

**CHAPTER V
BUSINESS REGULATIONS**

- Article 1. Solicitors, Canvassers, Peddlers
- Article 2. Recycling
- Article 3. Junk Dealers
- Article 4. Coin Operated Amusement Device
- Article 5. Tree Trimming and Removal
- Article 6. Sale of Firearms
- Article 7. Sexually Oriented Businesses

**ARTICLE 1
SOLICITORS, CANVASSERS, PEDDLERS**

5-101 DEFINITIONS. For the purpose of this article, the following words shall be considered to have the following meanings:

- (a) Soliciting shall mean and include any one or more of the following activities:
 - (1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever; or
 - (2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character; or
 - (3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.
- (b) Residence shall mean and include every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.
- (c) Canvasser or Solicitor shall mean any individual, whether resident of the city or not, whose business is mainly or principally carried on by traveling either by foot, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or 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 or not. Such definition shall include any person, who, for himself, herself or for another person, hires, leases, uses, or occupies any building, structure, tent, railroad boxcar, boat, hotel room, lodging house, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.
- (d) Peddler shall mean any person, whether a resident of the city or not, traveling by foot, automotive 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 and 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, automotive vehicle, railroad boxcar or other vehicle or conveyance, and further provided, that one who solicits orders and as a separate

transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a peddler.

(e) Transient merchant, itinerant merchant or itinerant vendor are defined as any person, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within such city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, railroad boxcar, or boat, public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. Such definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this article 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.

(f) Street salesman shall mean any person engaged in any manner in selling merchandise of any kind from a vehicle or stand temporarily located on the public streets or sidewalks of this city. (Ord. 2022, Sec. 1; Code 1999)

5-102 LICENSE REQUIRED.

(a) It shall be unlawful for any person to engage in any of the activities defined in the preceding sections of this article, within the corporate limits of the city without then having an un-revoked and unexpired license therefor in his or her possession and issued by the City Clerk. (b) The governing body may waive the license requirements of this section for any person, firm or corporation exempt from the payment of a license fee under section 5-107(d).

(Ord. 2022, Sec. 1; Code 1999)

5-103 SAME; APPLICATION REQUIRED. Before the City Clerk may issue any license required by this article, he or she shall require at least 30 days in advance of the date of solicitation, a sworn application in writing prepared in duplicate on a form to be supplied by the City Clerk which shall give the following information:

- (a) Name and description of applicant;
- (b) Permanent home address and full local address of applicant;
- (c) Identification of applicant including drivers license number, date of birth, expiration date of license and description of applicant;
- (d) Identification of vehicle used by applicant including license therefor used by applicant in conducting his or her business;
- (e) A brief description of the nature of the business to be carried on or the goods to be sold and the length of time such applicant has been engaged in the business;
- (f) If employed, the name and address of the employer, together with credentials establishing such relationship, including the authority by the employer authorizing the applicant to represent the employer in conducting business;
- (g) The length of time which business is proposed to be carried on;

(h) The place where services are to be performed or where the goods or property proposed to be sold or orders taken for the sale thereof are manufactured or produced, where such goods or products are located at the time the application is filed, and the proposed method of delivery;

(i) A photograph of the applicant, taken within 90 days prior to the date of making application which picture shall be at least two inches by two inches showing the head and shoulders of the applicant in a clear and distinguishing manner; or in lieu thereof, the fingerprints of the applicant may be taken by the Chief of Police and filed with the application;

(j) A statement as to whether or not the applicant has within two years prior to the date of the application been convicted of any crime, misdemeanor (other than minor traffic violations) or violation of any municipal law regulating peddlers, solicitors or canvassers and giving the nature of the offenses, the punishment assessed therefor, if any, and the city and state where conviction occurred.

(k) The applicant's Kansas Sales Tax number. (Ord. 2022, Sec. 1; Code 1999)

5-104 ISSUANCE; COUNTY RESIDENTS.

(a) Except as provided in section 5-109, if the applicant is a current resident of Clay County, Kansas, upon receipt of an application for a license and payment of the license fee, the City Clerk shall issue the license. Such license shall contain the signature and seal of the issuing officer and shall show the name and address of the licensee, the date of issuance and length of time the license shall be operative, and the nature of the business involved. The City Clerk shall keep a permanent record of all such licenses issued and submit a copy of such license to the Chief of Police. The licensee shall carry the license certificate at all times.

(b) If the applicant is not a current resident of Clay County, Kansas, a license will not be issued until after investigation and payment of the investigation fee as provided in sections 5-105. (Ord. 2022, Sec. 1; Code 1999)

5-105 SAME; INVESTIGATION AND ISSUANCE; NON-COUNTY RESIDENT.

(a) Upon receipt of the above application from an applicant who is not a current resident of Clay County, Kansas, the City Clerk shall refer the same to the Chief of Police who shall cause the Kansas Bureau of Investigation to conduct an investigation of the facts stated therein to be made within not more than five days.

(b) If as a result of the investigation, the applicant's character or business responsibility is found to be unsatisfactory or the facts stated therein to be untrue, the Chief of Police shall endorse on such application his or her findings and endorse his or her disapproval of the application and the reasons for the same and shall return the application to the City Clerk who then shall notify the applicant that his or her application is disapproved and that no license will be issued.

(c) If however, the investigation of such application discloses that the character and business responsibility and the facts stated in the application are satisfactory and true, the Chief of Police shall endorse his or her findings and approval on the application and return the same to the City Clerk who shall, upon payment of the license and investigation fees prescribed, issue a license to the applicant to engage in the business described in the application. Such license shall contain the signature and seal of the issuing officer and shall show the name and address of the licensee, the date of issuance

and length of time the license shall be operative, and the nature of the business involved. The City Clerk shall keep a permanent record of all such licenses issued and submit a copy of such license to the Chief of Police. The licensee shall carry the license certificate at all times. (Ord. 2022, Sec. 1; Code 1999)

5-106 SAME; INVESTIGATION FEE. At the time of filing the application, a non-refundable fee of \$50.00 shall be paid to the City Clerk to cover the cost of investigation of the facts stated in the foregoing application. (Ord. 2022, Sec. 1; Code 1999)

5-107 LICENSE FEE; TIME LIMITS; EXEMPTIONS.

(a) Except as provided in subsection (c), the fee for the license required pursuant to section 5-102 shall be in the amount of \$1,000.00 for any year that the licensee shall operate within the city limits.

(b) Any such license granted upon application as required hereinabove shall be limited to and effective only on the days set out in the license. Solicitation or sales by any peddler, solicitor or canvasser shall be conducted only between the hours of 8:00 a.m. and 9:00 p.m.

(c) Persons and firms not having a permanently established place of business in the city, but having a permanently established house-to-house or wholesale business shall receive a license as required by section 5-102 upon the payment of \$1,000.00 for any year, and may make solicitations or sales only between the hours of 8:00 a.m. and 9:00 p.m., or upon invitation at any hour.

(d) No license fee shall be required of:

(1) any person selling any agricultural, farm, garden or aquacultural products grown by such growers residing within this state (K.S.A. 12-1617);

(2) any businesses, trades or occupations which are part of fairs or celebrations sponsored by the city or any other governmental subdivision, or the state, or when part of all of the expenses of the fairs or celebrations are paid for by the city, any other governmental subdivision, or the state; and

(3) any not-for-profit or charitable organization as determined by the governing body.

