

TITLE XI: BUSINESS REGULATIONS

Chapter

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CHAPTER 110: GENERAL PROVISIONS

Section

110.01 FCC regulations; cable television

§ 110.01 FCC REGULATIONS; CABLE TELEVISION.

(A) The county hereby specifically adopts the FCC regulations with respect to the basic service rates and charges of any cable television system operating in the county. Any rate regulations or orders adopted by the county shall be consistent with the FCC regulations.

(B) In connection with that regulation, the county will ensure a reasonable opportunity for consideration of the views of interested parties.

(C) The County Auditor, or his or her designee, is authorized to execute on behalf of the county and file with the FCC certification forms or other instruments as are now or may hereafter be required by the FCC in order to enable the county to regulate basic service rates and charges.
(Ord. 1993-10, passed 11-29-1993) Penalty, see § 10.99

CHAPTER 111: TATTOO/BODY PIERCING

Section

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GENERAL PROVISIONS**§ 111.01 SANITARY OPERATION OF FACILITIES.**

All places, individuals, facilities and businesses that offer to perform any body piercing or to affix any type of permanent tattoo to a person shall be regulated by this chapter and shall maintain the premises in which tattoos or body piercing are performed and equipment used in the tattoo or body piercing process in a sanitary manner.

(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.02 DEFINITIONS.

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

BLOOD. Human blood.

BLOODBORNE PATHOGENS. Pathogenic micro-organisms that are present in human blood and can cause disease in humans. These pathogens include, but are not limited to, the following:

- (1) HBV (Hepatitis B Virus);
- (2) HCV (Hepatitis C Virus); and
- (3) HIV (Human Immunodeficiency Virus).

BODY PIERCER. Any person who performs body piercing on an individual.

BODY PIERCING. The perforation of any human body part other than ear lobe for the purpose of inserting jewelry or other decoration or for some other non-medical purpose.

CLEANED. Removal of all visible dust, soil or any other foreign material.

CONTAMINATED. The presence or reasonably anticipated presence of blood or OPIM on an item or surface.

DECONTAMINATED. The use of physical or chemical means to remove, inactivate or destroy bloodborne pathogens on a surface or item which does not require sterilization to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use or disposal.

DEPARTMENT. The Wells County Department of Health.

FACILITY. A tattoo or body piercing facility, or both, which is any room or space where tattooing or body piercing, or both, is provided or where the business of tattooing or body piercing, or both, is conducted.

HBV. The hepatitis B virus.

HCV. The hepatitis C virus.

HIGH LEVEL DISINFECTION. A process that destroys all micro-organisms, with the exception of high numbers of bacterial spores.

HTV. The human immunodeficiency virus.

INFECTIOUS WASTE.

(1) Waste that epidemiologic evidence indicates is capable of transmitting a dangerous communicable disease.

(2) **INFECTIOUS WASTE** includes, but is not limited to, the following:

(a) Contaminated sharps or contaminated objects that could potentially become contaminated sharps;

(b) Infectious biological cultures, infectious associated biologicals and infectious agent stock;

(c) Pathological waste;

(d) Blood and blood products in liquid and semi-liquid form;

(e) Carcasses, body parts, blood and body fluids in liquid and semi-liquid form, and bedding of laboratory animals; and

(f) Other waste that has been intermingled with infectious waste.

INTERMEDIATE LEVEL DISINFECTION.

(1) A process that inactivates:

(a) *Mycobacterium tuberculosis*;

(b) Vegetative bacteria;

(c) Most viruses; and

(d) Most fungi;

(2) But does not necessarily kill bacterial spores.

OPERATOR. Any person who controls, operates, manages or owns any facility.

OTHER POTENTIALLY INFECTIOUS MATERIALS or **OPIM.** The following:

(1) Human body fluids as follows:

(a) Semen;

(b) Vaginal secretions;

(c) Cerebrospinal fluid;

(d) Synovial fluid;

(e) Pleural fluid;

(f) Pericardial fluid;

(g) Peritoneal fluid;

(h) Amniotic fluid;

(i) Saliva in dental procedures;

(j) Any body fluid that is visibly contaminated with blood; and

(k) All body fluids where it is difficult or impossible to differentiate between body fluids.

(2) Any unfixed tissue or organ, other than intact skin, from a human, living or dead; and/or

(3) HIV-containing cell or tissue cultures, and HIV or HBV containing culture medium or other solution, and blood, organs or other tissues from experimental animals infected with HIV or HBV.

PARENTERAL. Piercing the mucous membranes or the skin barrier through such events as needlesticks, human bites, cuts or abrasions.

PERSONAL PROTECTIVE EQUIPMENT. Specialized clothing or equipment worn for protection against contact with blood or OPIM.

SECURE AREA. An area that is designated and maintained to prevent the entry of unauthorized persons.

SEMI-LIQUID BLOOD, BLOOD PRODUCTS. Blood, blood products that have intermediate fluid properties and are capable of flowing in a manner similar to liquid.

STERILIZE. The use of a physical or chemical procedure to destroy all microbial life, including highly resistant bacterial endospores.

STORE. The containment of infectious waste in a manner so as not to constitute collection, treatment, transport or disposal.

TATTOO.

(1) Any indelible design, letter, scroll, figure, symbol or other mark placed with the aid of needles or other instruments; or

(2) Any design, letter, scroll, figure or symbol done by scarring; upon or under the skin.

TATTOO ARTIST. Any person who provides a tattoo to an individual.

TEMPORARY. Intended or expected to be used, maintained or operated for use as a facility for a period of less than six months.

UNIVERSAL PRECAUTIONS. An approach to infection control in which all human blood and certain human body fluids are treated as if known to be infectious for HIV, HBV, HCV and other bloodborne pathogens.

HEALTH OFFICER. The duly appointed Health Officer as set in I.C. 16-20-2-16. The County Health Officer or designee shall be designated as the official in charge of enforcing this chapter. The Health Officer may designate a representative in the Health Department to perform those duties and responsibilities of the Health Officer.
(Ord. 01-12, passed 11-19-2001)

§ 111.03 OPERATOR; RESPONSIBILITIES; POLICIES.

(A) *Operator training responsibilities.* An individual or entity that is an operator shall comply with the following training responsibilities:

(1) Ensure that the training described in the state Occupational Safety and Health Administration's bloodborne standard (as found in 29 C.F.R. 1910.1030) is provided to all tattoo artists and body piercers, anyone employed by the facility or anyone acting on behalf of the facility, who has a reasonably anticipated risk for skin, eye, mucous membrane or parenteral contact with blood or OPIM;

(2) Ensure that training on the handling of infectious waste is provided to all tattoo artists and body piercers, or anyone employed by the facility or anyone acting on behalf of the facility who has a reasonably anticipated risk for skin, eye, mucous membrane or parenteral contact with blood or OPIM;

(3) Ensure that a record of training described in division (A)(1) above is maintained, as required under the State Occupational Safety and Health Administration's bloodborne pathogens standard (as found in 29 C.F.R. 1910.1030) of an individual's participation in the training that is provided. The record shall be made available to the department for inspection upon request; and

(4) Ensure that a record of training described in division (A)(2) above is maintained.

(B) Operator responsibilities.

(1) The operator shall ensure that all tattoo artists, body piercers or anyone employed by the facility or anyone acting on behalf of the facility who has a reasonably anticipated risk for skin, eye, mucous membrane or parenteral contact with blood have and use personal protective equipment and expendables needed to implement the precautions required by this rule and the State Occupational Safety and Health Administration's bloodborne pathogens standard (as found in 29 C.F.R. 1910.1030).

(2) The operator shall require tattoo artists and body piercers, anyone employed by the facility, or anyone acting on behalf of the facility who has a reasonably anticipated risk for skin, eye, mucous membrane or parenteral contact with blood to provide evidence of compliance with the universal precautions education requirements contained in division (A) above.

(3) The operator shall display a description of compliance with the requirements contained in division (B)(4) below.

(4) The operator shall display written materials prepared or approved by the department explaining universal precautions and patrons' rights under this rule. These materials shall include information on how to report violations of universal precautions and shall include information regarding the department's duties to investigate
(Ord. 01-12, passed 11-19-2001)

(C) Operator policies. The operator shall develop a written policy in compliance with this rule and the requirements of the State Occupational Safety and Health Administration's bloodborne pathogen standard (as found in 29 C.F.R. 1910.1030) that:

(1) Requires the use of universal precautions when performing tattooing or body piercing and any activity or duty that includes any reasonably anticipated skin, eye, mucous membrane or parenteral contact with blood or OPIM;

(2) Requires disinfection or sterilization of contaminated reusable items;

(3) Included the safe handling of infectious waste; and

(4) Provides sanctions, including discipline and dismissal, if warranted, for failure to use universal precautions or handle infectious waste safely, or both.
(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.04 TATTOO ARTIST AND BODY PIERCER MINIMUM TRAINING AND CERTIFICATION REQUIREMENTS.

(A) All tattoo artists, body piercers, anyone employed by the facility, and anyone acting on behalf of the facility, who has a reasonably anticipated risk for skin, eye, mucous membrane or parenteral contact with blood or OPIM shall complete the training program that is required under the requirements of the State Occupational Safety and Health Administration's bloodborne pathogen standard (as found in 29 C.F.R. 1910.1030). The programs under this section shall be as follows: a bloodborne pathogen training session provided by the operator meeting the requirements under the State Occupational Safety and Health Administration's bloodborne pathogens standard (as found in 29 C.F.R. 1910.1030).

(B) All tattoo artists, body piercers, anyone employed by the facility, and anyone acting on behalf of the facility, who has a reasonably anticipated risk for skin, eye, mucous membrane or parenteral contact with blood or OPIM must be trained in the facility's policies on the handling of infectious waste. (Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.05 PATRON RECORDS.

(A) Records of each patron shall be maintained by the operator for two years.

(B) The record shall include the following, but not be limited to:

- (1) Patron's name;
- (2) Patron's home address;
- (3) Patron's age;
- (4) Date tattooed or body pierced;
- (5) Design of the tattoo;
- (6) Location of the tattoo or body piercing on the patron's body;
- (7) The name of the tattoo artist or body piercer who performed the work;
- (8) Parental consent must be in writing when performed on any minor as required by law; and
- (9) Jewelry or other decoration used.

(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.06 ILLNESS.

(A) Tattoo artists or body piercers who are experiencing symptoms of acute disease that include, but are not limited to:

- (1) Diarrhea;
- (2) Vomiting;
- (3) Fever;
- (4) Rash;
- (5) Productive cough;
- (6) Jaundice; or
- (7) Draining (or open) skin infections, boils, impetigo or scabies.

(B) Shall refrain from providing tattoos or body piercing.
(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.07 HAND WASHING.

(A) Hand washing facilities shall be available at every station where tattooing or body piercing, or both, is provided.

(B) Hands shall be washed with soap and running warm water for a full 20 seconds immediately before putting on gloves and after removal of gloves or other personal protective equipment.

(C) Hand washing facilities must be accessible at all times and can not be blocked or inaccessible.

(D) Hand washing facilities shall not be used for any other purpose other than hand washing.

(E) Only single-use towels shall be used for hand drying.

