

TITLE 5
BUSINESS LICENSES AND
REGULATIONS

Chapters:

- 5.04 Business and Occupations Tax (Repealed)
- 5.05 Adult Businesses
- 5.06 Alarm Systems
- 5.08 Amusement Enterprises
- 5.12 Cereal Malt Beverages
- 5.16 Christmas Tree Sales
- 5.18 Day Care Homes
- 5.20 Private Clubs, Drinking Establishments and Caterers
- 5.24 Coin-operated Amusement Devices (Repealed)
- 5.28 Drive-in Restaurants
- 5.36 Explosives and Blasting Agents
- 5.38 Smokeless Propellants, Primers & Black Powders
- 5.40 Fireworks
- 5.44 Garage Sales
- 5.46 Juvenile Dance Halls
- 5.48 Alcoholic Liquor
- 5.50 Massage Therapy
- 5.51 Oil and Gas
- 5.52 Pawnbroking
- 5.53 Scrap Metal
- 5.56 Public Transportation Vehicles
- 5.60 Sales on Public Rights-of-Way
- 5.64 Solicitors
- 5.68 Solid Waste, Collection and Transportation (Repealed)
- 5.70 Transient Merchants
- 5.72 Payday and Title Loan Businesses

[Next Page is 5-100]

Chapter 5.04
BUSINESS AND OCCUPATIONS TAX¹
(This entire chapter has been repealed.)

Sections:

- 5.04.010 License required to conduct business. (Repealed)
- 5.04.020 Definitions. (Repealed)
- 5.04.030 Exemptions. (Repealed)
- 5.04.040 Taxes levied. (Repealed)
- 5.04.050 Where several classifications apply to a business. (Repealed)
- 5.04.060 License period. (Repealed)
- 5.04.070 Written application - Carrying license - Presentation for inspection. (Repealed)
- 5.04.080 Licenses nontransferable - Exception. (Repealed)
- 5.04.090 Securing license to cover period until next October 1st. (Repealed)
- 5.04.100 Issuance of license - Signatures - Seal. (Repealed)
- 5.04.110 Record of licenses. (Repealed)
- 5.04.120 Display of license - Carrying license. (Repealed)
- 5.04.130 Violation of chapter - Penalty. (Repealed)
- 5.04.140 Engaging in business without license - Penalty. (Repealed)
- 5.04.150 Payment of fine does not pay tax - Civil action. (Repealed)
- 5.04.160 Automobile dealers. (Repealed)
- 5.04.170 Bail bondsmen. (Repealed)
- 5.04.180 Banks & Savings & Loans. (Repealed)
- 5.04.190 Barber shops. (Repealed)
- 5.04.200 Beauty shops. (Repealed)
- 5.04.210 Christmas tree sales. (Repealed)
- 5.04.220 Coin-operated machine vendors. (Repealed)
- 5.04.230 Collecting agents. (Repealed)
- 5.04.240 Contractors. (Repealed)
- 5.04.250 Delivery men. (Repealed)
- 5.04.260 Detective agents - Merchant patrolmen. (Repealed)
- 5.04.270 Insurance agents. (Repealed)
- 5.04.280 Lessors of property. (Repealed)
- 5.04.290 Loan and finance companies. (Repealed)
- 5.04.300 Lumber yards. (Repealed)
- 5.04.305 Merchant, transient or itinerant. (Repealed)
- 5.04.306 Exhibition halls and convention centers. (Repealed)
- 5.04.310 Motels & Hotels. (Repealed)
- 5.04.320 Moving picture houses - Drive-in theaters. (Repealed)
- 5.04.330 Nurseries-Greenhouses. (Repealed)
- 5.04.340 Nursery schools & child care. (Repealed)
- 5.04.350 Nursing homes-Hospitals. (Repealed)
- 5.04.360 Real estate offices & Brokers. (Repealed)
- 5.04.370 Recreational, health and fitness facilities - Indoor. (Repealed)
- 5.04.380 Recreational, health and fitness facilities- Outdoor. (Repealed)

1.For the constitutional power of cities to levy taxes for revenue purposes, see Kansas Constitution, Article 12, Section 5(b).

Chapter 5.04

- 5.04.390 Restaurants - Drive-in eating establishments. (Repealed)
- 5.04.400 Retail stores. (Repealed)
- 5.04.410 Schools operated for profit. (Repealed)
- 5.04.420 Service stations. (Repealed)
- 5.04.425 Stables & Riding Academies. (Repealed)
- 5.04.430 Bus companies. (Repealed)
- 5.04.440 Tree trimmers. (Repealed)
- 5.04.450 Miscellaneous businesses. (Repealed)
- 5.04.460 Miscellaneous professions. (Repealed)

5.04.010 License required to conduct business.

Repealed.

(History: Ord. OT-1259, 84; OT-601 §1, 70)

5.04.020 Definitions.

Repealed.

(History: Ord. OT-1259, 84; OT-601 §2, 70)

5.04.030 Exemptions.

Repealed.

(History: Ord. OT-1259, 84; OT-1214 §1, 83; OT-601 §3, 70)

5.04.040 Taxes levied.

Repealed.

(History: Ord. OT-1259, 84; OT-601 §4, 70)

5.04.050 Where several classifications apply to a business.

Repealed.

(History: Ord. OT-1259, 84; OT-601 §35, 70)

5.04.060 License period.

Repealed.

(History: Ord. OT-1259, 84; OT-601 §36, 70)

5.04.070 Written application - Carrying license - Presentation for inspection.

Repealed.

(History: Ord. OT-1259, 84; OT-601 §38, 70)

5.04.080 Licenses nontransferable - Exception.

Repealed.

(History: Ord. OT-1259, 84; OT-601 §39, 70)

5.04.090 Securing license to cover period until next October 1st.

Repealed.

(History: Ord. OT-1259, 84; OT-601 §40, 70)

5.04.100 Issuance of license - Signatures - Seal.

Repealed.

(History: Ord. OT-1259, 84; OT-1074 ' 1, 80; OT-601 ' 41, 70)

5.04.110 Record of licenses.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 42, 70)

5.04.120 Display of license - Carrying license.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 43, 70)

5.04.130 Violation of chapter - Penalty.

Repealed.

(History: Ord. OT-1259, 84; OT-687 ' 1, 72; OT-601 ' 44, 70)

5.04.140 Engaging in business without license - Penalty.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 45, 70)

5.04.150 Payment of fine does not pay tax - Civil action.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 46, 70)

5.04.160 Automobile dealers.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 19, 70)

5.04.170 Bail bondsmen.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 29, 70)

5.04.180 Banks & Savings & Loans

Repealed.

(History: Ord. OT-1259, 84; OT-1214 ' 2, 83; OT-601 ' 12, 70)

5.04.190 Barber shops.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 10, 70)

5.04.200 Beauty shops.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 11, 70)

Chapter 5.04

5.04.210 Christmas tree sales.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 36, 70)

5.04.220 Coin-operated machine vendors.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 31, 70)

5.04.230 Collecting agents.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 24, 70)

5.04.240 Contractors.

Repealed.

(History: Ord. OT-1214 ' 13, 83; OT-601 ' 26, 70)

5.04.250 Delivery men

Repealed.

(History: Ord. OT-1214 ' 13, 83; OT-601 ' 30, 70)

5.04.260 Detective agents - Merchant patrolmen.

Repealed.

(History: Ord. OT-1259, 84; OT-855; ' 1, 75; OT-601A ' 2, 71)

5.04.270 Insurance agents.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 9, 70)

5.04.280 Lessors of property.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 34, 70)

5.04.290 Loan and finance companies.

Repealed.

(History: Ord. OT-1259, 84; OT-1214 ' 3, 83; OT-601 ' 14, 1970)

5.04.300 Lumber yards.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 32, 70)

5.04.305 Merchant, transient or itinerant.

Repealed.

(History: Ord. OT-1259, 84; OT-1214 ' 4, 83; OT-758 ' 1, 73;)

5.04.306 Exhibition halls and convention centers.

Repealed.

(History: Ord. OT-1259, 84; OT-1214 ' 5, 83; OT-779 ' 1, 74;)

5.04.310 Motels & Hotels.

Repealed.

(History: Ord. OT-1259, 84; OT-1214 ' 6, 83; OT-601 ' 13, 1970)

5.04.320 Moving picture houses - Drive-in theaters.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 15, 70)

5.04.330 Nurseries-Greenhouses

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 21, 70)

5.04.340 Nursery schools & child care.

Repealed.

(History: Ord. OT-1259, 84; OT-1214 ' 7, 83; OT-601 ' 23, 1970)

5.04.350 Nursing homes-Hospitals.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 33, 70)

5.04.360 Real estate offices & Brokers.

Repealed.

(History: Ord. OT-1259, 84; OT-1214 ' 8, 83; OT-1080 ' 1, 80; OT-601 ' 8, 70)

5.04.370 Recreational, health and fitness facilities - Indoor.

Repealed.

(History: Ord. OT-1259, 84; OT-1214 ' 9, 83; OT-885 ' 1, 76; OT-601 ' 27, 70)

5.04.380 Recreational, health and fitness facilities- Outdoor.

Repealed.

(History: Ord. OT-1259, 84; OT-1214 ' 10, 83; OT-933 ' 1, 77; OT-601 ' 16, 70)

5.04.390 Restaurants - Drive-in eating establishments.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 20, 70)

5.04.400 Retail stores

Repealed.

(History: Ord. OT-1259, 84; OT-1214 ' 11, 83; OT-855 ' 4, 75; OT-601 ' 5, 70)

5.04.410 Schools operated for profit.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 22, 70)

Chapter 5.04

5.04.420 Service stations.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 18, 70)

5.04.425 Stables & Riding Academies.

Repealed.

(History: Ord. OT-1259, 84; OT-855 ' 5, 75)

5.04.430 Bus companies.

Repealed.

(History: Ord. OT-1259, 84; OT-743 ' 2, 73)

5.04.440 Tree trimmers.

Repealed.

(History: Ord. OT-1259, 84; OT-601 ' 28, 70)

5.04.450 Miscellaneous businesses.

Repealed.

(History: Ord. OT-1259, 84; OT-1214 ' 12, 83; OT-601 ' 6, 1970)

5.04.460 Miscellaneous professions

Repealed.

(History: Ord. OT-1214 ' 13, 83; OT-972 ' 1, 78; OT-601 ' 7, 70)

[Next Page is 5-200]

Chapter 5.05 ADULT BUSINESSES

Sections:

- 5.05.010 Definitions.
- 5.05.020 License Required for Adult Business.
- 5.05.030 License Required for Managers, Servers and Entertainers.
- 5.05.040 License, Classification and Fees.
- 5.05.045 License Limited to One Identifiable Type of Adult Use.
- 5.05.050 License Applications.
- 5.05.060 Examination of Application, Issuance of License, Disapproval.
- 5.05.070 License - Ineligibility and Disqualification.
- 5.05.080 Standards of Conduct.
- 5.05.090 License - Posting or Display.
- 5.05.100 Manager on Premises.
- 5.05.110 Inspectors and Inspections.
- 5.05.120 Suspension, Revocation, or Nonrenewal -- License.
- 5.05.130 Renewal.
- 5.05.140 Judicial Review - Stay of Enforcement of Orders.
- 5.05.150 Penalty.
- 5.05.160 Regulations.
- 5.05.165 Savings Clause.
- 5.05.170 Severability.
- 5.05.180 Application to Existing Businesses.
- 5.05.190 Retail Sales of Adult Media.

5.05.010 Definitions.

For the purposes of this Chapter and unless the context plainly requires otherwise, the following definitions are adopted:

- A. "Adult Business" means any business:
 - 1. that has as a substantial or significant purpose the sale or rental of merchandise that is intended for use in connection with "Specified Sexual Activities," or that emphasizes matters depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas"; or
 - 2. that has as one of its regular and substantial business purposes:
 - a. the providing of entertainment where the emphasis is on performances, live or otherwise, that depict, portray, exhibit or display "Specified Anatomical Areas" or "Specified Sexual Activities"; or
 - b. the providing of services that are intended to provide sexual arousal or excitement or that allow observation of "Specified Sexual Activities" or "Specified Anatomical Areas" ancillary to other pursuits, or allow participation in "Specified Sexual Activities" ancillary to other pursuits.
 - 3. The definition of "Adult Business" also includes but is not limited to any and all of the following specific Adult Businesses, as defined herein:

Chapter 5.05

- a. Businesses that offer merchandise for exchange, rental or sale.
- 1) "Adult Media Outlet" means a business engaging in the exchange, rental or sale of "Adult Media" if such business is not open to the public generally but only to one or more classes of the public, excluding any minor by reason of age, or if a substantial or significant portion of the business is devoted to the exchange, rental or sale of "Adult Media." For purposes of this subsection, it shall be presumed that a "substantial or significant" portion of a business is devoted to the exchange, rental or sale of "Adult Media" if any one or more of the following criteria is satisfied:
 - a) forty (40) percent or more of the exchanges, rentals or sales, measured in dollars over any consecutive ninety-day period, is derived from such items;
 - b) forty (40) percent or more of the number of transactions, measured over any consecutive ninety-day period, relate to such items;
 - c) forty (40) percent or more of the dollar value of all merchandise displayed at any time is attributable to such items;
 - d) forty (40) percent or more of all inventory consists of such items at any time;
 - e) forty (40) percent or more of the merchandise displayed for sale consists of such items at any time;
 - f) forty (40) percent or more of the floor area of the business (not including storerooms, stock areas, restrooms, basements or any portion of the business not open to the public) is devoted to such items at any time.

This presumption shall be rebuttable.

- 2) "Adult Newsrack" means any coin- or card-operated device that offers for sale by dispensing printed material which is distinguished or characterized by its emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas."
- 3) "Adult Retail Establishment" means a business that displays or offers goods for sale, rental or exchange that meets any of the following tests:

- a) It displays or offers for sale, rental or exchange items from any two (2) of the following categories: "Sexually-Oriented Toys or Novelties"; clothing that graphically depicts any "Specified Anatomical Area"; or leather or other goods designed or marketed for use for sexual bondage or sadomasochistic practices; and the combination of such items constitutes:
 - (1) ten (10) percent or more of the sales, rentals or exchanges, measured in dollars over any consecutive ninety-day period; or
 - (2) ten (10) percent or more of the sale, rental or exchange transactions, measured over any consecutive ninety-day period; or
 - (3) ten (10) percent or more of the dollar value of all merchandise displayed at any time; or
 - (4) ten (10) percent or more of all inventory at any time, measured by the number of items; or
 - (5) ten (10) percent or more of the merchandise displayed at any time, measured by the number of items; or
 - (6) ten (10) percent or more of the sales floor area of the business (not including storerooms, stock areas, restrooms, or any portion of the business not open to the public) at any time;
- b) Five (5) percent or more of the sales, rentals or exchanges, measured in dollars over any consecutive ninety-day period, is derived from "Sexually-Oriented Toys or Novelties";
- c) Five (5) percent or more of the number of sale, rental or exchange transactions, measured over any consecutive ninety-day period, relate to "Sexually-Oriented Toys or Novelties";
- d) Five (5) percent or more of the dollar value of all merchandise displayed at any time is attributable to "Sexually-Oriented Toys or Novelties";
- e) Five (5) percent or more of all inventory, measured by the number of items, consists of "Sexually-Oriented Toys or Novelties" at any time;

- f) Five (5) percent or more of all merchandise displayed, measured by the number of items, consists of "Sexually-Oriented Toys or Novelties" at any time;
 - g) Five (5) percent or more of the sales floor area of the business (not including storerooms, stock areas, restrooms, or any portion of the business not open to the public) is devoted to "Sexually-Oriented Toys or Novelties" at any time.
- b. Businesses that provide entertainment.
- 1) "Adult Entertainment Business" means any business to which the public, Patrons or members are invited or admitted, and where providing "Adult Entertainment" is a regular and substantial portion of its business.
 - 2) The definition of "Adult Entertainment Business" also includes, but is not limited to, any and all of the following specific Adult Entertainment Businesses, as defined herein:
 - a) "Adult Motion Picture Theater" means an establishment with a screen or projection areas, where a regular and substantial portion of its business is the exhibition to Patrons of films, videotapes or motion pictures which is intended to provide sexual stimulation or sexual gratification to the Patrons or which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas."
 - b) "Adult Theater" means an establishment where a regular and substantial portion of its business is providing live performances that are distinguished by or characterized by an emphasis on the exposure, depiction or description of "Specified Anatomical Areas" or the conduct or simulation of "Specified Sexual Activities."
 - c) "Adult Entertainment Cabaret" means (1) an establishment where a regular and substantial portion of its business is providing live entertainment that (i) is intended to provide sexual stimulation or sexual gratification to the Entertainer or the Patrons, and (ii) is distinguished by or characterized by an emphasis on matter depicting, simulating, describing or relating to "Specified Anatomical Areas" or the conduct or simulation of "Specified Sexual Activities"; or (2) an establishment which regularly features entertainment of an erotic nature including exotic dancers, strippers, or similar Entertainers.

- d) "Adult Entertainment Studio" (includes the terms "rap studio," "exotic dance studio," "sensitivity studio," "body painting studio," or "encounter studio") means an establishment whose premises are physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises, and where a regular and substantial portion of its business is providing entertainment which features materials or live performances characterized by an emphasis on or features materials relating to "Specified Sexual Activities" or the exhibition of "Specified Anatomical Areas."
- c. Businesses that provide services.
 - 1) "Bath House" means an enterprise where a regular and substantial portion of its business is offering baths and/or showers with other Persons present who are "Nude" or displaying "Specified Anatomical Areas."
 - 2) "Adult Motel" means an enterprise where a regular and substantial portion of its business is offering public accommodations for the purpose of viewing closed-circuit television transmissions, films, movies, motion pictures, video cassettes, video tapes, slides or other photographic reproductions which are distinguished or characterized by an emphasis on the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" and which rents room accommodations for less than six hours at a time.
- 4. The definition of "Adult Business" does not include, and this Ordinance shall not apply to, a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances covered by the definition of "Adult Business" were permitted or allowed as part of such art exhibits or performances.
- B. "Adult Entertainment" means any exhibition, performance, display or dance of any type, including, but not limited to, talking, singing, reading, listening, posing, serving food or beverages, soliciting for the sale of food, beverages or entertainment, pantomiming, modeling, removal of clothing, or any service offered on a premises where such exhibition, performance, display or dance is intended to arouse or excite the sexual desires of the Entertainer, other Entertainers or Patrons, or if the entertainment is characterized by an emphasis on the exposure, depiction or description of "Specified Anatomical Areas" or the conduct or simulation of "Specified Sexual Activities."

Chapter 5.05

- C. "Adult Media" means books, magazines, periodicals, other printed matter, pictures, slides, records, audiotapes, videotapes, compact discs, DVDs, motion pictures, films, CD-ROMs or other devices used to record computer images, or other similar media which are distinguished or characterized by an emphasis on matters depicting, describing or relating to "Specified Anatomical Areas" or "Specified Sexual Activities."
- D. "Adult Media Viewing Booth" means any booth, cubicle, stall or compartment which is designed, constructed or used to hold or seat Patrons and is used for viewing or reading "Adult Media." "Adult Media Viewing Booths" are sometimes also known as adult video viewing booths, peep shows, adult video arcades, panoramas and adult mini-motion picture theaters. For purposes of this definition, an "Adult Media Viewing Booth" shall refer to all such booths, cubicles, stalls or compartments containing less than one hundred fifty (150) square feet of gross floor area.
- E. "Contagious and Infectious Diseases" means those diseases which are designated in Kansas Department of Health and Environment Regulations, K.A.R. 28-1-2, as amended.
- F. "Employee" means any and all Persons, including Managers, Entertainers and independent contractors, who work in or at or render any services directly related to the operation of an "Adult Business."
- G. "Entertainer" means any Person who provides "Adult Entertainment" within an "Adult Entertainment Business," whether or not a fee is charged or accepted for entertainment.
- H. "Manager" means any Person who manages, directs, administers, or is in charge of the affairs and/or conduct of any portion of any activity at any "Adult Business."
- I. "Minor" means any Person less than eighteen (18) years of age.
- J. "Nude" or "Nudity" means the appearance of a human bare buttock, anus, genitals, or female breast, or a state of dress that fails to completely and opaquely cover a human buttock, anus, genitals, or any part of the female breast or breasts that is situated below a point immediately above the top of the areola, but not including any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed.
- K. "Operate" means to own, conduct or maintain the affairs of an "Adult Business."
- L. "Operator" means any Person owning, operating, conducting or maintaining an "Adult Business."
- M. "Patron" means any Person who enters an "Adult Business" without regard to whether a purchase is made from the "Adult Business" or compensation is paid to the "Adult Business" or any Employee of the "Adult Business" for merchandise, entertainment or service; provided that the term "Patron" shall not include Persons who enter an "Adult Business" for the sole purpose of providing service or merchandise to the "Adult Business" and who do not remain in the "Adult Business" after the purpose has been accomplished including, but not limited to, Persons performing construction, repair or maintenance on the premises or delivering goods or merchandise to the "Adult Business" and any such similar activity.

- N. "Person" means any individual, partnership, corporation, limited liability company, trust, unincorporated association, joint venture, governmental entity, or other entity or group of Persons, however organized.
- O. "Server" means any person who serves food or drink at an "Adult Entertainment Business."
- P. "Sexually-Oriented Toys or Novelties" means instruments, devices or paraphernalia which either depict representations of "Specified Anatomical Areas" or are designed or marketed for use in connection with "Specified Sexual Activities." In determining whether an item is "designed or marketed for use" in connection with "Specified Sexual Activities," the following guidelines may be considered:
1. Expert testimony as to the principle use of the item;
 2. Evidence concerning the total business of a Person or business establishment and the type of merchandise involved in the business;
 3. National and local advertising concerning the use of the item;
 4. Evidence of advertising concerning the nature of the business establishment;
 5. Instructions, graphics or other material contained on the item itself or on the packaging materials for the item;
 6. The physical or structural characteristics of the item;
 7. The manner in which the item is displayed, including its proximity to other regulated merchandise or signage relating to items in a display area.

Any Person may request an interpretive ruling from the Chief of Police, or his or her designee, as to whether a particular item is considered by the City to be "designed or marketed for use" in connection with "Specified Sexual Activities." An application for an interpretive ruling shall be made in writing on a form provided by the Chief of Police, and shall be accompanied by such other information as may reasonably be requested under the circumstances pertaining to the specific item about which a ruling is requested. The Chief of Police shall issue a written interpretive ruling within ten business days following submission of a completed application. The decision of the Chief of Police may be appealed to the Governing Body within fifteen days following the interpretive ruling by submitting a written notice of appeal to the City Clerk.

- Q. "Specified Anatomical Areas" means:
1. Any of the following, or any combination of the following, when less than completely and opaquely covered: any human genitals, pubic region, any buttock, or any portion of the female breast or breasts that is situated below a point immediately above the top of the areola, but not including any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed; or
 2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Chapter 5.05

- R. "Specified Criminal Act" means any unlawful lewd or indecent conduct, specifically including, but without limitation, any of the lewd or indecent criminal acts as follows:
1. Any sex offense set forth in Chapter 21, Article 35, of the Kansas Statutes Annotated, or amendments thereto;
 2. Any crime set forth in the Kansas Uniform Controlled Substances Act, Chapter 65, Article 41, of the Kansas Statutes Annotated, or amendments thereto;
 3. Incest (K.S.A. 21-3602, or amendments thereto);
 4. Aggravated incest (K.S.A. 21-3603, or amendments thereto);
 5. Furnishing alcoholic liquor or cereal malt beverage to a Minor (K.S.A. 21-3610, or amendments thereto);
 6. Furnishing alcoholic beverages to a Minor for illicit purposes (K.S.A. 21-3610b, or amendments thereto);
 7. Promoting obscenity (K.S.A. 21-4301);
 8. Promoting obscenity to Minors (K.S.A. 21-4301a);
 9. Promotion to Minors of obscenity harmful to Minors (K.S.A. 21-4301c);
 10. Any Kansas municipal ordinance violation based upon any of the crimes set forth above in subparagraphs 1 through 9, inclusive;
 11. Any criminal violations from a State other than Kansas, or municipal ordinance violations from a State other than Kansas, corresponding to the crimes set forth above in subparagraphs 1 through 9, inclusive. If necessary, the City Attorney shall issue an interpretive ruling determining whether a crime from another State corresponds to the crimes set forth above in subparagraphs 1 through 9, inclusive.
- S. "Specified Sexual Activities" mean any of the following:
1. Sexual conduct including, but not limited to, actual or simulated acts of sexual intercourse, masturbation, oral copulation or sodomy;
 2. Fondling or other erotic touching of a Person's clothed or unclothed genitals, pubic region, buttock, anus or female breast;
 3. Sadomasochistic acts; or
 4. Human genitals in a state of sexual stimulation or arousal.
- (History: Ord. AEB-2416 §1, 2003; AEB-2027 §1, 97; AEB-1944 §1, 95; AEB-1935 §1, 95; AEB-1846 §1, 94; AEB-1837 §1, 93; AEB-1782A §1, 93; AEB-1782 §1, 93)

5.05.020 License required for Adult Business.

- A. It shall be unlawful for any Person to Operate or maintain an Adult Business in the City unless the owner, Operator or lessee thereof has obtained an Adult Business license from the City, or to Operate such business after such license has expired or been revoked or suspended by the City.

- B. It is unlawful for any Entertainer, Server, Employee, Manager, Operator or owner to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed Adult Business.
- C. The failure to post an Adult Business license in the manner required herein shall be prima facie evidence that an Adult Business has not obtained such a license. In addition, it shall be prima facie evidence that any Entertainer, Employee, Manager or owner who performs any business, service or entertainment in an Adult Business in which an Adult Business license is not posted in the manner required herein had knowledge that such business is not licensed.
- D. Any business that engages in the exchange, rental, or sale of Adult Media if such business is not open to the public in general but only to one or more classes of the public, excluding any Minor by reason of age, or if a substantial or significant portion of such items are distinguished or characterized by an emphasis on the depiction or description of Specified Sexual Activities or Specified Anatomical Areas shall be deemed to have consented to periodic entry into and inspection of the business premises by appropriate City officials and inspection by those officials of only those business records necessary for the limited purpose of determining whether such business enterprise is in compliance with this Ordinance. This entry and inspection shall take place during hours when such business is open to the public, unless otherwise requested by the business, and shall not unreasonably interfere with the conduct of such business.

(History: Ord. AEB-2416 §2, 2003; AEB-1944 §2, 95; AEB-1935 §2, 95; AEB-1846 §2, 94; AEB-1837 §2, 93; AEB-1782 §1, 93)

5.05.030 License required for Managers, Servers and Entertainers.

It is unlawful for any Person to work as an Entertainer, Server or Manager at an Adult Business without first obtaining a license to do so from the City, or to work as an Entertainer, Server or Manager at an Adult Business after such Person's license to do so has expired or been revoked or suspended.

(History: Ord. AEB-2416 §3, 2003; AEB-1944 §3, 95; AEB-1935 §3, 95; AEB-1846 §3, 94; AEB-1837 §3, 93; AEB-1782 §1, 93)

5.05.040 License, classification and fees.

- A. The license year for all fees required herein shall be from each January 1 through December 31. The application for a license shall be accompanied by payment in full of the fee stated herein by certified or cashier's check or money order, and no application shall be considered complete until such fee is paid.
- B. All licenses shall be issued for a specific location and shall be nontransferable, and license fees shall be nonrefundable.
- C. The classification of licenses and fees for each shall be as follows:
 - 1. Adult Business license fee is \$250.00 per year;
 - 2. Manager's license fee is \$20.00 per year;

Chapter 5.05

3. Entertainer's license fee is \$20.00 per year;
4. Server's license fee is \$20.00 per year.

(History: Ord. AEB-2416 §4, 2003; AEB-1944 §4, 95; AEB-1935 §4, 95; AEB-1846 §4, 94; AEB-1837 §4, 93; AEB-1782 §1, 93)

5.05.045 License limited to one identifiable type of adult use.

All Adult Business licenses shall be issued only for the one Adult Business use listed on the application. Any change in the type of adult use shall invalidate the Adult Business license and require the licensee to obtain a new license for the change in use. A separate license is required for each adult use. The establishment or maintenance of more than one Adult Business in the same building, structure or portion thereof is prohibited.

(History: Ord. AEB-2416 §5, 2003; AEB-1944 §5, 95; AEB-1935 §5, 95; AEB-1846 §5, 94; AEB-1837 §5, 93)

5.05.050 License applications.

A. Adult Business License.

All Persons desiring to secure a license to Operate an Adult Business as required herein shall make a verified application with the City Clerk. All applications shall be submitted in the name of the Person who owns the Adult Business. The application shall be signed by the applicant. If the applicant is a corporation, the application shall be signed by its President. If the applicant is a partnership, the application shall be signed by a partner. If the applicant is a limited liability company, the application shall be signed by a member. In all other instances where the owner is not an individual, the application shall be signed by an authorized representative of the owner. The City Clerk may require proof of authorization before accepting an application. All applications shall be submitted on a form supplied by the City Clerk and shall require all of the following information:

1. The name, any aliases, mailing address for receipt of notices, home telephone number, occupation, date and place of birth and social security number of the applicant.
2. The tax identification number and registered agent if the owner is required to have a tax identification number or registered agent.
3. The name of the Adult Business, a description of the type of Adult Business to be performed on the licensed premises, and the name of the owner of the premises where the Adult Business will be located.
4. The names, social security numbers and dates of birth of all partners, if the applicant is a partnership or limited liability partnership; and if the applicant is a corporation or limited liability company, the same information for all stockholders or members who own more than a 25% interest in the company.

5. A statement from the applicant whether the applicant and each Person required to be identified in the application pursuant to subparagraph 4 above, in previously operating in this or another city, county or state, has had an Adult Business license of any type revoked or suspended, and if so, the reason for the suspension or revocation and the business activity subjected to the suspension or revocation.
6. A statement from the applicant and each Person required to be identified in the application pursuant to subparagraph 4 above that each such Person has not been convicted of, or released from confinement for conviction of, or diverted from prosecution on, any felony, whichever event is later, within five (5) years immediately preceding the application, or has not been convicted of, or diverted from prosecution on, a misdemeanor or municipal ordinance violation, or released from confinement for conviction of a misdemeanor or municipal ordinance violation, whichever event is later, within two (2) years immediately preceding the application, where such felony, misdemeanor or municipal ordinance violation constitutes a Specified Criminal Act.
7. On applications requesting a license to Operate a Bath House, the applicant shall provide for each Employee, a health certificate from a duly licensed Kansas or Missouri physician stating that within 90 days prior thereto, the applicant and all other Persons working on the premises have been examined and found free of any Contagious or Infectious Disease. This shall be a continuing requirement. For each Person who is employed, the above described health certificate shall be submitted to the City Clerk within forty-eight (48) hours of the time such Person begins employment
8. If the applicant is a corporation or limited liability company, a current certificate of registration issued by the Kansas Secretary of State.
9. A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of this Ordinance regulating Adult Businesses.

Failure to provide the information and documentation required herein shall constitute an incomplete application and shall not be processed by the City. The City Clerk shall notify the applicant whether or not the application is complete within five (5) working days of the date the application is received by the City Clerk; in the event the City Clerk has determined that the application is incomplete, the notification to the applicant shall include a written explanation of the reason(s) why the application is incomplete.

B. Manager, Server or Entertainer License.

All Persons desiring to secure a license to be a Manager, Server or Entertainer shall make a verified application with the City Clerk. All applications shall be submitted in the name of the Person proposing to be a Manager, Server or Entertainer. All applications shall be submitted on a form supplied by the City Clerk and shall require all of the following information:

Chapter 5.05

1. The applicant's name, any aliases, mailing address for receipt of notices, home telephone number, date and place of birth, social security number, and, in the case of Entertainers, any stage names or nicknames used in entertaining.
2. The name and address of each Adult Business where the applicant intends to work as a Manager, Server or Entertainer.
3. A statement from the applicant that the applicant has not been convicted of, or released from confinement for conviction of, or diverted from prosecution on, any felony, whichever event is later, within five (5) years immediately preceding the application, or has not been convicted of, or diverted from prosecution on, a misdemeanor or ordinance violation, or released from confinement for conviction of a misdemeanor or ordinance violation, whichever event is later, within two (2) years immediately preceding the application, where such felony, misdemeanor or ordinance violation constitutes a Specified Criminal Act.
4. The applicant shall present to the City Clerk, who shall copy, documentation that the applicant has attained the age of 18 years at the time the application is submitted. Any of the following shall be accepted as documentation of age:
 - a. A motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth;
 - b. A state-issued identification card bearing the applicant's photograph and date of birth;
 - c. An official and valid passport issued by the United States of America;
 - d. An immigration card issued by the United States of America;
 - e. Any other form of picture identification issued by a governmental entity that is deemed reliable by the City Clerk; or
 - f. Any other form of identification deemed reliable by the City Clerk.

Failure to provide the information required herein shall constitute an incomplete application and shall not be processed by the City. The City Clerk shall notify the applicant whether or not the application is complete within five (5) working days of the date the application was received by the City Clerk; in the event the City Clerk has determined that the application is incomplete, the notification to the applicant shall include a written explanation of the reason(s) why the application is incomplete.

C. Application processing.

Upon receipt of an application for an Adult Business, Manager, Server or Entertainer license, the City Clerk shall immediately transmit one copy of the application to the Chief of Police for investigation of the application. In addition, the City Clerk shall transmit a copy of the application to the Director of Planning and Development Services and the Fire Inspector. It shall be the duty of the Chief of Police to investigate such application to determine whether the information contained in the application is accurate

and whether the application meets the requirements herein for issuance of the license for which the application is made. The Chief of Police shall report the results of the investigation to the City Clerk not later than ten (10) working days from the date the application is received by the City Clerk. It shall be the duty of the Director of Planning and Development Services and the Fire Inspector to determine whether the structure where the Adult Business will be conducted complies with the requirements and meets the standards of the applicable health, zoning, building code, fire and property maintenance ordinances of the City. The Director of Planning and Development Services and the Fire Inspector shall report the results of their investigation to the City Clerk not later than ten (10) working days from the date the application is received by the City Clerk. Upon receipt of the reports from the Chief of Police, the Director of Planning and Development Services and the Fire Inspector, the City Clerk shall schedule the application for consideration by the Governing Body at the earliest meeting consistent with the notification requirements established by law; provided, however, that the license application for an Adult Business, Server, Manager or Entertainer license shall be scheduled for hearing and either approved or disapproved within thirty (30) days from the date the application is received by the City Clerk, irrespective of whether the City Clerk has received timely reports from the Chief of Police, the Director of Planning and Development Services and the Fire Inspector. The applicant shall be notified in writing of the date when the Governing Body will consider the application and shall be afforded an opportunity to be heard at that meeting.

(History: Ord. AEB-2416 §6, 2003; AEB-2246 §1, 2001; AEB-1944 §6, 95; AEB-1935 §6, 95; AEB-1846 §6, 94; AEB-1837 §6, 93; AEB-1782A §2, 93; AEB-1782 §1, 93)

5.05.060 Examination of Application, Issuance of License, Disapproval.

- A. The Governing Body shall examine an application for an Adult Business license, or a Manager, Server or Entertainer license, within thirty (30) days of the date such application was received by the City Clerk. After such examination, the Governing Body shall approve the issuance of a license only if the appropriate license fee has been paid, the applicant is qualified and all the applicable requirements set forth herein are met. No license shall be approved for any Person ineligible pursuant to the provisions herein. All incomplete applications shall be denied.
- B. The record of the Governing Body shall show the action taken on the application, and if the license is granted, the Governing Body shall direct the City Clerk to issue the proper license. The Adult Business license and all Manager, Server and Entertainer licenses shall state that it is not transferable to other Persons or entities and the calendar year for which it is issued.
- C. If an application for a license is disapproved, the applicant shall be immediately notified by registered or certified mail to the applicant's last known mailing address, and the letter of notification shall state the basis for such disapproval. Any applicant aggrieved by the disapproval of a license application may seek judicial review in the Overland Park Municipal Court by filing a notice of appeal with the Clerk of the Municipal Court within

Chapter 5.05

thirty (30) days of the date of the letter of notification. A copy of the notice of appeal shall be immediately filed with the City Clerk. A memorandum of points and authorities in support of the appeal shall be served and filed concurrently with the appeal, and appellant shall immediately serve a copy of the appeal and the memorandum of points and authorities upon the City Attorney. Within fifteen (15) days of receipt of a copy of the notice of appeal, the City Clerk shall prepare and file the administrative record with the Clerk of the Municipal Court. Counsel for the City shall serve and file a memorandum of points and authorities in opposition to the appeal within fifteen (15) days after service of the appellant's appeal and memorandum of points and authorities. Appellant may serve and file a reply memorandum of points and authorities not later than three (3) days after service of the City's opposition memorandum. Within twenty-five (25) days after the appeal and accompanying memorandum of points and authorities are filed with the Clerk of the Municipal Court and served upon the City Clerk and the City Attorney, the Municipal Court shall conduct a hearing on the appeal. The Municipal Court shall rule on the appeal within thirty (30) days after the appeal and accompanying memorandum of points and authorities are filed with the Clerk of the Municipal Court and served upon the City Clerk and the City Attorney. If the Municipal Court has not decided the validity of the license denial within thirty (30) days after the appeal and accompanying memorandum or points and authorities is filed with the Clerk of the Municipal Court and served upon the City Clerk and the City Attorney, the City Clerk shall immediately issue a temporary license to the appellant. The temporary license shall remain in effect only until the Municipal Court has rendered its opinion concerning the validity of the license denial. In the event that the last day of any time period set forth above falls upon a Saturday, Sunday or a legal holiday (as defined by K.S.A. 60-206), the time period shall run until the end of the next day which is not a Saturday, Sunday or a legal holiday. Appeals of the decision of the Municipal Court may be taken as authorized and in the manner provided by Chapter 12, Article 46, of the Kansas Statutes Annotated, as amended.

(History: Ord. AEB-2416 §7, 2003; AEB-2414 §1, 2002; AEB-1944 §7, 95; AEB-1935 §7, 95; AEB-1846 §7, 94; AEB-1837 §7, 93; AEB-1782A §3, 93; AEB-1782 §1, 93)

5.05.070 License -Ineligibility and Disqualification.

No person is eligible nor shall a license be issued to:

- A. An applicant for an Adult Business license if one or more of the following conditions exist:

1. The premises for which an application for an Adult Business has been made is located within six hundred (600) feet of any school, church, licensed child care center, public park, or property zoned or used for residential purposes, which uses are located within the city limits. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point of the premises from which the Adult Business would be Operated to the nearest point on the property line of any school, church, licensed day care center, public park or property zoned or used for residential purposes located within the City;
 - a. provided the phrase "property zoned or used for residential purposes" shall not include any property zoned for residential use for which a special use permit has been granted for an indefinite period of time which permit allows a non-residential use;
 - b. provided further, the list of protected uses set forth herein shall exclude streets, alleys and highway rights-of-way;
 - c. provided further, any school, church or licensed day care center located within commercially zoned property pursuant to a special use permit shall not be included as a protected use.
2. The premises for which an application for an Adult Business has been made is located within five hundred (500) feet of any other business located within or without the City meeting the definition of Adult Business as set forth in this Ordinance, regardless of whether such other business has applied for or received a license to Operate an Adult Business at that location. Measurements shall be made in a straight line, without regard to intervening structures or objects from the premises from which the proposed Adult Business would be Operated to the nearest point on the property line of such other business meeting the definition of Adult Business as set forth in this Ordinance;
3. The applicant knowingly failed to supply all of the information requested on the application;
4. The applicant knowingly gave materially false, fraudulent or untruthful information on the application;
5. The applicant's proposed business premises does not comply with or meet the requirements of the applicable health, zoning, building code, fire and property maintenance ordinances of the City, provided, that upon a showing that the premises meets said requirements and that the applicant is otherwise qualified, the application shall be eligible for reconsideration by the Governing Body;
6. The applicant has been convicted, released from incarceration for conviction or diverted on any Specified Criminal Act during the time period set forth herein;
7. The applicant has had an Adult Business license or comparable license revoked or suspended in this or any other city during the past five (5) years; or

Chapter 5.05

8. If the applicant is applying for a license to Operate a Bath House or body painting studio and applicant has not produced a health certificate as required herein for all Persons working on the premises.
- B. An applicant for a Manager, Server or Entertainer license if one or more of the following conditions exist:
1. The applicant has been convicted, released from incarceration for conviction or diverted on any Specified Criminal Act during the time period set forth herein;
 2. The applicant knowingly failed to provide all of the information required on the application;
 3. The applicant knowingly gave materially false, fraudulent or untruthful information on the application;
 4. The applicant has had a Manager, Server or Entertainer license revoked or suspended in this or any other city during the past five (5) years; or
 5. The applicant is applying for a license for a Manager, Server or Entertainer in a Bath House and has not produced a health certificate as required herein.

(History: Ord. AEB-2416 §8, 2003; AEB-2027 § 2, 97; AEB-1944 §8, 95; AEB-1935 §8, 95; AEB-1846 §8, 94; AEB-1837 §8, 93; AEB-1782 §1, 93)

5.05.080 Standards of conduct.

It shall be unlawful for any Adult Business, or any Manager, Server, Entertainer or Employee thereof, or any Patron of an Adult Business, while on or about the premises of the business, to knowingly fail to adhere to the following standards of conduct, as applicable:

A. Identification Cards.

Any Manager, Server or Entertainer issued a license under this Chapter shall, at all times when working in an Adult Business, have in their possession a valid identification card issued by the City, bearing the permit number, the Employee's physical description and a photograph of such Employee. Such identification cards shall be laminated to prevent alteration.

B. Age Restriction.

Minors shall not be permitted on the premises of any Adult Business.

C. Exterior Observation.

The premises of all Adult Businesses will be so constructed as to ensure that the interior of the premises is not observable from the exterior of the building. In addition, all windows will be covered to prevent viewing of the interior of the building from the outside and all doorways not constructed with an anteroom or foyer will be covered so as to prevent observation of the interior of the premises from the exterior of the building.

D. Exterior Display.

No Adult Business will be conducted in any manner that permits the observation of live performers engaged in an erotic depiction or dance or any material or Persons depicting, describing or relating to Specified Sexual Activities or Specified Anatomical Areas, as defined herein, from any exterior source by display, decoration, sign, show window or other opening.

E. Nudity Prohibited.

No Manager, Employee, Server, Entertainer or Patron in an Adult Business other than a licensed Bath House shall be Nude.

F. Sale or Consumption of Alcohol Prohibited.

No alcoholic liquor or cereal malt beverages shall be sold or consumed on the premises of an Adult Business.

G. Specified Criminal Acts and Specified Sexual Activities Prohibited.

No Manager, Employee, Server, Entertainer or Patron of an Adult Business shall engage in any Specified Criminal Act or any Specified Sexual Activity on the premises of the business.

H. Certain Other Acts Prohibited.

1. No Manager, Employee, Server, Entertainer or Patron shall wear or use any device or covering exposed to view which simulates any Specified Anatomical Area or use artificial devices or inanimate objects to simulate or depict any Specified Sexual Activity while on the premises of an Adult Business.
2. All dancing or other live Adult Entertainment on the licensed premises shall only occur upon a stage at least two (2) feet above the immediate floor level and removed at least six (6) feet from the nearest Patron. The six-foot boundary from the outer edge of the stage shall be painted or otherwise clearly indicated on the floor so that Patrons will not cross the six-foot boundary. The absence of this demarcation will create a presumption that there have been violations of these standards of conduct during performances in unmarked areas. No Manager in charge of the Adult Business at the time shall knowingly permit any Patron to have any physical contact with an Entertainer or to cross the six-foot boundary while the Entertainer is engaged in a performance of Adult Entertainment. No Patron shall intentionally have any physical contact with an Entertainer or cross the six-foot boundary while the Entertainer is engaged in a performance of Adult Entertainment. No Entertainer shall engage in any performance of Adult Entertainment except upon the stage.