5-108 RENEWAL. All licenses issued shall be subject to renewal upon a showing of compliance with sections 5-102:203 of this article within a six month period prior to the renewal date. The City Clerk need not require an additional application under section 5-103 or an additional investigation and investigation fee under sections 5-105:206 unless complaints have been received of violations of the conditions under which any license has heretofore been issued. The City Clerk shall not renew or extend any license where there is satisfactory evidence of any grounds for the suspension or revocation of any prior license, and the applicant shall be required to apply for a license as in the case of an original license. (Code 1999)

5-109 DENIAL, REVOCATION OR SUSPENSION OF LICENSE; NOTICE.

(a) The City Clerk or Chief of Police may deny any application or may revoke or suspend for a period of not to exceed 30 days any license issued under this article, for any of the following causes:

(1) Fraud, misrepresentation or false statement contained in the application for license.

(2) Fraud, misrepresentation or false statement made in the course of carrying on the business.

(3) Any violation of this article.

(4) Conducting a business as defined in section 5-101 in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the city. Notice of the denial, revocation or suspension of a license shall be given in writing to the applicant or mailed to his or her last known address and the City Clerk shall set forth the grounds of such denial, revocation or suspension.

(5) Conviction of the crime of theft, larceny, fraud, embezzlement or any felony within two years prior to the application date.

(b) Such action shall be conveyed to the affected party by written notice served either by personal service by the Chief of Police or through registered mail addressed as set forth in the application. Immediately upon notice the license shall be considered denied, revoked or suspended. (Ord. 2022, Sec. 1; Code 1999)

5-110 APPEAL TO GOVERNING BODY.

(a) Any person aggrieved by the action of the Chief of Police or City Clerk in the denial of an application or revocation or suspension of a license as provided in this article, shall have the right of appeal to the governing body.

(b) Such appeal shall be taken by filing with the City Clerk within 14 days after notice of revocation, suspension or denial of the license has been given to or mailed to such applicant's last known address and setting forth the grounds for appeal.

(c) The governing body shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided herein for notice of denial, revocation or suspension. (d) The decision and order of the governing body on such appeal shall be final and conclusive. (Ord. 2022, Sec. 1; Code 1999)

5-111 REGULATIONS. It shall be unlawful for any solicitor:

(a) To solicit in person at any residence prior to the hour of 8:00 a.m or after 9:00 p.m., except by appointment;

(b) To solicit in person at any residence or other place bearing a notice of No Peddlers or No Solicitors or words of a similar meaning, providing such notice is posted in a conspicuous place upon or near the main entrance, is plainly visible, is at least 3x5 inches in size and contains lettering at least 1/3 inches in height;

(c) To solicit in person at other than the front or main door of any residence;

(d) To remain on any premises after being asked to leave by the owner, occupant or other person having authority over such premises;

(e) To misrepresent or make false, deceptive or misleading statements concerning the quality, quantity or character of any goods or services provided, the purpose of the visit, his or her identity or the identity of the represented organization or, if soliciting for a non-commercial cause, and so requested, to fail to specifically disclose what portions of the funds or other item of value solicited will actually be used for the purpose of which the organization is soliciting; or

(f) Licensees are required to exhibit their license at the request of any person to whom they attempt to sell their goods, wares and merchandise or take orders for future delivery of the same. (Ord. 2022, Sec. 1; Code 1999)

5-112 DISCLOSURE All registered solicitors shall conform to the following requirements:

(a) After the initial greeting and before any other statement is made to a prospective solicitee, solicitor shall expressly disclose his or her name, the name of the organization represented, if any, and identify the nature of the solicitation, i.e., selling, seeking information, asking for contribution to or for, etc.

(b) If the solicitation is for the purchase of goods or services or for any order for the later delivery of goods or services, the solicitor shall clearly inform the solicitee of their right to cancel the transaction at any time within 72 hours if it involves the extension of credit or is a cash transaction of more than \$25.00.

(c) If the solicitation results in an order for the later delivery of goods or services, the solicitor shall, at the time the order is taken, provide the buyer with a copy of all signed documents, containing at the minimum: the terms of the agreement; the amount paid in advance and whether such amount represents full, partial or no advance payment; the name, address and telephone number of the seller or provider; the delivery or performance date; and whether a guarantee or warranty is provided and, if so, the terms thereof.

(d) Upon any request to do so, the solicitor shall display for review the certificate of registration issued by the city. (Ord. 2022, Sec. 1)

5-113 EXEMPTIONS. The following, or their authorized agents, are exempt from the provisions of this article, any person:

(a) Delivering newspapers, fuel, dairy products or bakery goods to regular customers on established routes;

(b) Selling goods at wholesale to dealers in such goods;

(c) Who has an established place of business where goods or services being sold are offered for sale on a regular basis, and where the buyer has initiated contact with and specifically requested a home visit by such person;

(d) Who has had, or one who represents an organization which has had, a prior transaction similar to that being solicited with the solicitee;

(e) Who is an officer or employee of the city, county, state or federal government, or any subdivision thereof, when on official business;

(f) Conducting solicitations for the sole benefit or under the auspices of the organization, i.e., Girl or Boy Scouts, Chamber of Commerce, service club or charitable organization;

(g) Children under the age of 16 who are residents of the city.

(Ord. 2022, Sec. 1)

5-114 USE OF STREETS AND SIDEWALKS. It shall be unlawful for any person to place, operate or conduct upon any of the sidewalks or streets of the city, any stand, cart, vehicle or any other device containing and from which is sold any nuts, candy, popcorn, lunch or merchandise of any kind; provided, that this section shall not apply to any farmer or gardener, or their agents or employees, selling fruits, produce or supplies produced or grown by themselves. (Code 1993, 20-102)

5-115 DISTURBING THE PEACE. Except when authorized in writing by the City Clerk, no licensee nor any person in his or her behalf, shall use any sound device, including any loud-

peaking radio or sound-amplifying system upon any of the streets, alleys, parks or other public places of the city or upon any private premises in the city where sound of sufficient volume is emitted or produced therefrom to be capable of being plainly heard upon the streets, avenues, alleys, parks or other public places, for the purpose of attracting attention to any goods, wares or merchandise which such licensee proposes to sell. (Code 1999)

ARTICLE 2 RECYCLING

5-201 LICENSE REQUIRED. It shall be unlawful for any person to carry on the business of recycling, storing or collecting items for recycling within the City without first having obtained therefore a license to do so as hereinafter provided. (Ord. 2012, Sec. 1)

5-202 RECYCLING PERMITTED. The recycling of the following items is permitted with the above license: aluminum, plastic, lead, wire, copper, brass, glass, radiators, heater cores, stainless steel, paper, tin cans, cardboard, inner tubes, magnesium and monel. (Ord. 2012, Sec. 1)

5-203 APPLICATION FOR LICENSE; LOCATION; APPROVAL. Any person desiring such license shall make application therefore in writing to the City Clerk. Such application shall set forth the full name of applicant together with residence and location at which items to be recycled are to be kept or stored and the applicant shall not keep or store items for recycling at any other location in the City. The location for the recycling operation must be zoned for business and the recycler must provide evidence that the business location has been inspected and approved by a public officer of the City prior to submitting the application to the governing body. Such application shall be submitted to the governing body and if the governing body shall approve such application and location it may order the issuance of such license. (Ord. 2012, Sec.1)

5-204 SANITATION; INSPECTION BY BOARD OF HEALTH; OBJECTS HIDDEN, PUBLIC VIEW. Any person, being the owner or keeper of items for recycling as identified in this article, whether the same are kept for sale or otherwise, shall at all times keep the place where such items are kept in a sanitary condition and open to the inspection of any member of the board of health, and the recycler shall not have or permit any of the above items to be exposed to the public view in any yard within the City. The recycler is responsible for complying with all applicable state and federal requirements and regulations, including but not limited to the regulations of the Kansas Department of Health and Environment and the Environmental Health and Protection Agency. (Ord. 2012, Sec. 1)

