

## **TITLE XI: BUSINESS REGULATIONS**

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**CHAPTER 110: LICENSING**

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**§ 110.01 DEFINITIONS.**

For the purpose of Chapters 110 through 112, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***BUSINESS.*** Includes all activities engaged in within this town carried on including the exchange of goods and services for the purpose of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in the term business unless otherwise specifically provided.

***EACH SEPARATE PLACE OF BUSINESS.*** Each separate establishment or place of operation, whether or not operating under the same name, within the town, including a home or other place of lodging if the same is held out by advertisements, listings or otherwise as the establishment or place of operation of a person engaging in the business of selling tangible, personal property at either retail or wholesale, or both, in the town.

***EMPLOYEE.*** The operator, owner or manager of a place of business and any persons employed by such person in the operation of said place of business in any capacity and also any salesperson, agent or independent contractor engaged in the operation of the place of business in any capacity.

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**ENGAGING IN BUSINESS.** Includes, but is not limited to, the sale of tangible personal property at retail or wholesale, the manufacturing of goods or property and the rendering of personal services for others for a consideration by persons engaged in any profession, trade, craft, business, occupation or other calling, except the rendering of personal services by an employee to his or her employer under any contract of personal employment.

**PLACE OF BUSINESS.** Each separate location maintained or operated by the licenses within this town from which business activity is conducted or transacted.

**WHOLESALE.** A sale of tangible personal property by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale, and does not include a sale by wholesalers or retailers to users or consumers not for resale, except as otherwise specified.

**WHOLESALER.** A person doing a regularly organized wholesale jobbing business and selling to retail merchants, jobbers, dealers or other wholesalers, for the purpose of resale.  
(Prior Code, § 9-111)

**§ 110.02 BUSINESS LICENSE REQUIRED.**

It shall be a Class B misdemeanor for any person to transact, engage in or carry on any business, trade, profession, calling or to operate a vending, pinball or coin-operated machine without first receiving the class or type of license required by the town.  
(Prior Code, § 9-112) Penalty, see § 10.99

**§ 110.03 LICENSE ASSESSOR AND COLLECTION.**

The Recorder is designated and appointed as ex officio Assessor of license fees for this town. On receipt of any application of a license, the Recorder shall assess the amount due thereon and shall collect all license fees based upon the rate established by ordinance. He or she shall enforce all provisions of this chapter, and shall cause to be filed complaints against all persons violating any of the provisions of this chapter.  
(Prior Code, § 9-113)

**§ 110.04 PAYMENTS DATES.**

All license fees shall be due and payable as follows, except as may be otherwise provided in the applicable ordinance.

(A) Annual fees shall be payable before each calendar year in advance. The annual license shall date from January 1 of each year and shall expire on December 31 of each year.

(B) Annual fees shall be due on the first day of each calendar year and shall become delinquent if not paid by February 1 each year.

(C) One-half of annual fee shall be payable for all licenses issued by the town pursuant to applications made after July 1 of each year and licenses issued after July 1 shall expire on the following January 1. Payment shall be due upon the date of application approval.

(Prior Code, § 9-114)

**§ 110.05 LATE PAYMENT.**

If any license fee is not paid within 30 days of the due date, a penalty of 10% of the amount of such license fee shall be added to the original amount thereof. No license shall be issued until all penalties legally assessed have been paid in full.

(Prior Code, § 9-115)

**§ 110.06 APPLICATIONS FOR LICENSE.**

(A) All applications for license shall include:

(1) The name of the person desiring a license;

(2) The kind of license desired, stating the business, calling, trade or profession to be performed, practiced or carried on;

(3) The class of license desired, if such licenses are divided into classes;

(4) The place where such business, calling, trade or profession is to be carried on, giving the street number if the business calling, trade or profession is to be carried on in any building or enclosure having such number; and

(5) The period of time for which such license is desired to be issued.

(B) In the event that the license application relates to a coin-operated machine or device, the application shall identify the machine or device to which it applies and the location thereof.

(Prior Code, § 9-116)

**§ 110.07 CERTIFICATE.**

All certificates of licenses shall be signed by the Mayor, attested by the Recorder, and shall contain the following information:

(A) The name of the person to whom such certificate has been issued;

(B) The amount paid;

(C) The type of license and the class of such license if licenses are divided into classes;

(D) The term of the license with the commencing date and the date of its expiration; and

(E) The place where such business, calling, trade or profession is to be conducted.  
(Prior Code, § 9-117)

#### **§ 110.08 DISPLAY.**

(A) Every certificate of license issued under this title shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the place of business so that the same may be easily seen. When such certificate of license has expired, it shall be removed by the licensee from such place in which it has been posted, and no certificate of license which is not in force and effect shall be permitted to remain posted upon the wall or any part of any room within the place of business. If the licensee's business is such that a license cannot be displayed due to the transient or mobile nature of the business, then the licensee shall carry the license on his or her person ready to be shown on request by an authorized officer during all such time or times while the licensee is engaged in or pursuing the business for which a license is granted.

(B) In the event the license is for a coin-operated machine or device, the certificate shall be attached or displayed in the immediate vicinity of the machine for which it has been issued.  
(Prior Code, § 9-118)

#### **§ 110.09 TRANSFER OF LICENSE PROHIBITED.**

No license granted or issued under any ordinance of this town shall be assigned or transferred to any other person. It shall not be deemed to authorize any person other than therein named to do business or to authorize any other business, calling, trade or profession than is therein named unless by permission of the Town Council.  
(Prior Code, § 9-119)

#### **§ 110.10 REVOCATION OR DENIAL OF BUSINESS LICENSE.**

(A) Any license issued pursuant to the provisions of this code or of any ordinance of this town may be revoked and any application denied by the Town Council because of:

(1) The failure of the licensee or applicant to comply with conditions and requirements of this code or any ordinance of the town; or

(2) Unlawful activities conducted or permitted on the premises where the business is conducted.

(B) Prior to the revocation of a license or denial of an application to renew business license, the licensee or applicant shall be given a notice, which shall state in substance that the Town Council intends to revoke the business license or deny the application to renew, together with the reason or reasons therefor, at a regular or special meeting of the Town Council (which shall be at least ten days and not more than 30 days from the date notice is sent) and that the licensee or applicant has a right to appear, to be represented by counsel, to hear the evidence against him or her, to cross-examine

witnesses and to present evidence as to why the license should not be revoked or the application denied.

(C) Division (B) above shall not apply to applications for licenses for businesses which have not previously been licensed by the town, and such applicants need only be informed that their application has been denied.

(Prior Code, § 9-120)

## **§ 110.12 BRANCH ESTABLISHMENTS.**

A separate license must be obtained for each separate place of business in the town and each license shall authorize the licensee to engage only in the business licensed thereby at the location or in the manner designated in such license; provided, that warehouses and distributing places used in connection with or incident to a business licensed under this chapter shall not be deemed to be separate places of business or branch establishments.

