

CITY HALL LEGISLATIVE DAY DECEMBER 11, 2012

1



AGENDA

9:00 a.m. Welcome and Introductions – Mayor Bob Scott

ECONOMIC DEVELOPMENT

- 9:05 a.m.
 Targeted Jobs Withholding Tax Credit Program –
 Mayor Bob

 Scott and City Manager Paul Eckert (page)
 Mayor Bob
- 9:15 a.m. Enhance Iowa's Economic Programs and Overall Competitiveness Mayor Pro-tem John Fitch and Economic Development Director Marty Dougherty (page)

SUSTAINABILITY

9:30 a.m.	Public Safety Retirement Funding Modifications - Councilmember Keith
	Radig and Asst. City Manager /Finance Director Bob Padmore (page)
9:40 a.m.	Property Tax Reform - Councilmember Rhonda Capron and City Manager
	Paul Eckert (page)
9:50 a.m.	Proposals to Change Chapter 20 – Councilmember Keith Radig and City
	Attorney Nicole Jensen-Harris (page)
10:00 a.m.	Financial Impact of State Decisions on Municipal Finances -
	Mayor Bob Scott (page)

INFRASTRUCTURE/PARKS

10:10 a.m.	Water Quality Regulations Associated with Point Source Discharg			
	into the Missouri River – Mayor Pro-tem John Fitch and Public Works			
	Director Jade Dundas (page)			

- **10:20 a.m. Missouri River Surplus Water and Reallocation Plan** Mayor Bob Scott and Public Works Director Jade Dundas (page)
- 10:30 a.m. Municipal Liability for Sledding Activities Taking Place on City Owned Property - Councilmember Rhonda Capron and City Attorney Nicole Jensen (page)

OTHER ITEMS

10:40 a.m.	Regional Sports Authority District Appropriations - Councilmember		
	Rhonda Capron and Events Facilities Department Director Aran Rush (page)		
10:50 a.m.	State of Iowa and Home Rule Concerns - City Attorney Nicole Jensen-Harris		

- 11:00 a.m. General Discussion
- 11:15 a.m. Adjourn

Signature Signat



Issue: Targeted Jobs Withholding Tax Credit Program

Background: Iowa faces strong competition in our efforts to create and retain quality jobs and attract new investment. This competition is often acutely felt in border communities such as Sioux City. Tax Credit programs are often critical factors that drive business investment and site location decisions.

The Targeted Withholding Tax Credit Program ("Targeted Jobs") was created by the Iowa legislature as a five-year pilot program to help Iowa's border communities compete against neighboring states. Sioux City was designated along with four other border cities to initiate the Targeted Jobs program. This program was designed as a versatile tool for the creation and retention of Iowa jobs by offering a withholding tax credit of 3% of gross wages for up to ten years.

With more than 1,473 jobs created or retained and a capital investment of more than \$97 million since 2007, the Targeted Jobs program has proven to be a critical tool in attracting and retaining businesses in Sioux City. The Targeted Jobs program has been instrumental in 32 current economic development projects in Sioux City. The qualified jobs created or retained in these projects are typically far in excess of average wage levels in our region, with an average wage of \$33.16/ hour (and overall project jobs have an average wage of \$28.34/hour).

Some recent examples of the successful use of the program include Sabre, currently constructing a new \$28 million multi-building expansion project with 532 high-quality jobs; IDFI, a manufacturing company with skilled jobs expanding in Sioux City; First Administrators expansion with office jobs moving from out of state; and major new commitments made by both Mercy and St. Luke's Hospitals in Sioux City.

During the 2009 Legislative session the Targeted Jobs program was extensively reviewed and a number of changes were enacted that both extended the program to 2013 and tightened the rules and imposed limits on the program. In the 2011 session language was added that clarified the rules regarding job retention. The City and the other pilot cities continue to work closely with our legislators and State economic development officials to insure both the effectiveness and the accountability of this critical program.

Request: The Targeted Jobs program has proven itself to be an effective tool for job creation, but is set to expire on June 30, 2013. The City of Sioux City requests continued legislative support for the Targeted Jobs program to retain and extend this critical economic development tool.



Issue: Enhance Iowa's Economic Programs & Overall Competitiveness

Background: The economic vitality of Iowa depends on the successful development of new and existing business and industry, and job creation and investment, especially in Iowa's larger communities. This can best be achieved by:

- Providing state and local government partnerships the key resources to support effective business development programs.
- Improving the overall business and tax climate in Iowa.

Job creation programs - Adequate and predicable levels of funding for the Iowa Economic Development Authority and business incentive programs are critical to Iowa's ability to compete globally for job creation projects. In recent years funding has fluctuated significantly, making economic development projects more difficult.

Tax credit programs - Economic development is encouraged through the use of competitive tax credit programs. The legislature should review and increase the current limitations on tax credit program allocations. These programs support economic development projects that cost the state nothing unless the new jobs are created and revenues are generated.

Worker readiness programs - Strengthen successful worker training programs such as 260E through the community colleges. These have proven to be invaluable tools in the growth of business in Iowa, and often represent a significant competitive advantage in the attraction of new jobs and investment. Expand business sector and school collaborations to help provide businesses with the employees they need to create and grow quality jobs. Also support the Workforce Housing Fund within IFA.

Tax Increment Financing – Support this key tool for economic growth. Consider easing burdensome reporting requirements that go beyond practical transparency needs. Oppose potential rollback changes that may negatively impact base values of existing TIFs.

Property taxes - Commercial and industrial property taxes in Iowa are not competitive. Simply cutting tax rates places a heavy burden on local governments. Efforts from the past two years to find that critical balance between relieving tax rates on commercial and industrial taxpayers and ensuring cities and counties retain adequate resources to deliver services should continue.

Income taxes – Iowa's competitiveness can be improved through a simpler income tax structure and overall lower taxes.

Request: Iowa's Economic Development programs and tools are critical for projects currently under consideration by businesses in our community as well as the future growth of jobs and investment. We encourage these programs to be enhanced for example by improving the ability to provide flexible and customized solutions for business growth. The City of Sioux City requests continued legislative support and enhancement of these key business climate, assistance, tax credit, and worker training tools.

SUSTAINABILITY



Issue: Public Safety Retirement Funding Modifications

Background: The MFPRSI system and the actuarial group who assists them reported that, depending on the investment returns over the next 10-20 years, cities could see increases in mandated retirement contribution rates of nearly 36% in the next six years. The FY2014 contribution rate is set at 30.12% or an increase of 15.3% over FY2013 contributions rates for cities.

In addition the MFPRSI Board has proposed a change in calculating the actuarial method for determining rates. The proposed change would result in a change from the "aggregate" method to "entry age normal" method of calculating contribution rates. If adopted, this would further reduce the contribution rates required to be funded by communities.

While the City of Sioux City is encouraged by these recent changes, we still feel that the system is in dire need of changes in order for the City to fund their contribution while maintaining essential services. In the past the Iowa League of Cities established a committee to look at this issue and has recommended increases to the employee contribution rate for police and fire personnel. While the City of Sioux City supports the efforts of the Iowa League of Cities, we would like a thorough analysis and development of a model which allocates costs between the City and employee in a more equitable manner.