5-205 LICENSE FEE; PAYMENT; TERM. The fee for such license shall be \$50.00 per annum payable in advance and all licenses issued under this article shall expire on the 31st day of December, next after the same are issued. (Ord. 2012, Sec. 1)

5-206 SUSPENSION OR REVOCATION OF LICENSE. Any license issued hereunder may be suspended or revoked by the governing body upon the conviction in the municipal court of the City of the licensee of any violation of the terms of this article. (Ord. 2012, Sec. 1)

ARTICLE 3

JUNK DEALERS

5-301 **LICENSE REQUIRED.** It shall be unlawful for any person to carry on the business of a junk dealer or shipper or storer of junk or of a junk collector or peddler within the City without first having obtained therefor a license to do so as hereinafter provided. (Code 1993, 12-201)

5-302 **JUNK DEFINED.** Junk is hereby defined to be old iron, lead, brass, steel, copper or other metals or old machinery, automobiles and motor vehicles or parts thereof, rags or bagging, rope, rubber, bones, paper, bottles, and other old material. (Code 1993, 12-202)

5-303 **APPLICATION FOR LICENSE LOCATION; APPROVAL.** Any person desiring such license shall make application therefor in writing to the City Clerk. Such application shall set forth the full name of applicant together with his or her residence and location at which such junk is to be kept or stored, and the applicant shall not keep or store junk at any other location in the city. Such application shall be submitted to the governing body and if the governing body shall approve such application and location it may order the issuance of such license. (Code 1993,12-203)

5-304 **SANITATION; INSPECTION BY BOARD OF HEALTH; JUNK HIDDEN, PUBLIC VIEW.** Any person, being the owner or keeper of any junk as defined in this article, whether the same is kept for sale or otherwise, shall at all times keep the place where such junk is kept in a sanitary condition and open to the inspection of any member of the board of health, and the dealer shall not have or permit any junk to be exposed to the public view in any yard within the city.
(Code 1993, 12-204)

5-305 **LICENSE FEE; PAYMENT; TERM.** The fee for such license shall be \$25.00 per annum payable in advance and all licenses issued under this article shall expire on the 1st day of June or December, next after the same are issued. (Code 1993, 12-205)

5-306 **SUSPENSION OR REVOCATION OF LICENSE.** Any license issued hereunder may be suspended or revoked by the governing body upon the conviction in the municipal court of the City of the licensee of any violation of the terms of this Article. (Code 1993, 12-206)

ARTICLE 4

COIN OPERATED AMUSEMENT DEVICES

5-401 **DEFINITIONS.**

- (a) Coin Operated Amusement Device - Any amusement machine or device operated by the insertion of a coin, token or similar object for the purpose of amusement or skill. The term shall include coin operated mechanical musical devices, and musical record machines, commonly called juke boxes, and shall also include coin operated pool, snooker or billiard tables, pinball or marble machines, and electronic and video games.
- (b) Operator -Any person who sets up for operation by another or leases or distributes for the purpose of operation by another, any coin operated amusement device as herein defined, whether such setting up for operation, leasing or distributing be for a fixed charge or rental, or on the basis of a division of income derived from such device, or otherwise.

(c) Proprietor - Any person who, as the owner, lessee or tenant has under his, her or its control any establishment, place or premises in or at which such coin operated amusement device is placed or kept for use or play, or on exhibition for the purpose of use or play. (Code 1993, 12-114)

5-402 LICENSE REQUIRED; FEE. No person shall within the city limits, as a proprietor display for public patronage, or keep for operation by the public, any coin operated amusement device without first having obtained a license for the premises at which the device will be displayed or operated. The application for the license shall be made to the city clerk and shall contain but not be limited to the following information:

- (a) The name and address of the application (proprietor) and if a corporation, partnership or association, the principal officers thereof and their addresses.
- (b) The business name and address of the premises to be licensed.
- (c) The number of coin operated amusement devices to be operated within such premises.
- (d) The name and address of the operator of the coin operated amusement device or devices, if other than the proprietor. The proper license fee shall accompany such application and shall be subject to the approval of the governing body. Such license shall be non-assignable and non-transferable. All licenses shall expire December 31st of each year regardless of when issued. The license granted to the proprietor shall indicate the number of devices which can be located on the licensed premises. The license fee, payable with the application, shall be \$25.00 per machine per calendar year.

(Code 1993, 12-115)

5-403 REVOCATION OF LICENSE. The license issued may be revoked in the proprietor displays or operates a number of such devices which exceed the number of devices stated in the license, or a violation of any ordinance of the city, or a violation of any laws of the State of Kansas. Revocation shall be by action of the governing body after written notice to the licensee specifying the violation which is the cause for the revocation. (Code 1993, 12-116)

ARTICLE 5 TREE TRIMMING AND REMOVAL

5-501 TREE TRIMMING LICENSE REQUIRED. No person shall engage in the business of tree trimming or tree cutting within the city, without first having obtained a license for such activity from the city. Applicants for such licenses shall not be required to pay a fee. (Code 1993, 12-501)

5-502 INSURANCE REQUIREMENTS. No tree trimmer's license shall be issued unless the applicant for such license files and deposits with the city clerk a policy of insurance issued by an insurance company authorized to do business in the State of Kansas, which insurance policy so issued as aforesaid shall provide that all operations of such application or license in such a business in the city shall be protected by public liability insurance in the sum of at least \$25,000.00 for each person injured and in the sum of at least \$50,000.00 in case of injury of two or more persons in any one accident and in a sum of not less than \$10,000.00 for damage to property. The insurance policy must be effective whether the tree trimming or the tree cutting at the time of the accident is being performed by the licensee, his or her agent or employee. Such

policy shall carry an enforcement providing for actual notice to the city for any changes thereof. The insurance policy shall further provide that it cannot be canceled until 10 days written notice has been filed with the city clerk. Upon cancellation of the public liability insurance coverage, the tree trimmer's license shall automatically be revoked upon receipt of such cancellation. (Code 1993, 12-502)

5-503 LICENSE NOT TRANSFERABLE. A license granted in accordance with the provisions of this article shall not be transferable. When there is a change in the business status of the licensee, the successor shall have 60 days within which to obtain a license as provided by the terms and conditions of sections 5-501:602. (Code 1993,12-503)

5-504 EXEMPTIONS. The provisions of this article shall not apply to any person working at his or her own residence or established place of business or to regularly employed wage hands of the person working thereon nor shall it apply to officials or employees of the federal, state, county or city government engaged in the performance of their official duties. (Code 1993, 12-04)

ARTICLE 6. SALE OF FIREARMS

5-601 WAITING PERIOD BEFORE DELIVERY OF CERTAIN FIREARMS. No person, except as provided hereinafter, regularly engaged in the sale of pistols, revolvers or other firearms with a barrel less than ten inches, may deliver possession of such firearm, until the expiration of 48 hours from the date the sale of said firearm is consummated. For the purpose of this article, a sale of firearms shall be deemed consummated when the dealer shall have received a written commitment from the buyer legally binding the latter to purchase said firearm.

5-602 EXCEPTIONS TO 5-601. The 48 hour waiting period required by section 5-601 shall not be applicable to any sale of firearms in which the buyer is a federally licensed firearm dealer, or is a law enforcement officer employed by a governmental agency.