Chapter 5.05

3. No Employee, Server or Entertainer of an Adult Business while on the premises of the business shall knowingly touch, fondle or caress any Specified Anatomical Area of another Person, or knowingly permit another Person to touch, fondle or caress any Specified Anatomical Area of such Employee, Server or Entertainer, whether such Specified Anatomical Area is clothed, unclothed, covered or exposed. No Patron while on the premises of an Adult Business shall knowingly touch, fondle or caress any Specified Anatomical Area of an Employee, Server or Entertainer employed by the Adult Business, whether such Specified Anatomical Area is clothed, unclothed, covered or exposed.
 4. No Entertainer shall solicit, demand or receive any payment or gratuity from any Patron for any act prohibited herein and while on the premises of an Adult Business and no Entertainer shall receive any payment or gratuity from any Patron for any entertainment except as follows:
 - a. While such Entertainer is on the stage a Patron may place such payment or gratuity into a container provided by the Adult Business for the receipt of gratuities to be located outside the six-foot boundary surrounding the stage; or
 - b. While such Entertainer is not on the stage but while on the premises of an Adult Business and is clothed so as to not expose to view any Specified Anatomical Area, a Patron may place such payment or gratuity into the Entertainer's hand.
 5. No owner, Operator or Manager of an Adult Business shall:
 - a. knowingly permit alcoholic liquor or cereal malt beverages to be brought, sold or consumed upon the premises;
 - b. knowingly allow or permit any Employee of the business or any Patron to engage in any Specified Criminal Act or any Specified Sexual Activity on the premises;
 - c. knowingly allow or permit any Minor to be in or upon the premises of an Adult Business;
 - d. knowingly allow or permit a violation of this Ordinance or any other city ordinance provision or state law to occur on the premises.
- I. Signs required.
- All Adult Entertainment Businesses that provide live entertainment shall conspicuously display in the common area at the principal entrance to the premises, a sign, on which uppercase letters shall be at least two (2) inches high, and lowercase letters at least one inch high, which shall read as follows:

**THIS ADULT ENTERTAINMENT BUSINESS IS REGULATED
AND LICENSED BY THE CITY OF OVERLAND PARK**

ENTERTAINERS ARE:

- ◆ Not permitted to engage in any type of sexual conduct or prostitution on the premises or to fondle, caress or touch the pubic region, buttocks, genitals or female breast of any employee, patron or other entertainer or to permit any employee, patron or other entertainer to fondle, caress or touch the pubic region, buttocks, genitals or female breast of said entertainer.
- ◆ Not permitted to be nude.
- ◆ Not permitted to demand or collect any payment or gratuity from any customer for entertainment, except as follows:
 - While such entertainer is on the stage, by placing such payment or gratuity into a container located outside a six-foot boundary surrounding the stage; or
 - While such entertainer is not on the stage, by placing such payment or gratuity into the entertainer's hand.

CUSTOMERS ARE:

- ◆ Not permitted to be upon the stage at any time or to be within the six-foot marked boundary surrounding the stage while entertainers are performing.
- ◆ Not permitted to touch, caress or fondle the pubic region, genitals, buttocks or female breast of any employee, server or entertainer or engage in solicitation for prostitution.

J. Lighting required.

The premises of all Adult Businesses shall be equipped with overhead lighting in every place to which customers are permitted access, at an illumination of not less than one footcandle, as measured at the floor level, and such illumination must be maintained at all times that any customer or Patron is present in or on the premises.

K. Closed booths or rooms prohibited.

The interior premises of all Adult Businesses shall be configured in such a manner that there is an unobstructed view from a Manager's station of every area of the premises to which any Patron is permitted access for any purpose excluding restrooms. The view required must be by direct line of sight from the Manager's station. Adult Media Viewing Booths are prohibited.

L. Ventilation and sanitation requirements.

The premises of all Adult Businesses shall be kept in a sanitary condition. Except as otherwise provided herein, separate dressing rooms and restrooms for men and women shall at all times be maintained and kept in a sanitary condition.

Chapter 5.05

M. Hours of operation.

No Adult Business may be open or in use between the hours of 2:00 a.m. and 9:00 a.m. on any day other than a Sunday. No Adult Business may be open between the hours of 2:00 a.m. and 12:00 noon on a Sunday.

N. Facilities necessary.

No Adult Business license to conduct a Bath House shall be issued unless an inspection by the Code Official, and/or Administrator, Environmental Health, or his/her authorized representative reveals that the premises on which the applicant intends to conduct such business complies with each of the following minimum requirements:

1. The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given or showers taken. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business' operation shall be maintained in a clean and sanitary condition. Towels, linen, and items for personal use of Operators and Patrons shall be clean and freshly laundered. Towels, cloths, and sheets shall not be used for more than one Patron. Heavy, white paper may be substituted for sheets provided that such paper is changed for every Patron. No activity related to an Adult Business shall be carried on within any cubicle, room, booth, or any area within any permitted establishment which is fitted with a door capable of being locked.
2. Plumbing facilities shall be provided as required by O.P.M.C., Chapter 16.130, as amended.
3. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

The Code Official, and/or Administrator, Environmental Health, shall certify that the proposed business establishment complies with all of the requirements of this section and shall give or send such certification to the City Clerk. Provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof. The appropriate City official may recommend the issuance of a license contingent upon the compliance with any requirements in this section.

(History: Ord. AEB-2416 §9, 2003; AEB-2246 §2, 2001; AEB-2027 §3, 97; AEB-1944 §9, 95; AEB-1935 §9, 95; AEB-1846 §9, 94; AEB-1837 §9, 93; AEB-1782A §4, 93; AEB-1782 §1, 93)

5.05.090 License - Posting or display.

- A. Every Person licensed as an Adult Business shall post such license in a conspicuous place and manner on the Adult Business premises.
- B. Every Person holding a Server, Manager or Entertainer license shall post his or her license in his or her work area on the Adult Business premises so it shall be readily available for inspection by City authorities responsible for enforcement of this Ordinance.

(History: Ord. AEB-2416 §10, 2003; AEB-1944 §10, 95; AEB-1935 §10, 95; AEB-1846 §10, 94; AEB-1837 §10, 93; AEB-1782A §5, 93; AEB-1782 §1, 93)

5.05.100 Manager on premises.

- A. A Manager shall be on duty at all Adult Businesses at all times the premises are open for business. The name of the Manager on duty shall be prominently posted during business hours.
- B. It shall be the responsibility of the Manager to verify that any Person who provides Adult Entertainment or works as a Server within the premises possesses a current and valid Entertainer or Server's license and that such licenses are prominently posted. It shall also be the responsibility of the Manager to ensure that Minors do not enter upon the premises of an Adult Business.

(History: Ord. AEB-2416 §11, 2003; AEB-1944 §11, 95; AEB-1935 §11, 95; AEB-1846 §11, 94; AEB-1837 §11, 93; AEB-1782A §6, 93; AEB-1782 §1, 93)

5.05.110 Inspectors and inspections.

All Adult Businesses shall permit representatives of the police department or any other City official acting in their official capacity to inspect the premises as necessary to ensure the business is complying with all applicable regulations and laws.

(History: Ord. AEB-2416 §12, 2003; AEB-1944 §12, 95; AEB-1935 §12, 95; AEB-1846 §12, 94; AEB-1837 §12, 93; AEB-1782 §1, 93)

5.05.120 Suspension, revocation, or nonrenewal -- license.

Suspension, revocation or nonrenewal of licenses may be justified whenever the City Clerk has information that:

- A. The owner or Operator of an Adult Business or a holder of a Manager, Server or Entertainer license has violated, or knowingly allowed or permitted the violation of, any of the provisions of this Ordinance; or
- B. There have been recurrent violations of provisions of this Ordinance that have occurred under such circumstances that the owner or Operator of an Adult Business knew or should have known that such violations were committed; or
- C. The Adult Business license or the Manager, Server or Entertainer license was knowingly obtained through false statements in the application for such license, or renewal thereof; or
- D. The Adult Business licensee or the Manager, Server or Entertainer licensee knowingly failed to make a complete disclosure of all information in the application for such license, or renewal thereof; or
- E. The licensee has become disqualified from having a license by conviction of a Specified Criminal Act.

Upon receipt of any of the information set forth above, the City Clerk shall make this information known to the Governing Body, which, upon five (5) days written notice to the Person holding the license, shall conduct a public hearing to determine whether the license should be suspended or revoked. The Governing Body may pass a resolution setting forth the procedures for the conduct of such hearings. Based on the evidence produced at the hearing, the Governing Body may take any of the following actions:

Chapter 5.05

1. Direct the City Clerk to suspend the license for up to ninety (90) days; or
2. Direct the City Clerk to revoke the license for the remainder of the license year; or
3. Direct the City Clerk to place the license holder on administrative probation for a period of up to one year, on the condition that no further violations of the Ordinance occur during the period of probation. If a violation does occur and after a hearing the violation is determined to have actually occurred, the license will be revoked for the remainder of the license year.

(History: Ord. AEB-2416 §13, 2003; AEB-1944 §13, 95; AEB-1935 §13, 95; AEB-1846 §13, 94; AEB-1837 §13, 93; AEB-1782A §7, 93; AEB-1782 §1, 93)

5.05.130 Renewal.

- A. A license may be renewed by making application to the City Clerk on application forms provided for that purpose. Licenses shall expire on December 31 of each calendar year, and renewal applications for such licenses shall be submitted between December 16 and December 31.
- B. Upon timely application and review as provided for a new license, a license issued under the provisions of this Ordinance shall be renewed by issuance of a new license in the manner provided herein for the initial issuance of the license.
- C. If the application for renewal of a license is not made during the time provided herein, the expiration of such license shall not be affected, and a new application shall be required.

(History: Ord. AEB-2416 §14, 2003; AEB-1944 §14, 95; AEB-1935 §14, 95; AEB-1846 §14, 94; AEB-1837 §14, 93; AEB-1782 §1, 93)

5.05.140 Judicial review - stay of enforcement of orders.

Following the entry of an order by the City Clerk suspending or revoking a license issued pursuant to this Ordinance, or disapproving the renewal application for a license, such licensee or applicant may seek judicial review in the Overland Park Municipal Court by filing a notice of appeal with the Clerk of the Municipal Court within thirty (30) days of the date of the letter of notification. A copy of the notice of appeal shall be immediately filed with the City Clerk. A memorandum of points and authorities in support of the appeal shall be served and filed concurrently with the appeal, and appellant shall immediately serve a copy of the appeal and the memorandum of points and authorities upon the City Attorney. The City Clerk shall stay enforcement of any such order pending the final disposition of the appeal by the Municipal Court. Within fifteen (15) days of receipt of a copy of the notice of appeal, the City Clerk shall prepare and file the administrative record with the Clerk of the Municipal Court. Counsel for the City shall serve and file a memorandum of points and authorities in opposition to the appeal within fifteen (15) days after service of the appellant's appeal and memorandum of points and authorities. Appellant may serve and file a reply memorandum of points and authorities not later than three (3) days after service of the City's opposition memorandum. Within twenty-five (25)

days after the appeal and accompanying memorandum of points and authorities are filed with the Clerk of the Municipal Court and served upon the City Clerk and the City Attorney, the Municipal Court shall conduct a hearing on the appeal. The Municipal Court shall rule on the appeal within thirty (30) days after the appeal and accompanying memorandum of points and authorities are filed with the Clerk of the Municipal Court and served upon the City Clerk and the City Attorney. In the event that the last day of any time period set forth above falls upon a Saturday, Sunday or a legal holiday (as defined by K.S.A. 60-206), the time period shall run until the end of the next day which is not a Saturday, Sunday or a legal holiday. Appeals of the decision of the Municipal Court may be taken to the Johnson County District Court as authorized and in the manner provided by Chapter 12, Article 46, of the Kansas Statutes Annotated, as amended. In the event of such an appeal to the District Court, the City Clerk need not stay enforcement of any order pending the final disposition of proceedings for judicial review unless ordered to do so by the District Court.

(History: Ord. AEB-2416 §15, 2003; AEB-2414 §2, 2002; AEB-1944 §15, 95; AEB-1935 §15, 95; AEB-1846 §15, 94; AEB-1837 §15, 93; AEB-1782 §1, 93)

5.05.150 Penalty.

It shall be unlawful for any Person to violate any of the provisions of this Ordinance. Upon conviction thereof, such Person shall be fined not less than \$1.00 nor more than \$500.00, or be punished by incarceration for up to six (6) months, or by both such fine and incarceration. Each day's violation of, or failure, refusal or neglect to comply with, any provision of this Ordinance shall constitute a separate and distinct offense.

(History: Ord. AEB-2416 §16, 2003; AEB-1944 §16, 95; AEB-1935 §16, 95; AEB-1846 §16, 94; AEB-1837 §15, 93; AEB-1782A §8, 93; AEB-1782 §1, 93)

5.05.160 Regulations.

The City Clerk shall have the power to promulgate regulations as may be necessary and feasible for the carrying out of the duties of his/her office and which are not inconsistent with the provisions of this ordinance.

(History: Ord. AEB-1944 §17, 95; AEB-1935 §17, 95; AEB-1846 §17, 94; AEB-1837 §17, 93; AEB-1782 §1, 93)

5.05.165 Savings Clause.

Neither the adoption of this ordinance nor the repeal or amendment of any ordinance or part or portion thereof shall in any manner affect the prosecution or civil enforcement for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect.

(History: Ord. AEB-2027 §4, 97)

Chapter 5.05

5.05.170 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this ordinance, or the application thereof to any circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance.

(History: Ord. AEB-1944 §18, 95; AEB-1935 §18, 95; AEB-1846 §18, 94; AEB-1837 §18, 93)

5.05.180 Application to Existing Businesses.

- A. The provisions of this Ordinance shall apply to all Adult Businesses existing on the effective date of Ordinance No. AEB-1837 as well as to all Adult Businesses established after the effective date of Ordinance No. AEB-1837.
- B. Any Adult Business lawfully operating on December 15, 1993, that does not comply with section 5.05.070 A (1) and (2) herein shall be deemed a nonconforming business. The nonconforming business will be permitted to continue for a period not to exceed six (6) months, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming businesses shall not be increased, enlarged, extended or altered except that the business may be changed to a conforming business. If two (2) or more Adult Businesses are within 500 feet of one another and otherwise in a permissible location, the Adult Business which was first established and continually operating at a particular location is the conforming business and any later- established business is nonconforming.
- C. An Adult Business lawfully operating as a conforming business is not rendered nonconforming by the location, subsequent to the grant or renewal of the Adult Business license, of a school, church, licensed day care center, public park or property zoned or used for residential purposes located within the City limits and within six hundred (600) feet of the Adult Business. This provision applies only to the renewal of a valid license and does not apply when an application for a license is submitted after a license has expired or has been revoked.
- D. Any nonconforming business may apply to the Governing Body for an extension of time beyond that date provided herein within which to terminate the nonconforming business or make the business conforming. No such extension of time shall be granted for a period longer than one (1) year after the termination date otherwise set forth herein and shall be granted only upon a showing of extreme hardship.

(History: Ord. AEB-2416 §17, 2003; AEB-1944 §19, 95; AEB-1935 §19, 95; AEB-1846 §19, 94)

5.05.190 Retail Sales of Adult Media.

- A. Applicability.

This section shall apply to any bookstore, video store or other similar retail store in which Adult Media constitutes more than ten (10) percent but not more than forty (40) percent of the store's inventory at any time, or where Adult Media constitutes more than ten (10) percent but not more than forty (40) percent of the merchandise displayed for sale or

rental at any time, or where Adult Media occupies more than ten (10) percent but not more than forty (40) percent of the sales floor area of the business (not including store rooms, stock areas, restrooms, or any portion of the business not open to the public) at any time.

B. Prohibition of Public Display.

The owner or Manager of a store to which this section is applicable shall have the affirmative duty to prevent the display of Adult Media at or within the portions of the business open to Minors.

C. Display of Adult Media.

Adult Media in a store to which this section applies shall be kept in a separate room or section of the store, which room or section shall:

1. Not be open to any Minor;
2. Be physically and visually separate from the rest of the store by an opaque wall or durable material reaching at least eight (8) feet high or to the ceiling, whichever is less;
3. Be located so that the entrance to it is as far as reasonably practicable from media or other inventory in the store likely to be of particular interest to children; and
4. Have access controlled by electronic or other means to provide assurance that Minors will not accidentally enter such room or section.

(History: Ord. AEB-2416 §18, 2003)

[Next Page is 5-300]

Chapter 5.06 ALARM SYSTEMS

Sections:

- 5.06.010 Definitions.
- 5.06.020 Permit Required; Unlawful Acts; Exception.
- 5.06.030 Application for Permit; Non-transferability; Exceptions.
- 5.06.040 Regulations; Requirements; Duties; Unlawful Acts.
- 5.06.050 False Alarms; Fees Required; Grace Period; Right of Appeal.
- 5.06.052 Police Non-response to Alarms and Permit Revocation.
- 5.06.054 No Duty Created.
- 5.06.055 Appeals, Administrative Hearing.
- 5.06.060 User Instruction. (Repealed)
- 5.06.070 Automatic Dialing Devices; Certain Interconnections Prohibited; Exceptions.
- 5.06.075 Alarm School.
- 5.06.080 Confidentiality; Statistics.
- 5.06.090 Penalty.
- 5.06.100 Severability.

5.06.010 Definitions.

- A. "Alarm Coordinator's office" means those persons designated by the Chief of Police to administer and enforce the provisions of this ordinance.
- B. "Alarm school" means a course of instruction sponsored and jointly conducted by the Overland Park Police Department and the alarm industry.
- C. "Alarm system" means any assembly of equipment, mechanical or electrical, arranged to signal the occurrence of an illegal entry or other activity requiring urgent attention and to which police would be expected to respond.
- D. "Alarm user" means any person, firm, partnership, association, corporation, business, company or organization of any kind in control of any building, structure, premise or facility on which an operating alarm system is located.
- E. "Answering service" means a telephone answering business providing among its services the service of receiving on a continuous basis through trained employees, emergency signals from alarm systems, and thereafter immediately relaying the message by live voice to the communication center of the Overland Park, Kansas, Police Department.
- F. "Automatic dial protection device" means an electrically operated instrument composed of sensory apparatus and related hardware which automatically sends over telephone lines a prerecorded voice alarm upon receipt of a stimulus from the sensory apparatus that has detected a force or condition characteristic of an unauthorized intrusion or an emergency message indicating a need for emergency response.
- G. "Burglary alarm system" means an automated alarm system signaling an entry or attempted entry into an area protected by the system.

Chapter 5.06

- H. "Central station protective system" means a system or group of systems operated by a person, firm or corporation in which the operations of electrical protection circuits and devices are transmitted to, recorded in, maintained and supervised from a central station having operators in attendance at all times.
- I. "Chargeable false alarm" means a false alarm which is counted against the permittee for the purpose of determining when and the amount of any alarm fee to be assessed pursuant to O.P.M.C. 5.06.050.
- J. "City" means the City of Overland Park, Kansas.
- K. "False alarm" means an alarm signal, eliciting an urgent response by police when a situation requiring an urgent response does not, in fact, exist, but does not include an alarm signal caused by violent conditions of nature. A false alarm may be the result of, but not limited to, mechanical or electronic failure, malfunction, improper installation, improper adjustment, accidental tripping, misoperation, misuse, defect or negligence of a person. The burden of proving that such alarm was not a false alarm shall be on the alarm user.
- L. "Local alarm system" means an alarm system which when activated causes an audible and/or visual signaling device to be activated and is intended to be seen and/or heard by others outside of the protected premises.
- M. "Nonchargeable false alarm" means a false alarm that, due to type, cause or circumstance, will not be counted against the permittee for the purpose of determining when and the amount of any false alarm fee to be assessed pursuant to O.P.M.C. 5.06.050.
- N. "Non-response" means police officers will not be dispatched to investigate a report of a burglary alarm system alarm signal.
- O. "Notice" means, unless otherwise specified herein, written notice, given by personal service upon the addressee, or given by United States mail, postage prepaid, addressed to the persons to be notified at his or her last known address. Service of such notice shall be effective upon completion of personal service, or upon placing of the same in the custody of the United States Postal Service.
- P. "Panic Alarm" means an alarm device or system designated to be victim activated to alert others to the existence of an emergency.
- Q. "Permit year" means a twelve-month period beginning on January 1 of each year and ending on December 31 of the same year.
- R. "Police Chief" means the Chief of Police of the City of Overland Park, Kansas, or his or her designee.
- S. "Primary trunkline" means a telephone line leading into the communications center of the Overland Park, Kansas Police Department that is for the purpose of handling emergency calls on a person-to-person basis and which line is identified by a specific listing among the emergency numbers in the telephone directory issued by the telephone company serving the City.

- T. "Proprietary system" means an alarm system sounding and/or recording alarm and supervisory signals to a control center located within the protected premises, the control center being under the supervision of the proprietor of the premises. If a proprietary system includes a signal line connected directly or by means of an automatic dialing device to a police communications system, a central station protective system or answering service, it thereby becomes an "alarm system" as defined in this section.
- U. "Robbery alarm system" means an alarm system designed to be person-activated signaling a robbery or attempted robbery.
- V. "Secondary trunkline" means a telephone line leading into the central switchboard in the Overland Park City Hall that is identified by a specific listing in the telephone directory for handling administrative and other calls on a person-to-person basis.

(History: Ord. APD-1982 §1, 96; APD-1957 §1, 95; APD-1809 §1, 93; APD-1336 §1, 85; APD-1140 §1, 81; APD-713)

5.06.020 Permit required; Unlawful acts; Exception.

- A. It is unlawful for any person, firm, partnership, association, corporation, business, company or organization of any kind to be in control of any building, structure, premise or facility on which an operating alarm system is located without first obtaining a permit for such alarm system. Provided, the provisions of this Section are not applicable to local alarm systems affixed to motor vehicles.
- B. A permit fee of \$10.00 will be charged for each alarm permit issued. This fee shall be paid to the City Clerk prior to issuance of the permit. All valid alarm permits in effect on December 31, 1995, and all alarm permits issued after that date shall be valid as long as the permit holder continuously operates an alarm system at the same location. Permit holders are required to verify the continued operation of the permitted alarm when such information is requested by the City staff either orally or in writing. Alarm users who fail to secure an alarm permit prior to placing it in operation shall be charged a \$25.00 late fee if the alarm user has not secured an alarm permit within 15 days of receipt of notice from the City that an alarm permit is required, unless the Chief of Police or his designee waives the late fee for good cause shown. This late fee shall be in addition to and separate from the \$10.00 alarm permit fee. Nonpayment of the \$25.00 late fee is a violation of this ordinance. An alarm permit will not be issued until both the \$25.00 late fee and the \$10.00 alarm permit fee are paid. Failure to secure an alarm permit within 15 days of receipt of notice that an alarm permit is required shall also result in the Chief of Police or his or her designee directing that police response to future burglar alarms be terminated, until both the \$10 license fee and the \$25 late fee are paid in full. The alarm coordinator's office shall send notification of the "non-response" order to the alarm user by regular mail. Alarm users may appeal the "non-response" order to the Overland Park Municipal Court in writing within 15 days of the date the order was mailed. The hearing on appeal shall be as provided in O.P.M.C. 5.06.05. During the pendency of any appeal the "non-response" order shall remain in effect. Upon payment of the required fees the order of "non-response" shall be terminated, provided nothing contained in this paragraph or Section shall imply or otherwise convey the impression

that there exists a duty or a duty is created that would require a law enforcement response to any alarm received by the police department upon payment of the required fees. It is a violation of this ordinance to operate an alarm without a permit. Violations may be prosecuted in the municipal court. Upon request, applicants for an alarm permit shall provide proof of alarm system acquisition and installation.

(History: Ord. APD-2811 §1, 2009; APD-2120 §1, 98; Ord. APD-2104 §1, 98; Ord. APD-2063A §1, 97; APD-2063 §1, 97; APD-1982 §2, 96; APD-1957 §2, 95; APD-1897 §1, 94; APD-1809 §2, 93; APD-1140 §2, 81)

5.06.030 Application for permit; Non-transferability; Exceptions.

- A. In accordance with O.P.M.C. 5.06.020, every alarm user or operator shall obtain an alarm permit from the Police Department Alarm Coordinator's office prior to operation or activation of an alarm system. Alarm permits are non-transferable. Each separate building, structure, business, premise or facility maintaining one or more alarm systems must obtain an alarm user's permit. Each permit shall bear the signature of the Chief of Police or his or her designee and shall be physically kept upon the premises using the alarm system and shall be available for inspection by the Chief of Police, his or her designee or any police officer upon request.
- B. An alarm user which is a governmental political unit shall be subject to this ordinance; but such governmental political unit shall not be subject to the payment of any fees.
- C. An alarm user which temporarily and in cooperation with the Overland Park Police Department possesses, maintains, or controls an alarm system owned by the Overland Park Police Department shall be subject to this ordinance; provided however, such alarm user shall not be subject to the payment of any fees.

(History: Ord. APD-1982 §3, 96; APD-1957 §3, 95; APD-1897 §2, 94; APD-1809 §3, 93; APD-1336 §2, 85; APD-1140 §3, 81)

5.06.040 Regulations; Requirements; Duties; Unlawful acts.

- A. The Chief of Police or his or her designee may require inspection of any or all alarm systems installed within the City.
- B. Local alarm systems shall not emit a sound similar to that of an emergency vehicle siren or a civil defense warning system.
- C. Local alarm systems shall be equipped to automatically discontinue emitting an audible sound within 15 minutes of activation.
- D. Whenever a change occurs relating to the written information required by this ordinance, the alarm user shall give written notice thereof to the Alarm Coordinator's office within 15 days after such becomes effective.

- E. Alarm users shall notify the police communications center prior to any service, test, repair, maintenance, adjustment, alteration or installation of a local or police monitored alarm system which might activate a false alarm. Upon the completion of such service, test, repair, maintenance, adjustment, alteration or installation, the alarm user shall notify the police communications center of such completion. The police communication's officer shall forward this information to the Alarm Coordinator's office as requested.
- F. An alarm business, alarm user, employee of a central station protective system or employee of an answering service charged with the responsibility of relaying a live voice request for police response upon the activation of an alarm system shall give the following information to the police communications center at the time of such request: address of alarmed location; type of alarm system that has been activated; name of commercial business or full first and last name of resident; specific location of the building, structure or facility protected by the activated alarm; name of the alarm business making request if applicable; name of person making the request; and a phone number where the requesting party can be contacted. It is the sole responsibility of the person making such request to notify authorized persons in control of such alarmed building, structure or facility that such alarm has been activated.
- G. The Alarm Coordinator's office shall be responsible for determining which alarms constitute false alarms as defined by Section 5.06.010. A record of all false alarms shall be maintained by the Alarm Coordinator's office.
- H. At the time of the first and second chargeable false alarms for any permittee within any permit year, the Alarm Coordinator's office will notify the permittee by first class mail of such occurrence and that additional chargeable false alarms during the permit year will require the payment of fees as per Section 5.06.050 of this Code.
- I. It is unlawful for any person to activate any burglary, robbery or residential emergency alarm for the purpose of summoning police except in the event of an actual or attempted burglary, robbery or medical emergency or for such person notifying the police of an activated alarm and having knowledge that such activation was apparently caused by an electrical or other malfunction of the alarm system to fail to notify the police communications center of such malfunction.
- J. It shall be unlawful to have or maintain an alarm system on any premise without providing address numbers which are clearly visible from the roadway abutting the property. For residential premises, the address numbers shall be placed in a position on the building or on any structure, mail box, sign or monument on the property that is securely fixed to the ground to be plainly legible and visible from the street or road fronting the property. For Commercial premises, the address numbers shall be posted to the left, right or overhead to the main entrance of the building, structure or facility and if such building, structure or facility is on a corner lot, address numbers shall face the street named in the official address as designated by the United States Postal Service.

Chapter 5.06

- K. The Chief of Police shall establish, distribute and cause the enforcement of Rules and Regulations, subject to the provisions of this chapter, as from time to time he/she deems it necessary for the implementation of this ordinance.

(History: Ord. APD-2735 §1, 2008; APD-1982 §4, 96; APD-1957 §4, 95; APD-1897 §3, 94; APD-1809 §4, 93; APD-1336 §3, 85; APD-1140 §4, 81)

5.06.050 False alarms; Fees required; Grace period; Right of Appeal.

- A. The following fees shall be assessed alarm users who have recorded "chargeable" false alarms within a permit year:
1. There shall be no fees assessed for the first and second chargeable false alarms.
 2. There shall be a fee of \$50.00 assessed for the third chargeable false alarm.
 3. There shall be a fee of \$100.00 assessed for the fourth chargeable false alarm.
 4. There shall be a fee of \$150.00 assessed for the fifth chargeable false alarm.
 5. There shall be a fee of \$200.00 assessed for the sixth chargeable false alarm.
 6. There shall be a fee of \$250.00 assessed for the seventh chargeable and each subsequent chargeable false alarm.
- B. The payment of the fees provided for in paragraph (a)(1-6) of this section shall be submitted to the City Clerk's office within 30 days of receiving notice that such fee is due.
- C. Failure to pay false alarm fees is a violation of this ordinance. Violations may be prosecuted in the municipal court.
- D. If within the first 45 days of use, a permittee's alarm system signals a false alarm, the first false alarm during this period shall be considered a nonchargeable false alarm. This one-time-nonchargeable false alarm is intended to afford the permittee the opportunity to make adjustments and corrections in the alarm system. This nonchargeable false alarm shall be in addition to the two chargeable false alarms permitted each permit year that are not assessed false alarm fees. Provided, the provisions of this paragraph are not applicable to alarm users operating an alarm system without a permit. Upon request, permittees shall provide proof of alarm system acquisition and installation.
- E. Any alarm user who has been notified that a chargeable false alarm has been recorded and assessed against him/her may appeal such assessment of false alarm to the Chief of Police or his or her designee by filing a written notice of appeal with the Chief of Police within 15 days of the date of the notice of such assessment of false alarm. The filing of such notice shall stay the effect of the assessment and false alarm fee until a decision on the appeal is rendered by the Chief of Police or his or her designee.
- Subsequent to considering the statements and other evidence of the person appealing, the Chief of Police or his or her designee shall have the power to uphold or set aside the assessment of chargeable false alarm and fees. Any person aggrieved by or dissatisfied with the decision of the Chief of Police or his or her designee, may within 15 days of the

date of the decision, file a written notice or statement of appeal from said decision, to the Overland Park Municipal Court for an administrative hearing. The written notice shall be filed with the clerk of the municipal court and a copy of the notice of appeal delivered to the Chief of Police.

The filing of a written appeal under this subsection shall stay any false alarm fee assessed by the Chief of Police or his or her designee.

(History: Ord. APD-1982 §5, 96; APD-1957 §5, 95; APD-1912 §1, 95; APD-1897 §4, 94; APD-1809 §5, 93; APD-1403 §1, 86; APD-1336 §4, 85; APD-1140 §5, 81)

5.06.052 Police non-response to alarms and permit revocation.

- A. Subsequent to the ninth false alarm during the calendar year, the Alarm Coordinator's office shall send notification to the alarm user by regular mail of the following information:
That if an additional false alarm occurs during the calendar year, the Alarm Coordinator's office will review the alarm user's history to include past and ongoing efforts to eliminate false alarms. Based on this review, the Alarm Coordinator's office will make a recommendation to the Chief of Police as to whether the police should terminate its response to future burglar alarms and to revoke the alarm user's permit.
- B. Upon receipt of a recommendation of non-response and permit revocation, the Chief of police shall review the recommendation and may direct the non-response to any subsequent burglar alarms and revocation of alarm permit. Only the Chief of Police or the Acting Chief of Police may direct the non-response to burglar alarms and revocation of permit. The police non-response to burglar alarms and revocation of permit shall remain in effect until the alarm user meets the requirements for reinstatement of response and reissuance of revoked alarm permit as set forth herein. Only the Chief of Police or the Acting Chief of Police may direct the reinstatement of response to burglar alarms and reissuance of alarm permit.
- C. Alarm users may appeal a non-response order and permit revocation to the municipal court in writing within 15 days after receipt of the notice of non-response from the Chief of Police. Police response and active status of alarm permit will continue while an appeal is pending. Appeals of non-response orders and permit revocation shall be conducted in accordance with the procedures set forth in O.P.M.C. 5.06.055.
- D. Non-response orders, notice of permit revocation and information concerning the right to appeal the non-response order and permit revocation will be sent to the alarm user by certified mail at least thirty days prior to the effective date of the non-response order and permit revocation.
- E. Alarm users may apply for reinstatement of police response to burglar alarms and reissuance of alarm permit by applying in writing on a form provided by the Alarm Coordinator's office. The Chief of Police may set aside the non-response order and reissue the alarm permit upon finding that reasonable efforts have been made to correct the alarm user's problem with false alarms. Reasonable efforts shall include but not be limited to:

Chapter 5.06

1. Submission of a written report from the alarm company servicing the alarm, certifying that the system has been inspected, repaired if required and that it is functioning properly.
2. Payment of all license permit and false alarm fees.
3. Proof of a valid alarm permit.
4. If a residence, the alarm user must show proof that the alarm user and all adults residing in the household where the alarm is located have attended and successfully completed the alarm school. The Chief of Police may waive this requirement if valid and compelling reasons preclude attendance as required.
5. If a commercial establishment, the alarm user must show written proof that all supervisory personnel working on the alarmed premises have attended and successfully completed the alarm school. The Chief of Police may waive this requirement if valid and compelling reasons preclude attendance as required.
6. Submission of a false alarm prevention report that clearly sets forth the actions taken to discover and eliminate false alarms and what actions will be taken in the future to eliminate false alarms. False alarm prevention report forms will be provided by the Alarm Coordinator's office.
7. Payment of a fifty dollar administrative review fee.

If the Alarm Coordinator's office determines that the required corrective action has been taken, the office will submit a report to the Chief of Police documenting the corrective action and recommending whether the alarm user should be reinstated to response status and the user's permit reissued. Subsequent to reviewing the reinstatement recommendation of the Alarm Coordinator's office, the Chief of Police may reinstate police response to burglar alarms and reissue the user's alarm permit or may after consultation with the Alarm Coordinator's office, establish additional requirements to substantiate that "reasonable efforts" are being made to correct the problem with false alarms.

Activation of the alarm system during the period an alarm permit has been revoked shall constitute a violation of this ordinance. Violations may be prosecuted in the municipal court. (History: Ord. APD-1982 §6, 96)

5.06.054 No duty created.

Nothing contained herein, to include but not limited to, non-response to burglar alarm orders, permit revocation or reinstatement orders issued by the Chief of Police, shall:

- A. Preclude the police department from responding on a discretionary basis to panic alarms, ambush alarms, telephonic or other communications describing emergencies or crimes in progress, or routine calls for service, or
- B. Be construed in any fashion to create a duty for the police to respond under any circumstance, or
- C. Limit the police department from assessing fees for false alarms or issuing notices to appear for violations of this ordinance.

(History: Ord. APD-1982 §7, 96)

5.06.055. Appeals, administrative hearing.

The hearing on appeal provided for in O.P.M.C. 5.06.050 shall be conducted by an Overland Park Municipal Court judge who shall sit as an administrative judge for purposes of this chapter. The hearing on appeal shall be scheduled and held by the municipal court no later than ten business days after the notice of appeal is filed with the clerk of the court. The time of the hearing shall be set by the clerk of the municipal court. The sole issue for determination by the court shall be whether the decision of the Chief of Police or his or her designee was within the scope of his/her authority, supported by substantial evidence and not arbitrary and capricious. The Court shall make specific findings of fact and conclusions of law in each case.

Pursuant to its role as administrative judge, the Court is empowered to hold hearings, subpoena witnesses, take the testimony of any person under oath and in connection therewith, to require the production of any evidence relating to any matter being heard. In the case of the refusal of any person to comply with any subpoena issued hereunder or to testify in any matter regarding which he or she may be lawfully questioned, the Court may order such person to comply with such subpoena and testify; and failure to obey the Court's order may be punished by the Court as contempt.

(History: Ord. APD-1912 §2, 95)

5.06.060 User Instructions.

Repealed.

(History: Ord. APD-1336 §5, 85;APD-1140 §6, 81)

5.06.070 Automatic dialing devices; Certain interconnections prohibited; Exceptions.

- A. It is unlawful for any person to program an automatic dialing device to select a primary trunk line; and it is unlawful for an alarm user to fail to disconnect or reprogram an automatic dialing device within 12 hours of receipt of written notice from the Alarm Coordinator's office that it is so programmed.
- B. It is unlawful for any person to program an automatic dialing device to select a secondary trunk line; and it is unlawful for an alarm user to fail to disconnect or reprogram such device within 12 hours of receipt of written notice from the Alarm Coordinator's office that an automatic dialing device is so programmed.

(History: Ord. APD-1982 §8, 96; APD-1140 §7, 81)

5.06.075 Alarm school.

The Chief of Police shall establish rules and regulations for the implementation and operation of an alarm school to be operated in cooperation with the alarm industry. The alarm school will provide instruction and information to alarm users to help eliminate false alarms. Alarm users that successfully complete alarm school will be issued a completion certificate that shall be worth \$50.00 toward any chargeable false alarm fees pending at the time the user attended the school.

(History: Ord. APD-1982 § 9, 96)

5.06.080 Confidentiality; statistics.

- A. All information submitted in compliance with this ordinance shall be held in strictest confidence subject to the provisions of the Kansas Open Records Act; shall be deemed a public record exempt from disclosure; and shall be kept so that the contents thereof shall not be known except to persons authorized with the administration and enforcement of this ordinance. The Alarm Coordinator shall be charged with the sole responsibility for the maintenance of all records of any kind whatsoever under this ordinance.
- B. Subject to the requirements of confidentiality and the provisions of the Kansas Open Records Act, the Alarm Coordinator shall develop and maintain statistics having the purpose of assisting alarm system evaluation for use by members of the public and Governing Body.

(History: Ord. APD-1809 §6, 93; APD-1140 §8, 81)

5.06.090 Penalty.

Any person convicted of a violation of any of the provisions of or failing to comply with any of the mandatory requirements of this ordinance shall be guilty of a public offense and punished by a fine of not more than \$500 or by imprisonment not to exceed six months or by both such fine and imprisonment. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of the City ordinance is committed, continued or permitted by any such person.

(History: Ord. APD-1140 §9, 81)

5.06.100 Severability.

If any part or parts of this ordinance shall be held to be invalid, such invalidity shall not effect the validity of the remaining parts of this ordinance. The Governing Body declares that it would have passed the remaining parts of this ordinance if it had known that such part or parts thereof would be declared invalid.

(History: Ord. APD-1140 §10, 81)

[Next Page is 5-400]

Chapter 5.08
AMUSEMENT ENTERPRISES

Sections:

- 5.08.001 Definitions.
- 5.08.003 Unlawful north of 111th Street. (Repealed)
- 5.08.006 Permit required.
- 5.08.008 Prohibited Activities; Games of Chance; Amusement Rides on Public Right-of-Way.
- 5.08.009 North of 111th Street - Conditions Allowed. (Repealed)
- 5.08.010 Rides or food and beverage amusements prohibited where - Permit. (Repealed. See 5.08.006)
- 5.08.020 Permit procedure.
- 5.08.030 Standards of issuance of permit.
- 5.08.040 Duty of permittee to restore location.
- 5.08.050 Inspection and approval of premises.
- 5.08.060 Compliance with ordinances and regulations.

5.08.001 Definitions.

As used in this chapter, the words and phrases defined in this section shall have the following meanings, unless the context otherwise requires.

- A. "Carnival" shall be defined as a traveling enterprise offering amusement activities, mechanical and/or electrical rides, booths for the conduct of games of skill, or sideshows.
- B. "Circus" shall be defined as a show or performance that includes, but is not limited to, feats of physical skill and daring, animal acts, or performances by jugglers or clowns.
- C. "Street fair" shall be defined as a gathering of buyers and sellers with their wares on a public street or right-of-way at a particular place and time for trade.

(History: Ord. CAR-1256 §1, 84)

5.08.003 Unlawful north of 111th Street.

Repealed.

(History: Ord. CAR-769; CAR-744; CAR-715; CAR-689; CAR-590)

5.08.006 Permit required.

It is unlawful for any person, firm, partnership or corporation, other than the City of Overland Park, to operate an exhibition of any product, merchandise or service for profit anywhere within the city, or to operate any carnival, circus, street fair or similar public performance or amusement enterprise providing any amusement rides, or dispensing of food and beverage within the city, without first securing a permit from the Governing Body for the operation of such exhibition, carnival, circus, amusement enterprise or street fair.

(History: Ord. CAR-1436 §1, 87; CAR-1256 §2, 84; CAR-769; CAR-744; CAR-715; CAR-689; CAR-590 §1,70)

5.08.008 Prohibited Activities; Games of Chance; Amusement Rides on Public Right-of-Way.

It shall be unlawful for any person, firm, partnership or corporation to operate or permit the operation of any game of skill or game of chance where prizes are offered in connection with such carnivals, circuses, street fairs, or amusement enterprises. In addition, it shall be unlawful for any person, firm, partnership or corporation, other than the City of Overland Park, to operate or permit the operation of any amusement rides on public streets or in the public right-of-way. (History: Ord. CAR-1436 §2, 87; CAR-1256 §3, 84)

5.08.009 North of 111th Street - Conditions allowed.

Repealed.

(History: Ord. CAR-769; CAR-744; CAR-715; CAR-689; CAR-590)

5.08.010 Rides or food and beverage amusements prohibited where - Permit.

Repealed. See 5.08.006

(History: CAR-744; CAR-715; CAR-689; CAR-590)

5.08.020 Permit procedure.

- A. Any person, firm, partnership or corporation desiring to secure a permit, as provided for in Section 5.08.006, shall make an application to the Governing Body for issuance of a permit. Each application shall be accompanied by a permit fee of one hundred dollars which shall be refunded in the event the application is denied. The application for the issuance of a permit shall be made to the office of City Clerk, and a hearing for the consideration of such application shall be at the earliest regular meeting of the Governing Body thereafter.
- B. Each application for a permit shall be accompanied by a plot plan specifying the location of such exhibition, carnival, circus, amusement enterprise or street fair in relation to existing buildings, drive areas, located on the tract and the amount of space available for off-street parking of vehicles.
- C. It is unlawful for any person, firm, partnership or corporation, other than the City of Overland Park, to operate and maintain an exhibition, carnival, circus, amusement enterprise or street fair other than in compliance with all terms, conditions and regulations of the permit as granted by the Governing Body. Failure to comply with any such terms, conditions and regulations of a permit shall immediately void the permit.

(History: Ord. CAR-1436 §3, 87; CAR-769 §2, 73; CAR-590 §2, 70; CAR-199B; CAR-199A; CAR-199 §1, 63)

5.08.030 Standards of issuance of permit.

- A. Standards and regulations applicable to all exhibitions, carnivals, circuses, amusement enterprises or street fairs, except those directly sponsored, promoted, and conducted by the City of Overland Park, are as follows:
 - 1. The starting time for any such exhibition, carnival, circus or amusement

enterprise or street fair shall be no earlier than 1 p.m. with the exception of any Saturday and Sunday which may have a starting time of 9 a.m. and noon respectively. The closing time for any such exhibition, carnival, circus, amusement enterprise or street fair shall be no later than 10:30 p.m. with the exception of any Friday and Saturday, which may have a closing time of 11 p.m.

2. A certificate of insurance shall accompany the permit application providing the following:

Coverage

- a. General liability including products/ completed operations, broad form contractual, independent contractors and personal injury.
- b. Automobile liability including all owned, non-owned, and hired vehicles.

Limits

Minimum:

- a. \$5,000,000 each occurrence if amusement rides or other similar devices are used on the premises;
- b. \$1,000,000 for each occurrence if amusement rides or other similar devices are not in use on the premises.

Liability insurance requirements may be modified or waived at the City's discretion upon approval by the Governing Body. A written application requesting deviation from the specific insurance requirements set forth in this ordinance, in the form of a certificate of insurance evidencing the applicant's insurance coverage, must first be filed with the City Clerk who shall forward to the City's Risk Manager, who shall forward to the Governing Body his or her reasoning for any recommended modification or waiver, or denial thereof, prior to Governing Body action on the permit application.

If an excess liability policy is used to supplement the primary limits of protection, it must be issued on a "following forms" basis.