Among the proposals the City of Sioux City would ask to be considered:

- · Eliminate the 17% minimum contribution rate currently required of cities.
- · Eliminate the 9.4% maximum contribution rate currently applied to members.
- · Implement a new cost distribution model which results in a 60% employer/40% Employee

sharing of costs.

· Consider the implementation of a two-tier system, resulting in a more cost effective retirement system for new hires.

The City of Sioux City recognizes the importance of properly funding all public retirement systems in the State of Iowa. At the same time, we feel that increases should be shared by both employer and employee. This will serve to protect our tax payers from tax increases and/or reduction in services, while protecting the integrity of the retirement systems.

Request: The City of Sioux City is seeking legislative assistance in developing a model which allocates future contributions increases to the retirement system more equitably between the city and the employee.



Issue: Property Tax Reform

Background: During the last legislative session there was considerable discussion of the need to overhaul the property tax system, and specifically commercial and industrial property taxes. While the City of Sioux City agrees that this issue must be addressed, the proposals from the prior legislative session, if enacted, would have led to an unrealistic reduction in tax dollars collected by our community.

The enactment of legislation which reduces commercial and industrial property taxes without an offset from other sources would dramatically impact the ability of the City of Sioux City to provide services to our citizens. The City of Sioux City relies heavily on property taxes to fund essential services to our residents. In the Fiscal Year 2012 budget seventy percent of all tax dollars collected funded public safety. Changes to the current property tax system without offsetting mechanisms to recapture lost commercial and industrial taxes would result in drastic reductions to public safety in our community.

In the past few years, the City has undertaken austerity measures, resulting in a reduction in our property tax rate. In order to achieve this, we have already reduced many non-essential services. Further reductions in our taxable values would leave us little choice but to reduce those services identified as essential. It would also lead to the elimination of most quality of life amenities our community provides.

The limitation on the ability of our tax base to grow, will further strain our ability to fund general operations. Such limitation would have a negative effect on our ability to bond for projects. As the costs of providing services goes up, cities need to be able to benefit from the growth in assessed value in our community.

The City of Sioux City supports efforts to creatively lower commercial and industrial property taxes in our State. However, we do not feel that any change which shifts the burden of taxation to another class or reduces the ability of a community to collect sufficient taxes to operate will, in the long run, prove beneficial to our economic development efforts or our ability to grow as a community or State.

Request: The City of Sioux City respectfully requests that any proposed changes to the current property tax system include provisions to offset the loss of property taxes collected by communities.



Issue: Proposals to Change Chapter 20

Background: Chapter 20 which governs public employment relations and collective bargaining has been in effect for the past 37 years. While during this time, it has provided an effective method for members of the labor unions and management to prioritize and communicate needs and to explore creative options in pursuit of voluntary agreements, we believe that current economic conditions necessitate some fundamental changes this legislation, specifically Chapter 20.22(9), Binding Arbitration. Current practices reflect that interest arbitrators do not give substantial weight to the budgetary issues raised by public employers, and with the elimination of fact-finding from the impasse procedures, the alternatives available to arbitrators is limited to either the position of the employer or the position of the union. The language in subparagraph "d" has been interpreted to mean that public employers have the ability to raise taxes to fund employee wage and benefit increases they deem fair and equitable. This interpretation discounts any deference the arbitrator must give to the ability of "the public employer to finance economic adjustments." The current language allows arbitrators to ignore the impact that their award may have on the taxing body and on taxpayers. Instead, public employers are required to make decisions on whether to increase taxes or reduce services.

Request: The City of Sioux City requests the legislature support amending Chapter 20.22(9)d so that arbitration awards will not cause services to be diminished or taxes to be raised. The organization and labor unions have an interest in maintaining staffing and service levels as well as not increasing the tax burden on citizens. The City supports legislation that will appeal to both sides and achieve this must needed change. Chapter 20 has served both public employers and employees well and the City believes it can continue to do so with the following amendment to sub-paragraph d.

d. The power the public employer to levy taxes and appropriate funds for the conduct of its operations.



Issue: Impact of State Legislation on City Finances

Background: In the past, the Iowa State Legislature has enacted legislation which did not recognize the negative financial impact it placed on Cities. In addition, interpretations of the legislation by the Supreme Court has placed additional financial strain on Cities, at the same time our citizens are asking us to lower taxes.

Examples Include:

Chapter 499A – Multiple Housing Cooperatives

A recent decision by the Iowa Supreme Court as it relates to the application of Chapter 499A, results in a dramatic loss of property tax revenue and related tax dollars to communities.

Under current lowa tax law, multi-family housing units are classified as commercial properties and therefore are taxed at one hundred percent of their assessed value. In a 2011 Supreme Court ruling (Krupp Place 1 Co-op, Inc. and Krupp Place 2 Co-op Inc. v. Board of Review of Jasper County, Iowa.), made a decision which , ever, under Chapter 499A, an apartment complex owner can convert the property to a Multiple Housing Cooperative, resulting in the application of the residential rollback provision. The net effect is the reduction in value of apartment complexes of nearly fifty percent of those apartment complex owners who take advantage of this loop hole.

It is the position of the City, that the intent of 499A was not to allow all apartment complexes to establish Multiple Housing Cooperatives for the sole purpose of avoiding commercial property taxes. As noted in a lower court decision overturned by the Supreme Court, the intent of the apartment owners was ""seeking to minimize their tax liability, forming a shell multiple housing cooperative under chapter 499A while actually operating a standard rental property."

Unfunded Portion of the Homestead Exemption – The failure of the State to fully fund the exemptions results in higher property taxes for our citizens.

Chapter 20.22 Binding Arbitration

I-649

PUBLIC EMPLOYMENT RELATIONS (COLLECTIVE BARGAINING), §20.22

to act as a mediator. It shall be the function of the mediator to bring the parties together to effectuate a settlement of the dispute, but the mediator may not compel the parties to agree. [C75, 77, 79, 81, §20.20]

91 Acts, ch 174, §5; 92 Acts, ch 1011, §3; 92 Acts, ch 1227, §13; 2010 Acts, ch 1193, §108 Section amended

20.21 Fact-finding. Repealed by 2010 Acts, ch 1165, § 31.

20.22 Binding arbitration.

1. If an impasse persists ten days after the mediator has been appointed, the board shall have the power, upon request of either party, to arrange for arbitration, which shall be binding. The request for arbitration shall be in writing and a copy of the request shall be served upon the other party.

2. Each party shall serve its final offer on each of the impasse items upon the other party within four days of the board's receipt of the request for arbitration. The parties may continue to negotiate all offers until an agreement is reached or an award is rendered by the arbitrator. The full costs of arbitration under this section shall be shared equally by the parties to the dispute.

3. The submission of the impasse items to the arbitrator shall be limited to those items upon which the parties have not reached agreement. With respect to each such item, the arbitrator's award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitrator.