(F) Hand sanitizers are prohibited.
(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.08 PERSONAL PROTECTIVE EQUIPMENT.

Appropriate personal protective equipment shall be worn as follows.

(A) A clean protective clothing layer shall be worn whenever there is a reasonably anticipated risk of contamination of clothing by blood or OPIM.

(B) Masks in combination with eye protection devices, such as goggles, or glasses with side shield, or chin length face shield, shall be worn whenever splashes, spray, splatter or droplets of blood or OPIM may be generated and eye, nose or mouth contamination can be reasonably anticipated.

(C) Disposable gloves, such as surgical or examination type, shall be worn during the tattooing or body piercing process. Gloves shall be changed and properly disposed of each time there is an interruption in the application of tattoo or body piercing, when the gloves become torn or punctured, or whenever the ability to function as a barrier is compromised. Disposable gloves shall not be reused.

(D) Gloves shall be worn when decontaminating environmental surfaces and equipment.
(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.09 TATTOOING/BODY PIERCING EQUIPMENT.

(A) Only single use razors shall be used to shave the area to be tattooed, or body part to be pierced. Single use razors shall be discarded in sharps containers immediately after use.

(B) All stencils shall be properly disposed of after a single use.

(C) If the design is drawn directly onto the skin, it shall be applied with a single use article only.

(D) After shaving the area to be tattooed or pierced, or if the area does not need to be shaved, the site of the tattoo or piercing shall be cleaned with soap and warm water, rinsed with clean water and a germicidal solution applied in a sanitary manner before a piercing, or before a design is placed on the skin for use during tattooing. Other sterile, individual towels or gauze shall be used in preparing the site to be tattooed or pierced, and properly disposed of after use on each patron.

(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.10 NEEDLES.

(A) Needles shall be individually packaged and sterilized prior to use.

(B) Needles shall be single use only.

(C) Needles shall be discarded in sharps containers immediately after use.

(D) Contaminated needles shall not be bent or broken or otherwise manipulated by hand.
(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.11 REUSABLE EQUIPMENT.

(A) Autoclave sterilization must be used when heat stable, non-disposable equipment is sterilized.

(B) Equipment that is to be sterilized shall be put in single use packaging.

(C) Records must be maintained to document the following:

(1) Duration of sterilization technique;

(2) Determination of effective sterility, such as use of a biological indicator, is performed monthly; and

(3) Equipment is maintained as recommended by the owner's manual, and proof is available that the owner's manual recommendations are reviewed monthly.

(D) Reusable contaminated equipment shall not be stored or processed in a manner that requires any person to reach by hand into the containers where these sharp items have been placed.

(E) Reusable contaminated equipment shall be:

(1) Placed in puncture-resistant containers;

(2) Labeled with the bio hazard symbol;

(3) Leakproof on both sides and bottom; and

(4) Stored in a manner that does not require reaching by hand into the container where the equipment is stored until cleaning prior to sterilization.

(F) Reusable contaminated equipment shall be effectively cleaned prior to sterilization or disinfection.

(G) Any reusable contaminated equipment that comes into direct contact, or is likely to come into direct contact, with an instrument that penetrates the skin other than a piercing gun shall be effectively cleaned and sterilized prior to use.

(H) All sterilized equipment shall not be removed from wrappers or sterilized packaging until immediately prior to use.

(I) Any reusable equipment that comes into contact with mucus [sic, mucous] membranes shall be effectively cleaned and sterilized prior to use.

(J) Piercing guns shall be cleaned and undergo, at a minimum, high level disinfection after each use and whenever visibly contaminated.

(K) All reusable equipment that has contact with intact skin shall undergo, at a minimum, intermediate level disinfection.

(L) All other equipment used during the tattooing or body piercing procedure shall be single use, including corks.

(M) All body piercers and tattoo artists shall comply with all other equipment manufacturer's recommendations.

(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.12 DYES AND PIGMENTS OR OTHER OBJECTS PLACED UNDER THE SKIN.

(A) All dyes or pigments used in tattooing shall be from professional suppliers specifically providing dyes or pigments for the tattooing of human skin.

(B) In preparing dyes or pigments to be used by tattoo artists, only nontoxic, sterile materials shall be used. Single use or individual portions of dyes or pigments in clean, single use containers shall be used for each patron.

(C) After tattooing, the remaining unused dye or pigment in single use or individual containers shall be discarded along with the container.

(D) Any object placed under the skin shall be sterile.

(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.13 WORK ENVIRONMENT.

(A) No tattooing or body piercing shall be conducted in any room used as living quarters or in any room that opens directly into living or sleeping quarter, or in any mobile or temporary facility.

(B) Live animals shall be excluded from areas where tattooing or body piercing is being conducted. This exclusion does not apply to the following:

(1) Patrol dogs accompanying security or police officers; and

(2) Guide dogs accompanying the following:

(a) Blind persons;

(b) Partially blind persons;

- (c) Physically disabled persons;
- (d) Guide dog trainers; and
- (e) Persons with impaired hearing.

(C) Eating, drinking, smoking, applying cosmetics or handling contact lenses shall not be allowed in work areas where there is a likelihood of exposure to blood or OPIM.

(D) Food and drink shall not be kept in the areas where there is a reasonably anticipated risk of exposure to blood or OPIM.

(E) All equipment and environmental surfaces shall be cleaned and disinfected after contact with blood or OPIM.

(F) Environmental surfaces and equipment not requiring sterilization that have been contaminated by blood shall be cleaned and disinfected.

(G) All work surfaces shall be:

- (1) Nonabsorbent;
- (2) Easily cleanable;
- (3) Smooth; and
- (4) Free of:
 - (a) Breaks;
 - (b) Open seams;
 - (c) Cracks;
 - (d) Chips;
 - (e) Pits; and
 - (f) Similar imperfections.

(H) Disinfectant solutions shall be:

(1) A hospital grade, tuberculocidal Environmental Protection Agency (EPA) registered disinfectant; or

(2) Sodium hypochlorite, 0.5% concentration, by volume (common household bleach in 10% concentration in water); the solution shall be dated and shall not be used if it is more than 24 hours old. (Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.14 INFECTIOUS WASTE CONTAINMENT.

(A) Contaminated disposable needles or instruments shall be:

(1) Stored in:

(a) Leak resistant containers; and

(b) Puncture resistant containers;

(2) Tightly sealed to prevent expulsion;

(3) Labeled with the biohazard symbol; and

(4) Effectively treated in accordance with this rule prior to being stored in an unsecured area and sent for final disposal.

(B) Infectious wastes that are not contaminated sharps or objects that could potentially become contaminated sharps shall be placed in containers that meet the following requirements:

(1) Impervious to moisture;

(2) Sufficient strength and thickness to prevent expulsion;

(3) Secured to prevent leakage expulsion;

(4) Labeled with the biohazard symbol; and

(5) Effectively treated in accordance with this rule prior to being placed in an unsecured area and sent for final disposal.

(C) If infectious waste is stored prior to final disposal, all persons subject to this rule shall store infectious waste in a secure area that:

(1) Is locked or otherwise secured to eliminate access by or exposure to the general public;

(2) Affords protection from adverse environmental conditions and vermin; and

(3) Has a prominently displayed biohazard symbol.

(D) (1) Infectious waste shall be stored in a manner that preserves the integrity of the container and is not conducive to rapid microbial growth and putrefaction.

(2) Disinfect reusable containers for infectious waste each time that they are emptied unless the surfaces of the reusable containers have been protected from contamination by disposable liners, bags or other devices that are removed with the infectious waste.

(Ord. 01-12, passed 11-19-2001)

§ 111.15 TREATMENT AND TRANSPORT OF INFECTIOUS WASTE.

(A) All operators shall ensure that infectious waste is either treated on-site in accordance with this rule or transported off-site for treatment in accordance with this rule.

(B) A treatment is effective if it reduces the pathogenic qualities of infectious waste for safe handling, is designed for the specific waste involved, and is carried out in a manner consistent with this rule. Effective treatment may include:

- (1) Incineration in an incinerator designed to accommodate infectious waste;
- (2) Steam sterilization in an autoclave;
- (3) Chemical disinfection under circumstances where safe handling of the waste is assured;
- (4) Thermal inactivation;
- (5) Irradiation; or

(6) Discharge in a sanitary sewer or septic system that is properly installed and operating in accordance with state and local laws.

(C) All persons subject to this rule shall:

(1) Transport infectious waste in a manner that reasonably protects waste haulers and the public from contracting a dangerous communicable disease; and

(2) Effectively treat infectious waste in accordance with this rule before it is compacted.

(D) The operator shall ensure that infectious waste, effectively treated or not is transported off-site in compliance with 410 I.A.C. 1-3.

(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

SPECIFIC PROVISIONS

§ 111.30 HOURS OF OPERATION.

No tattooing and/or body piercing facility shall be operated between the hours of 10:00 p.m. and 10:00 a.m.

(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.31 PERMITS.

(A) *Business.* Each tattoo or body piercing facility shall obtain a permit from the County Health Department. The permit shall provide the name and address of the owner and operator of the business and the name and address of each and every tattoo artist or body piercer located at each location. The cost for this permit shall be \$500 and shall not be transferable. The permit expires on December 31 of each year. Any holder of a permit shall be subject to inspection as set forth herein. The County Health Department shall provide the appropriate forms for this permit. The permit shall be posted at the facility in the place where the tattoos or body piercing or both are performed and clearly visible to the public.

(B) *Tattoo artist or body piercer.* Every person that desires to perform any tattoo or body piercing shall obtain a permit from the County Health Department. This permit must be obtained before any tattoos are affixed to any person or before any body piercing is performed and after the requisite training. The applicant must satisfy the minimum requirements as set forth herein in § 111.04 above. The cost of the permit shall be \$100 and shall not be transferable. The permit expires on December 31 of each year. Any holder of a permit shall be subject to inspection as set forth herein. The County Health Department shall provide the appropriate forms for this permit. The permits shall be posted at the facility in the place where the tattoos or body piercing or both are performed and must be clearly visible to the public.

(C) *Temporary or mobile facilities.* Temporary and/or mobile facilities are not allowed or permitted. (Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.32 INSPECTIONS.

The County Health Department shall conduct inspection of each and every facility located in the county. The County Health Department shall conduct a minimum of four inspections per year. Additional inspections may be conducted by the County Health Department as it determines and/or in response to complaints submitted. The results of the inspections shall be provided to each operator. Violations noted by the County Health Department shall be corrected immediately. The Department shall conduct follow-up inspections to determine compliance with this chapter.

(Ord. 01-12, passed 11-19-2001)

§ 111.33 PROCEDURES WHEN VIOLATIONS ARE NOTED.

(A) If, during the inspection of any facility, the Health Officer or his or her authorized representatives discovers the violation of any provision of Wells County Ordinance- _____, he or she shall issue a written report/order listing the violations and the remedial action(s) to be taken. A copy of the report/order shall be delivered to the permittee by hand delivering the report/order to him or her on-site, or mailing the notice by certified mail to the address listed by the permittee as his or her or its mailing address on the permit application.

