

## CHAPTER 5.

### **BUSINESS REGULATIONS**

- Article 1. General Regulations and Licenses
- Article 2. Solicitors, Canvassers, Peddlers and Transient Merchants
- Article 3. Drive-In Business
- Article 4. Bath Houses; Massage Establishments
- Article 5. Amusement Devices
- Article 6. Wrecker and Tow Services
- Article 7. Water Conditioning Contractors
- Article 8. Adult Entertainment Regulations.
- Article 9. Franchises



#### **ARTICLE 1. GENERAL REGULATIONS AND LICENSES**

##### **5-101 Definitions.**

Terms as used in this chapter shall be defined as follows:

- (a) Person - means any individual, partnership, corporation, firm, or gas station, association, joint stock company or syndicate who or which is engaged in any business, trade, occupation or profession, or rendering or furnishing any service for profit or livelihood and subject to the provisions of this article: Provided, That any individual in the direct employ of any person licensed under the provisions of this article is not a person unless such individual operates as a subcontractor; but if such individual performs any service or practices his or her skill for compensation for any person other than his or her licensed employer, he or she is a person and must pay the tax and obtain a license if such be required by the terms of this article.
- (b) Business - means and includes businesses, trades, occupations, professions, the renting or leasing (or the offering for rent or lease) of property for residential or business use, and also the rendering or furnishing of a service; provided, that the name of a business, trade, occupation or profession may be used, and when so used, shall refer to the particular business, trade, occupation or profession.
- (c) Business Property - Any property subject to licensure herein or upon which any commercial, business or professional activity is conducted, except as may be exempt by state law or other authority.
- (d) Home Business - Any business or activity operated out of the home, a material purpose for which is the conduct of commerce or some other business of commercial enterprise for profit or gain. Any declaration of income on any government tax form generated from a home-based enterprise is prima facie evidence of the establishment and

operation of a business on the premises,

(e) Fee - means an occupation or license fee for city revenue without regulations upon and for the privilege of engaging in business as herein defined.

(f) License - means the documents issued by the city acknowledging payment of the required amount of tax, and stating the name of the licensee, the kind of business and where located, the period which the tax covers, such other matter as may be required and signed by the proper officer or officers.

(Code 2008, § 5-101; Ord. 339, Sec. 2; Ord. 734, Sec. 2)

### **5-102. LICENSE REQUIRED.**

It shall be unlawful for any person, firm, or corporation to conduct or pursue any occupation, business or profession, for which a license is required under this chapter, without having a valid license in possession or on the licensed premises.

(Code 1983; Code 1993, 5-103; Code 2008, § 5-102)

### **5-103. PURPOSE.**

The licenses provided for herein are solely for the purpose of providing revenue to defray a part of the expenses of the city, and not for the purpose of regulation.

(Code 1993, 5-301; Code 2008, § 5-103; Ord. 339, Sec. 1)

### **5-104. EXEMPTIONS.**

Nothing herein shall be construed as applying to or taxing:

- (a) The interstate portion of any business;
- (b) Any business the taxing of which by a city is prohibited by the statutes of the State of Kansas;
- (c) Instrumentalities of the government of the United States, unless authorized by laws of the United States;
- (d) Organizations of any kind or the employees thereof wholly for charitable, religious, benevolent, fraternal, civic, educational, military, municipal or similar purposes, and from which profit is not derived, either directly or indirectly by any individual.

The city clerk may require any business, instrumentality, or organization claiming to be exempt under this section to file with the city clerk a verified statement stating the facts upon which exemption is claimed.

(Code 1993, 5-302; Code 2008, § 5-104; Ord. 339, Sec. 3)

### **5-105. OCCUPATION FEES LEVIED.**

There are hereby levied occupation fees in the amounts and for the periods stated upon the business as hereinafter stated:

(a) Any occupation of a service character conducted in a residence which occupation is clearly secondary to the main use of the premises as a dwelling place and does not change the character thereof, and does not change the appearance with signs, material, equipment, noise, odor or other nuisance or unusual pedestrian or vehicular traffic pertinent to such home occupation which shall be carried on by members of a family residing in the dwelling, and in connection with which there is kept no stock in trade or commodity for sale upon the premises shall pay an occupational fee of \$25.00 per year.

(b) All indoor/outdoor recreational facilities shall pay an occupational fee of \$350.00 per location.

(c) All callings, trades, professions, occupations, manufacturers, stores, industries, processors, wholesalers and similar activities, the occupation fee of which is not set forth in subsections (a) or (b) of this section, shall pay an occupation fee computed on the basis of five cents (\$.05) per square foot of the floor which it occupies which has the greatest area without regard to use; five cents (\$.05) per square foot of other floor areas when used for retail sales and five-tenths of one cent (\$.005) per square foot of outside display or drive-in service area occupied. When a business occupies multiple floors (except retail sales as provided herein above) the fee shall be calculated upon the floor which has the greatest area, the minimum occupation fee computed as herein provided shall not be less than \$50.00 per year.

(d) Cereal malt beverages; alcoholic liquor.

(1) Sales of cereal malt beverages in original containers for consumption off the premises shall pay an occupational fee of \$50.00 per year, which shall be in addition to any other occupation licenses required in connection with any other business of the applicant.

(2) Cereal malt beverages at retail for consumption on the premises shall pay an occupational fee of \$100.00 per year.

(3) Sale of alcoholic liquor by the package at retail or for consumption on the premises shall pay an occupational fee of \$300.00 per year.

(e) Rental/Leasing Businesses. - Persons engaged in the business of owning residential rental properties shall pay an annual occupational fee of \$30.00 per structure, if the rental property is offered for lease by a leasing agent of the owner, then the fee required shall be made and paid by the leasing agent, unless paid by the owner, if any rental property is offered for lease by the owner of a property who is not a resident of Johnson County, the owner must designate a resident agent who resides in Johnson County. The agent shall be responsible for the payment of all fees and penalties as provided herein.

If any person fails or refuses to pay any fee or penalties as provided by this section, the city may collect the amount due in the same manner as a personal debt of the property owner to the city by bringing an action in the District Court of Johnson County. Such actions may be maintained, prosecuted, and all proceedings taken, including any award of post-judgment interest to the same effect and extent as for the enforcement of any action for debt. All provisional remedies available in such actions shall be and are hereby made available to the city in the enforcement of the payment of such obligations. In such

actions, the city also shall be entitled to recover interest at the rate provided in K.S.A 79-2968, and amendments thereto from and after the date a delinquency occurs in the payment of the fee. The amount owing may be assessed against the property and the city clerk may at the time of certifying other taxes to the county clerk, certify the aforesaid fees and penalties owing by the proper owner; and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner of a civil action as described herein, but only until the full cost and any applicable interest has been paid in full.

(Code 2008, § 5-105; Ord. 777; Sec. 1; Ord. 770, Sec. 1)

#### **5-106. TWO OR MORE BUSINESSES, SAME LOCATION.**

A person engaged in two or more businesses at the same location shall not be required to obtain separate licenses for each business but shall be issued one license at the highest fee applicable.

(Code 1993, 5-304; Code 2008, § 5-106; Ord. 339, Sec. 5)

#### **5-107. LEASED DEPARTMENTS.**

Any person operating what is commonly known as a leased department in a business establishment shall pay the fee applicable to the business conducted by the department.

(Code 1993, 5-305; Code 2008, § 5-107; Ord. 339, Sec. 6)

#### **5-108. LICENSE APPLICATION: PROCEDURE.**

Any person shall before engaging in any business or before continuing such business after a license has expired, make application for a license and pay the proper fee. Application shall be made to the city clerk giving the name of the person, the kind of business, location and such other information as may be necessary, or directed by the city clerk, to determine the amount to be paid. All such information furnished the city clerk shall be true, to the knowledge of the person making such application and any such false information as to the kind of business, location, use of the property and such other information as is required by the city clerk, shall subject such license to be declared void and subject such person to the penalty as set out in section 5-316 hereof. The city clerk may, in his or her discretion, cause an investigation to be made to determine the accuracy of such statements furnished the city clerk.

(Code 1993, 5-306; Code 2008, § 5-108; Ord. 548, Sec.1)

#### **5-109. SAME; RECEIPT AND LICENSE.**

The city clerk shall, when satisfied of the accuracy of the information and the proper amount having been paid, issue a receipt stating the name of the person, kind of business, his, her or its location, the date of issuance, the amount paid, the duration and expiration.

In addition to the receipt, the city clerk shall issue a license stating the name of the licensee, the nature of the business, the exact location, if possible, the amount paid and date, and date of expiration. The license shall be signed by the city clerk.

(Code 1993, 5-307; Code 2008, § 5-109; Ord. 339, Sec. 8)

#### **5-110. EXPIRATION OF LICENSE.**

All annual licenses shall expire on January 15 of each year: Provided, That when a business begins operation on or after July 1 of any year, the amount charged shall be one-half of the annual amount.

(Code 1993, 5-308; Code 2008, § 5-110; Ord. 727, Sec. 1)

#### **5-111. TRANSFERS.**

(a) There shall be no transfer of license from one person to another, except that where a business, including stock, if any, is sold and the new owner continues the business at the same location and under the same name, the license shall continue to expiration. If the holder of a license moves a stock of goods from the location stated on the license to another location and begins business at the new location, he or she may return the license to the city clerk and secure a substitute license upon payment of a fee set by the governing body and any additional prorated amount for the unexpired term, should a greater amount be required at the new location.

(b) The annual fee is non-refundable. No reduction in the fee will be refunded if a business should become subject to a smaller fee during a given year.

(Code 2008, § 5-111; Ord. 339, Sec. 10)

#### **5-112. LATE PAYMENT, PENALTY.**

Any person who, under the provisions of this article, is required to pay a fee, and who does not pay the fee within 30 days after it becomes due, shall pay, in addition to the fee, a penalty of 10% of the amount of the fee; and 10% of the fee shall be added as a penalty for each additional 30 days' delinquency.

(Code 1993, 5-310; Code 2008, § 5-112; Ord. 339, Sec. 11)

#### **5-113. DISPOSITION OF REVENUE.**

The revenue received under the provisions of this article shall be credited to the city general fund.

(Code 1993, 5-311; Code 2008, § 5-113; Ord. 339, Sec. 12)

#### **5-114. LICENSE TO BE DISPLAYED. <sup>1</sup>**

All persons not having permanent location are required to carry their license with them. A licensee shall present his or her license for inspection when requested to do so by any officer of the city.

(Code 1993, 5-312; Code 2008, § 5-114; Ord. 339, Sec. 13)

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<sup>1</sup> **Legal analysis: 5-114. LICENSE TO BE DISPLAYED.** If applicable, add provision also mandating display of license in a permanent location if one exists.

**5-115. BUSINESS TRANSACTIONS NOT INVALID.**

The pursuing, conducting or carrying on of any business without the payment of the fee required and without having secured a license as provided by this article shall not affect the validity of any business transaction; which would otherwise be lawful.  
(Code 1993, 5-313; Code 2008, § 5-115; Ord. 339, Sec. 14)

**5-116. PAYMENT OF FINE DOES NOT PAY FEE; CIVIL ACTION.**

The payment of a fine or the serving of a jail sentence for failure to pay the fee and secure a license shall not constitute payment of the fee and does not excuse the person from making payment, and the city may proceed by civil action to collect the fee.  
(Code 1983; Code 1993, 5-314; Code 2008, § 5-116)

**5-117. PENALTY.**

Any person, as defined by this article who shall conduct, pursue, carry on or operate within the corporate limits of the city any business as defined by this article, and any individual who shall assist directly or indirectly, in so doing in any manner or to any extent, either as owner, proprietor, manager, superintendent, partner, agent, servant, or employee of any person after a fee should have been paid and a license obtained to conduct, pursue, carry on or operate such business and the fee has not been paid and a license obtained, shall be deemed to do so unlawfully and upon conviction thereof in the municipal court shall be punished by a fine of not more than \$500.00, or by imprisonment in the city jail for a period not exceeding 180 days, or by both such fine and imprisonment.

