined in [section 321.1](#).
8. “*Farm truck*” means a single-unit truck, truck-tractor, tractor, semitrailer, or trailer used by a farmer to transport agricultural, horticultural, dairy, or other farm products, including livestock, produced or finished by the farmer, or to transport any other personal property owned by the farmer, from the farm to market, and to transport property and supplies to the farm of the farmer.
9. a. “*Farmer*” means any of the following:
 - (1) A person who files schedule F as part of the person’s annual form 1040 or form 1041 filing with the United States internal revenue service, or an employee of such person while the employee is actively engaged in farming.

(2) A person who holds an equity position in or who is employed by a business association holding agricultural land where the business association is any of the following:

(a) A family farm corporation, authorized farm corporation, family farm limited partnership, limited partnership, family farm limited liability company, authorized limited liability company, family trust, or authorized trust, as provided in [chapter 9H](#).

(b) A limited liability partnership as defined in [section 486A.101](#).

(3) A natural person related to the person actively engaged in farming as provided in subparagraph (1) or (2) when the person is actively engaged in farming. The natural person must be related as spouse, parent, grandparent, lineal ascendant of a grandparent or a grandparent's spouse, other lineal descendant of a grandparent or a grandparent's spouse, or a person acting in a fiduciary capacity for persons so related.

b. For purposes of [this subsection](#), “*actively engaged in farming*” means participating in physical labor on a regular, continuous, and substantial basis, or making day-to-day management decisions, where such participation or decision making is directly related to raising and harvesting crops for feed, food, seed, or fiber, or to the care and feeding of livestock.

10. “*Health care provider location*” means an office or institution providing care or treatment of disease, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to a hospital as defined in [section 135B.1](#), a long-term care facility, an adult day services program as defined in [section 231D.1](#), clinics, laboratories, and the locations of professionals regulated pursuant to [Title IV, subtitle 3](#), and includes all enclosed areas of the location including waiting rooms, hallways, other common areas, private rooms, semiprivate rooms, and wards within the location.

11. “*Implement of husbandry*” means implement of husbandry as defined in [section 321.1](#).

12. “*Long-term care facility*” means a health care facility as defined in [section 135C.1](#), an elder group home as defined in [section 231B.1](#), or an assisted living program as defined in [section 231C.2](#).

13. “*Place of employment*” means an area under the control of an employer and includes all areas that an employee frequents during the course of employment or volunteering, including but not limited to work areas, private offices, conference and meeting rooms, classrooms, auditoriums, employee lounges and cafeterias, hallways, medical facilities, restrooms, elevators, stairways and stairwells, and vehicles owned, leased, or provided by the employer unless otherwise provided under [this chapter](#). “*Place of employment*” does not include a private residence, unless the private residence is used as a child care facility, a child care home, or as a health care provider location.

14. “*Political subdivision*” means a city, county, township, or school district.

15. “*Private club*” means an organization, whether or not incorporated, that is the owner, lessee, or occupant of a location used exclusively for club purposes at all times and that meets all of the following criteria:

a. Is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain.

b. Sells alcoholic beverages only as incidental to its operation.

c. Is managed by a board of directors, executive committee, or similar body chosen by the members.

d. Has established bylaws or another document to govern its activities.

e. Has been granted an exemption from the payment of federal income tax as a club pursuant to 26 U.S.C. §501.

16. “*Public place*” means an enclosed area to which the public is invited or in which the public is permitted, including common areas, and including but not limited to all of the following:

a. Financial institutions.

b. Restaurants.

c. Bars.

d. Public and private educational facilities.

e. Health care provider locations.

f. Hotels and motels.

- g. Laundromats.
 - h. Public transportation facilities and conveyances under the authority of the state or its political subdivisions, including buses and taxicabs, and including the ticketing, boarding, and waiting areas of these facilities.
 - i. Aquariums, galleries, libraries, and museums.
 - j. Retail food production and marketing establishments.
 - k. Retail service establishments.
 - l. Retail stores.
 - m. Shopping malls.
 - n. Entertainment venues including but not limited to theaters; concert halls; auditoriums and other facilities primarily used for exhibiting motion pictures, stage performances, lectures, musical recitals, and other similar performances; bingo facilities; and indoor arenas including sports arenas.
 - o. Polling places.
 - p. Convention facilities and meeting rooms.
 - q. Public buildings and vehicles owned, leased, or operated by or under the control of the state government or its political subdivisions and including the entirety of the private residence of any state employee any portion of which is open to the public.
 - r. Service lines.
 - s. Private clubs only when being used for a function to which the general public is invited.
 - t. Private residences only when used as a child care facility, a child care home, or health care provider location.
 - u. Child care facilities and child care homes.
 - v. Gambling structures, excursion gambling boats, and racetrack enclosures.
17. “*Restaurant*” means eating establishments, including private and public school cafeterias, which offer food to the public, guests, or employees, including the kitchen and catering facilities in which food is prepared on the premises for serving elsewhere, and including a bar area within a restaurant.
18. “*Retail tobacco store*” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is incidental to the sale of tobacco products.
19. “*Service line*” means an indoor line in which one or more individuals are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
20. “*Shopping mall*” means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
21. “*Smoking*” means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other tobacco product in any manner or in any form. “*Smoking*” does not include smoking that is associated with a recognized religious ceremony, ritual, or activity, including but not limited to burning of incense.
22. “*Sports arena*” means a sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, or other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

2008 Acts, ch 1084, §2

Referred to in §237A.3B, 321.453

142D.3 Prohibition of smoking — public places, places of employment, and outdoor areas.

- 1. Smoking is prohibited and a person shall not smoke in any of the following:
 - a. Public places.
 - b. All enclosed areas within places of employment including but not limited to work areas, private offices, conference and meeting rooms, classrooms, auditoriums, employee lounges and cafeterias, hallways, medical facilities, restrooms, elevators, stairways and stairwells, and vehicles owned, leased, or provided by the employer unless otherwise provided under [this chapter](#).

2. In addition to the prohibitions specified in [subsection 1](#), smoking is prohibited and a person shall not smoke in or on any of the following outdoor areas:

a. The seating areas of outdoor sports arenas, stadiums, amphitheaters, and other entertainment venues where members of the general public assemble to witness entertainment events.

b. Outdoor seating or serving areas of restaurants.

c. Public transit stations, platforms, and shelters under the authority of the state or its political subdivisions.

d. School grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a public or private educational facility, including inside any vehicle located on such school grounds.

e. The grounds of any public buildings owned, leased, or operated by or under the control of the state government or its political subdivisions, including the grounds of a private residence of any state employee any portion of which is open to the public with the following exceptions:

(1) This paragraph shall not apply to the Iowa state fairgrounds, or fairgrounds as defined in [section 174.1](#).