The City of Overland Park, the sponsoring organization, and the owner of the premises being used to accommodate the amusement enterprise shall be named as "additional insureds" on all liability insuring agreements offered in compliance with this ordinance.

The permittee, upon receipt of notice of any claim in connection with this permit, shall promptly notify the City with full details thereof including an estimate of the amount of loss or liability. The permittee shall promptly notify the City of any impairment or reduction of primary or excess coverage in excess of \$10,000 whether or not such impairment of liability came about in connection with this permit.

In the event, after notice of loss, the City shall determine that the permittee's aggregate coverage shall have been impaired or reduced to such an extent that the

Chapter 5.08

City shall determine such limits inadequate, the permittee shall upon notice from the City, promptly reinstate the original limits of liability required hereunder and shall furnish evidence thereof to the City in a form satisfactory to the City.

The City will only accept coverage from an insurance carrier who offers proof that it:

- a. is licensed to do business in the State of Kansas;
 - b. carries a Best's policyholder rating of A or better; and
 - c. carries at least a Class X financial rating; or
is a company mutually agreed upon by the City and the permittee.
3. Any one such event shall not cover an area in excess of twenty-five thousand square feet.
 4. Public sanitary facilities shall be provided for use at the time of first utilization by the permittee of the location of such exhibition, carnival, circus, amusement enterprise or street fair, provided that the public sanitary facilities shall be in a condition approved by the City Environmental Health Officer.
 5. The Governing Body must approve the site location of any such exhibition, carnival, circus, amusement enterprise or street fair.
 6. Any person, firm, partnership or corporation operating any such exhibition, carnival, circus, amusement enterprise or street fair shall be subject to and shall comply with all pertinent City ordinances and regulations not in conflict herewith. Provided, however, that compliance with Overland Park Municipal Code 18.36.010 shall not be required.
 7. The permittee shall, prior to commencing operation of any such exhibition, carnival, circus, amusement enterprise, or street fair, provide the City Clerk with a Certificate of Inspection. Each Certificate shall:
 - a. Be signed by the insurance carrier or authorized agent;
 - b. State the date of inspection and the items inspected, including, but not limited to, any and all rides, attractions, structures, related utilities, and support equipment and supplies;
 - c. Specifically state any and all known defects or dangerous conditions, including defects or conditions which could be reasonably discovered pursuant to an inspection, concerning any and all rides, attractions, structures, related utilities, and support equipment and supplies.

A valid inspection shall be an inspection performed by the insurance company providing the insurance required by this ordinance within the most recent annual quarter under the terms of the insurance coverage. Further, the existence of a defective or otherwise dangerous condition may be sufficient reason to deny the permit requested.

A permittee's failure to provide a proper Certificate of Inspection prior to commencing the operation of any such exhibition, carnival, circus, amusement enterprise, or street fair is guilty of a public offense, and upon conviction, shall be punished as provided in 1.12.010. The City of Overland Park may further enforce violation of this section by maintaining any action in the appropriate court for injunction to enforce the provisions of this chapter, to cause the correction of any such violation, for assessment and recovery of a civil penalty for such violation, or to pursue other appropriate civil remedy.

- B. Additional standards applying to any exhibition, carnival, circus, amusement enterprise or street fair, except those directly sponsored, promoted, and conducted by the City of Overland Park, are as follows:
1. Not more than four such events shall be allowed in any one calendar year on any one site.
 2. Any one such event shall not continue any longer than seven consecutive days.
 3. The site location as shown on the plot plan shall not be closer than eight hundred feet to any developed areas zoned R-1 through R-6. The City Council may waive or modify this requirement, after a public hearing for which notice has been given to all property owners within the affected portion of the eight hundred foot area, upon a finding that the purpose and intent of this requirement will be satisfied and that the public health, safety and welfare will not be adversely affected by such waiver or modification.

(History: Ord. NOI-2287 §6, 2001; CAR-1677 ' 1, 91; CAR-1564 ' 1, 88; CAR-1436 ' 4, 87; CAR-1282 ' 1, 84; CAR-1256 ' 4, 84; CAR-1226 ' 1, 82; CAR-715 ' 2, 72; CAR-590 ' 3, 70; CAR-199C, 70 CAR-199 ' 2, 63)

5.08.040 Duty of permittee to restore location.

The permittee shall clean and restore the location where the exhibition, carnival, circus, street fair or similar amusement enterprise operates during the term of the permit to the condition which existed thereon prior to the occurrence of the event.

(History: Ord. CAR-769 ' 4, 73; CAR-590 ' 4, 70)

5.08.050 Inspection and approval of premises.

The director of health for Overland Park, Kansas, shall inspect and approve that the permittee's premises at the authorized location comply with all laws, both state and federal, and ordinances and regulations of the city governing public health, safety and welfare.

(History: Ord. CAR-769 ' 5, 73; CAR-590 ' 5, 70)

Chapter 5.08

5.08.060 Compliance with ordinances and regulations.

Any person, firm, partnership or corporation holding a permit issued by authority of this chapter shall comply with all ordinances or regulations of the City during the term of the permit, and violation thereof shall constitute a cause for the immediate revocation of such permit at the election of the City.

(History: Ord. CAR-769 ' 6, 73; CAR-590 ' 6, 70)

[Next Page is 5-500]

Chapter 5.12 CEREAL MALT BEVERAGES¹

Sections:

- 5.12.010 Definitions.
- 5.12.020 License required - Unlawful acts.
- 5.12.030 Application for license - Investigation.
- 5.12.040 License fees - Nontransferability.
- 5.12.045 Temporary Permit.
- 5.12.050 Examination of application - Issuance of license - Disqualifications.
- 5.12.060 Regulations - Hours of Operation - Standards of conduct - Minors - Alcoholic liquor - Sanitation.
- 5.12.065 Nudity or Semi-nudity Prohibited - Standards of Conduct for Entertainment. (Repealed)
- 5.12.070 Revocation or suspension license.
- 5.12.080 Retail sales by wholesalers prohibited.
- 5.12.090 Change of location.
- 5.12.100 Sale on credit.
- 5.12.110 Beer in public places - Unlawful acts. (Repealed. See 11.48.160)
- 5.12.120 Persons under 18 years of age - Receiving prohibited. (Repealed. See 11.48.110)
- 5.12.130 Furnishing for persons under 18 years of age. (Repealed. See 11.48.120)
- 5.12.140 Placement of buildings for consumption. (Repealed. See ZRR-1429)
- 5.12.150 Furnishing to persons from buildings within 200 feet of another building. (Repealed. See ZRR-1429)
- 5.12.160 Private property.
- 5.12.170 Alcoholic beverage defined. (Repealed)
- 5.12.180 Violation - Penalty.
- 5.12.190 Separability.
- 5.12.200 Savings Clause.

5.12.010 Definitions.

As used in this Chapter, the words and phrases defined in this Section shall have the following meanings, unless the context otherwise requires.

- A. "Alcohol" means the product of distillation of any fermented liquid, whether rectified or diluted, whatever its origin, and includes synthetic ethyl alcohol but does not include denatured alcohol or wood alcohol.
- B. "Alcoholic liquor" means Alcohol, Spirits, Wine, Beer, and every liquid or solid, patented or not, containing Alcohol, Spirits, Wine, or Beer and capable of being consumed as a beverage by a human being, but shall not include any Cereal Malt Beverage.
- C. "Beer," when its meaning is not enlarged, modified, or limited by other words, means a beverage, containing more than 3.2% Alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such

¹ For statutory provisions regarding the licensing and regulation of sales of cereal malt beverages, see K.S.A. 41-2701 et seq.

Chapter 5.12

- alcoholic content.
- D. "Calendar Year" means January 1st to December 31st, both dates inclusive, of each year.
 - E. "Cereal Malt Beverage" includes any fermented but undistilled liquor brewed or made from malt or a mixture of malt and/or malt substitute, or any flavored malt beverage, as defined in K.S.A. 2009 Supp. 41-2729, and amendments thereto, but does not include any such liquor which contains more than 3.2% Alcohol by weight.
 - F. "The City" or "this City" means the City of Overland Park, Kansas.
 - G. "The County" or "this County" means Johnson County, Kansas.
 - H. "Director" means the Director of Alcoholic Beverage Control of the Kansas State Department of Revenue.
 - I. "Drink" means an individual serving of Cereal Malt Beverage or Non-alcoholic Malt Beverage.
 - J. "General Retailer" is a person who has a license to sell Cereal Malt Beverages and Non-alcoholic Malt Beverages at retail for consumption on the licensed premises.
 - K. "Governing Body" means the Mayor and Council of this City.
 - L. "Legal Age for Consumption of Cereal Malt Beverage" means 21 years of age.
 - M. "Licensee" means the Person to whom the license required under this Chapter is issued as well as any manager, agent or employee of such Person at the licensed Place of Business.
 - N. "Limited Retailer" is a Person who has a license to sell Cereal Malt Beverages and Non-alcoholic Malt Beverages at retail only in original and unopened containers and not for consumption on the premises.
 - O. "Non-alcoholic Malt Beverage" means a beverage containing less than 0.5% Alcohol by volume obtained by Alcohol fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes Beer, ale, stout, lager Beer, porter and similar beverages having such alcoholic content.
 - P. "Person" means any natural person, partnership, corporation, firm, association, trust, or limited liability partnership or corporation.
 - Q. "Place of Business" means any place at which Cereal Malt Beverages and Non-alcoholic Malt Beverages are sold.
 - R. "Morals Charge" means and includes those charges involving prostitution, procuring any Person; soliciting of a child under 18 for any immoral act involving sex; possession or sale of narcotics, marijuana, amphetamines or barbiturates; rape; incest; gambling; illegal cohabitation; adultery; bigamy; crimes against nature, or lewd and lascivious behavior.
 - S. "Sale at Retail" and "Retail Sale" means sales for use or consumption and not for resale in any form.
 - T. "Spirits" means any beverage which contains Alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with Alcohol or other substances.
 - U. "The State" or "this State" means the State of Kansas.
 - V. "Tavern" is an establishment in which the predominant source of income, exclusive of admission charges, is attributable to the sale of Cereal Malt Beverages or Non-alcoholic

Malt Beverages. Revenue will be attributed to the sale of Cereal Malt Beverages or Non-alcoholic Malt Beverages where money is ostensibly received for another product or service and the purchase of that product or service entitles the purchaser to Cereal Malt Beverage or Non-alcoholic Malt Beverage at no further charge or at a reduced charge.

- W. "Wholesaler" or "Distributor" means any Person who sells or offers for sale any Cereal Malt Beverage, Non-alcoholic Malt Beverage or Wine to any Person authorized by law to sell Cereal Malt Beverages, Non-alcoholic Malt Beverages or Wine at retail.
- X. "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries or other agricultural products, including such beverages containing Alcohol or Spirits or containing sugar added for the purpose of correcting natural deficiencies.

(History: Ord. CMB-2874 §1, 2010; CMB-2186 §1, 99; CMB-1654 §1, 90; CMB-1450 §1, 87; CMB1380 §1, 86; CMB-1319 §1, 85; CMB-1041 §1, 79; CMB-861)

5.12.020 License required - Unlawful acts.

- A. It is unlawful for any Person to Sell at Retail any Cereal Malt Beverages or Non-alcoholic Malt Beverages within the City limits without having in such Person's possession a valid unexpired, unrevoked license issued by the City for the Place of Business at which such sales are made provided any Person issued a valid, unexpired, unrevoked license to operate a Class A club, Class B club, drinking establishment, or as a caterer by the Alcohol Beverage Control Division of the State of Kansas shall not be required to possess a Cereal Malt Beverage license in order to serve Non-alcoholic Malt Beverages, provided further such Persons must possess a Cereal Malt Beverage license in order to Sell at Retail Cereal Malt Beverages. It is unlawful for any Person holding a license for the Sale at Retail of Cereal Malt Beverages or Non-alcoholic Malt Beverages only in original and unopened containers and not for consumption on the premises to sell such beverages in any other manner than is provided for in the license. It is unlawful for a Person holding a license to sell Cereal Malt Beverages for consumption on the licensed premises to sell Cereal Malt Beverages for consumption off the premises.
- B. Nothing contained in this Chapter shall prohibit the serving of complimentary Alcoholic Liquor or Cereal Malt Beverages at fund raising activities of charitable organizations as defined by K.S.A. 17-1760, and amendments thereto, and as qualified pursuant to 26 U.S.C.A. 501(c) and by committees formed pursuant to K.S.A. 25-4142 et seq., and amendments thereto. The serving of such Alcoholic Liquor at such fund raising activities shall not constitute a sale pursuant to this Chapter, nor require any such fund raising activity to obtain a license or a temporary permit.

(History: Ord. CMB-2874 §2, 2010; CMB-2186, §2, 99; CMB-1654 §2, 90; CMB-1319 §2, 85; CMB-76 §2, 60)

5.12.030 Application for license - Investigation.

Any Person desiring to secure a license under the provisions of this Chapter shall make a verified application to the City Clerk and accompany the application by the required license fee for the Place of Business for which a license is required. The application shall be made upon a form which shall have been approved by the Attorney General of the State and shall contain:

Chapter 5.12

- A. The name and residence of the applicant;
- B. The length of time that the applicant has resided within the State of Kansas;
- C. The particular place for which a license is desired;
- D. The name of the owner of the premises upon which the Place of Business is located;
- E. A statement that the applicant is a citizen of the United States and not less than 21 years of age and that the applicant has not within two years immediately preceding the date of making application, been convicted of a felony or any crime involving a Morals charge, or drunkenness, or driving a motor vehicle while under the influence of intoxicating liquor, or operating or attempting to operate a motor vehicle while the Alcohol concentration in the Person's blood or breath is .08 or more, as measured from samples taken within two hours after the Person operated or attempted to operate the vehicle, or the violation of any other law of this City or State or any other city or state or of the United States pertaining to Alcoholic Liquor or Cereal Malt Beverages or Non-alcoholic Malt Beverages.

One copy of such application shall be transmitted by the City Clerk to the Chief of Police for investigation of the applicant and inspection of the Place of Business for which a license is desired. The Chief of Police shall investigate such application and determine whether the applicant is qualified to receive a license under the provisions of this Chapter and shall report the findings and recommendations made to the City Clerk.

(History: Ord. CMB-2874 §3, 2010; CMB-2186 §3, 99; CMB-2101 §1, 98; CMB-1654 §3, 90; CMB-1319 §3, 85; Modified during codification under authority of K.S.A. 12-3015; Ord. CMB-76 §3, 60)

5.12.040 License Fees - Nontransferability.

- A. The following fees are prescribed for each license authorized by this Chapter:
 - 1. General Retailer. For each Place of Business selling Cereal Malt Beverages or Non-alcoholic Malt Beverages at retail for consumption on the licensed premises, \$100.00 for the license year;
 - 2. Limited Retailer. For each Place of Business selling only at retail, Cereal Malt Beverages or Non-alcoholic Malt Beverages in original and unopened containers and not for consumption on the licensed premises, \$50.00 per license year.
 - 3. Special Permit. For each special permit, \$50.00 per event.
- B. Except as provided otherwise herein, the license fee shall be assessed and issued for a one year term. Persons applying for a license after the effective date of this Ordinance shall be issued a license for a one year term beginning on the date the license is issued. There shall be no refund when the license is revoked or suspended for any cause provided for under this Chapter. The City Clerk is authorized to issue a prorated refund of the license fees paid for any period in which the Licensee shall not use such license as

the result of the license being canceled at the request of the Licensee and for voluntary reasons. No license issued under this Chapter shall be transferable to another Person.

- C. Payment of all fees required to be paid pursuant to this Section may be made by personal, certified or cashier's check, money order, debit or credit card or cash, in a manner prescribed by the City Clerk.

(History: Ord. CMB-2874 §4, 2010; CMB-2224 §1, 2000; CMB-2186 §4, 99; CMB-1654 §4, 90; CMB-861 §2, 76; CMB-76B §4, 60)

5.12.045 Temporary Permit.

A temporary permit for the sale of CMB may be issued for the purpose of selling CMB at special events authorized by the Governing Body pursuant to the provisions of O.P.M.C. 11.48.160(A). The term of the temporary permit shall not exceed three days. Applicants for temporary permits must meet the license requirements set forth herein. In addition, applicants for a temporary permit shall provide a diagram accurately describing the premises and/or property where CMB will be sold, served, dispensed or consumed during the special event and a statement describing the security for the special event.

(History: Ord. CMB-2227 §1, 2000; CMB-2224 §2, 2000)

5.12.050 Examination of application - Issuance of license - Disqualifications.

- A. If the application is in proper form and accompanied by the proper license fee, the City Clerk shall examine the application; and after such examination, issue the license if the applicant is qualified as provided by law; provided that no license shall be issued to an applicant who does not meet the license qualifications set forth in K.S.A. 41-2703 and amendments thereto, or to an applicant or Licensee that is indebted to the City.

The City Clerk shall keep, as a public record, a list of all licenses issued under this Chapter, together with the class and expiration date of each. Among other things, the license shall state that it is not transferable to other Persons and the license year for which issued. The license shall be kept posted in a conspicuous place in the Place of Business licensed.

- B. Renewal licenses may be issued by the City Clerk upon payment of the necessary fee if the Licensee has not been suspended or revoked pursuant to Section 5.12.070 during the license term and the Licensee continues to meet the qualifications for issuance of the license.
- C. If an application for a license is refused, the license fee accompanying the same shall be immediately returned to the Person who has made such application. If the City Clerk denies an application for a license, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant, and the notice shall state the basis for the denial. Any applicant aggrieved by the denial may seek review by the Governing Body by filing a written notice of appeal

from the denial with the City Clerk within ten business days after the date of the notice of denial. The Governing Body shall determine the matter *de novo*, and if it determines the applicant is qualified as provided by law, shall direct the Clerk to issue the applicant a license; provided that no license shall be issued to an applicant who does not meet the license qualifications set forth in K.S.A. 41-2703 and amendments thereto, or to an applicant or Licensee that is indebted to the City.

(History: Ord. CMB-2874 §5, 2010; CMB-2388 §1, 2002; CMB-2186 §5, 99; CMB-1654 §5, 90; CMB-1450 §2, 87; CMB-1319 §4, 85; CMB-1145 §1, 81; CMB-861 §3, 76; CMB-76)

5.12.060 Regulations-Hours of Operation - Standards of Conduct - Minors - Alcoholic liquor - Sanitation.

A. Hours of Operation.

1. A limited retailer who is licensed to sell cereal malt beverages or non-alcoholic malt beverages at retail in the original package shall not sell cereal malt beverages or non-alcoholic malt beverages (a) On Sunday before 12 noon or after 8 p.m.; (b) on Easter Sunday; or (c) before 6 a.m. or after 12 midnight, on any day when the sale is permitted.
2. A general retailer who is licensed to sell cereal malt beverage and non-alcoholic malt beverage for consumption on the premises and who derives not less than 30% of its gross receipts from the sale of food for consumption on the licensed premises shall not sell cereal malt beverages or non-alcoholic malt beverages (a) between the hours of 12 midnight and 6:00 a.m. of any day when the sale is permitted or (b) on Easter Sunday.
Notwithstanding the above, cereal malt beverages or non-alcoholic malt beverages may be sold on premises which are both licensed pursuant to this chapter and licensed as a club or drinking establishment at any time when alcoholic liquor is allowed to be served on the premises.
3. Temporary permit holders shall not be issued temporary permits to sell cereal malt beverages or non-alcoholic malt beverages at any time the sale of such beverages are prohibited in subparagraphs A.1 and 2 above.

B. Standards of Conduct.

1. No licensee shall permit private rooms or closed booths to be operated in a place of business, but this provision shall not apply if the licensed premises are also currently licensed as a club pursuant to the club and drinking establishment act.
2. Each place of business shall be open to the public and to law enforcement officers of the City at all times during business hours by the licensee, except that a premises licensed as a private club pursuant to the club and drinking establishment act shall be open to law enforcement officers and members but not to the general public.
3. Except as otherwise provided by this section, no licensee shall permit a person

under the legal age for consumption of cereal malt beverage or non-alcoholic malt beverage to consume or purchase, any cereal malt beverage or non-alcoholic malt beverage, in or about a place of business. A licensee's employee who is not less than 18 years of age may dispense or sell cereal malt beverage or non-alcoholic malt beverage if:

- a. the licensee's place of business is licensed only to sell at retail cereal malt beverage in the original package and not for consumption on the premises; or
 - b. the licensee's place of business is a licensed food service establishment, as defined by K.S.A. 36-501 and amendments thereto, and not less than 50% of the gross receipts from the licensee's place of business is derived from the sale of food for consumption on the premises of the licensed place of business.
4. No licensee shall permit any person to have any alcoholic liquor in such person's possession while in a place of business, unless the premises are currently licensed as a club or drinking establishment pursuant to the club and drinking establishment act.
 5. Cereal malt beverages or non-alcoholic malt beverages may be sold on premises which are licensed pursuant to both the cereal malt beverage act and the club and drinking establishment act at any time when alcoholic liquor is allowed by law to be served on the premises.
 6. No licensee shall knowingly sell, give away, dispose of, exchange or deliver any cereal malt beverage or non-alcoholic malt beverage to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of cereal malt beverage or non-alcoholic malt beverage.
 7. No licensee shall offer or serve any free cereal malt beverage or non-alcoholic malt beverage or alcoholic liquor in any form to any person; or
 8. No Licensee shall offer to serve to any person a drink at a price that is less than the acquisition cost of the drink to the licensee; or
 9. No licensee shall sell, offer to sell or serve any person an unlimited number of drinks during any set period for a fixed price except at private functions not open to the general public or to the general membership of a club; or
 10. No licensee shall sell, offer to sell or serve any drink to any person at any time at a price less than that charged the general public on that day, except at private functions not open to the general public; or
 11. No licensee shall increase the size of a drink without increasing proportionately the price regularly charged for the drink on that day; or
 12. No licensee shall encourage or permit on the business premises, any game or contest which involves drinking cereal malt beverage or non-alcoholic malt beverage or the awarding of drinks as prizes; or
 13. No licensee shall advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections 7 through 12; or
 14. Nothing in subsections 7 through 13 shall be construed to prohibit a licensee from offering free food or entertainment at any time.

Chapter 5.12

15. Every licensee shall make available at any time upon request a price list showing the licensee's current prices for all cereal malt beverages or non-alcoholic malt beverages.
16. The licensee, in the operation of such place of business, shall at all times comply with the sanitary, health, building and fire code regulations and all ordinances of the city.
17. The licensee shall require that all patrons or customers of any place of business licensed as a general retailer and constituting a tavern, as defined above, shall exit and be off the premises of the place of business prior to and not later than one half hour after the legal hour of closing; provided however, a tavern, upon application to the Governing Body can secure a special permit to remain open after the legal hour of closing if the tavern adequately shows that the business is so conducted that a nuisance to the surrounding neighborhood will not occur, and the premises are in conformity with the zoning requirements of the city. Provided however, even if a special permit is secured by a tavern to remain open after the legal hour of closing, all cereal malt beverages or non-alcoholic malt beverages must be consumed prior to and not later than one-half hour after the legal hour of closing. The permit shall be issued for the period from January 1st through December 31 of each year.

The special permit may be revoked after at least ten days' notification to the permit holder of the Governing Body's determination that the after-hours' operation of the tavern is a nuisance in that it has resulted in such an unreasonable amount of noise as to constitute an annoyance and a discomfort to the neighboring residents; or that the tavern's patrons habitually use obscene language or habitually engage in lewd acts.

18. Licensees of those establishments herein defined as "taverns" in 5.12.010 shall, in addition to all other requirements of this chapter, comply with the following requirements for the conduct and operation of such establishment:
 - a. Prevent the removal from such establishment of open containers, in any form whatsoever, of cereal malt beverages or non-alcoholic malt beverages.
 - b. Be responsible for removing all trash, litter and debris from the property and parking lot of such establishment.
 - c. Provide necessary customer parking as required under the city zoning ordinances or as required by the city in the issuance of a special use permit for the conduct of a "tavern" business.
 - d. Provide plumbing facilities as required by O.P.M.C. Chapter 16.130 and the City's adopted edition of the International Plumbing Code.
 - e. Exclude any and all persons under the legal age for consumption of cereal malt beverage or non-alcoholic malt beverage from the premises.

Chapter 5.12

19. The licensee shall notify the City Clerk's office of any change in the manager, owner or incorporators of the licensee's place of business, and the notification must be received in the City Clerk's office within 10 days of such change.
20. A violation of, or non-compliance with, the provisions of this section shall be grounds for the revocation of such license under the provisions of 5.12.070.

(History: Ord. AL-2591 §1, 2005; AL-2566 §1, 2005; CMB-2460 §1, 2004; NOI-2287 §7, 2001; CMB-2247 §1, 2001; CMB-1873 §1, 94; CMB-1654 §6, 90; CMB-1450 §3, 87; CMB-1446 § 1, 87; CMB-1380 §2, 86; CMB-1319 §5, 85; CMB-1176 §1, 82; CMB-1145 §2, 81)

5.12.065 Nudity or Semi-nudity Prohibited - Standards of Conduct for Entertainment.

Repealed.

(History: Ord. CMB-2030 § 1, 97; CMB-PCT-1636 §1, 90; CMB-PCT-1561 §1, 88)

5.12.070 Revocation or suspension license.

- A. After at least five days notification to any person holding any license issued under this chapter that the Governing Body of the City is, on a date certain, to take some action on such license, the Governing Body shall revoke or suspend such license for any of the following reasons:
 1. The licensee has fraudulently obtained the license by giving false information in the application therefor;
 2. The licensee has violated any of the provisions of this chapter or any rule or regulations made by the Governing Body as the case may be;
 3. The licensee has become ineligible to obtain a license in this chapter;
 4. Drunkenness of the licensee at the licensed premises or permitting any intoxicated or disorderly person to remain in the licensee's premises. For purposes of this subsection the term "drunkenness" shall mean that a person's faculties, physical and/or mental, are impaired by the consumption of alcohol;
 5. The sale of cereal malt beverages or non-alcoholic malt beverages to any person under the legal age for consumption of cereal malt beverage or non-alcoholic malt beverage;
 6. The nonpayment of any license fees;
 7. Permitting any gambling in or upon the licensee's place of business;
 8. Permitting any person to mix drinks with materials purchased in the place of business or brought in for that purpose;
 9. The employment of persons under 18 years of age in dispensing cereal malt beverages or non-alcoholic malt beverages;
 10. The employment or continuation in employment of a person in connection with the sale, serving or dispensing of cereal malt beverage if the licensee knows such person has been, within the preceding two years, adjudged guilty of a felony or of any violation of the alcoholic liquor laws of this city or state or any other City or state;
 11. The sale or possession of or permitting any person to use or consume on the licensed premises any alcoholic liquor;

Chapter 5.12

12. The licensee has been convicted of a violation of the beer and cereal malt beverage keg registration act;
 13. The submission to the Governing Body by the Chief of Police proof of five violations committed by or permitted by a licensee, or the licensee's agent or employee, on the business premises including the parking lot, within the preceding year, of any statutes or ordinances regulating such business and of any ordinance in Title 11 of the Overland Park Municipal Code.
- B. The provisions of subsections A(8) and (11) shall not apply if the place of business or premises are also currently licensed as a club or drinking establishment under the club and drinking establishment act.
- C. Within 20 days after the order of the Governing Body revoking or suspending any license the licensee may appeal to the district court and the district court shall proceed to hear such appeal as though such court had original jurisdiction of the matter. Any appeal taken from an order revoking or suspending the license shall not suspend the order of revocation or suspension during the pendency of any such appeal. Provided further that no person who has had a proprietary interest in a licensee whose cereal malt beverage and non-alcoholic malt beverage license is revoked as hereinbefore provided, or any person acting for or on such person's behalf, shall be granted a license for the sale of cereal malt beverages or non-alcoholic malt beverages within the City, for a period of 180 days following the date of revocation of the license; provided further that no person who has had a proprietary interest in a licensee whose cereal malt beverage and non-alcoholic malt beverage license has been revoked as hereinbefore provided shall be employed in a place of business which sells or distributes cereal malt beverages or non-alcoholic malt beverages for consumption on the premises, for a period of 180 days following the date of revocation of the license.

(History: Ord. CMB-2388 §2, 2002; CMB-1939 §1, 95; CMB-1654 §7, 90; CMB-1450 §4, 87; CMB-1319 §6, 85; CMB-1145 §3, 81; CMB-1041 §3, 79)

5.12.080 Retail sales by wholesalers prohibited.

It is unlawful for any wholesaler or distributor, or such person's agent or employee to sell or deliver cereal malt beverages or non-alcoholic malt beverages within the corporate limits of the city to other persons than those licensed to sell such beverages at retail within the city.

(History: Ord. CMB-1654 §8,90; CMB-1319 §7,85; CMB-76 §8,60)

5.12.090 Change of location.

The Place of Business of any Licensee may be changed from one location to another within the City upon special application to the City Clerk describing the new location and upon the approval of the City Clerk and the payment of a fee of \$5.00.

(History: Ord. CMB-2874 §6, 2010; CMB-76 §9, 60)

5.12.100 Sale on credit.

A licensed retailer may sell cereal malt beverages or nonalcoholic malt beverages at retail to a consumer on credit, pursuant to a credit card which entitles the user of the card to purchase goods or services from at least 100 persons not related to the issuer of the card.

(History: Ord. CMB-1972 1, 96; CMB-1967 §1, 96; CMB-1654 §9, 90; CMB-76 §10, 60)

5.12.110 Beer in public places - Unlawful acts.

Repealed. See: 11.48.160.

(History: Ord. CMB-1319 §17, 85; CMB-76E §1, 69; CMB-76C §1, 66; CMB-76 §11, 60)

5.12.120 Persons under 18 years of age - Receiving prohibited.

Repealed. See: 11.48.110.

(History: Ord. CMB-1319 §17, 85; CMB-1145 §4, 81; POC-625 §83, 72)

5.12.130 Furnishing for persons under 18 years of age.

Repealed. See: 11.48.120.

(History: Ord. CMB-1319 §17, 85; CMB-1145 §5, 81; CMB-SM-179)

5.12.140 Placement of buildings for consumption.

Repealed. See: ZRR-1429.

(History: Ord.CMB-1430 §1, 87; CMB-1319 §11, 85; CMB-1041 §4, 79; CMB-861)

5.12.150 Furnishing to persons from buildings within 200 feet of another building.

Repealed. See: ZRR-1429.

(History: Ord. CMB-1430 §1, 87; CMB-1319 §12, 85; CMB-861 §7, 76; CMA-353)

5.12.160 Private property.

Nothing in this chapter shall be deemed to prevent, regulate or control the consumption of cereal malt beverage, non-alcoholic malt beverages and alcoholic liquor upon private property by those occupying such private property as the owner, or as a lessee of an owner and by the guests of the owner or lessee, provided that no charge is made by the owner or lessee for the serving or mixing of any drink or drinks of cereal malt beverage, non-alcoholic malt beverages or alcoholic liquor or for any substance co-mixed with such beverages.

(History: Ord. CMB-1654 §10, 90; CMB-1319 §13, 85; CMA-353 §3, 65)

5.12.170 Alcoholic beverage defined.

Repealed. See: 5.48.010.

(History: Ord. CMB-1319 §17, 85; CMA-353 §5, 65)

5.12.180 Violation - Penalty.

Any person, convicted of a violation of this chapter shall be fined not less than \$100 nor more than \$500 or imprisoned for a maximum of 6 months, or both such fine and imprisonment in addition to any action that may be taken pursuant to 5.12.070.

(History: Ord. CMB-1319 §14, 85; Amended during codification in accordance with K.S.A. 12-3015; Ord.CMA-353 §6, 65; CMB-SM-179 §3, 63; CMB-76 §12, 60)

5.12.190 Separability.

If any part or parts of this ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this ordinance if it had known that such part or parts thereof would be declared invalid.

Chapter 5.12

(History: Ord. CMB-1319 §15, 85)

5.12.200 Savings Clause.

Neither the adoption of this ordinance nor the repeal or amendment of any ordinance or part or portion thereof shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect.

(History: Ord. CMB-1319 §16, 85)

[Next Page is 5-600]

Chapter 5.16
CHRISTMAS TREE SALES¹

Sections:

- 5.16.010 Permit required for selling.
- 5.16.020 Issuance of permit - Zones allowed.
- 5.16.030 Sales in other than designated zones.

5.16.010 Permit required for selling.

No Christmas trees may be sold within the city except after issuance of a permit as provided in this chapter. No fee shall be charged for such permit.

(History: Ord. CTS-224 §1, 63)

5.16.020 Issuance of permit - Zones allowed.

This city clerk shall issue permits for the sale of Christmas trees, provided the sites for which applications are made are zoned for one of the following uses: C-O, C-P, C-1, C-2, C-3, M-1 or M-2. Before issuing any such permits, the city clerk shall determine whether adequate parking is available for the respective sites.

(History: Ord. CTS-224 §2, 63)

5.16.030 Sales in other than designated zones.

Application to sell Christmas trees at locations which are zoned other than as mentioned in 5.16.020 may be granted by the governing body upon such terms and conditions as may be imposed.

(History: Ord. CTS-224 §3, 63)

¹ For further regulations governing zoning and planning, see Title 18 of this code.

[Next Page is 5-650]

Chapter 5.18 DAY CARE HOMES

Sections:

- 5.18.010 Statement of Intent
- 5.18.020 Definitions
- 5.18.030 Inspection of Day Care Homes

5.18.010 Statement of Intent

It is the intent of the Governing Body of the City of Overland Park to regulate and set minimum standards for "child care facilities," as defined in K.S.A. 2010 Supp. 65-503(c), and amendments thereto or "day care homes," as defined in K.S.A. 2010 Supp. 65-530(a)(1) and amendments thereto, hereinafter referred to as "day care homes," to protect the public health, safety, and welfare of the residents of Overland Park. Said day care homes shall be allowed in the locations for day care provided in Chapter 18 of the Overland Park Municipal Code. The State of Kansas, through the Kansas Department of Health and Environment (KDHE) and the Office of the Fire Marshal, has provided licensing and inspection requirements for day care homes, which the City intends to cooperate with fully and supplement with additional life-safety inspections through the Fire Department.

(History: Ord. DCH-2907 §1, 2011)

5.18.020 Definitions

The following words and phrases when used in this Chapter shall, for the purpose of this Chapter, have the meanings respectively ascribed to them in this Section unless otherwise defined in the text of the Section.

- A. "Day care home" shall mean a structure designed and used as a one- or two-family dwelling where child care is provided by a Child Care Provider.
- B. "Child care provider" shall mean the homeowner or resident licensed with KDHE to operate a day care home from their place of residence.
- C. "Code" or "this Code" shall mean the Overland Park Municipal Code.
- D. "Fire Department" shall mean the Fire Department of the City of Overland Park, Kansas.
- E. "Fire Inspector" shall mean a person authorized by the Fire Department to conduct fire safety inspections.

(History: Ord. DCH-2907 §2, 2011)

5.18.030 Inspection of Day Care Homes

Day Care Homes shall be subject to periodic inspections as required by the Fire Department. The Fire Inspector is authorized to inspect the premises for which a day care home license has been issued by KDHE. Said inspections shall be conducted utilizing the applicable provisions of the Kansas State Fire Marshal Fire Safety Handbook. Reasonable prior notice of an upcoming inspection shall be provided in writing by the Fire Department. An inspection report shall be provided to the Child Care Provider at the end of the inspection. The Child Care Provider shall have 30 days to correct any violation(s) before a re-inspection occurs, unless such violation(s) constitutes an imminent threat to life safety, in which case immediate correction of the

Chapter 5.18

violation(s) shall be required. If corrections are not made in the prescribed time frame, the Fire Inspector may assess a failed inspection fee, and if such fee is assessed, the Fire Inspector shall complete a failed inspection (fee for service) report. The amount of said failed inspection fee is established by resolution of the Governing Body.

(History: Ord. DCH-2907 §3, 2011)

[Next Page is 5-700]

Chapter 5.20
PRIVATE CLUBS, DRINKING ESTABLISHMENTS,
AND CATERERS¹

Sections:

- 5.20.010 Annual license tax. (Repealed. See 5.20.065)
- 5.20.020 Levy. (Repealed. See 5.20.070)
- 5.20.025 Nudity or Semi-nudity Prohibited - Standards of conduct for entertainment. (Repealed. See 5.20.110)
- 5.20.030 Hours of Closing. (Repealed. See 5.20.100)
- 5.20.035 Caterer and temporary permit holder notification. (Repealed. See 5.20.135)
- 5.20.040 Separability. (Repealed. See 5.20.160)
- 5.20.050 Savings Clause. (Repealed. See 5.20.165)
- 5.20.055 Definitions.
- 5.20.060 City and State Liquor License Required.
- 5.20.065 Biennial license tax.
- 5.20.068 License tax for temporary permit holders.
- 5.20.070 Levy and Term.
- 5.20.075 License exclusive to Premises issued.
- 5.20.078 Temporary Permits; Applications; Process.
- 5.20.080 Application for license; investigation of applicant by Chief of Police.
- 5.20.085 Qualifications for license.
- 5.20.090 Examination of application - Issuance of license - Disqualifications.
- 5.20.095 Compliance.
- 5.20.100 Hours of closing.
- 5.20.105 Permitting consumption by Minors; exceptions; penalties.
- 5.20.110 Nudity or semi-nudity prohibited - Standards of conduct for entertainment. (Repealed)
- 5.20.115 Revocation of license.
- 5.20.120 Suspension of license by Chief of Police.
- 5.20.125 Display of license.
- 5.20.130 Right of entry and inspection.
- 5.20.135 Caterer and temporary permit holder notification.
- 5.20.140 Removal from the licensed premises.
- 5.20.145 Member must be present.
- 5.20.150 No drinks promotion.
- 5.20.155 Penalty for violation.
- 5.20.160 Separability.
- 5.20.165 Savings clause.

5.20.010 Annual license tax.

Repealed. See 5.20.065.

(History: Ord. CDC-1653 §2, 90; PCT-1453 §1, 87; PCOT-1322 §1, 85; PCOT-441 §1, 67)

¹ For statutory provisions authorizing the levying of a maximum \$250 annual occupational tax on Class B Private Clubs, see K.S.A. 41-2627.

Chapter 5.20

5.20.020 Levy.

Repealed. See 5.20.070.

(History: Ord. CDC-1653 §2, 90; PCT-1453,A §1, 87; PCT-1453 §2, 87; PCOT-1322 §2,1985; PCOT-441 §2, 67)

5.20.025 Nudity or Semi-nudity Prohibited - Standards of Conduct for Entertainment.

Repealed. See 5.20.110.

(History: Ord. CDC-1653 §2, 90; CMB-PCT-1636 §2, 90; CMB-PCT-1561 §2, 88)

5.20.030 Hours of Closing.

Repealed. See 5.20.100.

(History: Ord.CDC-1653 §2, 90; PCT-1453 §3, 87; PCOT-1322 §3, 85; AL-859 §1,75)

5.20.035 Caterer and Temporary Permit Holder notification.

Repealed. See 5.20.135.

(History: Ord. CDC-1653 §2, 90; PCT-1453 §4, 87)

5.20.040 Separability.

Repealed. See 5.20.160.

(History: Ord. CDC-1653 §2, 90; PCOT-1322 §4, 85)

5.20.050 Savings Clause.

Repealed. See 5.20.165.

(History: Ord. CDC-1653 §2, 90; PCOT-1322 §5, 85)

5.20.055 Definitions.

As used in this Chapter, the words and phrases defined in this Section shall have the following meanings, unless the context otherwise requires:

- A. "Alcohol" means the product of distillation in any fermented liquid, whether rectified or diluted, whatever the origin, and includes synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol;
- B. "Alcoholic Liquor" means Alcohol, Spirits, Wine and Beer and every liquid or solid, patented or not, containing Alcohol, Spirits, Wine and Beer, and capable of being consumed as a beverage by a human being, but shall not include any Cereal Malt Beverage;
- C. "Beer," when its meaning is not enlarged, modified, or limited by other words, means a beverage, containing more than 3.2% Alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.
- D. "Beneficial Interest" shall not include any interest a Person may have as owner, operator, lessee or franchise holder of licensed Hotel or motel on the Premises of which a Club or Drinking Establishment is located.

- E. "Caterer" means an individual, partnership or corporation which sells Alcoholic Liquor by the individual drink, and provides services related to the serving thereof, on unlicensed Premises which may be open to the public, but does not include a holder of a Temporary Permit, selling Alcoholic Liquor in accordance with the terms of such permit.
- F. "Cereal Malt Beverage" means any fermented but undistilled liquor brewed or made from malt or from a mixture of malt or malt substitute, or any flavored malt beverage, as defined in K.S.A. 2009 Supp. 41-2729, and amendments thereto, but does not include any such liquor which is more than 3.2% percent Alcohol by weight.
- G. "Cereal Malt Beverage Retailer" means any Person who sells or offers for sale any Cereal Malt Beverage for use or compensation and not for resale in any form.
- H. "Class A Club" means a Premises which is owned or leased by a corporation, partnership, business trust or association, and which is operated thereby as a bona fide nonprofit social, fraternal or war veterans' club, as determined by the Director, for the exclusive use of the corporation stockholders, partners, trust beneficiaries or associates (hereinafter referred to as "members"), and their families and guests accompanying them.
- I. "Class B Club" means a Premises operated for profit by a corporation, partnership or individual to which members of such Club may resort for the consumption of food or alcoholic beverages and for entertainment.
- J. "Club" means a Class A or Class B Club.
- K. "Director" means the Director of Alcoholic Beverage Control of the Kansas State Department of Revenue.
- L. "Drinking Establishment" means Premises which may be open to the general public, where Alcoholic Liquor by the individual drink is sold.
- M. "Employee" means any Person employed in the business of selling Cereal Malt Beverages or Alcoholic Liquor by Licensee.
- N. "Hotel" has the meaning ascribed to it by K.S.A. 36-501 and amendments thereto.
- O. "Legal Age for Consumption of Cereal Malt Beverage" means 21 years of age.
- P. "Licensee" means any Person to whom a current Club, Drinking Establishment, or Caterer's license or Temporary Permit has been issued pursuant to this title and/or any Person to whom a current Club, Drinking Establishment, or Caterer's license, or Temporary Permit has been issued.
- Q. "Mini-bar" means a closed cabinet, whether nonrefrigerated or wholly or partially refrigerated, access to the interior of which is restricted by means of a locking device which requires the use of a key, magnetic card or similar device.
- R. "Minor" means any Person under 21 years of age.
- S. "Morals Charge" means a charge involving prostitution; procuring any Person; soliciting a child under 18 years of age for any immoral act involving sex; possession or sale of narcotics, marijuana, amphetamines or barbiturates; rape; incest; gambling; illegal cohabitation; adultery; bigamy; a crime against nature; or lewd and lascivious behavior.
- T. "Off-premises Business" means a business establishment which sells Cereal Malt Beverages or Alcoholic Liquor in original unopened containers for consumption off of the license Premises.

Chapter 5.20

- U. "Original Package" means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked, or capped, sealed and labeled by the manufacturer of Alcoholic Liquor or Cereal Malt Beverage to contain and to convey any Alcoholic Liquor or Cereal Malt Beverage.
- V. "Person" means any natural person, partnership, corporation, firm, association, trust, or limited liability partnership or corporation.
- W. "Premises" means the specific area described in the license application and approved as the location upon which the Cereal Malt Beverages and/or Alcoholic Liquor may be sold and/or consumed under the license.
- X. "Retailer" means any Person who sells at retail or offers for sale at retail, Alcoholic Liquors in the Original Package for consumption off the Premises.
- Y. "Spirits" means any beverage which contains Alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with Alcohol or other substances.
- Z. "Temporary Permit" shall have the meaning ascribed to it by K.S.A. 41-2601 and amendments thereto.
- AA. "To Sell" includes to solicit or receive an order for, to keep or expose for sale and keep with intent to sell.
- BB. "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits or berries or other agricultural products, including such beverages containing Alcohol or Spirits or containing sugar added for the purpose of correcting natural deficiencies.
- CC. "Wholesaler" means a distributor as defined by K.S.A. 41-2701 and amendments thereto. (History: Ord. CDC-2875 §1, 2010; CDC-2178 §1, 99)

5.20.060 City and State liquor license required.

- A. No Person shall operate a Class A Club, Class B Club, Drinking Establishment, or as a Caterer serving Alcoholic Liquor or pursuant to a Temporary Permit without first having in their possession unexpired, unrevoked licenses to do so issued by the City and the State of Kansas. Licenses shall be required for each Premises where Alcoholic Liquor is served.
- B. Nothing contained in this Chapter shall prohibit the serving of complimentary Alcoholic Liquor or Cereal Malt Beverages at fund raising activities of charitable organizations as defined by K.S.A. 17-1760, and amendments thereto, and as qualified pursuant to 26 U.S.C.A. 501(c) and by committees formed pursuant to K.S.A. 25-4142 et seq., and amendments thereto. The serving of such Alcoholic Liquor at such fund raising activities shall not constitute a sale pursuant to this Chapter, nor require any such fund raising activity to obtain a license or a Temporary Permit.