A separate offense shall be deemed committed on each day during or at which a violation occurs or continues.  
(Code 1970, 5-316; Code 1993, 5-315; Code 2008, § 5-117)

**5-118. SALES ON PUBLIC PROPERTY.**

No merchandise, goods, wares or edible products of any nature whatsoever may be displayed for sale or sold within and upon the city streets or public property, except upon proper application for a license for the use of public grounds as set forth in section 12-104 of this code.  
(Code 1993, 5-102; Code 2008, § 5-118)

**5-119. NEW GOODS PUBLIC AUCTION: LICENSE FEE.**

The license fee for the conduct of a new goods public auction shall be \$25.00 per day as provided in K.S.A. 58-1019.  
(Code 1983; Code 1993, 5-105; Code 2008, § 5-119)

**5-120. RIGHT TO INSPECT BUSINESS PROPERTY.**

The city shall have the right to enter upon any business property to the extent permitted by law, to determine:

- (a) The use of the property is in compliance with the applicable zoning laws.
- (b) The property meets the requirements of the city's building and safety codes.
- (c) No condition exists in the structure or on the property upon which it is located constituting a violation of any other code or ordinance of the city.  
(Code 2008, § 5-120)

**ARTICLE 2. SOLICITORS, CANVASSERS, PEDDLERS, TRANSIENT MERCHANTS**

**~~5-201. STATEMENT OF PURPOSE.~~<sup>2</sup>**

~~It is the purpose of this article to protect the general public against:~~

- ~~(a) Crimes, frauds and misrepresentation committed by persons posing as solicitors;~~
- ~~(b) The continuing danger of fraud, robbery, and other crimes to the residents of the city; and~~
- ~~(c) Undue annoyances caused by solicitors.  
(Code 1993; Code 2008, § 5-201)~~

**5-202. DEFINITIONS.**

For the purpose of this article, the following words shall be considered to have the following meanings:

- (a) Soliciting - shall mean and include any one or more of the following activities:
  - (1) Seeking to obtain orders for the purchase of goods, wares, merchandise, foodstuffs, services, of any kind, character or description whatever, for any kind of consideration whatever; or
  - (2) Seeking to obtain prospective customers for application or purchase of insurance of any type, kind or character; or
  - (3) Seeking to obtain subscriptions to books, magazines, periodicals, newspapers and every other type or kind of publication.
- (b) Residence - shall mean and include every separate living unit occupied for residential purposes by one or more persons, contained within any type of building or structure.
- (c) Solicitor - shall mean any individual, whether resident of the city or not, whose business is mainly or principally carried on by traveling either by foot, automobile, motor truck, or any other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for sale of goods, wares and

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<sup>2</sup> **Legal analysis: 5-201. STATEMENT OF PURPOSE.** Delete as not needed.

merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale or whether he or she is collecting advance payments on such sales or not. Such definition shall include any person, who, for himself, herself or for another person, hires, leases, uses, or occupies any building, structure, tent, ~~railroad boxcar~~, boat, hotel room, lodging house, apartment, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery. Solicitor includes charitable solicitors. <sup>3</sup>

(d) Peddler - shall mean any person, whether a resident of the city or not, traveling by foot, automotive vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who, without traveling from place to place, shall sell or offer the same for sale from a ~~wagon~~, automotive vehicle, ~~railroad boxcar~~ or other vehicle or conveyance, and further provided, that one who solicits orders and as a separate transaction makes deliveries to purchasers as a part of a scheme or design to evade the provisions of this article shall be deemed a peddler. <sup>4</sup>

(e) Transient merchant, itinerant merchant or itinerant vendor - are defined as any person, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling and delivering goods, wares and merchandise within such city, and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, tent, ~~railroad boxcar~~, or boat, public room in hotels, lodging houses, apartments, shops or any street, alley or other place within the city, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. Such definition shall not be construed to include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. The person so engaged shall not be relieved from complying with the provisions of this article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer. <sup>5</sup>

(f) Street salesman - shall mean any person engaged in any manner in selling merchandise of any kind from a vehicle or stand temporarily located on the public streets or sidewalks of this city.

(g) Charitable - means any activity represented as carried on for unselfish, civic, or humanitarian motives, or for the benefit of others, and not for private gain.

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<sup>3</sup> **Legal analysis: 5-202. DEFINITIONS, (c) solicitor.** Delete "railroad boxcar" if obsolete.

<sup>4</sup> **Legal analysis: 5-202. DEFINITIONS, (d) peddler.** Delete "wagon" and "railroad boxcar" if obsolete.

<sup>5</sup> **Legal analysis: 5-202. DEFINITIONS, (e) transient merchant.** Delete "railroad boxcar" if obsolete.



~~(h) City means the City of Westwood, Kansas.~~<sup>6</sup>

(i) Commercial Handbill - is any printed or written matter, any sample or device, circular, leaflet, pamphlet, paper booklet, or any other printed or otherwise reproduced original or copies of any matter of literature:

- (1) Which advertises for sale any merchandise, product, commodity or thing;
- (2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales;
- (3) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged. for the purpose of private gain or profit.
- (4) Exemption for mail and newspapers. For purposes of this ordinance the term commercial handbill shall not be construed to include mail delivered by the United States Postal Service or newspapers duly entered with the Post Office Department of the United States and newspapers filed and recorded with any recording officer as provided by general law or any periodical or current magazine regularly published with not less than four issues per year, and sold to the public.  
(Code 2008, § 5-202)

### **5-203. SOLICITATION PERMITS REQUIRED.**

Every solicitor, peddler, transient merchant, itinerant merchant, itinerant vendor, or street salesman must obtain a permit from the city before soliciting within the city. In order to obtain a permit to solicit, the applicant must furnish the information required under this article to the city clerk.

(Code 1993; Code 2008, § 5-203)

### **5-204. INFORMATION REQUIRED ON APPLICATION FOR SOLICITATION PERMIT.**

An applicant for a solicitation permit shall furnish to the city clerk an application containing the following information:

- (a) The name and address of the principal office of the person applying for the permit (including both local and non-local principal offices where such exist);
- (b) If the applicant is not an individual, the names and addresses of the applicants principal officers and executives;
- (c) The purpose for which the solicitation is to be made;
- (d) The name and address of the person or persons who will be making the

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<sup>6</sup> **Legal analysis: 5-202. DEFINITIONS, (h) city.** Delete as covered by General Provisions in Chapter 1.

solicitations;

(e) The time when the solicitations will be made, giving the expected dates for the commencement and termination of the solicitations, subject to the limitations on time for solicitations contained in this article;

(f) A statement to the effect that if a permit is granted:

(1) It will not be used or represented in any way as an endorsement by the city by any department or officer thereof;

(2) That during the period specified in the permit, if there is any change in fact, policy or method that would alter the information given in the application, the applicant will notify the city clerk in writing thereof within 48 hours after such change;

(3) At no time during the period of solicitation will the applicant or his or her agents solicit at any residence within the city where there is clearly and visibly posted any sign requesting No Solicitation, or No Trespassing or words of similar import;

(4) The applicant and all persons for whom application is made will carry on their person a copy of the solicitation permit issued by the city.

(g) A sample of the identification badge or card that each person participating in the solicitation shall wear or carry, indicating that person's name and the name of the organization for which he or she is soliciting. Such badge or card shall be furnished by the organization and be approved by the city clerk.

(Code 1993; Code 2008, § 5-204)

#### **5-205. STANDARDS FOR ISSUANCE.**

(a) The city clerk shall except as provided by this article, issue a solicitation permit provided for by this article upon receiving a completed application form from the applicant or their representative.

(b) The city clerk, or a person designated by the city clerk to review applications for solicitation permits, may defer issuance of any solicitation permit for such period of time as is reasonably necessary to verify the accuracy of information required to be provided in the application for solicitation permit.

(c) The city clerk shall not issue a solicitation permit to any person who within the five years preceding the date of filing of an application for solicitation permit has been convicted of a felony, or other violation of the laws of the United States or of any state or city of the United States where such conviction was for an offense involving force or threat of force, violence, theft, dishonesty, fraud, sexual misconduct or moral turpitude or where such conviction was for violation of this ordinance or the solicitation ordinance of any other city.

(d) Any person who is aggrieved by the refusal of the city clerk to issue a solicitation permit may appeal the refusal to the governing body. On refusal, the city clerk shall notify the applicant by registered mail of the refusal to issue a solicitation permit and that the

applicant may appeal the refusal to the governing body by requesting a hearing before the governing body not later than 30 days following receipt of the notice of refusal. The notice of refusal shall contain a statement of the facts upon which the city clerk acted in refusing to issue a permit. On receipt of a request for hearing before the governing body, the city clerk shall schedule the matter to be heard before the next regularly scheduled meeting of the governing body unless the applicant shall request that the hearing be scheduled at a later date. In no event shall such hearing be held more than 30 days following receipt of the applicant's request for hearing. At the hearing the applicant may offer evidence to supply any contention that a permit should be issued.  
(Code 1993; Code 2008, § 5-205)

#### **5-206. APPLICATION AND PERMIT AVAILABLE FOR PUBLIC INSPECTION.**

All applications, permits and supporting documentation filed with the city clerk shall be a matter of public record, and shall be available for examination and inspection by any member of the public during regular business hours.  
(Code 1993; Code 2008, § 5-206)

#### **5-207. FEES.**

There shall be no fees or charges paid to the city for a permit pursuant to this article.  
(Code 1993; Code 2008, § 5-207) <sup>7</sup>

#### **5-208. CONTENTS OF PERMIT.**

Permits issued under the provisions of this article should bear the name and address of the person to whom the permit is issued, the number of the permit, the dates within which the permit holder may solicit, the statement that the permit does not constitute an endorsement by the city or by any of its departments, officers or employees, of the purpose or the person conducting the solicitation, and the signature of the city clerk or his or her designee.  
(Code 1993; Code 2008, § 5-208)

#### **5-209. TERM OF PERMIT.**

Permits issued pursuant to this article shall authorize the holder thereof to solicit for the number of days requested in the application, not to exceed 90 consecutive days. Applications for renewal of permits may be made and shall be granted if the requirements of this article are still being met and no violations of the permit or this article have been found to exist.  
(Code 1993; Code 2008, § 5-209)

#### **5-210. PERMITS NONTRANSFERABLE.**

No permit issued under the provisions of this article shall be transferable or assignable.  
(Code 1993; Code 2008, § 5-210)

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<sup>7</sup> **Legal analysis: 5-207. FEES.** Please verify that the city does not wish to revise these terms to include a fee.

**5-211. SUSPENSION OR REVOCATION OF PERMITS.**

Any determination by the city clerk that the holder of a city permit has violated any provisions of this article or if the permit issued pursuant thereof, or that the holder of the permit has made representations which are contrary to the facts stated in the application for the permit, shall cause the city clerk to give notice to the permit holder that the permit is immediately suspended. The notice of immediate suspension is to be mailed to the permit holder by registered or certified mail, and shall notify the holder that a hearing will be had before the governing body at its next regular or special meeting for the purposes of determining whether or not the permit should be revoked. The notice shall contain a statement of the facts upon which the city clerk acted in suspending the permit and at that hearing the permit holder may offer evidence to support any contention its permit should not be revoked. No solicitation shall be made during the period of suspension or revocation of a permit.

(Code 1993; Code 2008, § 5-211)

**5-212. UNIFORMITY OF ADMINISTRATION OF ARTICLE.**

The city clerk is directed to administer this article uniformly, and is to require all applicants to submit the application and supporting data required by this article before issuing a permit. All applicants are to be treated alike.

(Code 1993; Code 2008, § 5-212)

**5-213. PROHIBITED ACTS.**

(a) It shall be unlawful for any solicitor to ring the bell, or knock on the door or otherwise attempt to gain admittance for the purpose of soliciting at a residence, dwelling or apartment at which a sign bearing the words No Solicitors, No Trespassers, or words of similar import indicating that such persons are not wanted on the premise, is painted, affixed or otherwise exposed to public view; provided that this paragraph shall not apply to any solicitor who gains admittance to such residence at the invitation or with the consent of the occupant thereof.

(b) It shall be unlawful for any solicitor to solicit prior to 10:00 a.m. or after 9:00 p.m. local times, of any day.

(c) It shall be unlawful for any solicitor to engage in soliciting upon any premise or in any dwelling house, apartment or other residence after having been asked by the owner or occupant thereof to leave the premises or residence.

(d) It shall be unlawful for any solicitor to make more than one solicitation call at the same residential premises for identical goods, services, or contributions within any consecutive 60 days period, without receiving a prior invitation thereof from the occupants of the premises. This provision shall be construed to include solicitation upon the same premises by employees, agents, or other persons acting on behalf of the same person more than once during the aforesaid period without a prior invitation as herein provided.

(e) It shall be unlawful for any solicitor to fail to provide, at the request of the purchaser, a written receipt, for purchases exceeding \$5.00 in cash or tangible property which receipt shall be signed by the person making the sale and shall set forth a brief

description of the goods or services sold, the total purchase price thereof, amount of cash payment, if any, and the balance due and terms of payment; or for any charitable solicitor or organization accepting any contribution exceeding \$5.00 in cash or tangible property to fail to provide at the request of the donor a written receipt acknowledging such contribution and personally signed by the person accepting such contribution.

(f) It shall be unlawful for any solicitor to fail at the outset to disclose to the prospective buyer, prospective donor, or canvasee his or her name and the name of the company, product or organization he or she represents.

(g) It shall be unlawful for any solicitor to make any assertion, representation or statement which misrepresents the purpose of his or her call, or use any plan, scheme, or use which misrepresents such purpose.

(h) It shall be unlawful for any solicitor to conduct his or her business in such a way as would restrict or interfere with the ingress or egress of the abutting property owner or tenant, increase traffic congestion or delay, or constitute a hazard to traffic, life or property, or an obstruction to adequate access to fire, police or sanitation vehicles.

(i) It shall be unlawful for any person to solicit who has been convicted of a felony or the violation of any law involving force, violence, moral turpitude, deceit, fraud, or the violation of any law regulating the act of soliciting as defined in this article within the past five years in this state or any other state or subdivision thereof or of the United States.

(j) It shall be unlawful for any person to solicit or attempt to solicit at a place of residence at any entrance other than the main entrance of the residence.

(k) It shall be unlawful for any person to solicit or attempt to solicit without carrying upon their person a copy of the permit issued by the city authorizing solicitation and an identification badge or card as described in section 5-204(g) of this article.

(Code 1993; Code 2008, § 5-213)

### **5-214. PENALTIES.**

Any person who violates or causes to be violated any provision of this article, or who gives false and incorrect information to the city clerk in filing statements or reports required by this article, whether such report or statement is verified or not, shall be guilty of a municipal offense and upon conviction thereof, shall be subject for the first offense to a fine of not less than \$100.00 or more than \$500.00 and for the second or any subsequent offense to a fine of not less than \$500.00 or more than \$1,000.00. Jail time not to exceed six months may be added as additional punishment or in lieu of a fine, at the discretion of the judge.