5-603 REPORTS TO POLICE DEPARTMENT. Any dealer subject to the provisions of section 5-601 shall forthwith upon the consummation of the sale of such firearm, report such sale to the Clay Center Police Department within 24 hours after the consummation of the sale of said firearm, describing therein the firearm sold. The description shall contain the serial number, caliber and make or manufacture of the firearm if such information is available. Further, the Clay Center Police Department shall be notified of the purchaser's name and address and the date and time when the possession of said firearm will occur. Any such records shall not be retained by the Clay Center Police Department in excess of five years.

5-604 PENALTY FOR VIOLATION. Any dealer who shall violate or fail to comply with the provisions of this article, or any person who is a buyer of such firearm and gives false information to said dealer or otherwise violates any of the provisions of this article shall upon conviction be fined \$100.00, or be imprisoned for not more than 30 days, or both such fine and imprisonment. (CODE 2007)

ARTICLE 7
SEXUALLY ORIENTED BUSINESSES

5-701 PREAMBLE. Whereas:

- (a) Sexually oriented businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the community where they locate; and,
- (b) Sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and, the concern over sexually transmitted diseases is a legitimate health concern of the City that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and,
- (c) Licensing is a legitimate means of accountability to ensure that operators and employees of sexually oriented businesses comply with reasonable regulations, and to ensure that operators do not allow their establishments to be used as places of illegal sexual activity or solicitation; and,
- (d) There is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and,
- (e) It is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics and secondary impacts, particularly when they are located in proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and,
- (f) The Council wants to prevent these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and,
- (g) It is not the intent of the Council to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary affects of sexually oriented businesses as well as the health problems associated with such businesses; and,
- (h) It is not the intent of the Council to condone or legitimize the distribution of obscene materials, and the Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the City of Clay Center.
- (i) The Clay Center City Council is empowered to issue, suspend and revoke business licenses and to regulate businesses by Article 12 of the Kansas Constitution.

5-702 PURPOSE. It is the purpose of this Article VII to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the City of Clay Center ("the City"), and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this Article 7 have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented

materials. Similarly, it is not the intent nor effect of this Article VII to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market, or to condone or legitimize the distribution of obscene materials.

5-703 FINDINGS. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in study sessions and in reports made available to the City Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. City of Newport, Ky*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1 986); *Hang On, Inc. v. City of Arlington,*, 65 F.3d 1248 (5th Cir. 1995); and *South Florida Free Beaches, Inc. v. City of Miami*, 734 F.2d 608 (I I th Cir. 1984), as well as studies conducted in other cities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the Council finds that:

- (a) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments, and there is presently no mechanism to hold owners of these establishments responsible for the activities that occur on their premises.
- (b) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. See, e.g., The Report to the American Center for Law and Justice.
- (c) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. See, e.g., *California v. LaRue*, 409 U.S. 109, 111 (1972).
- (d) The offering and providing of such booths and/or cubicles encourages such activities, which creates unhealthy conditions. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
- (e) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within those premises. See, e.g., *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698 (1986); see also Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
- (f) At least fifty communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections. See, e.g., Study of Fort Meyers, Florida.
- (g) As of June, 2001, the total number of reported cases of AIDS in the United States

caused by the immunodeficiency virus (HIV) was 793,025. See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(h) The total number of cases of genital chlamydia trachomatis infections in the United States reported in 2000 was 702,093, a 6% increase over the year 1999. See e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(i) The total number of cases of early (less than one year) syphilis in the United States reported during the ten year period 1985-1995 was 367,796. See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(j) The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,730,911 cases reported during the period 1996-2000. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(k) The surgeon general of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.

(l) According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See, e.g. Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(m) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(n) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(o) Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity (see, e.g., *Barnes v. Glen Theatre*, 501 U.S. 560, 583 (1991)).

(p) Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use. See, e.g., *Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1056 (9th Cir. 1986).

(q) Alcohol consumption in adult establishments increases the likelihood of crime, illegal drug use, and illegal sexual activity, and encourages undesirable behavior that is not in the interest of the public health, safety, and welfare. See, e.g., *Artistic Entertainment, Inc. V. City of Warner Robins*, 223 F.3d 1306, 1309 (11th Cir. 2000).

(r) The findings noted in paragraphs numbered (1) through (17) raise substantial governmental concerns.

(s) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(t) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented

businesses. Further, such a licensing procedure will place a heretofore non-existent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(u) Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.

(v) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.

(w) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct this ordinance is designed to prevent or who are likely to be witnesses to such activity.

(x) The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this Article VII.

(y) The barring of such individuals from operation or employment in sexually oriented businesses for a period of ten years for a previous felony conviction serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(z) The general welfare, health, morals, and safety of the citizens of this City will be promoted by enactment of this Article VII of Chapter V.

(aa) When more than one sexually oriented business use occupies the same location or business address, the secondary effects caused by such businesses are increased.

Secondary effects are eliminated or controlled to a greater degree when only a single sexually oriented business use is allowed to occupy the same location.

5-704 DEFINITIONS. The following words and phrases, when used in this article, shall have the following meanings:

(a) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, videos, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(b) ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

(1) books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, DVD's or other visual representations that are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas;" or

(2) instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

A principal business purpose exists if materials offered for sale or rental depicting or describing "specified sexual activities" or "specified anatomical areas" account for twenty percent (20%) or more of the exchanges, rentals or sales transaction; generate twenty percent (20%) or more of the business's income; or account for twenty percent (20%) or more of inventory, or occupy twenty percent (20%) or more of total floor space. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas."

(c) ADULT CABARET means a nightclub, bar, restaurant, café, or similar commercial establishment that regularly, commonly, habitually, or consistently features:

(1) persons who appear in a state of nudity or semi-nudity; or

(2) live performances that are distinguished or characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or

(3) films, motion pictures, video cassettes, slides, photographic reproductions, or other image producing devices that are distinguished or characterized by the depiction or description of "specifies sexual activities" or "specified anatomical areas;" or

(4) persons who engage in "exotic" or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

(d) ADULT ENTERTAINMENT shall mean any live exhibition, performance, display or dance of any type, including but not limited to talking; singing; reading; listening; posing; pantomiming; modeling; removal of clothing; or any service offered for amusement on a premises in which the exhibition, performance, display or dance is characterized by the depiction or description of nudity or specified sexual activities.

(e) ADULT MATERIAL shall mean media or merchandise for use in connection with specified sexual activities, or that is characterized by the depiction or description of nudity or specified sexual activities. Adult material includes, but is not limited to books, magazines, periodicals or other printed matter; photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations; and instruments, devices or other paraphernalia.

(f) ADULT MEDIA means books, magazines, periodicals, other printed matter, pictures, slides, records, audiotapes, videotapes, compact discs, DVDs, motion pictures, films, CD-ROMs or other devices used to record computer images, or other similar media which are distinguished or characterized by an emphasis on matters depicting, describing or relating to Specified Anatomical Areas or Specified Sexual Activities.

(g) ADULT MOTEL means a hotel, motel or similar commercial establishment that:

(1) offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, DVD's or other photographic reproductions that

are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or

(2) offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or

(3) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twenty-four (24) hours.

(h) **ADULT MOTION PICTURE THEATER** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, DVD's, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown which are intended to provide sexual stimulation or sexual gratification to the Patrons or which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

(i) **ADULT THEATER** means a theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are distinguished or characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(j) **APPLICATION DATE** shall mean the date the City Clerk receives a completed license application, accompanied by the appropriate fee.

(k) **DIRECTOR** means the chief of police and such employee(s) of the police department as he may designate to perform the duties of the director under this Act.

(l) **EMPLOYEE** means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

(m) **ENTERTAINER** shall mean any person who provides adult entertainment within an adult business, whether or not a fee is charged or accepted for the adult entertainment.

