

## Chapter 10

### BUSINESS REGULATIONS

#### Article 1. Alcoholic Beverages

##### §10-101 ALCOHOLIC BEVERAGES; SALES CONSTITUTE A BUSINESS.

Under the provisions of the Zoning Regulations of the City, the sale of alcoholic beverages shall be construed to be a business in and of itself, and no permit for the sale thereof shall be issued to any applicant except upon the written consent of the of the owners of lots and parts of lots.

##### §10-102 ALCOHOLIC BEVERAGES; HOURS OF SALE.

(1) It shall be unlawful for any licensed person or persons or their agents to sell any alcoholic beverages within the City except during the hours provided herein.

(2) All alcoholic liquors and alcoholic beverages, including beer and wine may be sold either on-sale or off-sale from 6:00 A.M. to 1:00 A.M., Mondays through Saturdays, and from 9:00 A.M. to 1:00 A.M. on Sundays, and, in addition thereto, on Sunday, December 24th and on Sunday December 31st beer and wine may be sold off sale from 8:00 A.M. to 12:00 Noon.

(3) No persons or persons shall consume any alcoholic beverages on licensed premises for a period of time longer than fifteen (15) minutes after the time fixed herein for stopping the sale of alcoholic beverages on the said premises. For the purposes of this section, "on sale" shall be defined as alcoholic beverages sold by the drink for consumption on the premises of the licensed establishment; "off sale" shall be defined as alcoholic beverages sold at retail in the original container for consumption off the premises of the licensed establishment.

(4) Nothing in this section shall be construed to prohibit licensed premises from being open for other business on days and hours during which the sale or dispensing of alcoholic beverages is prohibited by this section.

##### §10-103 ALCOHOLIC BEVERAGES; SIDEWALK CAFES.

The City Council may permit the public streets and sidewalks within the City limits to be occupied and used under a lease, license, or other permission by a person, business, or others for the sale of services or goods, and to permit the placement of nonpermanent sidewalk cafes, tables, chairs, benches, and other temporary improvements, including fencing or other enclosure from which such sales can be transacted on the public streets and sidewalks.

Any such uses, permits or improvements shall be subject to termination or removal upon thirty days notice from the City, without cause, in the sole discretion of the City Council.

##### §10-104 ALCOHOLIC BEVERAGES; RETAIL LIQUOR LICENSE APPLICATION; REQUIREMENTS AND PROCEDURE.

Notice of a hearing held pursuant to Neb. Rev. Statute 53-134 shall be given to the applicant by the City Clerk and shall contain the date, time, and location of the hearing. Two (2) or more proceedings which are legally or factually related may be heard and considered together unless any party thereto makes a showing sufficient to satisfy the Council that prejudice would result there from. Hearings will be informal and conducted by the Mayor. The intent is an inquiry into the facts, not an adversary action. The Council shall not be bound by the strict rules of evidence, and shall have full authority to control the procedures of the hearing including the admission or exclusion of testimony or other evidence. The Council may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent individuals in the conduct of their affairs. The Mayor may limit testimony where it appears incompetent, irrelevant, or unduly repetitious.

The order of the proceeding is as follows:

1. Presentation of evidence, witnesses and arguments by applicant.
2. Cross-examination by the opposition to the applicant.
3. Presentation of evidence, witnesses and arguments by those in opposition to the applicant.
4. Cross-examination by the applicant.
5. Rebuttal evidence by both parties.
6. Summation by both parties.

In all cases, the burden of proof and persuasion shall be on the party filing the application. Any member of the Council may question any witness, call witnesses, or request information. All witnesses shall be sworn. A transcript may be requested by the applicant at the applicant's expense.

§10-105 ALCOHOLIC BEVERAGES; RETAIL LIQUOR LICENSING STANDARDS AND EVALUATION CRITERIA.

The City Council shall consider the following standards and criteria in evaluation of retail liquor license applications for the purpose of formulating a recommendation for the Nebraska Liquor Control Commission in accordance with the Nebraska Liquor Control Act:

1. The adequacy of existing law enforcement resources and services in the area and any recommendation made by the Police Department and/or other law enforcement agency.
2. Existing motor vehicle and pedestrian traffic flow in the vicinity of the proposed licensed premises and parking requirements.
3. Zoning restrictions.
4. The sanitation or sanitary conditions on or about the proposed licensed premises.
5. The existence of a citizen's protest and any other evidence in support of or opposition to the application.
6. That the type of business or activity proposed to be operated in conjunction with the proposed license is or will be consistent with the public interest.
7. That the nature of the neighborhood where the proposed premise is located is suitable and applicable for placement of a liquor establishment.
8. That the type of business or activity proposed to be operated in conjunction with the proposed license is or will be consistent with the public interest.
9. That the applicant must ensure that every precaution has been taken to protect against the possibility of shoplifting of alcoholic beverages.
10. That the application is for a business, the sole purpose for which is the sale or dispensing of liquor, or the sale or dispensing of liquor is a substantial integral part of the business, and not just incidental thereto.
11. The quality and management ability of the applicant.

12. Assurances that the applicant will comply with State laws, liquor regulations and City ordinances and regulations.

13. Assurances that the application will provide an improvement to the neighborhood, a betterment to the City, and meets a true community need.

14. That the applicant is not prohibited from holding a license by virtue of section 53-125, Nebraska Reissue Revised Statutes.

15. That past performance of the applicant was satisfactory if the applicant previously held a liquor license.

16. Other information and data that may reasonably be considered pertinent to the issuance of the license.

The aforementioned licensing standards and criteria are not necessarily of equal value that can be computed in a mathematical formula. Rather, they are standards and criteria which can be weighed and cumulated positively and negatively. The burden of proof and persuasion shall be on the party filing the application. Moreover, the City Council shall give an affirmative recommendation to the Nebraska Liquor Control Commission only when the applicant has satisfactorily demonstrated that the issuance of the retail liquor is generally consistent with the preceding standards and criteria is in the best interest of the public.

**§10-106      BOTTLE CLUBS; DEFINED.**

A bottle club is hereby defined to mean any business or commercial operation, whether open to the public or where entrance is limited by any fee, cover charge, membership, or similar requirement to which patrons bring with them alcoholic liquor to be consumed or stored for consumption on the business premises and where such business or premises is not licensed to sell or dispense alcoholic beverages.

**§10-107      BOTTLE CLUBS; PROHIBITED.**

(1) It shall be unlawful for any person to knowingly or intentionally operate a bottle club.

(2) It shall be unlawful for any person to knowingly or intentionally allow or permit the operation of a bottle club on the premises owned by or under the direction and control of such person.

**§10-108      OCCUPATION TAX; AMOUNTS.**

For the purpose of raising revenue, an occupation tax is hereby levied on alcoholic beverages. The occupation tax collected shall be in accordance with the Nebraska Liquor Control Commission laws.

**§10-109      SPECIAL DESIGNATED LICENSE; APPLICATION FEE.**

There shall be a (\$50) fifty dollar per day application fee for any Special Designated License when the applicant does not hold a class K (catering) liquor license from the Nebraska Liquor Control Commission. or more residents of the Municipality on or before February 10, or August 10 for Class C licenses, the Governing Body shall hold a hearing to determine whether continuation of the license should be allowed. Upon the conclusion of any hearing required by this section, Governing Body may request a licensee to submit an application as provided in section 53-135 RS Neb.

**Article 2. Peddlers and Solicitors**

**§10-201      PEDDLERS AND SOLICITORS; DEFINITIONS.**

**PEDDLER.** An uninvited person offering products for immediate sale and delivery in residential areas.

**PRODUCTS.** All good, chattels, wares, merchandise and services of any kind whatsoever.

SOLICITOR. An uninvited person offering products for future delivery or seeking donations in return for products.

**§10-202 PEDDLERS AND SOLICITORS; PERMIT REQUIRED.**

All peddlers and solicitors, other than persons exempted by section 10-208, shall be required to obtain a City sales and solicitation permit prior to making sales or solicitations within the City. Sales and solicitation permits shall be valid for thirty (30) days and shall be issued by the City Clerk upon compliance with the requirements of this Article.

**§10-203 PEDDLERS AND SOLICITORS; SALES AND SOLICITATION PERMIT APPLICATION.**

Application for a City sales and solicitation permit shall be made between the hours of eight o'clock (8:00) a.m. and four o'clock (4:00) p.m., Monday through Friday, excluding holidays to the Fremont Police Department, on a form furnished by the Police Department. Incomplete applications shall be rejected. The Police Department shall conduct a background investigation on persons applying for such permits. Convicted felons and persons convicted of crimes involving dishonesty and moral turpitude shall not be issued a permit. Background investigations shall be completed within seven (7) working days.

**§10-204 SOLICITORS; BOND REQUIREMENT; FEE.**

All peddlers and solicitors, other than those exempted by section 10-208, are required to pay an administrative fee to the City Clerk in the amount of twenty-five dollars (\$25.00) for each solicitor to defray the cost of issuing the permit and of investigating the applicant. Solicitors shall also be required to post a license permit bond in the principal amount of two thousand dollars (\$2,000.00) guaranteeing future delivery of products ordered. Such bond shall be written by an approved surety company and shall be effective for at least six (6) months from the date of the sales and solicitation permit. Organizations employing or utilizing solicitors as independent contractors may purchase a single license permit bond in the amount of five thousand dollars (\$5,000.00) for up to ten (10) solicitors or a license permit bond in the amount of ten thousand dollars (\$10,000.00) for more than ten (10) solicitors. Any such bond posted by an organization employing or utilizing solicitors as independent contractors shall identify by name all persons covered by such bond.