(History: Ord. CDC-2875 §2, 2010; CDC-2178 §2, 99; CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.065 Biennial license tax.

The biennial license tax authorized by K.S.A. 41-2622 is established and fixed at \$500.00 for all Clubs, Drinking Establishments and Caterers.

(History: Ord. CDC-2875 §3, 2010 (effective 7/1/11); CDC-1716 §1, 91; CDC-1653A §1, 91; CDC-1653 §1, 90; PCT-1453 §1, 87; PCOT-1322 §1, 85; PCOT-441 §1, 67)[Source or prior law: 5.20.010]

5.20.068 License tax for temporary permit holders.

A license tax is established and fixed at \$75 for each three-day temporary permit issued. The tax shall be prorated for each day of the three-day permit period used by the permit holder.

(History: Ord. CDC-2178 §3, 99; CDC-1716 §2, 91)

5.20.070 Levy and Term.

- A. For all licenses other than Temporary Permits, the license tax shall be levied on the basis of a two year term and licenses shall be issued for a two year term.
- B. Licensees that hold multiple licenses and who choose to consolidate all their licenses into the same license year as authorized by the Kansas Department of Revenue, in addition to notifying the Alcohol Beverage Control licensing unit in writing, will serve a copy of their written notice upon the City Clerk and, at their next license renewal, must file applications for all licenses and permits held by the entity. Upon issuance of the new state licenses and the surrender of the un-expired City licenses, the City Clerk shall issue new licenses to coincide with the surrender of the un-expired City license and the Licensee will receive a refund for the unused portion of the license tax upon written request to the City Clerk.
- C. A license tax may be transferred during the two year term if the Licensee changes the status of the Premises from Drinking Establishment to private Club or private Club to Drinking Establishment, provided a ten dollar transfer fee shall be charged.
- D. At the option of the applicant or Licensee, the applicant or Licensee shall submit to the City Clerk either:
 - 1. the full amount of the license tax set forth in Section 5.20.065; or
 - 2. one-half of the full amount of the license tax set forth in Section 5.20.065.
- E. If the applicant or Licensee elects to pay only one-half of the license tax pursuant to Subsection D(2), the remaining one-half of the license tax plus 10% of such remaining balance shall be due and payable one year from the date of issuance of the license. Notwithstanding any other provision of law, failure to pay the full amount due under this paragraph on the date it is due shall result in the automatic cancellation of such license for the remainder of the license term. The City Clerk may, at the Clerk's sole discretion and after examination of the circumstances, extend the date payment is due pursuant to this paragraph for not more than 30 days beyond the date such payment is originally due. When the Licensee pays the full amount of the license fee upon application and is prevented from operating under such license for reasons other than suspension or revocation of the license for the entire second year of the license term, a refund shall be made of one-half of the license fee paid by such Licensee.

- F. There shall be no refund of the license tax when Licensees quit business prior to the end of the license year, or when the license is revoked or suspended for any cause provided for under this Chapter. The City Clerk is authorized to issue a prorated refund of the license tax paid for any period in which the Licensee shall not use such license as the result of the license being canceled at the request of the Licensee and for voluntary reasons.
- G. Payment of all taxes and/or fees required to be paid pursuant to this Section may be made by personal, certified or cashier's check, money order, debit or credit card or cash, in a manner prescribed by the City Clerk.

(History: Ord. CDC-2875 §4, 2010 (effective 7/1/11); CDC-2840 §1, 2009; CDC-2178 §4, 99; CDC-1716 §3, 91; CDC-1653A §1, 91; CDC-1653 §1, 90; PCT-1453A §1, 87; PCT-1453 §2, 87; PCOT-1322 §2, 85; PCOT-441 §2, 67)[Source or prior law: 5.20.020]

5.20.075 License exclusive to Premises issued.

- A. The license provided herein shall be issued for one particular Premises which shall be stated in the application and in the license. No license shall be issued for a Premises wherein the use thereof would be in violation of the City zoning laws or the City building codes or fire codes. Nothing in this Section shall be construed to require a fixed Premises for Persons licensed as a Caterer pursuant to Article 26 of Chapter 41 of Kansas Statutes Annotated.
- B. Any licensed Premises which includes the exterior of a building and/or an outdoor area must be adequately lighted during all business hours.
- C. Any licensed Premises which includes the exterior of a building or an outside area must be enclosed by a fence in such a way as to allow access only through the interior of the building or through an official gate or entrance. All gates or entrances to an outdoor area must be continuously manned by security personnel to insure no Alcoholic Liquor is removed from the Premises. Outdoor areas shall not include parking areas or sidewalks, provided the City Clerk may, upon proper application of the Licensee, authorize the extension of the licensed Premises to include parking or sidewalk areas for special events; provided, approval of such application is conditioned on the applicant applying for and receiving a special event permit. During such periods, the area of the extended Premises shall no longer be designated or used as a sidewalk or parking area.
- D. Licensees desiring to extend their licensed Premises to include parking and sidewalk areas for a special event must apply in writing to the City Clerk for such authorization. Applications must include written authorization from the Alcohol Beverage Control Division of the Kansas Department of Revenue to extend the licensed Premises for the special event. Applications must also include a diagram accurately describing the licensed Premises for the special event, the dates of the special event and the security measures to be implemented during the event. If parking areas are included in the extended Premises, the applicant must indicate how parking requirements will be

satisfied during the event. Applications shall be reviewed by the Chief of Police to insure the Licensee has planned for and has available the necessary security resources and otherwise is capable of meeting the ordinance requirements for the sale of intoxicating liquor in exterior areas. The Chief of Police will submit to the City Clerk in writing his/her review of the application which shall include any comments concerning public safety issues.

- E. Licensed Caterers desiring to cater an event on public property at which intoxicating liquor is sold, served, dispensed and consumed must apply in writing to the City Clerk for such authorization. Applications must include a diagram accurately describing the public property for the catered event, the dates of the event and the security measures to be implemented during the event. The security measures for the event must minimally include the enclosure of the area where intoxicating liquor is to be sold, served, dispensed or consumed by a fence in such a way as to allow access only through an official gate or entrance. All gates or entrances must be continuously manned by security personnel to insure no Alcoholic Liquor is removed from the area designated for consumption. If parking areas are included in the area designated for consumption, the applicant must clearly indicate how parking needs will be satisfied during the catered event. All applications shall be reviewed by the Chief of Police to insure the licensed Caterer has planned for and has available the necessary security resources. The Chief of Police shall submit to the City Clerk in writing his/her review of the application which shall include all comments concerning public safety issues.

(History: Ord. CDC-2875 §5, 2010; CDC-2178 §5, 99; CDC-2047 §1, 97; CDC-2043 §1, 97; CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.078 Temporary Permits; Applications; Process.

It shall be unlawful for any Person to conduct an event pursuant to a State issued Temporary Permit without first applying for a local Temporary Permit at least fourteen (14) days prior to the event and subsequently obtaining the permit. Those applications received after the fourteen day period shall be processed, however, review shall be subject to City Clerk calendar considerations. Written application for the local Temporary Permit shall be made to the City Clerk upon a form provided by the Clerk and shall clearly state the name of the applicant, the group for which the event is planned, the location, date and time of the event and any anticipated need for police, fire or other municipal services. If the event is to occur on private property, the applicant shall include written permission for the event and the service of alcohol from the owner of the private property. In addition, the application shall include a copy of the State issued Temporary Permit. Upon presentation of a State Temporary Permit, a written application and any necessary accompanying documents, payment of the license tax set forth in O.P.M.C. 5.20.068, and the recommendations of the Chief of Police, the City Clerk shall issue or deny the permit. The City Clerk shall notify the Chief of Police whenever a Temporary Permit has been issued and forward a copy of the permit and application to the Chief of Police.

(History: Ord. CDC-2875 §6, 2010; CDC-2178 §6, 99)

5.20.080 Application for license; investigation of applicant by Chief of Police.

Any Person desiring to secure a Drinking Establishment, Club or Caterer's license under the provisions of this Chapter shall make a verified application with the City Clerk. Such application shall be upon a form provided by the City Clerk and shall require the applicant to provide the information necessary to determine whether the applicant is qualified and eligible to be issued a license pursuant to this Chapter, to include the qualifications required by the State of Kansas for issuance of a state Drinking Establishment, Club or Caterers license. One copy of such application shall immediately be transmitted by the City Clerk to the Chief of Police for investigation of the applicant. It shall be the duty of the Chief of Police to investigate such applicant to determine whether they are qualified as a Licensee under the provisions of this Chapter. The Chief of Police shall report to the City Clerk not later than ten working days subsequent to the receipt of such application by the City Clerk. The City Clerk shall issue a license or deny the application within ten business days after receipt of the report of the Chief of Police.

(History: Ord. CDC-2875 §7, 2010; CDC-2178 §7, 99; CDC-2102 §1, 98; CDC-1963 §1, 95; CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.085 Qualifications for license.

No license shall be issued under the provisions of this chapter to an applicant for a club, drinking establishment or caterer's license or for a temporary permit unless the applicant meets the State of Kansas qualifications for a club, drinking establishment, or caterer's license or temporary permit as set forth in Chapter 41 of the Kansas Statutes Annotated.

(History: Ord. CDC-2178 §8, 99; CDC-1963 §2, 95; CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.090 Examination of application - Issuance of license - Disqualifications.

- A. If the application is in proper form and accompanied by the license tax, the City Clerk shall examine the application; and after such examination, the City Clerk shall issue the license, if the applicant is qualified as provided by law, provided that no license shall be approved to any Person who is not otherwise qualified and eligible to receive a license pursuant to Section 5.20.085, or to an applicant or Licensee that is indebted to the City.
- B. The City Clerk shall keep, as a public record, a list of all licenses issued under this Chapter, together with the class and expiration date of each. Among other things, the license shall state that it is not transferable to other Persons and the term for which it is issued. The license shall be kept posted in a conspicuous place in the place of business licensed.
- C. Renewal licenses may be issued by the City Clerk upon payment of the necessary tax if the Licensee has not been suspended or revoked pursuant to Section 5.20.115 or 5.20.120 during the license term and the Licensee continues to meet the qualifications for issuance of the license.

- D. If an application for a license is refused, the license tax accompanying the same shall be immediately returned to the Person who has made such application. If the City Clerk denies an application for a license, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant, and the notice shall state the basis for the denial. Any applicant aggrieved by the denial may seek review by the Governing Body by filing a written notice of appeal from the denial with the City Clerk within ten business days after the date of the notice of denial. The Governing Body shall determine the matter *de novo*, and if it determines the applicant is qualified as provided by law, shall direct the Clerk to issue the applicant a license; provided that no license shall be issued to an applicant who does not meet the license qualifications set forth in K.S.A. 41-2703 and amendments thereto, or to an applicant or Licensee that is indebted to the City.

(History: Ord. CDC-2875 §8, 2010; CDC-2178 §9, 99; CDC-2102 §2, 98; CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.095 Compliance.

It is unlawful for a licensee to:

- A. Employ any person under the age of 21 years of age in connection with the mixing or dispensing of drinks containing alcoholic liquor;
- B. Employ knowingly or continue in employment any person in connection with the dispensing or serving of alcoholic liquor or the mixing of drinks containing alcoholic liquor who has been adjudged guilty of a felony or of any crime involving a morals charge in the court of this city, or of this state or any other state, or of the United States; provided that the term "conviction" shall include being placed on diversion;
- C. Employ knowingly or continue in employment any person in connection with the dispensing or serving of alcoholic liquor or mixing of drinks containing alcoholic liquor who has been adjudged guilty on a violation of any intoxicating liquor law of this or any other municipality, this or any other state, or of the United States or been placed on diversion on a violation of the driving under the influence laws of this or any other municipality, this or any other state or of the United States during the two-year period immediately following such adjudging;
- D. In the case of a club, fail to maintain at the licensed premises a current list of all club members and their residences addresses or refuse to allow the City Attorney or any of his authorized agents or any law enforcement officer to inspect such list;
- E. Purchase alcoholic liquor from any person except from a person authorized by law to sell such alcoholic liquor to such licensee or permit holder;
- F. Permit any employee of the licensee or permit holder who is under the age of 21 years of age to work on the premises where alcoholic liquor is sold by such licensee or permit holder at any time when not under the on-premises supervision of either the licensee or permit holder, or an employee who is 21 years of age or over;

Chapter 5.20

- G. Employ any person under the age of 18 years of age in connection with the serving of alcoholic liquor.

(History: Ord. CDC-2178 §10, 99; CDC-2102 §3, 98; CDC-1963 §3, 95; CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.100 Hours of closing.

- A. No private club, drinking establishment, or temporary permit holder licensed under the provisions of K.S.A. 41-2601, *et seq.*, shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day. In addition, no caterer shall allow the serving, mixing, or consumption of alcoholic liquor between the hours of 2:00 a.m. and 6:00 a.m. on any day at an event catered by such caterer.
- B. A hotel of which the entire premises are licensed as a drinking establishment or a drinking establishment/caterer may at any time allow the serving, mixing and consumption of alcoholic liquor and cereal malt beverage from a mini-bar in a guest room by guests registered to stay in such room, and guests of guests registered to stay in such room.

(History: Ord. CDC-2178 §11, 99; CDC-2011 §1, 96; CDC-1813 §1, 93; CDC-1653A §1, 91; CDC-1653 §1, 90; PCT-1453 §3, 87; PCOT-1322 §3, 85; AL-859 §1, 75) [Source or prior law: 5.20.030]

5.20.105 Permitting consumption by Minors; exceptions; penalties.

- A. No Licensee or permit holder, or any owner, officer or Employee thereof, shall knowingly or unknowingly permit the possession or consumption of Alcoholic Liquor or Cereal Malt Beverage by a Minor on Premises where alcoholic beverages are sold by such Licensee or permit holder, except that a Licensee's or permit holder's Employee who is not less than 18 years of age may serve Alcoholic Liquor or Cereal Malt Beverage under the on-premises supervision of the Licensee or permit holder, or an Employee who is 21 years of age.
- B. Violation of this Section is a misdemeanor punishable by a fine of not less than \$100.00 and not more than \$250.00 or imprisonment not exceeding 30 days, or both.
- C. It shall be a defense to a prosecution under this Section if:
1. The defendant permitted the Minor to possess or consume the Alcoholic Liquor or Cereal Malt Beverage with reasonable cause to believe that the Minor was 21 or more years of age; and
 2. to possess or consume the Alcoholic Liquor or Cereal Malt Beverage, the Minor exhibited to the defendant a driver's license, Kansas nondriver's identification card or other official or apparently official document, that reasonably appears to contain a photograph of the Minor and purporting to establish that such Minor was 21 or more years of age.

(History: Ord. CDC-2875 §9, 2010; CDC-2178 §12, 99; CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.110 Nudity or Semi-nudity Prohibited - Standards of conduct for entertainment.

Repealed.

(History: Ord. CDC-2029 §1, 97; Ord. CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.115 Revocation of license.

- A. The City Clerk shall immediately revoke the license of any Licensee whenever the state license of the Licensee is revoked by the state for any reason.
- B. The Governing Body, upon five days' written notice to a Person holding a license To Sell Alcoholic Liquor, after conducting a hearing, may assess a fine not to exceed \$500.00, may assess such fine and/or suspension for a period not to exceed 90 days or may revoke such license for any of the following reasons:
 - 1. If the Licensee has fraudulently obtained the license by giving false information in the application therefor or any hearing thereon;
 - 2. If the Licensee, manager, Employee or agent has violated any of the provisions of this Chapter or any rule or regulation by the Governing Body of the City concerning Alcoholic Liquor;
 - 3. If the Licensee has become ineligible to obtain a license or permit under this title;
 - 4. Drunkenness of a Person holding such license, drunkenness of Licensee's manager or Employee while on the Premises for which said license is issued, or for a Licensee, whose manager or Employee permits any intoxicated Person to remain in such place selling Alcoholic Liquor;
 - 5. The sale or gift of Cereal Malt Beverage or Alcoholic Liquor to a Minor by a Licensee, his manager or Employee;
 - 6. The nonpayment of any license tax payable pursuant to this Chapter;
 - 7. For a Licensee, his manager or Employee to permit gambling in or upon Premises selling Alcoholic Liquor;
 - 8. If the Licensee or his manager or Employee, has knowingly permitted any disorderly Person to remain on Premises where Alcoholic Liquor is sold by such Licensee;
 - 9. If there has been a violation of a provision of the laws of this City or of this state or of any other state or the United States pertaining to the sale of intoxicating or Alcoholic Liquors or Cereal Malt Beverages, or any crime involving a Morals Charge on Premises where Alcoholic Liquor is sold by such Licensee;
 - 10. If the Licensee or his manager or any Employee has purchased or displayed, on Premises where Alcoholic Liquor is sold by such Licensee, a federal waging occupational stamp issued by the United States Treasury Department;
 - 11. If the Licensee or his manager or any Employee, has purchased and displayed, on Premises where Alcoholic Liquor is sold by such Licensee, a federal coin-operated gambling device stamp for the Premises issued by the United States Treasury Department;

Chapter 5.20

12. If the Licensee holds a license as a Class B Club, Drinking Establishment or Caterer and has been found guilty of a violation of Article 10 of Chapter 44 of the Kansas Statutes Annotated under a decision or order of the Civil Rights Commission which has become final or such Licensee has been found guilty of a violation of K.S.A. 21-4003 and amendments thereto;
 13. For employing a Person who has been adjudged guilty of a felony, a violation of an offense involving a Morals Charge, or a violation of intoxicating liquor or drug law. The Chief of Police may require any Employee of a Licensee to submit to fingerprinting to determine if a violation of this Section has occurred, and the failure of an Employee to submit to fingerprinting if required by the Chief of Police shall be prima facie evidence that the Employee is ineligible for employment under the provisions of this Section;
 14. For failure to maintain sufficient records to determine the percentage of gross business obtained from the sale of Cereal Malt Beverages or Alcoholic Liquor;
 15. For failure to permit the inspection of such records at all times during business hours by proper agents of the City;
 16. For knowingly allowing or permitting any known felon to loiter upon or about the licensed Premises;
 17. For knowingly selling or providing Alcoholic Liquor to any Person who is intoxicated;
 18. Failure to pay a fine assessed by the Governing Body within 30 days of the date such fine was imposed;
 19. Violation of any provisions of K.S.A. 41-2601 *et seq.*
- C. If any of the grounds for revocation enumerated in Subsection (B) of this Section are violated by an Employee or manager, then in the absence of proof of knowledge by the Licensee, there shall be no revocation, except as herein provided, but there may be a suspension of not more than thirty days. In any event if any Licensee is subject to more than two such suspensions in any twelve-month period, the Licensee's license may be revoked on the third such violation.
- D. Within 20 days after the order of the Governing Body or the City Clerk revoking or suspending any license, the Licensee may appeal from such order to the district court of the county in the manner as provided by law; provided that any appeal taken from an order revoking or suspending any such license shall not suspend the order during the pendency of such appeal. In case of the revocation of a license of any Licensee, no new license shall be issued to such Person or to any Person acting for or on his behalf, for a period of six months after the revocation becomes effective.

(History: Ord. CDC-2875 §10, 2010; CDC-2178 §13, 99; CDC-2102 §4, 98; CDC-1963 §4, 95; CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.120 Suspension of license by Chief of Police.

A. The Chief of Police, upon five days' written notice, and subsequent to conduct of a hearing shall have the authority to suspend such license for a period not to exceed 30 days for any of the reasons set forth at Section 5.20.115B (2), (4), (5), (7), (8), (9), (16), (17) and (18), which reason does not, in the judgment of the Chief of Police, justify a recommendation of revocation; provided, however, that the licensee may appeal such order of suspension to the Governing Body within seven days from the date. In the event such order of suspension is upheld by the Governing Body, the licensee may appeal to the district court of the county in the manner provided by law. Any appeal taken from an order of the Chief of Police shall stay the order of suspension until the matter is resolved by the Governing Body. Any appeal to the district court shall not stay the order of the Governing Body.

B. The Chief of Police shall notify the City Manager and City Clerk prior to making a suspension hereunder.

(History: Ord. CDC-2178 §14, 99; CDC-2102 §5, 98; CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.125 Display of license.

Every licensee shall cause the issued license to be framed and hung in plain view in a conspicuous place on the licensed premises.

(History: Ord. CDC-2178 §15, 99; CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.130 Right of entry and inspection.

The right of immediate entry to and inspection of any premises where alcoholic liquor is sold by a licensee or holder of a temporary permit, or any premises subject to the control of any licensee or temporary permit holder, at any time by any duly authorized officer or agent of the City, or by any law enforcement officer, shall be a condition on which every license or temporary permit is issued, and the application for and acceptance of any license or temporary permit shall conclusively be deemed to be the consent of the applicant and licensee or permit holder to such immediate entry and inspection. Such consent shall not be revocable during term of the license or temporary permit. Refusal of such entry shall be grounds for revocation of the license or temporary permit. Upon the refusal of any licensee to permit immediate entry and inspection as said above, the city attorney shall report such refusal to the State Director of Alcoholic Beverage Control.

(History: Ord. CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.135 Caterer and temporary permit holder notification.

Prior to any event at which a caterer or temporary permit holder will sell liquor by the individual drink, the caterer or temporary permit holder shall notify the Chief of Police in writing at least five working days prior to the event where the event shall take place and the estimated number of individuals participating in the event.

(History: Ord. CDC-1653A §1, 91; CDC-1653 §1, 90; PCT-1453 §4, 87)[Source or prior law: 5.20.035]

5.20.140 Removal from the licensed premises.

- A. Subject to the rights conferred by subparagraph B, below, no person shall remove any drink of alcoholic liquor from premises licensed as a club or drinking establishment or from a caterer's premises, or from premises licensed pursuant to a temporary permit. Violation of this section by a person is a misdemeanor punishable by a fine not to exceed \$100.
- B. Legal patrons of a class A club, class B club or a drinking establishment may remove from the licensed premises one or more opened containers of alcoholic liquor, subject to the following conditions:
 - 1. It must be legal for the licensee to sell the alcoholic liquor in its original container;
 - 2. the alcoholic liquor must be in its original container;
 - 3. each container of alcoholic liquor must have been purchased by a patron and the alcoholic liquor in each container must have been partially consumed on the licensed premises;
 - 4. the licensee or the licensee's employee must provide the patron with a dated receipt for the unfinished container or containers of alcoholic liquor; and
 - 5. before the container of alcoholic liquor is removed from the licensed premises, the licensee or the licensee's employee must securely reseal each container, place the container in a tamper-proof, transparent bag which is sealed in a manner that makes it visibly apparent if the bag is subsequently tampered with or opened.

(History: Ord. CDC-2629 §1, 2006; CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.145 Member must be present.

A club license shall allow the licensee to offer for sale, sell and serve alcoholic liquor for consumption on the licensed premises by members, their families and guests accompanying them and to any reciprocal member as provided by Article 26 of Chapter 41 of Kansas Statutes Annotated.

(History: Ord. CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.150 No drinks promotion.

- A. No club, drinking establishment, caterer or holder of a temporary permit nor any person acting as an employee or agent thereof, shall:
 - 1. Offer or serve any free drink of cereal malt beverage or alcoholic liquor in any form to any person;
 - 2. Offer or serve to any person a drink of cereal malt beverage or alcoholic liquor at a price that is less than the acquisition cost of the drink to the licensee or permit holder;
 - 3. Sell, offer to sell or serve to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the general public or to the general membership of a club;

4. Sell, offer to sell or serve any drink of cereal malt beverage or alcoholic liquor to any person at any time at a price less than that charged all other purchasers of drinks on that day;
 5. Increase the volume of alcoholic liquor contained in a drink or the size of a drink or cereal malt beverage without increasing proportionately the price regularly charged for the drink on that day.
 6. Encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or cereal malt beverage or the awarding of drinks as prizes; or
 7. Advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under subsections A(1) through (6);
 8. Sell, offer to sell or serve any drink of alcoholic liquor or cereal malt beverage for consumption off the licensed premises;
 9. Knowingly allow or permit any person to remove a drink of alcoholic liquor from the licensed premises or from the caterer's premises, or from premises licensed pursuant to a temporary permit.
- B. Nothing in subsection A shall be construed to prohibit a club, drinking establishment, caterer or holder of a temporary permit from:
1. Offering free food or entertainment at any time; or
 2. Selling or delivering wine by the bottle or carafe.
- C. Violation of any provision of this section is a misdemeanor and punishable by a fine of not more than \$500 or imprisonment not to exceed six months or by both such fine and imprisonment.
- D. Violation of any provision of this act shall be grounds for license suspension or revocation.

(History: Ord. CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.155 Penalty for violation.

Any person violating any provisions of this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500 or 30 days in the county jail unless otherwise provided herein.

(History: Ord. CDC-1653A §1, 91; CDC-1653 §1, 90)

5.20.160 Separability.

If any part or parts of this ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this ordinance. The governing body hereby declares that it would have passed the remaining parts of this ordinance if it had known that such part or parts thereof would be declared invalid.

(History: Ord. CDC-1653A §1, 91; CDC-1653 §1, 90; PCOT-1322 §4, 85)[Source or prior law: 5.20.040]

5.20.165 Savings clause.

Neither the adoption of this ordinance nor the repeal or amendment of any ordinance or part or portion thereof shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect.

(History: Ord. CDC-1653A §1, 91; CDC-1653 §1, 90; PCOT-1322 §5, 85)[Source or prior law: 5.20.050]

[Next Page is 5-800]

Chapter 5.24
COIN-OPERATED AMUSEMENT DEVICES
(This entire chapter has been repealed.)

Sections:

- 5.24.010 Findings. (Repealed)
- 5.24.020 Definitions. (Repealed)
- 5.24.030 License required. (Repealed)
- 5.24.040 Application - Contents. (Repealed)
- 5.24.050 Inspection of premises. (Repealed)
- 5.24.060 Denial of License. (Repealed)
- 5.24.070 License fees; reimbursement. (Repealed)
- 5.24.080 Regulations. (Repealed)
- 5.24.090 Conduct on premises. (Repealed)
- 5.24.100 Revocation or suspension. (Repealed)
- 5.24.110 Reasons for revocation or suspension. (Repealed)
- 5.24.120 Appeals and future licensing. (Repealed)
- 5.24.130 Existing facilities. (Repealed)
- 5.24.140 Penalty. (Repealed)

5.24.010 Findings.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1204 §1, 83)

5.24.020 Definitions.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1204 §2, 83)

5.24.030 License required.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1204 §3, 83; AD-816 §1, 74)

5.24.040 Application - Contents.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1204 §4, 83; AD-816 §2, 74)

5.24.050 Inspection of premises.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1204 §5, 83)

5.24.060 Denial of License.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1246 §1, 84; AD-1204 §6)

Chapter 5.24

5.24.070 License fees; reimbursement.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1246 §2, 84; AD-1204; AD-816)

5.24.080 Regulations.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1246 §3, 84; AD-1204; AD-371)

5.24.090 Conduct on premises.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1204 §9, 83)

5.24.100 Revocation or suspension.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1204 §10, 83; AD-371)

5.24.110 Reasons for revocation or suspension.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1204 §11, 83)

5.24.120 Appeals and future licensing.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1204 §12, 83)

5.24.130 Existing facilities.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1204 §13, 83)

5.24.140 Penalty.

Repealed.

(History: Ord. REP-2882 §1, 2010; AD-1204 §14, 83; AD-371)

[Next Page is 5-900]

Chapter 5.28 DRIVE-IN RESTAURANTS

Sections:

- 5.28.010 Generally - Defined.
- 5.28.020 Screening-Fencing required in R-1 or R-2 zone.
- 5.28.030 Hours.
- 5.28.040 No trespassing signs required after hours.
- 5.28.050 Loudspeakers. (Repealed)
- 5.28.060 Loud noises. (Repealed)
- 5.28.070 Patrolling premises.
- 5.28.080 Fencing to prevent litter from scattering.
- 5.28.090 Emerging or exiting.
- 5.28.100 Trash containers - Prevention of trash scattering.
- 5.28.110 Behavior of persons on premises. (Repealed)
- 5.28.120 Violation - Penalties.

5.28.010 Generally - Defined.

The following regulations for the operation of drive-in restaurants and the following standards of conduct in drive-in restaurants are established. "Drive-in restaurant," as used in this chapter, means those places of business where food is or may be consumed in cars parked on the premises, whether or not the premises have inside facilities for eating.

(History: Ord. DIR-382 ' 1, 66)

5.28.020 Screening - Fencing required in R-1 or R-2 zone.

Any drive-in restaurant adjacent to R-1, single family residential property, or adjacent to R-2, duplex property, shall be screened or fenced so that no light shall be cast upon such adjacent property.

(History: Ord. DIR-382-A ' 1, 66; DIR-382 ' 2, 66)

5.28.030 Hours.

No drive-in restaurant may remain open past the hour of one a.m., with the exception that indoor facilities may remain open after the hour of one a.m., provided that no food is consumed other than within the indoor facilities.

(History: Ord. DIR-382-A ' 2, 66; DIR-382 ' 3, 66)

5.28.040 No trespassing signs required after hours.

At all times during the nighttime hours that such drive-in restaurant is not open for business, "No Trespassing" signs must be posted at all drive-in parking lot entrances.

(History: Ord. DIR-382-A ' 3, 66; DIR-382 ' 4, 66)

5.28.050 Loudspeakers.

Repealed.

(History: Ord. NOI-2287 §11, 2001; DIR-382 ' 5, 66)

5.28.060 Loud noises.

Repealed.

(History: Ord. NOI-2287 §11, 2001; DIR-382 ' 6, 66)

5.28.070 Patrolling premises.

The owner or operator of any drive-in restaurant shall regularly patrol the premises and cause a surveillance to be kept thereon in order to regulate the conduct of persons on the premises and maintain order, pursuant to this chapter.

(History: Ord. DIR-382 ' 7, 66)

5.28.080 Fencing to prevent litter from scattering.

All drive-in restaurants shall be fenced so that litter and debris will not blow or be cast upon adjacent premises.

(History: Ord. DIR-382 ' 8, 66)

5.28.090 Emerging or exiting.

Every driver of a vehicle emerging or exiting from a drive-in restaurant shall stop before entering the street and shall yield the right-of-way to any vehicle or vehicles approaching on the street so closely as to constitute an immediate hazard, and shall yield the right-of-way to any pedestrian approaching the exit.

(History: Ord. DIR-382 ' 9, 66)

5.28.100 Trash containers - Prevention of trash scattering.

The owner or operator of any drive-in restaurant shall furnish sufficient trash containers for use on the premises and shall not cause or permit trash or debris to be scattered about the premises.

(History: Ord. DIR-382 ' 10, 66)

5.28.110 Behavior of persons on premises.

Repealed.

(History: Ord. NOI-2287 §11, 2001; DIR-382 ' 11, 66)

5.28.120 Violation - Penalties.

Violation of this chapter is a public offense, and any person, firm or corporation convicted of the violation of this chapter shall be fined in a sum of not less than \$5.00 and not more than \$200.

Each day upon which such a violation occurs constitutes a separate violation.

(Amended during codification in accordance with K.S.A.12-3015; Ord. DIR-382 ' 12, 66)

[Next Page is 5-1000]

Chapter 5.36 EXPLOSIVES & BLASTING AGENTS¹

Sections:

- 5.36.010 Application and relation to the City's adopted edition of the International Fire Code.
- 5.36.020 Short title.
- 5.36.030 Authority having jurisdiction.
- 5.36.040 Jurisdiction defined. (Repealed)
- 5.36.050 Permit defined.
- 5.36.060 Application of chapter.
- 5.36.062 Application to private property.
- 5.36.070 Retroactivity of permit. (Repealed)
- 5.36.080 Operations requiring permits.
- 5.36.090 Insurance and scale drawings required prior to permit issuance.
- 5.36.100 Reissuance of permits.
- 5.36.110 Permits not issued for places of public assembly or artificially lighted places. (Repealed)
- 5.36.120 Permits not issued for technical institute or college unless used for research or laboratory.
- 5.36.130 Permits nontransferable.
- 5.36.140 Validity period of permit - revocation.
- 5.36.150 Separate permits required for each operation.
- 5.36.160 Inspection and approval.
- 5.36.165 Blasting operations.
- 5.36.170 Modification. (Repealed)
- 5.36.180 Appeals.
- 5.36.190 Failure to comply with chapter - Penalties.

5.36.010 Application and relation to the City's adopted edition of the International Fire Code.

The provisions of the City's adopted edition of the International Fire Code, as found in O.P.M.C. 16.120.100, K.A.R. 22-4-1 through 22-4-3, and applicable federal regulations to include Title 27 of the Code of Federal Regulations, shall be complied with in all matters concerning the manufacture, storage, possession, transportation, sale and use of explosives or blasting agents within the City; provided, that the provisions of this Chapter shall, when not addressed by the City's adopted edition of the International Fire Code, be complied with. Copies of this ordinance shall be on file with the City Clerk and be open to inspection and available to the public during normal business hours.

(History: Ord. EBA-2461 §1, 2004; EBA-2248 §1, 2001; EBA-948,B §1, 89; EBA-948 §1, 77; EBA-410-A; EBA-410)

¹ For the statutory provisions defining as a crime, the selling or buying of explosives without a permit, and prohibiting certain sales outright, see K.S.A. 21-4207 – 21-4209; for the statutory provisions that require the State Fire Marshal to make rules and regulations for keeping, storing, use, manufacture, sale ... of highly inflammable materials ... including explosives, see K.S.A. 31-207. For the administrative provisions implementing that directive, see Kansas Admin. Regs. 22-1 to 22-8.

5.36.020 Short title.

This chapter shall be known as "An Ordinance Regulating the Manufacture, Storage, Possession, Transportation, Sale, and Use of Explosive Materials and Blasting Agents in the City of Overland Park, Kansas," and may be referred to as "The Explosive Materials and Blasting Agents Ordinance."

(History: Ord. EBA-948,B §2, 89; EBA-948 §2, 77; EBA-410 §2)

5.36.030 Authority having jurisdiction.

The City Engineer, or his agent, is designated to administer this ordinance as provided herein. In addition, the Fire and Police Departments shall have authority to enforce the regulatory provisions set forth herein; provided further, the City Engineer shall be notified immediately of any enforcement action taken.

(History: Ord. EBA-948,B §3, 89; EBA-948 §3, 77; EBA-410 §3)

5.36.040 Jurisdiction defined.

Repealed.

(History: Ord. EBA-948 §4, 77; EBA-410 §4)

5.36.050 Permit defined.

"Permit," whenever used in this chapter, means the written authority of the City Engineer, Fire Department or Police Department issued pursuant to this chapter, to manufacture, possess, store, sell, transport, or use an explosive or blasting agent.

(History: Ord. EBA-948,B §4, 89; EBA-410 §5, 67)

5.36.060 Application of chapter.

This chapter shall apply to all persons, firms, corporations, copartnerships, governmental agencies and associations storing, handling, or using explosives or blasting agents, and to the owner or lessee of any building, premises, or equipment in or on which explosives or blasting agents, and to the owner or lessee of any building, premises, or equipment in or on which explosives or blasting agents are stored, handled, or used.

(History: Ord. EBA-948,B §5, 89; EBA-948 §5, 77; EBA-410 §6)

5.36.062 Application to private property.

The provisions of this chapter shall be applicable to private as well as public property.

(History: Ord. EBA-948,B §6, 89)

5.36.070 Retroactivity of permit.

Repealed.

(History: Ord. EBA-948 §6, 77; EBA-410 §7)

5.36.080 Operations requiring permits.

A permit issued pursuant to this chapter shall be obtained from the City Engineer for any of the operations listed below in order to achieve greater fire safety and protection of the public; provided, all permits shall be acknowledged and endorsed in writing by the City Fire Department and Police Department:

- A. To manufacture, possess, store, keep, sell or otherwise dispose of any explosives, special industrial explosive materials, or blasting agents;
- B. To maintain any facility for loading, unloading, reloading, or transshipment of explosives or blasting agents, or the temporary retention of explosives or blasting agents in connection therewith;
- C. To use any explosives or blasting agents;
- D. To keep on hand any quantity of explosives or blasting agents in industrial research laboratories and laboratories of technical institutes, colleges, universities, and similar institutions.

(History: Ord. EBA-948,B §7, 89; EBA-948 §7, 77; EBA-410 §8(1))

5.36.090 Insurance and scale drawings required prior to permit issuance.

Before a permit as required under Section 5.36.080 shall be issued, the applicant for such permit shall secure and maintain insurance coverage in accordance with the provisions of the Design and Construction Standards Manual as defined and incorporated by reference in Chapter 13.10. Before a permit shall be issued, the applicant shall furnish to the City Engineer a scaled drawing accurately showing the surrounding land, indicating improvements thereupon, and all dimensions and distances relative thereto. The scale drawing shall show distances to all houses, buildings, or other facilities within 500 feet of the blasting or demolition work. The drawing accompanying an application for a permit to store explosives or blasting agents must show distances to buildings and other features in accordance with the American Table of Distances for Storage of Explosives. All permit applications which are not accompanied by the scale drawing shall be refused and will not be considered until such scale drawing accompanies the application for permit. In addition, the City Engineer shall have authority to establish additional written standards for the submission of scaled drawings or other portions of the application process.

(History: Ord. EBA-2850 §1, 2010; EBA-948,B §8, 89; EBA-948,A §1, 84; EBA-948 §8, 77; EBA-410 §8(2))

5.36.100 Reissuance of permits.

All permits issued in accordance with the provisions of this chapter shall, when reissued, be subject to any amendments hereafter made to this chapter.

(History: Ord. EBA-410 §8(3), 67)

5.36.110 Permits not issued for places of public assembly or artificially lighted places.

Repealed.

(History: Ord. EBA-2248 §2, 2001; EBA-948 §9, 77; EBA-410 §8(4))

5.36.120 Permits not issued for technical institute or college unless used for research or laboratory.

Permits as required in 5.36.080 shall not be issued for any building or structure that is occupied as technical institute, college, university, or similar institution, except that permits may be issued for school buildings used for research or for laboratories.

(History: Ord. EBA-410 §8(5), 67)

5.36.130 Permits nontransferable.

Permits shall not be transferable.

(History: Ord. EBA-410 §8(6), 67)

5.36.140 Validity period of permit - revocation.

Each permit granted by the City Engineer shall be valid for such period as may be specified but not to exceed one year, and shall be a revocable license, and shall expire when revoked.

(History: Ord. EBA-410 §8(7), 67)

5.36.150 Separate permits required for each operation.

Separate and distinct permits shall be required for each operation listed under 5.36.080.

(History: Ord. EBA-410 §8(8), 67)

5.36.160 Inspection and approval.

Application for a permit to construct or erect facilities for the storage, handling or use of explosives or blasting agents as required in this chapter shall be made in writing to the City Engineer. The City Engineer shall insure the applicant has a valid user's permit issued by the State Fire Marshal and then cause to be made an inspection of the premises and equipment proposed to be used. If they are found to be in compliance with this chapter, a statement to that effect shall be noted on the application and the application signed by the person making the inspection. The City Engineer shall thereupon issue a permit as applied for.

The City Engineer, or his agent, may inspect premises, buildings, installations, or equipment in conformance with applicable law for the storage, handling, or use of explosives or blasting agents. If a violation of this chapter is found to exist, he shall file with the owner, occupant, or operator a notice citing the violation and ordering its correction within a specified time period. If such order is not complied with, the City Engineer shall suspend the permit issued for such facility.

(History: Ord. EBA-948B §9, 89; EBA-948 §11, 77; EBA-410 §9, 67)

5.36.165 Blasting operations.

All blasting operations shall be carried out only by skilled and experienced personnel who are currently licensed by the state of Kansas to conduct blasting operations. When blasting is to take place within 500 feet of a house, building, or other facility, the application for the permit must be accompanied by a statement of procedure for the blasting operation approved by the applicant's insurance carrier. This statement of procedure shall include specific information on the blasting operation, such as charge weights, delays, depths, patterns, protective mats or coverings required, seismographic monitoring, pre-blast surveys, and notification of nearby property or utility owners.

Regardless of the distance to nearby facilities the blasting operations shall be carried out in such manner that they will not cause fly rock or damage from air blast overpressure or ground vibration. Seismic recordings may be required by the City Engineer. The maximum peak particle velocity at any such recording site must not exceed one inch per second in any one of three mutually perpendicular directions.

A daily blasting log, and storage log if applicable, must be kept for all blasting operations and made available for inspection by the City Engineer.

(History: Ord. EBA-948,B §10, 89; EBA-948 §11, 77)

5.36.170 Modification.

Repealed.

(History: Ord. EBA-948,B §13, 89; EBA-410 §10, 67)

5.36.180 Appeals.

As owner, lessee, agent, operator, or occupant aggrieved by any order or permit issued pursuant to this ordinance may file an appeal to the Code Board of Appeals, constituted by 16.04.120 of the Overland Park Municipal Code, and such appeal shall be heard by the Code Board of Appeals upon notice of the chairman and within 10 days of such appeal. Such appeal shall not stay the execution of such order until it has been heard and reviewed, vacated or confirmed. The Code Board of Appeals shall at such hearing affirm, modify, revoke, or vacate such order. Unless revoked or vacated, such order shall then be complied with.

Nothing contained in this section shall be deemed to deny the right of any person, firm, corporation, copartnership, or voluntary association to appeal from an order or decision of the Code Board of Appeals to a court of competent jurisdiction. Such appeal shall not stay the execution of such order until it has been heard and reviewed, vacated or confirmed.

(History: Ord. EBA-948,B §11, 89; EBA-948 §12, 77; EBA-410 §11, 67)

5.36.190 Failure to comply with chapter - Penalties.

Any person who fails to comply with the provisions of this chapter or with an order of the City Engineer issued pursuant thereto and from which no appeal has been taken, or with such an order as affirmed or modified by the City Council or by a court of competent jurisdiction within the time fixed therein, shall be fined not less than \$100 nor more than \$1000. The imposition of one penalty for the violation of such order shall not excuse the violation or permit it to continue. Each day that a violation continues shall be considered a separate violation and shall be subject to additional fines and penalties.

(History: Ord. EBA-948,B §12, 89; EBA-410 §12, 67)

[Next Page is 5-1100]

Chapter 5.38
SMOKELESS PROPELLANTS, PRIMERS & BLACK POWDER

Sections:

- | | |
|----------|--|
| 5.38.010 | Title. |
| 5.38.020 | Application and relation to the City's adopted edition of the International Fire Code. |
| 5.38.030 | Reporting and notification requirements. |
| 5.38.040 | Failure to comply. |

5.38.010 Title.

This chapter shall be known as "An Ordinance Regulating the Manufacture, Storage, Possession, Transportation, Sale and Use of Smokeless Propellants And Black Powder in the City of Overland Park, Kansas" and may be referred to as "The Smokeless Propellants and Black Powder Ordinance."

(History: Ord. SPBP-1615 §1, 89)

5.38.020 Application and relation to the City's adopted edition of the International Fire Code.

The provisions of the City's adopted edition of the International Fire Code, as found in O.P.M.C. 16.120.100 shall be complied with in all matters concerning the manufacture, storage, possession, transportation, sale and use of smokeless propellants, primers and black powder within the City; provided, that the provision of this Chapter shall when in conflict or when not addressed by the City's adopted edition of the International Fire Code take precedent and be complied with.