(Code 1993; Code 2008, § 5-214)

## **ARTICLE 3. DRIVE-IN BUSINESS <sup>8</sup>**

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<sup>8</sup> **Legal analysis: ARTICLE 3. DRIVE-IN BUSINESS.** Please advise whether the city would like to revise the definitions and/or regulations in this article to account for the growing popularity of eat-in dining establishments offering curbside pickup service.

### **5-301. DEFINITION.**

The term "drive-in business" as used herein shall be construed to mean any and all businesses which furnish curbside or delivery service to patrons outside of the building occupied by the business. The term "drive-in business" does not include: pay phones, ATM machines, vending machines and similar automated devices.

(Code 2008, § 5-301; Ord. 397, Sec. 1)

### **5-302. RULES AND REGULATIONS.**

All persons, firms, associations or corporations, either as principal or agent of any drive-in business, shall conform to the following rules and regulations:

(a) There shall be placed on the building or premise, notifying patrons desiring curbside or delivery service, signs visible to car occupants reading as follows Flash lights for car service.

(b) No curbside or delivery service shall be furnished patrons between the hours of 10:00 p.m. and 7:00 a.m.

(c) It shall be unlawful to use any device known as a loud-speaker, record player, radio, sound amplifier, bells, buzzers or signal calls the purpose of attracting attention or for advertising purposes outside of the building occupied by the business.

(d) No curbside or drive-in service shall be rendered to patrons, except on property owned or leased by the proprietor of the drive-in business.

(e) It shall be the duty of the owner, occupant or agent of the drive-in business to see that patrons shall not use the horn of their motor vehicle for a curbside or drive-in service.

(f) It shall be the duty of the owner, occupant or agent of the drive-in business building shall be kept free from all rubbish, waste paper, napkins, paper cups, sweepings or other loose combustible material.

(Code 1993, 5-402; Code 2008, § 5-302; Ord. 397, Sec. 2)

### **5-303. PENALTY.**

Any person, firm or corporation or any agent, manager or employee, officer or employer thereof, who shall violate or shall cause, permit or direct the violation of any of the provisions of this article shall upon conviction thereof, be fined in any sum not less than \$150.00, nor more than \$500.00 for each offense. Each occasion upon which violation shall occur shall be deemed a separate offense.

(Code 1993, 5-403; Code 2008, § 5-303; Ord. 397, Sec. 3)

## **ARTICLE 4. BATH HOUSES; MESSAGE ESTABLISHMENTS**

### **5-401. DEFINITIONS.**

For the purpose of this article, the following words shall mean:

- (a) Bath House. - The occupation of maintaining and operating for compensation any services of baths of all kinds, including all forms and methods of hydrotherapy.
- (b) Body Painting Studios. - The occupation of maintaining, operating and offering any services for compensation of applying paint or other substance, whether transparent or non-transparent, to or on the human body when such body is wholly or partially nude, by any means of application, technique, or process.
- (c) Employee. - Any person, other than masseurs or masseuses, who renders any service to a permittee under this article, who receives compensation from the permittee or patron.
- (d) Establishment. - Any establishment having a place of business where any person, firm, partnership, association or corporation engages in or carries on or permits to be engaged in or carried on any of the activities mentioned herein for compensation.
- (e) Massage. - Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.
- (f) Massage therapist. - Any person who, for any consideration whatsoever, engages in the practice of massage as herein defined. Any reference herein to "masseuse" or "masseur" shall mean and apply to a "massage therapist."
- (g) Modeling studio. - The occupation of maintaining, operating and offering any services for compensation of modeling for the purpose of reproducing the human body, wholly or partially in the nude, by means of photograph, painting, sketching, drawing or otherwise. To be included within the definition of modeling studios is the occupation or practices for compensation of offering one's body, wholly or partially in the nude, for the purpose of having designs of whatever nature applied thereto by whatever process or technique with any kind of substance whether it be transparent or non-transparent.
- (h) Patron. - Any person over 18 years of age who utilizes or receives the services of any establishment subject to the provisions of this chapter and under such circumstances that it is reasonably expected that he or she will pay money to give any other consideration therefor.
- (i) Recognized school. - Any school or institution of learning which has for its purpose the teaching of the theory, method, profession or work of massage, which school requires a resident course of study not less than seventy hours to be given in not more than three calendar months before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such.
- (Ord. 598; Code 2008, § 5-401; Ord. 856, Sec. 1)

#### **5-402. PERMIT REQUIRED.**

No person, firm, partnership, association or corporation shall operate a bath house, massage establishment, body painting studio or modeling studio, as defined herein, without first having obtained a permit from the City Clerk. A separate permit shall be required for each and every separate place of business conducted by any one permittee. Such permit shall be valid only from January 15 to January 14 of a calendar year. However, the fee may be prorated to the nearest month if an application is made after July 1 of any year.  
(Code 2008, § 5-402; Ord. 856, Sec. 2; Ord. No. 987, § 1, 12-14-2017)

#### **5-403. PERMIT FEES.**

Every applicant for a permit to maintain or operate any such an establishment or to perform massage therapy services in any such establishment shall file an application with the **Chief of Police** on a form approved by the **Chief of Police.** <sup>9</sup>

Each establishment shall pay an annual fee of \$50.00. Each individual massage therapist shall pay an annual fee of \$25.00. Any individual who operates an establishment and who also personally provides massage therapy shall only pay the \$50.00 establishment's fee, and shall not have to pay an additional permit fee by virtue of also providing massage therapy services.  
(Code 2008, § 5-403; Ord. 856, Sec. 3)

#### **5-404. APPLICATION.**

The application for a permit to operate any such establishment shall set forth the exact nature of the services to be provided, the proposed place of business and facilities therefor, and the name, address and telephone number of each applicant, including any stockholder holding more than 10 percent of the stock of the corporation, any partner, when a partnership is involved, and any manager.  
(Code 1993, 5-504; Code 2008, § 5-404; Ord. 598)

#### **5-405. SAME; STOCKHOLDERS.**

The applicant, employee, manager, partner and any stockholder holding more than ten percent of the stock of applicant corporation shall in addition furnish:

- (a) Name, address, telephone number and written proof applicant is at least eighteen years of age.
- (b) Two portrait photographs, at least two inches by two inches, and fingerprints.
- (c) Business, occupation or employment of the applicant for the three years immediately preceding the date of application.

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<sup>9</sup> **Legal analysis: 5-403. PERMIT FEES.** (1) Please clarify whether the permit application is to be provided by the city clerk (5-402), or the police chief (5-403), or whether these sections are referring to two different documents. Revise accordingly. (2) Please review the fees herein and advise as to any changes.



(d) History of person or applicant in such business or businesses, whether such person, in previously operating in this or another city or state under license, has had such license revoked or suspended, the reason therefor, and the business activity of occupation subsequent to such action of suspension or revocation.

(e) All criminal citations, arrests, or charges (except for minor traffic offenses), whether resulting in a dismissal, conviction, diversion, suspended imposition of sentence, or other resolution; the jurisdiction in which cited, arrested, or charged; and the offense for which a citation, arrest, or charge was made, as well as the circumstances surrounding any such incident.

(f) Authorization for the city to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit.

(g) The position or function the applicant is to perform within such establishment.  
(Code 2008, § 5-405; Ord. 598; Ord. 856, Sec. 4)

#### **5-406. EDUCATION REQUIREMENTS.**

(a) Any person, including an applicant for a massage establishment permit, who engages or intends to engage in the practice of massage shall, upon making application for a permit, supply the name and address of the recognized school attended, the date attended and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has successfully completed not less than 300 hours of instruction in the theory, method, or practice of massage.

(b) Applicants for a masseur or masseuse permit may substitute one years' continuous experience as a masseur or masseuse in lieu of the requirement of a diploma or certificate of graduation from a recognized school or other institution of learning wherein the method and work of massage is taught. Such masseur or masseuse must obtain an affidavit attesting to such experience from the owner of the establishment where the continuous year of experience occurred.  
(Code 2008, § 5-406; Ord. 598; Ord. 856, Sec. 5)

#### **5-407. IDENTIFICATION CARDS.**

All or any employee issued a permit by the chief of police under the provisions of this article shall, at all times when working in an establishment subject to the provisions of this article, have in their possession a valid identification card issued by the city bearing the employee's permit number, the employee's physical description and a photograph of such employee. Such identification cards shall be laminated to prevent alteration. All persons granted permits under this article shall at all times keep their permits available for inspection upon request of any person, who by law may inspect same.  
(Code 1993, 5-507; Code 2008, § 5-407; Ord. 598)

#### **5-408. ISSUANCE OF PERMIT.**

After the filing of an application in the proper form, the City Clerk shall issue a permit for a massage establishment, bath house, modeling studio or body painting studio or

employee permit, unless:

- a) The correct permit fee has not been tendered to the city, and, in the case of a check or bank draft, honored with payment upon presentation;
- b) The operation fails to comply with state and local laws, including, but not limited to, the city's building, zoning and health regulations.
- c) Any of the following have been convicted of any crime, including, but not limited to, any felony, misdemeanor, code violation, ordinance violation, or other violation of the laws of the United State or of any state or city of the United States where such conviction was for an offense involving force or threat of force, violence, theft, dishonesty, fraud, sexual misconduct or moral turpitude or where such conviction was for a violation of this ordinance or a substantially similar ordinance or enactment of any other jurisdiction, unless such conviction occurred at least five years prior to the date of the application:
  - i) The applicant, if an individual;
  - ii) Any of the stockholders holding more than ten percent of the stock of the corporation;
  - iii) Any of the officers and directors, if the applicant is a corporation;
  - iv) Any of the partners, including limited partners, if the applicant is a partnership; and
  - v) The manager or other person principally in charge of the operation of the business.
- d) The applicant has knowingly made any false, misleading or fraudulent statement of fact in the permit application or in any document required by the city in conjunction therewith.
- e) The applicant has had a massage establishment, bath house, body painting studio or modeling studio as defined herein, or other similar permit or license, denied, revoked or suspended for any of the above causes by the city or any other state or local agency within five years prior to the date of the application.
- f) The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, is not over the age of eighteen years;
- g) The manager or other person principally in charge of the operation of the business would be ineligible to receive a permit under the provisions of this article; and
- h) In the case of a masseur or masseuse that the applicant has not successfully completed a resident course of study from a recognized school as required under the provisions of this article.  
(Code 2008, § 5-408; Ord. 598; Ord. 856, Sec. 5; Ord. No. 987, § 2, 12-14-2017)

**5-409. PERMIT DISPLAYED.**

Any permit issued under the provisions of this article shall at all times be displayed by the permittee in an open and conspicuous place on the premises where the permitted business is conducted.

(Code 1993, 5-409; Code 2008, § 5-409; Ord. 598)

#### **5-410. REVOCATION OR SUSPENSION OF PERMIT.**

a) Any permit issued for an employee or for a massage establishment, bath house, modeling studio or body painting studio may be revoked or suspended by the City Clerk where it is found that any of the provisions of this article are violated.

b) The City Clerk, before revoking or suspending any permit, shall give the permittee at least ten days written notice of the charges against him or her and the opportunity for a public hearing before the Governing Body, at which time the permittee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

(Code 1993, 5-510; Code 2008, § 5-410; Ord. 598; Ord. No. 987, § 4, 12-1-2017)

#### **5-411. FACILITIES.**

No permit to conduct such establishment shall be issued unless an inspection by the city or its authorized representative reveals that the establishment complies with the following minimum requirements:

(a) The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given, floors shall be free from any accumulation of dust, dirt or refuse. All equipment used in the business' operation shall be maintained in a clean and sanitary condition. Towels, linen and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, cloths and sheets shall not be used for more than one patron. Heavy, white paper may be substituted for sheets provided that such paper is changed for every patron. No service or practice shall be carried on within any cubicle, room, booth or any area within any permitted establishment which is fitted with a door capable of being locked.

(b) Toilet facilities shall be provided in convenient locations. When five or more employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. A single water closet per sex shall be provided for each twenty or more employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets after one water closet has been provided. Toilets shall be designated as to the sex accommodated therein.

(c) Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

(d) Massage therapy may also be offered as a home occupation provided that all facilities are clean and safe, and all other ordinances of the City are complied with including, but not limited to, all City ordinances and requirements pertaining to home occupations.

(Code 2008, § 5-411; Ord. 598; Ord. 856, Sec. 6)

#### **5-412. CERTIFICATION.**

The City or the City's authorized representative shall certify that the proposed business establishment complies with all of the requirements of this section and shall give or send such certification to the chief of police. Nothing contained herein shall be construed to eliminate other requirements of any statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof.

(Code 2008, § 5-412; Ord. 598; Ord. 856, Sec. 7)

#### **5-413. INSPECTIONS.**

The City or the City's authorized representative shall from time to time make an inspection of each permitted establishment in this city for the purposes of determining compliance with the provisions of this article. Such inspections shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any permittee to fail to allow such inspection officer immediate access to the premises or to hinder such officer in any manner. Any failure on the part of any permittee or employee to grant immediate access to such inspector shall be grounds for the revocation or suspension of any business or employee permit.

(Code 2008, § 5-413; Ord. 598; Ord. 856, Sec. 7)

#### **5-414. OPERATION REGULATIONS.**

The following regulations shall apply to any such establishment:

(a) Such business shall be closed to the public and operations shall cease between the hours of 12:00 a.m. and 6:00 a.m. each day.

(b) No service shall be given which is clearly dangerous or harmful in the opinion of the City or the City's authorized health or safety representative, and after such notice in writing to the licensee from such director.