**§10-205 PEDDLERS AND SOLICITORS; REVOCATION OF PERMIT.**

- (A) A sales and solicitation permit may be revoked by the City Clerk or Chief of Police for the following reasons:
- (1) Complaints of high pressure sales.
  - (2) Providing incomplete or false information about company or their sales agent, supervisors, products or services.
  - (3) After hours operation violations.
  - (4) Indicating a fictitious affiliation with groups or companies.
  - (5) Enter upon any private premises when the same is posted with a sign stating "No Peddlers Allowed", or other words to that effect.
  - (6) Conviction of a felony or other crime involving dishonesty or moral turpitude.
  - (7) Improper transfer of a permit.
  - (8) Other solicitor misconduct as determined by the Police Department.
- (B) A denial or revocation of a sales and solicitation permit may be appealed to the City Council within ten (10) days of such revocation. Such appeal must be in writing and shall be considered and decided by the City Council within thirty (30) days. The Council may consider such appeals at any regular or specially called meeting, and may conduct a hearing according to such rules as the Council may establish.
- (C) The City may seek forfeiture of a license permit bond posted by a solicitor or organization where products ordered are not delivered as promised, or in the event of fraud, misrepresentation or

deceit by a solicitor. If the amount of the funds recovered from such forfeiture is insufficient to pay all claims, such claims shall be paid proportionately as determined by the City Council.

**§10-206 PEDDLERS AND SOLICITORS; HOURS.**

It shall be unlawful for an uninvited peddler or solicitor to visit any house, dwelling, or residence for the purpose of making sales or soliciting orders before eight o'clock (8:00) a.m. or after sunset.

**§10-207 PEDDLERS AND SOLICITORS; DISPLAY OF PERMIT.**

Every peddler and solicitor must carry on his or her person and display the sales and solicitation permit issued by the City Clerk while engaged in sales or solicitations. Sales and solicitation permits are not transferable.

**§10-208 PEDDLERS AND SOLICITORS; EXCEPTIONS.**

Unpaid volunteers or other individuals who are not paid or otherwise compensated to sell or solicit on behalf of a nonprofit organization, such as schools, scout troops, churches and other nonprofit organizations, shall be exempt from the requirements set forth in this Article. Organizations sponsoring or directing such sales or solicitations shall, upon request, provide documentation of the non-profit status of the organization.

**§ 10-209 SOLICITING RIDES OR BUSINESS.**

No person shall stand in a roadway for the purpose of soliciting a ride, employment, contributions or business from the occupant of any vehicle.

- (1) No person shall stand on or in the proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street or highway.
- (2) Exception to items 1 and 2 above may be allowed by the City Council for the purposes of soliciting contributions which are to be devoted to charitable or community betterment purposes, from any occupant of any vehicle when stopped by traffic control devices or traffic control signals, within a roadway which is not part of the state highway system; provided, that such person and the charity shall first comply with subsection (4) below.
- (3) A charity or community betterment organization and its solicitors, seeking to solicit contributions for those using a roadway shall comply with the following:
- (4) At least thirty days prior to the date of the proposed solicitation, the charity or organization shall file a request for roadway solicitation with the City Clerk. The request shall state the date, time and location of the proposed solicitation, and the names of all solicitors. All requests must include a Certificate of Insurance for the solicitation, naming the City of Fremont, and the solicitors as additional insured, in the minimum amount of one million dollars. Copies of the request shall be forwarded to the Chief of Police and placed on the agenda for consideration at the next meeting of the Fremont City Council.
  - (a) Each person who will be engaging in roadway solicitation shall sign an information/waiver form, which shall be available through the office of the City Clerk. The form shall waive any claims against the City of Fremont arising as a result of the solicitation and set forth the conditions under which the roadway solicitation may be conducted.
  - (b) A roadway solicitor shall be at least eighteen years of age. All roadway solicitors shall wear an optically bright yellow or orange safety vest while soliciting in the area of the roadway.
  - (c) City employees engaging in roadway solicitation may do so during off-duty time only and may not be identified, in any way, as a city employee during such solicitation. No City employee shall be eligible for worker's compensation benefits for any injury sustained as a part of any roadside solicitation.
  - (d) A charity or organization may engage in roadway solicitation only two times in twelve consecutive

calendar months and for a duration of no greater than two consecutive days each time.

- (e) Any solicitor must have documentation of having completed instruction regarding safe roadway operations as developed by the Fremont Police Department. Such documentation shall be provided upon request.

### Article 3: Regulated Business

#### §10-301 BINGO; DEFINED.

“Bingo” shall mean a game, whether known as beano, bingo, keno, lotto or any other name, in which each participant receives one (1) or more cards each of which is marked off into twenty-five (25) squares arranged in five (5) horizontal rows of five (5) squares each and five (5) vertical rows of five (5) squares each, with each square being designated by number, letter or combination of numbers and letter, no two (2) cards being identical, with the players covering the squares as the operator of such game announces the number, letter or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically, from a receptacle in which have been placed objects bearing numbers, letters or combination of numbers and letters corresponding to the system used for designating the squares, with the winner of each game being the players first properly covering a predetermined and announced pattern of squares on a card being used by him or them.

#### §10-302 BINGO; REGULATION,

Section 10-302 of the Municipal Code is hereby repealed.

#### §10-303 BINGO; TAX.

(Repealed by Ord. No. 3948. 1/30/01)

#### §10-304 BINGO; QUARTERLY REPORT.

(Repealed by Ord No. 3948, 1/30/01)

#### §10-305 BINGO; INCORPORATED REGULATION.

All applicable State statutes as they now exist or may hereafter be amended shall be, and will constitute, a part of this Article as if repeated verbatim herein, and violation of any State statute will be a distinct and separate offense against the City as well as against the State. Violators thereof shall be separately prosecuted by the City for each of such offenses, and if convicted, shall be deemed to be guilty of a misdemeanor.

#### §10-306 RAILROADS; SAFE CROSSINGS.

All railroads and railway companies and the owners of any railroad track shall station, keep, install and maintain at all times, at their own expense, at the crossings of the railroad tracks with any public streets or highways whenever directed to do so by order or resolution of the City Council; first: a flagman whose duty it shall be to signal persons traveling in the direction of any such crossings, and to warn them of the approach of any locomotive, engine and other impending danger; or secondly, an automatic signal device of the design and specifications approved by the Council to be installed, operated and maintained as per direction of the Council for the safety and protection of persons and vehicles using the streets and sidewalks. The erection and installation of such automatic signal device, with attached fixtures, upon or over any part of the streets or public grounds of the City hereunder is a revocable license to use such streets or grounds and no permanent rights shall be obtained in the streets or public grounds by reason of such use. The location of the device with wires and attachments shall be subject to change of location or removal, when deemed necessary for the public interest. Each railway installing and maintaining such device with its attachments, by virtue of obtaining the permission to install and operate, shall in case of loss or damage indemnify and save harmless the City, its officers and agents, from and against all lawful claims and demands for injuries to persons or property occasioned by virtue of the existence or operation or both of the device with its attachment.

**§10-307 RAILROADS; OBSTRUCTION OF STREETS.**

- (a) It shall be unlawful for any railroad company, except in an emergency, to order, allow or permit the operation of or to operate or to operate its system so that a train blocks the passage of vehicular traffic over the railroad crossing of any public street, road or highway within the corporate limits of the City for a longer period than ten (10) minutes. This section does not apply to an obstruction caused by a continuously moving train or caused by circumstances wholly beyond the control of the railroad but does apply to all other obstructions, including but not limited to, those caused by a stopped train, a train engaged in switching, loading or unloading operations.
- (b) Upon receiving notification from a law enforcement officer, member of a fire department, operator of an emergency medical vehicle, or the member of an emergency services provider that that emergency circumstances require the immediate clearing of a public street, road or highway railroad crossing, the members of the train crew of the train, railroad car or equipment or engine blocking such crossing shall immediately notify the appropriate railroad dispatcher of the pending emergency situation. Upon receipt of notice of such emergency circumstances, by the train crew or dispatcher, the railroad shall immediately clear the crossing consistent with the safe operation of the train.

**§10-308 RAILROADS; BELLS AND WHISTLES.**

The bell of each locomotive engine shall be rung continually while such locomotive engine is in motion and moving upon any railroad or railway track inside of the City limits. It shall be unlawful for any person to sound a whistle on any railroad train operated by gas, steam, oil or electricity within the corporate limits of the City for street crossings for a longer period of time than three (3) seconds or to again sound such whistle until one (1) second has expired.

**§10-309 RAILROADS; SPEED LIMITS.**

It shall be unlawful for any person to drive or propel any railroad train, which is operated by gas, steam, Diesel engine or electricity, at a greater rate of speed than forty (40) miles per hour within the corporate limits of the City.

**§10-310 RAILROADS; LIGHTED CROSSINGS.**

Each railroad, the cars of which are propelled by steam, oil, or diesel shall be lighted and kept lighted in this City at all the intersections in this City, by the company, corporation or person operating or owning the same as follows:

There shall be placed one (1) electric light lamp of the capacity of three hundred and twenty-five (325) watts at all the intersections of every such railway, such lamps each to be placed under the supervision of the Department of Utilities and such lamps to be placed in the manner of the electric light lamps used by this City for lighting the streets and to be at a height sufficient for the safety of the persons using such streets, and as near as practicable to the height of the electric lights used by the City for lighting the streets. Such electric light lamps at such intersections shall be lighted at the hour each day set for the lighting of the electric light lamps used by the city for lighting streets and shall be kept lighted during the times set for the electric light lamps used by the City to be kept lighted. The Mayor and Council may by resolution, from time to time as necessity may require, order the lighting by every such company of any other street crossing.

The cost of maintaining, erecting, lighting and keeping lighted lamps at each intersection of any railway with anyone of the streets specified in this section shall be paid for by the company, corporation or person owning or operating such road, and upon failure of any such company, corporation or person to put in or operate any such lamp as required by this section or within a reasonable time from and after the passage of a resolution as provided by this section, the Council shall cause such lamp to be put in and operated, and shall collect the cost thereof from such company, corporation or person.

**§10-311; §10-312; §10-313 REPEALED**

**§10-314 HOUSE MOVING; DEFINED.**

The term “house moving” as used in this Article is hereby defined to mean and include the moving of any house, building or structure.