(B) A copy of the written report/order shall be maintained by the Department and then shall be made available to the public for inspection and review.
(Ord. 01-12, passed 11-19-2001)

§ 111.34 PERMIT SUSPENSION/REVOCATION.

The Health Officer may order the suspension or revocation of any permit issued for the facility which order shall include the prohibition of any further operation for the following reasons:

(A) Interference with the Health Officer, or his or her authorized representatives, in the performance of his or her duties. Interference shall be defined as the process of obstructing, hampering or blocking the Health Officer in the performance of his or her duties; and/or

(B) As a result of the willful and/or continuous violation of any provision of this chapter.
(Ord. 01-12, passed 11-19-2001)

§ 111.35 OTHER PERMIT REVOCATION, SUSPENSION AND IMMEDIATE CLOSURE ORDERS.

Except as set forth in § 111.34 above, no suspension or revocation shall be ordered by the Health Officer except after a hearing held pursuant to this section.

(A) Notwithstanding the provisions of § 111.34 above, whenever the Health Officer, or his or her authorized representatives find unsanitary or other conditions, involving the operation of any tattoo or body piercing facility, or both, which, in his or her reasonable belief, constitutes an imminent health hazard, he or she shall without notice or hearing, issue and serve a written order upon the permittee requiring the immediate closure of its operations, shall cite the existence of the unsanitary conditions and shall specify the corrective actions to be taken.

(B) The order shall be effective immediately.

(C) (1) The Health Officer or his or her authorized representatives shall make a re-inspection upon the request of the permittee.

(2) When the Health Officer or his or her authorized representatives determines that the necessary corrective action(s) have been taken, operation of the facility may be resumed.
(Ord. 01-12, passed 11-19-2001)

§ 111.36 HEARING.

(A) All hearings required under this section shall be held only upon at least ten-day written notice to the permittee of time, place and nature thereof. The notice of hearing shall be served upon the permittee by leaving or mailing by certified mail the notice to the address listed on the permit application as the permittee's mailing address or other address as the permittee shall designate in writing to the Health Officer.

(B) At any hearing required under this chapter, the Hearing Officer shall be the Health Officer or the Health Officer's designee. Every person who is a party to the proceedings shall have the right to submit evidence. All the hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitive evidence may be excluded.

(C) Upon the conclusion of the hearing, the Hearing Officer shall enter a final order, subject to the right of appeal in accordance with this section.

(D) Failure of the permittee to attend the hearing shall result in the Hearing Officer ordering an immediate suspension of the tattoo and/or body piercing facilities permit.
(Ord. 01-12, passed 11-19-2001)

§ 111.37 APPEAL.

(A) Any permittee aggrieved by any final order of the Health Officer shall be entitled to a review of the final order before the County Board of Health by filing a written request therefor with the Health Officer within 15 days after the final order is issued.

(B) Upon the Health Officer's receipt of the request, the Board shall hear the matter at the next scheduled Board meeting as long as the permittee is given at least five days written notice of the time, place and nature thereof.

(C) The notice of hearing shall be served upon the permittee by leaving or mailing by certified mail, the notice to the address listed on the permit application as the permittee's mailing address or other address as the permittee shall designate in writing to the Health Officer.

(D) At the hearing, the same rules of procedure shall apply as set forth in § 111.36(B) above, provided, that upon written request by the permittee or the Health Officer, the Board shall cause the proceedings before it to be recorded and the same, together with all papers and documents filed therein, shall, at the request of either party, be copied by the Board and a copy shall be available to any party.

(E) The Board shall make written findings of facts and shall enter its final order or determination of the matter in writing.
(Ord. 01-12, passed 11-19-2001)

§ 111.38 ENFORCEMENT.

(A) It shall be the duty of the Health Officer to enforce the provisions of this chapter. Any permit issued in conflict with the provisions of this chapter shall be null and void.

(B) A violation of an order issued by the Health Officer or Board shall be considered to be a violation of this chapter.
(Ord. 01-12, passed 11-19-2001) Penalty, see § 111.99

§ 111.39 VIOLATIONS.

Whenever the Health Officer determines that any tattoo or body piercing facility, or any other person, is in willful violation of any of the provisions of this chapter, the Health Officer shall furnish evidence of the willful violation to the County Attorney, who shall seek all appropriate legal remedies against the person(s) violating the provisions of this chapter.
(Ord. 01-12, passed 11-19-2001)

§ 111.40 INJUNCTION.

The Health Officer may bring an action for an injunction in the Circuit or Superior Court of Wells County, Indiana, to restrain any person from violating the provisions of this chapter, to cause the violation(s) to be prevented, abated or removed.
(Ord. 01-12, passed 11-19-2001)

§ 111.41 CONFLICT; EFFECT OF PARTIAL INVALIDITY.

(A) In any case where a provision of this chapter is found to be in conflict with a provision of any zoning, building, fire, safety or health ordinance or code of the county existing on the effective date of this chapter, the provisions which establish the higher standard for the promotion and protection for the health and safety of the people shall prevail. In any case where a provision of this chapter is found to be in conflict with a provision of any other ordinance or code of the county existing on the effective date of this chapter which establishes a lower standard for the promotion and protection of the health and safety of the people, the provisions of this chapter shall be deemed to prevail, and other ordinances or codes are hereby declared to be repealed to the extent that they be found in conflict with this chapter.

(B) If any section, division, paragraph, sentence, clause or phrase of this chapter should be declared invalid for any reason whatsoever, the decision shall not affect the remaining portions of this chapter,

which shall remain in full force and effect; and to this end the provisions of this chapter are hereby declared to be severable.

(Ord. 01-12, passed 11-19-2001)

§ 111.99 PENALTY.

(A) Any person who willfully violates any of the provisions of this chapter shall be subject to a fine of not more than \$500 for each violation. Each day of the existence of any violation of this chapter shall be considered to be a separate offense.

(B) Any person violating any of the provisions of this chapter shall be liable to the County Department of Health for the expense, loss or damage occasioned by reason of the violation, including reasonable attorney's fees, costs and expenses.

(Ord. 01-12, passed 11-19-2001)

CHAPTER 112: SOLICITORS AND TRANSIENT MERCHANTS

Section

- 112.01 Definitions
- 112.02 Registration with County Sheriff
- 112.03 Evidence of compliance
- 112.04 Display of permit
- 112.05 Exemptions
- 112.06 Duration of permit
- 112.07 Unlawful acts
- 112.08 Violations
- Appendix A: Application to Solicit in Wells County, Indiana

§ 112.01 DEFINITIONS.

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

PERSON. Any individual, firm, co-partnership, corporation, company, association or joint stock association, church, religious sect, religious denomination, society, organization or league, and includes any trustee, receiver, assignee, agent or other similar representative word.

PRINCIPAL AGENT. The employee or agent of the transient merchant who is responsible for the day-to-day operations of the business within the county.

SOLICIT or SOLICITATION. Requesting directly or indirectly money, credit, property, financial assistance or other things of value or selling, offering to sell, taking orders for sale of goods or services to be rendered at any place other than from a fixed place of business.

SOLICITOR. Any person, firm, limited liability company or corporation, both as principal and agent, who sells, offers to sell or takes orders for goods at any place other than a fixed place of business for future delivery or for services to be performed.

TRANSIENT MERCHANT.

(1) All persons, firms, limited liability companies and corporations, both as principals and agents, who engage in, do or transact any temporary or transient business in this county, either in one locality or in traveling from place to place in this county offering for sale or selling goods, wares or

merchandise, and those who, for the purpose of carrying on the business hire, lease or occupy any permanent or mobile building, structure or real estate for the exhibition by means of samples, catalogs, photographs and price lists or sale of the goods wares, or merchandise.

(2) ***TRANSIENT MERCHANT*** shall not include:

(a) Any person, individual, co-partner, limited liability company or corporation who grows the goods, wares or merchandise that are sold or offered for sale;

(b) A person who makes crafts or items by hand and sells them or offers them for sale;

(c) An auctioneer who is licensed under I.C. 25-6.1-7-1;

(d) A resident of the county in which the sale takes place who conducts a sale of tangible personal property for no more than four days per year;

(e) An organization that is exempt from the Indiana gross retail tax under I.C. 6-2.5-26;

(f) A person who sells merchandise, offers to sell merchandise and provides proof that the sale is being conducted as part of an activity sponsored by an organization described in division (2)(e) above;

(g) A person who organizes, sells merchandise at, and offers to sell merchandise at or exhibits at a trade show or convention; or

(h) A person who holds a registered retail merchant's certificate under I.C. 6-2.5-8.
(Ord. 2007-2, passed 4-16-2007)

§ 112.02 REGISTRATION WITH COUNTY SHERIFF.

(A) Any solicitor or transient merchant within the county shall first register at the office of the County Sheriff.

(B) As a part of the registration process the solicitor or transient merchant shall:

(1) Provide a valid driver's license, ID or other verifiable form of picture ID which contains the applicant's name, address, Social Security or driver's license number, and a physical description of the solicitor and permit an employee of the Sheriff's Department to copy same;

(2) Provide a brief description of the nature of the solicitation and the dates during which the solicitor expects to be soliciting within the county;

(3) Provide the name, address and telephone number of the company for whom the solicitor is employed or whom the solicitor represents;

(4) Provide a recent photograph of the solicitor. If no photo is available the solicitor shall permit an employee of Sheriff's Department to photograph the solicitor at the time of the application;

(5) Provide the license plate number of any vehicle to be used in the solicitation;

(6) Sign a statement as to whether the solicitor has been convicted of any felony or has been found to have violated any misdemeanor or ordinance related to solicitation or the sale of goods and to describe the nature of the conviction or violation; and

(7) Sign a statement that the permit to be issued will not be used or represented in any way as an endorsement of the solicitor by the county.

(Ord. 2007-2, passed 4-16-2007) Penalty, see § 10.99

§ 112.03 EVIDENCE OF COMPLIANCE.

As evidence of registration the County Sheriff's Department shall issue to each solicitor or transient merchant who has complied with § 112.02 above an orange colored permit which shall include the solicitor's or transient merchant's name, address, the name of the company represented, and the kind of goods to be sold or offered.

(Ord. 2007-2, passed 4-16-2007)

§ 112.04 DISPLAY OF PERMIT.

(A) The orange colored permit issued to a solicitor or to a transient merchant under this chapter shall:

(1) Prominently be displayed in the front window of the vehicle which they are operating; or

(2) Shall be maintained by a solicitor or transient merchant upon his or her immediate person or premises

(B) Upon the request of any member of the County Sheriff's Department or any person with whom he or she is transacting or attempting to transact business the solicitor or transient merchant shall produce the permit for inspection.

(Ord. 2007-2, passed 4-16-2007) Penalty, see § 10.99

§ 112.05 EXEMPTIONS.

The following shall be exempt from the requirements of this chapter.

(A) An organization that is exempt from the state gross retail tax under I.C. 6-2.5-5-26; and

(B) A person who provides proof that the business or activity is being conducted as part of an activity sponsored by an organization described in § 112.01 above.
(Ord. 2007-2, passed 4-16-2007)

§ 112.06 DURATION OF PERMIT.

A permit issued under this chapter shall be valid for one week from the date of issue.
(Ord. 2007-2, passed 4-16-2007)

§ 112.07 UNLAWFUL ACTS.

