

## CHAPTER 43

# LOCATION OF RETAIL HEAD SHOP BUSINESSES

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**43.01 PURPOSE.** The City Council of the City of Iowa Falls finds:

1. Head Shop oriented businesses require special consideration in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of Iowa Falls;
2. Head Shop businesses, because of their very nature, have a detrimental effect on both existing establishments around them and surrounding residential areas adjacent to them;
3. Head Shop businesses, due to their very nature, have serious objectionable operational characteristics, thereby contributing to blight and downgrading the quality of life in the adjacent areas;
4. The City of Iowa Falls wants to prevent these adverse effects and thereby protect the health, safety, and welfare of its residents; protect residents from increased crime; preserve the quality of life; preserve the property values and character of the surrounding neighborhoods; and deter the spread of blight;
5. It is not the intent of this chapter to suppress any speech activities protected by the First Amendment, but to enact content neutral regulations that address the secondary effects of Head Shop oriented businesses as well as the health problems associated with such establishments.

**43.02 DEFINITIONS.**

1. "Business" means any location, whether indoors or outdoors, at which merchandise is offered.
2. "Head Shop" means a wholesale or retail shop specializing principally or partially in the sale of articles which could be of interest to drug users or could be used for the consumption of illegal drugs or controlled substances as defined by State law.
3. "Controlled substance" as used in this chapter is defined as the term "controlled substance" is defined in the Uniform Controlled Substance Act, Chapter 124 of the Code of Iowa, as it now exists or is hereafter amended.
4. "Deliver" or "distribute" means to transfer ownership or a possessory interest to another, whether for consideration, as a gratuity or gift, for consignment, or otherwise.
5. "Display" means to show to a patron or to place in a manner so as to be available for viewing or inspection by a patron.
6. "Articles which could be of interest to drug users" (hereinafter "articles") means but is not limited to:

- A. Any item, whether useful for non-drug-related purposes or not, which is displayed, grouped with other items, advertised, or promoted in a manner to reasonably suggest its usefulness in the growing, harvesting, processing, manufacturing, preserving, inhaling, injecting or ingesting of marijuana, hashish, hashish oil, cocaine, methamphetamine or any controlled substance;
- B. Any item, whether useful for non-drug-related purposes or not, which is designated, decorated, adorned, packaged or displayed in a manner to reasonably suggest its usefulness in the growing, harvesting, processing, inhaling, injecting or ingesting of marijuana, hashish, hashish oil, cocaine, methamphetamine or any controlled substance;
- C. Any item defined as drug paraphernalia as set forth in Chapter 124.414(1) of the Code of Iowa as the same now exists or as the same may be hereafter amended;
- D. Kits used, intended for use, or primarily designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- E. Kits used, intended for use, or primarily designed for use in manufacturing, compounding, converting, producing, processing, or preparing of unlawful drugs or controlled substances;
- F. Isomerization devices used, intended for use, or primarily designed for use in increasing the potency of any species of plant which is an unlawful drug or controlled substance;
- G. Testing equipment used, intended for use, or primarily designed for use in identifying or analyzing the strength, effectiveness or purity of unlawful drugs or controlled substances;
- H. Diluents and adulterants, such as quinine hydrochloride, mannitol/ mannite, dextrose and lactose, used, intended for use, or primarily designed for use in cutting or thinning unlawful drugs or controlled substances;
- I. Separation gins and sifters used, intended for use, or primarily designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana or other controlled substance;
- J. Containers and other objects used, intended for use, or primarily designed for use in storing or concealing unlawful drugs;
- K. Any objects used, intended for use, or primarily designed for use in ingesting, inhaling, or otherwise introducing marijuana, hashish, or hashish oil, cocaine, methamphetamine or any controlled substance into the human body, such as:
- (1) Metal, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls, including but not limited to, glass tubes commonly marketed as novelty items such as a miniature rose vase, air freshener or colored marking pens which, when taken apart, contain a pipe that can be used for smoking or otherwise inhaling controlled substances;
  - (2) Water pipes;
  - (3) Carburetion tubes and devices;

- (4) Smoking and carburetion masks;
- (5) Roach clips, meaning objects used to hold burning materials, such as a marijuana cigarette that has become too small or too short to be held in the hand;
- (6) Chamber pipes;
- (7) Carburetor pipes;
- (8) Electric pipes;
- (9) Air-driven pipes;
- (10) Chillums;
- (11) Bongs;
- (12) Ice pipes or chillers;
- (13) Cocaine freebase kit;
- (14) A device constructed so as to prevent the escape of smoke into the air and to channel smoke into a chamber where it may be accumulated to permit inhalation or ingestion of larger quantities of smoke than would otherwise be possible;
- (15) A device constructed so as to permit the simultaneous mixing and ingestion of smoke and nitrous oxide or other compressed gas, whether the device is known as a “buss bomb” or otherwise;
- (16) A canister, container, or other device with a tube, nozzle or other similar arrangement attached thereto so constructed as to permit the forcing of smoke accumulated therein into the user’s lungs, under pressure, where the device is known as a “power hitter” or otherwise;
- (17) A smokeable pipe constructed with a receptacle or container in which water or other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested.

