

**TITLE XI: BUSINESS REGULATIONS**

**Chapter**

- 110. ITINERANT MERCHANTS, PEDDLERS,  
TRANSIENT VENDORS AND SOLICITORS
- 111. GAME ROOMS; PLACES OF AMUSEMENT
- 112. SEXUALLY ORIENTED BUSINESSES
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CHAPTER 110: ITINERANT MERCHANTS, PEDDLERS,  
TRANSIENT VENDORS AND SOLICITORS

Section

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§ 110.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ITINERANT MERCHANT.** Any merchant, other than a merchant with an established retail store in the town who transports an inventory of goods to a building, vacant lot or other locations in the town and who, at that location, displays the goods for sale and sells the goods at retail. A merchant who sells goods, other than farm products, in the town for less than six consecutive months is considered an ITINERANT MERCHANT, unless he or she stopped selling goods in the town because of death or disablement, the insolvency of his or her business, or the destruction of his or her inventory by fire or other catastrophe.

**PEDDLER.** Any person who carries from place to place any goods, wares or merchandise, subscriptions, services and/or discount coupons (hereinafter referred to as “wares”), or without traveling from place to place, selling or offering for sale any goods from any vehicle or device, and offers to sell or barter the same or actually sells or barter the same, except such person who is a wholesale dealer selling only to merchants for resale.

**SOLICITOR.** Any person traveling from place to place, taking or offering to take orders for the sale of goods for future delivery, or for personal services to be performed in the future, whether or not samples are displayed or money is collected in advance; and using or occupying any building or premises for the sole purpose of taking or offering to take orders for the sale of goods for future delivery, or for personal services to be performed in the future, whether or not samples are displayed or money is collected in advance.

**TRANSIENT VENDOR.** Any person engaging in a temporary business of selling and delivering goods, and for this purpose, using or occupying any building or premises; provided that merely associating a transient business with a permanently established business does not exclude it from this definition.  
(Ord. passed 11-3-2015)

§ 110.02 GENERAL PROVISIONS.

(A) A person deemed an itinerant merchant, peddler, solicitor or transient vendor shall apply and procure from the Police Department via the Chief of Police, or his or her designee, a town permit for the privilege of transacting such business, and shall pay the required permit fee as hereinafter set forth.

(B) It shall be unlawful for any person to sell or offer for sale or peddle wares upon the public streets or public parking lots of the town, or to engage in business as an itinerant merchant, peddler, solicitor or transient vendor anywhere in the town, without first having applied for and obtained a permit to do so from the Chief of Police or his or her designee. For the purposes of this chapter, ANY PERSON or EACH PERSON means an individual and shall be considered in the singular. Each person working for or acting as an agent or in any capacity for an individual, a partnership, a corporation, a company or a business of whatever nature or kind, must apply for and obtain a permit as set out in this chapter.

(C) Any person who sells or offers to sell any wares from his or her possession, a cart, truck, automobile or other vehicle operated over and upon the streets and highways within the town, shall be deemed an itinerant merchant, peddler, solicitor or transient vendor within the meaning of this chapter. Nothing in this section shall apply to the sale of farm products raised on the premises owned or occupied by the person, or his or her bona fide agent or employee selling the same.

(D) This chapter shall not apply to solicitation for charitable, civic, religious or patriotic purposes by persons who serve without compensation or remuneration; nor shall it apply to persons engaging in door-to-door advocacy of a religious, political or other cause where money or other valuable consideration is not being solicited; nor shall it apply to the distribution of religious or political handbills or pamphlets. Further, this chapter shall not apply to any person under the age of 18 years old who desires to offer a service only and who does so solely as a means of earning money for his or her own personal or family use on a short-term, temporary basis, such as and by example only, mowing lawns and raking leaves.

(E) This chapter shall not apply where town merchants and/or proprietors of stores display goods adjacent to their businesses for sale in front of their stores; nor shall this chapter apply to any individual, business or organization displaying goods for sale as part of a duly town-authorized festival or public event for which such goods are authorized to be sold.

(Ord. passed 11-3-2015) Penalty, see § 110.99

#### § 110.03 APPLICATION; PERMIT; STANDARDS FOR ISSUANCE.

(A) Each person desiring a permit to engage in business as an itinerant merchant, peddler, solicitor or transient vendor within the town shall make written application to the Chief of Police, at least five working days before that person seeks to sell that person's wares.