(Prior Code, § 9-121)

## **§ 110.13 JOINT LICENSE.**

Whenever a person is engaged in two or more businesses at the same location within the town, such person shall not be required to obtain separate licenses for conducting each of such businesses, but shall be issued one license which shall specify on its face all such businesses. The license tax to be paid shall be computed at the highest license fee applicable to any of the businesses being conducted at such location. The sale of beer or any other product or service requiring an additional license shall be subject to such additional licensing requirement. Where two or more persons conduct separate businesses at the same location, each such person shall obtain a license for such business and pay the required license tax for such business.

(Prior Code, § 9-122)

## **§ 110.14 RECIPROCAL RECOGNITION OF LICENSES.**

(A) No license shall be required for operation of any vehicle or equipment in this town when:

- (1) Such vehicle is merely passing through the town; or
- (2) Such vehicle is used exclusively in inter-city or inter-state commerce.

(B) No license shall be required by § 110.19 of any person whose only business activity in this municipality is the mere delivery in the town of property sold by him or her at a regular place of business maintained by him or her outside the town where:

(1) Such person's business is at the time of such delivery licensed by the state, municipality or county in which such place of business is situated;

(2) The authority licensing such business grants to licensees of this town making deliveries within its jurisdiction the same privileges, upon substantially the same terms, as are granted by this

section;

(3) Neither the property delivered nor any of the facilities by which it was manufactured, produced or processed are subject to inspection by authority of this town for compliance with health or sanitary standards prescribed by this town; and

(4) The truck or other conveyance by which such delivery is made prominently displays at all times a license plate or symbol used by the said licensing authority to evidence such business license. Such plate or symbol shall identify the licensing authority by which it is issued, shall indicate that it evidences a license issued thereby and shall specify the year or term for which it is effective.

(C) The Recorder shall at the request of any person certify a copy of this section to any municipality or county of the state to which a copy has not previously been certified.  
(Prior Code, § 9-123)

#### **§ 110.15 EXEMPTIONS TO LICENSE.**

(A) No license fee shall be imposed under § 110.19 on any person engaged in business for solely religious, charitable, eleemosynary or any other types of strictly non-profit purpose which is tax exempt in such activities under the laws of the United States and the state, nor shall any license fee be imposed on any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the state; nor shall any license fee be imposed upon any person not maintaining a place of business within this town who has paid a like or similar license tax or fee to some other taxing unit within the state and which taxing unit exempts from its license tax or fee, by reciprocal agreement or otherwise, businesses domiciled in this town and doing business in such taxing unit.

(B) The License Assessor and Collector may, with approval of the Town Council, enter into reciprocal agreements with the proper officials of other taxing units, as may be deemed equitable and proper in effecting the exemption provided for in division (A) above.  
(Prior Code, § 9-124)

#### **§ 110.16 FEE NOT TO CONSTITUTE UNDUE BURDEN ON INTERSTATE COMMERCE.**

None of the license taxes provided for by § 110.19 shall be applied as to occasion an undue burden on interstate commerce. In any case, where license tax is believed by a licensee or applicant for license to place an undue burden upon such commerce, he or she may apply to the License Assessor and Collector for an adjustment of the tax so that it shall not be discriminatory, unreasonable or unfair as to such commerce. Such application may be made before, at or within six months after payment of the prescribed license tax. The applicant shall, by affidavit and supporting testimony show his or her method of business and the gross volume or estimated gross volume of business and such other information as the License Assessor and Collector may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The License Assessor and Collector shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of facts from which he or she shall determine whether the tax fixed by § 110.19 is discriminatory, unreasonable or unfair as to applicant's business and shall recommend to the Town



Council a license tax for the applicant in an amount that is nondiscriminatory, reasonable and fair, and if the Town Council is satisfied that such license tax is the amount that the applicant should pay, it shall fix the license tax in such amount. If the regular license tax has already been paid, the Town Council shall order a refund of the amount over and above the tax fixed by the Town Council. In fixing the fee to be charged, the License Assessor and Collector shall have the power to base the fee upon a percentage of gross sales, or employees, or may use any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature.

(Prior Code, § 9-125)

#### **§ 110.17 ELIGIBILITY FOR EXEMPTION.**

All businesses carried on or based in this town shall pay the business license fees set out in § 110.19 unless they file for the exemptions, or any of them listed in § 110.15 and prove eligibility therefore to the satisfaction of the town's governing body.

(Prior Code, § 9-126)

#### **§ 110.18 MAINTENANCE OF RECORDS.**

Any person seeking exemption from the business license fees set forth in § 110.15 shall be required to maintain at his or her place of business records of purchases, sales and other data which are kept in conformity with the generally accepted accounting principals, and which detail and disclose the gross receipts of the business. Said records shall be available for inspection at any reasonable time by the town Clerk or any other official of this municipality. Failure to maintain said records shall be grounds for denial of an exemption under § 110.15 above.

(Prior Code, § 9-127)

#### **§ 110.19 FEE LEVIED.**

There is hereby imposed and levied a tax on the business, location, trade, calling or profession on every person engaged in business within the town. Such fee shall be in accordance with the fee schedule adopted by resolution and maintained by the Town Clerk.

(Prior Code, § 9-210)



**CHAPTER 111: ALCOHOLIC BEVERAGES**

## Section

- 111.01 License to sell beer at retail
- 111.02 Definitions
- 111.03 Retail licenses
- 111.04 Beer license fees
- 111.05 License fees to accompany application
- 111.06 Purchase of beer for resale
- 111.07 Application for license

**§ 111.01 LICENSE TO SELL BEER AT RETAIL.**

(A) It shall be a Class B misdemeanor for any person to engage in the business of selling beer at retail, in bottles or draft, without first having procured a license therefor from the governing body and paid the license fee required by this chapter.

(B) It shall be a Class B misdemeanor for any person to sell beer after the revocation of the license issued pursuant to this chapter.

(C) A separate license shall be required for each place of sale and the license shall at all times be conspicuously displayed in the place to which it shall refer or for which it shall be issued. All licensees shall comply with the State Liquor Control Act and the regulations of the Liquor Control Commission. (Prior Code, § 9-411) Penalty, see § 10.99

**§ 111.02 DEFINITIONS.**

The words and phrases used in this chapter shall have the meanings specified in the State Liquor Control Act unless a different meaning is clearly evident. (Prior Code, § 9-412)

**§ 111.03 RETAIL LICENSES.**

Retail licenses issued hereunder shall be of the following four kinds and shall carry the following privileges and be known as Class A, Class B, Class C and seasonal licenses.

(A) Class A retail licenses issued hereunder shall entitle the licensee to sell beer on the premises licensed in original containers for consumption off the premises in accordance with the State Liquor

Control Act and the ordinances of this town.

(B) Class B retail licenses shall entitle the licensee to sell beer in the original containers on the premises for consumption on or off the premises in accordance with the State Liquor Control Act and the ordinances of this municipality.

(C) Class C licenses for retail shall entitle the licensee to sell draft beer for consumption on or off the premises and to sell beer in accordance with the State Liquor Control Act and the ordinances of this town.