(n) **ESCORT** means a person who, for 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.

(o) **ESCORT AGENCY** means 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.

(p) **ESTABLISHMENT** means and includes any of the following:

(1) the opening or commencement of any sexually oriented business as a new business;

(2) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) The additions of any sexually oriented business to any other existing sexually oriented business; or

- (4) the relocation of any sexually oriented business; or
- (5) a sexually oriented business or premises on which the sexually oriented business is located.
- (q) **LICENSED DAY-CARE CENTER** means a facility licensed by the State of Kansas, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.
- (r) **LICENSEE** means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.
- (s) **LIVE THEATRICAL PERFORMANCE** means a play, skit, opera, ballet, concert, comedy, or musical drama.
- (t) **MANAGER** shall mean an on-site supervisor working on behalf of an adult business. A licensed owner is a manager when the licensed owner is on the premises, even if the owner has not obtained a manager's license as set forth herein.
- (u) **MINOR** shall mean any person under 18 years of age.
- (v) **NUDE MODEL STUDIO** means any place where a nude person is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons. "Nude model studio" shall not include a college, community college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, community college or university supported entirely or partly by taxation; or in a structure:
 - (1) That has no sign visible from the exterior of the structure and no other advertising that indicates that a person will be nude;
 - (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 person is on the premises at any one time.
- (w) **NUDITY** or a **STATE OF NUDITY** means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.
- (x) **OPERATE** means to own, conduct or maintain the affairs of a sexually oriented business.
- (y) **OPERATOR** means any Person owning, operating, conducting or maintaining a sexually oriented business.
- (z) **OWNER** shall mean any person who owns a sexually oriented business, including a sole proprietor, all partners in the case of a partnership or any stockholder or member with more than a 25 percent interest in the organization in the case of a corporation or company.
- (aa) **PATRON** shall mean any person on the premises of an adult business who is not an employee, entertainer, manager or owner of the adult business, regardless of whether the person pays any compensation to the adult business, employee or entertainer for any services, merchandise or adult entertainment. Patron shall not include a person who enters an adult business for the sole purpose of inspecting the premises or providing a

good or service to the adult business and who does not remain in the adult business after the purpose has been accomplished.

(bb) PERSON means an individual, proprietorship, partnership, corporation, limited liability company, trust, unincorporated association, joint venture, governmental entity, or other entity or group of persons, however organized.

(cc) PREMISES shall mean the structure, or a portion of a structure, in which the sexually oriented business is located, including restrooms, dressing rooms and kitchens, but not including any open space on the property or on adjoining property used in conjunction with the sexually oriented business, such as parking areas or common areas. If the sexually oriented business operates in a structure, which is designed, and intended to house only one business, the premises shall be the entire structure. If the sexually oriented operates within a structure that is designed, or intended, to house more than one business, the premises shall be the area within the exterior walls of such a structure that is devoted solely to the adult business.

(dd) PRINCIPAL BUSINESS PURPOSE exists if:

(1) During any 90 day period, services or materials offered for sale or rental related to or depicting or describing "specified sexual activities" or "specified anatomical areas" account for:

(A) twenty percent (20%) or more of the receipts, exchanges, rentals or sales, measured in dollars;

(B) twenty percent (20%) or more of the number of transactions of such business;

(C) twenty percent (20%) or more of the dollar value of all merchandise displayed at any time is attributable to such items;

(D) twenty percent (20%) or more of all inventory consists of such items at any time;

(E) twenty percent (20%) or more of the merchandise displayed for sale consists of such items at any time;

(F) twenty percent (20%) or more of the floor area of the business (not including storerooms, stock areas, restrooms, basements or any portion of the business not open to the public) is devoted to such items at any time.

(ee) SEMI-NUDE OR SEMI-NUDITY means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(ff) SERVER means any Person who serves food or drink at a sexually oriented business.

(gg) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(1) physical contact in the form of wrestling or tumbling between person of the opposite sex; or

(2) activities between person of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

A principal business purpose exists if the services offered are intended to generate business income.

- (hh) **SEXUALLY ORIENTED BUSINESS** means any business that:
- (1) Has as one of its principal business purposes the sale or rental of merchandise that is intended for use in connection with "Specified Sexual Activities," or that emphasizes matters depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas"; or
 - (2) That has as one of its principal business purposes:
 - (A) The providing of entertainment where the emphasis is on performances, live or otherwise, that depict, portray, exhibit or display "Specified Anatomical Areas" or "Specified Sexual Activities"; or
 - (B) The providing of services that are intended to provide sexual arousal or excitement or that allow observation of "Specified Sexual Activities" or "Specified Anatomical Areas" ancillary to other pursuits, or allow participation in "Specified Sexual Activities" ancillary to other pursuits.
 - (3) The definition of "sexually oriented business" also includes but is not limited to an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
- (ii) **SEXUALLY-ORIENTED TOYS OR NOVELTIES** means instruments, devices or paraphernalia which either depicts representations of Specified Anatomical Areas or are designed or marketed for use in connection with Specified Sexual Activities. In determining whether an item is designed or marketed for use in connection with Specified Sexual Activities, the following guidelines may be considered:
- (1) Expert testimony as to the principle use of the item,
 - (2) Evidence concerning the total business of a person or business establishment and the type of merchandise involved in the business,
 - (3) National and local advertising concerning the use of the item,
 - (4) Evidence of advertising concerning the nature of the business establishment, instructions, graphics or other material contained on the item itself or on the packaging materials for the item the physical or structural characteristics of the item,
 - (5) The manner in which the item is displayed, including its proximity to other regulated merchandise or signage relating to items in the display area.
- Any Person may request an interpretive ruling from the Chief of Police, or his or her designee, as to whether a particular item is considered by the City to be "designed or marketed for use" in connection with Specified Sexual Activities. An application for an interpretive ruling shall be made in writing on a form provided by the Chief of Police, and shall be accompanied by such other information as may reasonably be requested under the circumstances pertaining to the specific item about which a ruling is requested. The Chief of Police shall issue a written interpretive ruling within ten business days following submission of a completed application. The decision of the Chief of Police may be appealed to the Governing Body within fifteen days following the interpretive ruling by submitting a written notice of appeal to the City Clerk.
- (jj) **SPECIFIED ANATOMICAL AREAS** means:
- (1) the human male genitals in a discernibly turgid state, even if fully and opaquely covered;

- (2) less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.
- (kk) SPECIFIED CRIMINAL ACTIVITY shall mean any unlawful lewd or indecent conduct, specifically including, but not limited to, any of the following lewd or indecent criminal acts:
- (1) Any sex offense set forth in Chapter 21, Article 35, of the Kansas Statutes Annotated, as amended;
 - (2) Any crime set forth in the Kansas Uniform Controlled Substances Act, Chapter 65, Article 41, of the Kansas Statutes Annotated, as amended;
 - (3) Incest (K.S.A. 21-3602, as amended);
 - (4) Aggravated incest (K.S.A. 21-3603, as amended);
 - (5) Furnishing alcoholic liquor or cereal malt beverage to a Minor (K.S.A. 21-3610, as amended);
 - (6) Furnishing alcoholic beverages to a minor for illicit purposes (K.S.A. 21-3610b, as amended);
 - (7) Promoting obscenity (K.S.A. 21-4301, as amended);
 - (8) Promoting obscenity to minors (K.S.A. 21-4301a, as amended);
 - (9) Any Kansas municipal ordinance violation based upon any of the crimes set forth above in subsections (1) through (8), inclusive;
 - (10) Any criminal violations from a state other than Kansas, or municipal ordinance from a state other than Kansas, corresponding to the crimes set forth above in subsections (1) through (8), inclusive.
- (ll) SPECIFIED SEXUAL ACTIVITIES shall mean any of the following:
- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
 - (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation or sodomy;
 - (3) Masturbation, actual or simulated; or
 - (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) above.
- (mm) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25%), as the floor areas existed on September 1, 2008.
- (nn) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:
- (1) the sale, lease, or sublease of the business;
 - (2) the transfer of securities that form 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 that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

5-705 The provisions of this article shall apply to all sexually oriented businesses existing on the effective date of this article, as well as to all sexually oriented businesses established after the effective date of this article.