The following acts shall not be permitted:

(A) Soliciting or engaging in business as a transient merchant without a permit as provided in this chapter;

(B) Soliciting prior to 9:00 a.m. or after dusk; and

(C) Soliciting at a residence or business displaying a sign which indicated that solicitors are not to call on the residence or business.

(Ord. 2007-2, passed 4-16-2007) Penalty, see § 10.99

§ 112.08 VIOLATIONS; ENFORCEMENT.

A violation of this chapter shall be considered a Class C infraction under the terms of I.C. § 9-21-5-13. This penalty clause may be enforced by either the County Prosecutor or the County Attorney.

(Ord. 2007-2, passed 4-16-2007) Penalty, see § 10.99

APPENDIX A: APPLICATION TO SOLICIT IN WELLS COUNTY, INDIANA

WELLS COUNTY ORDINANCE # 07- ____

DATE: _____

NAME OF SOLICITOR: _____

SOCIAL SECURITY NUMBER: _____

DATE OF BIRTH: _____

HAS THE SOLICITOR EVER BEEN CONVICTED OF A FELONY? _____

IF SO, STATE THE NATURE OF THE OFFENSE, THE DATE, THE COURT OF CONVICTION,
AND THE PENALTY ASSESSED: _____

BUSINESS: _____

BUSINESS ADDRESS: _____

TELEPHONE NUMBER: _____

SUPERVISOR'S NAME: _____

TYPE OF PRODUCT: _____

COST OF PRODUCT: _____

ARE GOODS AVAILABLE IMMEDIATELY OR MUST THEY BE ORDERED? _____

PROPOSED DATE(S) AND TIME OF SOLICITATION? _____

TOTAL NUMBER OF SOLICITORS: _____

VEHICLE(S) AND LICENSE # (S) USED: _____

I HEREBY ACKNOWLEDGE THAT ANY PERMIT ISSUED BY WELLS COUNTY, INDIANA,
SHALL EXPIRE AT DUSK ON THE LAST DAY OF ITS ISSUANCE AND SHALL BE EFFECTIVE
ONLY BETWEEN 9:00 A.M. AND DUSK.

I HEREBY ACKNOWLEDGE GIVING PERMISSION TO HAVE A COPY OF MY DRIVER'S LICENSE ATTACHED TO THIS PERMIT APPLICATION.

I HEREBY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING STATEMENTS AND REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNED: _____

PRINTED NAME: _____

(Ord. 2007-2, passed 4-16-2007)

CHAPTER 113: FOOD ESTABLISHMENTS

Section

- 113.01 Definitions
- 113.02 Permits
- 113.03 Permit fees
- 113.04 Inspection
- 113.05 Compliance and enforcement
- 113.06 Appeals; hearing

§ 113.01 DEFINITIONS.

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

BED AND BREAKFAST ESTABLISHMENT. An operator occupied residence that:

- (1) Provides sleeping accommodations to the public for a fee;
- (2) Has no more than 14 guest rooms;
- (3) Provides breakfast to its guests as part of the fee; and
- (4) Provides sleeping accommodations for no more than 30 consecutive days to a particular guest.

CONFLICT OF INTEREST. A situation in which the private financial interest of a county official, county official's spouse, ex-spouse, siblings, in-laws, children and/or unemancipated child, may influence the county official's judgment in the performance of a public duty.

CRITICAL VIOLATION. A violation that, if in noncompliance, is more likely than other violations to significantly contribute to food contamination, illness or environmental health hazard.

FOOD ESTABLISHMENT. Any building, room, basement, vehicle of transportation, cellar or open or enclosed area occupied or used for handling food. The term does not include the following:

- (1) A dwelling where food is prepared on the premises by the occupants, free of charge, for their consumption or for consumption by their guests;

(2) A gathering of individuals at a venue of an organization that is organized for educational purposes in a nonpublic educational setting or for religious purposes, if:

(a) The individuals separately or jointly provide or prepare, free of charge, and consume their own food or that of others attending the gathering; and

(b) The gathering is for a purpose of the organization. Gatherings for the purpose of the organization include funerals, wedding receptions, christenings, bar or bat mitzvahs, baptisms, communions, and other events or celebrations sponsored by the organization.

(3) A vehicle used to transport food solely for distribution to the needy, either free of charge or for a nominal donation;

(4) A private gathering of individuals who separately or jointly provide or prepare and consume their own food or that of others attending the gathering, regardless of whether the gathering is held on public or private property;

(5) Except for food prepared by a for-profit entity, a venue of the sale of food prepared for the organization:

(a) That is organized for: religious purposes; or educational purposes in a nonpublic educational setting;

(b) That is exempt from taxation under I.R.C. § 501; and

(c) That offers the food for sale to the final consumer at an event held for the benefit of the organization; unless the food is being provided in a restaurant or a cafeteria with an extensive menu of prepared foods.

(6) Except for food prepared by a for-profit entity, an Indiana nonprofit organization that:

(a) Is organized for civic, fraternal, veterans or charitable purposes;

(b) Is exempt from taxation under I.R.C. § 501; and

(c) Offers food for sale to the final consumer at an event held for the benefit of the organization; if the events conducted by the organization take place for not more than 15 days in a calendar year.

HAZARD ANALYSIS CRITICAL CONTROL POINT (HACCP) PLAN. A written document that delineates the formal procedures for following the hazard analysis critical control point principles developed by the National Advisory Committee on Microbiological Criteria for Foods.

HEALTH OFFICER. The person, appointed as specified in I.C.-16-20-2-16, or his or her duly authorized representative, as specified in I.C. 16-2-1-14, who may conduct inspections and make a final decision on an enforcement action.

HEALTH BOARD. A local board that manages the County Health Department, and is composed of seven members appointed as described in I.C. 16-20-2-3 through I.C. 16-20-2-12.

HEARING PANEL. A panel of individuals acting in the capacity of a Hearing Officer in proceedings. The hearing panel may not include the Health Officer or any other employee of the County Health Department. The hearing panel shall include one member from the Health Board, one health professional appointed by the Chairperson of the Health Board and one agent from the Purdue University Cooperative Extension Office in the county.

IMMINENT HEALTH HAZARD. A significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance or event creates a situation that requires immediate correction or cessation of operation to prevent injury or illness based on the number of potential injuries and illnesses and the nature, severity and duration of the anticipated injury or illness (e.g., sewage backing up in a food preparation area or contamination of food products with toxic materials).

INCORPORATION OF CODE AND ADMINISTRATIVE CODE BY REFERENCE. Incorporated into this chapter by reference are I.C. 16-42-1, I.C. 16-42-2, I.C. 16-42-5 and the State Department of Health Rule(s) 410 and Indiana Administrative Code (I.A.C.) 7-15.5, 410 I.A.C. 7-24, 410 I.A.C. 7-21-47 and 410 I.A.C. 7-22 as amended.

INSPECTION REPORT. The document prepared by the County Health Department that is completed as the result of the inspection and provided to the operator.

OPERATOR. The person who has a primary oversight responsibility for operation of the establishment through ownership, or lease or contractual agreement, and who is responsible for the storage, preparation, display, transportation or serving of food to the public.

ORDER. A County Health Department action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of one or more specific persons. The term includes a permit.

PERMIT. The document issued by the County Health Department that authorizes a person to operate a bed and breakfast establishment and/or food establishment.

PERSON. Includes, but not be limited to, an association, corporation, individual, partnership, firm, business organization, municipality or other legal entity, government or governmental subdivision or agency.

SINGLE EVENT OR CELEBRATION. A gathering associated with a recognized special occasion. It shall not include an individual or group preparing food items for a limited time when not associated with the recognized occasions. An individual, a business or a commercial entity may obtain a temporary food service license for a recognized occasion, such as a promotional event, an auction, a fair or a celebration for a time period of no longer than 14 consecutive days. Temporary licenses for an event or celebration may not be issued to an individual, business or commercial entity on a routine or continuous basis in order to avoid compliance with 410 I.A.C. 7-24.

TEMPORARY FOOD ESTABLISHMENT. A retail food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration with the approval of the organizers of the event or celebration.

VENDING MACHINE LOCATION. The room, enclosure, space or area where one or more vending machines are installed and operated and includes the storage areas and areas on the premises that are used to service and maintain the vending machines.

WELLS COUNTY HEALTH DEPARTMENT. The local health department in the county or authorized representative having jurisdiction over a bed and breakfast establishment and/or food establishment.

(Ord. 2007-16, passed 11-9-2007)

§ 113.02 PERMITS.

(A) General.

(1) It is unlawful for a person to operate any bed and breakfast establishment and/or food establishment in the county, without first obtaining a valid permit from the Health Officer. The valid permit must be posted in a conspicuous location in the bed and breakfast establishment and/or food establishment.

(2) Only persons who comply with the applicable requirements of 410 I.A.C. 7-15.5 and /or 410 I.A.C. 7-24 will be entitled to obtain and keep a permit.

(3) A separate permit shall be required for each bed and breakfast establishment and/or food establishment operated or to be operated by any person.

(4) No permit issued to any operator under this chapter shall be transferable between locations or between operators. Upon change of location, operator or owner, all existing permits become void.

(5) A bed and breakfast establishment and/or food establishment permitted by the County Health Department shall be considered registered as required in I.C. 16-42-1-6.

(B) *Types of permits.*

(1) A bed and breakfast permit shall be issued to any person and/or operator of a bed and breakfast establishment, for a term beginning January 1, and/or before commencement of operation and expiring December 31 of the same year, and shall be applied for by the person and/or operator annually.

(2) A farmers market food permit shall be issued to any person and/or operator of a food establishment participating in a farmers market in the county for a period of time not to exceed six months. This does not include food establishments offering only whole, uncut fruits and vegetables, nuts in the shell, or prepackaged, non-potentially hazardous food.

(3) A limited food permit shall be issued to any person and/or operator of a food establishment operating on a continual basis and offering only pre-packaged, non-potentially hazardous food, or a food establishment with very limited preparation of open, non-potentially hazardous food. A limited food permit shall be issued for a term beginning January 1, and/or before commencement of operation and expiring on December 31 of the same year and shall be applied for by the person and/or operator annually.

(4) A mobile retail food establishment permit shall be issued to any person and/or operator of a mobile retail food establishment, as defined by 410 I.A.C. 7-24, for a term beginning January 1, and/or before commencement of operation and expiring December 31 of the same year and shall be applied for by the person and/or operator annually,

(5) A retail food establishment permit shall be issued to any person and/or operator of a retail food establishment for a term beginning January 1, and/or before commencement of operation and expiring December 31 of the same year, and shall be applied for by the person and/or operator annually.

(6) A seasonal food permit shall be issued to any person or operator of a food establishment who is going to operate either part time or full time for a maximum of six months. This does not include temporary food establishments. A seasonal food permit shall be issued for a term beginning on commencement of operation and expiring no more than six months from the date of issue.

(7) A temporary food establishment permit shall be issued to any person and/or operator of a temporary food establishment at a fixed location for a period of time not to exceed 14 consecutive days in conjunction with a single event or celebration. Temporary food establishment permits are not transferable with respect to the food establishment and/or the event.