(D) Seasonal licenses of any class may be issued for a period of time not to exceed one year which period shall be determined by the governing body.  
(Prior Code, § 9-413)

#### **§ 111.04 BEER LICENSE FEES.**

In addition to any other business license fee which any person or place of business may be required to pay, there is hereby imposed on the business location every person engaged in the sale or dispensing of beer the following annual license fees:

(A) Class A beer license, \$50;

(B) Class B beer license, \$100;

(C) Class C beer license, \$150; and

(D) Seasonal beer license, \$15 (for each 30-day period or fraction thereof).  
(Prior Code, § 9-414)

#### **§ 111.05 LICENSE FEES TO ACCOMPANY APPLICATION.**

(A) Applications provided for in this title shall be accompanied by the fees provided in this title.

(B) The fee shall be returned to the applicant if the application is denied.  
(Prior Code, § 9-415)

#### **§ 111.06 PURCHASE OF BEER FOR RESALE.**

It is a Class B misdemeanor for any licensee to purchase or acquire or to have or possess for the purpose of sale or distribution any beer, except that which he or she shall have lawfully purchased from a brewer or wholesaler licensed under the provisions of the State Liquor Control Act.  
(Prior Code, § 9-416)

#### **§ 111.07 APPLICATION FOR LICENSE.**

(A) All applications for licenses authorized by this title shall be verified and shall be filed with the Clerk. The applications must state the applicant's name in full and that he or she understands and has read and complied with the requirements and possesses the qualifications specified in the Liquor Control Act and this chapter. If the applicant is a co-partnership, the names and addresses of all partners, and if a corporation, the names and addresses of all officers and directors must be stated.

(B) Application must be subscribed by the applicant who shall state under oath that the facts therein contained are true.

(Prior Code, § 9-417)



**CHAPTER 112: CONSTRUCTION CONTRACTORS**

## Section

- 112.01 Purpose
- 112.02 Definitions
- 112.03 Doing business without registration and a license unlawful
- 112.04 Registration
- 112.05 Job license for each contract
- 112.06 Job license fee
- 112.07 Records; inspection
- 112.08 Regulations

**§ 112.01 PURPOSE.**

The purpose of this chapter is to establish a system of imposing license fees upon persons engaging in business within the limits of this town as contractors. The licenses are designed to be determined upon the basis of each contract or job being performed. It is the opinion of the governing body that this method of determining the amount of fee will result in fair taxation and will not discriminate against the contractor who performs only a few jobs within the town limits as distinguished from the contractor who performs many.

(Prior Code, § 9-431)

**§ 112.02 DEFINITIONS.**

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

**CONTRACTOR.** Any person, firm, co-partnership, corporation, association or other organization, or any combination thereof, who for a fixed sum, price, fee, percentage or other compensation other than wages, undertakes any building, highway, road, railroad, excavation or other structure, project, development or improvement, other than to personality, or any part thereof, provided, that the term **CONTRACTOR**, as used in this chapter, shall include anyone who builds more than one structure or his or her own property during any one year for the purpose of sale and shall include subcontractors, but shall not include anyone who merely furnishes material or supplies without fabricating the same into, or consuming the same in the performance of the work of the contractors as therein defined.

***TYPES OF CONTRACTORS.*** As an illustrative list of contractors subject to the provisions of this chapter, but not in limitation thereof, the following occupations are subject to this chapter: general contractors, specialty contractors of all kinds, such as, but not limited to those engaged in the business of installing, repairing or otherwise performing services in connection with: acoustical tile and roof decking; awnings, storm doors and windows; air conditioning, dry-heating, sheet metal; boilers, steamfitting; carpentry; cement and concrete; ceramic tile; cabinet and millwork; composition floor, countertops, tile; carpet; drywall; elevator installation; electrical; excavating and grading; fencing; floor coverings; fire prevention (structural); furnaces and burners; glazing; industrial piping; iron and bronze (ornamental); insulation; landscaping; lathing; lawn sprinklers; masonry; mosaic tile and terrazzo; overhead doors; painting and paper hanging; pest control (structural); plastering; plumbing and wet heating; roofing and siding; swimming pool; signs, stone masonry; sewer installation; steel reinforcing and erection; tanks (structural); waterproofing; weather stripping; welding; wrecking and demolition; wood floor laying and finishing.  
(Prior Code, § 9-432)

### **§ 112.03 DOING BUSINESS WITHOUT REGISTRATION AND A LICENSE UNLAWFUL.**

Any person desiring to engage in business as a contractor within the corporate limits of this town must comply with the two following requirements.

(A) Prior to engaging in any subject business activity during any calendar year, he or she must register for the calendar year as a contractor by completing and filing a registration form in the office of the Clerk.

(B) Prior to the performance of any services in connection with any specific contract or job, the person shall secure a license to engage in the performance of service connected with said specific job or contract from the office of the Clerk.

(Prior Code, § 9-433)

### **§ 112.04 REGISTRATION.**

Any person desiring to engage in business as a contractor shall complete and file in the office of the Clerk a registration form provided to him or her by the town which shall show:

(A) The name of the contractor;

(B) The address and telephone number of the contractor;

(C) The type of organization, e.g., corporation, partnership or sole proprietor; and

(D) If a partnership or a corporation or other artificial person, the name, address and telephone number of the person responsible for the functions of the organization:

(1) Whether or not licensed under the contractor's license law of the state; if so, the license number of the contractor;



(2) Type of business in which registrant seeks to engage, e.g., general contractor or one of the specialty contractors; and

(3) Such other information as the governing body may by regulation require.  
(Prior Code, § 9-434)

**§ 112.05 JOB LICENSE FOR EACH CONTRACT.**

(A) Any person desiring to perform services as a contractor shall, in addition to registering, as above required, secure a job license granting to him or her the privilege of performing the services required of him or her for each contract or job which he or she proposes to complete.

(B) Any person seeking said job license for a contract or job shall complete an application therefor on forms provided him or her by the town. The application shall set forth:

- (1) The name and address of the contractor;
- (2) His or her own registration number;
- (3) The number of his or her state contractor's license;
- (4) The person by whom he or she is engaged to perform services as a contractor;
- (5) The address of the person;
- (6) The location at which the contractor's services are to be performed;
- (7) The type of services that are to be performed, e.g., as a general contractor, as one of the specialty contractors;
- (8) The contract amount; and

(9) List of all sub-contractors that will be on the job and current state contractor's number.  
(Prior Code, § 9-435)

**§ 112.06 JOB LICENSE FEE.**

Every contractor, for the privilege of engaging in the business of performing the services, shall pay the amount as may be set forth from time to time.  
(Prior Code, § 9-436)

**§ 112.07 RECORDS; INSPECTION.**

All persons registered pursuant to this chapter for the privilege of doing business as contractors, and all persons who engage in doing business as contractors, shall maintain records of all services

performed by them as contractors within the corporate limits of this town. The records shall disclose the person for whom the services are performed and the contract price or charge made for the services and such other information as the governing body may, by regulation, require. The persons shall maintain such records as their office or principal place of business and shall permit officials or agents of the municipality to inspect said records for the purpose of determining whether or not said persons have complied with the requirements of this license part.