5-706 CLASSIFICATION. Sexually oriented business uses are classified as follows:

- (a) adult arcades; or
- (b) adult bookstores or adult video stores; or
- (c) adult motels; or
- (d) adult motion picture theaters; or
- (e) adult theaters; or
- (f) adult cabarets; or
- (g) escort agencies; or
- (h) nude model studios; or
- (i) sexual encounter centers.

5-707 LICENSE REQUIRED FOR ADULT BUSINESSES

(a) It shall be unlawful:

(1) For any person to operate or maintain a sexually oriented business within the City without a valid sexually oriented business operator's license, issued pursuant to this article.

(2) For any person to operate a sexually oriented business at any location, other than on the premises specified by the sexually oriented business license.

(3) For any employee, entertainer, manager or owner to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed sexually oriented business within the City.

(4) For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license ("employee license") issued to such employee by the City.

(5) It shall be unlawful for any person to work as an employee, entertainer or manager in or at sexually oriented business, or to render any services directly related to the operation of a sexually oriented business, without a valid, current license.

(6) It shall be a defense to subsections (iv. and v.) of this Section if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment or the premises.

(b) The failure to post an adult business license in the manner required in this article shall be prima facie evidence that an adult business has not obtained such a license. It shall also be prima facie evidence that any employee, entertainer, manager or owner who performs any business, service or entertainment in an adult business had knowledge that the business was not licensed.

(c) LICENSE FEES

(1) License fees are non-refundable.

(2) The license fee for all licenses required by this article shall be \$1,000.00.

(d) LICENSE LIMITATIONS.

(1) All licenses shall be issued for only one specific premises, and it shall be unlawful for any person to operate a sexually oriented business anywhere but at the designated licensed premises.

(2) All licenses shall be nontransferable and nonassignable.

(3) All licenses shall be issued only for the one use specified on the license application. A separate license is required for each use. The license is invalidated if the type of use is changed, and the licensee must obtain a new license for the change in use.

(e) LICENSE DISPLAY.

(1) The person holding the sexually oriented business license shall post the license in a conspicuous place and manner within the premises.

(2) Each employee, entertainer and manager shall post his or her license in his or her work area within the premises so it shall be readily available for inspection by City authorities.

(f) LICENSE APPLICATION INFORMATION.

(1) Sexually Oriented Business License. To obtain a license to operate a sexually oriented business within the City, the applicant shall complete the form supplied by the City Clerk and file the application with the City Clerk. The application shall require all the following information. The applicant must provide the following information. If the applicant is a partnership, each partner must provide the following information. If the applicant is a corporation or limited liability company, each stockholder or member who owns more than a 25 percent interest in the corporation or company also must provide the following information:

(A) Name, including any aliases, mailing address for receipt of notices, home telephone number, occupation, date and place of birth and social security number. An applicant, partner, stockholder or member who is not a resident of Clay County must provide the name and address of a Clay County resident to receive service of process on his or her behalf.

(B) A statement signed under oath indicating whether the individual has been convicted of, released from confinement for conviction of, or diverted from prosecution on, any felony or specified criminal act within the three years immediately preceding the application date. The three years begins from the most recent of the above events.

(C) A statement signed under oath indicating whether the individual previously had a sexually oriented business license of any type revoked or suspended, in this or another City, county or state; and if so, the reason for the revocation or suspension and the business activity subjected to the revocation or suspension.

(D) The tax identification number and name of the registered agent if the owner is required to have a tax identification number or registered agent.

(E) The location of the proposed premises, a description of the area that constitutes the premises and the name of the owner of the premises.

(F) The name of the sexually oriented business and a description of the type of sexually oriented business to be performed on the premises.

(G) If the applicant is a corporation or limited liability company, a current certificate of registration issued by the Kansas Secretary of State. If the applicant is a foreign corporation, a certified copy of the registration as a foreign corporation.

(H) A statement signed under oath that the applicant has personal

knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of this article.

(2) Employee, entertainer, and manager license. To obtain a license to be an employee, entertainer or manager at a sexually oriented business, the person proposing to be an employee, entertainer or manager shall complete the form supplied by the City Clerk and file the application with the City Clerk. The application shall require all the following information:

(A) The applicant's name, including any aliases, mailing address for receipt of notices, home telephone number, date and place of birth, social security number, and in the case of entertainers, any stage names or nicknames used in entertaining.

(B) The name and address of each sexually oriented business where the applicant intends to work as an employee, entertainer or manager.

(C) A statement signed under oath indicating whether the applicant has been convicted of, released from confinement for conviction of, or diverted from prosecution on, any felony or specified criminal act within the three years immediately preceding the application date. The three years begins from the most recent of the above events.

(D) A statement signed under oath indicating whether the applicant previously had a sexually oriented business license of any type revoked or suspended, in this or another City, county or state; and if so, the reason for the revocation or suspension and the activity subjected to the revocation or suspension.

(E) The applicant shall submit documentation to the City Clerk that proves that the applicant has attained the age of 18 years of age by the application date. The City Clerk shall copy the documentation, which may be any form of picture identification issued by a governmental entity that is deemed reliable by the City Clerk.

(g) APPLICATION PROCESSING.

(1) The City shall not process an incomplete license application. If the application is incomplete, the City Clerk shall provide the applicant with a written explanation of the reason(s) why the application is incomplete, *within five working days* of the date the City Clerk received the application.

(2) Upon receipt of a complete application for any license, the City Clerk shall immediately transmit copies of the application to the Clay Center Police Department, and the Fire Department. The police department shall investigate the application to determine whether the information contained in the application is accurate and whether the application meets the City requirements for issuance of the license for which the application is made, *their investigation not to exceed five (5) days*. The police department or City Clerk shall then forward their findings to the KBI which shall perform a records check on all applicants and they shall report the results of the investigation to the City Clerk *not later than ten (10) working days from the date of request*. The Fire Department shall determine whether the premises where the adult business will be conducted complies with the applicable zoning and building code ordinances. The Fire Department shall

report the results of their investigations to the City Clerk *not later than ten working days* from the application date.

(h) EXAMINATION OF APPLICATION, ISSUANCE OF LICENSE, DENIAL.

(1) If the license application is complete, in proper form and accompanied by the appropriate fee, The City Clerk shall issue the license as provided by law, provided that the applicant and the sexually oriented business meet the requirements of section 5-707(g). The City Clerk shall either approve or deny the complete application *within 20 working days* from the application date. Failure to approve or disapprove within the 20 working days shall not mean approval if a valid reason exists for not making the determination in a timely manner. All incomplete applications shall be denied.

(2) If an application for a license is approved, the issued license shall state the calendar year, premises and use for which it is issued, and that the license is nontransferable.

(3) If an application for a license is denied, the applicant shall be notified by registered or certified mail to the address on the application, and the letter of notification shall state the basis for such disapproval. Any applicant aggrieved by the disapproval of a license application may seek judicial review in the Municipal Court of the City of Clay Center, by filing a notice of appeal with the Clerk of the municipal court within 20 working days of date of the letter of notification.