(8) A vending retail food establishment permit shall be issued to any person and/or operator who furnishes, services, operates or maintains one or more vending machines, as defined by 410 I.A.C. 7-24, which dispense potentially hazardous food, for a term beginning January 1 and/or before commencement of operation and expiring December 31 of the same year, and shall be applied for by the person and/or operator annually,

(C) *Permit content.* Any permit issued by the Health Officer shall contain:

- (1) The name and address of the person and/or owner to whom the permit is granted;
- (2) The location of the establishment for which the permit is issued;
- (3) The issuance and expiration date(s); and
- (4) Other pertinent data as may be required by the County Health Officer.

(D) *Application.* A person desiring to operate a bed and breakfast establishment and/or food establishment shall submit to the County Health Department a written application for a permit on a form provided by the County Health Department prior to commencement of operation of the establishment. A person desiring to renew a permit must submit a written application for a permit on a form provided by the County Health Department on or before the last working day of the year.

(E) *Content of the application.* The application shall include:

(1) The name, mailing address, telephone number and original signature of the person and/or operator applying for the permit and the name, mailing address and location of the bed and breakfast establishment, food establishment;

(2) Information specifying whether the bed and breakfast establishment, and/or food establishment is owned by an association, corporation, individual, partnership or other legal entity;

(3) A statement specifying whether the bed and breakfast establishment and/or food establishment:

(a) If not permanent, is mobile and/or temporary; and

(b) The operation includes one or more of the following:

1. Prepares, offers for sale or serves potentially hazardous food:

a. Only to order upon a consumer's request;

b. In advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency;

c. Using time, rather than temperature, as the public health control as specified under 410 I.A.C. 7-24; or

d. Prepares acidified foods as defined in 410 I.A.C. 7-21-3.

2. Prepares potentially hazardous food in advance using a food preparation method that involves two or more steps which may include combining potentially hazardous ingredients; cooking; cooling; reheating; hot or cold holding; freezing; or thawing;

3. Prepares food as specified under item (3)(b)(2) of this section for delivery to and consumption at a location off the premises of the bed and breakfast establishment and/or food establishment where it is prepared;

4. Prepares food as specified under item (3)(b)(2) of this section for service to a highly susceptible population, as defined in 410 I.A.C. 7-24;

5. Prepares only food that is not potentially hazardous; or

6. Does not prepare, but offers for sale only prepackaged food that is not potentially hazardous.

(4) The name, title, address and telephone number of the operator directly responsible for the bed and breakfast establishment and/or food establishment.

(5) The name, title, address and telephone number of the person who functions as the immediate supervisor of the person specified under division (E)(4) above such as the zone, district or regional supervisor;

(6) The names, titles and addresses of:

(a) The persons comprising the legal ownership as specified under division (E)(2) above, including the owners and operators; and

(b) The local resident agent if one is required based on the type of legal ownership;

(7) A statement signed by the applicant that:

(a) Attests to the accuracy of the information provided in the application; and

(b) Affirms that the applicant will:

1. Comply with this chapter; and

2. Allow the County Health Department access to the bed and breakfast establishment and/or food establishment, and records as specified in 410 I.A.C. 7-15.5 and 410 I.A.C. 7-24.

(8) Other information required by the County Health Department.

(F) *Qualification.* To qualify for a permit, an applicant must:

- (1) Submit to the County Health Department a completed written application for a permit on a form provided by the County Health Department;
- (2) Be an owner and/or operator of the bed and breakfast establishment and/or food establishment;
- (3) Comply with the requirements of this chapter;
- (4) Agree to allow access to the bed and breakfast establishment, and/or food establishment and provide required information; and
- (5) Pay the applicable permit fees at the time the application is submitted.

(G) *Plans requirements.*

(1) The owner or other authorized agent of an existing or proposed bed and breakfast establishment and/or food establishment shall submit to the County Health Department properly prepared plans and specifications for review and approval before:

- (a) The construction of a bed and breakfast establishment and/or food establishment;
- (b) The conversion of an existing structure for use as a bed and breakfast establishment and/or food establishment; or
- (c) The remodeling of a bed and breakfast establishment and/or food establishment or a change of type of bed and breakfast establishment and/or food establishment or food operation if the County Health Department determines that plans and specifications are necessary to ensure compliance with this section.

(2) The plans and specifications for a bed and breakfast establishment and/or food establishment shall include:

- (a) The type of operation;
- (b) Type of food preparation (as specified in Appendix B of the published version of 410 I.A.C. 7-24); and
- (c) The menu.

(3) The plans and specifications shall be deemed satisfactory and approved by the County Health Department before a permit can be issued.

(4) A pre-operational inspection shows that the bed and breakfast establishment and/or food establishment is built or remodeled in accordance with the approved plans and specifications and that the establishment is in compliance with this chapter, 410 I.A.C. 7-24 and/or 410 I.A.C. 7-15.5.

(H) *Change of ownership.* The County Health Department may renew a permit for an existing bed and breakfast establishment, and/or food establishment or may issue a permit to a new owner of an existing bed and breakfast establishment and/or food establishment after a properly completed application is submitted, reviewed and approved, the fees are paid, and an inspection shows that the establishment is in compliance with this chapter.

(I) *Responsibilities of the operator.* Upon acceptance of the permit issued by the County Health Department, the operator in order to retain the permit shall:

(1) Comply with the provisions of this chapter and all laws and rules adopted by reference herein and the conditions of any variances granted by the State Department of Health;

(2) Immediately discontinue affected operations and notify the County Health Department if an imminent health hazard may exist;

(3) Allow representatives of the County Health Department access to the bed and breakfast establishment and/or food establishment at all reasonable times;

(4) Comply with directives of the County Health Department including time frames for corrective actions specified in inspection reports, notices, orders, warnings and other directives issued by the County Health Department in regard to the operator's bed and breakfast establishment and/or food establishment or in response to community emergencies;

(5) Accept notices issued and served by the County Health Department;

(6) Be subject to the administrative, civil, injunctive and criminal remedies authorized in law for failure to comply with this chapter or a directive of the County Health Department;

(7) Post the permit in a location in the bed and breakfast establishment and/or food establishment that is conspicuous to consumers; and

(8) Comply with applicable building and fire codes.
(Ord. 2007-16, passed 11-9-2007) Penalty, see § 10.99

§ 113.03 PERMIT FEES.

(A) It shall be unlawful for any person to operate a bed and breakfast establishment and/or food establishment in the county, who has not paid the permit fee required to be paid for the operation of the establishment.

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(B) The fee for a bed and breakfast permit, limited food permit, mobile retail food establishment permit, retail food establishment permit, and/or vending retail food establishment permit shall be paid for a term beginning January 1, and/or before commencement of operation and expiring December 31, of the same year and shall be applied for by the person and/or operator annually.

(C) The fee for a temporary food establishment permit, farmers market food permit, and/or seasonal food establishment permit shall be paid for a term beginning the date of commencement of the operation and shall expire on the last scheduled day of the permit period.

(D) Permit fees for the issuance of a permit under this chapter to a bed and breakfast establishment, and/or food establishment shall be set by the County Health Board, as provided by the statutes of the state. Fees are as follows:

Bed and breakfast establishment	\$35 per year
Farmers' market	\$10
Late fee	\$20 per day
Limited food	\$35
Mobile retail food establishment	\$35
Retail food establishment	\$100
New retail food establishment opening for business after September 30	\$50
New retail food establishment includes food establishments changing ownership and/or opening for business in a new location	
Seasonal food permit	\$50
Temporary food establishment	\$5 per day
Vending permit	\$20 per vending machine location, not to exceed \$100

(E) A receipt for the payment of the fee shall be provided by the County Health Department. No permits shall be issued or renewed until all fees have been paid in full. Payment is non-refundable.

(F) The payment of the fees shall be required for each bed and breakfast establishment and/or food establishment operated or to be operated by any person.

(G) Exemption from permit fees: an organization that is exempt from the state gross retail tax under I.C. 6-2.5-5-21(a)(1), and that offers food for sale to the final consumer at an event held for the benefit of the organization, is exempt from complying with the permit fee requirements of this chapter.

(H) A late fee for failure to pay the permit fee prior to the operation of the bed and breakfast establishment and/or food establishment or the late fee for failure to renew a permit before the close of business on the last working day of the year shall be assessed at \$20 per day. Nothing in this section shall prevent the Health Officer from exercising any other of his or her rights and/or duties regarding suspension, closure or revocation of the permit with regard to any food establishment.

(I) If a bed and breakfast establishment and/or food establishment has discontinued operation because their permit was suspended or revoked or otherwise, according to law, the operator must have the permit reinstated by the County Health Department before resuming operations. The fee for reinstating a permit will be one-half the original fee charged.

(J) The payment of fees under this chapter is not transferable or refundable.
(Ord. 2007-16, passed 11-9-2007) Penalty, see § 10.99

§ 113.04 INSPECTION.

(A) *General.* The County Health Department shall inspect a bed and breakfast establishment and/or food establishment at least once every six months and in accordance with the requirements of I.C. 16-42-5 *et seq.*

(B) *Modifications.* The County Health Department may modify the interval between inspections beyond six months if:

(1) The bed and breakfast establishment and/or food establishment is fully operating under an approved and validated hazard analysis critical control point (HACCP) plan(s);

(2) The bed and breakfast establishment and/or food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or

(3) The County Health Department may contact the operator to determine that the nature of the food operation has not changed.

(C) *Temporary food establishment.* The County Health Department shall periodically inspect throughout its permit period a temporary food establishment that prepares, sells or serves unpackaged potentially hazardous food and may inspect Temporary food establishment that prepares, sells or serves unpackaged, nonpotentially hazardous food that:

(1) Has improvised rather than permanent facilities or equipment for accomplishing functions such as hand washing, food preparation and protection, food temperature control, ware washing, providing drinking water, waste retention and disposal, and insect and rodent control; or

- (2) Has untrained food employees.

(D) *Performance and risk based inspections.* Within the parameters specified in the above inspection section(s) of this chapter, the County Health Department shall prioritize, and conduct more frequent inspections based upon its assessment of a bed and breakfast establishment and/or food establishment's history of compliance with this chapter and the bed and breakfast establishment and/or food establishment's potential as a vector of food borne illness by evaluating:

- (1) Past performance, for violations of 410 I.A.C. 7-15.5, 410 I.A.C. 7-24 and/or 410 I.A.C. 7-22 and/or HACCP plan requirements that are critical or non-critical;
- (2) Past performance, for numerous or repeat violations of 410 I.A.C. 7-15.5 and/or 410 I.A.C. 7-24 and/or HACCP plan requirements that are non critical;
- (3) Past performance, for complaints investigated and found to be valid;
- (4) The hazards associated with the particular foods that are prepared, stored or served;
- (5) The type of operation including the methods and extent of food storage, preparation and service;
- (6) The number of people served; and
- (7) Whether the population served is a highly susceptible population.