(History: Ord. SPBP-2462 §1, 2004; SPBP-2249 §1, 2001; SPBP-1615 §2, 89)

5.38.030 Reporting and notification requirements.

All persons, firms, contractors, corporations, co-partnership agencies and associations storing on premises owned, leased or in any fashion controlled by said entities shall report in writing the storage, keeping or presence of smokeless propellants and black powder as follows:

- A. Smokeless propellants in a quantity of fifty pounds or more.
- B. Black powder in a quantity of twenty pounds or more.

Notice of the aforementioned quantities of smokeless propellants or black powder shall be made prior to storage in writing to the City Fire Marshals on standard forms provided by the City for such purposes. The City Fire Marshal shall forward copies of said forms to the City Police Department and City Engineer.

(History: Ord. SPBP-1615 §3, 89)

5.38.040 Failure to comply.

Any person who fails to comply with provisions of this chapter shall be fined not less than \$100 nor more than \$1,000. The imposition of a penalty for a violation shall not excuse the violation or permit it to continue. Each day that a violation continues shall be considered a separate violation and shall be subject to additional fines and penalties.

(History: Ord. SPBP-1615 §4, 89)

[Next Page is 5-1200]

Chapter 5.40 FIREWORKS¹

Sections:

- 5.40.010 Definitions.
- 5.40.020 Fireworks prohibited; exceptions.
- 5.40.030 Fireworks retail sale, storage & purchase regulations. (Repealed)
- 5.40.040 Regulations for discharging fireworks. (Repealed)
- 5.40.050 Permit for public display by pyrotechnic expert - Generally.
- 5.40.060 Application for permit for public display.
- 5.40.070 Investigation and approval of permit by Code Official - Fee.
- 5.40.080 Insurance required.
- 5.40.090 Conduct of public display.
- 5.40.100 Fire extinguishers at public display. (Repealed)
- 5.40.110 Enforcement of provisions.
- 5.40.120 Exemptions from chapter.
- 5.40.130 Storage of fireworks to be sold at wholesale.
- 5.40.140 Violation - Penalty.

5.40.010 Definitions.

Fireworks. Any composition or device for the purpose of producing a visible or an audible effect for entertainment purposes by combustion, deflagration, or detonation that meets the definition of 1.4G or 1.3G fireworks as set forth herein. Fireworks does not include devices which contain quantities of less than twenty-five hundredths or less of a grain of explosives such as contained in paper caps used in toy pistols, toy guns or other novelty items. Each package containing toy paper caps offered for retail sale shall be labeled to indicate the maximum explosive content per cap.

Fireworks, 1.4G (Formerly known as Class C, Common Fireworks). Small fireworks devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion. Such 1.4G Fireworks shall include any firework that explodes, produces a report, shoots a projectile into the air, or produces an open flame including rockets, missiles, helicopters, sparklers, reloadable tube devices, comets, mines and shells, fire crackers, and roman candles. Such 1.4G fireworks which comply with the construction, chemical composition, and labeling regulations of the DOT for Fireworks, UN 0336, and the U.S. Consumer Product Safety Commission as set forth in CPSC 16 CFR: Parts 1500 and 1507, are not explosive materials for the purpose of this code.

Fireworks, 1.3G (Formerly known as Class B, Special Fireworks). Large fireworks devices, which are explosive materials, intended for use in fireworks displays and designed to produce audible or visible effects by combustion, deflagration, or detonation. Such 1.3G fireworks include, but are not limited to, firecrackers containing more than 130 milligrams (2 grains) of explosive composition, aerial shells containing more than 40 grams of pyrotechnic composition, and other display pieces, which exceed the limits for

¹ For statutory authority of the State Fire Marshal to regulate use and handling of fireworks, see K.S.A. 31-207; for administrative regulations issued pursuant to that authority, see Kansas Administrative Regulations 22-6.

Chapter 5.40

classification as 1.4G fireworks. Such 1.3G fireworks, are also described as Fireworks, UN0335 by the DOTn.

(History: Ord. FW-2250 ' 1, 2001; FW-912 ' 1, 76; FW-654 ' 1, 72; FW-223; FW-105)

5.40.020 Fireworks prohibited. Exceptions.

No person shall store, offer for sale, expose for sale, sell at retail, use, explode, discharge, or possess any fireworks except for supervised public exhibitions or displays; provided, however, that such public exhibitions or displays shall be conducted only in accordance with 5.40.050 through 5.40.100 and in accordance with any rules and regulations issued by the fire chief, who is designated as the Code Official, for review and approval as the Code Official, for the area included within the permit application boundaries of the City for compliance with O.P.M.C. Chapter 16.120. Provided further, however, that the provisions and prohibitions of this section shall not be construed to prohibit the proper and lawful storage of fireworks, by an actual wholesaler, for sale outside the City limits of Overland Park, Kansas.

(History: Ord. FW-2250 ' 2, 2001; FW-930 ' 1, 77; FW-912 ' 2, 76; FW-654 ' 2, 72; FW-223, A,B,C)

5.40.030 Fireworks retail sale, storage, and purchase regulations.

Repealed.

(History: Ord. FW-912 ' 3, 76; FW-654 ' 3, 72; FW-105; FW-105A & B)

5.40.040 Regulations for discharging fireworks.

Repealed.

(History: Ord. FW-912 ' 4, 76; FW-654 ' 4, 72; FW-105; FW-105A)

5.40.050 Permit for public display by pyrotechnic expert - Generally.

Fireworks may be sold for use by experienced pyrotechnic experts in a public exhibition or display of fireworks; provided, that the person desiring to purchase such articles of fireworks shall exhibit to and file with the seller a permit, or a copy thereof, issued by the City Clerk.

(History: Ord. FW-654 ' 5, 72; FW-223)

5.40.060 Application for permit for public display.

An applicant for a permit for a public exhibition or display of fireworks shall, at least 10 days before the day set for the display, file with the City Clerk a written application, in triplicate, duly subscribed and sworn to by the applicant.

Such application shall set forth the following:

- A. The name of the association, organization or corporation sponsoring the display, together with the names of the persons to be in charge of the firing and discharging of the display;
- B. The date and time of day at which the display is to be held;
- C. The exact location planned for the display;
- D. A description setting forth the age, experience, residence and physical characteristics of the persons who are to do the actual firing and discharging of the fireworks;

- E. The number and kinds of fireworks to be discharged;
- F. The manner and place of the storage of such fireworks between the date of purchase and the date of display;
- G. A diagram or sketch of the grounds on which the display is to be held, showing the point at which the fireworks are to be discharged, the location of all buildings, streets and other lines of communication, the lines behind which the public will be restrained, and the location of all nearby trees, telegraph or telephone lines or other overhead obstructions.

(History: Ord. FW-654 §6, 72; FW-223)

5.40.070 Investigation and approval of permit by Code Official - Fee.

A copy of an application filed under the preceding section shall be sent at once to the fire chief for review and approval as the Code Official, for the area included within the permit application boundaries. The Code Official shall make an investigation of the site of the proposed display, investigate the competence and skill of the persons to be in charge of firing and discharge of the fireworks, and be satisfied that the display will be conducted lawfully and in accordance with this chapter. No permit shall be issued unless the approval in writing therefor, signed by the Code Official, is filed with the City Clerk. The applicant for a permit shall, at the time of filing application therefor, pay a fee of \$10.00.

(History: Ord. FW-2250 §3, 2001; FW-912 §5, 76; FW-654 §7, 72; FW-223)

5.40.080 Insurance required.

Before a permit shall be issued for a public exhibition or display of fireworks, the applicant therefor shall file with the City Clerk a certificate of insurance from a company acceptable to the City in at least the amount listed below.

General Liability

Bodily Injury & property damage combined single limit: \$500,000 per occurrence

Policy must include the following conditions:

- A. Premises and Operations
- B. Explosion
- C. Independent Contractors

(History: Ord. FW-1478 §1, 87; FW-1050 §1, 79; FW-654 §8, 72; FW-223)

5.40.090 Conduct of public display.

Public fireworks displays shall comply with the requirements of O.P.M.C. Chapter 16.120 and Section 3308 of the City's adopted edition of the International Fire Code.

(History: Ord. FW-2463 §1, 2004; FW-2250 §4, 2001; FW-654 §9, 72; FW-223)

5.40.100 Fire extinguishers at public display.

Repealed.

(History: Ord. FW-2250 §6, 2001; FW-654 §10, 72; FW-223)

5.40.110 Enforcement of provisions.

The Chief of Police is charged with the duty of enforcing all the provisions, terms and regulations of this chapter and he may cause to be confiscated and destroyed all fireworks sold, used or possessed in violation of this chapter.

(History: Ord. FW-654 §11, 72; FW-223)

5.40.120 Exemptions from chapter.

Nothing in this chapter shall be construed as prohibiting any resident wholesaler, dealer or jobber from selling at wholesale such fireworks as are not herein prohibited, or the sale of any kind of fireworks; provided, that the same are to be shipped out of the City, nor shall this chapter be construed as prohibiting the manufacture, storage, sale or use of signals, fuses or fireworks necessary for the safe operation of railroads, trucks, aircraft or other instrumentalities of transportation or of blank cartridges and blank pistols for a show or theater or for signal or ceremonial purposes in athletics or sports or for use by military organizations. Nothing in this ordinance shall be deemed or construed to prevent, prohibit or regulate the use of explosives of any nature, or any substance or device used in connection with such explosives, in any building or construction work or activities within the City as provided in Chapter 5.36.

(History: Ord. FW-654 §12, 72; FW-223)

5.40.130 Storage of fireworks to be sold at wholesale.

Fireworks to be sold at wholesale shall be kept in a building used solely for the storage of fireworks. Such buildings must comply with pertinent building code requirements of Chapters 16.100 through 16.180, for this type of occupancy.

(History: Ord. FW-2250 §5, 2001; FW-654 §13, 72; FW-223)

5.40.140 Violation-Penalty.

Violation of any section of this chapter is a public offense and any person shall, upon conviction thereof, be punished as provided in 1.12.010.

(Amended during codification in accordance with KSA 12-3015; Ord. FW-654 §14, 72; FW-223)

[Next Page is 5-1300]

**Chapter 5.44
GARAGE SALES**

Sections:

- 5.44.010 Definitions.
- 5.44.020 Unlawful to hold more than the allowed number of sales per year.
- 5.44.025 Location.
- 5.44.026 Lease of Property.
- 5.44.030 Time limit.
- 5.44.035 Signs.
- 5.44.040 Violations-Penalty.

5.44.010 Definitions.

For the purpose of this chapter, the following terms, phrases, words, and the derivations will have the meaning given herein:

- A. "Garage sale" is hereby defined to mean the sale of any goods as defined herein, which sale is conducted on or about the premises of a private residence, by and resident of the immediate neighborhood, one of whom must be the occupant of the premises and which sale is open to the public, and includes all sales entitled "garage sale," "lawn sale," "rummage sale," "sample sale," "flea market sale," "basement sale," "porch sale," "yard sale," "estate sale," "moving sale" or any similar casual sale of tangible personal property which is advertised by any means whereby the public at large is or can be made aware of the sale;
- B. "Goods" includes any new or used goods, wares, merchandise, or other property capable of being the object of a sale regulated hereunder;
- C. "Person" is any person, firm, partnership, association, corporation, company, or organization of any kind.

(History: Ord. GS-2598 §1, 2006; GS-1251 §1, 84; GS-483 §1, 67)

5.44.020 Unlawful to hold more than the allowed number of sales per year.

It is unlawful for any person or household to hold more than two garage sales at the same location within one calendar year. If members of more than one residence join in holding a garage sale, then such sale shall be considered as to have been held for each and all such residences.

The Director of Planning and Development Services, or his/her designee, may grant permission for an additional sale during that calendar year if such sale is either an estate sale resulting from the death of an owner of the property or a moving sale resulting from the sale of the residence, upon the submission of sufficient documentation to the Director.

(History: Ord. GS-2598 §2, 2006; GS-1251 §2, 84; GS-483 §2, 67)

5.44.025 Location.

It is unlawful for any person to display items for or conduct a garage sale in any place other than a dwelling unit, garage, accessory use building, driveway or front yard. Display of items in the public right-of-way or within 10 feet of the curb is prohibited.

(History: Ord. GS-2598 §3, 2006; GS-1476 §1, 87)

5.44.026 Lease of Property.

It is unlawful to sell at a garage sale any goods other than goods legally owned by a resident of the private residence, or an immediate neighbor participating in the sale, and commercial merchandise may not be included in any such sale.

No merchandise shall be purchased and brought upon the premises for resale. Only the personal property of the residents or immediate neighbors may be sold. "Personal property" does not include property that has been consigned to, or acquired for the purpose of resale, but is limited to personal property which is utilized, owned and maintained by an individual or by members of a residence and acquired in the normal course of living in or maintaining of a residence; provided, however, such property may include salesperson promotional and advertising items not originally purchased or acquired for sale to the consumer.

(History: Ord. GS-2598 §4, 2006; GS-1476 §2, 87)

5.44.030 Time limit.

It is unlawful for any person to conduct a garage sale in violation of the length and separation requirements set forth in this ordinance. Each of the two garage sales permitted during a calendar year shall consist of not less than one day or portion thereof nor more than four consecutive days or portions thereof. For the purposes of this ordinance, a garage sale shall be considered to be conducted when either merchandise is offered or displayed for sale, or when any signs or other advertisements indicate it is being conducted, or both, and shall be considered concluded when there is an absence of said criteria and four consecutive days from its commencement have elapsed. When the first such sale in a calendar year is concluded, the second permitted garage sale may not commence until at least 30 clear days have elapsed from such conclusion. For example, a resident may hold a garage sale on any or all of the days between Wednesday and Saturday of the same week, but may not hold such a sale on a Wednesday and Sunday of the same week.

(History: Ord. GS-2598 §5, 2006; GS-1251 §3, 84; GS-483 §3, 67)

5.44.035 Signs.

Signs for sales at homes are governed by Title 18, the Unified Development Ordinance. See Section 18.440.

(History: Ord. GS-2598 §6, 2006)

5.44.040 Violations - Penalty.

The violation of any provision of this Chapter is a public offense and any person convicted thereof shall be punished as provided in Section 1.12.010. Each day that any violation of this Chapter shall continue shall constitute a separate offense. Prosecution of any violation as a public offense pursuant to this Section may be in addition to, or as an alternative to, any other remedy or course of action available to the City under this Chapter.

(History: Ord. GS-2598 §7, 2006; GS-1251 §4, 84; GS-483 §4, 67)

[Next Page is 5-1400]

Chapter 5.46
JUVENILE DANCE HALLS

Sections:

| | |
|----------|---------------------------------|
| 5.46.010 | Definitions. |
| 5.46.020 | License Required. |
| 5.46.030 | Exceptions. |
| 5.46.040 | License Application. |
| 5.46.050 | License Fee. |
| 5.46.060 | Issuance of License. |
| 5.46.070 | Hours of Operation. |
| 5.46.080 | Persons permitted in club. |
| 5.46.090 | Alcohol and Tobacco Prohibited. |
| 5.46.100 | Posting. |
| 5.46.110 | Maximum Occupancy. |
| 5.46.120 | Interior Lighting. |
| 5.46.130 | Parking. |
| 5.46.140 | Supervision and Security. |
| 5.46.150 | License Revocation. |
| 5.46.160 | Penalty. |

5.46.010 Definitions.

As used in this chapter, the words and phrases defined in this section shall have the following meanings:

- A. "In Session" means the status of a school during the fall or spring terms when students are required to attend the school;
- B. "Juvenile" means a person 14 years of age through 20 years of age;
- C. "Juvenile dance hall" means any place primarily attended by juveniles, to participate in dancing or listening to recorded music, whether admission thereto is by a set admission charge, by the donation of money, or no charge at all;
- D. "License" means a permit to operate a juvenile dance hall;
- E. "Licensee" means the person to whom the license required under this chapter is issued as well as any manager, agent or employee of such person at the licensed place of business;
- F. "School" means a public or private elementary or secondary school.

(History: Ord. JDH-1626A §1, 89; JDH-1626 §1, 89)

5.46.020 License Required.

It is unlawful and prohibited for any person to operate a juvenile dance hall within the City without having in such person's possession a valid juvenile dance hall license for the place of business issued by the City.

(History: Ord. JDH-1626 §2, 89)

5.46.030 Exceptions.

The following activities do not require a license pursuant to this chapter:

- A. A dance conducted at a private residence from which the general public is excluded;
- B. A dance conducted at or sponsored by a public or private elementary school, secondary school, college, or university;
- C. A dance conducted at a religious or fraternal organization;
- D. A dance conducted at a place owned by the federal, state, or local government.

(History: Ord. JDH-1626 §3, 89)

5.46.040 License Application.

The application for a license to operate a juvenile dance hall shall be made by the applicant to the City Clerk on a form provided by the City Clerk and shall contain, but not be limited to, the following information:

- A. The name and residence of the applicant;
- B. A description of the location to be licensed, the dimensions of the interior of the location, the dimensions of the dance floor, the seating arrangements, the location of any food service area, and the location and dimensions of the parking area. These dimensions shall be provided by inclusion of a floor plan graphically depicting the location of said items;
- C. A detailed description of the provisions the applicant has made for security on the premises to include parking lot security and the names and addresses of the persons who will supervise and manage the premises;
- D. The manner in which admission will be permitted, and, if admission will be by a set admission charge or the donation of money, the amount of the charge or the donation that will be required;
- E. The length of time the applicant has resided within Johnson County and the state of Kansas;
- F. The name of the owner of the premises upon which the place of business is located;
- G. The name and address of all employees who will be employed on the premises;
- H. A statement that the applicant and all employees are citizens of the United States and that the applicant and all employees have never been convicted of a felony or during the five years immediately preceding the date of application have never been convicted of:
 - 1. Prostitution;
 - 2. Promotion of prostitution;
 - 3. Public lewdness;
 - 4. Gambling;
 - 5. Violation of the Kansas Uniform Controlled Substance Act;
 - 6. Violation of the liquor laws of the state of Kansas or any city or state;

7. Driving under the influence of alcohol or drugs or any other alcohol-related offense;
8. Carrying a concealed weapon;
9. Disorderly conduct;
10. Battery;
11. A violation of this chapter.

One copy of the application shall be transmitted to the Chief of Police for investigation of the applicant. The Chief of Police shall investigate the applicant and the applicant's employees to determine whether the applicant is qualified under the provisions of this chapter and shall report the findings and recommendations to the City Clerk.

(History: Ord. JDH-1626A ' 2, 89; JDH-1626 ' 4, 89)

5.46.050 License Fee.

A license fee in the amount of \$200 per year shall be paid for each license that is issued pursuant to this chapter. The full amount of the license fee shall be required regardless of the time of the year in which the application is made. There shall be no refund in any case when the licensee quits business prior to the end of the year. No license shall be transferable.

(History: Ord. JDH-1626 ' 5, 89)

5.46.060 Issuance of License.

If the application is in proper form and accompanied by the license fee, the City Clerk shall examine the application and shall, if the applicant is qualified as provided herein, issue the license; provided no license shall be issued to:

- A. A person who is not a resident of Johnson County, Kansas, or has not been a resident of such county for at least six months prior to filing the application;
- B. A person who is not of good character or reputation in the community in which he/she resides.
- C. A person who is not a citizen of the United States.
- D. A person who has been convicted of during the immediately preceding five years, or if any employee or manager has been convicted of during the same period, any of the following:
 1. Prostitution;
 2. Promotion of prostitution;
 3. Public lewdness;
 4. Gambling;
 5. Violation of the Kansas Uniform Controlled Substance Act;
 6. Violation of the liquor laws of the state of Kansas or any city or state;
 7. Driving under the influence of alcohol or drugs or any other alcohol-related offense;
 8. Carrying a concealed weapon;

Chapter 5.46

9. Disorderly conduct;
 10. Battery;
 11. A violation of this chapter.
- E. A partnership, unless all the members are qualified individually;
 - F. A corporation, if any corporation officer or director thereof or any stockholder owning in the aggregate more than 25% of the stock of such corporation would be ineligible to receive a license for any reason other than citizenship and residency requirements;
 - G. A person whose place of business is conducted by a manager or agent unless the manager or agent possesses the same qualifications required of the licensee including citizenship and residency requirements;
 - H. A person whose spouse would be ineligible.

The licensee shall keep the license posted in a conspicuous place on the licensed premises.
(History: Ord. JDH-1626A ' 3, 89; JDH-1626 ' 6, 89)

5.46.070 Hours of Operation.

Juvenile dance halls shall be open to business only during the following times.

- A. If school is in session in the public school district in which the juvenile dance hall is located, the hours of operation shall be:
 1. 5:00 p.m. through 10:30 p.m. Monday through Thursday;
 2. 5:00 p.m. on Friday through 1:00 a.m. on Saturday;
 3. 1:00 p.m. Saturday through 1:00 a.m. on Sunday;
 4. 1:00 p.m. through 10:30 p.m. on Sunday.
- B. If school is not in session in the public school district in which the dance hall is located, the hours of operation shall be 1:00 p.m. through 1:00 a.m. Monday through Sunday.

(History: Ord. JDH-1626B ' 1, 90; JDH-1626A ' 4, 89; JDH-1626 ' 7, 89)

5.46.080 Persons permitted in club.

- A. Licensees may allow persons 14 years of age through 20 years of age to enter the club; provided, if a licensee allows persons 14 and 15 years of age to enter the club, they shall be prohibited from allowing persons 19 and 20 years of age from entering the club; provided further, if a licensee prohibits individuals 14 and 15 years of age from entering the club, they may allow persons 16 through 20 years of age to enter the club. Licensees are prohibited from allowing both 14 and 15-year-old individuals and 19 and 20-year-old individuals in the club at the same time. In addition, licensees must state on their application for license which age group they intend to serve. If during the license period a licensee desires to change the age group to be served, the licensee must first notify the City Clerk in writing of the change.
- B. In those clubs where the licensee has indicated on the license application that service will be to 14 through 18-year-old individuals, no person under the age of 14 years of age or over the age of 18 years old may enter or remain on the premises. In those clubs where the licensee has indicated on the license application that service will be to 16 through 20-

year-old individuals, no person under the age of 16 and no person over the age of 20 may enter or remain on the premises; provided that regardless of the age of the patrons selected by the licensee, parents or legal guardians of patrons on the premises, employees, or licensees of the juvenile dance hall and government officials conducting business may enter upon the premises.

- C. It is a violation of this chapter for any person for the purpose of gaining admittance to a juvenile dance hall to falsely represent:
 - 1. Their actual age;
 - 2. Themselves to be a licensee or an employee of the juvenile dance hall;
 - 3. Themselves to be a parent or guardian of a person in the juvenile dance hall;
 - 4. Themselves to be a governmental employee in the performance of his/her duties.
- D. It shall be a violation of this chapter for a licensee not to check each person entering the licensed premises to insure by way of valid identification the person entering is of juvenile age as defined herein. Persons without identification shall be denied entrance to the premises.
- E. It shall be a violation of this chapter for any person on the premises, to include the parking areas, to not provide identification to law enforcement officers to include name, age and address.

(History: Ord. JDH-1626A ' 5, 89; JDH-1626 ' 8, 89)

5.46.090 Alcohol and Tobacco Prohibited.

- A. The possession of alcohol or cereal malt beverages is prohibited on the premises of any juvenile dance hall and it shall be a violation of this chapter for any person to possess alcohol on the premises of a juvenile dance hall or for a licensee to permit the possession of alcohol on the premises. Licensees shall physically check all handbags, purses or hand carried clothing to insure no alcohol is brought into the premises.
- B. There shall be no smoking permitted on the premises of a juvenile dance hall. It shall be a violation of this chapter for any person to smoke on the premises of a juvenile dance hall or for a licensee to permit smoking on the premises.

(History: Ord. JDH-1626 ' 9, 89)

5.46.100 Posting.

Licensee shall post the age restrictions and the alcohol and tobacco prohibitions conspicuously upon the premises, preferably on the outside of the building adjacent to the main entrance.

(History: Ord. JDH-1626 ' 10, 89)

5.46.110 Maximum Occupancy.

Juvenile dance hall occupant loads shall not exceed the value established by O.P.M.C. Chapter 16.100. The occupancy load shall be posted as required by O.P.M.C. Title 16.

(History: Ord. JDH-2251 ' 1, 2001; JDH-1626 ' 11, 89)

5.46.120 Interior Lighting.

During all times a juvenile dance hall is open for business the interior lighting shall be sufficient

Chapter 5.46

to make the appearance and conduct of all patrons and other persons easily discernable immediately upon entering the premises.

(History: Ord. JDH-1626 ' 12, 89)

5.46.130 Parking.

Every juvenile dance hall shall provide and maintain parking spaces sufficient for the location as determined by the City Planning and Development Services Department. All parking areas shall be maintained and supervised as required by 5.46.140. In addition, all parking areas shall be posted with "No Loitering" signs.

(History: Ord. JDH-2251 ' 2, 2001; JDH-1626 ' 13, 89)

5.46.140 Supervision and Security.

Every juvenile dance hall licensee shall provide during hours of operation and one hour subsequent to hours of operation at least one uniformed security guard for each 100 anticipated customers. Such security guards shall patrol both the interior and exterior of the premises to include the parking areas and maintain order and shall supervise the cleanup of trash and litter in the parking lot. At all times there shall be at least one security guard in the parking areas.

Security guards shall enforce the required "No Loitering" signs and report all criminal violations to law enforcement authorities as necessary.

(History: Ord. JDH-1626 ' 14, 89)

5.46.150 License Revocation.

After five days written notice to any person holding a juvenile dance hall license, the Governing Body of the City may suspend or revoke such license for a violation of any of the provisions of this chapter or for any of the following:

- A. Licensee permits criminal activity to include drug sales on premises;
- B. Licensee or employee violates any City, state or federal laws;
- C. Licensee employs persons in violation of the licensing standards of this chapter;
- D. Licensee fails to cooperate with City officials in the conduct of their enforcement and inspection duties.

Within 20 days of Governing Body's action, the licensee may appeal any decision to the District Court.

(History: Ord. JDH-1626A ' 6, 89; JDH-1626 ' 15, 89)

5.46.160 Penalty.

Any person convicted of a violation of this chapter shall be fined not more than \$1,000 or imprisoned for more than six months, or by both such fine and imprisonment in addition to any action taken pursuant to Section 5.46.150.

(History: Ord. JDH-1626 ' 16, 89)

[Next Page is 5-1500]

Chapter 5.48
ALCOHOLIC LIQUOR¹

Sections:

- 5.48.010 Definitions.
- 5.48.020 Gallonage Tax Stamp or Crown Required on Original Package for Sale or Transport.
- 5.48.030 Consumption of Alcoholic Liquor in Public Places - Unlawful Acts. (Repealed. See 11.48.160)
- 5.48.040 Violation - Penalty. (Repealed. See 5.48.090)
- 5.48.050 Levy.
- 5.48.060 Presentation of License to Pay Tax.
- 5.48.070 Receipt to Be Displayed.
- 5.48.080 Hours for Selling - Minors - Persons Hired - Compliance with Sanitary Regulations.
- 5.48.085 Private Clubs - Hours of Operation. (Repealed. See 5.20)
- 5.48.090 Penalties.
- 5.48.100 Separability.
- 5.48.110 Savings Clause.

5.48.010 Definitions.

As used in this chapter, the words and phrases defined in this section shall have the following meanings, unless the context otherwise requires:

- A. "Alcohol" means the product of distillation in any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, and includes synthetic ethyl alcohol, but does not include denatured alcohol or wood alcohol;
- B. "Alcoholic liquor" includes the four varieties of liquor as defined herein, namely: alcohol, spirits, wine and beer and every liquid or solid, patented or not, containing alcohol, spirits, wine and beer, capable of being consumed as a beverage by a human being, but shall not include any beer or cereal malt beverage containing not more than 3.2 percent of alcohol by weight;
- C. "Beer," when its meaning is not enlarged, modified, or limited by other words, means a beverage, containing more than 3.2% alcohol by weight, obtained by alcoholic fermentation of an infusion or concoction of barley, or other grain, malt and hops in water and includes beer, ale, stout, lager beer, porter and similar beverages having such alcoholic content.
- D. "Director" means the director of alcoholic beverage control of the department of revenue.
- E. "Original package" means any bottle, flask, jug, can, cask, barrel, keg, hogshead or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer or alcoholic liquor, to contain and to convey any alcoholic liquor.
- G. "Retailer" means any person who sells at retail or offers for sale at retail, alcoholic liquors in the original package for consumption off the premises.
- H. "Person" includes individuals, firms, copartnerships, corporations, and associations.

¹ For statutory provisions regarding license fees and occupational tax for retailers of alcoholic liquor, see generally K.S.A. Chapter 41.

Chapter 5.48

- I. "Spirits" means any beverage which contains alcohol obtained by distillation, mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin or other spirituous liquors, and such liquors when rectified, blended or otherwise mixed with alcohol or other substances.
- J. "Wine" means any alcoholic beverage obtained by the normal alcoholic fermentation of the juice of sound, ripe grapes, fruits, berries or other agricultural products, including such beverages containing added alcohol or spirits or containing sugar added for the purpose of correcting natural deficiencies.

(History: Ord. AL-1379 §1, 86; AL-1320 §1, 85; ABC-421 §1, 71)

5.48.020 Gallonage Tax Stamp or Crown Required on Original Package for Sale or Transport.

It is unlawful for any person, firm, partnership, or corporation to possess, sell, deliver, distribute, transport or use alcoholic liquor in any original package unless the package shall have affixed the stamps or crowns of the Kansas Gallonage Tax on alcoholic liquors.

(History: Ord. ABC-421 §2, 71)

5.48.030 Consumption of Alcoholic Liquor in Public Places - Unlawful Acts.

Repealed. See: 11.48.160.

(History: Ord. AL-1320 §9, 85; ABC-421 §3, 71)

5.48.040 Violation - Penalty.

Repealed. See 5.48.090.

(History: Ord. AL-1320 §9, 85; ABC-421 §4, 71)

5.48.050 Levy.

- A. There is levied a biennial license tax on each Retailer of Alcoholic Liquor, in the City who also has a Retailer's license issued by the Director in the sum of \$600.00. The tax levied in this Section shall be paid by the Retailer to the City Clerk before business is begun under an original state license and shall be paid within five days after any renewal of the state license.
- B. At the option of the licensee, the licensee shall submit to the City Clerk either:
 - 1. the full amount of the license tax set forth in Subsection A, above; or
 - 2. one-half of the full amount of the license tax set forth in Subsection A, above.
- C. If the licensee elects to pay only one-half of the license tax pursuant to Subsection B(2), the remaining one-half of the license tax plus 10% of such remaining balance shall be due and payable one year from the date of issuance of the license. Notwithstanding any other provision of law, failure to pay the full amount due under this paragraph on the date it is due shall result in the automatic cancellation of such license for the remainder of the license term. The City Clerk may, at the Clerk's sole discretion and after examination of the circumstances, extend the date payment is due pursuant to this paragraph for not more

than 30 days beyond the date such payment is originally due. When the licensee pays the full amount of the license fee upon application and is prevented from operating under such license for reasons other than suspension or revocation of the license for the entire second year of the license term, a refund shall be made of one-half of the license fee paid by such licensee.

- D. There shall be no refund when the license is revoked or suspended for any cause provided for under this Chapter. The City Clerk is authorized to issue a prorated refund of the license tax paid for any period in which the licensee shall not use such license as the result of the license being canceled at the request of the licensee and for voluntary reasons.
- E. Payment of all taxes required to be paid pursuant to this Section may be made by personal, certified or cashier's check, money order, debit or credit card or cash, in a manner prescribed by the City Clerk.

(History: Ord. AL-2876 §1, 2010; AL-1320 §2, 85; AL-75 §1, 60)

5.48.060 Presentation of License to Pay Tax.

The holder of a license for the retail sale of alcoholic liquor, as aforesaid, issued by the Director shall present such license to the City Clerk when applying to pay the license tax levied in 5.48.050 and the tax shall be received and a receipt shall be issued for the period covered by the state license.

(History: Ord. AL-1320 §3, 85; AL-75 §2, 60)

5.48.070 Receipt to be Displayed.

Every licensee shall cause the City alcoholic liquor retailer's license tax receipt to be placed in plain view, next to or below the state license in a conspicuous place on the licensed premises.

(History: Ord. AL-1320 §4, 85; AL-75 §3, 60)

5.48.080 Hours for Selling - Minors - Persons Hired - Compliance with Sanitary Regulations.

- A. Hours of Operation. No retailer or his or her agent or employee shall sell any alcoholic liquor during the following times:
1. Before 9:00 a.m. or after 11:00 p.m. Monday through Saturday; or
 2. Before 12:00 p.m. (noon) or after 8:00 p.m. on Sunday; or
 3. On Easter Sunday, Thanksgiving Day or Christmas Day.
- B. Standards of Conduct. No retailer or his or her agent or employee shall:
1. Sell, give away, dispose of, exchange or deliver any alcoholic liquor to any person under the age of 21; or
 2. Knowingly sell, give away, dispose of, exchange or deliver any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor; or

Chaper 5.48

3. Permit the consumption of alcoholic liquor in or about the place of business; or
4. Employ any person under the age of 21 in the dispensing of alcoholic liquor; or
5. Employ any person who has been convicted of a felony or any violation of the alcoholic liquor laws of this city or this state or any other city or state or of the United States.
6. Fail to comply with the sanitary, health, and fire safety regulations and ordinances of this city.

(History: Ord. AL-2566 §2, 2005; AL-2447 §1, 2003; AL-1874A §1, 94; AL-1874 §1, 94; AL-1320 §5, 85; AL-75 §4, 60; POC-625 §24, 72)

5.48.085 Private Clubs - Hours of Operation.

Repealed. See: 5.20.

(History: Ord. AL-1320 §9, 85; AL-859 §1, 75)

5.48.090 Penalties.

Any person having a retailer's license to sell alcoholic liquor, as provided in this chapter, who fails to pay the license tax herein levied and within the time prescribed herein, or who violates any other section in this chapter, shall upon conviction be fined not less than \$100 nor more than \$500 or by imprisonment for not more than 6 months, or by both such fine and imprisonment; provided nothing herein shall be construed to prohibit the city from collecting the license tax by any procedure authorized by law.

(History: Ord. AL-1320 §6, 85; ABC-421 §4, 71)

5.48.100 Separability.

If any part or parts of this ordinance shall be held to be invalid, such invalidity shall not affect the validity of the remaining parts of this ordinance. The Governing Body hereby declares that it would have passed the remaining parts of this ordinance if it had known that such part or parts thereof would be declared invalid.

(History: Ord. AL-1320 §7, 85)

5.48.110 Savings Clause.

Neither the adoption of this ordinance nor the repeal or amendment of any ordinance or part or portion thereof shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect.

(History: Ord. AL-1320 §8, 85)

[Next Page is 5-1600]

Chapter 5.50 MESSAGE THERAPY

Sections:

- 5.50.010 Definitions. (Repealed)
- 5.50.015 Reference to Chief of Police, Other Staff. (Repealed)
- 5.50.020 License Required. (Repealed)
- 5.50.021 Limitations on In-office Massage Therapy Licenses. (Repealed)
- 5.50.030 Massage Therapist License Required, Categories, Educational Requirements, Restrictions. (Repealed)
- 5.50.035 Student Massage Therapy. (Repealed)
- 5.50.040 Application for Massage Therapy and In-office Massage Therapy Business License; Fees. (Repealed)
- 5.50.050 Application for Massage Therapist License; Fees. (Repealed)
- 5.50.060 Education Requirements; Masseur or Masseur. (Repealed)
- 5.50.065 Massage Therapy Business License Application Processing. (Repealed)
- 5.50.070 Identification Cards. (Repealed)
- 5.50.080 Issuance of Massage Therapy Business License. (Repealed)
- 5.50.090 Application Processing and Issuance of Massage Therapist License. (Repealed)
- 5.50.100 Revocation or Suspension of Business License. (Repealed)
- 5.50.110 Revocation of Massage Therapist License. (Repealed)
- 5.50.120 Inspection Necessary. (Repealed)
- 5.50.130 Inspections, Immediate Right of Entry. (Repealed)
- 5.50.140 Operation Regulations. (Repealed)
- 5.50.150 Supervision. (Repealed)
- 5.50.160 Employee and Patron Registers. (Repealed)
- 5.50.170 Persons under Age 18 Prohibited Services. (Repealed)
- 5.50.180 Advertising. (Repealed)
- 5.50.190 Transfer of Licenses; Other Licenses and Fees. (Repealed)
- 5.50.200 Applicability to Existing Businesses. (Repealed)
- 5.50.210 Exceptions. (Repealed)
- 5.50.220 Further Regulations. (Repealed)
- 5.50.230 Restriction of Business to Premises. (Repealed)
- 5.50.240 Penalty. (Repealed)
- 5.50.250 Severability. (Repealed)
- 5.50.300 Definitions.
- 5.50.310 Reference to Chief of Police, Other Staff.
- 5.50.320 Business License Required.
- 5.50.330 Limitations on In-office Massage Licenses.
- 5.50.340 Application for Massage Establishment and In-office Massage License; Fees.
- 5.50.350 Massage Establishment License Application Processing.
- 5.50.360 Inspection Necessary.
- 5.50.370 Issuance of Massage Establishment License.
- 5.50.380 Business Identification Cards.

Chapter 5.50

- 5.50.390 Inspections, Immediate Right of Entry.
- 5.50.400 Operation Regulations.
- 5.50.410 Supervision.
- 5.50.420 Persons Under Age 18 Prohibited Services.
- 5.50.430 Employee and Patron Registers.
- 5.50.440 Advertising.
- 5.50.450 Applicability to Existing Businesses.
- 5.50.460 Exceptions.
- 5.50.470 Further Regulations.
- 5.50.480 Restriction of Business to Premises.
- 5.50.490 Revocation or Suspension of Massage Establishment License.
- 5.50.500 Massage Therapist License Required, Examination Requirements, Restrictions.
- 5.50.510 Application for Massage Therapist License; Fees.
- 5.50.520 Application Processing and Issuance of Massage Therapist License.
- 5.50.530 Identification Cards.
- 5.50.540 Revocation or Suspension of Massage Therapist License.
- 5.50.550 Student Massage Therapy.
- 5.50.560 Transfer of Licenses; Other Licenses and Fees.
- 5.50.570 Penalty.
- 5.50.580 Severability.

5.50.010 Definitions.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §1, 94; MP-1682 §1, 91; MP-862 §1, 76)

5.50.015 Reference to Chief of Police, Other Staff.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2208 §1, 2000)

5.50.020 License Required.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §2, 94; MP-1734 §1, 92; MP-1682 §2, 91; MP-862 §2, 76)

5.50.021 Limitations on In-office Massage Therapy Licenses.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §3, 94; MP-1682 §3, 91)

5.50.030 Massage Therapist License Required, Categories, Educational Requirements, Restrictions.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2045 §1, 97; MP-1971 §1, 96; MP-1911 §1, 95; MP-1842 §4, 94; MP-862 §3, 76)

5.50.035 Student Massage Therapy.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1971 §2, 96)

5.50.040 Application for Massage Therapy and In-office Massage Therapy Business License; Fees.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §5, 94; MP-1734 §2, 92; MP-1682 §4, 91; MP-862 §4, 76)

5.50.050 Application for Massage Therapist License; Fees.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2103 §1, 98; MP-1842 §6, 94; MP-1734 §3, 92; MP-1682 §5, 91; MP-1482 §1, 87; MP-862 §5, 76)

5.50.060 Education Requirements; Masseur or Masseuse.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §7, 94; MP-1682 §6, 91; MP-862 §6, 76)

5.50.065 Massage Therapy Business License Application Processing.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2065 §1, 97; MP-2045 §2, 97; MP-1842 §8, 94)

5.50.070 Identification Cards.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §9, 94; MP-862 §7, 76)

5.50.080 Issuance of Massage Therapy Business License.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §10, 94; MP-1682 §7, 91; MP-862 §8, 76)

5.50.090 Application Processing and Issuance of Massage Therapist License.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §11, 94; MP-1682 §8, 91; MP-862 §9, 84)

5.50.100 Revocation or suspension of business license.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §12, 94; MP-1682 §9, 91; MP862 §10, 76)

5.50.110 Revocation of Massage Therapist License.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §13, 94; MP-1682 §10, 91; MP-862 §11, 76)

Chapter 5.50

5.50.120 Inspection necessary.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2065 § 2, 97; MP-2045 § 3, 97; MP-1842 §14, 94; MP-1682 §11, 91; MP-862 §12, 76)

5.50.130 Inspections, Immediate Right of Entry.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2045 § 4, 97; MP-1842 §15, 94; MP-1682 §12, 91; MP-862 §13, 76)

5.50.140 Operation Regulations.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2117 §1, 98; MP-2045 § 5, 97; MP-1842 §16, 94; MP-1682 §13, 91; MP-862 §14, 76)

5.50.150 Supervision.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §17, 94; MP-862 §15, 76)

5.50.160 Employee and Patron Registers.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §18, 94; MP-862 §16, 76)

5.50.170 Persons under Age 18 Prohibited Services.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §19, 94; MP-1682 §14, 91; MP-862 §17, 76)

5.50.180 Advertising.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §20, 94; MP-862 §18, 76)

5.50.190 Transfer of Licenses; Other Licenses and Fees.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §21, 94; MP-1682 §15, 91; MP-862 §19, 76)

5.50.200 Applicability to Existing Businesses.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §22, 94; MP-1682 §16, 91; MP-862 §20, 76)

5.50.210 Exceptions.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1911 §2, 95; MP-1812 §1, 93; MP-1682 §17, 91; MP-862 §21, 76)

5.50.220 Further Regulations.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-2045 § 6, 97; MP-1842 §23, 94; MP-1682 §18, 91; MP-862 §22, 76)

5.50.230 Restriction of Business to Premises.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-1842 §24, 94; MP-1734 §4, 92; MP-1682 §19, 91; MP-862 §23, 76)

5.50.240 Penalty.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-862 §24, 76)

5.50.250 Severability.

Repealed.

(History: Ord. MP-2790 §30, 2008; MP-862 §25, 76)

5.50.300 Definitions.

- A. "Business premises." Those premises where a private or public commercial enterprise is conducted.
- B. "In-home massage." Massage that is conducted in a private residence of a massage client or a therapist's home or residence that is permitted as a home occupation and is licensed as a massage establishment.
- C. "In-office massage." Massage that is conducted on the business premises of a massage client and is limited to massage therapy applied only above the massage client's waist.
- D. "In-office massage establishment." Any establishment having a place of business where any person, firm, partnership, association, or corporation engages in the activities mentioned in Section 5.50.300E for compensation.
- E. "Massage." Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice. Massage as defined herein does not include the touching in any fashion of human genitalia.
- F. "Massage establishment." Any establishment where any person, firm, partnership, association, or corporation engages in or carries on or permits to be engaged in or carried on any of the activities mentioned in Section 5.50.300E for compensation but does not include "in-office massage establishments."
- G. "Minor Traffic Violations" mean any violation classified as a traffic infraction or ordinance traffic infraction pursuant to K.S.A. 8-2118(c), and amendments thereto.

Chapter 5.50

- H. "Massage therapist." Any person who, for any consideration whatsoever, engages in the practice of massage as herein defined.
- I. "Patron" means any person over 18 years of age who utilizes or receives the services of any establishment subject to the provisions of this Chapter and under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor, provided a person under the age of 18 may utilize or receive massage therapy from a licensed massage therapist if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy in writing.
- J. "Table shower." An activity in which a patron lies on a table and is washed by an attendant.

(History: Ord. MP-2790 §1, 2008)

5.50.310 Reference to Chief of Police, Other Staff.

Any reference in this Chapter to the Chief of Police, City Clerk, Community Planning & Services Director, Director of Planning & Development, Deputy City Manager or Fire Inspector shall include those persons' designees and any individuals designated by the City Manager.

(History: Ord. MP-2790 §2, 2008)

5.50.320 Business License Required.

No person, firm, partnership, association or corporation shall operate a massage establishment or an in-office massage business, as defined herein, without first having obtained a license therefor, issued by the City Clerk. It is unlawful to conduct such a business unless the license issued is current, unrevoked and not suspended. A separate license shall be required for each and every separate place of business conducted by any one licensee. Such license shall be valid for a period of twelve months from the date of issuance.