**§10-315 HOUSE MOVING; LICENSE REQUIRED, PROCEDURE, REQUIREMENT.**

It shall be unlawful for any person to carry on or engage in the occupation of house moving in the City without having first procured a license therefor and having complied with all the related provisions of this Article. Any person desiring to engage in the business of house moving shall file with the City Clerk a written application for a license therefor. Such application shall be accompanied by a bond in the sum of five thousand (\$5,000.00), of a surety authorized to do business in the State and conditioned, upon other things, that such licensee will in all things strictly comply with all the provisions of this Article and any other sections of this Code relating to house moving, that such license will save, indemnify and keep harmless the City from all liabilities, judgments, costs and expenses which may in anywise accrue against it in consequence of the granting of such license, or in consequence of any injury to persons or property resulting directly or indirectly from the exercise of the privileges in such license granted, that such licensee will pay to the City any and all damages which may be sustained to any pavement, curb, gutter, sidewalk, streets, crosswalks or other City property through the conduct of such occupation by such licensee, and that such licensee will also pay to the owner any and all damages caused in a like manner to any private property in the City. Such application and bond shall thereupon be submitted to the City Council for approval, and if approved, the City Clerk shall issue a license to the applicant upon payment by the applicant of a license fee of twenty-five dollars (\$25.00), which fee shall pay the cost of issuing the license up to the following April. The license fee of twenty-five dollars (\$25.00) shall be required for each year or that part thereof that said license is to be operative.

**§10-316 HOUSEMOVING; LICENSE REVOCATION.**

The license provided for by the preceding section may be revoked at any time by the City Council if the licensee shall conduct his business in a reckless or careless manner, or if he shall fail or refuse to make prompt payment of any sums due the City from him under any of the provisions of this Article.

**§10-317 HOUSEMOVING; LIMITATION, SPECIAL PERMIT EXCEPTIONS.**

No building having greater height than eighteen (18') feet, or a greater width than twenty-four (24') feet shall be moved over or across any street, alley or public way in the City. The width shall be ascertained by measuring the widest part, at the eaves, of such building. However, the City Council may, upon written application, grant a special permit for the moving of structures of greater height and dimensions than specified, when in the opinion of the City Council the route over which such house may be moved will cause no exceptional hazard to persons or property. Before such permit is granted, the applicant shall file with the City Clerk a bond to be approved by the City Council, containing all the conditions required of the bond set forth in Section 10-315, which bond shall be executed by the owner of the house or structure to be moved and shall be in an amount not less than five thousand (\$5,000.00) dollars, or such sum greater as the City Council shall deem necessary.

**§10-318 HOUSEMOVING; WHEELS AND ROLLERS, SPECIFICATIONS.**

All trucks, wheels or rollers used to move buildings shall be not less than fifteen (15") inches in diameter and have a minimum width of twelve (12") inches. When moving over or across pavements, planks not less than two (2") inches thick and of sufficient width shall be laid on the pavement and the trucks, wheels or rollers run thereon. In lieu of the foregoing, pneumatic tires may be used; provided, that the per axle load does not exceed the maximum permitted by the laws of the state governing the use of public roads. (*Ref 7-8, Code 1972*)

**§10-319 HOUSEMOVING; MOVING PERMIT REQUIRED.**

No building exceeding eight (8') foot in width at its widest point; twelve (12') foot in total length; or thirteen (13') foot in height when loaded and ready for moving shall be moved over or across any street, alley or public way of the City without a permit to do so, issued as provided by this Section, nor shall any permit be issued to any person other than a licensed house mover. The Building Inspector is hereby authorized to issue house moving permits upon written application when the building to be moved is consistent with the provisions of this Article. The application for a house moving permit shall contain a description of the building proposed to



be moved, its dimensions and construction, its weight when loaded, the number of axles, its location and the location where the same is to be moved. Such application shall have attached a certificate of the Director of Finance showing payment to him of a fee of twenty-five (\$25.00) dollars; and that all City taxes and special assessments levied and assessed against the lot, including the building upon which the building is located, have been paid. The Building Inspector, in each permit, shall limit the time for removal of the building and the time to be occupied in moving the same, He shall also specify in each permit the route to be followed in moving such building, and it shall be unlawful for any person to digress therefrom without the written consent of the Building Inspector. No permit shall be issued unless countersigned and approved by the City Engineer and by the duly authorized agent of the Department of Utilities, telephone and telegraph company, CATV company, and the Director of the Board of Parks and Recreation. If the right-of-way of any railroad company is to be crossed, such company must also approve such permit. The house mover shall notify the Building Inspector of the hour when moving will actually begin. An investigation fee of twenty-five (\$25.00) dollars will be charged in addition to the normal moving permit fee. If any individual moves any building covered by this Article across or onto any street, alley or public way of the City without first having had a licensed mover obtain a proper moving permit. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this Article nor from any penalty prescribed by law.

**§10-320      HOUSEMOVING; PROTECTION OF TREES.**

For the purpose of protecting trees, a member of the Parks and Recreation Department shall accompany the house mover over the prescribed route of the move pursuant to this Article. The house mover shall compensate the City for such services as it shall provide, with the Parks and Recreation Department making the determination as to the amount.

**§10-321      HOUSEMOVING; DAMAGE TO CITY PROPERTY, PAYMENT.**

In case of injury or damage to City property caused or occasioned by the moving of any building pursuant to this Article, the City Engineer shall make an estimate of the amount of such injury or damage, and the licensee shall pay the stipulated amount to the Director of Finance within five (5) days after notification. In case of his failure to pay, the Director of Finance shall proceed to collect the same by suit on the bond of such licensee or otherwise.

**§10-322      ASPHALT AND CONCRETE WORK; LICENSE REQUIRED.**

No person shall engage in the work of constructing, reconstructing, building or rebuilding of any driveway, approach, curbing or crossing on or across any street, avenue, alley or other public place in the City unless licensed to do so as provided by this section. Any person desiring to engage in the work aforesaid, except if under contract with the City, shall, before receiving a license to do so, present to the Mayor and Council a petition in writing giving his name and that of each member of his firm, if any, and his place of business, asking to become a licensed constructor, reconstructor and rebuilder of driveways, approaches, curbings and crossings on and across the streets, avenues, alleys and other public places of the City and stating his willingness to be governed in all respects by the provisions of this Chapter and any other ordinances now or hereafter adopted by the City concerning driveways, approaches, crossings and curbings. Before receiving a license he shall also file in the office of the City Clerk a bond payable to the City with two or more good and sufficient sureties or a surety company to be approved by the Mayor and Council in the sum of five thousand (\$5,000.00) dollars, conditioned that he will indemnify and keep harmless the City from any liability for any accident or damages arising from any negligence or unskillfulness in doing or protecting his work. The license herein provided for shall be issued by the City Clerk on the order of the Mayor and Council after the applicant has paid to the City a fee of twenty (\$20.00) dollars for the year or unexpired part thereof. Such bond and license shall be for the period ending on April 1st following, and shall be renewable annually on or before April 1st for the succeeding year. Any person licensed under the provisions of this section as an asphalt and/or concrete worker, who does not renew their license for a period of sixty (60) days after expiration of same, shall submit themselves to an examination by the City Council before such person can again be licensed hereunder. The license herein provided may be suspended or revoked by the Mayor and City Council for violation of provisions of this Chapter and any other ordinances now or hereafter adopted relating to driveways, approaches, crossings and curbings.

**§10-401 FORESTERS: ISSUANCE OF LICENSE.**

- (1) It shall be unlawful for any firm, partnership or corporation to engage in the business of forestry until such firm, partnership or corporation has been approved and licensed by the City. The issuance of such license shall be conditioned on the following:
- (2) One (1) or more persons of such firm or partnership, or in the case of corporations, one (1) or more officers including the manager or individual designated and registered to accept service of summons in the name of the corporation, shall be the holder of a forester's license of the grade required for the work undertaken and; provided further, that each job shall be in direct and personal charge of the holder of a forester's license of the proper class.

**§10-402 FORESTERS: LICENSE: WHEN REQUIRED.**

- (1) (a) It shall be unlawful for any person for hire or other valuable consideration to cut into and excavate cavities or to remove rotten, dead or diseased wood from any tree; fill or treat in any manner any cavity in a tree, repair any broken or injured tree; spray or otherwise treat for pests or diseases any tree or shrub; to cut down trees or to trim and cut or prune, limbs or branches of trees within the City unless he holds a valid first or second class forester's license as is applicable, in good standing, granted by the Board of Forestry Examiners.  

(b) In no way is the foregoing paragraph to prevent a property owner from performing the acts outlined above upon his own property.
- (2) Nothing contained herein shall be interpreted as prohibiting the employment, by the holder of a forester's certificate, of helpers who are not holders of forester's certificates; provided, that such certificate holder is in direct and personal charge of the work, and further provided, that said certificate holder shall be equally as responsible for all acts of his helpers as if he had done them himself.

**§10-403 FORESTERS: CLASSIFICATION OF LICENSES.**

- (1) First class forester's license shall entitle the holder thereof for hire or other valuable consideration, to trim and cut or prune limbs or branches of trees and shrubs; to perform tree surgery; to cut into and excavate cavities or to remove rotten, dead or diseased wood from any tree; to fill or treat in any manner any cavity in a tree; to repair any broken or injured tree; to spray or otherwise treat for pests or diseases any tree or shrub, or to treat in any manner any tree or shrub within the City, subject to the requirements hereinafter set forth.
- (2) A second class forester's license shall entitle the holder thereof for hire or other valuable consideration, to trim and cut or prune limbs or branches of any tree or shrub in the City, subject to the requirements hereinafter set forth.
- (3) A second class forester's license, certified by the Board of Forestry Examiners for spraying shall entitle the holder to spray or otherwise treat for pests or diseases, any tree or shrub within the City, in addition to the other types of work permitted by the second class license.

**§10-404 FORESTERS: QUALIFICATIONS.**

- (1) Every applicant shall be at least eighteen (18) years old, of temperate habits and good character.
- (2) Liability Insurance. (a) Before a license is granted or renewed, applicants and license holders shall file with the City Clerk a certificate of liability insurance coverage, providing liability coverage for accidents arising out of his work as a tree expert of at least one hundred thousand (\$100,000.00) dollars for the injury or death of any one (1) person; three hundred thousand (\$300,000.00) dollars for the injury or death of any number of persons in any one (1) accident, and with a coverage of at least twenty-five thousand (\$25,000.00) dollars for property damage in any one (1) accident for holders of first class licenses. (b) Such policy of insurance shall run in favor of the City and the general public, and shall further provide that it cannot be cancelled until ten (10) days written notice

of such cancellation has been filed with the City Clerk. Cancellation or termination of any insurance policy is sued for or in compliance with the provisions hereof shall automatically terminate any forester's license, unless another policy complying with the provisions hereof shall be provided and in full force and effect at the time such cancellation or termination becomes effective.