4. Upon the filing of the request for arbitration, a list of five arbitrators shall be served upon the parties by the board. Within five days of service of the list, the parties shall determine by lot which party shall remove the first name from the list and the parties shall then alternately remove names from the list until the name of one person remains, who shall become the arbitrator. The parties shall immediately notify the board of their selection and the board shall notify the arbitrator. After consultation with the parties, the arbitrator shall set a time and place for an arbitration hearing.

5. The arbitrator shall at no time engage in an effort to mediate or otherwise settle the dispute in any manner other than that prescribed in this section.

6. From the time the board notifies the arbitrator of the selection of the arbitrator until such time as the arbitrator's selection on each impasse item is made, there shall be no discussion concerning recommendations for settlement of the dispute by the arbitrator with parties other than those who are direct parties to the dispute.

7. The arbitrator shall consider, in addition to any other relevant factors, the following factors:

a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.

b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services. *d*. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

8. The arbitrator may administer oaths, examine witnesses and documents, take testimony and receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of records. The arbitrator may petition the district court at the seat of government or of the county in which the hearing is held to enforce the order of the arbitrator compelling the attendance of witnesses and the production of records.

9. The arbitrator shall select within fifteen days after the hearing the most reasonable offer, in the arbitrator's judgment, of the final offers on each impasse item submitted by the parties.

10. The selections by the arbitrator and items agreed upon by the public employer and the

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Issue: Water quality regulations associated with point source discharges into the Missouri River.

Background: Since 1998 the USEPA has been considering the implementation of water quality requirements to control nitrogen and phosphorus discharges into the US waterways. The improvements suggested by the EPA are extremely low, cost prohibitive and beyond current technological capabilities to achieve. These limits primarily focused on point source discharges which would only have a marginal improvement in overall water quality. Due to concern expressed by States and other agencies the EPA reconsidered their position on nutrient reduction and has allowed the individual States to address water quality issues.

Providing the State's with the opportunity to develop their own nutrient criteria is a positive move which allows a more equitable distribution of improvements and a more realistic expectation for water quality limits. Iowa has recently published a plan which documents a nutrient reduction strategy for the State. This document address controls for point source discharges such as municipal and industrial users and controls for nonpoint source (agricultural) runoff. The plan signifies the importance of addressing both of these discharges and estimates cost of capital and annual expenses for both. While the cost for both is high the benefit of point source reduction is disproportionately low, representing only 8% of total nitrogen (TN) and 20% of total phosphorus (TP) within the State.

The State's plan establishes an explicit program for controlling discharge from major point sources and sets a schedule for these controls. The plan is less specific regarding nonpoint sources (NPS) and timeframes for the control of these discharges. While the non-specific nature of NPS control is understood because of the scale of the program the funding for NPS control is extensive and very well detailed in the strategy document. Municipalities are traditionally restricted to funding regulatory requirement through user fees or State Loan Programs. There are very few Federal programs and no public infrastructure legislation which would produce funding to make the required point source improvements.

The other factor concerning the development of these requirements is the equity associated with the lack of requirements in neighboring states. To date, neither South Dakota nor Nebraska has official plans for the control of nutrient discharges into the Missouri River. This presents an inequitable regulatory environment which in turn could impact the cost of service to customers. While all of the sewer service in the area is provided by Sioux City there are plans to construct other treatment facilities within the region. If this occurs and the costs of treatment are higher in Iowa this will create a cost advantage in the adjoining states. Prospective economic development projects could see this as a reason not to establish a business in Iowa.

Request: The City is requesting legislative support to ensure that nutrient reduction requirements are established and implemented equality. Non-point source controls will have a long term impact on the costs required by the point sources. The equability in funding is also very important in the development of these programs. The City would request legislation which would create Federal funding for infrastructure improvements and reconstruction. While nutrient reduction is the primary concern of this paper aging infrastructure as a whole is costing municipalities more each year. The final item which should be considered is the equitable implementation of the controls with neighboring states. The impacts of nutrients on the Missouri River are of obvious national importance. The construction of treatment facilities in other states in order to avoid the cost of nutrient reduction in Iowa should not be allowed to create an unfair economic advantage for users of the same waterway.



Issue: Missouri River Surplus Water and Reallocation Plan

Background: The Missouri River is important to Sioux City both historically and currently for a number of reasons. The most important use of the river for Sioux City today is as a source of drinking water supply. Water supply was one of the beneficial uses which were protected by the Pick/Sloan Act. The Act protected stream flow through the Missouri River system in order to ensure that beneficial uses were maintained. In order for the City to grow and support industrial expansion, the stream flows must be protected and maintained.

Sioux City like so many other communities, public water systems and industries along the Missouri River, has dealt with reduced reservoir releases over the past ten (10) years. Along the Missouri impacts of lowered water levels include reduced recreational opportunities and impacts to industries that withdraw water directly from the stream. Public water supply system which depend on the river have also had to implement water conservation measure and have had impacts to operating cost related to pumping of water for the water tables. All of this is due to insufficient water available to fully support the beneficial uses as established by the Pick/Sloan Act of 1944.

It is very concerning that the Corps of Engineers is now prepared to declare a "surplus" of water, where one arguably does not exist. Part of their recent surplus determination is to propose charging municipalities and industries for the utilization of water with drawn from the Missouri River. Users are already subjected to variable costs of a rising and falling river. The lack of consistency in the maintenance of river elevations has cost millions over the last several years. Fees to preserve the beneficial uses of the river should not be allowed.

Request: Sioux City requests Iowa's support, both through the Department of Natural Resources and legislative action to oppose the Army Corp of Engineers M & I Reallocation Study and Surplus Water Report. Sioux City does not believe the Army Corp of Engineers approach to the Multiple Use Zone allocation is correct. If there truly is "surplus water" available it should be evenly distributed among the eight (8) authorized beneficial uses. With water supply as one of the original beneficial uses, consideration of now charging for the use of that water seems to be in conflict with the Pick/Sloan Act. With the design life of the Missouri River Reservoir System of fifty (50) years the depreciated value would be at or near \$0.00.



Issue: Municipal Liability for sledding activities taking place on City owned property

Background: Municipalities across the State of Iowa are facing liability actions for individuals injured while sledding on City owned land or in City parks. Currently, no immunity exists under Iowa law for this type of activity.

In early 2012, the City of Sioux City contributed to a \$2.75 million settlement for a man that was injured while sledding in Sertoma Park in 2008. The injured individual was riding on a snow tube when he struck a no parking sign located in the park and suffered paralysis as a result.

Additionally, in 2011 the City of Boone, Iowa paid a settlement amount not to exceed \$12 million to settle a lawsuit arising from a sledding accident in which a female party struck a concrete cube at the bottom of a hill in a park.

Last year Representative Baltimore from Boone, Iowa introduced legislation that would have included sledding under the immunity provisions afforded to municipalities under Iowa Code Chapter 670. Currently, Chapter 670 only provides protection for inherently dangerous activities such as skateboarding, in-line skating, bicycling, unicycling, scootering, river rafting, canoeing, and kayaking. Unfortunately, Representative Baltimore's attempt to implement changes to Chapter 670 was unsuccessful.