(Prior Code, § 9-437)

#### **§ 112.08 REGULATIONS.**

The governing body may adopt such regulations as, in its opinion, are necessary to implement this chapter of the objectives thereof.

(Prior Code, § 9-438)

## CHAPTER 113: SOLICITORS, CANVASSERS, PEDDLERS AND ITINERANT MERCHANTS

### Section

- 113.01 License required
- 113.02 Definitions
- 113.03 Application for license
- 113.04 Investigation and issuance of license
- 113.05 Fees
- 113.06 Licenses, badges, revocation, expiration, appeal
- 113.07 Additional requirements
- 113.08 Exception

### § 113.01 LICENSE REQUIRED.

It shall be unlawful for:

(A) A transient merchant, itinerant merchant or itinerant vendor to engage in such business without first obtaining a license therefor in compliance with the provisions of this chapter;

(B) Any person to engage in the business of peddler without first obtaining a permit and license therefor as provided in this chapter; and

(C) Any solicitor or canvasser to engage in such business without first obtaining a permit and license therefor in compliance with the provisions of this chapter.

(Prior Code, § 9-451) Penalty, see § 10.99

### § 113.02 DEFINITIONS.

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

**CANVASSER** or **SOLICITOR**. Any individual whether or not a resident of the town, traveling either by foot, wagon, motor vehicle or other type of conveyance, from place to place, from house to house or from street to street, taking or attempting to take orders for the sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, of for services to be furnished or performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject of such sale, or whether he or she is collecting advance payments on such sales, provided that such definition shall include any person who, for himself or herself, or for another

person, firm or corporation, hires, leases, uses or occupies any building, structure, tent, railroad boxcar, hotel or motel room, lodging house, apartment, shop or any other place within the town for the sole purpose of exhibiting samples and taking orders for future delivery.

**PEDDLER.** Includes any person, whether or not a resident of this town traveling by foot, wagon, motor vehicle or any other type of conveyance, from place to place, from house to house or from street to street carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck farm products or provisions, offering or exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, motor vehicle, railroad car or other vehicle or conveyance, and further provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as part of a scheme or design to evade the provisions of this chapter shall be deemed a **PEDDLER** subject to the provisions of this chapter. The word **PEDDLER** shall include the words **HAWKER** and **HUCKSTER**.

**TRANSIENT MERCHANT, ITINERANT MERCHANT or ITINERANT VENDOR.** Any person, firm or corporation, whether as owner, agent, co-signee or employee, whether or not a resident of this town, who engages in a temporary business of selling and delivering goods, wares and merchandise within this town, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar, public room in any hotel, motel, lodging house, apartment, shop or any street, alley or other place within this town, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. The person, firm or corporation so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.

(Prior Code, § 9-452)

### **§ 113.03 APPLICATION FOR LICENSE.**

(A) Applicants for permits and licenses under this chapter shall file a sworn application in writing signed by the applicant, if an individual, by all partners, if a partnership, and by the president if a corporation, or by an agent, including a state or regional agent, with the Clerk which shall give the following information:

(1) The name of the applicant, and if the applicant is an employee or agent of a corporation, the name of the corporation;

(2) The address of the applicant, and if the applicant is an agent or employee of a corporation, the address of the corporation;

(3) A brief description of the nature of the business and the goods to be sold and from whom and where the applicant obtains the goods to be sold;

(4) If the applicant is employed by or an agent of another person, the name and permanent address of such other person or persons;

(5) The length of time for which the applicant desires to engage in business within this town;

(6) The place or places within this town where the applicant proposes to carry on his or her business;

(7) A list of the other municipalities in which the applicant has engaged in business within the six-month period preceding the date of the application;

(8) A photograph of the applicant, taken within six months immediately prior to the date of filing the application, which photograph shall be two inches showing the head and shoulders of the applicant in a clear and distinguishing manner;

(9) A statement as to whether or not the applicant or any of his or her employers have been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor;

(10) If the applicant desires to sell fresh vegetables, fruits, meats or other foodstuffs, a statement by a reputable physician in the state, dated not more than ten days prior to submission of the application, certifying the applicant to be free of infectious, contagious or communicable diseases; and

(11) If the applicant is employed by another person, firm or corporation, documents showing that the person, firm or corporation for which the applicant proposes to do business is authorized to do business within the state.

(B) At the time of filing the application, a fee which shall be deposited with the Clerk, is required. Such fee shall be in accordance with the fee schedule adopted by resolution and maintained by the Town Clerk.

(Prior Code, § 9-453)

#### **§ 113.04 INVESTIGATION AND ISSUANCE OF LICENSE.**

(A) On receiving the application, the Clerk shall refer it to the Chief of Police, who shall cause such investigation of the applicant's business and moral character to be made as he or she deems reasonable and necessary for the protection of the public good.

(B) If as a result of the investigation the applicant's character or business responsibility is found to be unsatisfactory, the Chief of Police shall endorse such upon the application together with a statement of his or her reasons therefor and return the application to the Clerk who shall notify the applicant that his or her application has been disapproved and that no permit and license will be issued.

(C) If, as a result of such investigation, the character and business responsibility of the applicant is found to be satisfactory, the Chief of Police shall endorse such upon the application and return it to the Clerk, who shall, upon payment of the prescribed license fee, deliver to the applicant his or her permit and issue a license. The license shall contain the signature of the issuing officer and shall show the name, address and photograph of the licensee and the kind of goods to be sold pursuant to the application together with an expiration date.

(Prior Code, § 9-454)

**§ 113.05 FEES.**

(A) The license fee, which shall be charged by the Clerk for any license issued pursuant to this chapter, shall be in accordance with the fee schedule adopted by resolution maintained by the Town Clerk.

(B) None of the license fees provided for by this chapter shall be applied so as to engage an undue burden upon interstate commerce. In any case where a license fee is believed by the licensee or applicant for license to place an undue burden upon interstate commerce, he or she may apply to the Mayor for an adjustment of the fee so that it will not be discriminatory, unreasonable or unfair to interstate commerce. Such application may be made before, at or within six months after paying the prescribed license fee.

(Prior Code, § 9-455)

**§ 113.06 LICENSES, BADGES, REVOCATION, EXPIRATION, APPEAL.**

(A) A Clerk shall issue to each licensee at the time of delivery of his or her license a badge which shall contain the words "Licensed Solicitor," "Licensed Transient Merchant" or "Licensed Peddler," as the case may be, for which the application was made and the license issued, and the number of the license, in letters and figures easily discernible from a distance of five feet. Such badge shall, during the time the peddlers or solicitors are engaged in the business for which they are licensed, be worn constantly by them on the front of their outer garment in such a way as to be conspicuous.

(B) Any person licensed pursuant to this chapter shall exhibit his or her license at the request of any citizen of this town.

(C) It shall be the duty of any police officer of this municipality to require any person seen soliciting, canvassing or peddling, and who is not known by such officer to be duly licensed, to produce his or her license and to enforce the provisions of this chapter.