**§10-405      FORESTERS: APPLICATION FOR LICENSE.**

Every applicant for a forester's license shall make application upon a blank furnished by the Board of Forestry Examiners. Any applicant who fails to pass the examination herein provided for, or present himself to the Board at the time set by the Board, shall be required to wait at least one (1) month after the date of such examination before again making application for such license.

**§10-406      FORESTERS: EXAMINATION.**

(1) Application and Fees.

- (a) Each applicant for a second class forester's license shall, upon making application therefor, pay into the City Treasury a fee of twenty-five (\$25.00) dollars and each applicant for a first class forester's license shall, upon making application therefor, pay into the City Treasury a fee of forty-five (\$45.00) dollars. This fee is to apply on the cost of examinations and shall not be returned to the unsuccessful applicants.
- (b) Any applicant who fails to pass the examination herein provided for, shall be required to wait at least one (1) month after the date of such examination before again making application for such license. The applicant shall be required to pay the same fee as for the original examination.
- (c) Any applicant who fail to present himself before the Board of Forestry Examiners for examination at the time set by such Board shall forfeit the fee paid and his application shall be cancelled, unless for good cause he has been excused by the secretary of the Board of Forestry Examiners.

(2) Scope of examinations:

- (a) The examination for a first class forester's license shall require a knowledge of forestry and shall include the principles and practice of planting, preservation, culture, pruning and shaping of trees and shrubs, the repairing of damage to same and of the measures necessary to control and exterminate insects, other pests and diseases from trees and shrubs.
  - (b) The examination for a second class forester's license shall require a knowledge of the principles and practice of preservation, culture, pruning and shaping of trees and shrubs.
- (3) Examination. All examinations shall be oral, written or both, in the discretion of the Board of Forestry Examiners, and the applicant shall also be required to pass a practical test. A grade of seventy-five (75%) percent shall be required to pass. A complete stenographic record of all oral examinations shall be made and the typewritten transcript thereof, together with the written examinations, shall be kept on file by the secretary.

**§10-407      FORESTERS: LICENSE EXPIRATION AND REVOCATION.**

- (1) Revocation. The Board of Forestry Examiners may revoke the license of any forester, or the license of compliance of any firm, partnership or corporation found using improper methods as defined in Chapter 8 of this Code or who in any other way digresses from good forestry practice.
- (2) Expiration. All licenses, unless revoked for cause shall be valid up to and including the thirty-first (31<sup>st</sup>) day of December next, subsequent to the date of issuance and shall be renewed from year to year thereafter upon the payment into the City Treasury of thirty five (\$35.00) dollars for each year. If not renewed within one (1) year from the date of expiration, a new application and re-examination shall be required.

**§10-408 FORESTERS: RECIPROCITY OF LICENSES.**

- (1) Holders of valid first class forester's licenses or certificates or licenses of equal classification, issued by Cities of the First Class or larger, in the State only, can by application to the Board of Forestry Examiners waive the required examination.
- (2) The Board of Forestry Examiners is hereby empowered to issue a first class forester's license to such an applicant upon certified proof, from the issuing agency and if the applicant fully meets all other requirements and qualifications as provided by this Article.
- (3) The applicant will be charged a fee of twenty (\$20.00) dollars, to be paid into the City Treasury, for his initial application. The license can then be renewed on January first of each subsequent year, unless previously revoked for cause, upon payment into the City Treasury of thirty five (\$35.00) dollars for each year.

**§10-409 FORESTERS: ENFORCEMENT, APPEAL.**

- (1) It shall be the duty of the Director of Parks and Recreation, or such of his assistants as he may designate from time to time, to enforce the provisions of this Article.
- (2) When any person has made application for a forester's license under this Article and such license has been revoked, or when any person believes himself otherwise injured or wronged by the Board or any member thereof or by the Director of Parks and Recreation, such applicant, or such person whose certificate has been refused or revoked may appeal that action to the Mayor and City Council by filing a written request with the City Clerk within ten (10) days after receiving notice of such denial, revocation or other ruling or order. The Mayor and Council at the next regular Council meeting, after such filing of appeal, shall hear such appeal and shall take such action or make such orders as in their opinion may be just and proper. All testimony shall be under oath.

**Article 5. Junk dealers and Pawnbrokers**

**§10-501 JUNK DEALERS AND PAWNBROKERS: DEFINITION.**

Any person who shall engage in the business of loaning money upon deposits or pledge of personal property or other valuable things, or the purchasing of goods on condition of delivering or selling the same back again at a stipulated price is hereby declared and defined to be a pawnbroker. Any person who shall engage in the business of buying, selling, receiving, collecting or dealing in metal scraps, bottles, rubber or rags is hereby defined to be a junk dealer. Any person who shall engage in the business of buying, selling or dealing in secondhand clothing, jewelry, goods, wares or merchandise is hereby declared and defined to be dealer in secondhand goods.

**§10-502 JUNK DEALERS AND PAWNBROKERS: APPLICABILITY.**

The provisions of this Article shall not apply to any person going from house to house and collecting iron, copper, brass, and zinc scraps, rags or bottles, and selling the same to junk dealers or persons buying or selling furniture and household goods known as secondhand furniture dealers.

**§10-503 JUNK DEALERS AND PAWNBROKERS: RECORDS REQUIRED.**

Every person who shall engage in the business of pawnbroker, junk dealer or dealer in secondhand goods shall keep a book in which shall be legibly written in ink, at the time of any loan or purchase, an accurate account or description in the English language of the goods, article or things pawned, pledged or purchased, the amount of money loaned or paid therefor, the time the same was received and the name, residence and description of the person pawning, pledging or selling the same, which book, as well as the article pawned or purchased, shall at all reasonable time be open to the inspection of the Chief of Police or any member of the police force.

**§10-504 JUNKDEALERS AND PAWNBROKERS: HOLDING PERIOD FOR PROPERTY.**

No personal property received on pledge by any such pawnbroker or purchased by any secondhand or junk dealer shall be sold or permitted to be redeemed from the place of business of such person for the space of twenty-four (24) hours after the pledge to such pawnbroker or sale to such secondhand or junk dealer.

§10-505 JUNK DEALERS AND PAWNBROKERS. RECEIVING PROPERTY FROM NON-OWNERS, MINORS, ETC.

It shall be unlawful for any pawnbroker or junkdealer or secondhand dealer as defined by this Article to take or receive upon deposit, pawn or pledge, or buy any personal property of any kind from a minor or person under age, unless such person shall be doing business wholly on his own account which fact shall be noted upon the book of record required by Section 10-503. It shall also be unlawful for any such pawnbroker or junk or secondhand dealer to knowingly receive or pawn or deposit or purchase any personal property of any kind from any person not being the owner thereof or from any intoxicated person. (Ref. 19-6, Code 1972)

Article 6. Taxation

§10-601 OCCUPATION TAX; AMOUNTS. REPEALED 7-8-2014 ORDINANCE 5310

§10-602 OCCUPATION TAX; COLLECTION DATE.

All occupation taxes shall be due, and payable on the first (1st) day of April of each year, except in the event that the said tax is levied daily, and upon the payment thereof by any person or persons to the City Clerk, the said City Clerk shall give a receipt, properly dated, and specifying the person paying the said tax, and the amount paid; provided, occupation taxes collected from Class C liquor licensees shall be due and payable on the first (1st) day of November. The revenue collected shall then be immediately deposited into the General Fund by the Director of Finance. The Director of Finance shall keep an accurate account of all revenue turned over to him. All forms, and receipts herein mentioned shall be issued in duplicate. One (1) copy shall then be kept by each party in the transaction.

§10-603 OCCUPATION TAX; CERTIFICATES.

The receipt issued after the payment of any occupation tax shall be the Occupation Tax Certificate. The said certificate shall specify the amount of the tax and the name of the person, and business that paid the said tax. The Occupation Tax Certificate shall then be displayed in a prominent place, or carried in such a way as to be easily accessible, while business is being conducted.

§10-604 OCCUPATION TAX; FAILURE TO PAY.

If any person, company, or corporation fails, or neglects to pay the occupation taxes as provided herein on the day it becomes due, and payable, the City shall then proceed by civil suit to collect the amount due. All delinquent taxes shall bear interest at the rate of one percent (1%) per month until paid. (Ref 16-205 RS Neb.)

§10-605 BOTTLE CLUB; TAXES. REPEALED 6-8-1999 ORDINANCE 3892

§10-606 BOTTLE CLUB; FAILURE TO PAY TAX. REPEALED 6-8-1999 ORDINANCE 3892

§10-607 BOTTLE CLUB; PAYMENT TO CITY. REPEALED 6-8-1999 ORDINANCE 3892

§10-608 BOTTLE CLUB; FAILURE TO COLLECT OR REMIT TAX. REPEALED 6-8-1999 ORDINANCE 3892

§10-609 GENERAL LICENSE AND OCCUPATION TAX RATE.

The annual rate of the general license and occupation tax shall be as follows:

5¢ per square foot floor space upon all inside floor space business and professional places within the district, with annual maximum of \$500.00 and a minimum of \$40.00 for a, single business and professional establishment.

Article 7. Improvement and Parking District

§10-701 IMPROVEMENT AND PARKING DISTRICT CREATED, BOUNDARIES.

The Mayor and Council find it necessary for the promotion and maintenance of the welfare and general interests of the City and its trade and commerce and inhabitants that the City establish a downtown improvement and parking district and collect a license and occupation tax to develop the public facilities in the district area. Thus, there is created and established a downtown improvement and parking district.

The boundaries of the district are as follows:

Commencing at the southeast corner of Block 203, thence east on north boundary of First Street to the middle of Block 205, thence north in a continuous straight line through the middle of Block 205, 182, 175 and 152 to the north boundary of Block 145, thence east along the north boundary of Fifth Street to the middle of Block 146, thence, north and in a continuous straight line through the middle of Blocks 146, 121 and 116 to the south boundary of Eighth Street, thence west along the south boundary of Eighth Street to the middle of Block 110, thence south and in a continuous straight line through the middle of Blocks 110, 127, 140, 157, 170 and 187 to the north boundary of Second Street, thence east along the north boundary of Second Street to the southwest corner of Block 184, thence south to the north boundary of the Chicago and Northwestern Railway right-of-way which intersects the east boundary of Park Avenue thence south easterly along said right-of-way to the place where this right-of-way intersects First Street, thence along the north boundary of First Street in Block 203, to the place of beginning, all in Fremont, Dodge County, Nebraska, as platted and recorded, to the place of beginning.