(2) This paragraph shall not apply to institutions administered by the department of corrections, except that smoking on the grounds shall be limited to designated smoking areas.

(3) This paragraph shall not apply to facilities of the Iowa national guard as defined in [section 29A.1](#), except that smoking on the grounds shall be limited to designated smoking areas.

2008 Acts, ch 1084, §3

Referred to in §142D.4, 142D.5

142D.4 Areas where smoking not regulated.

Notwithstanding any provision of [this chapter](#) to the contrary, the following areas are exempt from the prohibitions of [section 142D.3](#):

1. Private residences, unless used as a child care facility, child care home, or a health care provider location.

2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that not more than twenty percent of the rooms of a hotel or motel rented to guests are designated as smoking rooms, all smoking rooms on the same floor are contiguous, and smoke from smoking rooms does not infiltrate into areas in which smoking is otherwise prohibited under [this chapter](#). The status of smoking and nonsmoking rooms shall not be changed, except to provide additional nonsmoking rooms.

3. Retail tobacco stores, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under [this chapter](#).

4. Private and semiprivate rooms in long-term care facilities, occupied by one or more individuals, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under [this chapter](#).

5. Private clubs that have no employees, except when being used for a function to which the general public is invited, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under [this chapter](#). This exemption shall not apply to any entity that is established for the purpose of avoiding compliance with [this chapter](#).

6. Outdoor areas that are places of employment except those areas where smoking is prohibited pursuant to [section 142D.3, subsection 2](#).

7. Limousines under private hire; vehicles owned, leased, or provided by a private employer that are for the sole use of the driver and are not used by more than one person in the course of employment either as a driver or passenger; privately owned vehicles not otherwise defined as a place of employment or public place; and cabs of motor trucks or truck tractors if no nonsmoking employees are present.

8. An enclosed area within a place of employment or public place that provides a smoking

cessation program or a medical or scientific research or therapy program, if smoking is an integral part of the program.

9. Farm tractors, farm trucks, and implements of husbandry when being used for their intended purposes.

10. Only the gaming floor of a premises licensed pursuant to [chapter 99F](#) exclusive of any bar or restaurant located within the gaming floor which is an enclosed area and subject to the prohibitions of [section 142D.3](#).

11. The Iowa veterans home.

[2008 Acts, ch 1084, §4](#)

142D.5 Declaration of area as nonsmoking.

1. Notwithstanding any provision of [this chapter](#) to the contrary, an owner, operator, manager, or other person having custody or control of an area otherwise exempt from the prohibitions of [section 142D.3](#) may declare the entire area as a nonsmoking place.

2. Smoking shall be prohibited in any location of an area declared a nonsmoking place under [this section](#) if a sign is posted conforming to the provisions of [section 142D.6](#).

[2008 Acts, ch 1084, §5](#)

Referred to in [§142D.6](#), [142D.8](#), [142D.9](#)

142D.6 Notice of nonsmoking requirements — posting of signs.

1. Notice of the provisions of [this chapter](#) shall be provided to all applicants for a business license in this state, to all law enforcement agencies, and to any business required to be registered with the office of the secretary of state.

2. All employers subject to the prohibitions of [this chapter](#) shall communicate to all existing employees and to all prospective employees upon application for employment the smoking prohibitions prescribed in [this chapter](#).

3. The owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to [section 142D.5](#), or outdoor area where smoking is prohibited under [this chapter](#) shall clearly and conspicuously post in and at every entrance to the public place, place of employment, area declared a nonsmoking place pursuant to [section 142D.5](#), or outdoor area, “no smoking” signs or the international “no smoking” symbol. Additionally, a “no smoking” sign or the international “no smoking” symbol shall be placed in every vehicle that constitutes a public place, place of employment, or area declared a nonsmoking place pursuant to [section 142D.5](#) under [this chapter](#), visible from the exterior of the vehicle. All signs shall contain the telephone number for reporting complaints and the internet site of the department of public health. The owner, operator, manager, or other person having custody or control of the public place, place of employment, area declared a nonsmoking place pursuant to [section 142D.5](#), or outdoor area may use the sample signs provided on the department of public health’s internet site, or may use another sign if the contents of the sign comply with the requirements of [this subsection](#).

4. The owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to [section 142D.5](#), or outdoor area where smoking is prohibited under [this chapter](#) shall remove all ashtrays from these locations.

[2008 Acts, ch 1084, §6](#)

Referred to in [§142D.5](#)

142D.7 Nonretaliation — nonwaiver of rights.

1. A person or employer shall not discharge, refuse to employ, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded under [this chapter](#), registers a complaint, or attempts to prosecute a violation of [this chapter](#).

2. An employee who works in a location where an employer allows smoking does not waive or surrender any legal rights the employee may have against the employer or any other person.

[2008 Acts, ch 1084, §7](#)

142D.8 Enforcement.

1. [This chapter](#) shall be enforced by the department of public health or the department's designee. The department of public health shall adopt rules to administer [this chapter](#), including rules regarding enforcement. The department of public health shall provide information regarding the provisions of [this chapter](#) and related compliance issues to employers, owners, operators, managers, and other persons having custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to [section 142D.5](#), or outdoor area where smoking is prohibited, and the general public via the department's internet site. The internet site shall include sample signage and the telephone number for reporting complaints. Judicial magistrates shall hear and determine violations of [this chapter](#).

2. If a public place is subject to any state or political subdivision inspection process or is under contract with the state or a political subdivision, the person performing the inspection shall assess compliance with the requirements of [this chapter](#) and shall report any violations to the department of public health or the department's designee.

3. An owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to [section 142D.5](#), or outdoor area regulated under [this chapter](#) shall inform persons violating [this chapter](#) of the provisions of [this chapter](#).

4. An employee or private citizen may bring a legal action to enforce [this chapter](#). Any person may register a complaint under [this chapter](#) by filing a complaint with the department of public health or the department's designee.

5. In addition to the remedies provided in [this section](#), the department of public health or the department's designee or any other person aggrieved by the failure of the owner, operator, manager, or other person having custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to [section 142D.5](#), or outdoor area regulated by [this chapter](#) to comply with [this chapter](#) may seek injunctive relief to enforce [this chapter](#).

2008 Acts, ch 1084, §8

142D.9 Civil penalties.

1. A person who smokes in an area where smoking is prohibited pursuant to [this chapter](#) shall pay a civil penalty pursuant to [section 805.8C, subsection 3](#), paragraph "a", for each violation.

2. A person who owns, operates, manages, or otherwise has custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to [section 142D.5](#), or outdoor area regulated under [this chapter](#) and who fails to comply with [this chapter](#) shall pay a civil penalty as follows:

a. For a first violation, a monetary penalty not to exceed one hundred dollars.

b. For a second violation within one year, a monetary penalty not to exceed two hundred dollars.

c. For each violation in excess of a second violation within one year, a monetary penalty not to exceed five hundred dollars for each additional violation.