(B) The application shall contain the following:

(1) The name, address, date of birth and Social Security number of the applicant, and a vehicle description and tag number of the vehicle to be used by the applicant (if applicable);

(2) The name and address of the person and/or company, if any, that the applicant represents;

(3) An accurate and detailed description of the kind of wares offered for sale. No wares reasonably deemed dangerous or likely to cause damage by releasing projectiles or substances shall be permitted;

(4) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit

of money in advance of final delivery;

(5) The period of time the applicant wishes to engage in the business within the town;

(6) Police Department employees, who are certified operators of the Division of Criminal Information Network (“DO”) and certified by the State Bureau of Investigation (“SBI”), will run the applicant’s criminal record for local or state criminal records checks. This will provide acceptable evidence that the applicant has no state criminal record that would prohibit the issuance of a permit. If the applicant is found to have an out-of-state criminal history, the applicant will be responsible for providing a certified copy to the Chief of Police. The following will constitute valid reasons for disapproval of an application:

(a) Has been convicted of a crime of moral turpitude;

(b) Has made willful misstatements in the application;

(c) Has committed prior violations of ordinances pertaining to itinerant merchants, peddlers, solicitors and the like;

(d) Has committed prior fraudulent acts;

(e) Has a record of continual breaches of contracts; or

(f) Has an unsatisfactory moral character.

(7) Information concerning whether the applicant is on, or has been on, parole or probation in the state, any other state, or the federal government;

(8) A list of any criminal offenses, other than minor traffic offenses, for which the applicant has been charged within the past five years. For purposes of this division, a MINOR TRAFFIC OFFENSE is an offense that is a violation of G.S. Ch. 20, and that is punishable as, or would be punishable as, an infraction in the state. (Ord. passed 11-3-2015)

#### § 110.04 FEES; RULES.

(A) Fee. A non-refundable fee of \$25 must be paid before an application can be processed, provided that payment of this fee is not a guarantee or promise that the application will be approved.

(B) Rules. Each individual person desiring to engage in the activity of an itinerant merchant, peddler, solicitor or transient vendor, as defined herein, must obtain a permit. A permit is not transferable and cannot be used for the activity of another person working or acting on behalf of an applicant for a permit.

(C) Falsification. Falsification of any matter on or provided as part of the application for a permit shall be grounds for immediate denial of the permit.

(D) Issuance. No permit shall be issued under the provisions of this chapter until the applicant has complied with all the provisions and requirements of this chapter.

(E) Denial. A permit can be denied for the same reasons that it can be revoked as set out in this chapter.

(F) Permitted hours. A person issued a permit pursuant to this section shall not engage in the activity of an itinerant merchant, peddler, solicitor or transient vendor between the hours of 9:00 p.m. through 9:00 a.m. in residential areas; except in ballparks during recreational events, but no later than 15 minutes after the event, except in town parks, venues and facilities during town-sponsored or approved events.

(G) Duration. A permit shall be issued for the period requested in the application or for as long as the information on the face of the application is unchanged, provided, however, no permit shall be issued for a period exceeding 90 days or three calendar months. Upon expiration of the permit due to time or to change in information, the applicant may apply for a renewal of the permit, upon a form designated by the Chief of Police, which shall indicate what changes, if any, have occurred since the date the original application was completed. The Police Department may renew and extend the permit for an additional term not to exceed three calendar months. Each renewal or change in the application shall carry the same application fee of \$25.

(H) Contents. Each permit issued under the provisions of this chapter shall be signed by the Chief of Police, or his or her designee, shall be dated as of the date of its issuance, and shall state its duration or term on its face. Any permit not dated and signed as required in this section, or which was issued in violation of this section, shall be void.

(Ord. passed 11-3-2015) Penalty, see § 110.99

#### § 110.05 EXHIBITION OF IDENTIFICATION.

(A) Display. Every itinerant merchant, peddler, solicitor or transient vendor issued a permit under the provisions of this chapter, and doing business within the town, shall wear and display a town-approved permit in a manner clearly visible to anyone that person is approaching for the purpose of selling or attempting to sell the wares of that itinerant merchant, peddler, solicitor or transient vendor.