§10-702 IMPROVEMENT AND PARKING DISTRICT LICENSE AND OCCUPATION TAX.

All businesses and professions located within the boundaries of the district shall be subject to the provisions of the additional tax as provided hereafter.

The initial annual rate of the general license and occupation tax it is proposed to establish

is whatever is the most of the following:

1. Two (2¢) cents per square foot floor space upon all inside floor space of business and professional places within the district, or
2. Fifteen (\$15.00) dollars minimum annual tax for any single business and professional establishment.

The license and occupation tax shall be fair, equitable and uniform as to class and shall be based primarily on the square footage of the owner's and user's place of business or professional office space. The word "space" shall mean building square foot space of buildings wherein customers, patients, clients or other invitees are received and space from time to time used or available for use in connection with the business or profession of the user, excepting all that space owned or used by a political subdivision and nonprofit corporations or associations. No general license or occupation tax will be charged to occupant for residential use of space by the occupant. Rooms or floor space not open to and not used by customers, patients, clients or other invitees shall be excluded from computation of floor space. The word "business" as used herein is intended to include all businesses or occupations conducted for profit, to include but not limited to professions, service businesses and manufacturing.

The City Clerk-Director of Finance shall place all taxes collected hereunder in a special fund, to be used exclusively for the purposes described in the following Section.

§10-703 IMPROVEMENT AND PARKING DISTRICT; REVENUE USES.

The proposed uses of this additional revenue derived from the imposition of a general business license and occupation tax on businesses and users of the space within the district, are as follows:

1. The acquisition, construction, maintenance and operation of public, off-street parking facilities

for the benefit of the district area of which no charge for use shall be made

2. Improvement and decoration of any public place in the district area.
3. Promotion of public events which are to take place on or in public places in the district area
4. Creation and implementing of a plan for improving the general architectural design of public areas in the district area.
5. The development of any public activities in the district area.
6. Any other project or undertaking for the betterment of the public facilities in the district area, whether the project be capital or noncapital in nature.

**§10-704 IMPROVEMENT AND PARKING DISTRICT; TAX COMPUTATION, OBJECTIONS.**

The City Clerk-Director of Finance is authorized and directed, with the advice and recommendations of the Downtown Improvement Board, to determine and compute the tax in accordance with the applicable Sections of this Article.

Objections to the determination in amount of additional tax may be made in writing to the City Clerk, specifying the basis of such objection. All such objections shall be made within twenty (20) days after the due date thereof, or shall be deemed waived. All timely objections shall be submitted to the Downtown Improvement Board for its consideration, review and recommendations. The Mayor and City Council shall make the final determination on all such objections, at any regular or special meeting, after notice thereof to the objector.

**§10-705 IMPROVEMENT AND PARKING DISTRICT; WHEN TAX PAYABLE.**

The license and occupation tax imposed by the preceding Sections is an annual tax and shall be due and payable on the First (1st) day of February each year, commencing February 1, 1971, for the year in advance. Businesses or professional offices starting after February 1 of the year shall pay a pro-rata tax for the balance of that tax year. Upon payment thereof to the City Clerk, the Clerk shall give a receipt therefor, properly dated and specifying the person paying, the name of the business or profession on whose behalf the tax is being paid, the amount thereof and for what period the tax is paid. It is hereby made the duty of every person, partnership, firm or corporation, engaged in carrying on any business or occupation within the limits of the district as provided on which a license and occupation tax is levied by this Chapter, to pay such tax at the times provided for its payment herein.

**§10-706 IMPROVEMENT AND PARKING DISTRICT; LIABILITY FOR TAX, VIOLATIONS.**

Any person who shall refuse or neglect to pay the general license and occupation tax levied by this Article, or who transacts any such business or engages in any such profession without having complied with the provisions of this Article shall be guilty of a violation of this Code; Provided, that whenever any of the businesses or occupations shall be conducted by an agent for a corporation or a nonresident, such agent shall be subject to arrest and punishment under the provisions hereof, if his principal shall not have complied with the provisions hereof. Any person, partnership or corporation whose duty it is made by this Article to pay any license tax and who shall fail to pay the same shall be liable to an action for the recovery of the amount of such license tax; Provided, that such remedy by action shall not be deemed exclusive but concurrent with other remedies herein provided.

**Article 8. Trailer Camps and Mobile Home Parks**

**§10-801 MOBILE HOME PARKS; RULES, REGULATIONS, AND STANDARDS ADOPTED BY REFERENCE.**

The Rules, Regulations, and Standards for Mobile Home Parks, of which not less than three (3) copies are now on file in the office of the City Clerk of the City of Fremont, are hereby adopted and incorporated as if fully set forth at length herein. The provisions therein shall be controlling for utility systems, sanitary conditions, inspections and licensing of Mobile Home Park within the corporate limits of the City of Fremont.

§10-802 TRAILER CAMPS; DEFINITIONS.

For the purpose of this Article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- A. Automobile Trailer, Trailer Coach and Trailer. An “automobile trailer,” “trailer coach” or “trailer” means any vehicle designed and constructed in such manner will permit the occupancy thereof as sleeping quarters one (1) or more persons, or the conduct of any business profession, occupation or trade (or use as a selling or advertising device), and so designed that it is or may be mounted on wheels and used as a conveyance on highways or City streets, propelled or drawn by its own or other motive power, excepting a device used exclusively upon stationary rails or tracks.
- B. Trailer Camp. A “trailer camp” means any park, trailer park, trailer court, court, camp, site, lot, parcel or tract land designated. maintained or intended for the purpose supplying a location or accommodations for any trailer coach or trailer coaches and upon which any trailer coach or trailer coaches are parked and shall include all buildings used or intended for use as part of the equipment thereof whether a charge is made for the use of the trailer camp and its facilities or not. “Trailer camp” shall not include automobile or trailer sales lots on which unoccupied trailers are parked for purposes of inspection and sale.
- C. Unit. A “unit” means a section of ground in a trailer camp of not less than eight hundred (800) square feet of unoccupied space in an area designated as the location for only one (1) automobile and one (1) trailer. (Ref. 31-1, Code 1972)

§10-803 TRAILER CAMPS; LOCATION OF TRAILERS OUTSIDE OF CAMPS.

- A. Generally. It shall be unlawful for any person to park any trailer on any street, alley, highway or other public place, or on any tract of land owned by any person, occupied or unoccupied, within the City, except as provided in this Article.
- B. Emergency or Temporary Parking, Etc. on Streets, Etc. Emergency or temporary stopping or parking is permitted on any street, alley or highway for not longer than one and one half (1 ½) hours, or for not longer than four (4) hours provided the trailer is parked immediately adjacent to the trailer owner’s property, or for not longer than four (4) hours provided the trailer is parked immediately adjacent to the property at which the trailer owner is a guest of said property owner.
- C. Parking on Premises Outside Camp. No person shall park or occupy any trailer on the premises of any occupied dwelling, or on any lot which is not a part of the premises of any occupied dwelling, either of which is situated outside an approved trailer camp, except, the parking of only one (1) unoccupied trailer in an accessory private garage building or in a rear yard in any district is permitted; provided, that no living quarters shall be maintained or any business practiced in such trailer while such trailer is so parked or stored; provided, that the City Council may by Resolution permit limited business practices and public or parochial school classroom use in a trailer for a period not to exceed one (1) year. In addition, the City Council may by Resolution grant one (1) or more one-year extensions of the temporary occupancy if the Council feels either of the following conditions are met:
  - 1. The building in which the business or public or parochial school was located must have been damaged by fire, explosion, Act of God, or public enemy to the extent that utilization of a trailer is necessary; or,
  - 2. For an existing business or public or parochial school which is being remodeled, expanded or is rebuilding at a new location and temporary occupancy of a trailer is deemed necessary by the City Council.



A temporary concession trailer may be located on a lot with an existing business in a commercially zoned area provided all other City Codes are complied with. Concession trailers to be utilized at any one (1) location less than two (2) weeks in conjunction with an existing business in a commercially zoned area shall not require City Council permission provided they comply with all other applicable City Ordinances. Notwithstanding the above, a trailer coach or motor home shall be allowed to park on the front driveways of residences from April first (1st) to November first (1st) as long as it does not create a safety hazard.

**§10-804 TRAILER CAMPS; LICENSE REQUIRED, TERMS.**

It shall be unlawful for any person to establish, operate or maintain, or permit to be established, operated or maintained upon any property owned or controlled by him, a trailer camp within the City without having first secured a license therefor from the City, granted and existing in compliance with the terms of this Article. Such license shall expire on December thirty-first (31st) of each year and may be renewed under the provisions of this Article for additional periods of one (1) year.

**§10-805 TRAILER CAMPS; LICENSE APPLICATION, FEE, BOND.**

The application for a license pursuant to this Article or the renewal thereof shall be filed with the City Clerk and shall be accompanied by a fee of ten dollars (\$10.00) for each camp and a license bond in the sum of two thousand dollars (\$2,000.00) to guarantee compliance with the terms of this Article. The application for a license or a renewal thereof shall be made on printed forms furnished by the City and shall include the name and address of the owner in fee of the tract (if the fee is vested in some person other than the applicant, a duly verified statement by that person that the applicant is authorized by him to construct or maintain the trailer camp and make the application), and such legal description of the premises, upon which the trailer camp is or will be located, as will readily identify and definitely locate the premises. The application shall be accompanied by four (4) copies of the camp plan showing the following, either existing or as proposed:

1. The extent and area used for camp purposes.
2. Roadways and driveways.
3. Location of sites or units for trailer coaches.
4. Location and number of sanitary conveniences, including toilets, washrooms and utility rooms to be used by occupants of units.
5. That there has been proper conformance with City building, zoning, plumbing and other regulations.
6. Method and plan of sewage disposal.
7. Method and plan of garbage removal.
8. Plan for water supply.
9. Plan for electrical lighting of units.