There is growing interest across the State of Iowa to pursue alternatives to limit municipal liability without having to completely ban sledding or recreational type activities. It is a balancing act facing many City Councils. The choice to allow recreation type activities while weighing the protection of the public from payment of liability claims arising from these activities can be daunting.

Specifically, the City of Davenport has authored a memo outlining its position and requesting legislative change. This memo succinctly outlines the risks taken on by a municipality allowing public lands to be open to recreational activities. A copy of this memo is attached for ready reference.

Request: The City of Sioux City requests the legislature support amending the Iowa Code to provide additional protections to Cities for activities such as sledding. Two separate alternatives are attached for your consideration. These amendments are also supported by the City of Davenport

Alternative One: This alternative adds two additional paragraphs to Iowa Code Section 670.4 which would afford protection for municipalities from claims initiated by individuals entering upon and using public property for recreation or leisure.

Alternative Two: This alternative also expands immunity protections under Chapter 461C to public entities owning land used for recreational purposes. Previously, municipalities were not afforded protection under this chapter.



City Attorney's Office Memorandum

Date: November 26, 2012

To: Mayor & Council City Administration, Parks, Risk

From: Thomas D. Warner, City Attorney

Re: Sledding



Unlike claims based upon or arising out of a person skateboarding, in-line skating, bicycling, unicycling, scootering, river rafting, canoeing or kayaking on public property, lowa's tort liability law does not provide immunity to cities from claims based upon recreational sledding injuries.

According to the Consumer Product Safety Commission every year tens of thousands of children and adults sustain injuries sledding down hills. Barnes-Jewish Health Care states that between 30,000 and 35,000 children across the country receive treatment in hospital emergency rooms for injuries they receive while sledding and one in 25 of those children will have suffered injuries severe enough to require hospitalization. Older children prefer to ride sleds, toboggans and inner tubes in a seated position and when they hit a hard bump they are thrown up into the air and land forcefully frequently suffering injuries to the spine. For the year of 1995 these injuries cost a total of \$365 million in medical, legal and insurance fees.

Municipal liability claims focus on sledding hill design, pre-season setup, supervision (or lack thereof), inspection and signage and education of the community. Hill design involves creating and maintaining a flat staging area at the top of the hill, a hill with a 30° average slope, a hill with a northern facing orientation, a hill face that channels sleds away from obstacles, a run-out area at the bottom of the hill, a walk way for the return to the top, and nothing on the hill that can cause injuries. Regular inspections must be made to identify new hazards that might develop like make-shift ramps/jumps. Supervision is required through the presence of attendants trained for emergency response, basic first aid, CPR, identification of hill conditions that might result in hill closure, etc. Signage should be posted at the parking lot, warming house, top of the hill and all points of entry. The hill should be free of bumps, dips, jumps, moguls, debris and obstructions. An emergency phone should be provided and operational.

Recent news regarding sledding is not good, unless you're a trial lawyer:

Omaha, NE 2012 – The city was ordered to pay \$2.4 million to a family after their daughter was paralyzed from the chest down after her sled hit a tree. Experts testified "the slope of the hill was deceptive and naturally guided the girl toward the trees." The city subsequently banned sledding at two parks. The total award was in excess of \$10 million, but was reduced by a state law tort liability cap.

Sioux City 2012 – Total settlement of \$2.75 million to a man who injured his spinal cord when he slid into a parking sign. The Sioux City paid \$478,632 and their insurer paid another \$1.97 million on behalf of the city. A third party paid \$300,000.

Boone, IA 2011 – City Council agrees to pay an amount in excess of \$12 million to settle lawsuit involving sledder who struck a concrete cube at the bottom of a hill. Her claims were negligence, liability for defects on public property, design and construction of a sledding hill, public nuisance and gross negligence. The sledder contended that the city should have been aware of the hill's condition.

Ottawa, IL 2011 – Ottawa County Park Commission is sued by family whose 11-year old boy died in a sledding accident. The park commission did not maintain the hill for sledding.

Ohio 2010 – Chagrin Falls, OH man thinks sledding hill is dangerous and wants parks system to fix it before anyone else is hurt. Said hill was very icy and he noticed bump in the hill which he tried to avoid but couldn't. The bump sent him airborne and he landed head first on the side of the hill with a broken neck. Parks department says other sledders purposely make mini-hills on the sledding hill so they can launch their sleds off of them.

Pennsylvania 2009 – Allegheny County (PA) closed Boyce Park hill to sledding as a result of a lawsuit filed by a woman who broke her back while sledding. She eventually is awarded \$500,000.

Syracuse, NY 2009 – city posts signs telling people not to sled on Wescott Reservoir hill. The reservoir is public land and it is illegal to sled there. A 12-year old girl died there after she slid into a parked car.

Connecticut 2007 – Waterbury's mayor ponders closing Fulton Park hill to sledding after settling lawsuit for \$8 million with woman who fractured 5th cervical vertebra.

Missouri 2007 – Joplin, MO bans sledding on Dover Hill as a result of a sledding lawsuit. The parks director said, "We have never designated that hill for sledding. People have more or less taken it upon themselves to sled there. There is no where in our park system designated as a sledding area."

New York 1998 – Patrick Sena injured sledding when sled struck a brownish mound which threw he and his 7-year old son into the air, his son landed on his pelvis causing a spinal fracture, sued town and was awarded more than \$2 million. Town had declared the hill for sledding use but had posted a sign that sledding was at one's own risk.



If a City officially takes the position that sledding is allowed it has legally obligated itself to make sure that all park hills upon which sledding occurs are properly designed for sledding activity, to conduct pre-season inspections to identify hazards and remove the same, to provide for supervision of sledding activities at all hills in all parks with supervisors trained in first aid, CPR and emergency response, to provide emergency phone service in all parks, to conduct regular inspections throughout the winter regarding new hazards that might develop such as makeshift ramps/jumps and debris, and to post signage at all parking areas, entry points, tops of hills regarding the hazards of sledding. To not take these costly measures and allow sledding would be extraordinarily risky under the current state of tort law.

The most sensible solution to the sad dilemma facing cities today of closing sled hills or risky multi-million dollar claims is to have the state legislature strike a different balance. Cities can lobby the lowa legislature for immunity like private property owners enjoy and the city enjoys for other recreational activities (swimming, bicycling, in-line skating, skate boarding, kayaking, etc.). When no fee is charged and no representations of safety are made, asking adults and parents to gauge the risks of an activity and be responsible for themselves or their children is not unreasonable. Particularly when balanced against the public's possible loss of the recreational opportunity. Nearly all of our neighboring states have granted immunity.

Attached are a couple of legislative proposals that will accomplish the same purpose.



ALTERNATIVE ONE:

Two new subsections under lowa Code §670.4 that read as follows:

16. Any claim based upon or arising out of an act or omission of an officer, employee or agent of the municipality or the municipality's governing body by a person concerning an alleged dangerous condition, injury or damage that occurred upon public property that is open for recreation or leisure without an admission fee unless the act or omission constitutes actual malice.