(D) Revocation of license:

(1) Permits and licenses issued pursuant to this chapter may be revoked by the Chief of Police or the Clerk, after notice and hearing, for any of the following causes:

(a) Fraud, misrepresentation or false statement contained in the application for the licensed;

(b) Fraud, misrepresentation for false statement made in the course of carrying on his or her business as solicitor or canvasser;

(c) Any violation of this chapter;

(d) Conviction of any crime or misdemeanor involving moral turpitude; or

(e) Conducting the business of soliciting, or of canvassing in an unlawful manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(2) Notice of the hearing for revocation of a license shall be given in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee at his or her last known address or at the address shown on his or her application. The hearing and notice shall in all other aspects substantially comply with § 10.19.

(E) Any person aggrieved by the action of the Chief of Police or the Clerk in the denial or a permit or a license issued pursuant to this chapter, or by the action of the Town Council of the municipality. Such appeal shall be taken by filing with the Council within 14 days after notice of the action complained of has been mailed to such person's last known address or address on the business application, a written statement setting forth fully the grounds for the appeal. The Council shall set a time and a place for the hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as above proved in division (D) above.

(F) All licenses issued pursuant to this chapter shall expire on the date specified on the license.  
(Prior Code, § 9-456)

#### **§ 113.07 ADDITIONAL REQUIREMENTS.**

This chapter shall not be construed so as to waive the provisions and requirements of any other ordinance of this municipality and the requirements and fees required herein shall be in addition to any other requirements and fees of any other ordinance of this town.  
(Prior Code, § 9-457)

#### **§ 113.08 EXCEPTIONS.**

The provisions of this chapter shall not apply to any individual who is at the time he or she is engaged in any activity which would otherwise require licensing by this chapter, engaged in an activity which is authorized by any church or charity which has a permanent structure located within the state, provided such church or charity has had such permanent for at least six months prior to the date when the individual's engaged in the activity which would otherwise require licensing by this chapter.  
(Prior Code, § 9-458)





**CHAPTER 114: JUNK DEALERS**

## Section

- 114.01 Defined
- 114.02 Fraudulent practices to affect marketplace
- 114.03 Record of sales and purchases
- 114.04 Violation; classification of offense
- 114.05 Junk dealer to obtain statement from sellers
- 114.06 Falsification or seller's statement to junk dealer

**§ 114.01 DEFINED.**

For the purpose of this chapter, **JUNK DEALER** means all persons, firms or corporations engaged in the business of purchasing or selling secondhand, or castoff material of any kind, such as old iron, copper, brass, lead, zinc, tin, steel, aluminum and other metals, metallic cables, wires, ropes, cordage, bottles, bagging, rags, rubber, paper and other like materials.  
(Prior Code, § 13-76-10-901)

**§ 114.02 FRAUDULENT PRACTICES TO AFFECT MARKETPLACE.**

Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a Class B misdemeanor.  
(Prior Code, § 13-76-10-902) Penalty, see § 10.99

**§ 114.03 RECORD OF SALES AND PURCHASES.**

Every junk dealer shall keep a book in which shall be written, in ink in the English language, at the time of each and every purchase and sale a listing of the weight and metallic description of the sale or purchase, together with the full name and residence of the person or persons selling junk, together with the date and place of the purchase and sale. No entry in the book shall be erased mutilated, or changed. The book and entries shall at all times be open to inspection by the Sheriff of the county or any of his or her Deputies and by any member of the police force of this municipality, and any constable or other state, municipal or county officials in the county, provided this chapter shall not apply to any sale of less than 20 pounds.  
(Prior Code, § 13-76-10-907) Penalty, see § 10.99

**§ 114.04 VIOLATION; CLASSIFICATION OF OFFENSE.**

Any junk dealer who shall be found guilty of a violation of any of the provisions of this chapter shall be guilty of a Class B misdemeanor; provided that this chapter shall not be construed to in any way affect any tax, license or regulation otherwise imposed on any junk dealer.  
(Prior Code, § 13-76-10-908) Penalty, see § 10.99

#### **§ 114.05 JUNK DEALER TO OBTAIN STATEMENT FROM SELLERS.**

At the time of purchase by any junk dealer of any copper wire, pig or pigs, of metal or of any junk, as defined in this chapter, he or she shall obtain a signed and dated statement from the person or persons selling it as to when, where and from whom the property was obtained and also the residence, address and place of employment of the seller or sellers. The statement shall be retained for five years by the junk dealer and shall be subject to the provisions of § 114.03 relating to erasure, mutilation or change and also to inspection.  
(Prior Code, § 13-76-10-909) Penalty, see § 10.99

#### **§ 114.06 FALSIFICATION OR SELLER'S STATEMENT TO JUNK DEALER.**

Any seller who, in the making of his or her statement as required by this chapter in selling, offering or trying to sell junk willfully makes a false statement or gives untrue information, shall be guilty of a Class B misdemeanor.  
(Prior Code, § 13-76-10-910) Penalty, see § 10.99

**CHAPTER 115: TRADEMARKS, TRADE NAMES AND DEVICES**

## Section

- 115.01 Definitions
- 115.02 Forging or counterfeiting trademark, trade name or trade device
- 115.03 Selling goods under counterfeited trademark, trade name or trade device
- 115.04 Sales in containers bearing registered trademark of substituted articles
- 115.05 Using, destroying, concealing or possessing articles with registered trademark or service mark to deprive owner of use or possession; exception
- 115.06 Selling or dealing with articles bearing registered trademark or service mark with intent to defraud
- 115.07 Use of registered trademark without consent

**§ 115.01 DEFINITIONS.**

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

***FORGED TRADEMARK, FORGED TRADE NAME, FORGED TRADE DEVICE*** and ***COUNTERFEITED TRADEMARK, COUNTERFEITED TRADE NAME, COUNTERFEITED TRADE DEVICE*** or their equivalents. Include every alteration or imitation of any trademark, trade name or trade device so resembling the original as to be likely to deceive.

***TRADEMARK*** or ***TRADE NAME*** or ***TRADE DEVICE***. Includes every trademark registrable with the Secretary of State.  
(Prior Code, § 13-76-10-1001)

**§ 115.02 FORGING OR COUNTERFEITING TRADEMARK, TRADE NAME OR TRADE DEVICE.**

Every person who willfully forges or counterfeits or procures to be forged or counterfeited any trademark, trade name or trade device, usually affixed by any person, or by any association or union of working persons, to his or her or its goods, which has been filed in the office of the Secretary of State, with intent to pass off any goods to which the forged or counterfeited trademark, trade name or trade device is affixed or intended to be affixed as the goods of the person or association or union of working persons, is guilty of a Class B misdemeanor.

(Prior Code, § 13-76-10-1002) Penalty, see § 10.99

**§ 115.03 SELLING GOODS UNDER COUNTERFEITED TRADEMARK, TRADE NAME OR**

**TRADE DEVICE.**

Every person who sells or keeps for sale any goods upon or to which any counterfeited trademark, trade name or trade device has been affixed, after it has been filed in the office of the Secretary of State, intending to represent the goods as the genuine goods of another knowing it to be counterfeited, is guilty of a Class B misdemeanor.