**§10-806 TRAILER CAMPS; LICENSE ISSUANCE, RIGHTS, REVOCATION.**

Before any license pursuant to this Article may be issued, there shall be a favorable recommendation by the Chief of Police and the premises shall be inspected and approved by each of the members of the Chief of Police, or his duly authorized representative, as complying with all the provisions of this Article and all other applicable provisions of this Code or other ordinances of the City, whereupon it will be up to the City Council's direction as to issuance. Licenses issued under the terms of this Article convey no right to erect any building, to do any plumbing work or to do any electrical work.

The City Council is authorized to revoke any license issued pursuant to the terms of this Article if after due investigation it determines that the holder thereof has violated any of the provisions of this Article or that any trailer, or trailer camp, is being maintained in an unsanitary or unsafe manner or nuisance.

§10-807 TRAILER CAMPS; ZONING REQUIREMENTS.

- A. No trailer camp shall be located in any residential zone or any other zone save and except where the Zoning Ordinance is complied with.
- B. No trailer camp shall be located within the City unless water and sewer connections and fire protection facilities are available.
- C. No occupied trailer shall be located within the City within the recognized setback line for the zoning district in which such trailer is located nor less than ten feet (10') from any other building or vehicle or the boundary line of the tract on which such trailer is located.

§10-808 TRAILER REQUIREMENTS. CAMPS; REGULATIONS.

- A. Grading and Drainage. Every trailer camp shall be located on a well-drained area and the premises shall be properly graded so as to prevent the accumulation of storm or other waters.
- B. Arrangement and Designation of Units; Driveways. Trailer units shall be clearly designated and the camp so arranged that all units shall face or abut on a driveway of not less than sixteen feet (16') in width, giving easy access from all units to a public street. Such driveway shall be at least graveled or cindered and maintained in good condition, having proper drainage into the City's drainage system, be well lighted at night, and shall not be obstructed.
- C. Location of Toilets and Service Buildings. Trailer camps shall be so laid out that no unit shall be located farther than two hundred feet (200') from the toilets and service buildings provided for by this Article, and walkways to such buildings shall be at least graveled or cindered and well lighted at night.
- D. Electric Service Outlets for Units. Every trailer unit shall be furnished with an electric service outlet. Such outlet shall be equipped with an externally operated fused switch of not less than thirty (30) amperes capacity, and a heavy duty outlet receptacle.
- E. Water Supply. An adequate supply of pure water, furnished through a pipe distribution system connected directly with the City water main, with supply faucets located not more than two hundred feet (200') from any trailer shall be furnished for drinking and domestic purposes in all trailer camps.

An abundant supply of hot water shall be provided in trailer camps at all times for bathing facilities.

No common drinking vessels shall be permitted in trailer camps, nor shall any drinking water faucets be placed in any toilet room or water closet compartment.

F. Service Building.

- a. Required. Every trailer camp shall have erected thereon, at a distance not greater than two hundred feet (200') from any unit it is designed to serve, a suitable building for housing toilets and shower facilities as required by this Article, such building to be known as the "service building."
- b. Toilet and Lavatory Facilities Generally. There shall be provided separate toilet rooms for each sex. Flush toilets provided with an adequate water supply shall be enclosed in separate compartments and shall be provided for each sex in the ratio of one (1) toilet for each eight (8) units or fraction thereof. Every male toilet room shall have one (1) urinal for each sixteen (16) units, but in no case shall any male toilet be without one (1) urinal. Toilet rooms shall contain lavatories with hot and cold water in the ratio of one (1) lavatory to every two (2) or less water closets.
- c. Bathing, Etc., Facilities Generally. Separate bathing facilities for each sex shall be provided with one (1) shower enclosed in a compartment for each eight (8) units or fraction thereof. Each

shower compartment shall be supplemented by an individual dressing compartment.

- d. Basis of Accommodations. The above accommodations shall be based on the total camp capacity according to accepted plans.
- e. Floors of Toilets and Showers. Floors of toilets and showers shall be of concrete, tile or similar material impervious to water and easily cleaned and pitched to a floor drain.

G. Waste and Garbage Disposal.

- a. Sanitary Waste Disposal Generally. All waste from showers, toilets, faucets and lavatories shall be wasted into a sewer system extended from and connected to the City sewer system.
- b. Prohibited Connections. All sanitary facilities in any trailer which are not connected with the City sewer system by means of rigid pipe connections shall be sealed and their use is hereby declared unlawful.
- c. Disposal of Waste. Etc.. Water. Each faucet site shall be equipped with facilities for drainage of waste and excess water into the sewer. In no case shall any waste water be thrown or discharged upon the surface of the ground, or disposed of by means other than as herein provided.
- d. Garbage Disposal. Every unit shall be provided with a substantial flytight metal garbage depository from which the contents shall be removed by a garbage collection service.

§10-809 TRAILER CAMPS; OFFICE.

In every trailer camp there shall be an office building in which shall be located the office of the person in charge of such camp. A copy of the camp license and of this Article shall be posted therein and the camp register shall at all times be kept in such office.

§10-810 TRAILER CAMPS; CAMP MANAGER DUTIES, CAMP REGISTER.

It is the duty of the attendant or person in charge of a trailer camp, together with the licensee, to:

- A. Register. Keep at all times a register of all guests (which shall be open at all times to inspection by state and federal officers and officers of the City) showing for all guests:
  - a. Names and addresses.
  - b. Dates of entrance and departure.
  - c. License numbers of all trailers and towing or other automobiles.
  - d. States issuing such licenses.
  - e. Place of last location and length of stay.
- B. Maintenance of Camp Generally. Maintain the camp in a clean, orderly and sanitary condition at all times.
- C. Enforcement, Etc., of Article, Etc. See that the provisions of this Article are complied with and enforced and report promptly to the proper authorities any violation of this Article or any other violations of law which may come to his attention.
- D. Disease Control. Report to the City Physician all cases of persons or animals affected or suspected of being affected with any communicable disease.
- E. Animals, Etc.. at Large. Prevent the running loose of dogs, cats or other animals or pets.
- F. Fire Extinguishers. Maintain in convenient places approved by the Fire Department, hand fire extinguishers in the ratio of one (1) to each eight (8) units.
- G. Service Charge and Records. Pay the service charge provided for in section 10-811 to the Director

of Finance of the City. A book shall be kept showing the number of trailers and the names of the owners thereof parked in such camp each day, and the amount paid to the Director of Finance.

H. Open Fires. Prohibit the lighting of open fires on the premises.

I. Excess Occupancy. Prohibit the use of any trailer by greater number of occupants than that which it is designed to accommodate.

#### §10-811 TRAILER CAMPS; INSPECTION AND SERVICE CHARGES.

There is hereby imposed a service and inspection charge of fifty cents (50¢) per inspection per trailer on every licensee regulated by this Article, and such licensee shall pay such service charge to the Director of Finance in accordance with such reasonable regulation as the Director of Finance may promulgate governing such payments.

### Article 9. Franchises and Agreements

#### §10-901 FRANCHISES AND AGREEMENTS; AIRPORTS.

No person shall sell, repair, maintain or equip aircraft or aircraft parts or carry persons or property for hire or give instructions in the care, maintenance or operation of aircraft at the City Airport, without first entering into an agreement with the City authorizing the same to be done for a consideration.

#### §10-902 FRANCHISES AND AGREEMENTS; SANITARY LANDFILL.

The City Council has granted a private individual the authority to furnish a waste disposal and landfill dump site operation for the City. Actual details of the agreement, and the present rates, charges, fees, and regulations are available at the City Clerk's office.

#### §10-903 FRANCHISE AND AGREEMENTS; NATURAL GAS.

The City Council has granted a twenty (20) year Franchise to the Nebraska Natural Gas Company to lay, install, maintain and operate a gas transmission and distribution system within the limits of the City of Fremont, Nebraska. Actual details of the agreement and all amendments thereto as well as the present rates, charges and fees are available for public inspection at the office of the City Clerk.

#### §10-904 FRANCHISE AND AGREEMENTS; BUNGEE JUMPING; PERMITS, CLEANUP FEES.

It shall be unlawful to sponsor or in any way conduct bungee jumping activities and entertainments of like nature within the City limits where the public is an invitee, either as a spectator or participant, without first having been authorized to do so by the Mayor and City Council. Said authorization shall be in the form of a permit formally approved by the Mayor and City Council. Said permit shall be levied one hundred dollars (\$100.00) per day. The Mayor and City Council may require a cleanup, crowd, and traffic control deposit, up to five hundred dollars (\$500.00) a day, all or part of which may be returned to the applicant upon written approval of the Superintendent of Public Services.

### Article 10. Penal Provisions

#### §10-1001 VIOLATION; PENALTY.

Any person who violates any of the prohibitions or provisions of any Article or Section of this Chapter shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular Article or Section for which the person stands convicted of violating, the penalty for such violation shall be in any amount not to exceed one thousand (\$1,000.00) dollars and/or imprisonment for any length of time not to exceed three (3) months, in the discretion of the court.

Whenever a nuisance exists as defined in this Chapter, the Municipality may proceed by a suit in equity to enjoin and abate the same, in the manner provided by law. Whenever, in any action, it is established that a nuisance exists, the court may together with the fine or penalty imposed, enter an order of abatement as a part of the judgment in the case.

#### Article 11. Adult Establishments

##### Section

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##### **§10-1101 PURPOSE; FINDINGS AND RATIONALE**

- A. *Purpose.* It is the purpose of this Article to regulate adult establishments in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the jurisdiction of the City. The provisions of this Article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Article 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. Neither is it the intent nor effect of this Article to condone or legitimize the distribution of obscene material.