(B) Possession and display of identification. Any person, while engaged in the activity of an itinerant merchant, peddler, solicitor or transient vendor as set out in this chapter, shall, in addition to displaying a valid permit, possess a current, verifiable form of photographic identification, and must present that identification, upon either the request of a law enforcement officer or upon the request of any person approached by the itinerant merchant, peddler, solicitor or transient vendor attempting to sell or selling his or her wares to the person requesting the identification. For purposes of this division, a VERIFIABLE FORM OF PHOTOGRAPHIC IDENTIFICATION shall include, but not be limited to, a valid driver's license, passport, state-issued identification card or student identification card containing a recent photograph of the person identified.

(Ord. passed 11-3-2015)

#### § 110.06 STANDARDS FOR REVOCATION.

(A) Revocation. Any permit issued under the provisions of this chapter may be revoked by the Chief of Police, or his or her designee, for the violation by the itinerant merchant, peddler, solicitor or transient vendor permit holder of any applicable provision of this chapter, state law or town ordinance, rule or regulation applicable to peddlers, or for the violation of any state or federal law as denoted below.

(B) Grounds for issuance or denial of a permit. A permit shall be issued or renewed if the applicant satisfies the following requirements and the application shall be denied otherwise:

(1) The applicant's criminal record shall be free of any convictions of criminal offenses involving crimes of violence, the possession, use or sale of weapons, sexual offenses, prostitution, offenses involving the

transportation, sale or possession of alcohol or controlled substances for sale, indecent exposure, contributing to the delinquency of a minor and fraud;

- (2) The applicant shall not be a registered sexual offender;
- (3) The application must be free of any fraud, misrepresentation or any false statement;
- (4) The applicant (or employer) must pay any privilege tax or business license fee;
- (5) The applicant (or employer) must pay all fees associated with the application; and
- (6) The applicant (or employer) must satisfy all zoning requirements if activities take place on privately owned land.

(C) Prior to denial of any permit based on a criminal record check obtained by the Police Department, the Town Manager or designee will verify that record by either obtaining a certified public record, or by requiring the applicant to submit to the Police Department a fingerprint card of the applicant or individual to the SBI for verification.

(Ord. passed 11-3-2015)

#### § 110.07 APPEAL PROCESS.

An applicant may appeal the denial or revocation of a permit by submitting a written notice of appeal to the Town Manager or designee, specifying with particularity the grounds upon which the appeal is based. An appeal shall be submitted no later than ten days from the date of the denial or revocation of the permit in question. The Town Manager or designee shall fix a reasonable time for the hearing of the appeal, shall give due notice to all parties and shall render a decision within a reasonable time. The Town Manager's or designee's decision shall be the town's final decision.

(Ord. passed 11-3-2015)

#### § 110.99 PENALTY.

(A) Misdemeanor. A violation of this chapter shall be punishable as a Class 3 misdemeanor by a fine of \$250 for the first offense, and a fine of \$500 for the second and subsequent offenses.

(B) Other licenses or permits. The provisions of this chapter shall not exempt the applicant from obtaining any other license or permit as may be required by law.

(Ord. passed 11-3-2015)



## CHAPTER 111: GAME ROOMS; PLACES OF AMUSEMENT

### Section

- 111.01 Definitions
- 111.02 Regulatory license required
- 111.03 Rules for operation of game rooms
- 111.04 Notice and hearing previous to revocation or denial
- 111.05 Violations of chapter

### § 111.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**DEPARTMENT.** Police Department of the Town of Bethel.

**GAME ROOM.** Any place of business that operates four or more mechanical games or pay devices or tables for which charge is made either directly or indirectly. Examples of the aforesaid games and devices, by way of illustration and not limitation, are pinball machines, video games, poolrooms, bowling alleys, billiard halls, amusement centers and the like. Vending machines for the sale of soft drinks, candy and other foods are not included within the aforesaid definition.

**INTERESTED PARTY.** Any person, partnership or corporation which is an applicant for a license or who is an employee of an applicant for a license, any person who is a partner in a partnership which is an applicant for a license and any person, partnership or corporation which is an officer, director or principal stockholder of a corporation which is an applicant for a license.

(Prior Code, § 14-63) (Ord. 9, passed 10-1-1985)

### § 111.02 REGULATORY LICENSE REQUIRED.

(A) No interested party shall operate a game room, as defined in aforesaid § 111.01, unless the party shall have first applied for and received the regulatory license provided for by this section.