(i) LICENSE DISQUALIFICATION.

(1) No license to operate a sexually oriented business shall be issued to the following:

(A) A person who is a minor;

(B) A person who failed to supply all information requested on the application;

(C) A person who gave materially false, fraudulent or untruthful information on the application;

(D) A person who is not a citizen of the United States;

(E) A person who has been convicted, released from incarceration for conviction or diverted on any felony or specified criminal act during the three (3) years immediately preceding the date of application approval, beginning from the most recent of the aforementioned events;

(F) A person who has had a sexually oriented business license or comparable license revoked or suspended in this or any other City within the five (5) years immediately preceding the application date;

(G) A partnership, unless all members of the partnership are otherwise qualified to obtain a license; or

(H) A corporation, unless all officers or directors are otherwise qualified to obtain a license.

(2) No license shall be issued for a sexually oriented business if the proposed premises do not comply with the requirements provided herein; provided that upon a showing that the premises meets such requirements and that the applicant is otherwise qualified, the application shall be eligible for reconsideration by the City Council.

(3) No license for an employee, entertainer or manager shall be issued to the

following:

- (1) A person who has not been a resident of Clay County for at least six (6) months prior to filing the application;
 - (2) A person who is a minor;
 - (3) A person who failed to provide all of the information required on the application;
 - (4) A person who gave materially false, fraudulent or untruthful information on the application;
 - (5) A person who has been convicted, released from incarceration for conviction or diverted on any felony or specified criminal act during the three (3) years immediately preceding the application date, beginning from the most recent of the aforementioned events; or,
 - (6) A person who has had an employee, entertainer or manager license, or its equivalent, revoked or suspended in this or any other City during the five years immediately preceding the application date.
- (j) LICENSE SUSPENSION, REVOCATION OR NON-RENEWAL. The City may permanently revoke, or suspend a license, after providing five (5) working days written notice to a licensee, for any of the following reasons:
- (1) The licensee obtained the license through false statements in the application for the license, or for renewal thereof;
 - (2) The licensee failed to make a complete disclosure of all information in the application for the license, or for renewal thereof;
 - (3) The licensed employee, entertainer or manager licensee is no longer a resident of Clay County;
 - (4) The licensee has become disqualified from having a license by conviction or diversion of a specified criminal act.
 - (5) The licensee has an equivalent sexually oriented business license from this or any other City revoked or suspended.
 - (6) The licensee has violated, or allowed or permitted the violation of, any of the provisions of this article or any City Code relating to adult businesses or the premises.
 - (7) There have been recurrent violations of provisions of this article, or any City code relating to sexually oriented businesses or the premises, that have occurred under such circumstances that the owner of the sexually oriented business knew or should have known that such violations were committed.

5-708 STANDARDS OF CONDUCT.

- (a) Identification cards required.
 - (1) It shall be unlawful for any licensed employee, entertainer or manager to fail to have in their possession, at all times when working in a sexually oriented business, a valid identification and a valid license, issued by the City, bearing the license number and the licensee's physical description.
 - (2) It shall be unlawful for any person to alter the City-issued license.
- (b) Age restriction.
 - (1) It shall be unlawful for any owner, manager or employee to allow or permit any minor to be in or upon the premises of a sexually oriented business.
 - (2) The manager or manager's representative shall verify the age of each person

with one valid form of identification. The manager shall be held responsible for the failure to verify the age of the person.

- (c) Hours of operation. It shall be unlawful for a sexually oriented business to be open or in use between the hours of 2:00 a.m. and 10:00 a.m. on any day Monday through Saturday. It shall be unlawful for a sexually oriented business to be open on Sunday. The manager and/or owner shall be held responsible for a violation of this subsection.
- (d) Nudity prohibited. It shall be unlawful for any person to be nude on the premises of an adult business.
- (e) Sale or consumption of alcohol prohibited.
 - (1) It shall be unlawful for any person to sell or consume alcoholic liquor or cereal malt beverages on the premises of a sexually oriented business.
 - (2) It shall be unlawful for any owner or manager to knowingly allow or permit alcoholic liquor or cereal malt beverages to be brought, sold or consumed upon the premises.
- (f) Specified sexual activities prohibited.
 - (1) It shall be unlawful for any person to engage in any specified sexual activity on the premises of a sexually oriented business.
 - (2) It shall be unlawful for any person to wear or use any device that simulates any specified anatomical area or to use artificial devices or inanimate objects to simulate or depict any specified sexual activity while on the premises of a sexually oriented business.
 - (3) It shall be unlawful for any owner or manager to knowingly allow or permit any person to engage in any specified criminal act or any specified sexual activity on the premises.
- (g) Physical contact prohibited.
 - (1) It shall be unlawful for any person to touch, fondle or caress any specified anatomical area of any person on the premises of a sexually oriented business.
 - (2) It shall be unlawful for any person to permit a second person to touch, fondle or caress the first person's specified anatomical areas on the premises of a sexually oriented business.
 - (3) It shall be unlawful for any person to have any physical contact with an entertainer, including an entertainer having physical contact with another entertainer, during the provision of adult entertainment.
 - (4) It shall be unlawful for a manager to knowingly permit any person to have any physical contact with an entertainer, including permitting an entertainer to have physical contact with another entertainer.
- (h) Adult entertainment limited to the stage.
 - (1) It shall be unlawful for any entertainer to provide adult entertainment anywhere but upon the stage as required by section 5-714.
 - (2) It shall be unlawful for any manager to permit any entertainer to provide adult entertainment anywhere but upon the stage as required by section 5-714.
 - (3) It shall be unlawful for a patron to cross the stage boundaries set forth in section 5-714 while an entertainer is providing adult entertainment.
 - (4) It shall be unlawful for a manager to knowingly permit a patron to cross the stage boundaries set forth in section 5-714 while the entertainer is engaged in a performance of adult entertainment.
- (i) Restrictions on payment of gratuity.

(1) It shall be unlawful for an Entertainer to solicit, demand or receive any payment or gratuity from any patron while on the premises of a sexually oriented business, except as provided in subsection (ii).

(2) An entertainer shall only receive payment or gratuity for the provision of adult entertainment in the following manner:

(A) While such entertainer is on the stage, a patron may place such payment for gratuity into a container provided by the adult business for the receipt of gratuities located outside the six-foot boundary surrounding the stage; or

(B) While such entertainer is not on the stage but while on the premises of a sexually oriented business and is clothed, a patron may place such payment or gratuity into the entertainer's hand.

(j) Responsibility of manager and owner. It is unlawful for the manager or owner of a sexually oriented business to violate any provision of this article or of City or state law, or to permit or allow any person to violate any provision of this article or of City or state law, while on the premises of the adult business.

5-709 MANAGER ON PREMISES.

(a) A manager shall be on duty at the adult business at all times the premises are open for business. The name of the manager on duty shall be prominently posted.

(b) A manager shall verify that any person working as an employee or entertainer possesses a current and valid license and that such license is prominently posted.

5-710 CONDITIONS OF LICENSURE.

(a) It shall be a condition of the issuance of each license, that any officer or agent of any department charged with the enforcement of this article or any other City Code shall have the right of immediate entry and inspection of any premises subject to the control of the sexually oriented business licensee, at any time. The application for and acceptance of a sexually oriented business license shall conclusively be consent of the applicant and licensee to immediate entry and inspection of the licensed premises. Such consent shall not be revocable during the term of the license. Refusal of entry and inspection shall be grounds for license revocation.