(c) All operators permitted under the provisions of this article shall at all times be responsible for the conduct of business on their permitted premises and for any act or conduct of his or any of his employees which constitutes a violation of the provisions of this chapter. Any violation of the city, state or federal laws committed on the permitted premises by any such permittee or employee affecting the eligibility or suitability of such person to hold a license or permit may be grounds for suspension or revocation of the same.

(Code 2008, § 5-414; Ord. 856, Sec. 8)

#### **5-415. SAME; EQUIPMENT; ATTIRE.**

(a) Every portion of a permitted establishment, including appliances and personnel shall be kept clean and operated in a sanitary condition.

(b) All employees, masseurs and masseuses must be modestly attired. Diaphanous, flimsy, transparent, form-fitting or tight clothing is prohibited. Clothing must cover the

employees', masseurs' or masseuses' chests at all times. Hemlines of skirts, dresses or other such attire may be no higher than the top of the knee.

(c) The private parts of patrons must be covered by towels, cloths or undergarments when in the presence of an employee, masseur or masseuse. Any contact with a patron's genital area is strictly prohibited.

(d) All permitted establishments, when applicable, shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in approved, sanitary manner.

(e) Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use.

(Code 2008, § 5-415; Ord. 596; Ord. 856, Sec. 9)

#### **5-416. SUPERVISION.**

A permittee shall have the premises supervised at all times when open for business. Any business rendering massage services shall have one person who qualifies as a masseur or masseuse on the premises at all times while the establishment is open. The permittee shall personally supervise the business and shall not violate or permit others to violate, any applicable provision of this article. The violation of any such provision by any agent or employee of the permittee shall constitute a violation by the permittee.

(Code 1993, 5-516; Code 2008, § 5-416; Ord. 598)

#### **5-417. EMPLOYEE REGISTERS.**

All operators permitted under the provisions of this article shall keep and maintain on their premises a current register of all their employees showing such employee's name, address and permit number. Such register shall be open to inspection at all reasonable times by any health inspector or members of the city police department.

(Code 2008, § 5-417; Ord. 596)

#### **5-418. MINORS PROHIBITED.**

No person shall permit any person under the age of 18 years to come or remain on the premises of any permitted business establishment, as masseur, employee or patron, unless such person is on the premises on lawful business.

(Code 1993, 5-518; Code 2008, § 5-418; Ord. 598)

#### **5-419. ADVERTISING.**

No establishment granted a permit under provisions of this article shall place, publish or distribute or cause to be placed, published or distributed any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than those services as described in section 5-401 or that employees, masseurs or masseuses are dressed in any manner other than described in section 5-415 nor shall any establishment indicate in the text of such advertising that any service is available other than those services described in section 5-

401.

(Code 1993, 5-519; Code 2008, § 5-419; Ord. 598)

#### **5-420. TRANSFER OF PERMITS.**

(a) No massage business, bath house, modeling studio, body painting studio or employee permits are transferable, and such authority as a permit confers shall be conferred only on the permittee named therein.

(b) Any applications made, fees paid and permits obtained under the provisions of this article shall be in addition to and not in lieu of any other fees, permits or licenses required to be paid or obtained under any ordinances of this city, or under any state or federal laws. <sup>10</sup>

(Code 1993, 5-520; Code 2008, § 5-420; Ord. 598)

#### **5-421. EXCEPTIONS.**

The provisions of this article shall not apply to hospitals; nursing homes, sanitariums or persons holding an unrevoked certificate to practice the healing arts under the laws of this state, or persons working under the direction of any such persons or in an such establishment. Nor shall this article apply to health care professionals, barbers, aestheticians, manicurists, cosmetologists, or other licensed professionals carrying out their particular profession or business and holding a valid, un-revoked license or certificate of registration issued by this state.

(Code 2008, § 5-421; Ord. 598; Ord. 856, Sec. 10)

#### **5-422. CITY TO ESTABLISH AND ENFORCE RULES AND REGULATIONS**

The City or the City's authorized representative may make and enforce reasonable rules and regulations not in conflict with but to carry out the intent of this article.

(Code 2008, § 5-422; Ord. 856, Sec. 11)

#### **5-423. RESTRICTION TO PREMISES.**

All business or activity provided for under this article shall be conducted and performed on the respective premises. However, bath house or massage shop permittees or employees at the direction of a duly licensed physician may perform their services in behalf of physically incapacitated patients in such patient's home, residence or other designated place, or such permittee or employee may render such treatment to persons who are bedfast or are so physically incapacitated that it is impractical to provide same to such persons at a permitted location. All such services so rendered shall have received the prior approval of the City or its authorized representative.

(Code 1993, 5-523; Code 2008, § 5-423; Ord. 598)

### **ARTICLE 5. AMUSEMENT DEVICES**

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<sup>10</sup> **Legal analysis: 5-420. TRANSFER OF PERMITS.** Revise to be more complete.

**5-501. DEFINITION.** <sup>11</sup>

Amusement device shall mean any machine, device which is coin-operated or otherwise available for hire, which machine or device permits a person or operator to use the device as a game or contest of skill, whether or not registering a score. It shall include, but not be limited to such devices as electronic or mechanical game machines, pool tables, foosball tables, air hockey tables, pong games, single-passenger mechanical rides for children, electronic video games, shooting gallery type games, pinball machines, skee ball, bowling machines, or any other mechanical or electronic games or operations similar thereto. This definition does not include merchandise, amusement rides as defined in K.S.A. 44-1601, vending machines or coin-operated jukeboxes phonographs, televisions or other devices which are not designed for manipulation by the person operating the device.

(Code 1983; Code 1993, 5-601; Code 2008, § 5-501)

**5-502. LICENSE REQUIRED.**

No person shall within the city limits display for public patronage or keep for operation any coin-operated amusement device without first obtaining a license from the city. Not more than one machine or device shall be operated under one license, and a separate license shall be obtained for each and every machine or device displayed or operated. Not more than two devices shall be operated per establishment.

(Code 1983; Code 1993, 5-602; Code 2008, § 5-502; Ord. 598)

**5-503. LICENSE APPLICATION.**

Application for a license under this article shall be made to the governing body by written application and such application for such license shall contain, but not be limited to, the following information:

- (a) The name and address of the applicant, his or her age and date of birth and the name and address of the owner of the device.
- (b) The place where the machine or device is to be displayed or operated and the business conducted at that place.
- (c) A description of the machine or device to be covered by the license, including its mechanical features, the name of the manufacturer and the serial number.
- (d) Whether the applicant or owner has paid a current Federal Occupation Tax for the use or permit to use, on any place or premises within the city, a coin-operated amusement or game device under the Federal Internal Revenue Code. Each such application shall be made out in duplicate, one copy being referred to the chief of police and the other copy to be affixed to the license issued.

(Code 1993, 5-603; Code 2008, § 5-503; Ord. 598)

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<sup>11</sup> **Legal analysis: 5-501. DEFINITION.** Revise to differentiate amusement devices from amusement rides, which are regulated under K.S.A. 44-1601 et seq.

**5-504. LICENSE FEE.**<sup>12</sup>

No license required of this article shall be issued to any applicant unless the application is approved by the governing body. The initial license fee for all new applications for coin-operated amusement devices shall be \$100.00, and for each annual renewal hereof the license fee shall be \$50.00 per year.

(Code 1993, 5-604; Code 2008, § 5-504; Ord. 598; Ord. 895)

**5-505. LICENSE REVOCATION; NOTICE AND HEARING.**

Every license issued for public patronage for operation of a coin-operated amusement device is subject to the right, which is hereby especially reserved, to revoke the same should the licensee, directly or indirectly, permit the operation of any coin-operated amusement or gaming device, contrary to the provisions of any ordinance of this city, any statute of the state of Kansas or any federal law. Such license may be revoked by the governing body after written notice to the licensee, which notice shall specify the ordinance or law violation with which the licensee is charged if, after a hearing the licensee is found to be guilty of such violations.

(Code 1993, 5-605; Code 2008, § 5-505; Ord. 598)

**5-506. DISPLAY OF LICENSE.**

Every license provided by this article shall be maintained permanently at the premises and at the location where the device is to be operated or maintained, and available for inspection by the chief of police upon request.

(Code 1993, 5-606; Code 2008, § 5-506; Ord. 598)

**5-507. TRANSFER OF LICENSE.**

A license issued under this article may be transferred from one machine or device to another similar machine or device upon application to the governing body to such effect and giving the description and serial number of the new machine or device.

(Code 1993, 5-607; Code 2008, § 5-507; Ord. 598)

**5-508. TERM OF LICENSE.**

Each license issued under this article shall expire one year from the date of issuance.

(Code 1993, 5-608; Code 2008, § 5-508; Ord. 598)

**5-509. PENALTY.**

Any persons violating the provisions of this article shall, upon conviction thereof, be fined in any sum not exceed \$500.00, or be imprisoned not to exceed six months or be both so fined and imprisoned.

(Code 1993, 5-609; Code 2008, § 5-509; Ord. 598)

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<sup>12</sup> **Legal analysis: 5-504. LICENSE FEE.** Please review the fees herein and advise as to any changes.



## **ARTICLE 6. WRECKER AND TOW SERVICES**

### **5-601. APPROVAL REQUIRED.**

Any person, firm, partnership or corporation desiring to perform wrecker or towing service for the Westwood police department shall first be approved by the **chief of police** before being added to the list of companies authorized to respond for wrecker or towing service requests by the Westwood police department on a rotation basis. Any such wrecker or towing service which meets the requirements of section 5-602 and all other provisions of this article shall be eligible to be placed on such list and be called on such rotation basis. (Code 1993, 5-701; Code 2008, § 5-601; Ord. 613, Sec. 1)

### **5-602. CRITERIA FOR APPROVAL.**

The following requirements and criteria shall be met by any wrecker or towing service seeking approval to be authorized and listed as eligible to respond to requests for towing service seeking approval to be authorized and listed as eligible to respond to requests for towing service by the Westwood police department;

(a) Exclusive of legal holidays, each wrecker or towing service shall be open and have a representative actually on the premises of the location or area where towed vehicles are stored or kept 10 hours per day, from 8 a.m. to 6p.m. Monday through Friday, and from 8a.m. to 12:00 noon on Saturdays.

(b) Towing and wrecker services and drivers must be available on a 24- hour, seven days a week basis.

(c) Each towing and wrecker service must have properly zoned adequate storage facilities. The outside storage areas should be fenced, with at least a six foot high chain link fence.

(d) Each towing and wrecker service must have available storage area which is totally enclosed within a building for the protection and security of recovered stolen property to be processed and valuable property left in vehicles.

(e) Each wrecker or towing service must have available at least one 16-ton capacity wrecker (a Holmes 600 or its equivalent) or wrecker vehicle with greater capacity.

(f) Each towing and wrecker service must handle and tow abandoned vehicles in proportion to the number of tow requests received from said police department for damaged or disabled vehicles.

(g) **Each towing and wrecker service must provide the city with proof of adequate insurance coverage under the following policies:**

(1) **Garage Keeper's Policy. - A garage keeper's legal liability policy covering fire, theft, windstorm, vandalism and explosion in the amount of \$1,000,000 with each vehicle suffering damage being deemed a separate claim.**

(2) **Garage Liability Policy.** - A garage liability policy covering the operation of the owner's business, equipment or other vehicles for any bodily injury or property damage. This policy shall be in the minimum amount of \$1,000,000 for any one person injured or killed and a minimum of \$1,000,000 for more than one person injured or killed in any accident and an additional \$25,000 for property damage.

(3) Each policy required herein must contain an endorsement providing 30 days notice to the city and the insured in the event of any material change in coverage or cancellation of the policy.

(h) The criteria and requirements set forth in subsections (a) through (g) shall not apply when the person whose vehicle is to be towed shall indicate a preference as to which towing and wrecker service is to be utilized or when the person whose vehicle is to be towed shall request a specific towing or wrecker service.  
(Code 2008, § 5-602; Ord. 613, Sec. 2)

### **5-603. TOWING AND STORAGE CHARGES.**

All wrecker or towing services shall charge for towing services and storage fees such fees and charges as are adopted by the governing body of the city by resolution. (Such fees and charges shall apply only as to vehicles towed and stored in response to a request by said police department.) No wrecker or towing service shall charge the owner or person in charge of or possession of any towed and/or stored vehicle a second or subsequent additional towing charge to delivery vehicle from the wrecker or towing service's storage lot to a destination initially requested by the owner or operator or possessor or person in charge of such vehicle when the vehicle was originally towed.  
(Code 1993, 5-703; Code 2008, § 5-603; Ord. 613, Sec. 3)

### **5-604. PERSONAL PROPERTY IN VEHICLE.**

(a) No wrecker or towing service, or owner, employee or agent thereof, shall prohibit or refuse to allow the owner, operator, person in charge or possession of the towed and stored vehicle who has proof of title or registration, to retrieve any personal property from such towed and stored vehicle during the normal operating hours at the storage facility; however, this provision shall not apply to the following property or articles:

(1) Property or articles relating to the operation and repair of a vehicle or spare parts for a vehicle;

(2) Electric or personal electronic equipment, whether operating or not, including but not limited to; portable CD players, ipods, cell phones, laptops, but not to include built-in CD players, G.P.S. Devices, or the like. <sup>13</sup>

(b) No wrecker or towing service shall require the payment of any fees or charges

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<sup>13</sup> **Legal analysis: 5-604. PERSONAL PROPERTY IN VEHICLE, subsection (a)(2).** Revise to clarify – as it reads, owners are allowed to retrieve built-in electronic devices, but not personal devices such as cell phones and laptops. Assuming the opposite meaning is intended, revise accordingly.

before permitting access to a person retrieving such personal property permitted to be retrieved under this section.