(History: Ord. MP-2790 §3, 2008)

5.50.330 Limitations on In-office Massage Licenses.

The authority granted a licensee issued an in-office massage license is limited to the authority to conduct massage therapy on the non-permanent office premises of the licensee's clients and specifically does not include the authority to conduct massage therapy at a permanent premises operated by the licensee; provided the licensee must have a permanent business office located within the City.

(History: Ord. MP-2790 §4, 2008)

5.50.340 Application for Massage Establishment and In-office Massage License; Fees.

Every applicant for a license to maintain, operate or conduct any establishment covered by this Chapter shall file an application with the City Clerk and pay an annual filing fee to the City Clerk of \$300 per business. The fees shall not be refundable.

The application for a license to operate any such establishment shall set forth the exact nature of the services to be provided, the proposed place of business and facilities therefor, and the name, address, and telephone number of each applicant, including any stockholder holding more than 10% of the stock of the corporation, any partner, when a partnership is involved, and any manager.

In addition to the foregoing, any applicant for an establishment license shall furnish the following information:

- A. Written proof that the applicant is at least 18 years old.
- B. Two passport photographs at least two inches by two inches, and fingerprints, provided once an applicant has submitted an application containing their fingerprints, they will not have to submit fingerprints in any subsequent renewal application for that person.
- C. The business, occupation, or employment of the applicant for the three years immediately preceding the date of application.
- D. The massage establishment and in-office massage business license history of the applicant; whether such person, in previously operating in this or another city or state under license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of suspension or revocation.
- E. Any criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and circumstances thereof.
- F. In the case of applicants who intend personally to provide in-office massage or massage therapy, the applicant must also apply for and receive a massage therapist license as provided for in Section 5.50.500.
- G. Authorization for the City, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license.
- H. Applicants for renewal of an existing license need provide only that information or documentation necessary to insure up-to-date renewal application processing.

(History: Ord. MP-2790 §5, 2008)

5.50.350 Massage Establishment License Application Processing.

- A. Upon receipt of a complete application for a massage establishment license, the City Clerk shall immediately transmit one copy of the application to the Chief of Police for investigation of the application. In addition, the City Clerk shall transmit a copy of the application to the Community Planning & Services Manager, the Director of Planning & Development Services and the Fire Inspector.
- B. It shall be the duty of the Chief of Police to investigate such application to determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued the license applied for. The Chief of Police shall report the results of the investigation to the City Clerk not later than 21 days from the date the application is received by the City Clerk.

Chapter 5.50

- C. It shall be the duty of the Community Planning & Services Manager, the Director of Planning & Development Services and the Fire Inspector to determine whether the structure where the massage therapy business will be conducted complies with the requirements and meets the standards of the applicable health, zoning, and fire ordinances of the City. All standards for premises set forth in Section 5.50.360 must be met prior to the first day the premises are open for business. The Community Planning & Services Manager, the Director of Planning & Development Services and the Fire Inspector shall report the results of their investigation to the City Clerk not later than 21 days from the date the application is received by the City Clerk.
- D. Upon receipt of the reports from the Chief of Police, the Community Planning & Services Manager, the Director of Planning & Development Services and the Fire Inspector, or whenever 21 days have elapsed after the filing of the application, whichever occurs first, the City Clerk shall grant or deny the license consistent with the notification requirements established by law, provided the license shall be issued or denied within 45 days from the date of filing of a completed application with the clerk's office. Any applicant aggrieved by denial of a license may seek judicial review in accordance with subsection E.
- E. Any person aggrieved by denial, suspension or revocation of a license application may seek judicial review pursuant to K.S.A. 60-2101(d), and amendments thereto.

(History: Ord. MP-2790 §6, 2008)

5.50.360 Inspection Necessary.

No business shall be conducted on a licensed premises unless an inspection by the Community Planning & Services Manager or his authorized representative reveals that the establishment complies with each of the following minimum requirements:

- A. The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business's operation shall be maintained in a clean and sanitary condition. Towels, linen, and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, cloths, and sheets shall not be used for more than one patron. Heavy, white paper may be substituted for sheets provided that such paper is changed for every patron. No service or practice shall be carried on within any cubicle, room, booth, or any area within any permitted establishment which is fitted with a door capable of being locked. These provisions are not applicable to an in-office massage business.
- B. Toilet facilities shall be provided in convenient locations. When five or more massage establishment employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Urinals may be substituted for water closets after one water closet has been provided. Toilets shall be designated as to the sex accommodated therein. These provisions are not applicable to an in-office massage business.

- C. Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels. These provisions are not applicable to an in-office massage business.

The Community Planning & Services Manager shall certify that the proposed business establishment complies with all of the requirements of this Section and shall give or send such certification to the City Clerk and Chief of Police. Provided, however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof.

(History: Ord. MP-2790 §7, 2008)

5.50.370 Issuance of Massage Establishment License.

After the filing of an application in the proper form, the City Clerk shall examine the application, and after such examination, shall approve the issuance of a license for an in-office massage establishment or a massage establishment, unless the City Clerk finds that:

- A. The correct license fee has not been tendered to the City, and, in the case of a check or bank draft, honored with payment upon presentation.
- B. The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws including, but not limited to, the City's zoning, and health regulations.
- C. The applicant, if an individual; or any of the stockholders holding more than 10% of the stock of the corporation, any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, having been convicted of, or diverted on:
 1. a felony in the 20 years immediately preceding the date of the application;
 2. an offense involving sexual misconduct with children;
 3. obscenity;
 4. promoting prostitution as defined by K.S.A. 21-3513;
 5. solicitation of a lewd or unlawful act;
 6. prostitution;
 7. pandering or other sexually related offense; or
 8. Any violation of this Chapter during the last five years.
- D. The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the City in conjunction therewith.
- E. The applicant has had a massage establishment or other similar permit or license denied, revoked, or suspended or has voluntarily surrendered the permit or license in lieu of revocation or suspension for any of the above causes by the City or any other state or local agency within five years prior to the date of the application.
- F. The applicant has previously been issued a license for an adult entertainment business (as defined in this Code) or escort service, or has been employed by any such establishment.

Chapter 5.50

- G. The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, has not attained the age of 18 years.
- H. The manager or other person principally in charge of the operation of the business would be ineligible to receive any license under the provisions of this Chapter.

The records of the City Clerk shall show the action taken on the application. The license shall state that it is not transferable or refundable. If an application is denied, the applicant shall be immediately notified by certified mail, return receipt requested, mailed to the last known mailing address of the applicant, and the notice shall state the basis for the denial. Any applicant aggrieved by the disapproval may seek judicial review as set forth in Section 5.50.350E.

Any license issued under the provisions of this Chapter shall at all times be displayed by the licensee in an open and conspicuous place on the premises where the licensed business is conducted.

(History: Ord. MP-2790 §8, 2008)

5.50.380 Business Identification Cards.

All license applicants or managers issued a license pursuant to the provisions of this Chapter shall, at all times when working in an establishment have in their possession a valid identification card issued by the City. Such identification cards shall be laminated to prevent alteration. Licensees or managers shall produce their identification cards for inspection upon request of any person who by law may inspect same.

(History: Ord. MP-2790 §9, 2008)

5.50.390 Inspections, Immediate Right of Entry.

The Police Department and Community Planning & Services may from time to time make an inspection of each licensed establishment in this City, to include those locations where an in-office massage business conducts its business, for the purposes of determining that the provisions of this Chapter are complied with. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any licensee to fail to allow such inspection officer immediate access to the premises or to hinder such officer in any manner. Provided further, that any failure on the part of any licensee or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee license.

(History: Ord. MP-2790 §10, 2008)

5.50.400 Operation Regulations.

The operation of any massage establishment or in-office massage business shall be subject to the following regulations:

- A. Hours. Such business shall be closed and operations shall cease between the hours of 10:00 p.m. and 6:00 a.m. each day provided the hours of operation for in-office massage may be extended on premises having bona fide evening and night shifts.

- B. Danger to safety or health. No service shall be given which is clearly dangerous or harmful in the opinion of the Deputy City Manager or Community Planning & Services Manager, to the safety or health of any person, and after such notice in writing has been delivered to the licensee from such director.
- C. Alcoholic beverages. No alcoholic beverages or cereal malt beverages, nor the consumption thereof, shall be allowed, permitted, or suffered to be done in or upon any premises licensed under the provisions of this Chapter or during in-office massage. Provided this restriction shall not apply to businesses where the licensed massage therapy is accessory to the predominant business purpose of the establishment, provided further, no alcohol is permitted on that portion of such premises where massage therapy occurs. As used in this Section, "that portion" shall mean physical, visual and audible separation by permanently installed walls and doors between the area where massage therapy occurs and the area where alcoholic beverages or cereal malt beverages are sold or consumed. Any currently-licensed establishments are exempt from the physical, visual and audible separation requirements as long as they remain validly licensed.
- D. Conduct of premises. All licensees licensed under the provisions of this Chapter shall at all times be responsible for the conduct of business on their licensed premises and for any act or conduct of his or her employees which constitutes a violation of the provisions of this Chapter. Any violation of the city, state, or federal laws committed on the licensed premises by any such licensee or employee affecting the eligibility or suitability of such person to hold a license or may be grounds for suspension or revocation of same.
- E. Every portion of a licensed establishment, including appliances, and personnel shall be kept clean and operated in a sanitary condition.
- F. All employees shall be clean and wear clean outer garments. On all premises except in-office massage, provisions for a separate dressing room for each sex must be available on the premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.
- G. All licensed employees and massage therapists must be modestly attired. Diaphanous or transparent clothing is prohibited. Clothing must cover the licensee's employees' or massage therapists' chests at all times.
- H. The private parts of patrons must be covered by towels, cloths, or undergarments when in the presence of an employee or massage therapist. Any contact with a patron's genital area is strictly prohibited.
- I. All licensed establishments, when applicable, shall be provided with clean, laundered sheets and towels in sufficient quantity and such items shall be laundered after each use thereof and stored in a sanitary manner.
- J. Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.
- K. Table showers are strictly prohibited.

(History: Ord. MP-2890 §1, 2010; MP-2790 §11, 2008)

5.50.410 Supervision.

A licensee shall have the premises supervised at all times when open for business. The licensee or a person employed as a Massage Therapist shall personally supervise the business, and shall not violate or permit others to violate, any applicable provision of this Chapter. The violation of any such provision by any agent or employee of the licensee shall constitute a violation by the licensee.

(History: Ord. MP-2790 §12, 2008)

5.50.420 Persons Under Age 18 Prohibited Services.

No licensee shall perform or permit any massage therapy to be provided to a person under the age of 18, provided a person under the age of 18 may utilize or receive massage therapy from a licensed massage therapist if accompanied by a parent or legal guardian and a parent or legal guardian has authorized such therapy in writing.

(History: Ord. MP-2790 §13, 2008)

5.50.430 Employee and Patron Registers.

- A. All operators licensed under the provisions of this Chapter shall keep and maintain on their premises a current register of all their employees showing such employee's name, address and license number. Such register shall be open to inspection at all reasonable times by any health inspector or members of the City police department.
- B. Every person who engages in or conducts a licensed establishment shall keep a daily register of all patrons, with first and last names, addresses, hours of arrival and departure, the rooms or cubicles assigned, and the first and last name of the employee who performed the massage. Said daily register shall at all times during business hours be subject to inspection by City health officials and by the police department and shall be kept on file for one year.

(History: Ord. MP-2790 §14, 2008)

5.50.440 Advertising.

No person, firm, partnership, association or corporation, including but not limited to an establishment granted a license under provisions of this Chapter shall place, publish, or distribute or cause to be placed, published, or distributed any advertising that reasonably suggests to prospective patrons that any service is available other than those services as described in Section 5.50.300E, or that employees or massage therapists are dressed in any manner other than described in Section 5.50.400, nor shall any establishment indicate in the text of such advertising that any service is available other than those services described in Section 5.50.300E.

(History: Ord. MP-2790 §15, 2008)

5.50.450 Applicability to Existing Businesses.

The operators of any existing massage establishment or in-office massage business are required to comply with all provisions of this Chapter, subject to the educational and experience requirements set forth in Section 5.50.500.

(History: Ord. MP-2790 §16, 2008)

5.50.460 Exceptions.

The provisions of this Chapter shall not apply to hospitals, nursing homes, sanitariums, or persons holding an unrevoked certificate to practice the healing arts, persons licensed to practice as a registered professional nurse under the laws of this state, persons licensed to practice as a physical therapist under the laws of this state, persons working under the direction and supervision of any licensed healing arts practitioner or in any such establishment, or barbers or cosmetologists lawfully carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued by this state.

(History: Ord. MP-2790 §17, 2008)

5.50.470 Further Regulations.

The Deputy City Manager, City Clerk or the Chief of Police may, after a public hearing, make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this Chapter.

(History: Ord. MP-2790 §18, 2008)

5.50.480 Restriction of Business to Premises.

- A. All massage therapy (not to include in-office massage) provided for under this Chapter shall be conducted on the premises of a licensed massage establishment.
- B. Subject to subsection C, all licensed massage establishments shall be operated from a commercial business premise. Sole practitioners (therapists who work alone), are required to have both a massage therapist license and massage establishment license and to work from a commercial business premise.
- C. Licensed massage therapists may perform their services on behalf of clients in clients' homes or residences or other designated places, or in the therapist's home or residence provided that the therapist's home is licensed as a massage establishment and provided that any place where massage therapy is performed is subject to the inspection as set out in Sections 5.50.360 and 5.50.390, operated in accordance with the regulations set out in Section 5.50.400, and if conducted in a therapist's home or residence, subject to the home occupation requirements in Title 18.

(History: Ord. MP-2790 §19, 2008)

5.50.490 Revocation or Suspension of Massage Establishment License.

- A. Any license issued for a massage establishment or an in-office massage business may be revoked or suspended by the Municipal Judge, sitting as an administrative hearing officer, after notice and a hearing where the Municipal Judge finds that any of the provisions of this Chapter are or were violated, or the provisions for issuance of any license are or were violated, or where the licensee or any employee of the licensee, including a massage therapist, has been convicted of or diverted on any offense found in Sections 5.50.370 and 5.50.520 herein and the licensee has actual or constructive knowledge of the violation or conviction, or in any case where the licensee refused to permit any duly authorized police officer or employee of the City to inspect the premises or the operations of the licensee.

Chapter 5.50

Convictions or diversions for any offense found in Sections 5.50.370 and 5.50.520 shall result in revocation unless the Municipal Judge determines by clear and convincing evidence that such licensee or employee of the licensee will not pose a threat to the public in such person's capacity as a licensee or employee thereof and that such person has been sufficiently rehabilitated to warrant the public trust.

- B. Before revoking or suspending any license, the Municipal Judge shall give the licensee at least ten days' written notice of the specific charges against the licensee and the opportunity for a public hearing before the Municipal Judge, at which time the licensee may present evidence bearing upon the question. A licensee aggrieved by the decision of the Municipal Judge may seek judicial review as set forth in Section 5.50.350E.

(History: Ord. MP-2950 §1, 2012; MP-2790 §20, 2008)

5.50.500 Massage Therapist License Required, Examination Requirements, Restrictions.

No person shall perform massage therapy or in-office massage within the City, unless he or she has a valid massage therapist license issued by the City pursuant to the provisions of this Chapter, provided massage therapy may be performed by a student massage therapist subject to the provisions of Section 5.50.550.

- A. To be eligible for issuance of a Massage Therapist license, an applicant must:
1. Submit an application on a form provided by the City Clerk, and;
 2. Submit acceptable proof that the applicant has successfully passed the 1992 or later National Certification Examination for Therapeutic Massage and Bodywork (NCBTMB), or the 2007 or later Massage & Bodywork Licensing Examination (MBLEx). If the certification body has additional continuing requirements to maintain certification, the applicant must also provide proof of continuing certification. The applicant must also have successfully completed a course of instruction, consisting of not less than 500 hours, in the theory, method or practice of massage. The required curriculum must include the subjects of anatomy, physiology, kinesiology, pathology, first aid and hygiene and practical instruction in massage technique. Proof of completion of educational and training requirements must be by certified transcripts. The educational and training requirements required by this Chapter may be received from more than one school. The applicant must also have successfully completed an in-person certification program in American Red Cross first aid and American Heart Association CPR, or equivalent programs, and provide current certification, and;
 3. Pay the applicable license fee(s).
- B. All licensed massage therapists applying for a renewal license must show proof that they have received a minimum of twelve hours (fifty minutes per hour) of professional massage continuing education during the preceding twelve-month licensing period. One hour continuing education credit will be awarded for each hour attendance at programs relating to the theory or clinical application of theory pertaining to the practice of massage to include, but not limited to, clinical business practices, hygiene, record-keeping, medical terminology, professional ethics, business management, human behavior, client interaction and state and local laws that are sponsored

by a university, junior college or otherwise found to be acceptable by the Police Department. The certificate for any on-line continuing education courses must clearly depict the time required to acquire such certificate. All licensed massage therapists applying for renewal license must show proof of current in-person certification in American Red Cross first aid and American Heart Association CPR, or equivalent programs in addition to the twelve hours of continuing education. Continuing education hours are required for all license renewals after issuance of the initial license.

- C. Individuals licensed with the City as massage therapists as of the effective date of this ordinance may renew that license notwithstanding failure to satisfy the minimum education and testing provisions in Section 5.50.500A, and continue to renew such license so long as there are no lapses in active licensure status. If active licensure status lapses, the person will be required to apply for a new massage therapist license and meet the qualifications in Section 5.50.500A, and continuing education hours meeting the requirements set forth in Section 5.50.500B.

(History: Ord. MP-2890 §2, 2010; MP-2790 §21, 2008)

5.50.510 Application for Massage Therapist License; Fees.

- A. Any person who desires to perform or provide massage or in-office massage or to perform any massage services in a massage establishment, as defined herein, shall file a written application with the City Clerk and pay an annual filing fee to the City Clerk of \$75 for a new application, or \$50 for a renewal application, neither of which shall be refundable. No privilege to provide massage therapy shall exist until an application for renewal has been approved. After a license has expired, a "new" application under the current education and testing standards is required. A massage therapist license shall be valid for a period of 12 months from the date of issuance. This application fee shall cover the cost of processing the application to include the current KBI fingerprint fee. Only one massage therapy license shall be required for a massage therapist regardless of the activity or activities the therapist engages in that are permitted by this Chapter. Identification cards as provided in Section 5.50.530 are required for each massage establishment in which the therapist works. The fee for each identification card subsequent to the initial one is \$15.
- B. The application for a massage therapist license shall contain the following:
1. Name, address, and telephone number.
 2. Two passport photographs at least two inches by two inches.
 3. Applicant's weight, height, color of hair and eyes, and fingerprints, provided once an applicant has submitted fingerprints, they shall not be required to submit new fingerprints for any renewal application for that person.
 4. Written evidence that the applicant is at least 18 years old.
 5. Business, occupation, or employment of the applicant for the three years immediately preceding the date of application.
 6. Whether such person has ever been convicted of any crime except minor traffic violations. If any person mentioned in this subsection has been so convicted, a statement must be made giving the place and court in which the conviction was obtained and the sentence imposed as a result of such conviction.

Chapter 5.50

7. The position or function the applicant is being hired to perform within such establishment. (If applicable).
8. Authorization for the City, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the license.
9. Proof of the education requirements set forth at Section 5.50.500 herein.
10. Verification of employment by signature of the manager of the licensed massage establishment.

(History: Ord. MP-2790 §22, 2008)

5.50.520 Application Processing and Issuance of Massage Therapist License.

The City Clerk shall issue a massage therapist license within 21 days following application, unless he/she finds that:

- A. The applicant for the massage therapist license has been convicted of, or diverted on:
 1. a felony within the 20 years immediately preceding the date of the application;
 2. an offense involving sexual misconduct with children;
 3. obscenity;
 4. promoting prostitution as defined by K.S.A. 21-3513;
 5. solicitation of a lewd or unlawful act;
 6. prostitution;
 7. pandering or other sexually related offense; or
 8. any violation of this Chapter in the last year, or any revocation of their therapist license within the last year.
- B. The applicant has knowingly made any false, misleading, or fraudulent statement of fact in the license application or in any document required by the City in conjunction therewith.
- C. That the correct license fee has not been tendered to the City, and in the case of a check or bank draft, honored with payment upon presentation.
- D. That the applicant has not successfully completed the examination or education standards required under the provisions of this Chapter.
- E. That the applicant is not legally present in the United States.
- F. Any applicant aggrieved by denial of a license may seek judicial review in accordance with Section 5.50.350E.

(History: Ord. MP-2890 §3, 2010; MP-2790 §23, 2008)

5.50.530 Identification Cards.

- A. Upon issuance of a massage therapist license, the City Clerk shall issue the massage therapist an identification card bearing the massage therapist's license number, physical description, and a photograph. Such identification cards shall be laminated to prevent alteration.
- B. All massage therapists issued a license pursuant to the provisions of this Chapter shall have their City-issued identification card in their possession at all times when working in an establishment, and shall produce such identification for inspection upon request of any person who by law may inspect same.

- C. Licensees shall, when conducting in-office massage, conspicuously display their City-issued identification card on their clothing.

(History: Ord. MP-2790 §24, 2008)

5.50.540 Revocation or Suspension of Massage Therapist License.

- A. The Municipal Judge, sitting as an administrative hearing officer, may, after notice and a hearing, revoke or suspend a massage therapist license where it appears that the therapist has been convicted of or diverted on any offense enumerated in Section 5.50.520A or for violation of any of the provisions of this ordinance to include the application standards.

Convictions or diversions for any offense found in Section 5.50.520 shall result in revocation unless the Municipal Judge determines by clear and convincing evidence that such licensee will not pose a threat to the public in such person's capacity as a licensee and that such person has been sufficiently rehabilitated to warrant the public trust.

- B. Before revoking or suspending any massage therapist license, the Municipal Judge shall give the massage therapist at least ten days' written notice of the hearing and specify the alleged violation of this code warranting suspension or revocation.
- C. Any massage therapist aggrieved by a revocation or suspension of their license may seek judicial review as set forth in Section 5.50.350E.

(History: Ord. MP-2950 §2, 2012; MP-2790 §25, 2008)

5.50.550 Student Massage Therapy.

An individual actively enrolled in and currently attending classes in a course of instruction, consisting of not less than 300 hours, in the theory, method or practice of massage, may conduct massage therapy as a practicum component of the training program under the supervision of the massage school instructor, provided the following conditions are met:

- A. All advertisements for massage therapy that will be performed by a student will clearly inform the customer that the massage therapy will be performed by a student under the supervision of the massage school instructor.
- B. Prior to conducting any massage therapy, the student massage therapist will require the customer sign and acknowledge he/she has been informed the massage therapy will be conducted by a student under the supervision of the massage school instructor. These acknowledgment documents will be maintained by the school for a period of one year and will be produced at the request of any law enforcement officer or City official.

(History: Ord. MP-2790 §26, 2008)

5.50.560 Transfer of Licenses; Other Licenses and Fees.

- A. No massage establishment or in-office massage business, or massage therapist licenses are transferable and such authority as a license confers shall be conferred only on the licensee named therein.
- B. Any applications made, fees paid, and licenses obtained under the provisions of this Chapter shall be in addition to and not in lieu of any other fees, permits, or licenses required to be paid or obtained under any other ordinances of this City.

(History: Ord. MP-2790 §27, 2008)

Chapter 5.50

5.50.570 Penalty.

Any person, firm, partnership, association or corporation convicted of violating any of the provisions of this Chapter shall be deemed guilty of a public offense and subject to the general penalty provisions of Section 1.12.010.

(History: Ord. MP-2790 §28, 2008)

5.50.580 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this Chapter or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter or any part thereof.

(History: Ord. MP-2790 §29, 2008)

[Next Page is 5-1700]

Chapter 5.51 OIL & GAS

Sections:

- 5.51.010 Findings.
- 5.51.020 Purpose.
- 5.51.030 Definitions.
- 5.51.040 Permits Required.
- 5.51.050 Permit Procedure.
- 5.51.060 Requirements.
- 5.51.070 Additional Requirements.
- 5.51.080 Abandonment.
- 5.51.090 Existing Wells.
- 5.51.100 Insurance Required.
- 5.51.110 Bonds Required.
- 5.51.120 Default.
- 5.51.130 Transference.
- 5.51.140 Appeals.
- 5.51.150 Suspension.
- 5.51.160 Revocation.
- 5.51.170 Enforcement Action.
- 5.51.180 Fees.

5.51.010 Findings.

The City of Overland Park, Kansas, hereby finds and declares as a matter of public policy, that the extraction of the oil and gas resources from lands within the City's corporate boundaries as a temporary activity is required in the interest of the energy and resource needs of the City, state, region, and nation, but that uncontrolled drilling and production would be detrimental to the public health, safety, comfort, convenience, prosperity, and general welfare.

(History: Ord. OG-1165 §1, 82)

5.51.020 Purpose.

The purposes of this ordinance are to establish uniform and reasonable limitations, safeguards, and controls as necessary:

- A. To assist the local, state, regional, and national demand for oil and gas resources.
- B. To aid those owners of land in the economic utilization of the land until growth and development progresses into the area.
- C. To protect existing residential and commercial from incompatible activities.
- D. To provide for the orderly growth and development of lands consistent with the Master Plan.
- E. To minimize any risks to the public health, safety, comfort, convenience, and prosperity, and general welfare.
- F. To avoid undue liability for the City, its residents, and businesses.
- G. To maintain the City's character and economic vitality.

H. To insure that oil and gas development do not hinder the growth and growth potential of the City.

(History: Ord. OG-1165 §2, 82)

5.51.030 Definitions.

The following terms as used in this chapter shall, unless the context clearly indicates otherwise, have the respective meanings herein set forth. These definitions supplement those contained in Section 1.04.010.

To the extent that these definitions may conflict with those contained in 1.04.010, these definitions shall control:

1. Abandonment- Shall mean the plugging of a well, removal of equipment and the restoration of the site in compliance with this chapter.
2. Applicant- Shall mean the person who represents the owner(s) or operator(s) and seeks, on their behalf, a permit pursuant to the provisions of this chapter.
3. Blowout- Shall mean the uncontrolled discharge of gas, solid, or liquids, or combination thereof from a well.
4. Blowout Preventor- Shall mean a mechanical, hydraulic or pneumatic, or other device, or combination of devices secured to the top of a well casing including valves, fittings, and control mechanism connected therewith which can be closed around the drill pipe, or which completely closes the top of the casing and is designed for and capable of preventing blowouts.
5. Buffer- Shall mean an area of at least 165' inside a tract line in which no drilling or production related activities shall occur.
6. Cement- Shall mean portland cement.
7. CFR- Code of Federal Regulations.
8. Circulating Mud Pit- The working pit from which the drilling muds are continuously recirculated during the drilling process into and from the drilling hole for the purpose of flushing there from the drill bit cuttings and as a lubricant to reduce torque, drag, heat, friction, and a differential sticking during the drilling process.
9. Code- Overland Park Municipal Code.
10. Code Administrator- Shall mean the executive official of the Building Safety Division, who is charged with the responsibility of administering and/or enforcing the building, electrical, fire, plumbing, and health and zoning ordinances of the City, and is synonymous with the term "Fire Official," "Code Official," "Building Official," or "Enforcing Officer."
11. Code Board of Appeals- Shall mean the Board of Appeals as set forth in the City's adopted edition of the International Building Code as found in O.P.M.C. 16.100.100.
12. Completion- The point at which drilling is terminated or at which time the formation is shot, perforated, or fractured, but before production commences.
13. Corporation Commission- Shall mean the State Corporation Commission of the State of Kansas.
14. Desertion- Shall mean the leaving of equipment on a site beyond the prescribed time, the failure to plug a well as required, or the failure to restore the site as required.
15. Disposal Well- Shall mean a well used for injecting brines or mineralized waters into permeable subsurface formations that do not contain fresh water in compliance with K.S.A. Chapter 55, Article 10, and K.A.R. 82-2-400, and any amendments thereto.

16. Discharge- Shall mean the authorized spilling, leaking, pumping, pouring, or emptying of oil.
17. Drilling- Shall mean any digging or boring of a hole or well in the earth, whether for exploration or production, having the capability for producing oil, gas, or other hydrocarbon resources and shall also include disposal wells and redrillings of existing wells. In some instances when exploratory and production drilling are differentiated, such occasions are clearly expressed.
18. Drilling Equipment- Shall mean all temporary structures, devices, and facilities necessary and incidental to the drilling or completion of a well.
19. Enforcement Officer- See Code Administrator.
20. Exploratory Drilling- Shall mean any drilling, including shot holes for seismic tests, that is done in pursuit of oil, gas, or other hydrocarbon resources.
21. Fire Official- See Code Administrator.
22. Gas- Shall mean the gaseous component or vapor occurring in or derived from petroleum or natural gas.
23. K.A.R.- Kansas Administrative Regulations.
24. K.S.A.- Kansas Statutes Annotated.
25. Lessee- Shall mean the possessor of the right to exploit the premises for minerals.
26. Lease- Shall mean the physical area to which mineral rights are held.
27. Lessor- Shall mean the mineral rights owner.
28. Tract Line- Shall mean the surface boundaries or legal description of the special use permit.
29. Maintenance- Shall mean the repair and replacement of the parts of a structure to retain the designed safety and effectiveness of the structure and including those activities which are both routine and non-routine, that when performed will minimize the risk of any health, safety, or environmental hazards or nuisances being created.
30. Mud- The drilling fluid used and recirculated through the drilling hole as a lubricant.
31. NFPA- National Fire Protection Association, which publishes the National Fire Code.
32. Oil- Shall mean and include the terms petroleum or crude oil of any kind or in any form.
33. Operator- Shall mean the person, whether owner, lessee, or independent contractor, who is actually in charge and in control of the drilling, maintenance, operation or pumping of a well or lease.
34. OPMC- Overland Park Municipal Code.
35. Owner- Shall mean the person who owns a legal or equitable title in and to the surface of the lease.
36. Permittee- Shall mean the person who represents the owner or operator and receives on their behalf a permit pursuant to the provision of this chapter.
37. Plugging- Shall mean putting cement into the well in compliance with this Chapter and K.S.A. 55-128.
38. Production- Shall mean oil or gas extracted from the well, and includes normal maintenance operations.
39. Production Drilling- Shall mean any activity or drilling which is related to commencing production and shall also include any drilling that is done to facilitate extraction from another well by injection of fluids or gases, and shall also include drilling of disposal wells.

Chapter 5.51

40. Production Equipment- Shall mean all structures necessary and incidental to the production of oil or gas or disposal of brines and mineral water, including but not limited to pipes, tank batteries, and pumps.
41. Redrilling- Shall mean the deepening of an existing well and shall also mean the re-opening of a well that has been abandoned.
42. Reserve Pit- Any excavation, pit, or receptacle designed or actually used to receive, store, or hold rocks, drill bit cuttings, shale, sand, fresh water, or drilling mud which contains no salt water, oil, oil derivatives, caustics, acids, or other deleterious substances harmful to soil, vegetation, or injurious to animal or human life.
43. Spill- See discharge.
44. Structure- That which is built, constructed, or erected.
45. Sump or Slush Pit- An excavation, pit, or water tight container, designed or actually used to receive, store or hold waste oil, oil derivatives, sand, salt water, or other waste products or deleterious substances produced or used in the drilling, swabbing, cleaning, or reworking of any oil, gas, or disposal wells.
46. Suspension- Shall mean the approved or required temporary cessation of drilling.
47. Well- See drilling.

(History: Ord. OG-2464 §1, 2004; ROCR-2245 §3, 2001; OG-1165 §3, 82)

5.51.040 Permits Required.

Except as otherwise provided herein, no person shall initiate, commence, carry out or cause to be carried out any drilling or abandonment of a well and appurtenances until and unless a Special Use Permit has been secured under O.P.M.C. 18.370 and a permit has been issued by the Code Official pursuant to this chapter and other applicable laws of the City.

(History: Ord. ROCR-2245 §4, 2001; OG-1165 §4, 82)

5.51.050 Permit Procedure.

A. Applications.

1. Exploratory Drilling. The applicant shall file an application for a permit to explore for oil and/or gas on forms furnished by the Code Administrator. The application shall include and be accompanied by the following:
 - a. The names, addresses, and phone numbers of the applicant, the operator and owner.
 - b. A location map, at a scale of not less than one inch = 2000 feet and/or a location detail map at a scale determined by the Code Administrator, showing the lease and its relationship to existing subdivisions, community facilities, public ground, commercial areas, and the 100-year floodplain.
 - c. A boundary survey, for the lease, of the third order accuracy (maximum closure error of one foot in 5000 feet) with bearings and distance referenced to section or fractional section corners or other baseline along with all other information necessary to be readily reproducible on the ground and a site plan of the drilling area or some lesser area identified by the applicant showing all structures within 300 feet of the drilling area or the lesser area including:

- 1) The location, use, and width of all easements for the lease;
 - 2) The location of lots, streets, and alleys;
 - 3) The general location and character of surface storm drainage;
 - 4) The location of any waterway;
 - 5) The exact location and elevations of the 100 year flood elevation for the lease;
 - 6) The existing and proposed contours at intervals of not more than five feet;
 - 7) The location of woody vegetation and such other topographic features as may be pertinent to the lease;
 - 8) A north arrow, scale, date, revision, and amendment dates and certification by a registered land surveyor or civil engineer acknowledging that the survey was made by him.
- d. Photographs of the lease and surrounding area, sufficient in type and number to evaluate any land disturbances and need for restoration activities and to assist in any evaluation of any permit.
 - e. Statements of Assurance for compliance with all Federal, State, and local laws.
 - f. Proof of compliance with KSA Chapter 55-128.
 - g. Fire Prevention and Protection Plan in conformity with 5.51.060F.
 - h. A Spill Prevention Control and Countermeasures Plan in conformity with 5.51.060G.
 - i. A list of the additional requirements imposed by the special use permit.
 - j. A statement of safety for operations and equipment.
 - k. Such other information which the Code Administrator deems essential to a determination regarding the issuance of a permit and which information request is consistent with the intent purpose of this Chapter or 18.370.
 - l. A Certificate of Insurance in conformity with 5.51.100.
 - m. Cash or corporate surety bond(s) in conformity with 5.51.110.
 - n. The intended exploratory well location(s) in conformity with 5.51.060A.
 - o. The permit fee in conformity with 5.51.180.
2. Production Drilling. The applicant shall file an application for a permit to produce oil or gas from a well(s), or to engage in any drilling activities intended to facilitate production, or to drill a disposal well, or to convert an existing well to a disposal well or to convert an existing well to a water well on forms furnished by the Code Administrator. The application shall include and be accompanied by the following:

Chapter 5.51

- a. A new or amended site plan which identifies the precise location and dimensions for the producing or injection wells, and all appurtenances, including but not limited to the tank battery, pipes, fences, and dikes.
 - b. A grading plan showing existing and proposed contours.
 - c. Statements of Assurance for compliance with all Federal, State, and local laws.
 - d. A new or amended Fire Prevention and Protection Plan.
 - e. A new or amended Spill Prevention Control and Countermeasures Plan.
 - f. A statement of safety for operations and equipment.
 - g. A Certificate of Insurance in conformity with 5.51.100.
 - h. Cash or corporate surety bond(s) in conformity with 5.51.100.
 - i. Such other information as is deemed, by the Code Administrator, essential to a determination about the issuance of a permit and which information request is consistent with the intent and purpose of this Chapter or 18.370.
 - j. The permit fee in conformity with 5.51.180.
- B. Application Review Process. The Code Administrator shall transmit for review and comment, copies of the proposed drilling or production wells and appurtenances, accompanied by the pertinent information to the Transportation Department, the Fire Department, or other appropriate agencies.
- C. Approval/Denial. Upon acceptance of the application and receipt of the process filings, the Code Administrator shall review the application for sufficiency and compliance with the requirements of this Chapter. If any deficiencies are found or additional information required, the Code Administrator shall notify the applicant in writing; otherwise, the application shall be approved or denied.
- D. Effect and Limitations. Approval of the exploration permit authorizes the applicant to proceed with all associated and necessary activities to achieve discovery of oil and/or gas in compliance with the permit and any conditions attached thereto, but such approval does not constitute authorization to proceed with activities associated with production.

Approval of a production permit authorizes the applicant to proceed with all associated and necessary activities to commence production, or to enhance production by injection, or to drill and dispose of brines and mineralized waters, in compliance with the permit and any conditions attached thereto.

Approval of any permit is limited to the well(s) on which the required information is provided and approved.

Approval of any permit shall not be construed nor is intended to imply that associated activities or industries, such as refineries, dehydrating or absorption plants, are permissible.

Approval of any permit shall not be construed nor is intended to imply that a storage facility for any equipment other than that equipment which is reasonably related and incidental to the drilling and production for that lease is permissible.

Denial of any permit shall prohibit any drilling or production related activities from being initiated or carried out.

(History: Ord. OG-2448 §1, 2003; ROCR-2245 §5, 2001; OG-1165 §5, 82)

5.51.060 Requirements.

The following requirements are the minimum acceptable standards, adopted by the City to which an applicant shall adhere in submitting or amending an application for an exploratory or production drilling permit or in evaluating and revising an existing permit:

- A. Well Location(s)- Precise identification of exploration wells prior to their being drilled will not usually be necessary to fulfill the intent and purpose of 18.370, provided, however, that an application for exploration shall provide the Code Administrator with sufficient locational information for determining the well's compliance with this Chapter and the special use permit.
- B. Site Plan- An amended site plan shall be provided by the applicant and shall contain a certified survey, for the well location, by a registered land surveyor or civil engineer within 30 days of each well's completion.
- C. Completion Report- Within 10 days after completion of the well, a report indicating the status of the well as being oil, gas, dry, injection, or disposal shall be filed with the Code Administrator on a form furnished by the Code Administrator.
- D. Inspections Required. The Code Administrator shall, in addition to responding to complaints about wells, perform the following inspection to determine conformance with the approved plans and conditions and requirements of this Chapter and the special use permit, and to determine whether additional requirements are necessary to protect the public health or safety:
 - 1. An inspection during the exploratory drilling operations;
 - 2. An inspection after the well is completed and the production equipment, including wellhead, pipes, tanks, dikes, are being or have been installed but before production has commenced;
 - 3. An annual inspection; and
 - 4. An inspection following abandonment of the well.
 - 5. Other than the annual inspection, the applicant shall provide adequate notice to the Code Administrator of the three aforementioned stages to insure compliance and avoid unnecessary delay.
- E. Authorization to Enter. The Code Administrator is authorized and directed to enter lands on which a special use permit for oil and/or gas has been granted for the purpose of carrying out inspections, routine or non-routine, and to perform any work or act required by this Chapter on the special use permit. Such entry shall be in compliance with 1.08.010, whether for inspection or performance of work, except in case of emergency, or if the consent of the permittee has otherwise been obtained.

- F. Fire Prevention and Protection Plan. The guidelines in this section establish the process and the minimum standards in the preparation, review, and implementation of a Fire Prevention and Protection Plan and are, in addition to any existing and local law, policies and procedures, such plan guidelines pertain to health, safety, environmental protection, in addition to fire prevention, to minimize the potential hazards associated with the drilling for oil and gas and the storage of oil, and to control and eliminate any fire or risk of fire as promptly as possible. Any plan should therefore reflect a level of detail commensurate with the risk posed to persons, property, and the community welfare.
1. Plan Required. Any and all owners or operators that have received a special use permit to drill for oil and gas shall prepare a Fire Prevention and Protection Plan or amendment in accordance with this section as part of the application process for a drilling permit.
 2. Plan Preparation. The applicant shall submit a plan to the Code Administrator for review and such plan should include safety procedures and equipment used by the applicant, the type of drilling and its relationship to nearby structures and activities, and a contingency plan should a fire occur.
 3. Plan Review. The Code Administrator shall review and approve such plans and amendments for compliance with this Chapter and Title 16 of the Code.
 4. Plan Amendment. Amendments shall be made to the plan as necessary to retain a comparable level of safety for any change, addition or intensification of drilling or production activities, whether in design location, construction, installation, operation, or maintenance.
 5. Plan Implementation. The applicant shall implement any such approved plan and amendment for the design, location, construction, installation, operation, and maintenance of all equipment related to drilling or production.
 6. Plan Evaluation and Revision. An applicant shall review and evaluate the plan at least once every five years and make such revisions as are necessary to include more effective prevention and control technology if:
 - a. Such technology will significantly reduce the likelihood of a fire or fire hazard, and;
 - b. If such technology has been field proven at the time of review.
 7. Plan Standards. Except as provided herein the standards for design, location, construction, installation, maintenance and operation of all plumbing and electrical or other equipment shall be in accordance with Chapters 16.120, 16.130, 16.140, 16.150 and 16.160 of the Code. The Fire Prevention and Protection Plan shall include the following:
 - a. Waste control and combustible materials:
 - 1) No person shall allow or cause to be allowed the discharge of any liquid containing crude petroleum or its products into or upon any streets, public highway, drainage channel, or ditch, storm drain, or flood control channel.

- 2) No person shall allow or cause to be allowed any oil, waste oil, refuse, or waste material to be on the surface of the ground whether under, around, or near any well, pump, boiler, oil storage tank, or building.
 - 3) All land within 25 feet of any oil well, flammable liquid tank, or other appurtenance to any such well, shall at all time remain free and clear of dry weeds, grass, rubbish or other combustible debris.
- b. Sources of Ignition. In locations where flammable vapors may be present, precautions shall be taken to prevent ignition by eliminating or controlling sources of ignition. Sources of ignition may include open flame, internal-combustion engines, lightning, smoking, cutting and welding, hot surfaces, frictional heat, spark (static electrical and mechanical) spontaneous ignition, chemical and physical-chemical reaction, and radiant heat. Such precautions shall include but are not limited to the following:
- 1) Smoking- No person shall smoke nor cause, permit, or allow another person to smoke within 50 feet of any well, tank, or area contaminated by oil or waste gas, except in those posted areas designated by the Code Administrator.
 - 2) Soundproofing Material- If soundproofing material is required during drilling operation, such material shall be noncombustible, provided that fire retardant treated materials may be used and maintained as approved by the Code Administrator.
 - 3) Drilling Equipment- All engines used during drilling operations shall use accepted methods to prevent the escape of flames, sparks, and ignited carbon.
 - 4) Production Pumps- All pumps used for the production of oil shall be electrically powered, which power shall not be generated on the lease (unless otherwise impractical).
- c. Location. No well shall be drilled or appurtenances placed within 165' of a habitable structure or place of public gathering, nor shall any habitable structure or place of public gathering be placed within 165' of any well or appurtenances.
- d. Contingency Plan. All drilling permit applicants shall submit an emergency procedures plan. The plan shall be designed to minimize and be commensurate with the risk to persons, property, and the community welfare from a fire or fire hazard by having available or having procedures and access to person and equipment capable of controlling and eliminating the fire or fire hazard. Such procedures shall be posted at the drilling or production site.

G. Spill Prevention Control and Countermeasures Plan. The guidelines in this section establish the process and minimum standards for the preparation, reviewing, and implementation of a Spill Prevention Control and Countermeasures Plan and are in addition to any requirements of K.S.A. Chapter 55, or any regulations thereunder, 40 C.F.R. 112, or Title 16 of the Code. Such guidelines pertain to health, safety, environmental protection, and fire prevention to minimize the potential for oil discharge and to control and remove such oil discharges should they occur and any such plan should reflect a level of detail commensurate to the risk posed to persons, property, and community welfare.