(b) It shall be a condition of the issuance of each license that the licensee has submitted to the jurisdiction of the City of Clay Center Municipal Court for the prosecution for any violation relating to the operation of or employment at the adult business.

5-711 SIGN REQUIREMENTS.

(a) Interior signs. All sexually oriented businesses that provide live adult entertainment shall conspicuously display, in the common area at the principal entrance to the premises, a sign, with uppercase letters at least two inches high and lowercase letters at least one inch high, that reads as follows:

THIS ADULT BUSINESS IS LICENSED AND REGULATED BY THE CITY
OF CLAY CENTER
YOU MUST BE 18 YEARS OLD TO ENTER

Standards of Conduct for the Premises :

- (1) No alcohol.
 - (2) No nudity.
 - (3) No person, including another entertainer, may have any physical contact with an entertainer while performing.
 - (4) No person may touch any person's genitals, pubic region, buttocks or female breast at any time.
 - (5) No sexual acts, sexual conduct, prostitution or solicitation of prostitution.
 - (6) Entertainers may only perform in the stage area.
 - (7) No patron may enter the stage area.
 - (8) A patron may only tip an entertainer by 1) placing a tip in a container located outside the stage area during an entertainer's performance, or 2) placing a tip in a clothed entertainer's hand after a performance.
- (b) Exterior signs.
- (1) A sexually oriented business shall have no signs on the premises or the property on which the premises is located, except as provided herein. Any permitted sign must meet the requirements of this section and the Clay Center Zoning Regulations. In the event of a conflict between this section and the Clay Center Zoning Regulations, the sexually oriented business shall comply with the more restrictive provision.
 - (2) A sexually oriented business may have one wall sign on the exterior of the premises, consisting of internally lit, individually wall-mounted letters, indicating only the name of the sexually oriented business. The gross surface area of the wall sign shall not exceed 20 square feet.
 - (3) A sexually oriented business may have one sign located on the entrance to the premises, either on or beside the door, indicating only the name of the sexually oriented business and the hours of operation. This sign shall be non-illuminated. The gross surface area of the sign shall not exceed two (2) square feet.
 - (4) No sign or exterior surface of the sexually oriented business premises, including windows and doors, shall include descriptive art, graphics, lighting or designs depicting or referring to a nude person or specified sexual activities.
 - (5) No sexually oriented business shall permit temporary sales aids, portable signs, exterior or interior window displays, prohibited signs or banner signs, as defined in the Buildings and Construction portion of the City Code.
 - (6) No sexually oriented business shall permit any architectural building element that draws attention to the sexually oriented business, including but not limited to, neon lighting outlining the building, spot lighting, strobe lighting or garish paint.
 - (7) A sexually oriented business shall obtain a sign permit prior to installation or any modification of any sign.

5-712 LOCATION REQUIREMENTS.

- (a) No license shall be issued for a sexually oriented business if the proposed business premises do not comply with or meet the requirements of the applicable health, zoning, building code, fire and property maintenance ordinances of the City.
- (b) No license shall be granted for a sexually oriented business which is located within 1,000 feet of the following protected uses:

- (1) A church or place of worship.
 - (2) A K-12 educational institution.
 - (3) Property that is zoned as a residential district, as defined in the Clay Center Zoning regulations.
 - (4) A state-licensed group childcare facility.
 - (5) A public park.
 - (6) A public building that is frequented by the public.
 - (7) An arterial street as designated by the City or the Kansas Department of Transportation.
- (c) The separation distance between a sexually oriented business and a protected use shall be measured in a straight line, without regard to intervening objects or structures, from the closest part of the sexually oriented business premises, including signs and roof overhangs, to the closest point on property boundaries on which a protected use is located; or, if a protected use is located on a parcel of land that lacks a defined boundary, to the closest point of the actual improvement that is the protected use.
- (d) It shall be unlawful to locate or operate a sexually oriented business within 1,000 feet of another sexually oriented business, as measured between the premises of each sexually oriented business. It shall be unlawful to operate more than one sexually oriented business in any building, structure or portion thereof.

5-713 Nonconforming businesses.

- (a) A sexually oriented business is nonconforming if it previously conformed to this article and all applicable Clay Center Zoning Regulations, or if it has not been subject to this article or the Clay Center Zoning Regulations, and it has remained in the same condition continuously since such time, and the only reason it no longer conforms, is because of a change in this article or the Clay Center Zoning Regulations.
- (b) Nonconforming businesses may continue operation for a period not to exceed six months, unless sooner terminated for any reason, or voluntarily discontinued for a period of 30 days or more. Any nonconforming business may apply to the governing body for an extension of time beyond six months upon a showing of extreme hardship. The extension of time shall not exceed one year after the six-month termination date.
- (c) Nonconforming businesses shall not be increased, enlarged, extended or altered except to change to a conforming business.
- (d) If two or more adult businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was established first and continually operating is the conforming business and any later-established business is the nonconforming business.
- (e) A conforming sexually oriented business is not rendered nonconforming by the location, subsequent to the grant or renewal of a sexually oriented business license, of a protected use. In the event that an owner of a conforming sexually oriented business sells the sexually oriented business to another person, the new owner may apply for a sexually oriented business license of the same type held by the prior owner, without the sexually oriented business becoming nonconforming in the interim, but no later than 30 working days from the prior owner's termination of operation of the sexually oriented business.

5-714 FACILITY REQUIREMENTS.

- (a) Stage requirements. A sexually oriented business providing adult entertainment

shall install a stage at least two feet above the immediate floor level and removed at least six (6) feet from the nearest patron. The six-foot boundary from the outer edge of the stage shall be clearly indicated to prevent patrons from crossing the boundary. The absence of this demarcation boundary shall be prima facie evidence that there have been performances in the unmarked areas, in violation of the standards of conduct.

(b) Exterior observation. The premises of all sexually oriented businesses shall be constructed to ensure that the interior of the premises cannot be observed from the exterior of the premises. Windows shall be covered and doorways shall be constructed or covered to prevent observation of the interior of the premises from the exterior of the premises.

(c) Exterior display. No sexually oriented business shall be conducted in any manner which permits the observation of live performers from any exterior source by display, decoration, sign, show window or other opening.

(d) Lighting required. The premises of sexually oriented businesses shall be equipped with overhead lighting in every place to which customers are permitted access, at an illumination of not less than one footcandle, as measured at the floor level, and such illumination must be maintained at all times that any patron is present on the premises.

(e) Ventilation and sanitation requirements. The premises of all sexually oriented businesses shall be kept in a sanitary condition. Except as otherwise provided herein, separate dressing rooms and restrooms for men and women shall at all times be maintained and kept in a sanitary condition.

(f) Closed booths or private rooms prohibited. The interior premises of all sexually oriented businesses shall be configured so that there is an unobstructed and direct-line-of-sight view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Closed booths or private rooms are prohibited.

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

5-715 PENALTY FOR VIOLATION. It shall be unlawful for any person to violate any of the provisions of this article. Upon conviction thereof, the person shall be punished for each offense by a fine less than or equal to \$500.00, or by imprisonment for a period less than or equal to six months, or by both such fine and imprisonment. Each day any violation of this article shall continue shall constitute a separate offense.

5-716 AUTHORITY TO PROMULGATE REGULATIONS. The City Clerk shall have the power to promulgate regulations as may be necessary and feasible for the carrying out of the duties of his/her office and which are not inconsistent with the provisions of this article.

5-717 SAVINGS CLAUSE. Neither the adoption of this ordinance nor the repeal or

amendment of any ordinance or part or portion thereof shall in any manner affect the prosecution or civil enforcement for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at said effective date due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect.

5-718 SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this article, or the application thereof to any circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this article.