(Code 2008, § 5-604; Ord. 613, Sec. 4)

### **5-605. ENFORCEMENT.**

The chief of police shall establish, distribute and cause the enforcement of reasonable rules and regulations for wrecker or towing services, subject to the provisions of this article, as from time to time he or she deems appropriate for the safety, well-being and protection of citizens and their property within the city.

(Code 1993; Code 2008, § 5-605; Ord. 613, Sec. 5)

### **5-606. SUSPENSION, REVOCATION OF APPROVAL.**

(a) If a wrecker or towing service operating under this article shall fail to comply with the provisions of this article, ~~After at least seven days notice,~~ the chief of police may, ~~after at least seven days notice,~~ order that the approval and authority of a wrecker or towing service to respond to requests of said police department be suspended or revoked and order such wrecker or tow service be struck from the rotational call list. Any such suspension shall be for a maximum of 60 days. If such approval and authority is revoked, such wrecker or towing service shall not be eligible for reinstatement for at least one year from the date of revocation. <sup>14</sup>

(b) Such suspension or revocation shall be preceded by written notice to the wrecker or towing service advising such service of its failure to comply with any of the requirements of this article or of the violation by such wrecker or towing service of any of the following provisions upon which a suspension or revocation may be based:

- (1) Obtaining the approval and authority by fraudulent conduct or false statements;
- (2) The wrecker or towing service violated the fee and charge schedule by overcharge;
- (3) Such wrecker or towing service consistently refuses to respond to requests for such service by the police department or consistently fails to answer telephone calls from the police department at the telephone number supplied by the business for towing services;
- (4) The wrecker or towing service responds to the scene of an accident, emergency, or impoundment situation, when not specifically called to do so, and solicits wrecker or towing business;
- (5) The city is not satisfied with the general services of the owner and/or employees or with the cooperation it has received from such wrecker or towing service or other justifiable cause.

(c) As to the requirements or criteria for approval and authorization, only one such warning shall be required to be given and the wrecker or towing service shall be allowed a

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<sup>14</sup> **Legal analysis: 5-606. SUSPENSION, REVOCATION OF APPROVAL, (a).** Revise for clarity.

reasonable time to correct any deficiency found. Any wrecker or towing service which violates any of the provisions of section 5-604 or paragraphs (1) through (5) of section 5-606 more than once in total shall be subject to a suspension or revocation of the approval and authority.

(Code 1993, 5-706; Code 2008, § 5-606; Ord. 613, Sec. 6)

### **5-607. SAME; APPEAL.**

Any wrecker or towing service's approval and authority to respond to police requests which are suspended or revoked by the chief of police may appeal such suspension or revocation to the governing body by filing a written notice of appeal, which shall stay the effect of such suspension or revocation until a hearing is held before the governing body at its next regular meeting. <sup>15</sup>

The governing body shall have the power to reverse, alter, modify, uphold, or increase any suspension or revocation ordered by the chief of police.

(Code 1993, 5-707; Code 2008, § 5-607; Ord. 613, Sec. 7)

## **ARTICLE 7. WATER CONDITIONING CONTRACTORS**

### **5-701. REGISTRATION REQUIRED.**

Every water conditioning contractor as defined by K.S.A. 12-3601, shall be required to register with the city clerk before engaging in such business in the City of Westwood, Kansas.

(Code 1993, 5-801; Code 2008, § 5-701; Ord. 544, Sec. 1)

### **5-702. CERTIFICATE OF REGISTRATION.**

The city clerk shall issue a certificate of registration on the contractors' satisfactory showing that he or she meets requirements as set forth in section 5-703, provided that should the contractor show proof of registration in another city of this state, the clerk shall issue a certificate forthwith. The registration information shall include the contractor's name, address, form of business, name of business and place of business. In the event the contractor is registered in any other city of this state, the registration information should include the name of such other city or cities. Such registration information furnished shall be on the certificate issued by the city clerk along with a statement that the city clerk is holding contractor's surety bond as required bylaw.

(Code 1993, 5-802; Code 2008, § 5-702; Ord. 544, Sec. 2)

### **5-703. SAME; CONDITIONS.**

The conditions for issuance of a certificate by the city clerk shall be as follows:

- (a) That the contractor has not been convicted of a felony or any crime involving moral turpitude or fraud, deception or misrepresentation.

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<sup>15</sup> **Legal analysis: 5-607. SAME; APPEAL.** Revise for clarity.

- (b) That the contractor has not been refused in other jurisdictions.
- (c) That the contractor has not knowingly given any false statement in his or her registration.
- (d) That the contractor maintain general liability and product liability insurance in the minimum amount of \$1,000,000. Such insurance requirement shall be shown by furnishing the clerk certificates of such insurance.
- (e) That the contractor furnish the clerk in the first city in which he or she registers an acceptable surety bond. The bond shall be held by the clerk and be executed by the contractor as principal and by a solvent corporation authorized to do business in the State of Kansas in the amount of \$2,500. The aggregate liability of the surety for all breaches of the conditions of the bond, shall, in no event, exceed the amount of the bond. The surety on the bond shall have the right to cancel such bond upon giving 30 days notice to the city clerk of the first city in which the insured and thereafter shall be relieved for any breach of condition occurring after the effective date of the cancellation. In lieu of the corporate surety bond, such contractor may file a bond signed by three or more good and sufficient sureties conditioned as hereinafter provided. The bond shall be to the State of Kansas for use and benefit of such persons as may suffer by breach thereof; and shall be conditioned that the contractor will honestly and properly conduct his or her business, that the contractor will not fail or refuse to render to a customer services as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties, and that the contractor will not violate the Laws of the State of Kansas, the City of Westwood, or any political subdivision of the State of Kansas.  
(Code 2008, § 5-703; Ord. 544, Sec. 3)

**5-704. SAME; REVOCATION.**

The certificate issued by the city clerk may be revoked by the clerk should the contractor have failed to maintain compliance with requirements set out above.  
(Code 1993, 5-804; Code 2008, § 5-704; Ord. 544, Sec. 4)

**5-705. COMPLIANCE WITH LAWS.**

The contractor shall comply with all building regulations, ordinances and requirements of the building codes of the city in connection with the service or repair of water conditioning equipment or in connection with the original installation or repair of the same.  
(Code 1993, 5-805; Code 2008, § 5-705; Ord. 544, Sec. 5)

**ARTICLE 8. ADULT ENTERTAINMENT REGULATIONS**

**5-801. DEFINITIONS.**

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

- (a) Adult Business - means any business enterprise that has as its primary business purpose (1) the sale or rental of goods that are designed for use in connection with "specified sexual activities", graphically depict "specified anatomical areas" or primarily

emphasize matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas"; or (2) the providing of entertainment where the primary emphasis is on performances, live or otherwise, that feature and emphasize material depicting, portraying, exhibiting or displaying "specified anatomical areas" or "specified sexual activities"; or (3) the providing of services that primarily emphasize activities that provide sexual stimulation or gratification and that are distinguished by or characterized by an emphasis on the depiction, observation, and participation in pursuits relating to specified sexual activities or specified anatomical areas.

The definition of "adult business" also includes but is not limited to any and all of the following, as defined herein:

(1) The following businesses that offer goods for sale or rent are included in the definition of "adult business."

(A) Adult retail establishment - means an establishment which as its primary business purpose, offers for sale or rent, any one or more of the following: instruments, devices, gifts or paraphernalia which are designed for use in connection with "specified sexual activities" or clothing that graphically depicts "specified anatomical areas" or any of the materials sold or rented in an adult bookstore as defined herein.

(B) Adult bookstore - means an establishment which as its primary business purpose, offers for sale or rent, books, magazines, periodicals or other printed matter, photographs, slides, films or videotapes, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

(C) Adult media outlet - means an establishment that has as its primary business purpose the rental, sale or offering for viewing or other use any media that is sold or exhibited by adult bookstores, adult news racks, adult newsstands, adult entertainment businesses, adult theaters or adult motion picture theaters.

(D) Adult news rack - means any coin or card operated device that offers for sale by dispensing printed material, which is distinguished or characterized by its emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

(E) Adult news stand - means a freestanding structure, vehicle or booth which as its primary business purpose, offers for sale books, magazines, periodicals or other printed matter, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

(2) The following businesses that provide entertainment are included in the definition of "adult business."

(A) Adult entertainment business - means any enterprise to which the public, patrons or members are invited or admitted, and where providing "adult entertainment" as defined herein, is a regular and substantial portion of its business.

(B) Adult motion picture theater - means an establishment containing a room with

seats facing a screen or projection areas, where a regular and substantial portion of its business is the exhibition to customers of films, videotapes, or motion pictures which are intended to provide sexual stimulation or sexual gratification to the customers and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," other than motion pictures designated by the Motion Picture Association as Restricted or R-Rated.

(C) Adult theater - means an establishment located in an enclosed building where a regular and substantial portion of its business is providing the live performance of activities relating to "specified sexual activities" or exhibition of "specified anatomical areas" of live performers, for observation by customers and patrons.

(D) Adult entertainment cabaret - means an establishment where a regular and substantial portion of its business is providing adult entertainment which features strippers, male or female impersonators, go-go dancers, or live performances or materials which are primarily characterized by an emphasis on "specified sexual activities" or "specified anatomical areas."

(E) Adult entertainment studio (includes the terms rap studio, exotic dance studio, sensitivity studio or encounter studio) - means an establishment whose premises is physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises, and where a regular and substantial portion of its business is providing entertainment which features materials or live performances characterized by an emphasis on or features materials relating to "specified sexual activities" or the exhibition of "specified anatomical areas."

(F) Adult encounter parlor - means an establishment where a regular and substantial portion of its business is the provision of premises where customers congregate, associate, or consort with employees and/or performers or private contractors who display "specified anatomical areas" in the presence of such customers, with the intent of providing sexual gratification or stimulation to such customers.

(G) Body painting studio - means an establishment where a regular and substantial portion of its business is the maintaining, operating, or offering for compensation the applying of paint or other substance to or on the human body by any means of application, technique or process when "specified anatomical areas" of the subject's body are displayed for the customer's view, or where "specified anatomical areas" of the customer's body are displayed for the view of others.

(3) The following businesses that provide services are included in the definition of "adult business."

(A) Bath house - means an enterprise where a regular and substantial portion of its business is offering baths with other persons present who are nude or displaying "specified anatomical areas." Nothing herein, however, shall limit or void the authority of the City of Westwood to regulate bath houses or similar establishments by other lawful means.

(B) Adult motel - means an enterprise where a regular and substantial portion of its business is offering public accommodations for consideration for the purpose of viewing

closed circuit television transmissions, films, motion pictures, video cassettes, DVD's or other digital media, or other photographic reproductions which are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" and rent room accommodations for less than six hours at a time.

(b) Adult Entertainment - means any live exhibition, performance, display or dance of any type, including but not limited to talking, singing, reading, listening, posing, serving food or beverages, soliciting for the sale of food, beverages or entertainment, pantomiming, modeling, removal of clothing or any service offered for amusement on a premises where such exhibition, performance, display or dance is intended to seek to arouse or excite the sexual desires of the entertainer, other entertainers or patrons, or if such entertainment involves a person who is nude or in such attire, costume or clothing as to expose to view any portion of the human genitals, pubic region, vulva, pubic hair, buttocks, female breast or breasts below a point immediately above the top of the areola or nipple or the human male genitals in a discernably erect state, even if completely and opaquely covered.

(c) Contagious and communicable diseases - means those diseases which are set out in Kansas Department of Health and Environment Regulations, KAR. 28-1-6 and as amended.

(d) Employee - means any and all persons, including managers, entertainers and independent contractors, who work in or at or render any services directly related to, the operation of an adult business.

(e) Entertainer - means any person who provides adult entertainment within an adult business as defined in this section, whether or not a fee is charged or accepted for entertainment.

(f) Manager - means any person who manages, directs, administers, or is in charge of the affairs and/or conduct of any portion of any activity at any adult business.

(g) Operator - means any person operating, conducting or maintaining an adult business.

~~(h) Person means any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity or other entity or group of persons however organized.~~ <sup>16</sup>

(i) Primary business purpose - means (1) more than fifty percent (50%) of the gross floor space is devoted to that purpose; or (2) more than fifty percent (50%) of the retail floor space is devoted to that purpose; or (3) more than fifty percent (50%) of the sales of the business are derived from that purpose.

(j) Public place - means any area generally visible to public view and includes streets,

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<sup>16</sup> **Legal analysis: 5-801. DEFINITIONS, (h) person.** Delete as covered by general provisions in Chapter 1.



sidewalks, bridges, alleys, plazas, parks, driveways, parking lots and automobiles whether moving or not.

(k) Server - means any person who serves food or drink at an adult entertainment business.

(I) Specified anatomical areas - mean (1) uncovered or exposed human genitals, pubic region or pubic hair; or buttock; or female breast or breasts below a point immediately above the top of the areola or nipple; or any combination of the foregoing; or (2) human male genitals in a discernible erect state, even if completely and opaquely covered.

(m) Specified sexual activities - mean sexual conduct, whether actual or simulated; acts of human masturbation; sexual intercourse; physical contact, in an act of apparent sexual stimulation or gratification, with a person's clothed or unclothed genitals, pubic area, buttocks or the breast of a female; or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification. (Code 2008, § 5-801; Ord. 782)

#### **5-802. LICENSE REQUIRED FOR ADULT BUSINESS.**

(a) It shall be unlawful for any person to operate or maintain an adult business in the City unless the owner, operator or lessee thereof has obtained an adult business license from the City, or to operate such business after such license has been revoked or suspended by the City.