(E) *Access allowed at reasonable times after due notice.*

(1) After the County Health Department presents official credentials and provides notice of the purpose of and the intent to conduct an inspection, the operator shall allow the County Health Department to determine if the bed and breakfast establishment and/or food establishment is in compliance with this chapter by allowing access to the establishment, allowing inspection and providing information and records specified in this chapter. The County Health Department is entitled the information and records according to I.C. 16-42-1-13 and I.C. 16-42-5-22 and 23, during the bed and breakfast establishment and/or food establishment's hours of operation and other reasonable times, including but not limited to all hours of operation and all times when food preparation and/or food service takes place.

(2) Access is a condition of the acceptance and retention of a food establishment permit to operate. If access is denied, an Order issued by the appropriate authority allowing access may be obtained according to law under I.C. 16-20-1-26.

(F) *Authority to copy records.* The operator shall, upon the request of the Health Officer, permit the copying of any and all records relating to establishment ownership, as well as any and all records relating to food and beverage purchases, sources, storage, pest control and overall sanitation of the food establishment.

(G) *Inspection reports.* At the conclusion of the inspection, the County Health Department shall provide a copy of the completed inspection report and the notice to correct violations to the operator or to the person-in-charge, as required under I.C. 16-20-8-5.

(H) *Timely correction of critical violations.*

(1) Except as specified in the next division, an operator shall at the time of inspection correct a critical violation of 410 I.A.C. 7-15.5, 410 I.A.C. 7-24 and/or 410 I.A.C. 7-22 and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

(2) Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the County Health Department may agree to or specify a longer time frame after the inspection, for the operator to correct critical code violations or HACCP plan deviations.

(3) After receiving notification that the operator has corrected a critical violation or HACCP plan deviation, or at the end of the specified period of time, the County Health Department may verify correction of the violation, document the information on an inspection report, and enter the report in the County Health Department's records.

(I) *Refusal to sign acknowledgment.* Refusal to sign an acknowledgment of receipt will not affect the operator's obligation to correct the violations noted in the inspection report within the time frames specified.

(1) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the County Health Department historical record for the bed and breakfast establishment and/or food establishment.

(2) The operator is not necessarily in agreement with the findings of the County Health Department inspection by acknowledgment of receipt.

(3) Public information except as specified in § 176 (Trade Secrets) of 410 I.A.C. 7-24, the County Health Department shall treat the inspection report as a public document and shall make it available for disclosure to a person who requests it as provided in law. (See I.C. 16-20-8-6) (Ord. 2007-16, passed 11-9-2007)

§ 113.05 COMPLIANCE AND ENFORCEMENT.

(A) *Application denial.* If an application for a plan review and/or permit to operate a bed and breakfast establishment and/or food establishment is denied, the County Health Department shall provide the applicant with a notice that includes:

(1) The specific reasons and rule citations for the application and/or permit denial;

(2) The actions, if any, that the applicant must take to qualify for the application and/or permit; and

(3) Advisement of the applicant's right of appeal and the process and time frames for appeal that are provided in law.

(B) *Permit revocation.* The County Health Department may revoke a permit to operate a bed and breakfast establishment and/or food establishment for a time period not to exceed 90 calendar days. If the permit has been revoked in the past and a clear demonstration of noncompliance is demonstrated by the permit holder then the permit may be revoked for a longer period of time as determined by the Health Officer.

(C) *Permit suspension.* The County Health Department may suspend a permit to operate a bed and breakfast establishment and/or food establishment, and/or temporary food establishment as a result of the willful and/or continuous violation of any provision of this chapter; interference with the Health Officer or his or her authorized representatives in the performance of his or her duties; or if it determines through inspection, or examination of employee, food, records or other; as specified in this chapter, that an imminent health hazard exists. A suspension shall not exceed 30 calendar days. The permit may be suspended for a longer period of time as determined by the Health Officer. Interference shall be defined as the process of obstructing, hampering or blocking the Health Officer in the performance of his or her duties.

(D) *Ceasing operation and contacting the County Health Department.* An operator of a bed and breakfast establishment and/or food establishment and/or temporary food establishment shall immediately discontinue operations and notify the County Health Department if an imminent health hazard may exist because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, misuse of poisonous or toxic materials, onset of an apparent food borne illness outbreak, gross unsanitary occurrence or condition, or other circumstance that may endanger public health. An operator need not discontinue operations in an area of an establishment that is unaffected by the imminent health hazard.

(E) *Resuming operation.* If a bed and breakfast establishment and/or food establishment has discontinued operations for the reasons stated above or otherwise according to law, the operator must obtain approval from the County Health Department before resuming operations.

(F) *Outstanding fees.* Any outstanding fees may be a condition upon which a permit may not be issued.

(G) *Enforcement options.*

(1) Violation of this chapter shall be a Class C infraction and shall be enforced in the name of the municipal corporation by their attorney or the County Prosecuting Attorney under I.C. 34-28-5-1 *et seq.* or the Schedule of Civil Penalties under 410 I.A.C. 7-23.

(2) The County Health Officer may issue an "Order To Abate" based upon a condition that may transmit, generate or promote disease.

(3) In the event the order is not complied with the County Attorney or the attorney for the County Board of Health may institute an action for abatement pursuant to I.C. 16-20-1-25 *et seq.* (Ord. 2007-16, passed 11-9-2007)

§ 113.06 APPEALS; HEARING.

(A) Any person(s) aggrieved by orders issued under the enforcement options in § 113.05(G)(1) through (3) above shall be entitled to a review of the final order before a Hearing Officer by filing a written request therefor with the Health Officer. The written request must be mailed or hand delivered to the County Health Officer, and must be received within 15 days after the final order is issued.

(B) Upon the Health Officer receipt of the request, the Hearing Officer shall hear the matter again in an open hearing after at least five days written notice of the time, place and nature thereof. The time shall be measured pursuant to the rules of court of the jurisdiction.

(C) The notice of the hearing shall be served upon the person requesting the review by hand delivering or mailing by certified mail the notice to the address listed on the permit application as the person's mailing address or other address, as the person shall designate in the letter of request to the Health Officer.

(D) The Hearing Officer establishes the rules of procedure and advises the parties prior to the start of the proceedings.

(E) The Hearing Officer shall make written findings of facts and shall enter its final order or determination of this matter in writing.

(F) The order completes the administrative appeals procedure.
(Ord. 2007-16, passed 11-9-2007)

CHAPTER 114: SEXUALLY ORIENTED BUSINESSES

Section

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§ 114.01 PURPOSE AND FINDINGS.*(A) Purpose.*

(1) The purpose of this chapter is to regulate sexually oriented businesses in order to promote the health, safety and general welfare of the citizens of the county, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within unincorporated areas of the county.

(2) The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of or reasonable access to any communicative materials, including sexually oriented materials.

(3) Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the United States Constitution or Article I, § 9, of the Indiana Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

(4) Adoption of this chapter will allow the county to obtain the identity of persons licensed and to be licensed for the operation of sexually oriented businesses to ensure proper identification of those persons responsible for the operation of the businesses so as to assist in the proper enforcement of this chapter.

(5) It is an important public purpose to protect children and the family environment from the deleterious and harmful secondary effects of sexually oriented businesses.

(6) It is not the purpose of this chapter to establish community standards on obscenity nor to permit persons to engage in any activity which is in violation of law, including but not limited to, state laws pertaining to the advertising, promotion, distribution or sale of obscene matter or matters portraying a sexual performance by a minor, or state laws pertaining to the use of a minor in a sexual performance or promotion of sexual performance by a minor, or the use of a minor to distribute material portraying sexual performance by a minor.

(7) Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(B) Findings. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of Commissioners, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, LLC*, 124 S.Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1993); *California v. LaRue*, 409 U.S. 109 (1972); and *Schultz v. City of Cumberland*, 26 F.Supp.2d

1128 (W.D. Wise. 1998), *aff'd in part, rev'd in part*, 228 F.3d 831 (7th Cir. 2000); *Blue Canary Corp. v. City of Milwaukee*, 270 F.3d 1156 (7th Cir. 2001); *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *Berg v. Health & Hospital Corp.*, 865 F.2d 797 (1989); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (1999); *Graff v. City of Chicago*, 9 F.3d 1309 (1993); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (1996); *Chulchian v. City of Indianapolis*, 633 F.2d 27 (7th Cir. 1980); *Bigg Wolf Discount Video v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *County of Cook v. Renaissance Arcade and Bookstore*, 122 Ill. 2d 123 (1988) (including cases cited therein); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *People ex rel Deters v. Effingham Retail 27, Inc.*, No. 04-CH-26 (4th Judicial Circuit, Effingham County, Ill, June 13, 2005); *Annex Books, Inc. v. City of Indianapolis*, No. 1:03-CV-918, Summary Judgment Order, Aug. 27, 2004 and Order Denying Motion to Alter or Amend, Mar. 31, 2005 (S.D. Ind.); *Andy's Lounge et al v. City of Gary*, No. 2:01-CV-327, Order Granting Summary Judgment, Mar. 31, 2005 (N.D. Ind.); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; Kennedale, Texas - 2005; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the Board of Commissioners finds:

(1) Sexually oriented businesses should be regulated and should be segregated from one another and from religious institutions, schools, boys' clubs, girls' clubs, parks, residences and residential neighborhoods to protect the public health, welfare and safety because sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects, including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter and sexual assault and exploitation; and

(2) Each of the foregoing negative secondary effects constitutes a harm which the county has a substantial governmental interest in abating and/or preventing in the future, and this substantial government interest exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses.

(Ord. 2012-1, passed 2-21-2012)

§ 114.02 DEFINITIONS.

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

ADULT ARCADE. A commercial establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors or similar machines or other image producing machines, for viewing by five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, digital video disks (e.g. DVDs), slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE or ADULT VIDEO STORE. A commercial establishment which has a significant or substantial portion (25 % or more) of its stock-in-trade or interior business space allocated to, or derives 25 % or more of its revenues from the sale or rental for any form of consideration of, any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, digital video disks (e.g. DVDs), slides or other visual representations which are characterized by the depiction or display of specified sexual activities or specified anatomical areas.

ADULT CABARET. A nightclub, bar, restaurant, bottle club or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

- (1) Persons who appear semi-nude or in a state of semi-nudity; or
- (2) Live performances which are characterized by the exposure of specified anatomical areas or by pictures, video cassettes, digital video disks (e.g. DVDs), slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

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

- (1) Offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, digital video disks (e.g. DVDs), slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; and
- (2) Offers a sleeping room for rent for a period of time less than ten hours; or
- (3) Allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten hours.

ADULT MOTION PICTURE THEATER. A commercial establishment where films, motion pictures, video cassettes, digital video disks (e.g. DVDs), slides or similar photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

ADULT THEATER. A theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of semi-nudity or live performances which are characterized by exposure of specified anatomical areas or by specified sexual activities.

CHARACTERIZED BY. This term means the essential character or quality of an item. As applied in this chapter, no business shall be classified as a sexually oriented business by virtue of showing, selling or renting materials rated NC-17 or R by the Motion Picture Association of America.

COMMERCIAL SEXUAL ENTERTAINMENT CENTER. Any commercial establishment not otherwise described herein which as one of its principal uses regularly offers matter, services or entertainment appealing to adult sexual interests if the establishment or its entertainment, services or goods are advertised by or on behalf of the establishment in a manner patently designed to appeal to the adult sexual interests.