1. Plan Required- Any and all owners or operators that have received a special use permit to drill for oil and/or gas shall prepare a Spill Prevention Control and Countermeasures Plan or amendment as part of the application process for a drilling permit.
2. Plan Preparation- The applicant shall have a registered professional engineer review and certify such plan and any amendments and attest that the Spill Prevention Control and Countermeasures Plan has been prepared in accordance with this Chapter and good engineering practices.
3. Plan Review- The Code Administrator shall review and approve such plans and amendment for compliance with this Chapter and Title 16 of the Code.
4. Plan Amendment- Amendments shall be made to the plan as necessary to retain a comparable level of safety for any change, addition, intensification of drilling or production activities whether in design, location, construction, installation, operation, or maintenance.
5. Plan Implementation- The owner or operator shall implement such approved plan and amendment for the design, location, construction, installation, operation, and maintenance of all equipment related to the drilling and production of oil.
6. Plan Evaluation and Revision- An owner or operator shall review and evaluate, at least once every five years, their plan and make such revisions as are necessary to include more effective prevention and control technology if:
 - a. Such technology will significantly reduce the likelihood of a discharge, and;
 - b. If such technology has been field proven at the time of review.
7. Plan Standards- Except as provided herein, the standards for design, location, construction, installation, maintenance and operation of all plumbing, electrical equipment, storage tank or other equipment shall be in accordance with Chapters 16.120, 16.130, 16.140, 16.150 and 16.160 of the Code and good engineering practices. The Spill Prevention Control and Countermeasures Plan shall include the following:
 - a. Containment and/or Diversionary Structures. In order to prevent discharge oil from dispersing, whether from an oil rush, rupture, or other occurrence, the following may be used:

- 1) Dikes, berms, or retaining walls sufficiently impervious to contain spilled oil;
 - 2) Curbing;
 - 3) Culverting, gutters, or other drainage systems;
 - 4) Weirs, booms, or other barriers;
 - 5) Emergency spill diversion pond (not a sump);
 - 6) Sorbent materials;
 - 7) Such containment may be temporary in nature for the drilling, but shall be modified for production operations to provide the necessary protection.
- b. Drainage of Rainwater. Provision shall be made for draining water from any diked area. Drainage into a storm drain or an effluent discharge that empties into an open water course may be acceptable if:
- 1) The bypass valve is normally closed;
 - 2) Inspection of the runoff rainwater ensures compliance with the applicable water quality standards;
 - 3) The bypass valve is opened and resealed following drainage under responsible supervision. Otherwise, the accumulated rainwater and oil should be picked up and returned to storage or disposed of in accordance with Federal and State environmental water quality regulations.
- c. Transfer of Oil. Except as herein provided all pipes, valves, and fittings shall comply with Title 16 of the Code.
- d. Safety and Security
- 1) All oil well production equipment having external moving parts hazardous to life or limb shall be fenced with the gates being secured when the owner or operator's personnel are not present.
 - 2) All storage facility tanks shall have hatches, sized or otherwise, secured so as to prevent entrance by a child into the tank.
 - 3) Facility lighting should be commensurate with the type and location of the facility. Consideration should be given to:
 - a) Adjoining habitable structures;
 - b) Discovery of a spill occurring through darkness;
 - c) Prevention of spills occurring through vandalism.
8. General Environmental Standards
- a. Noise- All related activities not on the tract, such as transporting of oil and maintenance, should occur in such a manner as to minimize noise and obtrusiveness to the surrounding community.

Chapter 5.51

- b. Air- The permittee should employ all reasonable efforts to minimize odor beyond the drilling and storage site by monitoring the mud, sealing of pumps, tanks, or ventilation stacks.
- c. Water:
 - 1) All brines and mineralized waters, liquids with oil content, sand or sorbent materials with oil, disposal or other waste products produced in connection with drilling, testing, cleaning, swabbing, reworking, or operating of an oil, gas, or disposal well shall be containerized in water tight vessels and disposed of according to K.S.A. Chapter 55, Articles 9 and 10, and K.S.A. 55-121, or any amendments thereto.
 - 2) Earthen sumps or slush pits are prohibited.
 - 3) In addition to the requirements of this Chapter, all drilling and production permits are subject to the requirements of 18.360 of the Code, regarding floodplains.

(History: Ord. OG-2448 §2, 2003; NOI-2287 §8, 2001; ROCR-2245 §6, 2001; OG-1165 §6, 82)

5.51.070 Additional Requirements.

If at the time of application for a permit, or after drilling or production has commenced, the Code Administrator determines that additional requirements consistent with the intent and purpose of this Chapter, Chapter 18.370, and any condition attached to the special use permit are required to promote and protect the public health and safety, the Code Administrator may impose additional requirements as he deems appropriate, including but not limited to a blowout preventor, fire retardant enclosures, and fire suppression equipment.

(History: Ord. OG-2448 §3, 2003; OG-1165 §7, 82)

5.51.080 Abandonment.

To insure that all land used for drilling and production is restored to a condition which will not inhibit or adversely affect the health, safety, and welfare of the community, the following requirements shall be applicable and, except as provided, are in addition to KSA 55-128 and 132: KAR 82-303 through 307, and any amendments thereto.

- A. Removal- All drilling equipment incidental to well's production shall be removed from a lease within 30 days after cessation of drilling activity for which a permit was sought and approved under this chapter.

All production related equipment shall be removed from a lease within 60 days after production of a well has ceased, unless such equipment is actively in use for production activities of the lease or is being installed with due diligence for use on the lease.

- B. Plugging- Any well which is to be abandoned shall be plugged by cementing the well from bottom to a depth of six feet below grade after the oil well casing is removed or cut to six feet below grade.

- C. Restoration- All land which is disturbed during drilling or production shall be returned as near as practicable to original grade and stabilized as soon as practical to prevent soil erosion and any reserve pit shall be drained and backfilled, prior to being stabilized.
- D. Time- Any and all wells shall be in production or abandoned within 180 days from the time drilling commences.

(History: Ord. OG-1265 §8, 82)

5.51.090 Existing Wells.

Any lawful nonconforming well within the City as of the date of passage of this ordinance or amendments thereto, or of any well hereafter annexed within the City limits, may continue under Title 18 of the Code as nonconforming use provided; however, such use shall to the extent practical, comply with this chapter, except when compliance would be impossible.

(History: Ord. OG-1265 §9, 82)

5.51.100 Insurance Required.

- A. At the time of application for a permit required by this chapter, the applicant shall file with the City Code Administrator a copy of the Certificate(s) of Insurance provided by the Code Administrator, approved by the City Attorney, and issued by a reputable insurance company currently authorized to do business in the State of Kansas and maintaining a Best policyholder rating of B+ or better and a Best's financial rating of Class VIII or better. The Certificate or Certificates shall evidence current insurance of the owner and operator conditioned for the payment of all claims stemming from injury to persons or damage to property arising out of an act or omission of the owner, operator, their agents, employees or independent contractors resulting from the drilling or production of the proposed well or any structure, machinery, equipment, pipeline, or appurtenances used therewith, in a minimum amount of Five Million Dollars (\$5,000,000) of comprehensive general liability and One Million Dollars (\$1,000,000) of automobile liability. The owner and operator must each provide proof of insurance in the minimum amount outlined above but may do so by providing either individual policies or by being named as an additional insured on the policy of the other.

The policies and Certificate shall name the drilling company, owner, operator, including their agents and employees, and the City of Overland Park, Kansas, as an additional insured and shall provide that 30 days' advance written notice be filed with the Code Administrator prior to any change in or cancellation of the policies of insurance. The general liability insurance shall be written in comprehensive form and shall include coverage for premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, independent contractors, person injury, underground equipment and resources, blowout and cratering hazard, and contamination or pollution hazard when sudden and accidental. The automobile liability shall be written in comprehensive form and shall include coverage for owned, hired, and non-owned vehicles.

Chapter 5.51

- B. The permittee, upon receipt of notice of any claim in connection with any of his operations, shall promptly notify the Code Administrator with full details thereof including an estimate of the amount of loss or liability. The permittee shall promptly notify the Code Administrator of any impairment or reduction of primary or umbrella coverage in excess of \$10,000 whether or not such impairment of liability came about as the result of operations within the City of Overland Park. In the event, after notice of loss, if the Code Administrator shall determine that the permittee's aggregate umbrella or primary coverage has been impaired or reduced to such an extent that the Code Administrator shall determine such limits inadequate for the balance of the permit term, the permittee shall upon the notice from the City promptly reinstate the original limits liability required hereunder and shall furnish evidence thereof to the Code Administrator in a form satisfactory to him.
- C. Worker's Compensation and Employers' Liability insurance shall be provided to protect permittee against all claims under applicable state workers' compensation laws. The permittee shall also be protected against claims for injury, disease, or death of employees which, for any reason, may not fall within the provisions of the workers' compensation law. The policy shall include the broad form all states endorsement. Liability limits shall not be less than the following:

Workers' Compensation:

Statutory Employers' Liability; \$100,000 each accident.

(History: Ord. OG-1165 §10, 82)

5.51.110 Bonds Required.

- A. At the time of application for any permit required by this Chapter, the applicant shall furnish to the City cash or a corporate surety bond in the sum of \$10,000 for each well, or cash or a corporate surety bond in the sum of \$50,000 for all wells within the property for which a special use permit has been granted in accordance with Chapter 18.370. Any bond shall be executed by the applicant as principal and by a surety company as surety and conditioned that the principal shall faithfully comply with all applicable provisions of the Code and all regulations of the State of Kansas. Any surety company executing a bond hereunder shall be authorized to do business within the State of Kansas and shall be included in the current Federal Register's listing of acceptable sureties on federal bonds. The bond shall secure the City against all costs, charges, and expenses incurred by it by reason of the failure of the principal to fully comply with the applicable provisions of this Code or regulations of the State of Kansas. The bond shall include the correct name or number of the well(s) and such other information as may be necessary to readily identify the well(s).
- B. Cancellation of Bond
1. The principal or surety may cancel the bond required pursuant to 5.51.110A effective on any anniversary date of said bond, by giving written notice of intent to cancel to the Code Administrator and to the other party (principal or surety) not less than 120 days prior to said anniversary date.

2. In the event that a cancellation notice pursuant to paragraph A above is given, the principal shall, not less than 60 days prior to the anniversary date of the bond, furnish a substitute surety bond or cash complying with the provisions of 5.51.110A to the City, or alternatively, the principal shall, not less than 60 days prior to the anniversary date of the bond, abandon the well and comply with all requirements of this Code and all regulations of the State of Kansas relating to abandonment.
3. Failure on the part of the principal to satisfy the requirements of paragraph B above shall constitute a default, and the Code Administrator shall give notice of default in the manner provided in 5.51.120.

(History: Ord. OG-2448 §4, 2003; OG-1165 §11, 82)

5.51.120 Default.

Whenever the Code Administrator finds that a default has occurred in the performance of any requirement imposed by this Code, or of any condition imposed by a permit or special use permit, written notice shall be given to the applicant and, if a surety bond has been furnished pursuant to 5.51.110A, to the surety on the bond. Such notice shall specify the work to be done, the estimated cost thereof and the period of time deemed by the Code Administrator to be reasonably necessary for the completion of such work. After receipt of such notice, the applicant or surety shall either cause or require work to be performed within the time therein specified, or failing therein, shall pay over to the Code Administrator the estimated cost of doing the work as set forth in the notice. Upon receipt of such monies, the Code Administrator shall proceed in such manner as is deemed convenient to cause the required work to be performed and completed, but no liability shall be incurred.

(History: Ord. OG-1165 §12, 82)

5.51.130 Transference.

Any permit may be transferred except when the transference is the result of the death of the permittee or when the transference is the result of a judgment rendered by a court of competent jurisdiction, subject to the following conditions:

- A. Written notice shall be required at least 10 days prior to such transfer;
- B. The transferee shall post the required cash or bonds and provide satisfactory evidence of insurance in conformance with this chapter, prior to such transference and such cash or bonds and insurance shall become effective before or at the time of transferences; and
- C. The transferee shall submit new assurances in conformance with this chapter.

(History: Ord. OG-1165 §13, 82)

5.51.140 Appeals.

Any and all appeals of administrative determinations, including interpretations and permit modifications for additional requirements, shall be taken by the affected person(s) to the Code Board of Appeals created pursuant to Chapter 16.100 and shall comply with the rules and

Chapter 5.51

procedures set forth for that Board. Provided, however, that the Code Board of Appeals shall have no authority to amend, modify, alter, or eliminate any condition imposed by the special use permit.

(History: Ord. ROCR-2245 §7, 2001; OG-1165 §14, 82)

5.51.150 Suspension.

In addition to other remedies provided, the Code Administrator is authorized and directed to suspend any drilling or production activity, in whole or in part, for failing to comply with the requirements of the laws, policies, procedures of this chapter, and the City. Such action shall only occur when, after appropriate notice and opportunity to be heard, the owner or operator has failed to comply or has not appealed the Code Administrator's decision except:

- A. The Code Administrator may suspend any or all operations immediately and during the appeal if the risk to the public health or safety warrants, otherwise, an appeal shall stay the suspension.
- B. Unless appealed, the Code Administrator shall determine the actions necessary to bring the activity into compliance and/or out of suspension.
- C. When 30 days prior to an intended transfer's effective date, a good and sufficient bond and insurance in compliance with this chapter has not been submitted and approved, or when the transference is due to the death of the permittee, or when the transference is the result of a judgment rendered by a court of competent jurisdiction, any such drilling or production activities shall be suspended and suspended in such a manner as to avoid the creation of risk of injury to persons, property, and liability for the City, and such suspension shall remain in effect until the permit is transferred or the well is abandoned, pursuant to this chapter.

A suspension shall prevent the tolling of time for removal under 5.51.080A.

(History: Ord. OG-1165 §15, 82)

5.51.160 Revocation.

In addition to other remedies provided, the Code Administrator is authorized to revoke any permit or other approval, in whole or in part, issued under the provisions of this chapter in a case of any false misrepresentation or statement of fact in the application or amendments on which the permit was based.

(History: Ord. OG-1165 §16, 82)

5.51.170 Enforcement Action.

- A. General- The Code Administrator shall be responsible for the enforcement of this chapter.
- B. Violation and Penalties- The violation of any provision of this chapter is a public offense and any person convicted thereof shall be punished in accordance with the provisions of 1.12.010. Each day any violation continues to exist shall constitute a separate offense.

- C. Other Remedies- Nothing contained in this section shall limit or preclude the City from pursuing and instituting any and all other appropriate actions or proceedings to prevent, restrain, correct, or abate such violations, including but not limited to, civil actions for injunction or declaratory judgment.

(History: Ord. OG-1165 §17, 82)

5.51.180 Fees.

The fee for any permit or inspection shall be established by resolution of the City Council and a copy of such current resolution shall be available for inspection in the office of the City Clerk.

(History: Ord. OG-1165 §18, 82)

[Next Page is 5-1800]

Chapter 5.52 PAWNBROKING¹

Sections:

| | |
|----------|--------------------------------------|
| 5.52.010 | Definitions. |
| 5.52.020 | License Required. |
| 5.52.030 | Qualifications. |
| 5.52.040 | Transfer of Ownership. |
| 5.52.050 | Contents of License. |
| 5.52.060 | Change of Business Location. |
| 5.52.070 | Records and Accounts. |
| 5.52.080 | Suspension or Revocation of License. |
| 5.52.090 | Loan Procedures. |
| 5.52.100 | Reporting, Holding Period. |
| 5.52.110 | Record Book. |
| 5.52.120 | Minors Prohibited. |
| 5.52.130 | Search of Premises. (Repealed) |
| 5.52.140 | Charges. |
| 5.52.145 | Proof of Identification; Ownership. |
| 5.52.150 | Violation - Penalty. |
| 5.52.155 | Separability. |

5.52.010 Definitions.

As used in this chapter the words:

- A. "Pawnbroker" means any person who loans money on deposit or pledge of personal property or other valuable thing other than intangible personal property or who deals in the purchase of personal property on the condition of selling the same back again at a stipulated price but such terms shall not include any person operating under the supervision of the State Banking Commissioner, Credit Union Administrator, or the Consumer Credit Commissioner of the State of Kansas.
- B. "Person" means any individual, firm, company, partnership, corporation, or association of persons.
- C. "Precious Metal" means gold, silver or platinum group metals or any used articles or other used personal property containing such metals, but shall not include coins purchased for their numismatic value rather than their metal content or ingots or other industrial residue or by-products composed of such metals purchased from manufacturing firms.
- D. "Precious Metal Dealer" means any person who engages in the business of purchasing precious metal for the purpose of reselling such metal in any form.

(History: Ord. PB-1123 §1, 82; PB-712 §1, 72)

¹ For statutory provisions regarding the regulation of pawnbrokers, see K.S.A. Chapter 51, 1972 Session.

5.52.020 License Required.

No person shall engage or continue in business as a Pawnbroker or Precious Metal Dealer without first obtaining a license therefor. The person shall obtain such license from the City Clerk. An application for a license shall be in writing and shall state the full name and place of residence of the applicant. If the applicant is a partnership, the application shall contain the name and place of residence of each member thereof, or if a corporation or association, of each officer, shareholder or member thereof. The application shall include the address of the places where the business is to be conducted, the hours and days of the week during which the applicant purposes to engage in the business of pawnbroking or dealing in precious metals at each such place, and such other information as may be necessary to determine the applicant's qualifications for a license in accordance with the provisions of this chapter. Each applicant shall also submit with the application:

- A. A statement that the applicant is the holder of a valid registration certificate issued by the Director of Revenue pursuant to K.S.A. 79-3608 for each place of business for which an application for a license is made; and
- B. A detailed inventory and description of all goods, wares, merchandise, precious metals or other property held in pledge or for sale at the time of the application at each place of business stated therein, indicating whether the same was received in pledge, purchased as secondhand merchandise, or precious metal purchased for resale.

The license application shall be in a form approved by the Attorney General. Each application shall be accompanied by a fee of \$25 which shall be paid annually upon renewal of the license. All such fees received by the City Clerk shall be deposited in the City General Fund.
(History: Ord. PB-1123 §2, 82; PB-712 §2, 72)

5.52.030 Qualifications.

No license or any renewal thereof shall be granted to:

- A. Any person who is not a citizen of the United States;
- B. Any person who has not been an actual resident of the state of Kansas for at least two years immediately preceding the date of his application; provided that corporate officers, directors and stockholders of an applicant corporation that have resided in Cass County, Clay County, Platte County and Jackson County, Missouri, for the two years immediately preceding the date of application, are not subject to the residence requirements of this section, provided further, each premises operated by a corporate licensee must have an in-store manager who is a resident of the state of Kansas.
- C. Any person who has been convicted of or has pleaded guilty to a felony under the laws of this state, or any other state, or of the United States, or shall have forfeited his bond to appear in court to answer charges for any such offense within the ten years immediately prior to such person's application for a license;
- D. Any person who has had his license revoked for cause under the provisions of this chapter;
- E. Any person who is not at least twenty-one years of age;
- F. Any person who at the time of application for renewal of any license issued under this chapter would not be eligible for such license upon a first application;

- G. Any person who does not own the premises for which a license is sought, unless he has a written lease therefor for at least three-fourths of the period for which the license is to be issued;
- H. Any person whose spouse would be ineligible to receive a license hereunder for any reason other than the age, citizenship, and residence requirements;
- I. Any partnership, unless all the partners shall be eligible to receive a license as an individual; and
- J. A corporation if any officer, manager, director, or stockholder would be ineligible to receive a license as an individual.

(History: Ord. PB-1737 ' 1,92; PB-712 ' 3, 72)

5.52.040 Transfer of Ownership.

It is unlawful for any shareholder of a corporate licensee to transfer any stock in the corporation to any person who would be ineligible to receive a license as an individual, and any such transfer shall be null and void; provided, that if any such stockholder of a corporate licensee shall become deceased, and his heirs or devisees to whom such stock descends by descent and distribution or by will shall be ineligible to receive a license under this chapter, then the legal representatives of the deceased stockholder's estate, his heirs and devisees shall have fourteen months from the date of the death of the stockholder within which to sell such stock to a person eligible to receive a license under this chapter, with such sale to be made in accordance with the provisions of the probate code and any amendments thereto. If the legal representative, heirs, and devisees fail, refuse or neglect to so convey the stock within the time herein before prescribed, then the stock shall revert to and become the property of the corporation, for which the corporation shall pay the legal representatives, heirs or devisees the book value of such stock. If the stock in any corporation shall be the subject of any trust heretofore or hereafter created, the trustee or trustees and the beneficiaries of each trustee and beneficiary of said trust who is twenty-one years of age or older must be a person who would be eligible to receive a license or the trustee shall be and he is authorized and required within fourteen months after the effective date of the trust to sell the stock to a person eligible to receive a license under this chapter and he shall hold and disburse the proceeds thereof in accordance with the terms of the trust or the license of the corporation shall be forfeited.

During the fourteen month periods herein before mentioned a corporation shall not be denied a license or have its license revoked if it meets all of the other requirements necessary to have a license as provided in this chapter.

(History: Ord. PB-712 ' 4, 72)

5.52.050 Contents of License.

The document or other instrument evidencing the license of a pawnbroker or precious metal dealer shall state the address at which the business is to be conducted and shall state fully the name of the licensee. If the licensee is a partnership, the license shall state the names of the members thereof; and, if a corporation, the date and place of the incorporation, and the names of all the shareholders thereof. Such license shall be kept conspicuously posted in the place of business of the licensee. It is not transferable or assignable. Not more than one place of business shall be maintained under the same license, but more than one license may be issued to the same

licensee upon compliance with all the provisions of this chapter governing the issuance of an initial license.

(History: Ord. PB-1123 ' 3, 82; PB-712 ' 5, 72)

5.52.060 Change of Business Location.

Whenever a licensee shall change his place of business to another location within the city, he shall immediately give written notice thereof to the city clerk who shall then issue a duplicate license which shall show in addition to all the information appearing on the old license a record of the change of location and the date thereof, which new license shall be authority for the operation of such business under such license at such location. The licensee shall return the old license to the city clerk as soon as the new license has been received and the change in location has taken place.

(History: Ord. PB-712 ' 6, 72)

5.52.070 Records & Accounts.

Each licensee shall keep and use in the licensee's business such books, accounts, records and files as will enable the City to determine whether such licensee is complying with the provisions of this act. During the licensee's regular business hours the Chief of Police or his designated representative may examine or cause to be examined such books, accounts, records, and files used by any licensee or by any other person engaged in the business of pawnbroking or dealing in precious metals, irrespective of whether such person acts or claims to act as principal, agent or broker, or under or without authority of this chapter.

The Chief of Police or his designated representative shall have and be given free access, during the licensee's regular business hours, to all such books, accounts, records and files. Further, the Chief of Police or his designated representative shall have and be given free access to all safes and vaults on the licensee's place of business which are used to store such books, accounts, records and files.

(History: Ord. PB-1123 ' 4, 82; PB-712 ' 7, 72)

5.52.080 Suspension or Revocation of License.

Any license issued under this chapter may be suspended or revoked after due notice and public hearing before the governing body if the licensee:

- A. Has failed to pay the annual license fee;
- B. Has violated any provision of this chapter; or
- C. Has been convicted of or has pleaded guilty to a felony under the laws of this state, or any other state, or the United States, or shall have forfeited his bond to appear in court to answer charges for any such offense, if such conviction or plea occurred subsequent to or within the ten years immediately prior to the date of the licensee's application for the license. Any license issued under this chapter shall be revoked, after due notice and hearing thereon, if it shall be proved at the hearing that the licensee sold any handgun to a minor.

The hearing herein provided shall be held within 30 days after notice thereof and the alleged violation determined by written order of the governing body within 60 days after such hearing is concluded; but no revocation or suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any borrower.

(History: Ord. PB-712 ' 8, 72)

5.52.090 Loan Procedures.

Every loan made by a pawnbroker for which goods are received in pledge of security shall be evidenced by a written contract, in ink, a copy of which shall be furnished to the borrower. The loan contract shall set forth the loan period, which shall be one month, the date on which the loan is due and payable and the charges, and it shall clearly inform the borrower of his right to redeem the pledge during the redemption period of two months after due date. Except as otherwise provided herein, the holder of any such contract shall be presumed to be the person entitled to redeem the pledge, and the pawnbroker shall deliver the pledge to the person presenting the contract, upon payment of the principal and charges.

Every pawnbroker shall retain in his possession, after the date on which the loan became due and payable every article pledged to him for a redemption period of two months. During such period, the borrower may redeem the pledged article, upon payment of the principal and charges. It is unlawful for any pawnbroker to sell or transfer title or possession of any pledged property until the expiration of such period of redemption. If any pledged article is not redeemed within said redemption period, the pawnbroker shall become vested with all right, title, and interest of the pledgor or his assigns to such pledged article, to hold and dispose of as his own property. Any other provision of law relating to the foreclosure and sale of pledges shall not be applicable to any pledge the title to which is transferred in accordance with this section.

(History: Ord. PB-712 ' 9, 72)

5.52.100 Reporting, Holding Period.

- A. On or before Tuesday of each week, every pawnbroker or precious metal dealer shall report in detail, the description of all properties received in pledge or purchased as a pawnbroker or precious metal dealer during the preceding calendar week and whatever quantity received. Such report shall include all property purchased as secondhand merchandise at wholesale, secondhand merchandise taken in for sale or possessed on consignment for sale and secondhand merchandise taken in trade. No such report need be made concerning property or merchandise acquired from another pawnbroker or precious metal dealer licensed in this state in a transaction involving the purchase or other acquisition from the other pawnbroker or precious metal dealer of the other pawnbroker's or dealer's stock in trade, or a substantial part thereof in bulk, where the other pawnbroker or dealer has made the reports required by this section with respect to such property or merchandise. Such report shall be submitted to the Chief of Police.
- B. All reports required to be submitted pursuant to this section shall contain the following information:
 1. Date of the purchase;

Chapter 5.52

2. Name, date of birth, residence, and driver's license number of the seller;
 3. A clearly legible, detailed and accurate description of each item purchased. Such description shall include but not be limited to the following information:
 - a. Type of precious metal purchased;
 - b. Weight of the metal, in either pennyweight, grams or ounces,
 - c. A description of any precious stones contained within the item purchased including type of stone, carat size and color,
 - d. Any identifying letters, numbers, marks or writing on the item,
 - e. Size of any ring purchased,
 - f. Any brand names or pattern names.
- C. Every precious metal dealer shall retain in the dealer's possession for a period of 10 days all precious metal purchased as a precious metal dealer, and such metal shall remain in the condition in which it was purchased. The 10-day period shall commence on the date the Chief of Police receives the report of its acquisition in compliance with this section. If the Chief of Police has probable cause to believe that any precious metal reported by a dealer has been stolen, the Chief of Police may give written notice to the dealer to retain such metal for an additional period of 15 days. Upon such notice the dealer shall retain such metal in an unaltered condition for the additional 15-day period unless the Chief of Police notifies the dealer in writing that the waiting period is terminated at an earlier time.
- D. Reports made pursuant to this section shall be available for inspection only by law enforcement officers, district and city attorneys and their employees for law enforcement purposes.

(History: Ord. PB-1123 ' 5, 82; PB-712 ' 10, 72)

5.52.110 Record Book.

- A. At the time of making a loan, a pawnbroker shall enter in a book kept for that purpose:
1. The date, duration, amount and charges of every loan made by the pawnbroker;
 2. A full and accurate description of the property pledged; and
 3. The name, date of birth, residence and driver's license or other personal identification number of the pledgor.
- B. At the time of purchasing precious metal, a precious metal dealer shall enter in a book kept for that purpose:
1. The date of the purchase,
 2. A fully detailed and accurate description of each item purchased, including any identifying letters, numbers, or marks on the item; and
 3. The name, date of birth, residence and driver's license number of the seller.
- C. The record required by this section shall be maintained in a clearly legible manner by the pawnbroker or precious metal dealer at the pawnbroker's or dealer's place of business for not less than one year following the date of the transaction.

(History: Ord. PB-1123 ' 6, 82; PB-712 ' 11, 72)

5.52.120 Minors Prohibited.

No pawnbroker shall receive in pledge or as security for any loan, transfer, service, undertaking or advantage, anything of value from any person under the age of 18 years.

No precious metal dealer shall purchase any precious metal from any person under the age of 18 years.

(History: Ord. PB-1123 §7, 82; PB-712 §12, 72)

5.52.130 Search of Premises.

Repealed

(History: Ord. PB-1123 §10, 82; PB-712 §13, 72)

5.52.140 Charges.

- A. On the effective date of ordinance codified in this chapter no pawnbroker shall contract for, charge, or receive directly or indirectly on or in connection with any pawnbroker transaction any charges, whether for interest, storage, insurance, service fee, handling, compensation, consideration or expense which in the aggregate are greater than the charges provided and authorized by this chapter. Any other provisions of law relating to interest, storage, and such charges shall not be applicable to any pawnbroker transaction made in accordance with this chapter.
- B. Whenever any loan is made by a pawnbroker for which goods are received in pledge, the following maximum amounts may be charged:
 - 1. On any amount a charge may be added in an amount not to exceed 10% per month or 120% per year of the amount advanced to the borrower; and
 - 2. The maximum amount of a loan authorized by this chapter shall not exceed \$5000 per transaction.
- C. The term of any loan made under the provisions of this chapter shall be one month. Loans may be extended or renewed by the payment of charges herein provided monthly. The charges authorized herein shall be deemed to be earned at the time the loan is made and not be subject to refund. On loans under this chapter, no insurance charges or any other charges of any nature whatsoever shall be permitted.

(History: Ord. PB-1913 §1,95; PB-712 §14, 72)

5.52.145 Proof of Identification; Ownership.

A precious metal dealer shall require of every person from whom the dealer purchases metal for resale:

- 1. Proof of identification; and
- 2. A signed statement saying that the seller is the legal owner of the precious metal or is an agent of the legal owner who is authorized to sell such metal, stating when, where and in what manner such metal was acquired by the seller.

(History: Ord. PB-1123 §8, 82)

Chapter 5.52

5.52.150 Violation - Penalty.

Any person convicted of a violation of any of the provisions of or failing to comply with any of the mandatory requirements of the ordinances of the City for which another penalty is not specifically provided is guilty of a public offense and is punishable as provided in 1.12.010.

(History: Ord. PB-712 §15, 72)

5.52.155 Separability.

Should any court declare any section, clause or provision of this chapter to be unconstitutional or invalid, such decision shall affect only such section, clause or provision so declared unconstitutional or invalid and shall not affect any other section, clause or provision.

(History: Ord. PB-1123 §9, 82)

[Next Page is 5-1850]

Chapter 5.53
SCRAP METAL

Sections:

- 5.53.010 Definitions.
- 5.53.020 Registration Required.
- 5.53.030 Qualifications.
- 5.53.040 Suspension or Revocation of Registration.
- 5.53.050 Severability.

5.53.010 Definitions.

Words, terms and phrases used herein shall have the same meaning as those words, terms or phrases set out in K.S.A. 2010 Supp. 50-6,109, and amendments thereto.

(History: Ord. SM-2931 §1, 2011)

5.53.020 Registration Required.

- A. On or after January 1, 2012, no business in this City shall purchase any regulated scrap metal without having first registered each place of business as herein provided. Violations of this provision shall be prosecuted as set out in Section 11.12.230.
- B. Applications for registration will be on forms provided by the City Clerk. Applications shall be verified, and shall contain:
 - (1) The name and residence of the applicant;
 - (2) the length of time that the applicant has resided within the state of Kansas and a list of all residences outside the state of Kansas during the previous 10 years;
 - (3) the particular place of business for which a registration is desired;
 - (4) the name of the owner of the premises upon which the place of business is located; and
 - (5) the applicant shall disclose any prior convictions within 10 years immediately preceding the date of making the registration for theft, as defined in K.S.A. 21-3701, prior to its repeal, or K.S.A. 2011 Supp. 21-5801, and amendments thereto; theft of property lost, mislaid or delivered by mistake, as defined in K.S.A. 21-3703, prior to its repeal, or K.S.A. 2011 Supp. 21-5802, and amendments thereto; theft of services, as defined in K.S.A. 21-3704, prior to its repeal, criminal deprivation of property, as defined in K.S.A. 21-3705, prior to its repeal, or K.S.A. 2011 Supp. 21-5803, and amendments thereto; or any other crime involving possession of stolen property.
- C. The City Clerk shall provide the Sheriff and Chief of Police written notice of the filing of registration by a scrap metal dealer within 10 days of registration or renewal.
- D. Each registration for a scrap metal dealer to purchase regulated scrap metal shall be accompanied by a fee of \$400.00.
- E. The City Clerk shall accept a registration for a scrap metal dealer as otherwise provided for herein, from any scrap metal dealer engaged in business in the City and qualified to file such registration, to purchase regulated scrap metals. Such registration shall be issued for a period of 10 years.

Chapter 5.53

- F. The City Clerk shall grant and issue renewals or registration upon application of the registration holder, if the registration holder is qualified to receive the same and the registration has not been revoked as provided by law. The registration fee for such renewal, which shall be in addition to the fee provided by subsection (D), shall be \$50.00.
- G. No registration issued under this Chapter shall be transferable.
- H. This Section shall not apply to a business licensed under the provisions of K.S.A. 8-2404, and amendments thereto, unless such business buys or recycles regulated scrap metal that are not motor vehicle components.

(History: Ord. SM-2931 §1, 2011)

5.52.030 Qualifications.

No scrap metal registration shall be accepted for:

- A. A person who is under 18 years of age and whose parents or legal guardians have been convicted of a felony or other crime which would disqualify a person from registration under this Section and such crime was committed during the time that such parents or legal guardians held a registration under this Chapter.
- B. A person who, within five years immediately preceding the date of filing, has pled guilty to, been convicted of, released from incarceration for or released from probation or parole for committing, attempting to commit, or conspiring to commit a violation of Article 37 of Chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or K.S.A. 2011 Supp. 21-5801 through 21-5839, and amendments thereto; cruelty to animals under subsection (a)(6) of K.S.A. 2011 Supp. 21-6412, and amendments thereto; perjury, K.S.A. 21-3805, prior to its repeal, or K.S.A. 2011 Supp. 21-5903, and amendments thereto; compounding a crime, K.S.A. 21-3807, prior to its repeal, obstructing legal process or official duty, K.S.A. 21-3808, prior to its repeal, falsely reporting a crime, K.S.A. 21-3818, prior to its repeal, interference with law enforcement, K.S.A. 2011 Supp. 21-5904, and amendments thereto, interference with judicial process, K.S.A. 2011 Supp. 21-5905, and amendments thereto, or any crime involving moral turpitude.
- C. A person who, within the five years immediately preceding the date of registration, has pled guilty to, been found guilty of, or entered a diversion agreement for violating the provisions of Section 11.12.210, 11.12.220, 11.12.230 or K.S.A. 50-6,109 *et seq.*, and amendments thereto, the laws of another state comparable to such provisions or laws of any county or city regulating the sale or purchase of regulated scrap metal three or more times.
- D. A person, who within the three years immediately preceding the date of registration, held a scrap metal dealer registration which was revoked, or managed a facility for a scrap metal dealer whose registration was revoked, or was an employee whose conduct led to or contributed to the revocation of such registration.
- E. A person who makes a materially false statement on the registration application or has made a materially false statement on a registration or similar filing within the last three years.
- F. A partnership or limited liability company, unless all members of the partnership or limited liability company are otherwise qualified to file a registration.

- G. A corporation, if any manager, officer or director thereof, or any stockholder owning in the aggregate more than 25% of the stock of such corporation, would be ineligible to receive a registration hereunder for any reason.
- H. A person whose place of business is conducted by a manager or agent unless the manager or agent possesses all of the qualifications for registration.
- I. A person whose spouse has been convicted of a felony or other crime which would disqualify a person from registration under this Section and such crime was committed during the time that the spouse held a registration under this Chapter.

(History: Ord. SM-2931 §1, 2011)

5.53.040 Suspension or Revocation of Registration.

- A. The City Clerk, upon five days' notice to the persons holding a registration, may suspend the scrap metal dealer's registration for up to 30 days for any one of the following reasons:
 - 1. The registrant has been convicted of violating any of the provisions of Section 11.12.210, 11.12.220, 11.12.230 or K.S.A. 50-6,109 *et seq.*, and amendments thereto, or any similar ordinance, resolution or rules or regulations made by the City, as the case may be;
 - 2. the employment or continuation in employment of a person if the registered scrap metal dealer knows such person has, within the 24 months prior to the notice of suspension or revocation action, been convicted of violating any of the provisions of Section 11.12.210, 11.12.220, 11.12.230 or K.S.A. 50-6,109 *et seq.*, and amendments thereto, or the laws of another state comparable to such provisions, or any City or county ordinance or resolution, or regulation controlling scrap metal sale or purchase in Kansas or any other state; or
 - 3. permitting any criminal activity under the Kansas criminal code, or a similar ordinance, or rules or regulations made by the City, in or upon the registrant's place of business.
- B. The City Clerk may revoke the registration of a scrap metal dealer who has had its registration suspended three or more times within a 24-month period.
- C. The City Clerk, upon five days' notice to the person holding the registration, shall revoke or suspend the registration for any one of the following reasons:
 - 1. The registrant has fraudulently registered by knowingly giving materially false information on the registration form;
 - 2. the registrant has become ineligible to obtain a registration under this Chapter; or
 - 3. the nonpayment of any registration fees after receiving written notice that such registration fees are more than 30 days past due.
- D. Within 20 days after the order of the City Clerk denying, revoking or suspending any registration, the registrant may appeal to the district court and the district court shall proceed to hear such appeal as though the court had original jurisdiction of the matter. Upon request by the registrant, the district court may enjoin the revocation or suspension of a registration until final disposition of any action brought under this Chapter.

Chapter 5.53

- E. Any action brought under subsections (a), (b) or (c) shall be brought individually against a single registrant's site and not against any other scrap metal sites or locations registered by the same individual, company or business entity.

(History: Ord. SM-2931 §1, 2011)

5.53.050 Severability.

Should any court declare any section, clause or provision of this Chapter to be unconstitutional or invalid, such decision shall affect only such section, clause or provision so declared unconstitutional or invalid and shall not affect any other section, clause or provision.

(History: Ord. SM-2931 §1, 2011)

[Next Page is 5-1900]

Chapter 5.56
PUBLIC TRANSPORTATION VEHICLES¹

Sections:

- 5.56.010 Definitions. (Repealed)
- 5.56.020 Permit requirements. (Repealed)
- 5.56.030 Permit application. (Repealed)
- 5.56.040 Issuance of Permits. (Repealed)
- 5.56.045 Fleet permits. (Repealed)
- 5.56.050 Enforcement. (Repealed)
- 5.56.060 Permit revocation. (Repealed)
- 5.56.070 Insurance. (Repealed)
- 5.56.080 Insurance cancellation - Permit revoked. (Repealed)
- 5.56.090 Insurance Provisions. (Repealed)
- 5.56.100 Insurance deposit. (Repealed)
- 5.56.110 Liability requirements. (Repealed)
- 5.56.120 Insurance deductible specifications. (Repealed)
- 5.56.130 Insurance termination notice. (Repealed)
- 5.56.140 Liability of owner. (Repealed)
- 5.56.150 Vehicle identification specifications. (Repealed)
- 5.56.155 Livery vehicles. (Repealed)
- 5.56.160 Vehicle structure specifications. (Repealed)
- 5.56.170 Passengers carrying for hire by other vehicles prohibited. (Repealed)
- 5.56.180 Vehicles from other cities. (Repealed)
- 5.56.190 Public vehicle stands and parking. (Repealed)
- 5.56.200 Operation without permit - Penalty. (Repealed)
- 5.56.210 Violation-Penalties. (Repealed)
- 5.56.300 Definitions.
- 5.56.301 Taxicab License Required.
- 5.56.302 Application for Taxicab License.
- 5.56.303 Criteria for issuance of taxicab license.
- 5.56.304 Liability insurance; Required; Amount; Conditions.
- 5.56.305 Term of taxicab licenses.
- 5.56.306 Taxicab License Fees.
- 5.56.307 Transfer of taxicab licenses.
- 5.56.308 Taxicab license stickers.
- 5.56.309 Conditions to issuance of taxicab licenses.
- 5.56.310 Taxicab license; Grounds for suspension or revocation.
- 5.56.311 Enforcement.

5.56.010 Definitions.

Repealed.

¹ For the statute that declares that the power and authority of cities to control and regulate all public utilities and common carriers situated and operated wholly or principally within [a] city, see K.S.A. 66-104; for provisions regarding issuance of a chauffeur's license, see K.S.A. 8-235.

Chapter 5.56

(History: Ord. PT-1375 §2, 86; PT-1298 §1, 85; PT-742 §1; PT-661)

5.56.020 Permit requirements.

Repealed.

(History: Ord. PT-1375 §2, 86; PT-742 §2, 73; PT-661 §2, 71)

5.56.030 Permit application.

Repealed.

(History: Ord. PT-1375 §2, 86; PT-1298 §2, 85; PT-742 §3; PT-661)

5.56.040 Issuance of permits.

Repealed.

(History: Ord. PT-1375 §2, 86; PT-661 §4, 71)

5.56.045 Fleet permits.

Repealed.

(History: Ord. PT-1375 §2, 86; PT-742 §5, 73; PT-661 §24, 71)

5.56.050 Enforcement.

Repealed.

(History: Ord. PT-1375 §2, 86; PT-661 §5, 71)

5.56.060 Permit revocation.

Repealed.

(History: Ord. PT-1375 §2, 86; PT-661 §6, 71)

5.56.070 Insurance.

Repealed.

(History: Ord. PT-1375 §2, 86; PT-661 §7, 71)

5.56.080 Insurance cancellation - Permit revoked.

Repealed.

(History: Ord. PT-1375 §2, 86; PT-661 §8, 71)

5.56.090 Insurance provisions.

Repealed.

(History: Ord. PT-1375 §2, 86; PT-661 §9, 71)

5.56.100 Insurance deposit.

Repealed.

(History: Ord. PT-1375 §2, 86; PT-661 §10, 71)

5.56.110 Liability requirements.

Repealed.

(History: Ord. PT-1375 §2, 86; PT-661 §11, 71)

5.56.120 Insurance deductible specifications.

Repealed.

(History: Ord. PT-1375 ' 2, 86; PT-661 ' 12, 71)

5.56.130 Insurance termination notice.

Repealed.

(History: Ord. PT-1375 ' 2, 86; PT-661 ' 13, 71)

5.56.140 Liability of owner.

Repealed.

(History: Ord. PT-1375 ' 2, 86; PT-661 ' 14, 71)

5.56.150 Vehicle identification specifications.

Repealed.

(History: Ord. PT-1375 ' 2, 86; Ord. PT-1298 ' 3, 85; PT-742 ' 4, 73; PT-661 ' 15)

5.56.155 Livery vehicles.

Repealed.

(History: Ord. PT-1375 ' 2, 86; PT-1298 ' 4, 85)

5.56.160 Vehicle structure specifications.

Repealed.

(History: Ord. PT-1375 ' 2, 86; PT-1298 ' 5, 85; PT-661 ' 16, 71)

5.56.170 Passengers carrying for hire by other vehicles prohibited.

Repealed.

(History: Ord. PT-1375 ' 2, 86; PT-661 ' 17, 71)

5.56.180 Vehicles from other cities.

Repealed.

(History: Ord. PT-1375 ' 2, 86; PT-661 ' 18, 71)

5.56.190 Public vehicle stands and parking.

Repealed.

(History: Ord. PT-1375 ' 2, 86; PT-661 ' 19, 71)

5.56.200 Operation without permit - Penalty.

Repealed.

(History: Ord. PT-1375 ' 2, 86; PT-661 ' 20, 71)

5.56.210 Violation - Penalties.

Repealed.

(History: Ord. PT-1375 ' 2, 86; PT-661 ' 21, 71)

5.56.300 Definition.

As used in this chapter, the word "taxicab" shall mean any public passenger motor vehicle which is for hire by a passenger for a fee, except that the following shall not be considered to be taxicabs:

- A. Vehicles for hire operating generally within the City under franchise or permits issued by the City or by the Kansas Corporation Commission.
- B. Vehicles operated by tax levying boards or relief organizations.
- C. Vehicles exclusively licensed or regulated by the United States of America or the State of Kansas.
- D. Motor buses operated by the Kansas City Area Transportation Authority or motor buses operated by the City of Overland Park, Kansas, or Johnson County, Kansas.
- E. Motor buses and motor vehicles engaged exclusively in the transportation of students to and from school, commonly known as school buses.
- F. Motor buses engaged exclusively in interurban service under a certificate of convenience and necessity issued by the Kansas Corporation Commission or the Public Service Commission of Missouri.
- G. Motor buses engaged primarily in interstate service under certificates of convenience and necessity issued by the Interstate Commerce Commission.
- H. Vehicles operated by a person or company and used to transport person who are the employees, patrons, guests, residents or customers of the person or company and where the provision of such transportation is incidental to the business of such person or company.
- I. Group riding, or an arrangement between individuals whereby they pool their private transportation resources, either by using the personal automobile of one member of the group with the others contributing to the costs of operating same, or by rotating the use of their personal automobiles with joint contributions to the cost by the other members of the group, or when any employer provides transportation for his employees, and for none other, for a charge.