(b) It is unlawful for any entertainer, server, employee, operator, owner or manager to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed adult business.

(c) It shall be prima facia evidence that any adult business that fails to have posted, in the manner required by this section, an adult business license, has not obtained such a license. In addition, it shall be prima facia evidence that any entertainer, employee, owner or manager who performs any business service or entertainment in an adult business in which an adult business license is not posted, in the manner required by this section, had knowledge that such business was not licensed. (Code 2008, § 5-802; Ord. 782)

#### **5-803. LICENSE REQUIRED FOR MANAGERS, SERVERS AND ENTERTAINERS.**

It is unlawful for any person to work as an entertainer, server or manager at an adult business without first obtaining a license to do so from the City, or to work as an entertainer, server or manager at an adult business after such person's license to do so has been revoked or suspended. (Code 2008, § 5-803; Ord. 782)

#### **5-804. LICENSE LIMITED TO REQUESTED PURPOSES.**

All adult business licenses shall be issued only for the purposes requested by the applicant on the application. Any change in the type of adult use shall invalidate the adult business license.

(Code 2008, § 5-804; Ord. 782)

### **5-805. LICENSE APPLICATION.**

(a) Adult Business License - All persons desiring to secure a license to operate an adult business under the provisions of this chapter shall make a verified application with the City Clerk. All applications shall be submitted in the name of the person proposing to conduct or operate the adult business. All applications shall be submitted on a form supplied by the City Clerk and shall require the following information:

(1) The name, residence address, home telephone number, occupation, date and place of birth and social security number of the applicant.

(2) The name of the adult business, a description of the type of adult business to be performed on the licensed premises, and the name and address of the owner of the premises where the adult business will be located.

(3) The names, residence addresses, social security numbers and dates of births of the applicant or all partners, if the applicant is a partnership; if the applicant is a corporation, the same information for all corporate officers and directors and stockholders who own more than 10% or greater interest in the applicant corporation; and if the applicant is any other type of entity, the same information for all who have an ownership interest in the applicant entity.

(4) The addresses of the applicant if he or she is an individual, of all partners if the applicant is a partnership, of all corporate officers and directors for the five years immediately prior to the date of application if the applicant is a corporation, or of all who have an ownership interest in the applicant if the applicant is any other type of entity.

(5) A statement from the applicant if an individual, or from all partners if the applicant is a partnership, or if the applicant is a corporation from all corporate officers and directors, or if the applicant is any other entity from all who have an ownership interest in the applicant, whether any such person, or entity, in previously operating in this or another city, county or state, has had a business license of any type revoked or suspended, and if so, the reason for the suspension or revocation and the business activity subjected to the suspension or revocation.

(6) A statement of the business, occupation or employment of the applicant, of all partners (if the applicant is a partnership), of all corporate officers and directors for the three years immediately preceding the date of the application (if the applicant is a corporation), or of all who have an ownership interest in the applicant (if it is any other type of entity).

(7) A statement from the applicant, and if the applicant is a partnership, a statement from all partners, and if the applicant is a corporation, a statement from each corporate officer and director, and if the applicant is any other form of entity, a statement from each person claiming an ownership interest in the entity, that each such person has not been convicted of, or released from confinement for conviction of, or diverted from prosecution on any felony, whichever event is later, within five years immediately preceding the application, or has not been convicted of or diverted from prosecution on a misdemeanor,

or released from confinement for conviction of a misdemeanor, whichever event is later, within two years immediately preceding the application, where such felony or misdemeanor involved sexual offenses, prostitution, indecent exposure, sexual abuse of another or pornography and related offenses, alcohol-related offenses, or controlled substances or illegal drugs or narcotics offenses as defined in the Kansas Statutes or municipal ordinances.

The statement shall also indicate that the applicant, each partner (if a partnership) or each corporate officer and director (if a corporation) or each person having an ownership interest (if any other type of entity) has not been convicted of a municipal ordinance violation or diverted from prosecution on a municipal ordinance violation, within two years immediately preceding the application where such municipal ordinance violation involved sexual offenses, sexual abuse of another or pornography or related offenses, indecent exposure, prostitution, alcohol, or sale of controlled substances or illegal drugs or narcotics.

(8) On applications requesting a license to operate a bath house or body painting studio, the applicant shall provide for each person working on the premises a health certificate from a duly licensed Kansas or Missouri physician stating that within ninety days prior thereto, the applicant and all other persons working on the premises have been examined and found free of any contagious or communicable disease as defined herein.

(9) A full set of fingerprints and a photograph, to be taken by the police department, of the applicant, or of all partners if the applicant is a partnership, or of all corporate officers and directors if the applicant is a corporation.

(10) If the applicant is a corporation, a current certificate of registration issued by the Kansas Secretary of State.

(11) A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of this chapter regulating adult businesses.

Failure to provide the information and documentation required by this subsection shall constitute an incomplete application which shall not be processed.

(b) Manager, Server or Entertainer License - All persons desiring to secure a license under the provisions of this chapter to be a manager, server, or entertainer at an adult business shall make a verified application with the City Clerk. All applications shall be submitted in the name of the person proposing to be a manager, server or entertainer. All applications shall be submitted on a form supplied by the City Clerk and shall require the following information. **17**

(1) The applicant's name, home address, home telephone number, date and place of birth, social security number, and any stage name or nicknames used.

- (2) The name and address of each adult business where the applicant intends to work as a manager, server or entertainer, and an "intent to hire" statement from an adult business that is licensed, or that has applied for a license, under the provisions of this chapter, indicating the adult business intends to hire the applicant to manage, serve or entertain on the premises. Failure to provide an "intent to hire" statement shall not invalidate the application.
- (3) A statement from the applicant, and if the applicant is a partnership, a statement from all partners or if the applicant is a corporation, a statement from each corporate officer and director or if the applicant is any other form of entity, a statement from all who have an ownership interest in the entity, that each such person has not been convicted of; or released from confinement for conviction of or diverted from prosecution on any felony, whichever event is later, within five years immediately preceding the application, or has not been convicted of or diverted from prosecution on a misdemeanor or municipal ordinance violation, or released from confinement for conviction of a misdemeanor or municipal ordinance violation, whichever event is later, within two years immediately preceding the application, where such felony or misdemeanor involved sexual offenses, prostitution, indecent exposure, sexual abuse of a child or pornography and related offenses, or alcohol, controlled substances or illegal drugs or narcotics offenses as defined in the Kansas statutes or municipal ordinances.
- (4) If the applicant is an individual, a full set of fingerprints and a photograph of the applicant, to be taken by the police department.
- (5) The applicant shall present to the City Clerk who shall copy documentation that the applicant has attained the age of 18 years at the time the application is submitted. Any of the following shall be accepted as documentation of age:
- (A) A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;
  - (B) A state-issued identification card bearing the applicant's photograph and date of birth;
  - (C) An official and valid passport issued by the United States of America;
  - (D) An immigration card issued by the United States of America;
  - (E) Any other form of picture identification issued by a governmental entity that is deemed reliable by the City Clerk; or
  - ~~(F) Any other form of identification deemed reliable by the City Clerk.~~ **18**

Failure to provide the information required by this subsection shall constitute an incomplete application and shall not be processed.

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**18 Legal analysis: 5-805. LICENSE APPLICATION, (b)(5)(F).** Delete as too arbitrary, or revise wording.

(c) Facilities necessary. - No adult business license to conduct a bath house or body painting studio shall be issued unless an inspection by the **Johnson County Health Inspector** or his authorized representative reveals that the premises the applicant intends to conduct business from complies with each of the following minimum requirements:

(1) The walls shall be clean and painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business's operation shall be maintained in a clean and sanitary condition. Towels, linen and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, cloths and sheets shall not be used for more than one patron. Heavy, white paper may be substituted for sheets provided that such paper is changed for every patron. No service or practice shall be carried on within any cubicle, room, booth, or any area within any permitted establishment which is fitted with a door capable of being locked.

(2) Toilet facilities shall be provided in convenient locations. When five or more employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. A single water closet per sex shall be provided for each 20 or more employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets after one water closet has been provided. Toilets shall be designated as to the gender accommodated therein.

(3) Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

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

(d) Application processing. - Upon receipt of a complete application for an adult business for a manager, server or entertainer license: **19**

(1) The City Clerk shall immediately transmit one copy of the application to the Chief of Police for investigation of the application. In addition, the City Clerk shall transmit a copy of the application to the Codes Administrator;

(2) It shall be the duty of the Chief of Police to investigate such application to determine whether the information contained in the application is accurate and whether the applicant meets the terms of this ordinance. The Chief of Police shall report the results of the investigation to the City Clerk not later than ten working days from the date the

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**19 Legal analysis: 5-805. LICENSE APPLICATION, (d) Application Processing.** Divide contents of subsection (d) into separate subsections, for clarity and ease of following which duties belong to which city personnel.

application is received by the City Clerk;

(3) It shall be the duty of the Codes Administrator to determine whether the structure where the adult business will be conducted complies with the requirements and meets the standards of the applicable health, zoning, building code, fire, and property maintenance ordinances of the City. The Codes Administrator shall report the results of their investigation to the City Clerk not later than ten working days from the date the application is received by the City Clerk.

(4) Upon receipt of the reports from the Chief of Police and the Codes Administrator, the City Clerk shall schedule the application for consideration by the governing body at the earliest meeting consistent with the notification requirements established by law, provided the license application for an adult business and for a manager, server or entertainer license shall be approved or disapproved within 45 days from the date of filing of a completed application with the clerk's office. The applicant shall be notified in writing of the date when the governing body will consider the application.  
(Code 2008, § 5-805; Ord. 782)

#### **5-806. EXAMINATION OF APPLICATION, ISSUANCE OF LICENSE, DISAPPROVAL.**

(a) If the application for an adult business or for a business manager, server or entertainer is in proper form and accompanied by the appropriate license fee, the governing body shall examine the application, and after such examination, the governing body shall, if the applicant is qualified under the provisions of this ordinance, approve a license as provided for by law, provided a license shall not be approved to any person ineligible pursuant to Section ~~5-05-070~~ 5-807. **20**

(b) The record of the governing body shall show the action taken on the application, and if the license is granted, the governing body shall direct the City Clerk to issue the proper license. The license shall state that it is not transferable to other persons and the calendar year for which it is issued. The license shall be kept posted in a conspicuous place in the place of business that is licensed or where the licensee is working.

(c) If an application for a license is disapproved, the applicant shall immediately be notified by registered or certified mail to the applicant's last known address, and the notification shall state the basis for such disapproval. Any applicant aggrieved by the disapproval of a license application may seek judicial review in the Johnson County District Court in a manner provided by law.  
(Code 2008, § 5-806; Ord. 782)

#### **5-807. LICENSE; INELIGIBILITY AND DISQUALIFICATION.**

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

(a) An applicant for an adult business license if one or more of the following conditions

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**<sup>20</sup> Legal analysis: 5-806. EXAMINATION OF APPLICATION, ISSUANCE OF LICENSE, DISAPPROVAL, (a).** Revise to reference Section 5-807: Ineligibility and Disqualification. Please advise if this was not the correct section to be referenced.

exist:

- (1) The applicant's premises is located within 250 feet of any other adult business for which there is a license issued. Measurements shall be made in a straight line without regard to intervening structures or objects, from the nearest point on the property line or premises boundary, if such is located in a shopping center, of the applicant's business to the nearest point on the property line of such other adult businesses;
  - (2) The applicant failed to supply all of the information requested on the application;
  - (3) The applicant gave materially false, fraudulent or untruthful information on the application.
  - (4) The applicant's proposed business premises does not comply with or meet the requirements of the applicable health, zoning, building code, fire, and property maintenance ordinances of the City; provided, that upon a showing that the premises meets said requirements and that the applicant is otherwise qualified, the application shall be eligible for reconsideration by the governing body.
  - (5) The applicant has been convicted, released from incarceration for conviction or diverted on any of the crimes set forth in subsection ~~V(a)(7)~~ 5-805(a)(7) during the time period set forth in said subsection.
  - (6) The applicant has had an adult business or comparable license revoked or suspended in this or any other city during the past five years, if revocation or suspension was for any reason which would justify revocation or suspension of a license under this ordinance.
  - (7) If the applicant is applying for a license to operate a bath house or body painting studio and has not produced a health certificate as required herein for all persons working on the premises.
- (b) An applicant for a manager, server or entertainer license if one or more of the following conditions exist:
- (1) The employer for whom the applicant intends to work does not have or is ineligible to receive an adult business license for any of the reasons stated in subsection (a) above.
  - (2) The applicant has been convicted, released from incarceration for conviction or diverted on any of the crimes set forth in subsection ~~V(b)(3)~~ 5-805(b)(3) during the time period set forth in said subsection; **21**
  - (3) The applicant failed to supply all of the information requested on the application;
  - (4) The applicant gave materially false, fraudulent or untruthful information on the application;

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<sup>21</sup> **Legal analysis: 5-807. LICENSE; INELIGIBILITY AND DISQUALIFICATION, (a)(5) and (b)(2).** Revise internal citations for clarity and consistency.

(5) The applicant has had a manager, server or entertainer license revoked or suspended in this or any other city during the past five years, if revocation or suspension was for any reason which would justify revocation or suspension of a license under this article.