EMPLOYEE. Any person hired by or suffered or permitted to work in a sexually oriented business establishment whether that person receives remuneration or compensation directly from the operator or owner of the establishment, from patrons of the establishment or from any other source whether by contract of employment or otherwise, for work or services performed for the benefit of the sexually oriented business establishment. **EMPLOYEE** does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods, such as foods, to the premises.

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

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

ESTABLISH or ESTABLISHMENT. Includes any of the following:

- (1) The opening or commencement of any type of sexually oriented business as a new business after the adoption of this chapter;
- (2) The conversion of an existing business, if not a sexually oriented business, to any of the sexually oriented businesses defined in this chapter;
- (3) The addition of any of the sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

KNOWINGLY. A person engages in conduct **KNOWINGLY** if, when he or she engages in the conduct, he or she is aware of a high probability that he or she is doing so.

LICENSEE. A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license.

MASSAGE PARLOR. Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with specified sexual activities, or where any person providing this treatment, manipulation or service related thereto, exposes his or her specified anatomical areas. The definition of sexually oriented businesses shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor, osteopath or certified massage therapist, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor, osteopath or certified massage therapist, nor by trainers or any amateur, semi-professional or professional athlete or athletic team or school athletic program.

NUDITY or STATE OF NUDITY. Any of the following: the showing of the human male or female genitals, pubic area, anus or anal cleft with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

OPERATE or CAUSE TO OPERATE. To cause to function, or to put or keep in a state of doing business.

OPERATOR. Any person on the premises of a sexually oriented business who operates or manages the business or exercises overall control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner or licensee of the business.

PERMITTED OR LICENSED PREMISES. Any premise that requires a license or permit and that is classified as a sexually oriented business.

PERMITTEE. Synonymous with **LICENSEE**.

PERSON. An individual, proprietorship, partnership, corporation, association or other legal entity.

PRINCIPAL USE. A substantial or significant use, but not necessarily a majority of the business activity or stock in trade. The fact that a business may have one or more other **PRINCIPAL USES** unrelated to sexually oriented business shall not relieve the business from the provisions of this chapter applicable to sexually oriented business establishments. **PRINCIPAL USE** shall exist in the following circumstances:

(1) Where a business establishment dedicates, or permits the use of at least 25 % of the utilized square footage of its premises for sexually oriented business activity or activities; or

(2) Where at least 25% of the gross receipts of a business establishment, excluding food and beverage receipts, result from sexually oriented business activity or activities.

PUBLIC BUILDING. Any building owned, leased or held by the United States, the state, the county, a city, town, township, any special district, school district or any other agency or political subdivision of the state or the United States, which building is used for government purposes.

PUBLIC PARK or RECREATION AREA. Public land which has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian or bicycle paths, open space, wilderness areas or similar public land within the county which is under the control, operation or management of the United States, the state, the county, a city, town, township, any special district, school district or any other agency or political subdivision of the state or the United States.

RECKLESSLY. A person engages in conduct **RECKLESSLY** if he or she engages in the conduct in plain, conscious and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct.

REGULARLY. As used in the phrases herein such as **REGULARLY FEATURES** and **REGULARLY OFFERS**, a consistent and repeated course of conduct engaged in or permitted by the operator of the business.

RELIGIOUS INSTITUTION. Any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.

RESIDENCE. Any structure, manufactured home or mobile home used by one or more persons as a dwelling.

RESIDENTIAL DISTRICT OR USE. A single-family, duplex, townhouse, multiple-family or mobile home park or subdivision and campground as defined in the county code.

SCHOOL. Any public or private educational facility, including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities. **SCHOOL** includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.

SELF-DESIGNATED SEXUALLY ORIENTED BUSINESS CENTER. Any establishment which designates all or a portion of its premises as for adults only and has a policy of excluding minors from its premises or from a portion of its premises and which advertises so as to convey the impression that the services, entertainment, matter or goods available at the premises or at the portion of the premises designated for adults only are characterized or distinguished by displays of human genitals or sexual activities.

SEMI-NUDE. A state of dress which shows the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a dress, blouse, shirt, leotard or similar wearing apparel, provided the areola is not exposed in whole or in part.

SEMI-NUDE MODEL STUDIO. Any place where a person, who regularly appears in a state of semi-nudity, is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons.

SEX CLUB, also known as a ***SWINGERS CLUB*** (shall not be prohibited under this ordinance). An establishment which provides patrons the opportunity to voluntarily engage in and/or view live consensual sexual activity and which collects remuneration of any kind, including entrance fees, facility use fees, gratuities, fees for goods provided far in excess of their value, and/or donations.

SEXUAL DEVICE. Any three-dimensional object designed and marketed for stimulation of the male or female human genital organ or anus, or for sadomasochistic use or abuse of oneself or others, and shall include devices such as dildos, vibrators and penis pumps, and shall also include other devices with non-sex related utility, such as leather whips, straps and ligatures, when the devices are marketed in a context suggesting sexual or sadomasochistic purposes. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy. Nothing in this definition shall be construed to restrict sales by any pharmacy, drug store, medical provider or any establishment primarily dedicated to providing medical or healthcare products or services.

SEXUAL DEVICE SHOP. A commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic or any establishment primarily dedicated to providing medical or healthcare products or services.

SEXUAL ENCOUNTER ESTABLISHMENT (shall not be prohibited under this ordinance). A business or commercial establishment that, as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate or consort for the purposes of specified sexual activities. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

SEXUALLY ORIENTED BUSINESS. Any of the following businesses, as defined herein: adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort, escort agency, massage parlor, self-designated sexually oriented business center, semi-nude model studio, sex club, sexual device shop or sexual encounter establishment.

SPECIFIED ANATOMICAL AREAS. Includes any of the following:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES. Masturbation, intercourse, oral copulation or sodomy, or excretory functions as a part of or in connection with any of these activities.

SUBSTANTIAL ENLARGEMENT OF SEXUALLY ORIENTED BUSINESS. Increase in the floor areas occupied by the business by more than 15%, as the floor areas exist on February 21, 2012.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS. Includes any of the following:

- (1) The sale, lease or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- (3) The establishment of a trust, gift or other similar legal device which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.
(Ord. 2012-1, passed 2-21-2012)

§ 114.03 LOCATION RESTRICTIONS.

No person shall cause or permit the establishment of any sexually oriented business in the unincorporated areas of the county, as defined above, within 2,640 feet of another sexually oriented business or within 2,640 feet of any religious institution, school, boys' club, girls' club, public park or within 1,000 feet of any residence or property zoned for residential use.
(Ord. 2012-1, passed 2-21-2012)

§ 114.04 MEASUREMENT OF DISTANCE.

As regarding § 114.03 above, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any sexually oriented business and any religious institution, school, boys' club, girls' club, public park or any residence or property zoned for residential use, shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where the sexually oriented business is conducted, to the nearest property line of the premises of a religious institution, school, boys' club, girls' club, public park or any residence or property zoned for residential use.
(Ord. 2012-1, passed 2-21-2012)

§ 114.05 EXEMPTIONS AND DEFENSES.

It is a defense to an action for any violation under this chapter if the person appearing in a state of nudity did so for a modeling class operated:

(A) By a proprietary school licensed by the state; a college, junior college or university supported entirely or partly by taxation;

(B) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

(C) In a structure:

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

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

(3) Where no more than one nude model is on the premises at any one time.

(D) It is a defense to prosecution for a violation of this chapter that an employee of a sexually oriented business, regardless of whether or not it is permitted under this chapter, exposed any specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.
(Ord. 2012-1, passed 2-21-2012)

§ 114.06 EXISTING BUSINESSES; GRANDFATHER PROVISIONS.

(A) (1) *Generally.* A sexually oriented business, existing and operating lawfully in all respects prior to February 21, 2012, that is in a location that does not comply with § 114.03 above, may continue to operate for one year following February 21, 2012 in order to make a reasonable recoupment of its investment in its current location. At the conclusion of the one year, the sexually oriented business will no longer be allowed to operate at any location that does not comply with § 114.03 above. The sexually oriented business may seek one or more six-month extension(s) of the original one-year period upon a showing of financial hardship. An application for an initial extension based upon financial hardship shall be made at least 60 days before the conclusion of the aforementioned one-year period. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least 60 days before the conclusion of the sexually oriented business's then-current extension period.

(2) *Procedure for seeking hardship extension.* An application for a hardship extension shall be filed in writing with the Board of Commissioners, and shall include evidence of purchase and improvement costs, income earned and lost, depreciation and costs of relocation and evidence of compliance with the county ordinances applicable to the business. The Board of Commissioners shall schedule the matter for a public hearing at the next regularly scheduled Board of Commissioners meeting. The Board shall issue a written decision within ten days after the public hearing on the application for a hardship extension.

(B) (1) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of a sexually oriented business permit or license, of a religious institution, school, boy's club, girl's club, or public park within 2,640 feet or residential district or residence within 1,000 feet of the sexually oriented business.

(2) This provision applies only to the renewal of a valid permit or license and does not apply when an application for a permit or license is submitted after a permit or license has expired or has been revoked.

(C) A sexually oriented business existing and operating lawfully in all respects prior to February 21, 2012 shall apply for the permit provided for by § 114.07 below within 30 days of the effective date of this chapter.

(Ord. 2012-1, passed 2-21-2012)

§ 114.07 APPLICATION PROCEDURE.

(A) No person shall maintain, operate, conduct or cause to be conducted, any sexually oriented business within the limits of the county without first obtaining a permit under this section.

(B) An applicant for a sexually oriented business permit shall file with the Plan Commission Director of the county a completed application made on a form prescribed and provided by the Plan Commission Director of the county. An application shall be considered complete if it includes the information required in this section. The applicant shall be qualified according to the provisions of this chapter. The application is complete when it includes the information and items required in divisions (B)(1) and (2) below:

(1) An application for permit must contain the following information:

(a) The full true name of the applicant, and any other names or aliases used in the preceding five years;

(b) The applicant's current business or mailing address;

(c) Proof that the applicant is at least 18 years of age, consisting of either:

1. A copy of the applicant's birth certificate and current photo;
2. A copy of the applicant's driver's license with picture; or
3. Another picture identification document issued by a government agency.

(d) The name of the business, the business location and legal description of the property, a description of the type of sexually oriented business;

(e) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches;

(f) A signed statement stating the following:

1. That the business is authorized by the state to conduct business within the state;
2. That the site being applied for meets the requirements of § 114.03 above; and
3. The name and address of the statutory agent or other agent authorized to receive service of process.

(g) If a person wishing to operate a sexually oriented business is an individual, he or she shall sign the application for a permit as applicant. If an entity (partnership, corporation, limited liability company and the like) or group of individuals seeks to obtain a permit, each individual with 30% or greater ownership interest must sign as an applicant under oath and provide the information required in this section.

(2) The applicant shall be required to pay a non-refundable application fee as set forth in § 114.25 below.