This subsection does not limit any other immunity or defense.

17. Any claim based upon or arising out of an act or omission of an officer, employee or agent of the municipality or the municipality's governing body by a person concerning an alleged dangerous condition, injury or damage that occurred upon public property that is open for recreation or leisure upon payment of an admission fee provided the municipality establishes that: i) the person suffering the alleged injury or damage was trespassing; ii) it complied with its policy or level of service for maintenance and inspection immediately prior to the incident; or iii) the alleged injury or damage is a warned or commonly known risk of the activity that gave rise to the alleged injury or damage.

This subsection does not limit any other immunity or defense.

[The remedy against the municipality provided by section 670.2 shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the municipality or its officer, employee or agent whose act or omission gave rise to the claim, or the officer's, employee's, or agent's estate.

This section does not expand any existing cause of action or create any new cause of action against a municipality.]¹

¹Preexisting unnumbered paragraphs at the end of 670.4



ALTERNATIVE TWO:

461C.1 PURPOSE.

The purpose of this chapter is to encourage private <u>and public</u> owners of land to make land and water areas available to the public for recreational purposes and for urban deer control by limiting an owner's liability toward persons entering onto the owner's property for such purposes.

461C.2 DEFINITIONS.

As used in this chapter, unless the context otherwise requires: 1. "Charge" means any consideration, the admission price or fee asked in return for invitation or permission to enter or go upon the land.

2. "Holder" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises; provided_, <u>"however, Hholder" includesshall not mean the state of lowa, its political</u> subdivisions, or any public body or any agencies, departments, boards, or commissions thereof. <u>This chapter shall not be construed to be a waiver of any</u> er immunity that a holder may otherwise possess

other immunity that a holder may otherwise possess.

3. *"Land"* means private land located in a municipality including abandoned or inactive surface mines, caves, and land used for agricultural purposes, including marshlands, timber, grasslands and the privately owned roads, water, water courses, private ways and buildings, structures and machinery or equipment appurtenant thereto.

4. "Municipality" means any city or county in the state.

5. "Recreational purpose" means the following or any combination thereof: Hunting, trapping, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, nature study, water skiing, snowmobiling, other summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites while going to and from or actually engaged therein.

6. *"Urban deer control"* means deer hunting with a bow and arrow on private land in a municipality, without charge, as authorized by a municipal ordinance, for the purpose of reducing or stabilizing an urban deer population in the municipality.

SOLV CITY OTHER ITEM



Issue: Regional Sports Authority District Appropriations

Background: In FY2012, the City of Sioux City was certified as one of 10 regional sports authority districts by the state of Iowa and Iooks to be certified in FY2013 when the applications go near year end. The bill provides that each authority shall actively promote non-professional sporting events in the Iocal area. The bill's total funding was \$500,000 to be split evenly among the 10 authorities. The funding allows the City to be reimbursed \$2 for every \$1 spent. The City is eligible to receive up to \$50,000 in state economic development funds for this program.

The City's intent is to promote current nonprofessional sporting events and to attract new sporting events. Current nonprofessional sporting events that qualify for funding are the CNOS Foundation Basketball Classic, NAIA Women's Division II National Basketball Championship and the NAIA Volleyball National Championship. CNOS Basketball Classic is a three day basketball tournament that attracts teams from the tri-state area. NAIA Basketball attracts the top 32 NAIA nationwide teams to the City for one week in March. Annual attendance is over 40,000. NAIA Volleyball attracts the top NAIA teams and 21,000 fans to Sioux City for five days. The City is currently in the process of bidding several events. These events would all be new to Sioux City and the state of lowa. The events will also bring visitors to the City and promote the local and state economies.

The bill's funding allows us to receive state dollars to promote Sioux City. CNOS Foundation Basketball total budget is approximately \$50,000, NAIA Basketball total budget is approximately \$285,000 and NAIA Volleyball is approximately \$120,000. State funding will be a catalyst in promoting the events and city.

Request: The City of Sioux City request legislature support continued state funding for the Regional Sports Districts. The funding will allow the City to maintain current non-professional sporting events and attract new events to Sioux City and the State of Iowa.



Issue: Home Rule – Regulation of Automated Traffic Enforcement

Background: The City of Sioux City currently operates the DRIVE R.I.T.E. (Red-Light Intersection Traffic Enforcement) & S.A.V.E. Lives (Speed Automated Violation Enforcement) programs. Automated Traffic Enforcement Laws are currently authorized by both Iowa Home Rule Authority and the Iowa Supreme Court, in *City of Davenport v. Seymour*, 755 N.W.2d 533 (Iowa 2008), all of which recognize the rights of municipalities to utilize traffic infraction detectors to regulate municipal traffic.

According to the Insurance Institute for Highway Safety, as of October 2012, 541 communities in 24 states and the District of Columbia utilized automated red light enforcement systems and 119 communities in 13 states and the District of Columbia utilized automated speed enforcement systems. Both the DRIVE R.I.T.E (Red-Light Intersection Traffic Enforcement) and S.A.V.E. Lives (Speed Automated Violation Enforcement) programs have proven to be effective in reducing the number of accidents within Sioux City.

Since the inception of these programs, the overall number of traffic accidents has significantly decreased. A copy of the history of the implementation of these programs as well as statistical information compiled by the Sioux City Police Department has been attached for ready reference.

Request: The City of Sioux City is requesting legislative support to allow municipalities to continue to operate Automated Traffic Enforcement Programs as currently allowed under the Home Rule Authority given pursuant to Iowa Code Chapter 364 and Article III of the Iowa Constitution.



DRIVE R.I.T.E. (Red-Light Intersection Traffic Enforcement) & S.A.V.E. Lives (Speed **Automated Violation Enforcement) Programs**

Sioux City has one of the highest insurance rates for vehicle owners in the state of Iowa. Four years ago, the city was averaging well over 3,000 traffic accidents every year. Over half of those accidents were occurring at intersections throughout the city. In late 2005, the Sioux City Police Department began exploring possible solutions to this ongoing problem. While Sioux City Police continued to utilize conventional methods (i.e. traditional traffic enforcement, community education, etc.), using photo enforcement to gain voluntary compliance presented itself as a viable option. After researching several companies, in March of 2006, the City Council authorized the City Manager to negotiate a contract with Redflex.

Once a contractor was determined, the next question was how the city would design their photo enforcement program. There are two enforcement options. The first is to make the driver of the vehicle responsible for the violation. To do this, we would need to take a front photo of the interior compartment of the violating vehicle. Officers could then pull up driver's license photos of the vehicle's registered owner and other family members, confirm the driver through photography, and issue the citation to the vehicle operator. With this option, the violation could be a criminal citation and the citation would affect the operator's driving license. Our main concern with this option was the intrusiveness of the photograph. Not only would we be able to see the driver of the vehicle, we would be able to see all passengers. The second option placed the responsibility for the violation on the vehicle owner, making it a civil penalty rather than a criminal penalty. This option is similar to a parking citation, but would also allow the vehicle owner to nominate the operator of the vehicle. The Sioux City Police Department recommended the latter.