3. An employer who discharges or in any manner discriminates against an employee because the employee has made a complaint or has provided information or instituted a legal action under [this chapter](#) shall pay a civil penalty of not less than two thousand dollars and not more than ten thousand dollars for each violation.

4. In addition to the penalties established in [this section](#), violation of [this chapter](#) by a person who owns, operates, manages, or who otherwise has custody or control of a public place, place of employment, area declared a nonsmoking place pursuant to [section 142D.5](#), or outdoor area regulated under [this chapter](#) may result in the suspension or revocation of any permit or license issued to the person for the premises on which the violation occurred.

5. Violation of [this chapter](#) constitutes a public nuisance which may be abated by the department of public health or the department's designee by restraining order, preliminary or permanent injunction, or other means provided by law, and the entity abating the public nuisance may take action to recover the costs of such abatement.

6. Each day on which a violation of [this chapter](#) occurs is considered a separate and distinct violation.

7. Civil penalties paid pursuant to [this chapter](#) shall be deposited in the general fund of the state, unless a local authority as designated by the department in administrative rules is involved in the enforcement, in which case the civil penalties paid shall be deposited in the general fund of the respective city or county.

[2008 Acts, ch 1084, §9](#)

Referred to in [§331.427, 805.8C\(3\)\(a\)](#)

Nuisances in general, [chapter 657](#)

CHAPTER 153
SMOKEFREE AIR

641—153.1(82GA,HF2212) Purpose and scope. The purpose of these rules is to implement Iowa's Smokefree Air Act, enacted to reduce the level of exposure by the general public and employees to environmental tobacco smoke in order to improve the public health of Iowans. These rules apply to public places, places of employment, and certain outdoor areas in the state.

641—153.2(82GA,HF2212) Definitions. For the purposes of this chapter, the following definitions shall apply:

"Ashtray" means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs. However, "ashtray" shall not include any receptacle located outdoors and on the perimeter of any public place, the perimeter of the grounds of any public building, the perimeter of school grounds, or the perimeter of any other outdoor space subject to the prohibition in 2008 Iowa Acts, House File 2212, section 3, and rule 641—153.3(82GA,HF2212).

"Bar" means an establishment where one may purchase alcoholic beverages, as defined in Iowa Code section 123.3, for consumption on the premises and in which the serving of food is only incidental to the consumption of those beverages.

"Child care facility" means child care facility as defined by the department of human services pursuant to Iowa Code section 237A.1.

"Child care home" means child care home as defined by the department of human services pursuant to Iowa Code section 237A.1.

"Department" means the Iowa department of public health.

"Entrance" means any doorway to an enclosed area used by the public or employees for ingress to any public place or place of employment, but does not include any doorway designated for use as an exit in an emergency only. "Entrance" also includes the commonly understood points of entry to an outdoor area, subject to the prohibitions of this chapter, such as a driveway, sidewalk, pathway, access road, gate, or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way.

"Gaming floor" means gaming floor as defined by the state racing and gaming commission pursuant to Iowa Code section 99F.1.

"Grounds of any public building" means an outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk or driveway immediately adjacent to the building, but not including a sidewalk in the public right-of-way; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building. A person having custody or control of a public building may exclude from the designated grounds of any public building the following: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water. Nothing in this definition prohibits any owner, operator, manager, or other person having custody or control of an area that is exempt from the prohibitions of 2008 Iowa Acts, House File 2212, section 3, and rule 641—153.3(82GA,HF2212) from declaring the entire area or property a nonsmoking place.

"Hotel and motel" means any building or structure equipped, used, advertised as, or held out to the public to be an inn, hotel, motel, motor inn, or place where sleeping accommodations are furnished for hire to transient guests.

"Incidental to the sale of tobacco products" means that the gross revenue of a retail tobacco store derived from the sale of products other than tobacco products is not more than 20 percent of the retail tobacco store's total gross revenue.

"Infiltrate" means to permeate an area where smoking is prohibited by passing through a wall, ceiling, floor, window, door, or ventilation system to the extent that an individual can smell secondhand smoke.

“Public and private educational facility” means a public school and nonpublic school as defined in Iowa Code section 280.2, a community college as defined in Iowa Code section 260C.2, an accredited private institution as defined in Iowa Code section 261.9, and an institution governed by the board of regents pursuant to Iowa Code section 262.7.

“Public building” means an enclosed area owned, leased, or operated by or under the control of the state government or its political subdivisions.

“Restaurant” means eating establishments, including private and public school cafeterias, which offer food to the public, guests, or employees, including the kitchen and catering facilities in which food is prepared on the premises for serving elsewhere, and including a bar area within a restaurant.

“Retail tobacco store” means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is incidental to the sale of tobacco products.

“Seating areas of outdoor sports arenas, stadiums, amphitheaters, or other entertainment venues” means areas designated by the owner, operator, manager, or other person having custody or control of the area to be used primarily to witness entertainment events and shall include, but not be limited to, all chairs, seats, and bleachers whether permanent or temporary; standing room only; general admission or festival-style seating; and any other areas where individuals congregate to witness entertainment events.

“Serving of food incidental to the consumption of alcoholic beverages” means food preparation that is limited to the service of ice, prepackaged snack foods, popcorn, peanuts, and the reheating of commercially prepared foods that do not require assembly, such as frozen pizza, prepackaged sandwiches, or other prepackaged, ready-to-serve products.

“Smoking cessation program” means a course of treatment that is capable of clinical review for evidence-based outcomes that verify that individuals in the program stop smoking and that has been approved for coverage by a private or managed health care plan, Medicaid, Medicare, the Veterans Health Administration, or the United States military.

641—153.3(82GA, HF2212) Prohibition of smoking.

153.3(1) *Public places, places of employment.* Smoking is prohibited and a person shall not smoke in either of the following areas:

- a. Public places, as defined in 2008 Iowa Acts, House File 2212.
- b. All enclosed areas within places of employment including but not limited to work areas, private offices, conference and meeting rooms, classrooms, auditoriums, employee lounges and cafeterias, hallways, medical facilities, restrooms, elevators, stairways and stairwells, and vehicles owned, leased, or provided by the employer unless otherwise provided under these rules and 2008 Iowa Acts, House File 2212.