(History: Ord. PT-1375 ' 1, 86)

5.56.301 Taxicab License Required.

No person, firm, corporation, partnership, association or business organization shall own or operate or permit to be operated upon the streets of the City any vehicle as a taxicab unless a proper license has been issued for each such vehicle. Such license shall be required for the operation of any taxicab for which passengers are solicited within the City limits by any means, including but not limited to direct solicitation of passengers by words or actions, cruising, and occupying taxicab stands or zones and for every taxicab providing transportation for hire between two points when the point of origin is within the City limits.

(History: Ord. PT-1375 ' 1, 86)

5.56.302 Application for Taxicab License.

An application for a taxicab license shall be filed with the City Clerk upon forms provided by the City. The application shall furnish such information as the City Clerk may require including, but not limited to, the following:

- A. The name of the titleholder and, if applicable, the leaseholder of each taxicab, the residence and business address of each titleholder, and if applicable, the leaseholder, and if the titleholder or the leaseholder is a firm, corporation, partnership, association or business organization, the members and managers of such firm, association, or business organization, the partners and managers of such partnership or the principal shareholders, directors, officers and managers of any such corporation;
- B. The name of the firm, corporation, partnership, association or business organization, the members and managers of such firm, association, or business organization, the partners and managers of such partnership. or the principal shareholders, directors, officers and managers of any such corporation under whose agency any taxicab shall be operated if different from the titleholder or leaseholder;
- C. A complete description of each vehicle including the number of persons it is constructed to carry, the make, the model, the year, the vehicle identification number and the state vehicle registration number;
- D. The name of any vehicle liability insurance company to whom application has been made for vehicle liability insurance coverage.

(History: Ord. PT-1375 ' 1, 86)

5.56.303 Criteria for issuance of taxicab license.

A license to operate a vehicle as a taxicab shall be issued or reissued by the City Clerk to the titleholder or leaseholder of the taxicab or, if the taxicab is to be operated under the agency of a person or entity other than the titleholder or leaseholder, to that person or entity, if the City Clerk or his or her designee determine that the following conditions have been and will be met:

- A. The titleholder or leaseholder of the taxicab, if a corporation, is authorized to do business in Kansas;
- B. A policy of liability insurance meeting the standards and limits set out in Section 5.56.304 of this chapter is in effect on the taxicab and a fully executed certificate of liability insurance provided by the City confirming such coverage, or a true copy of the policy, has been approved by the Risk Manager of the City and is on file with the City Clerk;
- C. The vehicle has been properly registered and bears proper state license tags.

(History: Ord. PT-1375 ' 1, 86)

5.56.304 Liability insurance; Required; Amount; Conditions.

It shall be unlawful to operate a taxicab, or permit the same to be operated without proof of continuing public liability protection for each taxicab to be operated being on file in the office of the City Clerk. The requirement for liability protection shall be satisfied by the following

Chapter 5.56

method:

1. The licensee or applicant shall maintain commercial automobile liability insurance on each taxicab with liability limits of at least \$60,000 Combined Single Limit for injury to, or death of, one or more persons, and for damage to property, including baggage or other property of a passenger carried in or on said taxicab, resulting from any single accident, by reason of the carelessness or negligence of the driver or operator of such taxicab, with a property damage deductible, if any, not to exceed \$500 above which all claims shall be referred to the insurance company for handling.
2. The commercial liability insurance required to be maintained under the provisions of this section shall be issued by an insurance carrier who offers proof that it (1) is authorized and licensed to do business in the State of Kansas and has and maintains a local office or agent in the State of Kansas upon whom service of process may be had; (2) carries a Best's policy holder rating of A or better; and (3) carries at least a class X financial rating; or (4) is a company mutually agreed upon by the City and the licensee.
3. The commercial liability insurance required to be maintained under the provisions of this section shall be a policy of insurance under which the insurance company obligates itself to handle claims under the coverage thereof and to indemnify the licensee, owner, lessee, operator, and driver, as applicable, and pay to the claimant all amounts which the insured becomes legally obligated to pay under the policy in excess of any applicable deductible. A certificate of insurance reflecting all endorsements shall be filed with the City Clerk. The City's Risk Manager shall have the authority to require a true copy of the insurance policy if he has evidence that further proof of coverage is needed under the circumstances.
4. The liability insurance policy shall contain a provision for continuing liability thereunder to the full amount thereof, notwithstanding any recovery thereon. If, at any time, in the judgement of the Risk Manager, such policy is deemed insufficient for any cause, the City Clerk may require the licensee to replace such policy with another, to be approved by the Risk Manager.
5. The liability insurance policy shall contain a separate endorsement requiring the insurance company to notify the City Clerk in writing of any change in coverage, or cancellation of said policy at least ten (10) days prior thereto.
6. The liability insurance policy shall list each and every taxicab to be insured under the policy.
7. Nothing contained in the policy or any endorsement thereof shall release the company from liability for payment of any judgment due to any violation on the part of the insured of the provisions of the policy.

(History: Ord. PT-1375 ' 1, 86)

5.56.305 Term of taxicab licenses.

Licenses for the operation of taxicabs shall be of one-year duration. Licenses in good standing on the date of their expiration shall be eligible for renewal. Licenses shall expire on October 31

of each year. All vehicles for which new or renewed licenses are sought must be found to be in compliance with the requirements of this chapter before the issuance or renewal of such license. (History: Ord. PT-1375 ' 1, 86)

5.56.306 Taxicab License Fees.

The annual fee, payable in advance, for such taxicab licenses shall be \$25.00 for each taxicab operated. Whenever the number of taxicabs so operated shall be increased during the license year, the licensee shall notify the City Clerk of such change and shall pay the additional fee. Such license fee shall not be prorated nor any refund given during the license period, except, however, that if a licensed taxicab is taken out of service and another taxicab is substituted, upon surrender of the original license and upon payment of a substitute license fee of \$5.00, a new license shall be issued for such substituted taxicab, which new license shall expire at the end of the license period as hereinabove provided. Upon proof satisfactory to the City Clerk or his or her designee that a taxicab license has been lost, a duplicate license shall be issued by the City Clerk upon the payment of a fee of \$5.00.

(History: Ord. PT-1375 ' 1, 86)

5.56.307 Transfer of taxicab licenses.

There shall be no transfers or assignments of taxicab licenses from one person or entity to another. A change in the stock ownership of ten percent or more of the outstanding stock, or any change in the corporate structure of a corporation holding a license hereunder, including a change effected by a merger, consolidation or reorganization shall require submission of a new application pursuant to 5.56.302 along with applicable license fees.

(History: Ord. PT-1375 ' 1, 86)

5.56.308 Taxicab license stickers.

The City Clerk shall issue a suitable tag or sticker for each taxicab that is licensed hereunder. Such tag or sticker shall be displayed in the lower left hand corner of the rear window on each taxicab while it is in use except that on vehicles equipped with electric rear window defrosters or equipped with one-way glass or adhesive film or other glaze or application on the rear window which inhibits or substantially impairs the ability to see into the vehicle through such window, such sticker shall be placed in the lower portion of the driver's side of the front windshield.

(History: Ord. PT-1422 ' 1, 87; PT-1375 ' 1, 86)

5.56.309 Conditions to issuance of taxicab licenses.

Every taxicab licensee agrees, as a condition precedent to the privilege of holding such a license, that the City Clerk or his or her designee shall have the right and privilege to require such licensee to produce for the purpose of inspection, all records as required by this chapter for the purpose of ascertaining compliance by said licensee with the provisions hereof at any time.

(History: Ord. PT-1375 ' 1, 86)

5.56.310 Taxicab license; Grounds for suspension or revocation.

Taxicab licenses shall be automatically suspended by the City Clerk for any period that required insurance is not maintained in accordance with 5.56.304, above.

(History: Ord. PT-1375 ' 1, 86)

Chapter 5.56

5.56.311 Enforcement.

The enforcement of Section 5.56.301 of this ordinance shall be the responsibility of the police department.

(History: Ord. PT-1375 ' 1, 86)

[Next Page is 5-2000]

Chapter 5.60
SALES ON PUBLIC RIGHTS-OF-WAY

Sections:

- 5.60.010 Mobile Vehicle Operations Defined.
- 5.60.020 Compliance with Chapter Required.
- 5.60.030 Vehicle License Permit Procedure. (Repealed)
- 5.60.040 Operator's License Required.
- 5.60.050 Liability Insurance Required.
- 5.60.060 Parking to Dispense Products in Public Rights-of-way.
- 5.60.070 Sign Required for Vehicles Delivering Products.
- 5.60.080 Huckstering or Peddling near Intersections.
- 5.60.090 Dispensing Products from Mobile Vehicle in Park.
- 5.60.100 Persons Allowed in Vehicle.
- 5.60.110 Vehicle to Be Stationary for Sales.
- 5.60.120 Sales to Take Place on Right of Vehicle.
- 5.60.130 Selling from Vehicle near School.
- 5.60.140 Sound Devices. (Repealed)
- 5.60.150 Hours Sales Unlawful from Vehicles.
- 5.60.160 Enforcement of Rules - Equipment Inspections.
- 5.60.170 Violation-Penalty.

5.60.010 Mobile Vehicle Operations Defined.

For purposes of this chapter, a "mobile vehicle operation" is one conducted from a truck, trailer or other vehicle that travels from place to place and from which food, beverages, or products, of any nature whatsoever, are sold or distributed.

(History: Ord. SPS-553 ' 2, 69)

5.60.020 Compliance with Chapter Required.

It is unlawful for any person, firm, partnership, or corporation to conduct, hold, carry on, pursue, or operate a business of huckstering, peddling, or similar enterprise, for selling anything of any nature upon or within any public right-of-way, public street, alley, avenue, boulevard, or sidewalk within the corporate boundaries of the City unless the regulations set forth and contained in this chapter following hereafter are complied with and followed.

(History: Ord. SPS-553 ' 1, 69)

5.60.030 Vehicle License Permit Procedure.

Repealed.

(History: Ord. SPS-1405 ' 1,86; SPS-553 ' 3, 69)

5.60.040 Operator's License Required.

No person shall operate any vehicle under this chapter unless the person is the holder of a valid motor vehicle operator's license.

(History: Ord. SPS-553 ' 4, 69)

5.60.050 Liability Insurance Required.

There shall be filed with the City Clerk a certificate of insurance covering all vehicles operated under this chapter in such form as the City Clerk may deem proper, issued by an insurance company approved by the Insurance Commissioner of the state and authorized to do business in the state, insuring the public against injury, loss or damage resulting to persons or property from the use, maintenance and operation of any vehicle operated under this chapter for which such permit is granted in an amount of not less than fifty thousand dollars for injury to any one person and an amount of not less than one hundred thousand dollars for injury to all persons injured in any one occurrence; and property damage not less than ten thousand dollars per each occurrence; provided further that a certificate of insurance shall be filed with the City Clerk insuring the public against injuries or damage resulting from the use or consumption of any product dispensed under this chapter in an amount of not less than fifty thousand dollars for injury to any one person; and one hundred thousand dollars for injury to all persons injured in any one occurrence. (History: Ord. SPS-553 ' 5, 69)

5.60.060 Parking to Dispense Products in Public Rights-of-way.

It is unlawful for the operator of a mobile vehicle unit to stop, stand or park such vehicle in any street, alley, avenue, boulevard or sidewalk or other public right-of-way for the purpose of dispensing its products to customers, so as to obstruct the free flow of traffic in the street; provided that an operator may stop, stand or park such vehicle with its right wheels next to the curb, but that no vehicle will remain standing in any one location for a period exceeding five minutes.

(History: Ord. SPS-553 ' 6, 69)

5.60.070 Sign Required for Vehicles Delivering Products.

It is unlawful for any vehicle to be operated upon any street, alley, avenue, boulevard, sidewalk or other public right-of-way delivering or dispensing any goods or products of any nature whatsoever unless there is clearly marked upon such a vehicle a prominent sign visible to both the front and rear with the wording "Caution - Children."

(History: Ord. SPS-553 ' 7, 69)

5.60.080 Huckstering or Peddling near Intersection.

It is unlawful for the operator of any vehicle dispensing food, beverages or products of any kind whatsoever to engage in the business of huckstering or peddling any product or food of whatsoever nature within one hundred twenty-five feet of any street intersection within the city boundaries.

(History: Ord. SPS-553 ' 8, 69)

5.60.090 Dispensing Products from Mobile Vehicle in Park.

It is unlawful for any person to dispense food, beverages or any product of any kind whatsoever from a mobile vehicle in any public park of the City or public parking lot within the City unless express permission is granted by the Governing Body of the City.

(History: Ord. SPS-553 ' 9, 69)

5.60.100 Persons Allowed in Vehicle.

No person, other than the authorized operator of a vehicle and other persons expressly authorized by the owner or lessee of a vehicle, shall be in or upon the vehicle.

(History: Ord. SPS-553 ' 10, 69)

5.60.110 Vehicle to be Stationary for Sales.

Every vehicle shall be stationary while in the process of selling or dispensing food, beverages or products of any kind whatsoever while upon a public street, alley, avenue, boulevard, sidewalk or other public right-of-way within the City.

(History: Ord. SPS-553 ' 11, 69)

5.60.120 Sales to Take Place on Right of Vehicle.

Whenever any vehicle is used for the sale or dispensing of food, beverages or products of any nature whatsoever upon a public street, alley, avenue, boulevard, sidewalk or other public right-of-way within the City, the transaction shall occur on the right side of any such vehicle.

(History: Ord. SPS-553 ' 12, 69)

5.60.130 Selling from Vehicle near School.

Whenever a vehicle is used for selling or dispensing food, beverages or products of any nature whatsoever, no transaction will occur within 125 feet from the boundaries of public or private school property for a period commencing 30 minutes before the regular school day of any such school and continuing until 30 minutes after the adjournment of the regular school day of any such school.

(History: Ord. SPS-553 ' 13, 69)

5.60.140 Sound Devices.

Repealed.

(History: Ord. NOI-2287 §11, 2001; SPS-553 ' 14, 69)

5.60.150 Hours Sales Unlawful from Vehicles.

It is unlawful for any person, firm, partnership or corporation to sell or distribute food, beverages or products of any kind whatsoever upon or within any public right-of-way, public street, alley, avenue, boulevard or sidewalk within the City boundaries between 8:30 p.m. of each day and continuing until 10 a.m. on the following day.

(History: Ord. SPS-553 ' 15, 69)

5.60.160 Enforcement of Rules - Equipment Inspections.

The director of the health department of the City is authorized to enforce the rules and regulations of the department and to conduct periodic inspections of all vehicles and equipment used in the sale or distribution of any food, beverage or product of any nature whatsoever, for the purpose of enforcing the rules and regulations.

(History: Ord. SPS-553 ' 16, 69)

Chapter 5.60

5.60.170 Violations-Penalty.

Any person, firm, partnership or corporation violating any of the provisions and sections of this chapter is guilty of a public offense and upon conviction thereof shall be punished as provided in Section 1.12.010.

(Amended during codification in accordance with K.S.A. 12-3015; Ord. SPS-553 ' 17, 69)

[Next Page is 5-2100]

Chapter 5.64 SOLICITORS¹

Sections:

- 5.64.000 Legislative Findings.
- 5.64.010 Definitions.
- 5.64.020 Prohibited Acts.
- 5.64.030 Violations - Penalties.

5.64.000 Legislative Findings.

It is hereby found and determined by the Governing Body that crimes have been committed by persons posing as solicitors and that a great variety of frauds and misleading devices are employed in such solicitation. It is further found that some solicitors present a continuing danger of fraud, robbery, and other crimes to the residents of the City. In addition, it is found that residents of the City are being annoyed by solicitors. In response to these findings, it is hereby determined by the Governing Body that it is necessary, in the interest of the public safety and welfare for the Governing Body, to regulate the time, place, and manner of solicitation in the City of Overland Park, Kansas.

(History: Ord. SOL-1215 §1, 84)

5.64.010 Definitions.

For the purpose of this chapter the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them, unless a different meaning is clearly indicated by the context.

- A. "Canvass" as used in this chapter means opinion sampling, poll-taking, proselytizing, or other similar activity from house to house, door to door, street to street, or from place to place.
- B. "Canvasser" as used in this chapter means any Person who engages in canvassing in Person for himself or any other Person.
- C. "Charitable" as used in this chapter means any activity represented as carried on from unselfish, civic, or humanitarian motives, or for the benefit of others, and not for private gain, and may include without limitation patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, cultural, eleemosynary, scientific, historical, athletic, medical, or religious activities, either actual or implied.
- D. "City" as used in this chapter means the City of Overland Park, Kansas.
- E. "Individual Dwelling Unit" as used in this chapter means portion of a building containing sleeping, kitchen and bathroom facilities designed for and used or held ready for use as a permanent residence by one family.

¹ For the statutory provision regarding licensing and regulation of itinerant merchants (as defined herein), see K.S.A. Chapter 8 Article 8.

Chapter 5.64

- F. "Multi-Family Dwelling Complex" as used in this chapter means a grouping of individual buildings which are arranged, intended or designed for occupancy by 3 or more families, commonly referred to as apartments, town homes, or condominiums.
- G. "Peddle" as used in this chapter means to operate from a temporary stand, display or similar facility or to travel from house to house, door to door, street to street or from place to place, carrying, conveying, or transporting goods, wares, or merchandise for the purpose of offering and exposing the same for sale.
- H. "Peddler" as used in this chapter means a Person who Peddles for himself or any other Person.
- I. "Person" as used in this chapter means any individual, firm, partnership, corporation, company, religious sect or denomination, society, organization or league, and includes any trustee, receiver, assignee, agent or other similar representative thereof.
- J. "Solicit" and "Solicitation" as used in this chapter mean and include any one or more of the following:
 - 1. Selling or offering for sale, or taking or attempting to take orders for the sale of goods or services of any kind, character or description;
 - 2. Requesting directly or indirectly contributions of funds on the plea or representation that such contributions will be used for a Charitable purpose;
 - 3. Canvassing or peddling as defined in this section.A "Solicitation" as defined herein shall be deemed completed when made, whether or not the Person making the same receives any contribution or makes any sale.
- K. "Solicitor" as used in this chapter means a Person who Solicits for himself or any other Person.

(History: Ord. SOL-2406 §1, 2002; SOL-1460 §1, 87; SOL-1215 §2, 84; REP-1196; SOL-109)

5.64.020 Prohibited acts.

- A. It shall be unlawful for any Solicitor to ring the bell, or knock on the door, or otherwise attempt to gain admittance for the purpose of soliciting at a residence, dwelling or Individual Dwelling Unit in a Multi-Family Dwelling Complex at which a sign bearing the words "No Solicitors," "No Trespassers," or words of similar import indicating that such Persons are not wanted on the premises, is painted, affixed or otherwise exposed to public view; provided that this paragraph shall not apply to any Solicitor who gains admittance to such residence at the invitation or with the consent of the occupant thereof. For purposes of this section, the No Solicitors decal issued by the City Clerk prominently displayed on the door shall constitute sufficient notice to all Solicitors. However, other similar signs, as defined above, are also sufficient.
- B. It shall be unlawful for any Solicitor to Solicit or attempt to Solicit at an Individual Dwelling Unit in a Multi-Family Complex when all street entrances to the Multi-Family Complex have been clearly posted with signs marked "No Solicitors." This paragraph shall not apply to Solicitation in an Individual Dwelling Unit when the Solicitor has been invited onto the property to Solicit there by the occupant of that dwelling unit.

- C. It shall be unlawful for any Solicitor to Solicit prior to 10:00 a.m. or after 9:00 p.m. local time, of any day.
- D. It shall be unlawful for any Solicitor to engage in soliciting upon any premises or in any dwelling house, apartment or other residence after having been asked by the owner or occupant thereof to leave the premises or residence.
- E. It shall be unlawful for any Solicitor to make more than one Solicitation call at the same residential premises for identical or substantially similar goods, services, or contributions within any consecutive fourteen (14) day period, without receiving a prior invitation therefor from the occupants of the premises. This provision shall be construed to include Solicitation upon the same premises by employees, agents, or other Persons acting on behalf of the same Person more than once during the aforesaid period without a prior invitation as herein provided.
- F. It shall be unlawful for any Solicitor to fail to provide, at the request of the purchaser, a written receipt, for purchases exceeding Five Dollars in cash or tangible property which receipt shall be signed by the Person making the sale and shall set forth a brief description of the goods or services sold, the total purchase price thereof, amount of cash payment, if any, and the balance due and terms of payment; or for any Charitable Solicitor or organization accepting any contribution exceeding five dollars in cash or tangible property to fail to provide at the request of the donor a written receipt acknowledging such contribution and personally signed by the Person accepting such contribution.
- G. It shall be unlawful for any Solicitor to fail at the outset to truthfully disclose to the prospective buyer, prospective donor, or canvasee his/her name and the name of the company, product or organization he/she represents.
- H. It shall be unlawful for any Solicitor to make any assertion, representation or statement which misrepresents the purpose of his/her call, or use any plan, scheme, or ruse which misrepresents such purpose.
- I. It shall be unlawful for any Solicitor to conduct his/her business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or an obstruction to adequate access to fire, police or sanitation vehicles.
- J. It shall be unlawful for any Person to Solicit who has been convicted of a felony, misdemeanor, or ordinance violation involving force, violence, moral turpitude, deceit, fraud, or the violation of any law regulating the act of soliciting as defined in this chapter within the past five (5) years in this state or any other state or subdivision thereof or of the United States.
- K. It shall be unlawful for any Person to Solicit or attempt to Solicit at a place of residence at any entrance other than the main entrance of the residence.

(History: Ord. SOL-2406 §2, 2002; SOL-1460 §2, 87; SOL-1215 §3, 84; REP-1196; SOL-109)

Chapter 5.64

5.64.030 Violations-penalties.

Any person violating any of the provisions of this chapter is guilty of a public offense and upon conviction thereof shall be punished as provided in Section 1.12.010.

(History: Ord. SOL-1215 §4, 84; REP-1196; SOL-109)

[Next Page is 5-2200]

Chapter 5.68
SOLID WASTE
Collection and Transportation
(This entire chapter has been repealed.)

Sections:

- 5.68.010 License & permit required. (Repealed. See 7.36)
- 5.68.020 License & permit requirements. (Repealed. See 7.36)
- 5.68.030 License and permit fees. (Repealed. See 7.36)
- 5.68.040 Homes Association Contract Areas. (Repealed. See 7.36)
- 5.68.050 Penalty. (Repealed. See 7.36)
- 5.68.060 Severability. (Repealed. See 7.36)

5.68.010 License & permit required.

Repealed. See: 7.36

(History: Ord. SW-1714 §2,91;SWH-873 §1,76)

5.68.020 License & permit requirements.

Repealed. See: 7.36

(History: Ord. SW-1714 §2,91; SW-1334 §1,85; SWH-873 §2,76)

5.68.030 License and Permit Fees.

Repealed. See: 7.36

(History: Ord. SW-1714 §2,91; SWH-922 §1,77;SWH-873 §3,76)

5.68.040 Homes Association Contract Areas.

Repealed. See: 7.36

(History: Ord. SW-1714 §2,91; SWH-873 §4,76)

5.68.050 Penalty.

Repealed. See: 7.36

(History: Ord. SW-1714 §2,91; SWH-873 §5,76)

5.68.060 Severability.

Repealed. See: 7.36

(History: Ord. SW-1714 §2,91; SWH-873 §6,76)

[Next Page is 5-2300]

Chapter 5.70 TRANSIENT MERCHANTS¹

Sections:

- 5.70.010 Findings and Purpose.
- 5.70.020 Definitions.
- 5.70.025 Exemptions.
- 5.70.030 License Required.
- 5.70.040 License Fee.
- 5.70.050 Expiration of License; Nontransferable.
- 5.70.055 License for Farm and Aquaculture Products.
- 5.70.060 License Application.
- 5.70.070 Issuance of License; Revocation.
- 5.70.080 Display of License.
- 5.70.090 Prohibited Acts.
- 5.70.095 New Goods Public Auction Law.
- 5.70.100 Appeal.
- 5.70.110 Violations; Penalty.

5.70.010 Findings and Purpose.

It is hereby found that Transient Merchants operate businesses or conduct activities, in most cases, as retail operations or with a personal profit purpose. It is also found that Transient Merchants have operated temporary businesses or conducted activities in violation of municipal laws, have created traffic and parking problems, have trespassed on property, have disturbed or annoyed residential and commercial districts, and have perpetrated frauds and misrepresentations to the public. It is further found by the Governing Body that it is necessary, in the interest of the public health, safety, and welfare, for the Governing Body to regulate the time, place, and manner of Transient Merchant activities in the City.

It is the purpose of this Chapter to therefore regulate Transient Merchant activities, to require a licensing procedure, to assist in identifying Transient Merchants, to protect consumers, and to protect property owners and the integrity of residential and commercial districts within the City. (History: Ord. TM-2954 §1, 2012; TM-1315 §1, 85)

5.70.020 Definitions; Exceptions.

For purposes of this Chapter the following definitions shall apply:

- A. **“Person”** means any individual, corporation, partnership, association or other entity. When appropriate, it shall also include said Person’s owners, employees or agents.
- B. **“Transient Merchant”** means any Person who conducts or operates:
 - 1. A temporary or transient business for the sale or offer for the sale of goods, wares, merchandise or services which is carried on in any temporary or unenclosed structure, vehicle or railroad car, or on any real estate, for a period

¹ See also the *Transient Merchant Licensing Act* at K.S.A. 19.2231 et seq. (as may be amended) for statutory provisions regarding the licensing and regulation of transient merchants by the State and County.

Chapter 5.70

of less than six (6) months in each year; or

2. Meetings open to the general public where franchises, distributorships, contracts, or business opportunities are offered to participants.

(History: Ord. TM-2954 §2, 2012; TM-1539,A §1, 88; TM-1539 §1, 88; TM-1315 §2, 85)

5.70.025 Exemptions.

For purposes of this Chapter, a Transient Merchant shall not include the following activities:

- A. Door-to-door sales, canvassing, or solicitations as regulated by Chapter 5.64 of this Code.
- B. Exhibitions, street fairs, expositions, promotional ventures, or entertainment where a special event permit has been obtained, where regulated by Chapter 5.08 of this Code, or where such activity is sponsored in part by the City.
- C. Auctions where the items being auctioned are from a permanent business or residence and being auctioned at that business or residence.
- D. Garage sales as regulated by Chapter 5.44 of this Code.
- E. Amusement enterprises as regulated by Chapter 5.08 of this Code.
- F. Christmas tree sales as regulated by Chapter 5.16 of this Code.
- G. Sales of agricultural or farm, garden or aquacultural products, except nursery products and foliage plants, grown upon and sold or offered for sale from residential premises inhabited by the individual raising or producing such products.
- H. Sales conducted within the following structures: hotels, motels, trade centers, convention centers, and shopping malls.
- I. Vendors in a farmers' market, art festival or craft fair operated or sponsored by the City on City property or where a special event permit has been obtained.
- J. Sales or offering of sales by a local not-for-profit or community school group on non-residential property with the permission of the property owner or property manager when the following conditions are met:
 1. The sales or offering of sales at the property by any such group does not exceed two (2) days in any ten (10) day period;
 2. The sales or offering of sales occurs near the entrance of the property's existing business and away from other existing businesses and the rights-of-way; and
 3. The sales or offering of sales only occupies a nominal amount of space and does not interfere with or detrimentally impact pedestrian and vehicular traffic or parking.
(Note: If a tent or a significant portion of the parking lot is used, then this exemption shall not apply.)

Provided, this Section shall in no manner exempt any Person from any applicable federal, state, or city code, ordinance or regulation, including, but not limited to, the City's food code regulations, any Uniform Development Ordinance provision, any sales tax requirement, or any activity causing a traffic or sight distance hazard or any other type of public hazard or danger.

(History: Ord. TM-2954 §3, 2012; TM-1539,A §1, 88; TM-1539 §1, 88; TM-1315 §2, 85)

5.70.030 License Required.

It shall be unlawful for any Person to operate or conduct the business or activities of a Transient Merchant without first having obtained a license from the City.

(History: Ord. TM-2954 §4, 2012; TM-1315 §3, 85)

5.70.040 License Fee.

The license fee to operate or conduct the business or activities of a Transient Merchant shall be established by the Governing Body by resolution.

(History: Ord. TM-2954 §5, 2012; TM-2954 §5, 2012; TM-1315 §4, 85)

5.70.050 Expiration of License; Nontransferable.

- A. A license shall not exceed a period of fourteen (14) days.
- B. A license is not transferable to any other Person and cannot be used for any business or activity or at a location other than those listed on the application and approved for licensing.

(History: Ord. TM-2954 §6, 2012; TM-1539 §2, 88; TM-1315 §5, 85)

5.70.055 License for Farm and Aquaculture Products.

A Transient Merchant who is a producer, grower or agent or employee of such grower engaged in the sale of agricultural, farm, garden or aquacultural products grown by such growers within this state shall be required to obtain a license from the City and comply with all requirements as set forth in this Chapter; provided, however, that, in compliance with K.S.A. 12-1617 (as may be amended), the license shall be valid for a period of time of not less than six (6) months; and further provided, that the license fee shall be waived.

(History: Ord. TM-2954 §7, 2012)

5.70.060 License Application.

A Transient Merchant may obtain a license through the City Clerk's office. A license may be issued only upon the completion of a license application provided by the office of the City Clerk. The application shall require the following information:

- A. Name and permanent address of the applicant, showing proof of identification. If the applicant is not an individual, the names and addresses of the officers of the corporation or the members or the partnership, association or other entity, as the case may be;
- B. A description of the nature of the business or activities, including the items, goods, wares, merchandise, or services being sold or offered for sale;
- C. A sketch or drawing of the proposed site showing the dimensions of the area being used, the proximity to buildings, parking lots, right-of-ways or other such areas, and description of any structure, implement, stand, display prop, or other such items used for the activity including signs, banners or other attention getting devices;
- D. Proof of a current sales tax license from the State of Kansas or proof of exempt status from state sales tax;

Chapter 5.70

- E. Proof of payment of Commercial Inventory Tax paid to the Johnson County, Kansas, Treasurer's Office and any required County license, if any;
- F. The name, address, telephone number, and authorized signature of the owner or manager of the property where the business or activity is to take place. Such signature shall indicate that the owner or manager of the property has reviewed the application, understands the nature of the business or activity, and authorizes the use of the described property for the same;
- G. Identification of zoning classification for the area of the proposed business or activity as provided by an authorized City official. Such identification shall not constitute an approval of such business or activity in that zoning classification by the City;
- H. Dates and time the business or activity will operate or be conducted;
- I. Information concerning any felony, misdemeanor, or municipal ordinance conviction in this state or any other state or subdivision thereof or of the United States by the applicant or any agent or employee who will be on site, other than minor traffic offenses;
- J. Name and permanent address of any agents or employee who will be on site, and any companies or organizations being represented in relation to the business or activities; and
- K. Signature of applicant indicating that all of the information provided is true and correct. (History: Ord. TM-2954 §8, 2012; TM-1315 §6, 85)

5.70.070 Issuance of License; Revocation.

- A. A license may be issued only upon completion of the application and payment of fees. The application shall be reviewed to confirm that the applicant complies with the requirements of this Chapter and that the applicant is not proposing to operate in violation of the prohibited acts stated in this Chapter or in violation of any federal, state, or local law.
- B. No license shall be issued to any Transient Merchant for the operation of any temporary business or activity at a location for which a license has been previously issued unless the prior license expired at least ninety (90) days before the present application.
- C. The issuance of a license shall not constitute approval of the business or activity or otherwise prohibit enforcement of this Chapter or any other laws, city code or regulations.
- D. If a license is not issued, the City Clerk's office shall indicate in writing the reason for denial and inform the applicant of the applicant's right to an appeal of the denial.
- E. The license shall be revoked if the applicant fails to provide true and correct information on the application or upon a violation of any provision of this Chapter or any city code or regulation applicable or related to the license. Revocation may be appealed in the same manner as a denied application; however, any appeal taken from an order revoking the license shall not suspend the order of revocation during the pendency of the appeal. (History: Ord. TM-2954 §9, 2012; TM-1539 §3, 88; TM-1315 §7, 85)

5.70.080 Display of License.

A licensee shall be required to display the license while any business or activities pursuant to the license are being conducted. The license shall be posted in plain view to all Persons, including law enforcement officers.

(History: Ord. TM-2954 §10, 2012; TM-1315 §8, 85)

5.70.090 Prohibited Acts.

It is unlawful for any transient merchant to:

- A. Operate or conduct business or activities in violation of any zoning requirements of the City, including but not limited to, set back requirements.
- B. Operate or conduct business or activities except in areas zoned C-3, CP-3, M-2, MP-2, CP-3J, IP-2J, PEC-3J, or PRB-3J, and where the conduct of such business or activities shall be within two hundred (200) feet of any residentially zoned property used for residential purposes.
- C. Operate or conduct business or activities until one-half hour before sunrise or after one-half hour past sunset or at any time that would cause the need for the use of artificial lighting other than existing lighting.
- D. Fail to provide safely accessible and sufficient parking for customers and employees of the Transient Merchant. For the purposes of this Section, “safely accessible” parking means a parking area configured so that the Transient Merchant’s employees and customers can safely enter and exit the public and private right-of-way without creating a traffic, sight distance or any other type of hazard or danger. For the purposes of this Section, “sufficient” parking means a number of parking spaces equal to or exceeding the number of employees on site plus customer parking in a quantity that is reasonably likely to prevent customer parking overflows given the nature of the Transient Merchant’s business or activities.
- E. Locate the Transient Merchant business or activities, including business vehicles, structures, signs and parking, in a manner that causes congestion, interferes with the traffic flow, or prevents the normal use of parking facilities by existing businesses in the same area. In no event shall a Transient Merchant located entirely or partly in a parking lot used by an existing business reduce the number of available parking spaces to a level more than ten (10%) percent below the total number of parking spaces required by the zoning regulations.
- F. Use any electronic device for sound amplification in an outdoor area, or to otherwise violate any applicable noise ordinance or regulation.
- G. Provide any false or misleading information in completing the license application, or to fail to obtain permission of the property owner or property manager where such business or activity is being conducted.

Chapter 5.70

- H. Fail to provide at the request of a customer a written receipt for purchases exceeding FIVE DOLLARS in cash or tangible property which receipt shall be electronically printed or signed by the Person making the sale and shall set forth: the name and contact information of the Transient Merchant, a brief description of the goods, wares, merchandise or services sold, the total purchase price, the amount of applicable sales tax, the amount of payment, and the balance due and terms of payment (if any).
- I. Fail to provide any Person the Transient Merchant's name, the name of the company or organization represented, or the name of the goods, wares, merchandise or services sold, or to make any representation as to identity which is false or misleading.
- J. Fail to allow authorized law enforcement officers or City officers to enter into or upon the premises or to otherwise interfere with any inspection of the premises or business.
- K. Fail to remove any structure, device, trash, or debris caused, created or associated with the Transient Merchant's business or activities in an outdoor area.
- L. Operate or conduct business or activities if the licensee or any agent or employee has been convicted of a felony, misdemeanor, or ordinance violation involving force, violence, moral turpitude, deceit, fraud, or the violation of any law regulating the act of solicitation, peddling, hawking, canvassing, or merchandising within the past five (5) years in this state or any other state or subdivision thereof or of the United States.
- M. Erect or display more than one sign or any sign greater than sixteen (16) square feet in total area. When approved with the license, a separate sign permit shall not be required. Any attention attracting device or any other prohibited sign as set forth in O.P.M.C. Section 18.440.050 (as may be amended) are prohibited from use.
- N. Erect or construct any structure, tent, or building greater than one hundred and twenty (120) square feet.
- O. Operate or conduct business or activities within fifty (50) feet of any driveway entrance or access lane from a public street to an existing business.
- P. Operate or conduct more than one Transient Merchant business or activity on the same property at any one time.
- Q. Operate or conduct business or activities in the public right-of-way or in or upon any park or other public property.
- R. Operate or conduct business or activities that create a traffic or sight distance hazard or any other type of public hazard or danger.

(History: Ord. TM-2954 §11, 2012; NOI-2287 §9, 2001; TM-1539 §4, 88; TM-1315 §9, 85)

5.70.095 New Goods Public Auction Law.

Any Person subject to the provisions of the New Goods Public Auction Law (set forth at K.S.A. 58-1014 et seq., as may be amended) for the sale, disposal of, or offering for sale at public auction any new goods, wares or merchandise shall not be required to obtain a Transient Merchant's license in accordance with the other provisions of this Chapter, but shall instead be required to obtain a public

auction license in accordance to the New Goods Public Auction Law. Accordingly, the provisions of the New Goods Public Auction Law (as may be amended) are incorporated herein by reference, and the City Clerk is authorized to issue a license for the same in accordance with the provisions thereof.

(History: Ord. TM-2954 §12, 2012)

5.70.100 Appeal.

Any applicant who is denied a license may appeal to the Director of Planning and Development Services or authorized designee. Such appeal must be filed in writing with the City Clerk within three (3) calendar days of the denial stating the specific reasons for the appeal. Upon receipt of the appeal, a hearing shall be scheduled within three (3) business days. The Director or designee shall issue a decision in writing within five (5) business days of the hearing. It is the responsibility of the appellant to provide sufficient information to the City Clerk so that the appellant may be timely notified. Otherwise all notices will be sent to the permanent address appearing on the application.

(History: Ord. TM-2954 §13, 2012; ROCR-2245 §8, 2001; TM-1315 §10, 85)

5.70.110 Violations; Penalty.

In addition to any action that may be taken pursuant to Section 5.70.070, any Person violating any of the provisions and sections of this Chapter is guilty of a public offense and upon conviction thereof shall be punished as provided in Section 1.12.010.

(History: Ord. TM-2954 §14, 2012; TM-1539 §5, 88)

[Next Page is 5-2400]

Chapter 5.72
PAYDAY AND TITLE LOAN BUSINESSES

Sections:

- 5.72.010 Legislative findings.
- 5.72.020 Definitions.
- 5.72.030 Permit required.
- 5.72.040 Separation requirements.
- 5.72.050 Posting required.
- 5.72.060 Unlawful to work without permit.
- 5.72.070 Periodic inspection.
- 5.72.080 Revocation.
- 5.72.090 Penalty.

5.72.010 Legislative findings.

These businesses should be regulated by the City of Overland Park because certain payday and title loan lending practices have proven detrimental to the financial security of individuals and families residing in the City. Payday and title loan lending practices often have an unreasonably adverse effect upon the elderly, the economically disadvantaged and other residents of the City. Frequently, taking a payday or title loan puts borrowers in much worse financial shape than before they took the loan. Therefore, the purpose of this ordinance is to require licensing for the purpose of regulating certain payday and title loan lending practices to minimize the detrimental effects of such practices on the citizens of the City by regulating payday and title loan lending practices occurring in the City, consistent with the laws of the State of Kansas. Furthermore, the City finds there is a need to regulate the placement and location of Payday and Title Loan businesses throughout the City. A clustering of these businesses can have a detrimental effect on the neighborhood and create the appearance of a commercial district in decline. These businesses do not create much foot traffic for adjacent businesses and a proliferation of them at particular locations can overwhelm a neighborhood and can be a disincentive for the location of other neighborhood businesses in close proximity to them. Finally, the fact that many surrounding communities in the metropolitan area are adopting or considering adopting restrictions on the location of such businesses could result in the City of Overland Park having an undue concentration of these businesses in the City unless location regulations are enacted. (History: Ord. PDL-2655 §1, 2007)

5.72.020 Definitions.

The term "Payday Loan Business" shall refer to any business regulated by K.S.A. §16a-2-404, as the same may be amended from time to time. The term "Title Loan Business" shall refer, except as provided below, to a consumer loan transaction, including a loan made pursuant to K.S.A. 16-706 et seq., and amendments thereto, secured by a vehicle. It shall not include a purchase money consumer loan or a loan made pursuant to subsection (2) of K.S.A. 16a-2-401 and amendments thereto. The term "Vehicle," for the purposes of this section, means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway and the ownership of which is evidenced by a certificate of title. (History: Ord. PDL-2655 §1, 2007)

5.72.030 Permit required.

Within 60 days of the effective date of this ordinance, it shall be unlawful for any person or business:

1. to operate or maintain a Payday or Title Loan Business in the City unless the owner, operator or lessee thereof has applied for and obtained a Payday Loan and Title Loan Business Permit from the City, or
2. to operate such business after such permit has expired or has been revoked or suspended by the City.

Permits shall be required for each location a lender operates in the City, shall be valid for a one year period of time and may be renewed annually. The application shall be in a form to be determined by the Overland Park City Clerk. The annual cost for the permit shall be \$1,000.00, payable to the City. This permit shall be in addition to any other permit or license required by other local, state or federal government agencies. No permit shall be issued for any business seeking to operate at a location prohibited by any applicable local, state or federal law, statute, ordinance, rule or regulation; provided, however, that a business lawfully in existence on the date of adoption of such prohibition may be issued a permit if allowed by such provisions.

(History: Ord. PDL-2655 §1, 2007)

5.72.040 Separation requirements.

No permit shall be issued for any Payday or Title Loan Business that is located within 5,280 feet of any other Payday or Title Loan Business or within 200 feet of any property used primarily for a single-family residence, a two-family residence, a town home, or an apartment building. The separation distances shall be measured from or to the outer wall of the Payday or Title Loan Business, and from or to the property line of the property containing the residential use.

However, this separation provision shall not apply to any Payday or Title Loan Business that can demonstrate to the City that they were in operation at the location requested in the Permit application prior to the effective date of this ordinance, and that they have operated continuously under the same business name since that time.

(History: Ord. PDL-2655 §1, 2007)

5.72.050 Posting required.

Any business that applies for and receives a Payday or Title Loan Business Permit from the City shall keep such permit posted on a wall within their business in a prominent location clearly visible to potential customers. Failure keep the permit posted in the manner required shall be prima facie evidence that the business has not obtained such a permit. It shall also be prima facie evidence that any person who performs any business or service as part of the Payday or Title Loan Business had knowledge that such business was not permitted. In addition, any business that applies for and receives a Payday or Title Loan Business Permit from the City shall post a sign in the business at a location clearly visible to potential customers that informs customers of their rights under federal, state or local laws, in a form approved by the Overland Park City Attorney.

(History: Ord. PDL-2655 §1, 2007)

5.72.060 Unlawful to work without permit.

It shall be unlawful for any person to knowingly perform any work or service directly related to the operation of a Payday or Title Loan Business that does not have a valid Payday or Title Loan Business Permit.

(History: Ord. PDL-2655 §1, 2007)

5.72.070 Periodic inspection.

Any business that applies for and receives a Payday or Title Loan Business Permit from the City shall be deemed to have consented to periodic entry into and inspection of the business premises by appropriate City officials, including the inspection of only those business records necessary for the limited purpose of determining whether such business enterprise is in compliance with this Ordinance or any other applicable state or federal law or regulation. This entry and inspection shall take place during hours when such business is open to the public, unless otherwise requested by the business, and shall not unreasonably interfere with the conduct of such business.

(History: Ord. PDL-2655 §1, 2007)

5.72.080 Revocation.

Any permit issued pursuant to this Ordinance shall be subject to revocation for the violation of any provision of this Ordinance or any applicable local, state or federal law, statute, ordinance, rule or regulation, subject to the procedure set forth in Section 18.370.050 (B) of the Overland Park Municipal Code for the revocation of Special Use Permits.

(History: Ord. PDL-2655 §1, 2007)

5.72.090 Penalty.

Any violation of any provision of this Ordinance by a person or business shall be a public offense and shall be subject to the penalties, fines and civil remedies as set forth in Section 18.100.110 of the Overland Park Municipal Code.

(History: Ord. PDL-2655 §1, 2007)

[Next Page is 6-i]