In the spring of 2006, the Sioux City Council passed a City Ordinance authorizing enforcement for red light cameras, making it a civil violation with owner responsibility. The contract was signed in December of 2006 authorizing the use of photo enforcement at up to 25 intersections. Eleven (11) "approaches" were identified for installation. Unfortunately, before we could begin implementation of the program, there was a law suit filed in the City of Davenport alleging the use of photo enforcement was unconstitutional. Conseguently, the contract was put on hold pending the outcome of that suit. In November of 2008, the Iowa Supreme Court ruled in favor of the legality of Red Light Cameras. At that point, intersections were reevaluated and eight approaches were selected for installation.

The Sioux City Police Department began using all media channels available to educate and alert the public about photo enforcement prior to going live in late July 2009. Since July 2009, we have increased the number of approaches to eleven (11) approaches at 9 (9) intersections. Those intersections are:

> Chevenne Blvd. & Outer Drive 5th Street & Court Street Gordon Drive & Fairmount Street Gordon Drive & Nebraska Street Gordon Drive & S. Palmetto Street Lewis Blvd. (Hwy 75) & Outer Drive Pierce Street & Gordon Drive Sergeant Road & Lakeport Street 129 & Singing Hills

^{1An} approach is a specific direction of travel within an intersection. Some intersections in Sioux City have up to two approaches established for photo enforcement. ^{2Evaluation} included accident data, officer input, and violator survey results.



When attempting to determine an appropriate fine schedule for violations we received feedback with two completely different schools of thought. The first group said this was going to be all about making money and that the city would continually raise the fine just to generate revenue. The second group also said it was all about the money; however, their argument was slightly different. They said we would keep the fines low just to generate money and not in an effort to change driver behavior. The general consensus was for the city to adopt the State of Iowa fine schedule for running a red light. The Iowa legislators had already determined what they believed to be the amount necessary to impact driver behavior. At the time of implementation, in 2008, that fine amount was \$107.25. In July of 2010, Iowa legislators chose to increase the fine for violating a red light to \$195.00. After much public debate, in the spring of 2012, the Sioux City Council chose to rewrite the ordinance setting the fine for red light photo enforcement at a flat \$100.00.

In the first year of red light photo enforcement, there were eight approaches and the program was averaging 952 violations per month (or rather 119 violations per approach per month). Although each approach has signage alerting drivers that the intersection is photo enforced, we felt that the number of violations was too high. The Sioux City Police Department began working more closely with the City Engineers to add stop lights and in some cases to redesign the intersections. This was done in an attempt to gain voluntary compliance. Because of these efforts, along with our continuing education, there has been a steady decrease in violations. These decreases continue to occur despite the increase in the number of photo enforced approaches. FY 2011 averaged 794 violations per month, and FY 2012 averaged 764 violations per month.

Although many factors can impact the number of traffic accidents in any given year (i.e. weather conditions), the number of traffic accidents in Sioux City have decreased significantly since we began using photo enforcement.

YEAR	ACCIDENTS	ACCIDENTS AT INTERSEC- TIONS	ACCIDENTS AT PHOTO EN- FORCED INTERSECTIONS
FY 2009	3192	1620	233
FY2010	3206	1677	124
FY2011	2929	1463	126
FY2012	2709	1164	117

Plainly put, the overall number of traffic accidents has decreased by 15%. Accidents at intersections using photo enforcement have decreased by 49%. Finally, those accidents at intersections (which amounted to about ½ of all traffic accidents) have decreased by 28%. We believe this is directly related to the photo enforcement program and is a huge win for our community, its citizens, and visitors coming into Sioux City. It is a much safer city to drive in than it was four years ago.

³Fiscal Year 2009 (July 1, 2008 through June 30, 2009) ⁴Fiscal Year 2010 saw record snow falls in Sioux City During the winter of 2008/2009, the Sioux City Police Department participated in a meeting regarding the unusual number of traffic accidents on I-29. Participants in the meeting included Supervisors and Engineers from the Iowa Department of Transportation (IDOT), the City Manager, Public Works Director, City Engineers, Police Chief, Uniform Bureau Commander, and Police Traffic Supervisor. A request was made at that meeting for the police department to conduct a five year causation study of the accidents on I-29. The results of the study are as follows:

YEAR	ACCIDENTS WITH PERSON- AL INJURIES ON I-29	FATALITY ACCIDENTS ON I- 29
2006	29	0
2007	42	1 (2 DEATHS)
2008	54	4 (7 DEATHS)
2009	42	3 (4 DEATHS)
2010	40	0

The study further determined well over 90% of the fatality accidents on I-29 were directly related to speed (as it relates to conditions). Over 75% of all personal injury accidents on I-29 were directly related to speed (as it relates to the conditions). Surprisingly, alcohol was a contributing factor in less than 1% of the accidents on I-29. Based upon the study, a combined response was formulated. The IDOT worked closely with Sioux City Police in maintaining a clear road surface on I-29. The City Field Service Staff assisted the IDOT in road maintenance efforts. Finally the Sioux City Police Department stepped up their traditional enforcement efforts, providing an ever increasing presence on I-29. Despite all of these efforts, I-29 was still a deadly stretch, averaging 2.6 deaths each year.

As a community policing organization, members of the department meet monthly with many citizen groups and hold Town Hall meetings on an annual basis. Repeatedly, traffic concerns, rank as the number one concern from citizens in our community. We also received complaints from visitors stating they do not want to come here to shop and visit because our streets and interstate roadway is unsafe due to traffic violators. On September 20, 2010, a speed study was conducted on I-29 in numerous locations for both southbound and northbound traffic. The survey was for a twelve hour period. Of the more than 6,000 vehicles traveling southbound and more than 8,000 vehicles traveling northbound, 38.2% were going at least 11 miles per hour (mph) over the posted speed limit. Almost 10% of those vehicles were going at least 21 mph over the posted speed limit.

In addition to the ongoing concerns about safety on I-29 through Sioux City, the IDOT began, in earnest, their nine year construction project; widening I-29 to three lanes and redesigning all the on/off ramps. There was a continued effort to improve the safety on I-29 for both construction workers and commuters on the roadway; however, traditional enforcement became almost impossible due to the construction. The Sioux City Police Department recommended the use of photo enforcement to gain voluntary compliance and slow traffic down on the interstate.

⁵This does not necessarily mean that the vehicle was exceeding the posted speed limit, but the vehicle was going too fast for road conditions. ⁶From 6:30 A.M. to 6:30 P.M.



After much public debate, the Sioux City Council passed a City Ordinance to allow for photo enforcement for speeders on I-29. The City chose to stay with the current photo enforcement provider, Redflex. The Police Department undertook a campaign to inform and educate the public beginning in the spring of 2011. We also contracted with the IDOT to place signs at the entrances to the city on I-29 that read "Traffic Laws Photo Enforced". Additionally, a sign reading "Photo Enforced" was erected under almost every speed sign on I-29. There are approximately eleven (11) speed limit signs for northbound traffic and ten (10) speed limit signs for southbound traffic on the stretch of I-29 through Sioux City. Periodically a speed or photo enforcement sign is taken down to facilitate construction; however a temporary and portable sign is almost always put up nearby.