(b) *Findings and Rationale*. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen 4 Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and

*Farkas v. Miller*, 151 F.3d 900 (8th Cir. 1998); *Jakes, Ltd. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *City of Lincoln v. ABC Books, Inc.*, 470 N.W.2d 760 (Neb. 1991); *Major Liquors, Inc. v. City of Omaha*, 188 Neb. 628 (1972); *DLH, Inc. v. Nebraska Liquor Control Commission*, 266 Neb. 361 (2003); *Village of Winslow v. Sheets*, 261 Neb. 203 (2001), *Xiong v. City of Moorhead*, 2009 WL 322217 (D. Minn. Feb. 2, 2009); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *U.S. v. Baston*, 818 F.3d 651 (11th Cir. 2016); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable*

*Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

and based upon reports concerning secondary effects occurring in and around adult establishments, including, but not limited to, “Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD,” *Journal of Urban Health* (2011); “Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?” *Crime & Delinquency* (2012) (Louisville, KY); Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009; El Paso, Texas – 2008; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; “Rural Hotspots: The Case of Adult Businesses,” 19 *Criminal Justice Policy Review* 153 (2008); “Stripclubs According to Strippers: Exposing Workplace Sexual Violence,” by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; “Sexually Oriented Businesses: An Insider’s View,” by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA); “Do ‘Off-Site’ Adult Businesses Have Secondary Effects?” 31 *Law & Policy* 217 (April 2009); Adult Business Study: Town and Village of Ellicottville, Cattaraugus County, New York (January 1998); and Strip Club-Trafficking Documents,

the City Council finds:

- (1) Adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- (2) Adult establishments should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other adult establishments, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of adult establishments in one area.
- (3) Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City’s rationale for regulating adult establishments, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the City’s interest in regulating adult establishments extends to preventing future secondary effects of either current or future adult establishments that may locate within area under the City’s jurisdiction. The City finds that the cases and documentation relied on in this Article are reasonably believed to be relevant to said secondary effects.

The City hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult establishments, including the judicial opinions and reports related to such secondary effects.

## **§10-1102 DEFINITIONS**

For purposes of this Article, the words and phrases defined in the Sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

*“Adult Arcade”* means a commercial establishment to which the public is permitted or invited that maintains booths or rooms smaller than 100 square feet, wherein image-producing devices are regularly maintained, and where a fee is charged to access the booths or rooms or to view the images displayed on the image-producing devices.

*“Adult Bookstore”* means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.” A “principal business activity” exists where the commercial establishment meets any one or more of the following criteria:

- (a) At least 35% of the establishment’s displayed merchandise consists of said items, or
- (b) At least 35% of the establishment’s revenues derive from the sale or rental, for any form of consideration, of said items, or
- (c) The establishment maintains at least 35% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in “floor space” maintained for the display, sale, or rental of said items); or
- (d) The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in “floor space” maintained for the display, sale, or rental of said items); or
- (e) The establishment regularly offers for sale or rental at least five hundred (500) of said items; or
- (f) The establishment regularly makes said items available for sale or rental and holds itself out, in any medium, by using “adult,” “adults-only,” “XXX,” “sex,” “erotic,” “novelties,” or substantially similar language, as an establishment that caters to adult sexual interests.

*“Adult Establishment”* means an “adult arcade,” an “adult bookstore,” an “adult motion picture theater,” a “semi-nude lounge,” or a “sex paraphernalia store.”

*“Adult Motion Picture Theater”* means a commercial establishment to which the public is permitted or invited that maintains viewing rooms that are 100 square feet or larger wherein films or videos characterized by their emphasis upon “specified sexual activities” or “specified anatomical areas” are regularly shown.



“*Characterized by*” means describing the essential character or quality of an item. As applied in this Article, no business shall be classified as an adult establishment by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

“City” means Fremont, Nebraska.

“*Employ, Employee, and Employment*” describe and pertain to any person who works or engages in activity for pay on the premises of an adult establishment, on a full time, part time, temporary, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

“*Establish or Establishment*” means and includes any of the following:

- (a) The opening or commencement of any adult establishment as a new business;
- (b) The conversion of an existing business, whether or not an adult establishment, to any adult establishment; or
- (c) The addition of any adult establishment to any other existing adult establishment.

“*Floor Space*” means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

“*Hearing Officer*” means an attorney, not an employee of the City, who is licensed to practice law in Nebraska, and retained to serve as an independent tribunal to conduct hearings under this Article.

“*Influential Interest*” means the actual power to control or influence the operation, management, or policies of the adult establishment or legal entity which operates the adult establishment. An individual is deemed to have an “influential interest” if he or she (1) is the on-site general manager of the adult establishment, (2) owns a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holds an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the adult establishment.

“*Licensee*” means a person in whose name a license to operate an adult establishment has been issued, as well as the individual or individuals listed as an applicant on the application for an adult establishment license. In the case of an “employee,” it shall mean the person in whose name the adult establishment employee license has been issued.

“*Nudity or Nude Conduct*” means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. For purposes of this Article, a “fully opaque covering” must be non-flesh colored, shall not consist of any substance that can be washed off the skin, such as paint or make-up, and shall not simulate the appearance of the anatomical area that it covers.

“*Operator*” means any person on the premises of an adult establishment who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

“*Person*” means an individual, proprietorship, partnership, corporation, association, or other legal entity.

“*Premises*” means the real property upon which the adult establishment is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult establishment, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for an adult establishment license.

“*Regional Shopping Mall (Enclosed)*” means a group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large “anchor” stores, such as department stores. The common walkway or “mall” is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.

“*Regularly*” means the consistent and repeated doing of an act on an ongoing basis.

“*Semi-Nude or Semi-Nudity*” means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

“*Semi-Nude Lounge*” means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly offers live semi-nude conduct. No establishment shall avoid classification as a semi-nude lounge by offering nude conduct.

“*Sexual Device*” means any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily designed for protection against sexually transmitted diseases or for preventing pregnancy.

“*Sex Paraphernalia Store*” means a commercial establishment:

- (a) where more than 100 sexual devices are regularly made available for sale or rental; or
- (b) where sexual devices are regularly made available for sale or rental and the establishment regularly holds itself out, in any medium, by using “adult,” “adults-only,” “XXX,” “sex,” “erotic,” “novelties,” or substantially similar language, as an establishment that caters to adult sexual interests.

This definition shall not be construed to include any establishment located within an enclosed regional shopping mall or any pharmacy or establishment primarily dedicated to providing medical products.

“*Specified Anatomical Areas*” means and includes:

- (a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“*Specified Criminal Activity*” means any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- (a) Prostitution or promotion of prostitution; public indecency; or dissemination, preparation, or promotion of obscenity, as defined in Nebraska Code, Ch. 28 Sections 801, 801.01, 802, 804; 806; 808, 809, 813-813.02;
- (b) Sexual assault; domestic assault; incest; human trafficking; or indecency with an animal, as defined in Nebraska Code, Ch. 28 Sections 319-320.02; 323; 703; 830, 831; 1010;
- (c) Criminal child enticement; child abuse; debauching a minor; possession, dissemination, preparation, or promotion of child pornography, as defined in Nebraska Code, Ch. 28 Sections 311; 707; 1463.03, 1463.05;
- (d) Any controlled substance offense or fraud offense under Nebraska Code, Ch. 28 Articles 4 or 6 that is related to any adult establishment;
- (e) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- (f) any offense in another jurisdiction that, had the predicate act(s) been committed in Nebraska, would have constituted any of the foregoing offenses.

“*Specified Sexual Activity*” means any of the following:

- (a) intercourse, oral copulation, masturbation or sodomy; or
- (b) excretory functions as a part of or in connection with any of the activities described in (a) above.

“*Transfer of Ownership or Control*” of an adult establishment means any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (c) The establishment of a trust, gift, or other similar legal device which 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.

“*Viewing Room*” means the room or booth where a patron of an adult establishment would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video on an image-producing device.

## **§10-1103 LICENSE REQUIRED**

- (a) *Adult Establishment License*. It shall be unlawful for any person to operate an adult establishment in the jurisdiction of the City without a valid adult establishment license.
- (b) *Employee License*. It shall be unlawful for any person to be an “employee,” as defined in this Article, of an adult establishment in the jurisdiction of the City without a valid adult establishment employee license, except that a person who is a licensee under a valid adult establishment license shall not be required to also obtain an adult establishment employee

license. It shall be unlawful for any person who operates an adult establishment to employ a person at the establishment who does not have a valid adult establishment employee license.

- (c) Application. An applicant for an adult establishment license or an adult establishment employee license shall file in person at the office of the City Clerk a completed application made on a form provided by the City Clerk. An adult establishment may designate an individual with an influential interest in the business to file its application for an adult establishment license in person on behalf of the business. The application shall be signed as required by subsection (d) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate licensing fee:
- (1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.
  - (2) Current business address or another mailing address for the applicant.
  - (3) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
  - (4) If the application is for an adult establishment license, the business name, location, legal description, mailing address and phone number of the adult establishment.
  - (5) If the application is for an adult establishment license, the name and business address of the statutory agent or other agent authorized to receive service of process.
  - (6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this Article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
  - (7) A statement of whether any adult establishment in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
    - (i) been declared by a court of law to be a nuisance; or
    - (ii) been subject to a court order of closure.
  - (8) An application for an adult establishment license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this Article shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. See Sections 10-1113 and 10-1117. The City Clerk may waive the requirements of this subsection (8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the City Clerk within ten (10) working days of a 12

change of circumstances which would render the information originally submitted false or incomplete.

- (d) *Signature*. A person who seeks an adult establishment employee license under this Section shall sign the application for a license. If a person who seeks an adult establishment license under this Section is an individual, he shall sign the application for a license as applicant. If a person who seeks an adult establishment license is other than an individual, each person with an influential interest in the adult establishment or in a legal entity that controls the adult establishment shall sign the application for a license as applicant. Each applicant must be qualified under this Article and each applicant shall be considered a licensee if a license is granted.
- (e) The information provided by an applicant in connection with an application for a license under this Article shall be maintained by the office of the City Clerk on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal law shall be redacted prior to such disclosure.