153.3(2) *Outdoor areas.* Smoking is prohibited and a person shall not smoke in or on any of the following outdoor areas:

- a. The seating areas of outdoor sports arenas, stadiums, amphitheaters and other entertainment venues where members of the general public assemble to witness entertainment events.
- b. Outdoor seating or serving areas of restaurants.
- c. Public transit stations, platforms, and shelters under the authority of the state or its political subdivisions.
- d. School grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a public or private educational facility, including inside any vehicle located on such school grounds.
- e. The grounds of any public buildings owned, leased, or operated by or under the control of the state government or its political subdivisions, including the grounds of a private residence of any state employee any portion of which is open to the public with the following exceptions:

(1) This paragraph shall not apply to the Iowa state fairgrounds, or fairgrounds as defined in Iowa Code section 174.1.

(2) This paragraph shall not apply to institutions administered by the department of corrections, except that smoking on the grounds shall be limited to designated smoking areas.

(3) This paragraph shall not apply to facilities of the Iowa National Guard as defined in Iowa Code section 29A.1, except that smoking on the grounds shall be limited to designated smoking areas.

641—153.4(82GA, HF2212) Areas where smoking not regulated. Notwithstanding any provision of these rules and 2008 Iowa Acts, House File 2212, to the contrary, the following areas are exempt from the prohibitions of 2008 Iowa Acts, House File 2212, section 3:

153.4(1) Private residences, unless used as a child care facility, child care home, or a health care provider location.

153.4(2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that not more than 20 percent of the rooms of a hotel or motel rented to guests are designated as smoking rooms, all smoking rooms on the same floor are contiguous, and smoke from smoking rooms does not infiltrate into areas in which smoking is otherwise prohibited under these rules. The status of smoking and nonsmoking rooms shall not be changed, except to provide additional nonsmoking rooms.

153.4(3) Retail tobacco stores, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under these rules.

153.4(4) Private and semiprivate rooms in long-term care facilities, occupied by one or more individuals, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under these rules and 2008 Iowa Acts, House File 2212.

153.4(5) Private clubs that have no employees, except when being used for a function to which the general public is invited, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under these rules and 2008 Iowa Acts, House File 2212. This exemption shall not apply to any entity that is established for the purpose of avoiding compliance with these rules and 2008 Iowa Acts, House File 2212.

153.4(6) Outdoor areas that are places of employment except those areas where smoking is prohibited pursuant to 2008 Iowa Acts, House File 2212, section 3, subsection 2.

153.4(7) Limousines under private hire; vehicles owned, leased, or provided by a private employer that are for the sole use of the driver and are not used by more than one person in the course of employment either as a driver or passenger; privately owned vehicles not otherwise defined as a place of employment or public place; and cabs of motor trucks or truck tractors if no nonsmoking employees are present.

153.4(8) An enclosed area within a place of employment or public place that provides a smoking cessation program or a medical or scientific research or therapy program, if smoking is an integral part of the program.

153.4(9) Farm tractors, farm trucks, and implements of husbandry when being used for their intended purposes.

153.4(10) Only the gaming floor of premises licensed pursuant to Iowa Code chapter 99F exclusive of any bar or restaurant located within the gaming floor which is an enclosed area and subject to the prohibitions of 2008 Iowa Acts, House File 2212, section 3.

153.4(11) The Iowa veterans home.

641—153.5(82GA, HF2212) Duties of employers, owners, operators, managers, and persons having custody or control of a public place, place of employment, area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, or outdoor areas where smoking is prohibited.

153.5(1) The employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under 2008 Iowa Acts, House File 2212, shall:

a. Not permit smoking in a public place, place of employment, outdoor area where smoking is prohibited, or an area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5.

b. Inform all current employees and all prospective employees upon application for employment of the prohibitions of 2008 Iowa Acts, House File 2212.

c. Not retaliate against any employee, applicant for employment, or customer that exercises any rights under 2008 Iowa Acts, House File 2212, registers a complaint, or attempts to prosecute a violation of 2008 Iowa Acts, House File 2212.

d. Post signs in and at every entrance to the public place, place of employment, area declared nonsmoking, and outdoor area where smoking is prohibited that clearly and conspicuously inform persons that they are entering a no smoking facility or area.

(1) The signs shall be clear and conspicuous in or at the entrance where posted.

(2) The signs shall be at least 24 square inches in size (for example, 4 inches by 6 inches) and shall be in legible font type.

(3) The signs shall contain the words “No Smoking” or the international “no smoking” symbol; the telephone number for reporting complaints, 1-888-944-2247; and the department of public health Web site, www.IowaSmokefreeAir.gov.

e. Place no smoking signs in every vehicle that constitutes a public place, place of employment, or area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5.

(1) Such signs shall be clear and conspicuous from the exterior of the vehicle.

(2) The signs shall be at least 9 square inches (for example, 3 inches by 3 inches) and shall be in legible font type.

(3) The signs shall contain the words “No Smoking” or the international “no smoking” symbol; the telephone number for reporting complaints, 1-888-944-2247; and the department of public health Web site, www.IowaSmokefreeAir.gov.

(4) Nothing in this rule requires the placement of a sign in any vehicle that the director of the department of administrative services or the director of transportation orders to receive a regular registration plate pursuant to Iowa Code section 321.19.

f. Remove all ashtrays from areas where smoking is prohibited.

153.5(2) The owner or operator of a building or facility that contains more than one public place, place of employment, or area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, which is controlled by other employers, owners, or operators shall comply with the provisions of subrule 153.5(1) for the area of the building or facility under the owner’s or operator’s control.

153.5(3) An employer, owner, or operator of a public place, place of employment or area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, that is within a public place that is owned or operated by another person shall comply with the provisions of subrule 153.5(1) for the area under the control of the employer, owner, or operator within that public place.

153.5(4) An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under 2008 Iowa Acts, House File 2212, shall inform any individual smoking in a place where smoking is prohibited that the individual is violating the smokefree air Act and shall request that the individual stop smoking immediately.

a. If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may discontinue service to that individual.

b. If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may request that the individual leave the area where smoking is prohibited.

c. If the individual refuses to leave the area where smoking is prohibited, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.

641—153.6(82GA, HF2212) Duties of other state agencies and political subdivisions. A state agency or political subdivision which inspects public places shall assess compliance with the requirements of these rules and 2008 Iowa Acts, House File 2212, during any inspection process and shall report any violations of 2008 Iowa Acts, House File 2212, to the department.

641—153.7(82GA, HF2212) Leases. Any lease entered into by the state or its political subdivisions on or after July 1, 2008, shall require that all areas where smoking is prohibited in 2008 Iowa Acts, House File 2212, section 3, comply with the provisions of 2008 Iowa Acts, House File 2212.

641—153.8(82GA, HF2212) Complaints and enforcement.