In July of 2011, the first speed trailer was placed on the shoulder of I-29. Since that time, the City has obtained a second trailer so that one trailer can be deployed for southbound traffic while the second trailer can be deployed for northbound traffic. The trailers are moved periodically to encourage compliance through the entire corridor. During one period, the City utilized a speed van. The trailer and van photo enforcement systems use a radar system similar to those used by law enforcement officers across the country. As a means to ensure the system is working correctly a tuning fork is used daily, during set up, to verify the system accuracy. If for any reason the tuning fork is unable to certify the machine, ALL violations received since the last time the machine was certified, are immediately dumped from the system. To date, all violations sent out have been checked and double checked for the accuracy of the machine. Additionally, the video of each incident is reviewed twice by the company and then viewed by a Sioux City Police Officer to verify its accuracy. The contractor will not issue a citation unless it is approved by a Sioux City Police Officer.

From July 1, 2011 through June 30, 2012 photo enforcement trailers or vans were deployed on I-29 for a total of 8,742 hours. During those hours approximately 4,388,597 vehicles were scanned as they drove the corridor. The Sioux City Police Department issued 18,785 civil citations. This means that basically less than .5% of all vehicles scanned were traveling 11 mph or more over the posted speed limit. In other words 99.5% of all vehicles traveling on I-29 are now complying with the posted speed limit.

Relying and calculating accident data for a one year period can be deceiving since there are many factors that may contribute to an increase in accidents (i.e. weather conditions). Despite this, it is interesting to note that during the first year of the program there were only 9 personal injury accidents and 1 fatality accident (resulting in 2 deaths). A causation study of all accidents on I-29 during this period revealed that approximately 11% were related to speed (as it relates to conditions). It is a much safer stretch of roadway to drive on than it has been over the previous six years.

⁷Two additional speed limit signs are in the southbound lanes of I29 in South Dakota just prior to entering Iowa.



COMMON MYTHS / QUESTIONS / CONCERNS

Q. How do the speed-enforcement vans or trailers work?

Vans or trailers are deployed in areas where police have identified persistent dangerous driving patterns. The vans use highly accurate speed detection technology, such as radar, to take several speed measurements of the vehicle as it travels toward or away from the van or trailer. When the devices detect a speed violation, the cameras capture video footage, a screen image, and an image of the license plate. Data about the incident — including location, date, time, speed limit, lane, vehicle speed, elapsed time, and other details — is then imprinted on each citation and encrypted.

Q. What is the photo speed-enforcement ticketing process?

Before a ticket is issued, the violation is reviewed multiple times by trained technicians to ensure a clear violation has occurred. Sioux City Police Officers then provide the final authorization after carefully reviewing the photographs and video evidence of each incident. When justified, a summons is sent by mail to owners of the violating vehicles. The registered owner then has the option to pay the ticket, show proof he or she was not the driver at the time of the incident and nominate the appropriate driver, or to contest the citation in a hearing with a Sioux City Police Officer. Should the registered owner wish to contest the ruling of the Officer, the owner may then appeal the violation in court.

Q. Can photos and video of the violation be viewed online?

Yes! A user-friendly web site, <u>www.photonotice.com</u>, allows many drivers to take a moment to acknowledge and correct their driving habits, the ultimate goal of the photo enforcement program. To access violation images, video of the incident and to pay fines online, visit and enter the citation number, license plate number, and the city code, (SCTYIA).

Q. Do photo enforcement cameras violate motorists' right to privacy?

No! Motorists agree to abide by all traffic laws when they obtain a driver's license. Photo enforcement cameras are posted in public areas and are clearly marked to ensure citizens are aware of their presence. Additionally, Sioux City notices block out the passenger compartment of the vehicle.

Q. Does Sioux City really need photo enforcement cameras?

Yes! In our community, there were on average 5 deaths each year as a result of traffic accidents. Countless government studies have shown that photo enforcement is extremely effective in reducing traffic violations and accidents, thus reducing the chance for tragedy.

The City of Sioux City is dedicated to efficiency and providing its citizens with quality cost effective services. Additionally, the Sioux City Police Department is a community policing organization committed to being responsive to the needs of our citizens. While photo enforcement is not about increased revenues for the city, it is about efficiency and tax savings. Without photo enforcement, traditional enforcement would require hiring additional officers at considerable cost to the tax payers of Sioux City.



Q. How do red light cameras work?

In-ground sensors continuously monitor each vehicle that passes. If a vehicle enters an intersection after the signal has turned red, the sensors trigger a high-resolution camera system. The multiple-camera system records separate still images of the vehicle and its rear license place, along with video of the incident. Data about the incident-including location, date, time, speed limit, lane, vehicle speed, elapsed time, and other details-is imprinted on each citation.

Q. Why did I get a red light camera ticket for turning right on red?

lowa law requires drivers to come to a complete stop before proceeding into an intersection to make a right turn on red. Drivers who roll through the intersection without bringing the vehicle to a full stop may be ticketed by either a police patrol officer or a red light camera.

Q. Does receiving a violation affect my driving record and insurance costs?

No! Because the violation is a civil citation written to the registered owner of the vehicle and not the driver it is not reported to IDOT. Consequently, insurance companies are NOT notified.

Q. Isn't it true that rear end accidents have gone up because drivers stop short when the light turns yellow and the car behind them ends up rear ending them?

Absolutely not true. Accidents at intersections with photo enforcement cameras in Sioux City have decreased by 49% since the program started four years ago. Additionally, all intersection related accidents in Sioux City have decreased by 28% during this period.

Q. Isn't it true that Sioux City shortened the time of the yellow light when the put in the red light cameras?

No! The length of time for any given yellow light is determined using formulas from the Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Administration. These guidelines are used by traffic engineers across the country. Some of the factors taken into consideration are the speed limits at the intersection and the physical width and size of the intersection. None of the yellow light times at the red light camera intersections in Sioux City have changed.

Q. Why am I sending my check to Cleveland, Ohio?

Cleveland Ohio is where the "Lock Box" is located. The "Lock Box" is a banking institution with no affiliation to Redflex (the company we contract with) or to the City of Sioux City. The bank then pays the contractor and the city. It helps with checks and balances to have an outside institution. It is similar to when you use a credit card from a local bank with a national affiliation. Your statements may come out of and be sent to another state.



Q. Isn't it true that photo enforcement has cost the city a lot of money to implement and most of the revenue is going to a company in Arizona?

No! The contractor (Redflex) assumes ALL costs for equipment, installation, and maintenance of equipment. The contract with Redflex has a "cost neutrality limitation" clause. If the violation is not paid, the contractor receives no money. For each **paid** red light violation, the lock box pays the contractor (Redflex) \$17.50. The remainder goes to the city. For each **paid** speed violation, the lock box pays the contractor (Redflex) approximately \$25.00. The remainder goes to the city.