(Prior Code, § 13-76-10-1003) Penalty, see § 10.99

**§ 115.04 SALES IN CONTAINERS BEARING REGISTERED TRADEMARK OF SUBSTITUTED ARTICLES.**

Every person who has or uses any container or similar article bearing or having in any way connected with it the registered trademark of another for the purpose of disposing, with intent to deceive or defraud any article or substance other than that which the container of similar article originally contained or was connected with by the owner of such trademark is guilty of a Class B misdemeanor.

(Prior Code, § 13-76-10-1004) Penalty, see § 10.99

**§ 115.05 USING, DESTROYING, CONCEALING OR POSSESSING ARTICLES WITH REGISTERED TRADEMARK OR SERVICE MARK TO DEPRIVE OWNER OF USE OR POSSESSION; EXCEPTION.**

Every person who, without the consent of the owner of an article bearing the owner's validly registered trademark or service mark, uses, destroys conceals or possesses the article or who defaces or otherwise conceals the trademark or service mark upon the article with intent to deprive the owner of the use of possession of that article is guilty of a Class B misdemeanor; provided, however, that nothing contained in this chapter shall be construed to apply to or restrict the transfer or use of wooden boxes or the reuse of burlap or cotton bags or sacks when those bags or sacks have been reversed inside out or the markings thereon have been concealed or obliterated to effectively demonstrate that the products contained therein do no purport to be the products of the owner of the registered trademark or service mark theretofore put upon those bags.

(Prior Code, § 13-76-10-1005) Penalty, see § 10.99

**§ 115.06 SELLING OR DEALING WITH ARTICLES BEARING REGISTERED TRADEMARK OR SERVICE MARK WITH INTENT TO DEFRAUD.**

Every person who, without the consent of the owner of an article bearing the owner's validly registered trademark or service mark knowingly sells or traffics in the articles or who withholds the articles from the owner thereof with intent to defraud the owner thereof, is guilty of a Class B misdemeanor.

(Prior Code, § 13-76-10-1006) Penalty, see § 10.99

**§ 115.07 USE OF REGISTERED TRADEMARK WITHOUT CONSENT.**

Every person who adopts or in any way uses the registered trademark of another without the consent of the owner thereof, is guilty of a Class B misdemeanor.  
(Prior Code, § 13-76-10-1007)



**CHAPTER 116: GAMBLING**

## Section

- 116.01 Definitions
- 116.02 Gambling
- 116.03 Gambling fraud
- 116.04 Promotion
- 116.05 Possessing a gambling device or record
- 116.06 Failure of prosecuting attorney or law enforcement officer to prosecute offenses
- 116.07 Seizure and sale of devices or equipment used for gambling
- 116.08 Seizure and disposition of gambling debts or proceeds
- 116.09 Confidence game; punishment as for theft description in charge

**§ 116.01 DEFINITIONS.**

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

**GAMBLING.** Risking anything of value for a return or risking anything of value upon the outcome of a contest, game, gaming scheme or gaming device when the return or outcome is based upon an element of chance and is in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome, and gambling includes a lottery; **GAMBLING** does not include:

- (1) A lawful business transaction; or
- (2) Playing an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

**GAMBLING BET.** Money, checks credit or any other representation of value.

**GAMBLING DEVICE OR RECORD.** Anything specifically designed for use in gambling or used primarily for gambling.

**GAMBLING PROCEEDS.** Anything of value used in gambling.

**LOTTERY.** Any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining property or portion of it, or for any share or any interest in property upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle or

gift enterprise or by whatever name it may be known.  
(Prior Code, § 13-76-10-1101)

#### **§ 116.02 GAMBLING.**

(A) A person is guilty of gambling if he or she:

(1) Participates in gambling; or

(2) Knowingly permits any gambling to be played, conducted or dealt upon or in any real or personal property owned, rented or under the control of the actor whether in whole or in part.

(B) Gambling is a Class B misdemeanor.

(Prior Code, § 13-76-10-1102) Penalty, see § 10.99

#### **§ 116.03 GAMBLING FRAUD.**

(A) A person is guilty of gambling fraud if he or she participates in gambling and wins or acquires to himself or herself or another any gambling proceeds when he or she knows he or she has a lesser risk of losing or greater chance of winning than one or more of the other participants, and the risk is not known to all participants.

(B) A person convicted of gambling fraud shall be punished as in the case of theft of property of like value, provided that the penalty shall not exceed a Class B misdemeanor.

(Prior Code, § 13-76-10-1103) Penalty, see § 10.99

#### **§ 116.04 PROMOTION.**

(A) A person is guilty of gambling promotion if he or she derives or intends to derive an economic benefit other than personal winnings from gambling and:

(1) He or she induces or aids another to engage in gambling; or

(2) He or she knowingly invests in, finances, owns, controls, supervises, manages or participates in any gambling.

(B) Gambling promotion is a Class B misdemeanor.

(Prior Code, § 13-76-10-1104) Penalty, see § 10.99

#### **§ 116.05 POSSESSING A GAMBLING DEVICE OR RECORD.**

(A) A person is guilty of possessing a gambling device or record if he or she knowingly possesses it with intent to use it in gambling.

(B) Possession of gambling device or record is a Class B misdemeanor.



(Prior Code, § 13-76-10-1105) Penalty, see § 10.99

**§ 116.06 FAILURE OF PROSECUTING ATTORNEY OR LAW ENFORCEMENT OFFICER TO PROSECUTE OFFENSES.**

Any prosecuting attorney or police officer who has reasonable cause to believe that any person has violated any provision of this chapter and shall thereafter fail or refuse to diligently prosecute such persons is guilty of a Class B misdemeanor.

(Prior Code, § 13-76-10-1106) Penalty, see § 10.99

**§ 116.07 SEIZURE AND SALE OF DEVICES OR EQUIPMENT USED FOR GAMBLING.**

(A) Whenever the Justice of the Peace shall determine that any devices or equipment is used or kept for the purpose of being used for gambling, he or she may notify the governing body and/or the Chief of Police and may authorize the Chief of Police to seize such devices and to hold them for sale at the best price obtainable pending a hearing before the Justice of the Peace. After the hearing has been properly scheduled and all parties having an interest in the devices have been notified of the hearing, the Justice of the Peace may order the devices seized and declare them to be the property of this municipality. The Court may then order the devices sold for the best price obtainable. The sale shall be made to a person of good character and repute who is a bona fide resident of the state wherein it is lawful to use such equipment. The officials conducting the sale shall place the equipment on a public carrier, property co-signed to the purchaser at his or her place of residence.

(B) The proceeds of any sale shall be paid to the municipal treasury.

(C) If no sale is consummated within 90 days after authorization therefor, the devices or equipment shall be destroyed under the direction of the Justice of the Peace.