153.8(1) Duties of department. The department shall maintain a system for receiving and investigating complaints against persons who own, operate, manage, or otherwise have custody or control of a place where smoking is prohibited and who fail to comply with the provisions of 2008 Iowa Acts, House File 2212.

a. Pursuant to 2008 Iowa Acts, House File 2212, section 9, subsection 7, the department may designate one or more public agencies through a 28E agreement or other written contract to assist with the enforcement of 2008 Iowa Acts, House File 2212.

b. The department may refer complaints regarding a violation of 2008 Iowa Acts, House File 2212, to the law enforcement authorities of the state or of the political subdivision of the state in which the alleged violation occurred.

153.8(2) Enforcement against a person who smokes in an area where smoking is prohibited. Pursuant to 2008 Iowa Acts, House File 2212, section 9, subsection 7, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with the enforcement of 2008 Iowa Acts, House File 2212. A peace officer may issue a citation in lieu of arrest pursuant to Iowa Code chapter 805 against a person who smokes in an area where smoking is prohibited pursuant to 2008 Iowa Acts, House File 2212, and such person shall pay a civil penalty pursuant to Iowa Code section 805.8C(3)“a” for each violation.

153.8(3) Enforcement against a person who owns, operates, manages, or otherwise has control of a place where smoking is prohibited. Pursuant to 2008 Iowa Acts, House File 2212, section 9, subsection 7, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with the enforcement of 2008 Iowa Acts, House File 2212. The department or its designee may initiate a civil action against an owner, operator, manager, or person who otherwise has custody or control of a place where smoking is prohibited pursuant to 2008 Iowa Acts, House File 2212, and such person shall pay the applicable civil penalty pursuant to 2008 Iowa Acts, House File 2212, section 9.

153.8(4) Manner of filing a complaint. Any person may register a complaint with the department by calling the toll-free number, 1-888-944-2247, or registering a complaint on the department’s Web site, www.IowaSmokefreeAir.gov, or downloading a complaint form from the department’s Web site and mailing the complaint form to the department at Department of Public Health, Division of Tobacco Use Prevention and Control, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

153.8(5) Contents of the complaint. A complaint filed with the department shall include:

a. The name or location of the public place, place of employment, area declared a nonsmoking place pursuant to 2008 Iowa Acts, House File 2212, section 5, or outdoor area where smoking is prohibited which is the subject of the complaint;

b. A description of the occurrence that prompted the complaint; and

c. Any other information relevant to the occurrence.

153.8(6) Review of complaint by department. Upon receipt of a complaint, the department or its designee may contact the individual making the complaint to confirm the details of the complaint and obtain any additional information.

153.8(7) Information from inspections. Information received by the department pursuant to rule 641—153.6(82GA, HF2212) of one or more violations of 2008 Iowa Acts, House File 2212, as a result of an inspection of a public place by the state or political subdivision of the state shall be considered a credible complaint under this rule.

153.8(8) Notice of potential violation. If the department determines that a complaint against a public place, place of employment, area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, or outdoor areas where smoking is prohibited is credible, the department shall:

a. For the first complaint.

(1) Issue a written notice of potential violation to the owner, operator or person having custody or control including the details of the complaint.

(2) The notice shall include educational materials about how to comply with 2008 Iowa Acts, House File 2212, and information on whom to contact for further information and assistance for compliance.

b. For the second complaint in one year.

(1) Issue a second notice of potential violation to the owner, operator, or person having custody or control.

(2) In addition, the department may authorize one or more public agencies to conduct a compliance check of the location.

(3) In addition, the department may pursue the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; may refer the complaint to the appropriate authority for enforcement of the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; or may pursue any other remedy authorized by 2008 Iowa Acts, House File 2212.

c. For the third and subsequent complaints of a potential violation within one year.

(1) Issue a subsequent notice of potential violation to the owner, operator, or person having custody or control.

(2) In addition, the department may authorize one or more public agencies to conduct a compliance check of the location.

(3) In addition, the department may pursue the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; may refer the complaint to the appropriate authority for enforcement of the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; or may pursue any other remedy authorized by 2008 Iowa Acts, House File 2212.

641—153.9(82GA,HF2212) Limitation of rules. Nothing in these rules is intended to limit any other state administrative rule or federal regulation that prohibits smoking.

These rules are intended to implement 2008 Iowa Acts, House File 2212.

[Filed emergency 6/30/08—published 7/30/08, effective 7/1/08]

[Filed 11/12/08, Notice 7/30/08—published 12/3/08, effective 1/7/09]

**SIGN
REQUIREMENTS**

SMOKEFREE AIR ACT

FACT SHEET

OVERVIEW

The Smokefree Air Act requires businesses, and state, county and city governments to post “no smoking” signs at every entrance to places where smoking is prohibited.

CONTACT

Iowa Department of
Public Health
Division of Tobacco Use
Prevention & Control
1-888-944-2247
<https://smokefreeair.iowa.gov/>

NOTE

The information provided in this document is not intended to be legal advice. Please consult state statutes or contact an attorney for additional information about the Smokefree Air Act (Iowa Code 142D)

CONTENTS & DIMENSIONS

To meet the sign requirements in the Smokefree Air Act, all “no smoking” signs should conform to the following:

- Signs must contain:
 1. The words “no smoking” or the international “no smoking” symbol
 2. The Smokefree Helpline: “1-888-944-2247”
 3. The official Web site: “www.iowaSmokefreeAir.gov”
- “No smoking” signs must be at least 24 square inches in size (e.g., 3” x 8” or 4” x 6”, etc.)
- Vehicle “no smoking” signs must be at least 9 square inches in size (e.g., 3” x 3”, etc.)
- Font type and size must be legible.

POSTING OF SIGNS

The Smokefree Air Act requires the posting of “no smoking” signs to inform persons they are entering a nonsmoking place. Signs must be posted in the following locations:

- At every entrance* to a public place, place of employment, area declared a nonsmoking place, and outdoor areas where smoking is prohibited.
- Entrance means any doorway to an enclosed area used by the public or employees for ingress and includes the commonly understood points of entry to an outdoor area such as a driveway, sidewalk, pathway, access road, gate, or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way.
- Every vehicle that constitutes a public place, place of employment, or vehicle designated nonsmoking. Signs have to be visible from the exterior of the vehicle.