(Code 2008, § 5-807; Ord. 782)

### **5-808. STANDARDS OF CONDUCT.**

The following standards of conduct shall be adhered to by all adult business licensees, their employees and all managers, servers and entertainers and patrons of adult businesses, while on or about the premises of the business:

(a) Identification cards. - All or any manager, server or entertainer issued a license by the Governing Body under the provisions of this chapter shall, at all times when working in an establishment subject to the provisions of this chapter, have in their possession a valid identification card issued by the City, bearing the permit number, the employee's physical description and a photograph of such employee. Such identification cards shall be laminated to prevent alteration; provided that all persons granted licenses under this chapter shall at all times keep their licenses displayed to the public in a prominent place on the premises.

(b) Age restriction. - Only persons 18 years of age or older shall be permitted on the premises of any adult businesses.

(c) Exterior observation. - The premises of all adult businesses will be so constructed as to insure that the interior of the premises is not observable from the exterior of the building. In addition, all windows will be covered to prevent the viewing of the interior of the building from the outside and all doorways not constructed with an anteroom or foyer will be covered so as to prevent observation of the interior of the premises from the exterior of the building.

(d) Exterior display. - No adult business will be conducted in any manner that permits the observation of live performers engaged in an erotic depiction or dance or any material or persons depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined herein, from any exterior source by display, decoration, sign, show window or other opening.

(e) No manager, employee, server or entertainer in an adult business other than a licensed bath house, shall appear in any fashion that exposes to view any "specified anatomical area" except when such manager, employee, server or entertainer is separated from the customers by a barrier and such manager, employee, server or entertainer is upon a stage at least two feet above the customer floor and such stage is at least six (6) feet from the customers, provided however, that in any business licensed to sell cereal malt beverages or alcoholic liquor, no such person shall appear in such a way as to expose to view any "specified anatomical area."

(f) Certain acts prohibited while on the premises of an adult business.

(1) While on the premises of an adult business, no manager, employee, server or



entertainer shall perform any specified sexual activities as defined herein, wear or use any device or covering exposed to view which stimulates any "specified anatomical area," use artificial devices or inanimate objects to perform or depict any of the specified sexual activities as defined herein, or participate in any act of prostitution.

(2) While on the premises of an adult business, no employee, server, entertainer or patron of an adult business shall knowingly touch, fondle or caress any "specified anatomical area" of another person, or knowingly permit another person to touch, fondle or caress any "specified anatomical area" of such employee, server, entertainer or patron, whether such "specified anatomical areas" are clothed, unclothed, covered or exposed.

(3) While on the premises of an adult business, no employee, server or entertainer of an adult business shall be visible from the exterior of the adult entertainment business while such person is unclothed or in such attire, costume or clothing as to expose to view any "specified anatomical area."

(4) No entertainer shall solicit, demand or receive any payment or gratuity from any patron or customer for any act prohibited by this chapter and no entertainer shall receive any payment or gratuity from any customer for any entertainment except while such entertainer is on the stage, a customer or patron may place such payment into a box affixed to the stage.

(5) No owner, operator, manager or other person in charge of the premises of an adult business premises shall:

(A) knowingly permit alcoholic liquor or cereal malt beverages to be brought upon or consumed on the premises;

(B) knowingly allow or permit the sale, distribution, delivery or consumption of any controlled substance or illegal drug or narcotic on the premises;

(C) knowingly allow or permit any person under the age of 18 years of age to be in or upon the premises;

(D) knowingly allow or permit any act of prostitution or patronizing prostitution on the premises;

(E) knowingly allow or permit a violation of this chapter or any other city ordinance provision or state law.

(g) Signs required. - All adult businesses that provide live entertainment shall have conspicuously displayed in the common area at the principal entrance to the premises a sign, on which uppercase letters shall be at least two inches high, and lowercase letters at least one inch high, which shall read as follows:

"THIS ADULT ENTERTAINMENT BUSINESS IS REGULATED AND LICENSED BY THE CITY OF WESTWOOD, KANSAS

**ENTERTAINERS ARE:**

Not permitted to engage in any type of sexual conduct or prostitution on the premises or to fondle, caress, or touch the breasts, pubic region, buttocks or genitals of any employee, patron or other entertainer, or to permit any employee, patron or other entertainer to fondle, caress or touch the breasts, pubic region, buttocks or genitals of said entertainer.

Not permitted to be nude, unclothed, or in less than opaque attire, costume or clothing so as to expose to view any portion of the breasts below the top of the areola, or any portion of the pubic region, buttocks or genitals, unless upon a stage at least two feet above the customer floor and a sufficient distance from the customers to prevent the customers from touching the entertainers.

Not permitted to demand or collect any payment or gratuity from any customer for entertainment, except while the entertainer is on stage, by placing such payment or gratuity into a box affixed to the stage.

#### **CUSTOMERS ARE:**

Not permitted on the stage at any time.

Not permitted to touch, caress or fondle the breasts, pubic region, buttocks or genitals of any employee, server or entertainer or engage in solicitation for prostitution.”

(h) Lighting required. - The premises of all adult businesses shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted to access at an illumination of not less than one foot-candle as measured at the floor level, and such illumination must be maintained at all times that any customer or patron is present in or on the premises.

(i) Closed booths or rooms prohibited. - The premises of all adult businesses shall be physically arranged in such manner that the entire interior portion of any booths, cubicles, rooms or stalls are visible from a common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, drapes, or any other obstruction whatsoever. However, this provision shall not apply to dressing rooms and restrooms as provided for in subsection (j). <sup>22</sup>

(j) Ventilation and sanitation requirements. - The premises of all adult businesses shall be kept in a sanitary condition and properly ventilated. Separate dressing rooms and restrooms for men and women shall at all times be maintained and kept in a sanitary condition and properly ventilated.

(k) Hours of operation. - No adult business may be open or in use between the hours of midnight and 9:00 a.m. on any day other than a Sunday when the business may not be open between the hours of midnight and 12:00 noon.  
(Code 2008, § 5-808; Ord. 782)

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<sup>22</sup> **Legal analysis: 5-808. STANDARDS OF CONDUCT, (i) Closed booths or rooms prohibited.**  
Add exception for restrooms and dressing rooms.

**5-809. LICENSE; POSTING OR DISPLAY.**

(a) Every person, partnership, corporation or other entity licensed under this chapter as an adult business shall post license in a conspicuous place and manner on the adult business premises.

(b) Every person holding a server, manager or entertainment license shall post his or her license in his or her work area on the adult business premises so it shall be readily available for inspection by City authorities responsible for enforcement of this Article. (Code 2008, § 5-809; Ord. 782)

**5-810. MANAGER ON PREMISES.**

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

(b) It shall be the responsibility of the manager to verify that any person who provides adult entertainment or works as a server within the premises possesses a current and valid adult servers license and that such licenses are prominently posted.

(c) It shall also be the responsibility of the manager to insure persons under the age of eighteen (18) do not enter upon the premises. (Code 2008, § 5-810; Ord. 782)

**5-811. INSPECTORS AND INSPECTIONS.**

All adult businesses shall permit representatives of the police department or any other City official acting in their official capacity to inspect the premises as necessary to insure the business is complying with all applicable regulations and laws. (Code 2008, § 5-811; Ord. 782)

**5-812. SUSPENSION, REVOCATION, OR NON-RENEWAL OF LICENSE.**

Whenever the City Clerk has information that:

(a) The owner or operator of an adult business or a holder of a manager, server or entertainer license has violated, or knowingly allowed or permitted the violation of, any of the provisions of this chapter; or

(b) There have been violations of provisions of this chapter that have occurred under such circumstances that the owner or operator of an adult business knew or should have known that such violations were committed; or

(c) The adult business license or the manager, server or entertainer license was obtained through false statements in the application for such license, or renewal thereof; or

(d) The adult business licensee or the manager, server or entertainer licensee failed to make a complete disclosure of all information in the application for such license, or

renewal thereof or

(e) The owner or operator, or any partner, or any corporate officer or director holding an adult business license has become disqualified from having a license by a conviction as provided in Section ~~5-805(a)(7)~~ 5-805(a)(7) or

(f) The holder of a manager, server or entertainer license has become disqualified from having a license by any violation of this ordinance or by a conviction as provided in Section ~~5-805(b)(3)~~ 5-805(b)(3). <sup>23</sup>

Then the City Clerk shall make this information known to the governing body, which upon five days' written notice to the person holding the license conduct a public hearing to determine whether the license should be suspended or revoked. The governing body may pass a resolution setting forth the procedures for the conduct of such hearings. Based on the evidence produced at the hearing, the governing body may take any of the following actions:

- (1) Suspend the license for up to 90 days.
- (2) Revoke the license for the remainder of the license year.
- (3) Place the license holder on administrative probation for a period of up to one year, on the condition that no further violations of the chapter occur during the period of probation. If a violation does occur and after the hearing the violation is determined to have actually occurred, the license will be revoked for the remainder of the license year. (Code 2008, § 5-812; Ord. 782)

#### **~~5-813. SEVERABILITY.~~** <sup>24</sup>

~~If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not effect the validity or effectiveness of the remaining portions of this chapter or any part thereof. (Code 2008, § 5-813; Ord. 782)~~

### **ARTICLE 9 FRANCHISES**

#### **5-901. TITLE.**

This Ordinance shall be referred to and cited as the "Master Franchise Code." (Throughout this Article the Master Franchise Code may be referred to as "this Code.") (Code 2008, § 5-901)

#### **5-902. DEFINITIONS.**

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<sup>23</sup> **Legal analysis: 5-812. SUSPENSION, REVOCATION, OR NON-RENEWAL OF LICENSE, (e) and (f).** Revise internal citation for clarity and consistency.

<sup>24</sup> **Legal analysis: 5-813. SEVERABILITY.** Delete as covered by general provisions in Chapter 1.

For the purposes of this Code, the following words and phrases shall have the meanings given herein:

~~(a) City shall mean the City of Westwood, Kansas. Any reference to "within the City" shall mean within the corporate City limits of the City of Westwood, Kansas.~~ <sup>25</sup>

(b) Entity – shall mean any individual person(s), governmental entity, business, corporation, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture or trust and shall include all forms of business enterprise not specifically listed herein.

(c) Facilities – shall mean lines, pipes, mains, laterals, wires, cables, conduit, ducts, poles, towers, cabinets, vaults, pedestals, boxes, appliances, antennae, transmitters, gates, meters, Gas Distribution System and Gas Distribution Facilities, together with all necessary appurtenances or other equipment thereto, or any part thereof, for the purpose of providing or otherwise facilitating any Service.

(d) Franchise – shall mean the grant, right, privilege and franchise by the City to provide, distribute, transport or sell a Service within the City and/or to install, construct, maintain, extend or operate Facilities along, across, upon, under or within the Right-of-Way. The grant, right, privilege and franchise shall be in accordance with the provisions of K.S.A. 12-2001, et seq., as amended, the City's Home Rule power, and applicable City ordinances.

(e) Franchisee or Grantee – shall mean any Entity that has a Franchise granted by the City pursuant to this Code, K.S.A. 12-2001, et seq., as amended, and/or the City's Home Rule power.

(f) Franchise Fee – shall mean consideration paid in the form of a charge upon a Franchisee as prescribed in the Ordinance granting the Franchise. Any such Franchisee Fee shall be subject to any applicable provisions of federal or state law.

(g) Gas Consumer – shall mean, without limitation, any Entity that receives natural gas or Other Energy on a retail basis within the City through a Gas Distribution System or Gas Distribution Facilities.

(h) Gas Distribution System or Gas Distribution Facilities – shall mean a pipeline or system of pipelines, including without limitation, mains, pipes, boxes, reducing and regulating stations, laterals, conduits and services extensions, together with all necessary appurtenances thereto, or any part thereof, for the purpose of distribution or supplying natural gas or Other Energy for light, heat, power and all other purposes.

(i) MCF – shall mean a measurement of natural gas equal to one thousand (1,000) cubic feet. It is assumed for purposes of this Code that one MCF equals one million (1,000,000) British Thermal Units (BTUs).

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<sup>25</sup> **Legal analysis: 5-902. DEFINITIONS, (a) City.** Delete as covered by general provisions in Chapter 1.

(j) Other Energy – shall mean any energy provided in a gaseous, liquid, or slurry mixture form through pipelines for light, heat, power, and all other purposes as an alternative or replacement for natural gas, but specifically, it shall not include electrical energy.

(k) Right-of-Way – shall mean present and future streets, alleys, rights- of-way, and public easements, including easements dedicated to the City in plats of the City for streets and alleys. The “Right-of-Way” shall not include property owned by the City outside of said streets, alleys, rights-of-way, and easements, or public easements limited in their dedication of purpose or otherwise not intended for placement of Facilities (for example, a public easement dedicated only for stormwater purposes).

(l) Reseller – shall mean a provider of Service within the City whereby the provider purchases and resells the Service of a duly authorized Franchisee, but only where the duly authorized Franchisee is already paying fees for the resold Service under its Franchise with the City. (For example, the resale of local exchange service as contemplated by K.S.A. 12-2001(n).)