#### **§10-1104 ISSUANCE OF LICENSE**

- (a) Adult Establishment License. Upon the filing of a completed application for an adult establishment license, the City Clerk shall immediately issue a Temporary License to the applicant if the completed application is from a preexisting adult establishment that is lawfully operating in the City's jurisdiction and the completed application, on its face, indicates that the applicant is entitled to an annual adult establishment license. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within thirty (30) days of the filing of a completed adult establishment license application, the City Clerk shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Clerk shall issue a license unless:
  - (1) An applicant is less than eighteen (18) years of age.
  - (2) An applicant has failed to provide information required by this Article for issuance of a license or has falsely answered a question or request for information on the application form.
  - (3) The license application fee required by this Article has not been paid.
  - (4) The adult establishment, as defined herein, is not in compliance with the interior configuration requirements of this Article.
  - (5) The location of the adult establishment does not comply with the location requirements of the Unified Development Code of the City of Fremont. This ground for denial of an adult establishment license, however, shall not prevent issuance or renewal of an adult establishment license to an establishment that was lawfully operating at the location for which the adult establishment license is sought, prior to the adoption of this subsection.  
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  - (6) Any adult establishment in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
    - (i) been declared by a court of law to be a nuisance; or

- (ii) been subject to an order of closure.
- (7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Article.
- (8)
  - (b) Employee License. Upon the filing of a completed application for an adult establishment employee license, the City Clerk shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed adult establishment and the completed application, on its face, indicates that the applicant is entitled to an annual adult establishment employee license. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within thirty (30) days of the filing of a completed adult establishment employee license application, the City Clerk shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The City Clerk shall issue a license unless:
    - (1) The applicant is less than eighteen (18) years of age.
    - (2) The applicant has failed to provide information as required by this Article for issuance of a license or has falsely answered a question or request for information on the application form.
    - (3) The license application fee required by this Article has not been paid.
    - (4) Any adult establishment in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
      - (i) been declared by a court of law to be a nuisance; or
      - (ii) been subject to an order of closure.
    - (5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Article.
  - (c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for an adult establishment, the address of the adult establishment. The adult establishment license shall be posted in a conspicuous place at or near the entrance to the adult establishment so that it may be read at any time that the business is occupied by patrons or is open to the public. An adult establishment employee shall keep the employee's license on his or her person or on the premises where the licensee is then working.

#### **§10-1105 FEES**

The initial license and annual renewal fees for adult establishment licenses and adult establishment employee licenses shall be as follows: one hundred dollars (\$100) for the initial fee for an adult establishment license and fifty dollars (\$50) for annual renewal; fifty dollars (\$50) for the initial adult establishment employee license and twenty-five dollars (\$25) for annual renewal.

#### **§10-1106 INSPECTION**

Adult establishments and adult establishment employees shall permit the City Clerk and his or her agents to inspect, from time to time on an occasional basis, the portions of the adult establishment premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Article, during those times when the adult establishment is

occupied by patrons or is open to the public. This Section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this Article, but not to authorize a harassing or excessive pattern of inspections.

#### **§10-1107 EXPIRATION AND RENEWAL OF LICENSE**

- (a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this Article. When a renewal license is issued, it shall become effective the day after the previous license expires and shall remain valid for a period of one calendar year from its effective date unless otherwise suspended or revoked.
- (b) Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

#### **§10-1108 SUSPENSION**

- (a) The City Clerk shall issue a written notice of intent to suspend an adult establishment license for a period not to exceed thirty (30) days if the adult establishment licensee has knowingly or recklessly violated this Article or has knowingly or recklessly allowed an employee or any other person to violate this Article.
- (b) The City Clerk shall issue a written notice of intent to suspend an adult establishment employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly or recklessly violated this Article.

#### **§10-1109 REVOCATION**

- (a) The City Clerk shall issue a written notice of intent to revoke an adult establishment license or an adult establishment employee license, as applicable, if the licensee knowingly or recklessly violates this Article or has knowingly or recklessly allowed an employee or any other person to violate this Article and a suspension of the licensee's license has become effective within the previous twelve-month (12-mo.) period.
- (b) The City Clerk shall issue a written notice of intent to revoke an adult establishment license or an adult establishment employee license, as applicable, if:
  - (1) The licensee has knowingly given false information in the application for the adult establishment license or the adult establishment employee license;
  - (2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the adult establishment;
  - (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the adult establishment;
  - (4) The licensee knowingly or recklessly operated the adult establishment during a period of time when the license was finally suspended or revoked;

- (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the adult establishment;
  - (6) The licensee has knowingly or recklessly allowed a person under the age of twenty-one (21) years to consume alcohol on the premises of the adult establishment;
  - (7) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to appear in a semi-nude condition or in a state of nudity on the premises of the adult establishment; or
  - (8) The licensee has knowingly or recklessly allowed three (3) or more violations of this Article within a twelve-month period.
- (c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- (d) When, after the notice and hearing procedure described in this Article, the City revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult establishment license or adult establishment employee license for one (1) year from the date revocation becomes effective.

#### **§10-1110 HEARING; LICENSE DENIAL, SUSPENSION, REVOCATION; APPEAL**

- (a) When the City Clerk issues a written notice of intent to deny, suspend, or revoke a license, the City Clerk shall immediately send such notice, which shall include the specific grounds under this Article for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the City Clerk for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the City Clerk, a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the City Clerk's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued.
- (b) If the respondent does make a written request for a hearing within said ten (10) days, then the City Clerk shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The City shall provide for the hearing to be transcribed.
- (c) At the hearing, the respondent shall have the opportunity to present all relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the City Clerk's witnesses. The City Clerk shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this Article, to the respondent within five (5) days after the hearing.



- (d) If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the thirtieth (30th) day after it is rendered. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the City Clerk to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the City Clerk shall contemporaneously therewith issue the license to the applicant.
- (e) If any court action challenging a licensing decision is initiated, the City shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any adult establishment that is lawfully operating as an adult establishment, or any adult establishment employee that is lawfully employed as an adult establishment employee, on the date on which the completed business or employee application, as 17 applicable, is filed with the City Clerk: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of any denial, suspension, or revocation of a Temporary License or annual license, the City Clerk shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the adult establishment or to continue employment as an adult establishment employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the City's enforcement. While a Provisional License is in effect, the provisional licensee shall comply with the regulations set forth in Sections 10-1106, 10-1112, 10-1113, 10-1114, and 10-1117, and any violations thereof shall be subject to the provisions of Section 10-1115.

#### **§10-1111 TRANSFER OF LICENSE**

A licensee shall not transfer his or her license to another, nor shall a licensee operate an adult establishment under the authority of a license at any place other than the address designated in the adult establishment license application.

#### **§10-1112 HOURS OF OPERATION**

No adult establishment shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

#### **§10-1113 REGULATIONS PERTAINING TO OPERATION OF ADULT ARCADE OR ADULT MOTION PICTURE THEATER**

- (a) A person who operates or causes to be operated an adult arcade or adult motion picture theater shall comply with the following requirements.
  - (1) Each application for an adult establishment license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. The diagram shall also designate the place at

which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The City Clerk may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
- (3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the premises.
- (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
  - (i) That the occupancy of viewing rooms less than 100 square feet is limited to one person.
  - (ii) That specified sexual activity on the premises is prohibited.
  - (iii) That the making of openings between viewing rooms is prohibited.
  - (iv) That violators will be required to leave the premises.
  - (v) That violations of these regulations are unlawful.
- (6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (iv) above.
- (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
- (8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

- (b) It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly or recklessly fail to fulfill that duty.
- (c) No patron shall knowingly or recklessly enter or remain in a viewing room less than 100 square feet in area that is occupied by any other patron.
- (d) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 100 square feet or larger in area.
- (e) No person shall knowingly or recklessly make any hole or opening between viewing rooms.

#### **§10-1114 LOITERING, EXTERIOR LIGHTING AND MONITORING, AND INTERIOR LIGHTING REQUIREMENTS**

- (a) It shall be the duty of the operator of an adult establishment to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
- (b) It shall be the duty of the operator of an adult establishment to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.
- (c) No adult establishment shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.
- (d) It shall be unlawful for a person having a duty under this Section to knowingly or recklessly fail to fulfill that duty.

#### **§10-1115 PENALTIES AND ENFORCEMENT**

- (a) A person who violates any of the provisions of this Article shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punishable by a fine in the amount of one thousand dollars (\$1,000.00) and/or imprisonment not to exceed three (3) months. For violations of this Article that are continuous with respect to time, each day that the violation continues is a separate offense. For violations of this Article that are not continuous with respect to time, each violation is a separate offense.

- (b) Any premises, building, dwelling, or other structure in which an adult establishment is repeatedly operated or maintained in violation of this Article shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.
- (c) The City's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this Article to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the City, provided, however, that nothing in this Section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Article, or any of the laws in force in the City's jurisdiction or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

#### **§10-1116 APPLICABILITY OF ARTICLE TO EXISTING BUSINESSES**

- (a) *Licensing Requirements.* All preexisting adult establishments lawfully operating in the City's jurisdiction in compliance with all state and local laws prior to the effective date of this Article, and all adult establishment employees working in the City's jurisdiction prior to the effective date of this Article, are hereby granted a De Facto Temporary License to continue operation or employment for a period of one hundred twenty (120) days following the effective date of this Article. Within ninety (90) days following the effective date of this Article, all adult establishments and adult establishment employees must apply for a license under this Article.
- (b) *Interior Configuration Requirements.* Any preexisting adult establishment that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of Section 10-1113 and subsection 10-1117(b) shall have ninety (90) days from the effective date of this Article to conform its premises to said requirements. During said ninety (90) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six (6) feet from all patrons.
- (c) *Other Requirements.* Except as provided for in subsections 10-1116(a) and (b), adult establishments shall comply with this Article on the date that it takes effect.

#### **§10-1117 PROHIBITED CONDUCT**

- (a) No patron, employee, or any other person shall knowingly or intentionally, in an adult establishment, appear in a state of nudity or engage in a specified sexual activity.
- (b) No person shall knowingly or intentionally, in an adult establishment, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
- (c) No employee who appears semi-nude in an adult establishment shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult establishment. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of an adult establishment.

- (d) No person shall possess alcoholic beverages on the premises of an adult establishment.
- (e) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult establishment.
- (f) No operator of an adult establishment shall knowingly or recklessly allow a room in the adult establishment to be simultaneously occupied by any patron and any other employee who is semi-nude or who appears semi-nude on the premises of the adult establishment, unless an operator of the adult establishment is present in the same room.
- (g) No operator or licensee of an adult establishment shall violate the regulations in this Section or knowingly or recklessly allow an employee or any other person to violate the regulations in this Section.
- (h) A sign in a form to be prescribed by the City Clerk, and summarizing the provisions of subsections (a), (b), (c), (d), and (e), shall be posted near the entrance of the adult establishment in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

**§10-1118 SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LICENSEE LIABILITY**

This Article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this Article. Notwithstanding anything to the contrary, for the purposes of this Article, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the adult establishment licensee for purposes of finding a violation of this Article, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.