MEMORANDUM

To: Planning and Zoning Commission

From:

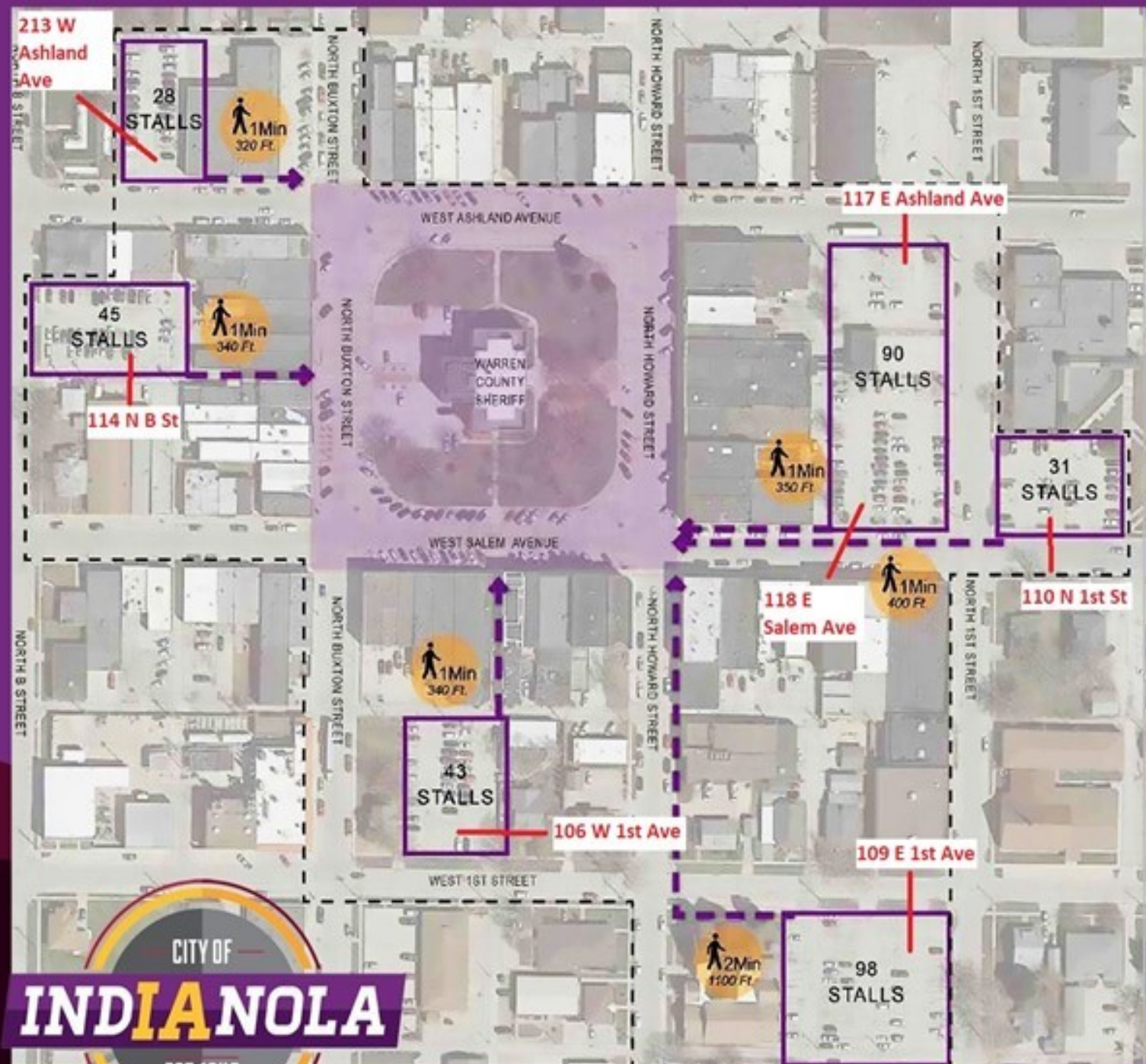
Date: May 17, 2022

Subject: Review Downtown Parking

Recommendation:

Attachments: 1. Public Parking Lots Addresses

PUBLIC PARKING DISTANCE



ACCESSIBLE & PEDESTRIAN FRIENDLY



MEMORANDUM

To: Planning and Zoning Commission
From:
Date: May 17, 2022
Subject: Review Bicycle and Mobility Regulations

Recommendation:

Attachments: 1. Bicycle and Mobility Regulations

BICYCLE AND MICROMOBILITY REGULATIONS

76.01 Purpose	76.08 Place of Riding
76.02 Definitions	76.09 Emerging from Alley or Driveway
76.03 Scope of Regulations	76.10 Towing
76.04 Traffic Code Applies	76.11 Parking
76.05 Motor Vehicle Operations	76.12 Equipment Requirements
76.06 Actions Against Bicycles and Micromobility Devices	76.13 Special Penalty
76.07 Responsible Riding	

76.01 PURPOSE.

The purpose of this Chapter is to set forth regulations for operating bicycles, electric scooters and other micromobility devices on the city's streets, sidewalks, and multi-use trails as enabled by Code of Iowa, Section 321.236[10].

76.02 DEFINITIONS.

1. "Bicycle" means either of the following: (1) A device having up to four wheels and having at least one saddle or seat for the use of a rider which is propelled by human power. (2) A low-speed electric bicycle.
2. "Electric scooter" means a device weighing less than one hundred pounds that is equipped with two or three wheels, handlebars, and an electric motor, and which is solely powered by the rider or by an electric motor capable of propelling the device without additional propulsion supplied by the rider, at a maximum speed on a paved level surface of no more than twenty miles per hour, or both.
3. "Low-speed electric bicycle" means a device having a saddle or seat for the use of a rider, up to four wheels, equipped with fully operable pedals, and an electric motor of less than seven hundred fifty watts that meets the requirements of one of the following classes:
 - A. "Class 1 low-speed electric bicycle" means a low-speed electric bicycle equipped with a motor that may be used to provide assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty miles per hour or more.
 - B. "Class 2 low-speed electric bicycle" means a low-speed electric bicycle equipped with a motor that may be used exclusively to propel the bicycle and that is not capable of providing assistance when the bicycle reaches a speed of twenty miles per hour or more.
 - C. "Class 3 low-speed electric bicycle" means a low-speed electric bicycle equipped with a motor that may be used to provide assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of twenty-eight miles per hour or more.
4. "Micromobility device" means a mobility device under one hundred fifty pounds, which may be equipped with an electric motor for assistance or sole propulsion, designed for conveying the operator, with speeds of less than twenty miles per hour.
5. "Multi-use trail" means a way or place for the use and travel of bicycles, pedestrians, or other authorized conveyances, the use of which is controlled by the city, designated by the multi-use trail maps, as approved by resolution by the city council, and no multi-use trail shall be considered as a street or highway.
6. "Other Power-Driven Mobility Device (OPDMD)" means any mobility device powered by batteries, fuel, or other engines that is used by individuals with mobility disabilities for the purpose of locomotion, including golf carts, electronic personal assistance mobility devices, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair.

76.03 SCOPE OF REGULATIONS.

These regulations shall apply whenever a bicycle, electric scooter, or other micromobility device is operated upon any street, park road, any multi-use trail, sidewalk, or in any bicycle lane, subject to those exceptions and regulations stated herein.