(B) (1) Every application for the regulatory license prescribed herein shall be upon a form approved by the Mayor, and shall be filed with the Town Manager.

(2) Every such application shall be made under oath and shall contain the following information:

- (a) The name, age and residence of any interested party;
- (b) The address of the premises where the business shall be located;

- (c) The proposed hours of operation of the business;
- (d) A complete statement of all criminal convictions of any interested party;
- (e) A description of any other business to be operated on the same premises or an adjoining premises owned or controlled by the applicant; and
- (f) A statement of any prior revocations of a license to operate a game room or similar business.

(C) An application fee of \$30 shall be paid to and collected by the Town Manager when the application is submitted to cover the cost of processing the application.

(D) It shall be unlawful to operate a game room within the town without a regulatory license as required by this section and unless the game room is in an area where such a business is permitted by the zoning ordinance of the town.

(E) The Town Manager shall, within five business days, transmit a copy of the application to the Police Department for an investigative report, to the Building Inspector to determine compliance with all building regulations, and to the Planning Board to determine compliance with all zoning regulations. The Police Department, Building Inspector and Planning Board shall, within a reasonable time, not to exceed 30 days, report the results of their examinations to the Town Manager.

(F) An application in proper form, accompanied by all reports required by this section, shall be submitted to the Town Council, which may approve the application if the Town Council determines that:

- (1) The application contains no misstatement of fact;
- (2) Any interested party has not been convicted of selling or possessing alcoholic beverages or any controlled substances or of violating any gambling laws of this state or of violating any provisions of G.S. §§ 14-289 et seq., or of violating any comparable statute of any other state;
- (3) The premises and its location conforms to all requirements of applicable zoning and building codes; and
- (4) Any interested party has not had revoked a previously issued license for engaging in a business dealing with operating a game room.

(G) Upon approval of the application by the Town Council, the Town Manager shall issue a privilege regulatory license to the applicant.

(H) A regulatory license issued pursuant to this section shall be revoked by action of the Town Council if the Council determines that:

- (1) The licensee has violated any provision of this chapter, including, but not limited to, violations of the operation rules in § 111.04;
- (2) The licensee or any interested party is convicted of selling or possessing alcoholic beverages or any controlled substance or is convicted of any gambling law;
- (3) The licensee violates any zoning or building ordinance of the town as the same applies to the

premises;

(4) The licensee suffers or permits any gambling activity or the sale or use of any racing, football or other parlay cards or gambling boards or devices on the licensed premises;

(5) The licensee suffers or permits the licensed premises to become disorderly, or permits any profane, obscene or indecent language thereon, or allows the unlawful possession of alcoholic beverages or controlled substances on the licensed premises; or

(6) The licensee employs, in carrying on the business, any person who has been convicted of violating any gambling, controlled substance or alcoholic beverage laws of this state or of any other state.

(I) A license issued pursuant to this chapter shall become void if the licensee moves or ceases to operate at the location required to be stated in the application for the license, pursuant to division (B)(2) above. (Prior Code, § 14-64) (Ord. 9, passed 10-1-1985; Ord. passed 2-4-1986) Penalty, see § 10.99

### § 111.03 RULES FOR OPERATION OF GAME ROOMS.

The following rules shall be observed by all operators of game rooms within the town.

(A) All game rooms shall be closed from 11:00 p.m., until 7:00 a.m., Monday through Thursday, and shall close at 12:00 midnight on Fridays and Saturdays.

(B) Game rooms may be open on Sunday only between the hours of 1:00 p.m. and 11:00 p.m.

(C) All game rooms shall be operated only on the ground floor of a building, and plate glass windows shall be in those parts of the building facing any street, so that a clear view inside may be had from the street.

(D) No play on any game shall be allowed during the times when game rooms are required by this chapter to remain closed.

(E) There must be an adult (18 years of age or older) managing the business on the premises during hours of operation at all times.

(F) All game rooms shall be closed to minors during normal school hours (that is, while any public school is in session within Bethel Township, Pitt County, North Carolina).

(G) No screens, curtains, blinds, partitions or other obstructions shall be placed between the entrance to the room where games are played and the rear wall of the room so that a clear view of the interior may be had from the street.