(Prior Code, § 13-76-10-1107) Penalty, see § 10.99

**§ 116.08 SEIZURE AND DISPOSITION OF GAMBLING DEBTS OR PROCEEDS.**

(A) At the commencement of any prosecution for a violation of this chapter, any gambling bets or gambling proceeds which are reasonably identifiable as having been used or obtained in violation of this chapter may be seized and they shall be held pending the disposition of the proceedings. At the conclusion of the proceedings, any person who is found guilty of a violation of this chapter shall forfeit any sums held by the court which were acquired or being used in violation of this chapter. Any sums not identifiable, or in the event the individual is found not guilty, the sums shall be returned to him or her.

(B) A commencement of prosecution shall occur upon arrest or issuance of a complaint or citation, whichever occurs first.

(C) All sums forfeited under this section shall be paid into the treasury of the municipality conducting the prosecution.

(Prior Code, § 13-76-10-1108) Penalty, see § 10.99

**§ 116.09 CONFIDENCE GAME; PUNISHMENT AS FOR THEFT DESCRIPTION IN CHARGE.**

(A) Any person who obtains or attempts to obtain from any other person any money or property by any means, instrument or device commonly called a confidence game shall be punished as in the case of theft of property of like value.

(B) In every complaint or citation under this section, it shall be deemed and held a sufficient description of the offense to charge that the accused did on \_\_ (insert the date) unlawfully and knowingly obtain or attempt to obtain (as the case may be) from \_\_\_\_\_ (insert name of the person or persons defrauded or attempted to be defrauded) his or her money or property (as the case may be) by means and by use of a confidence game.

(Prior Code, § 13-76-10-1109) Penalty, see § 10.99

## CHAPTER 117: SEXUALLY ORIENTED BUSINESSES

### Section

#### *Pornographic Materials and Performances*

- 117.01 Definitions
- 117.02 Material harmful to minors; no expert witness required
- 117.03 Determination of predominant appeal to prurient interest; expert testimony not required
- 117.04 Distributing pornographic material
- 117.05 Inducing acceptance of pornographic material
- 117.06 Dealing in harmful material to a minor
- 117.07 Allowing property or land to be used for lewdness or obscenity
- 117.08 Affirmative defenses
- 117.09 Distribution through cable prohibited

#### *Indecent Public Displays*

- 117.20 Definitions
- 117.21 Prohibitions
- 117.99 Penalty

### **PORNOGRAPHIC MATERIALS AND PERFORMANCES**

#### **§ 117.01 DEFINITIONS.**

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

**CONTEMPORARY COMMUNITY STANDARDS.** Those current standards in the vicinage where an offense alleged under this act has occurred, is occurring, or will occur.

**DISTRIBUTE.** To transfer possession of materials whether with or without consideration.

**EXHIBIT.** To show.

**HARMFUL TO MINORS.**

(1) The quality of any description or representation, in whatsoever form of nudity, sexual conduct, sexual excitement or sado-masochistic abuse when it:

- (a) Taken as a whole, appeals to the prurient interest in sex of minors;
  - (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
  - (c) Taken as a whole, does not have serious value for minors.
- (2) Serious value includes only serious literary, artistic political or scientific value for minors.

**KNOWINGLY.** An awareness, whether actual or constructive, of the character of material or of a performance. A person has constructive **KNOWLEDGE** if a reasonable inspection or observation under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is for the purpose of avoiding the disclosure or is criminally negligent.

**MATERIAL.** Anything printed or written or any picture, drawing, photograph, motion picture or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical or electrical reproduction or anything which is or may be used as a means of communication. **MATERIAL** includes undeveloped photographs, molds, printing plates and other latent representational objects.

**MINOR.** Any person less than 18 years of age.

**NUDITY.** The showing of the human male or female genitals, pubic area or buttocks, with less than a full opaque covering or the showing of a female breast with less than a full, opaque covering or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

**PERFORMANCE.** Any physical human bodily activity, whether engaged in alone or with other persons, including, but not limited to, singing, speaking, dancing, acting, simulation or pantomiming.

**PUBLIC PLACE.** Includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.

**SADO-MASOCHISTIC ABUSE.** Flagellation or torture by or upon a person clad in undergarments, a mask or in a revealing or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

**SEXUAL CONDUCT.** Acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.

**SEXUAL EXCITEMENT.** A condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual

conduct or nudity.  
(Prior Code, § 13-76-10-1201)

**§ 117.02 MATERIAL HARMFUL TO MINORS; NO EXPERT WITNESS REQUIRED.**

(A) In a prosecution dealing with an offense relating to harmful material to minors, the question whether the predominant appeal of the material is to the prurient interest shall be determined with reference to average minors.

(B) Neither the prosecution nor the defense shall be required to introduce expert witness testimony concerning the harmful character of the material or performance which is the subject of a prosecution.  
(Prior Code, § 13-76-10-1202) Penalty, see § 117.99

**§ 117.03 DETERMINATION OF PREDOMINANT APPEAL TO PRURIENT INTEREST; EXPERT TESTIMONY NOT REQUIRED.**

(A) Any material or performance is pornographic if:

(1) The average person, applying contemporary community standards finds that, taken as a whole, it appeals to prurient interest in sex;

(2) It is patently offensive in the description or depiction of nudity, sexual contact, sexual excitement, sadomasochistic abuse or excretion; and

(3) Taken as a whole it does not have serious literary, artistic, political or scientific value.

(B) In prosecutions under this chapter, where circumstances of production, presentation, sale, dissemination, distribution, exhibition or publicly indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political or scientific value.

(C) Neither the prosecution nor the defense shall be required to introduce expert witness testimony as to whether the material or performance is or is not harmful to adults or minors or is not pornographic, or as to any element of the definition of pornographic, including contemporary community standards.

(Prior Code, § 13-76-10-1203) Penalty, see § 117.99

**§ 117.04 DISTRIBUTING PORNOGRAPHIC MATERIAL.**

(A) A person is guilty of distributing pornographic material when he or she knowingly:

(1) Sends or brings any pornographic material into this municipality with intent to distribute or exhibit it to others;

(2) Prepares, publishes, prints or possesses any pornographic material with intent to distribute

or exhibit it to others;

(3) Distributes or offers to distribute, exhibits or offers to exhibit, any pornographic material to others;

(4) Writes, creates or solicits the publication or advertising of pornographic material;

(5) Promotes the distribution or exhibition of material which he or she represents to be pornographic; or

(6) Presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion thereof which makes it pornographic.

(B) Each distribution of pornographic material, as defined in this section, is a separate offense under this section. A separate offense shall be regarded as having been committed for each day's exhibition of any pornographic motion picture film and for each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others. (Prior Code, § 13-76-10-1204) Penalty, see § 117.99

#### **§ 117.05 INDUCING ACCEPTANCE OF PORNOGRAPHIC MATERIAL.**

A person is guilty of inducing acceptance of pornographic material when he or she knowingly requires or demands as a condition to a sale, allocation, consignment or delivery for resale of any newspaper, magazine, periodical, book, publication or other merchandise that the purchaser or consignee receive any pornographic material or material reasonably believed by the purchaser or consignee to be pornographic material or material reasonably believed by the purchaser or consignee to be pornographic.