76.04 TRAFFIC CODE APPLIES.

1. Every person riding a bicycle, electric scooter, or other micromobility device upon a roadway or in a bicycle lane shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of the State declaring rules of the road applicable to vehicles or by the Traffic Code of the City applicable to the driver of a vehicle, except as to those provisions that by their nature can have no application.
2. Bicycles, electric scooters, or other micromobility devices are not subject to registration, licensure, titling, inspection, and proof of financial liability coverage provisions of Code of Iowa, Chapter 321.
3. Riders of bicycles, electric scooters, or other micromobility devices are not required to have possession of a driver's license or permit.

4. Whenever such person dismounts from a bicycle, electric scooter, or other micromobility device, the person shall be subject to all regulations applicable to pedestrians.

(Code of Iowa, Sec. 321.234)

76.05 MOTOR VEHICLE OPERATIONS.

1. Bicycle lane right-of-way. Operators of all motor vehicles shall yield the right-of-way to bicycles, electric scooters, and other micromobility devices duly operated in a designated bicycle lane, unless provisions of law establish other requirements and regulations at intersections and other places affecting such bicycle lanes, then such other provision of law shall control.

2. Change Lane to Pass. The driver of a motor vehicle overtaking a person riding a bicycle, electric scooter, or other micromobility device, proceeding in the same direction on a roadway shall pass to the left of the rider of the device in an adjacent travel lane or on the opposite side of the roadway and shall not again drive to the right side of the roadway until safely clear of the overtaken rider and device.

3. Lateral Passing Distance. The driver of a motor vehicle overtaking a bicycle, electric scooter, or other micromobility device that is traveling on a paved shoulder or in a lane designated for the travel of bicycles, shall give at least three feet of lateral passing distance between the outside of the vehicle and the rider and device.

4. Opening Doors. No person shall open any door of a motor vehicle located on a roadway without first taking precaution to ensure that this action does not interfere with the movement of traffic or endanger any other person or vehicle. In addition, no person shall leave open any door of a motor vehicle located on a roadway for a period of time longer than necessary to load or unload passengers or cargo.

5. Yield to persons in crosswalks. The driver of a motor vehicle shall yield to any pedestrian or person riding a bicycle, electric scooter, or other micromobility device within any marked crosswalk or unmarked crosswalk at an intersection, or any multi-use trail crossing a roadway or driveway.

76.06 ACTIONS AGAINST BICYCLES AND MICROMOBILITY DEVICES.

1. A person operating a motor vehicle shall not steer the motor vehicle unreasonably close to or toward a person riding a bicycle, an electric scooter, or other micromobility device on a roadway, including the shoulder adjacent to the roadway.

2. A person shall not knowingly project any object or substance at or against a person riding a bicycle, an electric stand up scooter, or other micromobility device on a roadway, shoulder of roadway, sidewalk, multi-use trail, or any other location.

(Code of Iowa, Sec. 321.281)

76.07 RESPONSIBLE RIDING.

1. Double Riding Restricted. A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto. No bicycle, electric scooter, or other micromobility device shall be used to carry more persons at one time than the number for which it is designed and equipped.

(Code of Iowa, Sec. 321.234[3 and 4])

2. Speed. No person shall operate a bicycle, electric scooter or other micromobility device at a speed greater than is reasonable and prudent under the conditions then existing. No person shall operate a class 3 low-speed electric bicycle on a bicycle lane or multi-use trail in excess of the posted or applicable speed limit, or if there is no posted or applicable speed limit, twenty miles per hour.

(Code of Iowa, Sec. 321.235B[9.b.])

3. Control of bicycle, electric scooter, or other micromobility device. The operator shall keep the conveyance under directional, speed, and stopping control at all times.

4. Improper riding. No person shall ride a bicycle, electric scooter or other micromobility device in an irregular or reckless manner so as to disregard the safety of the operator, others, or property.

5. Right of way. Riders of electric scooters, low speed electric bicycles, and other electric micromobility devices shall yield right of way to pedestrians, human-powered bicyclists, and other human-powered conveyances. Riders of bicycles and other human-powered conveyances shall yield right of way to pedestrians.

6. A person under the age of sixteen shall not operate a class 3 low-speed electric bicycle. A person under the age of sixteen may ride as a passenger on a class 3 low-speed electric bicycle.

(Code of Iowa, Sec. 321.235B[6])

76.08 PLACE OF RIDING.

1. Bicycles, electric scooters and other micromobility devices may be operated on roadways, bicycle lanes, and paved multi-use trails, subject to the limitations of this Chapter.

2. Bicycles and other human-powered devices may be operated on unpaved trails. Other Power-Driven Mobility Devices may be operated by persons with mobility disabilities on unpaved trails provided that they do not risk damage to the trail, surrounding environment, or pose a risk to the safety of other trail users.

3. Bicycles, electric scooters and other micromobility devices, may be operated upon the public sidewalks in a careful and prudent manner except where signs are erected to prohibit riding on the sidewalk or upon sidewalks along the public

square where users shall walk their bicycle, electric scooter, or other micromobility device.

4. Other Power-Driven Mobility Devices may be operated by persons with mobility disabilities on all sidewalks provided that they do not risk damage to the sidewalks, surrounding environment, or pose a risk to the safety of other sidewalk users.

5. All bicycles, electric scooters, and other micromobility devices ridden on the roadway shall be operated on the right half of the roadway, except under any of the following situations:

- A. When using a facility designed or designated through signage and/or pavement markings for the use of bicycle traffic.
- B. When riding alongside or overtaking and passing another bicycle, electric scooter, or other micromobility device proceeding in the same direction.
- C. When preparing for a left turn at an intersection or into a private road or driveway.
- D. When necessary to avoid conditions that make it unsafe to continue along the right half of the roadway.
- E. When traveling straight through an intersection that has a dedicated right turn only lane.

This section does not apply to the use of a bicycle, electric scooter or other micromobility devices in a parade or special event authorized by the city.

76.09 EMERGING FROM ALLEY OR DRIVEWAY.

The operator of a bicycle, electric scooter, or other micromobility devices emerging from an alley, driveway or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on said sidewalk or sidewalk area, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on said roadway.

76.10 TOWING.

1. It is unlawful for any person riding upon any bicycle, electric scooter, or other micromobility device to attach the device or themselves to any moving motor vehicle by tow rope, hand grip or otherwise.

2. It is unlawful for any person riding a bicycle, electric scooter, or other micromobility device to tow any other vehicle or device upon the streets, sidewalks, park roads or multi-use trails of the City unless the vehicle or device is manufactured for such use.