(H) No loud noises shall be allowed to emanate beyond the licensed premises. (Prior Code, § 14-66) (Ord. 9, passed 10-1-1985) Penalty, see § 10.99

### § 111.04 NOTICE AND HEARING PREVIOUS TO REVOCATION OR DENIAL.

(A) Before the Town Council revokes a license issued pursuant to this chapter, or if the Town Council determines that reasonable grounds exist to deny an application for a license pursuant to this chapter, the Town

Council shall cause a written notice to be sent by certified mail to the licensee or applicant affected, at the address stated in the license or application.

(B) The notice shall advise the affected party of a right to appear before the Town Council, with or without legal counsel, at a stated time and place, for the purpose of presenting any evidence, examining any evidence submitted and examining or cross-examining any person providing such evidence.

(Prior Code, § 14-67) (Ord. 9, passed 10-1-1985)

#### § 111.05 VIOLATIONS OF CHAPTER.

Any person convicted of violating any provisions of this chapter shall be punished by fine or imprisoned as provided by G.S. § 14-4.

(Prior Code, § 14-68) (Ord. 9, passed 10-1-1985)

## CHAPTER 112: SEXUALLY ORIENTED BUSINESSES

### Section

- 112.01 Authority and jurisdiction
- 112.02 Purpose
- 112.03 Abrogation
- 112.04 Definitions
- 112.05 Interpretation
- 112.06 Adult oriented business
- 112.07 Nonconforming adult oriented businesses

### Statutory references:

Regulatory options available to local governments concerning sexually oriented businesses,  
see G.S. § 160A-181.1

### § 112.01 AUTHORITY AND JURISDICTION.

(A) The provisions of this chapter are adopted by the Town Council under the authority granted by the General Assembly of the state.

(B) From and after the effective date of the ordinance from which this chapter is derived, this chapter shall apply to every building, lot, tract or parcel of land within the town and its extraterritorial jurisdiction.  
(Prior Code, § 42-1) (Ord. 32, passed 7-3-2001)

### § 112.02 PURPOSE.

For the purpose of promoting the health, safety, morals and general welfare of the citizenry of the town, this chapter is adopted by the Town Council to regulate adult and sexually oriented businesses, as herein defined, located in the town and its extraterritorial jurisdiction. Further, the regulations of this chapter have been made with reasonable consideration, among other things, as to the character of the town and its areas.  
(Prior Code, § 42-2) (Ord. 32, passed 7-3-2001)

### § 112.03 ABROGATION.

These regulations shall not repeal, impair, abrogate or interfere with any existing easements, covenants, deed restrictions, setback requirements, rules, definitions or regulations previously adopted pursuant to law in any established zoning district in the town; however, where these regulations impose greater restrictions, the provisions of these regulations shall govern.  
(Prior Code, § 42-3) (Ord. 32, passed 7-3-2001)

### § 112.04 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADULT ARCADE.** Also know as **PEEP SHOW**, any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe specified sexual activities or specified anatomical areas.

**ADULT BOOKSTORE or ADULT VIDEO STORE.** A commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes or video reproductions, slides or other visual representations that depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.

**ADULT CABARET.** A nightclub, bar, restaurant or other commercial establishment that regularly features, exhibits or displays as one of its principal business purposes:

- (1) Persons who appear nude or semi-nude;
- (2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- (3) Films, motion pictures, videocassettes, slides or other photographic reproductions that depict or describe specified sexual activities or specified anatomical areas.

**ADULT MOTEL.** A hotel, motel or similar commercial establishment that:

- (1) Offers accommodations to the public for any form of consideration which provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions that depict or describe specified sexual activities or specified anatomical areas as one of its principal business purposes;
- (2) Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

**ADULT MOTION PICTURE THEATER.** A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown as one of its principal business purposes that depict or describe specified sexual activities or specified anatomical areas.

**ADULT ORIENTED BUSINESS.** An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center

(including adult massage parlor and adult health club), sexually oriented device business or any combination of the foregoing or any similar business.

**ADULT THEATER.** A theater, concert hall, auditorium or similar commercial establishment which regularly features, exhibits or displays, as one of its principal business purposes, persons who appear in a state of nudity or semi-nude, or live performances that expose or depict specified anatomical areas or specified sexual activities.