L. In determining whether a business is a Head Shop selling “articles” of interest to drug users as defined by this Code, City authority may consider the following, in addition to the foregoing and all other logically relevant factors:

- (1) Statement by an owner or by anyone in control of the object concerning its use;
- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, relating to any controlled substance for the limited purpose of demonstrating knowledge or lack to mistake regarding the object’s use as drug paraphernalia, and after determining on the record that the probative value of such outweigh a prejudicial impact;
- (3) Direct or circumstantial evidence of the intent of an owner or of anyone in control of the object, to deliver it to persons whom he or she knows, or should reasonably know, intend to use the object to facilitate a violation of the Iowa Falls Municipal Code, the laws of the State of Iowa, or the laws of the United States relating to controlled substances;

- (4) Descriptive materials or instructions, written or oral, accompanying the object, which explain or depict its use;
  - (5) The manner in which the object is displayed for sale;
  - (6) The existence and scope of legitimate uses for the object in the community; and
  - (7) Expert testimony concerning its use, including testimony from law enforcement personnel regarding their knowledge and experience concerning its use.
7. "Manufacture" means to fabricate, make, produce, create, assemble, modify, adapt or turn out.
  8. "Patron" means a person who enters a business for the purpose of purchasing, or viewing as a shopper, merchandise offered for sale at the business.
  9. "Person" means a natural person or any firm, partnership, association, corporation or cooperative association.
  10. "Primarily designed" means a device which has been fabricated, constructed, altered, adjusted or marked especially for use in the smoking, ingestion or consumption of marijuana, hashish, hashish oil, cocaine, methamphetamine or any controlled substance, and is peculiarly adapted to such purposes by virtue of a distinctive feature or combination of features associated with drug paraphernalia, notwithstanding the fact that it might also be possible to use such device for some other purpose.

#### **43.03 REQUIRED RECORDS.**

1. Every Head Shop which distributes "articles" as is authorized by this chapter must keep an accurate record of every item which is sold by the person or business.
2. Such record shall contain the following information:
  - A. The name and address of the purchaser.
  - B. The name and quantity of product and the generic name or type of the product.
  - C. The date and time of sale.
  - D. The signature of the person, business or authorized agent thereof.
  - E. The type of identification used to verify the age of the purchaser.
3. The records described herein shall be retained by the person or business for not less than two (2) years and shall be open to the inspection of the Chief of Police or that person's designee upon request at reasonable time during the two (2) year period.

**43.04 LOCATION RESTRICTIONS.** A Head Shop business shall be permitted within the City of Iowa Falls only in the M-1 Industrial District upon receipt of a site plan and only if it meets all of the location requirements set forth below. Distances provided hereafter shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed Head Shop business is to be located, to the nearest point of the parcel of property or zoning district boundary line from which the proposed Head Shop business is to be separated.

1. Head Shop businesses shall be prohibited in or within one thousand (1,000) feet of the borders of a residential district.
2. Head Shop businesses shall be prohibited within two thousand (2,000) feet of any church, synagogue, mosque, temple, or other place of religious worship.
3. Head Shop businesses shall be prohibited within two thousand (2,000) feet of any public or private school offering general education for students between the years of Kindergarten and Twelfth grade, public library or museum.
4. Head Shop businesses shall be prohibited within two thousand (2,000) feet of any registered daycare home or registered daycare business.
5. Head Shop businesses shall be prohibited within two thousand (2,000) feet of any public park or playground. For purposes of this section, bike paths, trails, waterways, and boat launches shall not be deemed a public park.
6. Head Shop businesses shall be prohibited within one thousand (1,000) feet of any other Head Shop business.
7. Head Shop businesses shall be prohibited within one thousand (1,000) feet of any existing establishment selling alcoholic beverages for consumption on premises.

**43.05 MINORS.** It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a Head Shop business at any time that the business is open for business. The operator must ensure that an attendant is stationed at each public entrance at all times during regular business hours. The attendant shall prohibit any person under the age of eighteen (18) from entering the business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished a valid driver's license issued by a state reflecting that person's age.

**43.06 RESPONSIBILITIES OF THE OWNER.** Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

**43.07 DISPLAY.** Display or offer for distribution of "articles" in a place of business open to the public, except as permitted in this chapter, shall be a violation of this chapter.

*(Ch. 43 – Ord. 1000 – Dec. 11 Supp.)*