76.11 PARKING.

- 1. Parking of a bicycle, electric scooter, or other micromobility device may be allowed:
 - A. upon a street against or near the curb,
 - B. upon the area between the sidewalk and the roadway,
 - C. in a designated parking area for the device, or;
 - D. against the wall of a building in such a manner as to afford pedestrian traffic clear movement in accordance with the American's with Disabilities Act.
- 2. Bicycles, electric scooters, or other micromobility devices shall not be parked in such a way as to impede access to:
 - A. a fire hydrant;
 - B. a US Postal Service mailbox;
 - C. a crosswalk or curb ramp;
 - D. loading zones;
 - E. transit zones, including bus stops, shelters, or other passenger waiting areas;
 - F. accessible parking spaces;
 - G. street furniture or amenities that require pedestrian access;
 - H. entryways; and
 - I. driveways.

76.12 EQUIPMENT REQUIREMENTS.

Every person riding a bicycle, electric scooter, or other micromobility device shall be responsible for providing and using equipment as provided herein:

1. Every device when in use between sunset to sunrise and when weather conditions provide insufficient lighting to render clearly discernable persons and vehicles on the road at a distance of 500 feet ahead, shall be equipped with a lamp on the front emitting a white light visible from a distance of at least 300 feet to the front and with a lamp on the rear exhibiting a red light visible from a distance of 300 feet to the rear, except that a red reflector on the rear, may be used in lieu of a rear light. A peace officer riding a police bicycle is not required to use either front or rear lamps if duty so requires.

(Code of Iowa, Sec. 321.384 and Sec. 321.397)

2. Equivalent equipment such as headlamps and red light attachments to the head, back, arm, or leg may be used in lieu of a lamp on the front and a red light on the rear of the device.

3. A citation issued for failure to have a front or rear lamp on a bicycle or on a bicycle rider as required shall first provide for a seventy-two hour period within which the person charged with the violation shall replace or repair the lamp. If the person complies with the directive to replace or repair the headlamp or rear lamp within the allotted time period, the citation shall be expunged. If the person fails to comply within the allotted time period, the citation shall be processed in the same manner as other citations.

4. A device shall not be equipped with and a person shall not use upon such device any siren or whistle. This shall not apply to bicycles ridden by peace officer in the line of duty.

(Code of Iowa, Sec 321.434)

76.13 SPECIAL PENALTY.

Any person violating the provisions of this chapter may, in lieu of the scheduled fine for bicyclists or standard penalty provided for violations of this Code of Ordinances and at the discretion of the person accused of the violation, allow the person's bicycle, electric scooter, or other micromobility device to be impounded by the City for five days.

(Ch. 76 - Ord. 1654 - Jul-21 Supp.)



MEMORANDUM

To: Planning and Zoning Commission

From:

Date: May 17, 2022

Subject: Next Meeting Date

Recommendation:

Attachments: None



MEMORANDUM

To: Planning and Zoning Commission
From:
Date: May 17, 2022
Subject: Upcoming Training/Conferences

Recommendation:

Attachments:

1. 2022 Downtown Forums
2. Iowa Downtown Conference

Subject: 2022 Iowa Downtown Forums

If you're having trouble viewing this email, you may [see it online](#).

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2022 DOWNTOWN FORUMS

Taking Action in Your Downtown...Nuisance Properties and Problem Buildings

The Iowa Downtown Resource Center is offering four interactive downtown forums in June focusing on downtown nuisance properties, problem buildings and the actions a city can take to remove the problem.

AGENDA

All forums will be held from 9:00 a.m. to 3:45 p.m.

Introductions

What's the Problem? / Examples of Downtown Nuisances

Community Examples / Audience Discussion

City Actions: Ordinances and Enforcement (building condition and building use)

Downtown Tour and Lunch (on your own, groups encouraged)

Basics of Good Building Design and Low-Cost Solutions

Incentives to Encourage the Best Projects (state and local)

Conclusion: Taking Action

Adjourn

LOCATIONS

Humboldt | *Tues., June 7, City Community Center, 607 1st Avenue S*

Creston | *Wed., June 8, City Hall, 116 W. Adams St.*

Washington | *Tues., June 14, City Hall, Fire Station Training Room, 215 E. Washington St.*

Sumner | *Wed., June 15, St. John's Lutheran Church, 109 Washington St.*

REGISTRATION

Please register for your preferred location. **Downtown Forums are complimentary**, but registration is required.

REGISTER HERE

The Iowa Economic Development Authority's (IEDA) Downtown Resource Center assists communities around the state in revitalizing their downtowns and commercial districts. Be sure to register for the Iowa Downtown Resource, the state's downtown revitalization newsletter.

Questions?

Jim Engle, Director - Iowa Downtown Resource Center
Office: 515.348.6180 | Mobile: 515.360.1674
james.engele@iowaeda.com

Iowa Economic Development Authority | 200 East Grand Avenue | Des Moines, Iowa 50309 | 515.348.6200



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2022 IOWA DOWNTOWN CONFERENCE

August 2-3 | Pella

[Home](#) / [Grow Your Community](#) / [Downtown Resource Center](#) / [Iowa Downtown Conference](#)

The 2022 Iowa Downtown Conference, brought to you by the Iowa Economic Development Authority's Iowa Downtown Resource Center in partnership with #Visit Pella, Central College, Pella Opera House, Alliant Energy and ISG. The conference will include plenary sessions with motivational keynote speakers and educational breakout sessions focusing on downtown revitalization, field sessions, tours, an exhibit hall and a number of networking activities in cool venues. A conference agenda and registration information will be available this spring.



There are still opportunities for involvement in the 2022 Iowa Downtown Conference to be held August 2-3 in Pella!

2022 Sponsorship Opportunities

Sponsoring the Iowa Downtown Conference is a highly visible, cost-effective way to reach a local, state and regional audience of approximately 250 attendees, including downtown development and economic development organization executives, bankers, chambers of commerce and Main Street program directors and

volunteers, preservationists, design professionals and city officials.

Download the [2022 Sponsorship Prospectus](#).

2022 Exhibitor Application

Vendors are invited to exhibit goods and services in the exhibit hall on Tuesday, August 2 from 10 a.m. – 4:15 p.m. You won't want to miss this opportunity to meet face to face with dedicated and passionate professionals and volunteers who either purchase or influence purchases for their city, neighborhood and/or downtown improvement program. There will be a limited number of spaces available on a first come/first served basis.

Download the [2022 Exhibitor Application](#).

Lodging Opportunities

Lodging options can be found at [#VisitPella](#). Room blocks have been reserved for conference attendees under the name IOWA DOWNTOWN CONFERENCE at the following locations:

- **Country Inn & Suites – Book at a reduced rate before July 1**
315 Roosevelt Rd, Pella, 641.620.1111
- **GrandStay Hotel & Suites – Book at a reduced rate before July 1**
2508 Bos Laden Dr, Pella, 641.628.4853

For more information, contact:

Carol Lilly

 515.348.6177

 Email Carol