**ESCORT.** A person who, for any tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**ESCORT AGENCY.** A person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip or other consideration.

**MASSAGE.** Any manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping, by hand or mechanical device.

**MASSAGE BUSINESS.** Any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios or massage parlors.

**NUDE MODEL STUDIO.**

(1) Any place where a person who appears nude, or semi-nude, or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.

(2) **NUDE MODEL STUDIO** shall not include a proprietary school licensed by the State of North Carolina or a college or university supported entirely or in part by public taxation; a private college or university which maintains an operated educational program in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or in a structure:

(a) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;

(b) Where in order to participate in a class a student must enroll at least three days in advance of class; and

(c) Where no more than one nude or semi-nude model is on the premises at any one time.

**NUDE or a STATE OF NUDITY.**

(1) The appearance of a human anus, male genitals or female genitals; or

(2) A state of dress that fails to opaquely cover a human anus, male genitals or female genitals.

**SEMI-NUDE.** A state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by or supporting straps or devices.

**SEXUAL ENCOUNTER CENTER.** A business or commercial enterprise that, as one of its principal

business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling (including sexually oriented massaging) between persons of the opposite sex, or similar activities between male and female persons and/or between persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

**SEXUALLY ORIENTED DEVICES.** Any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.

**SPECIFIED ANATOMICAL AREAS.** Human genitals in a state of sexual arousal.

**SPECIFIED SEXUAL ACTIVITIES.** Include any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
  - (2) Sex, acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
  - (3) Masturbation, actual or simulated; or
  - (4) Excretory functions as part of or in connection with any of the activities set forth in divisions (1) through (3) above.
- (Prior Code, § 42-4) (Ord. 32, passed 7-3-2001)

#### § 112.05 INTERPRETATION.

- (A) Words used in the present tense include the future tense.
- (B) Words used in the singular number include the plural and words used in the plural number include the singular.
- (C) The word “person” includes an owner, firm, joint venture, association, organization, partnership, corporation, trust and company, as well as an individual.
- (D) The word “owner” when applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant or tenant by the entirety of the whole or part of such building or land.
- (E) The word “lot” includes the words “plot” or “parcel”.
- (F) The word “building” includes the word “structure”.
- (G) The word “shall” is always mandatory and not merely directory.
- (H) The words “located” or “used” or “occupied” as applied to any land or building, shall be construed to include the words “intended, arranged or designed to be located, used or occupied”.
- (I) The word “dwelling” shall mean a structure or portion thereof which is used exclusively for human habitation.

(Prior Code, § 42-5) (Ord. 32, passed 7-3-2001)

§ 112.06 ADULT ORIENTED BUSINESS.

(A) No adult oriented business shall be permitted in any building located within:

(1) One thousand five hundred feet in any direction from a residential building or residentially zoned property;

(2) One thousand feet in any direction from a building in which an adult oriented business is located;

(3) One thousand five hundred feet in any direction from a building used as a church, synagogue or other house of worship;

(4) One thousand five hundred feet in any direction from a building used as a public or private elementary or secondary school, child day care or nursery school;

(5) One thousand five hundred feet in any direction from any lot or parcel on which a public playground, public swimming pool or public park is located; or

(6) One thousand five hundred feet in any direction from any establishment with an on-premises ABC license. The gross floor area of any adult oriented business shall not exceed 3,000 square feet and all business-related activity shall be conducted in a building.

(B) Except for an adult motel, no adult oriented business may have sleeping quarters.

(C) There shall not be more than one adult oriented business in the same building, structure or portion thereof. No other principal or accessory use may occupy the same building, structure, property or portion thereof with any adult oriented business.

(D) No printed material, slide, video, photograph, written text, live show or other visual presentation format shall be visible from outside the walls of the establishment, nor shall any live or recorded voices, music, or sounds be heard from outside the walls of the establishment.

(E) No enclosed or underground parking shall be permitted.

(Prior Code, § 42-6) (Ord. 32, passed 7-3-2001) Penalty, see § 10.99

§ 112.07 NONCONFORMING ADULT ORIENTED BUSINESSES.