(Prior Code, § 13-76-10-1205) Penalty, see § 117.99

#### **§ 117.06 DEALING IN HARMFUL MATERIAL TO A MINOR.**

(A) A person is guilty of dealing in harmful material when, knowing that a person is a minor or having failed to exercise reasonable care in ascertaining the proper age of a minor, he or she:

(1) Knowingly distributes or offers to distribute, exhibits or offers to exhibit, any harmful material to a minor;

(2) Produces, presents or directs any performance before a minor, harmful to minors to participates in any performance before a minor, harmful to minors; or

(3) Falsely pretends to be the parent or legal guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful material.

(B) This section does not prohibit any parent or legal guardian from distributing any harmful material to his or her minor child or ward or for permitting his or her minor child or ward to attend an exhibition of any harmful material if the minor child or ward is accompanied by him or her. This

section does not prohibit a person from exhibiting any harmful material to a minor child who is accompanied by his or her parent or legal guardian or by any person whom he or she reasonably believes to be the parent or legal guardian of that child.

(Prior Code, § 13-76-10-1206) Penalty, see § 117.99

### **§ 117.07 ALLOWING PROPERTY OR LAND TO BE USED FOR LEWDNESS OR OBSCENITY.**

It shall be unlawful for a landlord or landowner to willfully or knowingly allow his or her property or land to be used for the commercial exploitation of lewdness or obscenity.

(A) If a tenant or occupant of real property uses this property for an activity for which he or she or his or her employee is convicted under any provision of this chapter, the conviction makes void the lease or other title under which he or she holds at the option of the fee owner or any intermediate lessor; and ten days after the fee owner or any intermediate lessor gives notice in writing to the tenant or occupant that he or she is exercising the option, the right of possession to the property reverts to the person exercising the option. This option does not arise until all avenues of direct appeal from the conviction have been exhausted or abandoned by the tenant or occupants, or his or her employee.

(B) It shall be unlawful for a fee owner or intermediate lessor of real property to knowingly allow his or her property to be used for the purpose of distributing or exhibiting pornographic materials, or for pornographic performances, by a tenant or occupant if the tenant or occupant, or his or her employee, has been convicted under any provision of this chapter of an offense occurring on the same property and all avenues of direct appeal from the conviction have been exhausted or abandoned.

(1) **ALLOW**, under this division (B), means a failure to exercise the option arising under division (A) above within ten days after the fee owner or lessor receives notice in writing from the court attorney of the county where the property is situated, or if situated in a city of the first or second class, from the city attorney of that city, that the property is being used for a purpose prohibited by this division (B).

(2) A willful violation of this division (B) is a Class A misdemeanor and any fine assessed, if not paid within 30 days after judgment, shall become a lien upon the property.

(C) Any tenant or occupant who receives a notice in writing that the fee owner or intermediate lessor is exercising the option provided by division (A) above and who does not quit the premises within ten days after the giving of that notice is guilty of a Class A misdemeanor.

(Prior Code, § 13-76-10-1207) Penalty, see § 117.99

### **§ 117.08 AFFIRMATIVE DEFENSES.**

The following shall be affirmative defenses to prosecution under this chapter.

(A) It is an affirmative defense to prosecution under this chapter that the distribution of pornographic material was restricted to institutions or person having scientific educational, governmental or other similar justification for possessing pornographic material.

(B) It is not a defense to prosecution under this chapter that the actor was a motion picture projectionist, usher, ticket-taker, bookstore employee or otherwise was required to violate any provision of this chapter incident to his or her employment.

(Prior Code, § 13-76-10-1208) Penalty, see § 117.99

#### **§ 117.09 DISTRIBUTION THROUGH CABLE PROHIBITED.**

(A) No person including a franchise shall knowingly distribute by wire or cable any pornographic or indecent material to its subscribers.

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

***DISTRIBUTE.*** To send, transmit, retransmit or otherwise pass through a cable television system.

***INDECENT MATERIAL.*** Any material described in § 117.20.

***MATERIAL.*** Any visual display shown on cable television whether or not accompanied by sound, or any sound recording played on a cable television.

***PORNOGRAPHIC MATERIALS.*** Any material defined as pornographic in §§ 117.01 and 117.03.

(C) Any person who violates this section is guilty of a Class B misdemeanor.  
(Prior Code, § 13-76-10-1229) Penalty, see § 117.99

#### ***INDECENT PUBLIC DISPLAYS***

#### **§ 117.20 DEFINITIONS.**

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

##### ***DESCRIPTION OR DEPICTIONS OF ILLICIT SEX OR SEXUAL IMMORALITY.***

- (1) Human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy; and
- (3) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

***NUDE OR PARTIALLY DENUDED FIGURES.*** Less than completely covered:



- (1) Human genitals;
- (2) Pubic regions;
- (3) Buttock; and
- (4) Female breasts below a point immediately above the top of the areola; and
- (5) Human male genitals in a discernibly turgid state, even if completely covered.

(Prior Code, § 13-76-10-1227)

### **§ 117.21 PROHIBITIONS.**

Every person who shall willfully or knowingly engage in the business of selling, lending, giving away, showing, advertising for sale or distributing to any person under the age of 18 or has in his or her possession with intent to engage in the business of or otherwise offer for sale or commercial distribution to any individual under the age of 18 or who shall publicly display at newsstands or any other establishment frequented by minors under the age of 18 or where the minors are or may be invited as a part of the general public, any motion picture, or any live, taped or recorded performance, or any still picture or photograph or any book, pocket book, pamphlet or magazine the cover or content of which exploits, is devoted to, or is principally made up of indecent descriptions or depictions of illicit sex or sexual immorality or which consists of pictures of nude or partially denuded figures posed or presented in a manner to provoke arouse lust or passion or to exploit lust or perversion for commercial gain is guilty of a Class B misdemeanor punishable by § 117.99(E).

(Prior Code, § 13-76-10-1228) Penalty, see § 117.99

### **§ 117.99 PENALTY.**

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) Each separate offense under § 117.04 is a Class B misdemeanor punishable by a minimum mandatory fine of not less than \$100, plus \$10 for each article exhibited up to a maximum of \$1,000 and by incarceration without suspension of sentence in any way, for a term of not less than seven days. (Prior Code, § 13-76-10-1204)

(C) A violation of § 117.05 is a Class B misdemeanor punishable by a fine of not more than \$1,000 and by incarceration, without suspension of sentence in any way, for a term of not less than 14 days. (Prior Code, § 13-76-10-1205)

(D) Each separate offense under § 117.06 is a Class B misdemeanor punishable by a minimum mandatory fine of not less than \$99, plus \$10 for each article exhibited up to a maximum \$1,000 and by incarceration, without suspension of sentence in any way, for a term of not less than 14 days. (Prior Code, § 13-76-10-1206)

(E) Violation of § 117.21 is a Class B misdemeanor, punishable by a fine of not more than \$1,000 and by incarceration, without suspension of sentence in any way for a term of not less than 30 days, notwithstanding any provision of UCA § 77-35-17.  
(Prior Code, § 13-76-10-1228)