(C) The information provided by an applicant in connection with the application for a permit under this chapter shall be maintained by the county on a confidential basis, and may be disclosed only:

(1) To other governmental agencies in connection with a bona fide law enforcement or public safety function; or

(2) As may otherwise be required by law or a court order.

(D) Applicants for a permit under this section shall have a continuing duty to promptly supplement application information required by this section in the event that the information changes in any way from what is stated on the application. The failure to comply with this continuing duty within 30 days from the date of the change by supplementing the application on file with the Plan Commission Director of the county, shall be grounds for suspension of a permit.

(E) In the event that the Plan Commission Director of the county or his or her designee determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, the Plan Commission Director shall promptly notify the applicant of that fact and allow the applicant ten days to properly complete the application. The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.

(Ord. 2012-1, passed 2-21-2012)

§ 114.08 INVESTIGATION.

(A) Upon receipt of an application properly filed with the county and upon payment of the non-refundable application fee, the Plan Commission Director or his or her designee shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to the county agencies responsible for enforcement of this chapter. Each department or agency shall promptly conduct an investigation of the applicant, application and the proposed sexually oriented business in accordance with its responsibilities under law and as set forth in this chapter. The investigation shall be completed within 20 days of receipt of the application by the Plan Commission Director or his or her designee. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it and, in the event it disapproves, state the reasons therefore.

(B) After its indication of approval or disapproval, each department or agency shall immediately return the photocopy of the application to the Plan Commission Director or the county or his or her designee.

(Ord. 2012-1, passed 2-21-2012)

§ 114.09 ISSUANCE OR DENIAL.

(A) Within 30 days after the receipt of a completed application, the Plan Commission Director shall either issue a permit or issue a written denial of a permit to the applicant.

(B) The Plan Commission Director shall approve the application and grant a sexually oriented business unless one or more of the following is true:

- (1) An applicant is less than 18 years of age;
- (2) An applicant has failed to provide information required by § 114.08, or has provided false information on the application;
- (3) The premises to be used for the sexually oriented business are not in compliance with the locational requirements of § 114.03;
- (4) The applicant failed to pay the non-refundable permit application fee; and/or
- (5) The applicant has a permit under this chapter that has been revoked within the previous year.

(C) The granting of a permit to a permittee for a sexually oriented business shall be for one year and is nontransferable to any other person other than the applicant(s) listed on the application and is valid only for the location listed on the application.

(Ord. 2012-1, passed 2-21-2012)

SPECIFIC PROVISIONS**§ 114.25 FEES.**

The application fee for a sexually oriented business permit shall be \$100.
(Ord. 2012-1, passed 2-21-2012)

§ 114.26 INSPECTION OF PREMISES.

Sexually oriented business permittees and their employees shall permit officers or agents of the county to inspect, from time to time on an occasional basis, the portions of the sexually oriented businesses premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the sexually oriented business is occupied

by patrons or is open for business. This section shall be narrowly construed by the county to authorize reasonable inspections of the permitted premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

(Ord. 2012-1, passed 2-21-2012)

§ 114.27 PERMIT EXPIRATION.

(A) Each permit shall expire one year from the date of issuance and may be renewed only by making application as provided in § 114.07; for renewals, filing of the original survey, if applicable, shall be sufficient.

(B) Application for renewal shall be made not more than 120 days and not less than 90 days before the expiration date, and when made less than 90 days before the expiration date, the expiration of the permit will not be affected.

(Ord. 2012-1, passed 2-21-2012)

§ 114.28 SUSPENSION.

(A) The county shall issue a written notice of intent to suspend a permit for a period not to exceed 30 days if a permittee has knowingly violated any section of this chapter or has knowingly allowed an employee of the sexually oriented business to violate this chapter.

(B) The issuance of a written notice of intent to suspend shall not be a prerequisite to issuance of a written notice of intent to revoke a permit per § 114.29 below.

(Ord. 2012-1, passed 2-21-2012)

§ 114.29 REVOCATION.

(A) The Board of Commissioners of the county or its designee shall issue written notice of intent to revoke a permit if a cause of suspension in § 114.28 occurs and the permit has been suspended for any reason within the preceding 12 months.

(B) The Board of Commissioners of the county or their designee shall issue written notice to revoke a permit if:

- (1) A permittee gave false information in the material submitted during the application process;
- (2) A permittee has knowingly or recklessly allowed possession, use or sale of controlled substances in or on the premises;
- (3) A permittee has knowingly or recklessly allowed prostitution on the premises;

(4) A permittee has knowingly or recklessly operated the sexually oriented business during a period of time when the permittee's permit was suspended; or

(5) A permittee has knowingly or recklessly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or any other specified sexual activities to occur in or on the permitted premises.

(C) When the county revokes a permit, the revocation shall continue for one year and the permittee shall not be issued a sexually oriented business permit for one year from the date revocation became effective.

(Ord. 2012-1, passed 2-21-2012)

§ 114.30 ADMINISTRATIVE AND JUDICIAL REVIEW.

(A) If facts exist for denial, suspension or revocation of a permit under this chapter, the Plan Commission Director shall notify the applicant or permittee (respondent) in writing of the intent to deny, suspend or revoke the permit, including the grounds therefore, by personal delivery or by certified mail. The notification shall be directed to the most current business address on file with the Plan Commission Director. Within five working days of receipt of the notice, the respondent may provide to the Plan Commission Director, in writing, a response that shall include a statement of reasons why the permit should not be denied, suspended or revoked. Within three days of the receipt of respondent's written response, the Board of Commissioners shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding.

(1) Within ten working days of the receipt of respondent's written response, the Board of Commissioners shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. The Board of Commissioners shall issue a written opinion and decision within five days of the hearing. If a response is not received by the Board of Commissioners in the time provided or, if after a hearing, the Board of Commissioners finds that grounds as specified in this chapter exist for denial, suspension or revocation, then the denial, suspension or revocation shall become final five days after the Board of Commissioners sends, by certified mail, written notice that the permit has been denied, suspended or revoked. The notice shall include a statement advising the applicant or permittee of the right to appeal the decision to a court of competent jurisdiction.

(2) If the Board of Commissioners finds that no grounds exist for denial, suspension or revocation of a permit, then within five days after the hearing, the Board of Commissioners shall withdraw the intent to deny, suspend or revoke the permit, and shall so notify the respondent in writing by certified mail of the action and, in the case of an application for a permit, shall contemporaneously issue the permit.

(B) When a decision to deny, suspend or revoke a permit becomes final, the applicant or permittee (aggrieved party) whose application for a permit has been denied, or whose permit has been suspended or revoked, shall have the right to appeal the action to a court of competent jurisdiction. The following shall apply to businesses that have previously obtained a license under this chapter: upon the filing of any court action to appeal, challenge, restrain or otherwise enjoin the county's enforcement of the denial, suspension or revocation, the county shall immediately issue the aggrieved party a provisional permit. The provisional permit shall allow the aggrieved party to continue operation of the sexually oriented business, and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain or otherwise enjoin the county's enforcement.
(Ord. 2012-1, passed 2-21-2012)

§ 114.31 PERMIT TRANSFER RESTRICTED.

A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.
(Ord. 2012-1, passed 2-21-2012)

§ 114.32 MINORS ON PREMISES PROHIBITED.

A person is in violation of this chapter if he or she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for that business under this chapter, and knowingly or with reasonable cause to know, permits, suffers or allows:

- (A) Admittance of a person under 18 years of age to the business premises;
- (B) A person under 18 years of age to remain at the business premises;
- (C) A person under 18 years of age to purchase goods or services at the business premises; or
- (D) A person who is under 18 years of age to work at the business premises as an employee.

(Ord. 2012-1, passed 2-21-2012)

§ 114.33 ADVERTISING AND DISPLAY; LIGHTING.

(A) All off-street parking areas and premises entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot-candle of light on the parking surface and walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

(B) Nothing contained in this section shall relieve the operator(s) of a sexually oriented business from complying with the requirements of the county in this chapter, commonly known as the sexually oriented business ordinance, as it may be amended from time to time, or any subsequently enacted county ordinance or regulations.

(C) All signage and displays visible from the outside of sexually oriented business shall not include any photographs, silhouettes, drawings, or pictorial representations of nudity, semi-nudity, or sexual activity.

(Ord. 2012-1, passed 2-21-2012)

§ 114.34 HOURS OF OPERATION.

(A) It shall be unlawful and a person is in violation of this chapter if he or she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for that business under this chapter, between the hours of 11:00 p.m. and 7:00 a.m. of any particular day.

(B) This section shall not apply to prohibit the operation of businesses licensed by the State Alcoholic Beverage Commissioner during the lawful hours of operation as provided by the State Alcoholic Beverage Commission.

(Ord. 2012-1, passed 2-21-2012)

§ 114.35 PUBLIC NUDITY PROHIBITED.

(A) The U.S. Supreme Court decision in *Barnes v. Glen Theatre, Inc.* 501 U.S., Ill 560 - (1991), which upheld the rights of local governments to prohibit live public exposure of a person's private parts, specifically applies to sexually oriented businesses, regardless of whether or not a permit has been issued to those businesses under this chapter, including those businesses where no alcoholic beverages are sold, served or consumed at the premises.

(B) Public nudity is prohibited within the county, including any sexually oriented business. Any sexually oriented business which is found in violation of this section shall have its permit suspended pursuant to the provisions of § 114.28.

(Ord. 2012-1, passed 2-21-2012)

§ 114.36 CONDUCT REGULATIONS FOR A STRIP CLUB.

(A) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.

(B) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet from all patrons and on a stage at least 18 inches from the floor in a room of at least 600 square feet.

(C) No employee who regularly appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(D) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(E) No person shall knowingly or recklessly allow a person under the age of 18 years to be or remain on the premises of a sexually oriented business.

(F) No operator or licensee of a sexually oriented business shall knowingly violate the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.

(Ord. 2012-1, passed 2-21-2012)

§ 114.37 OPERATING WITHOUT VALID PERMIT PROHIBITED.

A person is in violation of this chapter if he or she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for that business under this chapter, and that person knows or should know that:

(A) The business does not have a sexually oriented business permit under this chapter for any applicable classification;

(B) The business has a permit which is under suspension;

(C) The business has a permit which has been revoked; or

(D) The business has a permit which has expired.

(Ord. 2012-1, passed 2-21-2012)

§ 114.38 CULPABLE MENTAL STATE REQUIRED TO ESTABLISH LIABILITY.

Where any provision or offense herein fails to state a necessary level of culpability to establish a violation or liability, the offense shall be established upon a showing that the person acted knowingly or recklessly with regard to the predicate act. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee shall be imputed to the sexually oriented business permittee for

the purpose of establishing a violation of this chapter, or for purposes of license denial, suspension or revocation only if a permittee allowed, either knowingly or recklessly, a violation of this chapter to occur. It shall be a defense to liability that the sexually oriented business permittee was powerless to prevent the violation.

(Ord. 2012-1, passed 2-21-2012)

§ 114.39 INJUNCTION.

A person who operates or causes to be operated a sexually oriented business in violation of this chapter, is subject to a suit for injunction. If any injunction must be sought, attorney's fees and costs will be assessed at the discretion of the court against the violator.

(Ord. 2012-1, passed 2-21-2012)