(A) Any adult oriented business lawfully operating on June 5, 2001, which is in violation of this chapter shall be deemed a nonconforming use. Any use which is determined to be nonconforming by application of the provisions of this section shall be permitted to continue for a period not to exceed two years. Such nonconforming uses shall not be increased, enlarged, extended or altered, except that the use may be changed to a conforming use. If a nonconforming use is discontinued for period of 30 days or more, it may not be reestablished. If two or more adult oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the business which was first established and continually operating at its present location shall be considered the conforming use and later-established business(es) shall be considered nonconforming. An adult oriented business lawfully operating as a conforming use shall not be rendered nonconforming by the subsequent location of a

dwelling, church, house of worship, daycare center, school, playground, public swimming pool or public park within 1,000 feet of the adult oriented business.

(B) All permitted uses must meet all compliance regulations set forth in the adult oriented business ordinance.

(C) Adult oriented businesses are a permitted use within the Highway Business (HB) Zoning District.

(D) Adult oriented businesses will not be a permitted use in the following residential zones: Residential/Agricultural Zone (RA-20), R-75 Residential Zone (R-75), R-15 Residential Zone (R-15), R-6 Residential Zone (R-6), Multi-family Residential Zone (MR) and Mobile Home Zone.

(E) Adult oriented businesses will not be a permitted use in the Central Business District (CB) Zoning District and the Neighborhood Business District (NB).

(F) Adult oriented businesses will not be a permitted use in the Industrial (I) Zoning District. (Prior Code, § 42-7) (Ord. 32, passed 7-3-2001)

## CHAPTER 113: VEHICLES FOR HIRE

### Section

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### § 113.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**PERSONS.** Includes both singular and plural, and shall also mean and include persons, individuals, firms, corporations, partnerships and associations.

**TAXICAB.** Any motor vehicle seating nine or fewer passengers, operated upon any street or highway on call or on demand, accepting or soliciting passengers indiscriminately for hire between such points along streets or highways as may be directed by the passenger or passengers so being transported, and shall not include motor vehicles or motor vehicle carriers as defined in the state statutes.

(Prior Code, § 58-1)

### § 113.02 UNLAWFUL TO OPERATE WITHOUT CERTIFICATE.

It shall be unlawful for any person to operate a taxicab upon and over the streets of the town without first having applied for and secured from the Council a certificate of convenience and necessity as hereinafter set forth. (Prior Code, § 58-2) Penalty, see § 10.99

### § 113.03 APPLICATION REQUIRED.

Every person desiring to operate a taxicab upon and over the streets of the town shall file on forms supplied by the Town Clerk an application for certificate of convenience and necessity.

(Prior Code, § 58-3)

#### § 113.04 COUNCIL ISSUES CERTIFICATES.

The Council shall have power and it will be its duty to order certain certificates issued or refuse to issue certain certificates or to issue certificates for partial exercise of the rights granted. Only such certificates under such terms and conditions as in its judgment the public convenience and necessity may require shall be issued. (Prior Code, § 58-4)

#### § 113.05 DURATION OF CERTIFICATE.

A certificate shall constitute a franchise from the town for the operation of taxicabs within the town subject to the provisions of this chapter for one year, unless a shorter period of time is specified in the certificate. Applications for renewal shall be filed annually and hearing conducted as herein provided. (Prior Code, § 58-5)

#### § 113.06 DETERMINATION OF CONVENIENCE AND NECESSITY.

(A) In determining whether the public convenience and necessity require the franchising of such taxicab or taxicabs, the Council shall, among other things, take into consideration the following factors:

- (1) Whether or not the public convenience and necessity require such proposed or additional taxicab service within the town;
- (2) The financial responsibility of the applicant and the likelihood of the proposed service being permanent, responsible and satisfactory;
- (3) The number and condition of equipment;
- (4) The schedule of proposed rates, if required by the Council, to be charged;
- (5) The number of taxicabs now operated and the demand for increased service, if any, and whether or not the safe use of the streets by the public, both vehicular and pedestrian, will be preserved and whether or not adequate provision has been made for off-street parking of said taxicabs;
- (6) The experience of applicant in the taxicab business; and
- (7) Such other relative facts as may be deemed necessary and advisable.

(B) The following factors shall be deemed sufficient grounds for refusing to issue a certificate or for revoking a certificate already issued:

- (1) Conviction of a felony against this state, or conviction of any offense against another state which would have been a felony if committed in this state;
- (2) Violation of any federal or state law relating to the use, possession or sale of alcoholic beverages or narcotic or barbiturate drugs;

- (3) Addiction to or habitual use of alcoholic beverages or narcotic or barbiturate drugs;
- (4) Violation of any federal or state law relating to prostitution;
- (5) Non-citizenship in the United States; and
- (6) Habitual violation of traffic laws or ordinances.