Q. Isn't it really just about Sioux City making money?

No! Photo enforcement has **significantly** reduced traffic accidents in Sioux City. Citizens are enjoying the benefits of much safer roadways. Additionally, citizens of Sioux City should eventually see some relief in their vehicle insurance cost based on the decrease in traffic accidents. The money the city receives from paid violations goes into the City's general fund. This money is used to continue to provide services to the citizens of Sioux City without having to significantly raise taxes. An emphasis is placed on improving traffic safety in the community through ongoing road maintenance, construction, and engineering.

⁸The overall number of traffic accidents has decreased by 15% over a four year period. Over the same period, accidents at intersections have decreased by 28%, and accidents at photo enforced intersections have decreased by 49%.



Issue: Home Rule - Regulation of Adult Entertainment Establishments

Background: On July 27, 2012 the Iowa Supreme Court issued an opinion in *Mall Real Estate, L.L.C. v. City of Hamburg*, (Case No. 10-0898) which had the effect of calling into question the ability of municipalities to license and regulate conduct within certain adult establishments. The Court determined that the state had reserved the exclusive right to regulate "obscene material" and that the definition of "obscene material" included live performances commonly referred to as nude dancing.

Based on this decision, municipalities across the state introduced moratoriums or suspensions of enforcement provisions of current city ordinances in order to comply with the Hamburg decision and to allow time for the Iowa Legislature to amend the provisions of Chapter 728 of the Iowa Code to exclude nude dancing from the definition of "obscene material" over which the state has maintained exclusive jurisdiction.

On August 27, 2012, the City of Sioux City passed a resolution suspending enforcement of Sioux City Municipal Code provisions relating to licensing of adult cabarets and dancers until July 1, 2013.

Request: The City of Sioux City is requesting legislative support to introduce amendments to the lowa Code which would clearly allow municipalities to regulate adult cabarets and nude dancing. Proposed draft legislation is attached for your consideration.



A BILL FOR An Act relating to the authority of cities and counties to regulate adult entertainment within their jurisdictions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 728.1(3), Code 2011, is amended to read as follows:

3. "Material" means any book, magazine, newspaper or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial representation or any statue or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials, but does not mean or include live nude or seminude dancing, performances, displays, modeling and/or acts.

Section 2. Section 728.1, Code 2011, is amended by adding the following new subsection 728.1 (3A):

<u>3A. "Model" means any person who for consideration or gratuity appears either nude or seminude: to be either viewed, photographed, sketched, drawn, sculptured: to dance; to provide reading or counseling sessions; for body painting; to deliver a service or in connection with the sale of merchandise; or to present materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.</u>

Section 3. Section 728.1, Code 2011, is amended by adding the following new subsection 728.1 (3B):

<u>3B. "Model studio" means any establishment where for any form of consideration or gratuity,</u> <u>models who display specified anatomical areas are provided to be observed, or subject to lawful</u> <u>tactile conduct, sketched, drawn, painted sculptured, photographed or similarly depicted by per-</u> <u>sons paying such consideration or gratuity, or where for any form of consideration or gratuity,</u> <u>nude or semi-nude dancing, readings, counseling sessions, body-painting and other activities that</u> <u>present materials distinguished or characterized by an emphasis on matter depicting, describing</u> <u>or relating to specified sexual activities or specified anatomical areas are provided for observation</u> <u>by or communication to persons paying such consideration or gratuity.</u>

Section 4. Section 728.1, Code 2011, is amended by adding the following new subsection 728.1 (11):

<u>11. "Specified Anatomical Areas" shall mean human genitals, anus, cleft of the buttocks, or the female breast.</u>

<u>Section 5</u>: Section 728.5, Code 2011, is amended by adding a new subsection 4 to read as follows:

728.5 Public indecent exposure in certain establishments.

1. An owner, manager, or person who exercises direct control over a place of business required to obtain a sales tax permit shall be guilty of a serious misdemeanor under any of the following circumstances:



establishment within their jurisdictions that offers, allows or permits live entertainment of an adult nature including live nude or semi-nude dancing, performances, displays, modeling and/or acts on a basis other than criminal obscenity charges.

EXPLANATION

This bill specifically amends Iowa Code Chapter 728 to provide that cities and counties have the ability to regulate adult entertainment establishments that offer allow or permit live nude or seminude dancing, performances, displays, modeling and/or other acts legislatively overruling the Iowa Supreme Court's recent decision in *Mall Real Estate, LLC v. City of Hamburg.*





1-3

34

Iowa League of Cities 2013 Legislative Priorities

Responsible Property Tax Reform

Enact reform that addresses commercial property tax relief without negatively impacting local governments' ability to provide necessary infrastructure and services or creating a tax shift.

Increase Road and Bridge Funding

Raise infrastructure revenues through user fees such as a gas tax increase and other mechanisms to maintain critical funding for Iowa's roads and bridges.

Air and Sustainable Public Pension Systems

Address the exponentially increasing costs and inequities under the Municipal Fire and Police Retirement System of Iowa (MFPRSI).

Ensure fairness and hold down costs to local governments participating in the Iowa Public Employees' Retirement System (IPERS).

Local Decision Making

Allow for more efficient use of city resources and enhance transparency by shifting requirements for newspaper publication to online publication.

Remove unnecessary requirements for certain boards and commissions.

Alleviate public safety costs by reducing costs for training officers and increasing fairness in

funding sources.

Home Town Economic Development

Strengthen and maintain the ability of cities to promote economic development through programs like Vision Iowa, including the CAT and RECAT programs, Main Street Iowa, the Enterprise Zone and Historic Tax Credits programs, Brownfield and Grayfield tax credits, Targeted Jobs tax credits and Tax Increment Finance.

Assist Communities with Water Infrastructure

Help communities struggling to implement expensive water and wastewater regulations through additional grant funding and technical assistance.

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2013 Legislative Priorities

MANDATE RELIEF

Pension Reform

Support original structure of the plan with a state contribution Cap employers contribution Adjust contribution rates

Elimination of archaic Mandates\Alternative Revenue

Home Rule Policy Elimination of requirements to post Notices; move practice online Local Option Tax Flexibility

ECONOMIC DEVELOPMENT

Infrastructure

Assist Communities with Water Infrastructure -Help communities struggling to implement expensive water and wastewater regulations through additional grant funding at technical assistance.

Support Gas Tax for road and bridge infrastructure project Passenger Rail-Support funding for the return of passenger rail access to lowa by utilizing federal dollars

Job Creation

Reduce Corporate/Personal Income Tax Responsible Commercial Property Tax Reform Support Increase in the Historic Tax Credit within DCA Support funding of the Workforce Housing Fund within IFA

PULIC SAFETY

Adult entertainment zoning enforcement -(Mall Real Estate, LLC v. City of Hamburg) Support Automated Traffic Enforcement

City Council

Mayor Bob Scott Mayor Pro-tem John Fitch Tom Padgett Keith Radig Rhonda Capron

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