(C) Before making any decision with respect to the insurance of a certificate of convenience and necessity, the Town Council, or a committee thereof, shall make a full and complete investigation of all facts, if it so desires, subpoena witnesses and utilize the services of the Chief of Police or any other officer or employee of the town.

(Prior Code, § 58-6)

#### § 113.07 HEARING, NOTICES.

(A) Each application for certificate of convenience and necessity shall be scheduled for a hearing not later than 20 days after the same is filed, and the applicant shall be notified by the Town Clerk by mail to the business address set forth in the application of the date and time of such hearing, such notification to be sent at least ten days before the date set for the hearing.

(B) The Town Clerk shall also, within the same time, notify all persons who at the time hold certificates of convenience and necessity for the operation of taxicabs within the municipality, of the date and time for such hearing and the name of the applicant.

(C) In addition, the Town Clerk shall cause to be published at least once in a newspaper of general circulation at least ten days before the hearing a notice setting forth the name of the applicant and the date and time of hearing. The cost of such publication shall be paid by the applicant.

(Prior Code, § 58-7)

#### § 113.08 BURDEN OF PROOF.

The burden of proof shall be upon the applicant to establish the existence of public convenience and necessity for the operation of the taxicab or taxicabs specified in his or her application, and all other facts required for the granting of a certificate.

(Prior Code, § 58-8)

#### § 113.09 FAILURE TO BEGIN OPERATIONS.

If a certificate is granted to an applicant, and said applicant shall fail, in accordance with the provisions of the certificate, to begin operations within 60 days after the date of said certificate, then said certificate shall become null and void, and no refund of any amount paid by the applicant will be made by said town.

(Prior Code, § 58-9)

#### § 113.10 TRANSFER.

A certificate is not transferable without the consent and approval of the Council. Applications for a permit to transfer shall be filed in the same manner as an application for a certificate of convenience and necessity. The proceedings upon such application for transfer shall be the same as those prescribed for the issuance of a certificate, except that the question of public convenience and necessity need not be proved.  
(Prior Code, § 58-10)

#### § 113.11 REVOCATION OF CERTIFICATE.

(A) The Council may at any time after a public hearing revoke any certificate issued by authority of this chapter for any one, or more, of the following causes:

(1) Failure to operate the taxicab specified in the certificate in such manner as to serve the public adequately and efficiently;

(2) Failure to maintain motor equipment in good repair;

(3) Failure to carry liability insurance or bond as required by law;

(4) Failure to pay to the town taxes or license fees of \$15 imposed upon such taxicabs;

(5) Repeated and persistent violation by the taxicab drivers of traffic and safety ordinances, or state laws relating to alcoholic beverages or prostitution;

(6) Failure to report accidents; and/or

(7) Willful failure to comply with any provision of this chapter or other ordinances or state laws relating to the operation of taxicabs, whether such ordinances and laws be now in force or hereafter enacted into ordinances and into laws.

(B) No certificate shall be revoked until the owner has had at least five days notice by personal service or registered mail of the charges against him or her, and of the time and place of the hearing. If, after the hearing, it is found that the owner is guilty of one or more of the offenses listed herein, the Council shall have the power to revoke the certificate, or to condition a revocation upon compliance of its order within any time fixed by it.  
(Prior Code, § 58-11)

#### § 113.12 SUBSTITUTION OF VEHICLES.

The person to whom a certificate has been issued may, by proper endorsement thereon by the Town Clerk, substitute another vehicle, or other vehicles, for the vehicle or vehicles for which certificate was granted. In such instance, the liability insurance or bonds shall also be transferred to such substitute vehicle or vehicles.  
(Prior Code, § 58-12)

#### § 113.13 NO PERSON TO HOLD MORE THAN ONE CERTIFICATE.

The Town Council reserves the right to issue only one such certificate to any one person, and the person holding such certificate shall be required to operate his or her taxicab himself or herself and shall have no power or authority by virtue of his or her certificate to delegate the operation of such taxicab to any person.

(Prior Code, § 58-13)