(m) Service – shall mean any utility or similar service to be provided, distributed, transported or sold to an Entity by means of a delivery or distribution system that is comprised of Facilities within the City, including without limitation, telecommunication, cable, broadband, Internet, Open Video Systems, steam, electric, water, telegraph, data transmission, natural gas, Other Energy, or any other similar service.  
(Code 2008, § 5-902)

### **5-903. FRANCHISE REQUIREMENT.**

No Entity shall provide, distribute, transport or sell a Service within the City or shall install, construct, maintain, extend or operate Facilities along, across, upon, under or within the Right-of-Way without a Franchise authorizing the same, unless applicable federal or State law prohibits City enforcement of such requirement. This franchise requirement includes:

- (1) Entities with Facilities within the City in order to provide, distribute, transport or sell Service within the City;
- (2) Entities with Facilities within the City in order to provide, distribute, transport or sell Service outside, but not within the City; and
- (3) Entities without their own Facilities within the City that lease or otherwise use the Facilities of other Entities in order to provide, distribute, transport or sell Service within the City.

Provided, this franchise requirement shall not include a Reseller, or include a governmental entity that has entered into an agreement with the City pursuant to K.S.A. 12-2901 et seq. regarding the use and occupancy of the Right-of-Way.  
(Code 2008, § 5-903)

### **5-904. GAS DISTRIBUTION SYSTEMS AND GAS DISTRIBUTION FACILITIES.**

It shall be unlawful for any Entity to install, construct, maintain, extend or operate or a Gas Distribution System or Gas Distribution Facilities or to provide, distribute, transport or sell natural gas or Other Energy within the City on a retail basis without first obtaining a Franchise authorizing the same and requiring a Franchise Fee. This franchise requirement applies to any provision, distribution, transportation or sale to a Gas Consumer within the City whether or not the portion of the Entity's Gas Distribution System is in the Right-of-Way. Provided, in the event the Gas Distribution System or Gas Distribution Facilities of a Franchisee are used by an Entity without its own Gas Distribution System or Gas Distribution Facilities within the City for the transportation or sale of said Entity's natural gas or Other Energy to a Gas Consumer, said Entity shall be exempt from the requirement of obtaining a Franchise if it reports, calculates and pays (either directly or through the Franchisee) a sum to be submitted to the City for such services that is equivalent to the calculation of the Franchisee's Franchise Fee. In such event, if gross receipts are not or cannot be reported, a sufficient volumetric rate multiplied by the number of MCF of the transported natural gas or Other Energy may be used in making such calculation. (Code 2008, § 5-904)

#### **5-905. PRESERVATION OF POLICE POWER AUTHORITY AND APPLICABILITY OF REGULATIONS.**

Any rights granted pursuant to this Code and pursuant to any Franchise are subject to the authority of the City to adopt and enforce ordinances and regulations necessary to the health safety and welfare of the public. All Entities subject to this Code shall also be subject to and comply with all applicable federal and state laws, statutes and regulations, and all applicable rules, regulations, policies and ordinances enacted by the City, including without limitation, the City's Ordinance relating to the Use and Occupancy of the Public Right-of-Way (codified as Article 1 of Chapter XIII 13 of the Code of the City of Westwood, Kansas, and amendments thereto). Provided, nothing in this Code shall be deemed to waive a right, if any, that an Entity might have to seek judicial or regulatory review as provided by law. (Code 2008, § 5-905)

#### **5-906. NATURE OF RIGHTS GRANTED BY ANY FRANCHISE.**

Franchises shall not convey title, equitable or legal, in the Right-of-Way or any other public property, but shall give only the right to occupy the Right-of-Way for the purposes and period stated within the Franchise. No Franchise shall grant the right to use Facilities owned or controlled by the City or a third-party, without the consent of such party, nor shall a Franchise excuse a Franchisee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party. Any Franchise granted by the City shall be nonexclusive. (Code 2008, § 5-906)

#### **5-907. INDEMNIFICATION OF THE CITY.**

Any Entity installing, constructing, maintaining, extending or operating Facilities within the City or otherwise providing, distributing, transporting or selling a Service within the City shall hold the City harmless from any and all damages or claims arising or accruing from: the exercise of any right or privilege granted under this Code or a Franchise; the

installation, construction, maintenance, extension, operation of its Facilities within the City; and the negligence or intentional acts or omissions of its employees, agents, or servants in the exercise of said installation, construction, maintenance, extension, operation, provision, distribution, transportation or sale. Failure of said Entity to obtain or maintain a Franchise shall in no manner waive this requirement and obligation.  
(Code 2008, § 5-907)

#### **5-908. LIABILITY INSURANCE AND BOND REQUIREMENT.**

(a) Each Franchisee shall file with the City evidence of liability insurance with an insurance company licensed to do business in Kansas. The amount will be not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. The insurance will protect the City from and against all claims by any person whatsoever for loss or damage from personal injury, bodily injury, death, or property damage to the extent caused or alleged to have been caused by the negligent or wrongful acts or omissions of the Franchisee. The Franchisee shall also have coverage for automobile liability in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 in aggregate. The City shall be an additional insured on all policies of Franchisee, to the extent permitted by law, unless waived in writing by the City. If the Franchisee is self-insured, it shall provide the City proof of compliance regarding its ability to self insure and proof of its ability to provide coverage in the above amounts, and shall agree to indemnify and hold the City harmless for any losses associated with Franchisee's activities in the Right-of-Way. All contractors actually performing work for any Franchisee shall be subject to the same insurance requirements set forth herein.

(b) To the extent any Franchisee installs, constructs, maintains, extends or operates any Facilities in the Right-of-Way, it shall maintain a performance and maintenance bond as set forth in the City's Ordinance relating to the Use and Occupancy of the Public Right-of-Way (codified as Article 1 of Chapter ~~XIII~~ 13 of the Code of the City of Westwood, Kansas, and amendments thereto) or as set forth in the Franchise Ordinance of Franchisee. To the extent any Franchisee installs, constructs, maintains, extends or operates any Facilities anywhere else within the City, the City may require a bond in the Franchise when reasonably deemed necessary.

(c) A copy of the Liability Insurance Certificate and any required Performance and Maintenance Bond must be on file with the City Clerk.  
(Code 2008, § 5-908)

#### **5-909. FRANCHISE APPLICATIONS.**

(a) Applications. All applications for a Franchise shall be on forms provided or approved by the City. Any application fee shall be paid prior to processing by the City, unless otherwise agreed to by the City. Upon receipt of a completed application and any applicable fee, the designated city official shall prepare a report and make a recommendation respecting such application to the Governing Body. Each Service subject to a Franchise shall require a separate application.

(b) Application Fee. Subject to Kansas Statute, an application fee shall be paid at the time of the application in the amount established by the City; provided, the City may agree to defer submission of part or all of the application fee until all costs have been



determined. As part of said application fee the City may include reimbursement for all reasonable costs incurred by the City in drafting, negotiating, adopting, and publishing the Franchise. Provided, nothing herein shall prevent the City from having any publication or other reasonable costs billed directly to the applicant. Said application fee shall not be considered or credited against the collection of applicable Franchise Fees.  
(Code 2008, § 5-909)

#### **5-910. FRANCHISE RENEWAL.**

Franchise renewals shall be in accordance with applicable law. The City and any Franchisee, by mutual consent or as otherwise provided in such Franchisee's Franchise, may enter into renewal negotiations. The City may require such Franchisee to update any application information and, subject to Kansas Statute or any provisions in such Franchisee's Franchise, submit an application fee.  
(Code 2008, § 5-910)

#### **5-911. APPLICABILITY.**

The provisions of this Code shall apply from and after its effective date, and shall apply to the full extent of the terms herein. Said provisions shall be deemed incorporated into each Franchise.  
(Code 2008, § 5-911)

#### **5-912. FEDERAL AND STATE LAW.**

The requirements set forth in this Code shall be subject to the provisions of K.S.A. 12-2001 et seq., as may be amended, and any other applicable federal or State law.  
(Code 2008, § 5-912)

#### **5-913. FAILURE TO ENFORCE.**

The failure of the City to insist upon the strict adherence to the requirements of this Code or of any Franchise shall not be construed as a waiver or relinquishment for the future of the rights of the City to enforce this Code or any Franchise or any term or provision thereof.  
(Code 2008, § 5-913)

#### **5-914. VIOLATIONS.**

Any Entity violating this Code shall be subject to a fine of \$500 per day. The payment of such fine notwithstanding, all such violators shall be subject to all other applicable provisions of this Code to fullest extent allowed by law, including, but not limited to, the payment of a Franchise Fee or the equivalent thereof, and indemnification of the City.  
(Code 2008, § 5-914)

#### ~~**5-915. SAVINGS CLAUSE.**~~ <sup>26</sup>

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<sup>26</sup> **Legal analysis: 5-915.SAVINGS CLAUSE.** Delete as covered by general provisions in Chapter 1.

~~The provision of this Code shall be liberally construed to effectively carry out its purposes, which are hereby found and declared to be in furtherance of the public health, safety, welfare, and convenience. If any clause, sentence or section of this Code shall be held to be invalid, it shall not affect the remaining provisions of this Code. (Code 2008, § 5-915; Ord. 889)~~<sup>27</sup>

**ARTICLE 10. PROHIBITED DISCRIMINATION IN EMPLOYMENT, HOUSING, OR PUBLIC ACCOMMODATIONS AS TO SEXUAL ORIENTATION OR GENDER IDENTITY.**

**5-1001. DECLARATION OF POLICY.**

(a) The right of an otherwise qualified individual to be free from discrimination because of that individual's sexual orientation or gender identity is hereby recognized. This right shall include, but not be limited to, any of the following:

- (1) The right to pursue and hold employment and the benefits associated therewith without unlawful discrimination.
- (2) The right to the full enjoyment of any of the services, advantages or privileges of any place of public accommodation without unlawful discrimination.
- (3) The right to engage in property transactions, including obtaining housing for rent or purchase and credit therefor, without unlawful discrimination.
- (4) The right to exercise any right granted under this article without unlawful retaliation.<sup>28</sup>

(b) To protect these rights, it is hereby declared to be the purpose of this article to extend the law to prohibit discrimination and retaliation based upon sexual orientation and gender identity and to provide a local process for the acceptance, investigation and resolution of complaints of discrimination and retaliation relating to sexual orientation and/or gender identity arising hereunder.

(c) Such prohibition is in furtherance of providing equal protection to all residents of the City and, for purposes of the Kansas Preservation of Religious Freedom Act (K.S.A. 60-5301 et seq.) and other applicable law, the provisions set forth herein are determined to be the least restrictive means of furthering a compelling governmental interest.

(d) Nothing in this article shall be construed to make it lawful to discriminate or retaliate against individuals on the basis of race, color, religion, national origin, sex, age, disability, marital status, familial status, or military status. Such discrimination and

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<sup>27</sup> **Legal analysis: 5-915. SAVINGS CLAUSE.** Ord. 889 is only cited as a history note following Sec. 5-915 – Savings Clause. I assume the entire article was derived from Ord. 889, but need to confirm for purposes of history noting. Please verify that Ord. 889 includes the content for all of Article 9.

<sup>28</sup> **Legal analysis: 5-1001. DECLARATION OF POLICY (a)(4).** There appears to be some missing language in this provision. Please advise accordingly.

retaliation is not addressed in this article because federal and state law consistently address unlawful discriminatory and retaliatory practices related to those characteristics and provide a complaint, investigation and enforcement process for such discrimination and retaliation.

(Ord. No. 1004, § 1(5-1001), 10-10-2019)

## **5-1002. DEFINITIONS.** <sup>29</sup>

Except to the extent they are in conflict with the definitions below, the definitions contained within the Kansas Acts Against Discrimination (K.S.A. 44-1001 et seq.), and amendments thereto, shall apply to this article. For purposes of this article, certain terms shall be interpreted or defined as follows unless the context clearly indicates otherwise.

- (a) Aggrieved individual - means any individual who has a good faith belief that such individual has been injured by an unlawful discriminatory practice under this article.
- ~~(b) City - means the City of Westwood, Kansas.~~
- ~~(c) Code - means the Code of the City of Westwood, Kansas.~~
- (d) Days - means calendar days. If a deadline falls on a day city hall is not open (e.g. a weekend, a holiday recognized by the City, emergency closure) the deadline will be extended to the next day city hall is open.
- (e) Employee - means any individual authorized to perform services within the City for an employer, and includes an officer of the employer, but does not include any individual employed by such individual's parents, spouse or child or in the domestic service of any individual. Employee also does not include an independent contractor.
- (f) Employer - means any individual or entity, including but not limited to corporations, partnerships, limited liability companies, associations, labor organizations, mutual companies, joint-stock companies, trusts, or unincorporated organizations, employing four (4) or more employees in the City (including all departments, boards, and agencies thereof), and any City contractor (with respect to contracts between the City and the contractor). For purposes of this article, employer shall not include any non-profit fraternal or social association/corporation or any religious organization.
- (g) Gender identity - means an individual's actual or perceived (by the individual or another) gender-related identity, expression, appearance, or mannerisms, or other gender-related characteristics regardless of the individual's designated sex at birth.
- (h) Hearing officer - means the City of Westwood Municipal Judge.
- (i) Investigator - means the City of Westwood Prosecutor.
- (j) Nonprofit fraternal or social association/corporation - means an association or

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<sup>29</sup> **Legal analysis: 5-1002. DEFINITIONS: (b) city; (c) code.** Delete as covered by general provisions in Chapter 1.

corporation that meets all of the following requirements: (1) it is organized in good faith for social or fraternal purposes; (2) membership entails the payment of bona fide initiation fees or regular dues; (3) there exists a regularly established means of self-government by the members thereof clearly set forth in a constitution or by-laws adopted by the membership; (4) there is a regularly established means of and criteria for admitting members and for expulsion of members by the existing membership or by their duly elected or appointed delegates; and (5) it is not operated, directly or indirectly for purposes of profit for any individual or groups of individuals other than the membership as a whole.

(k) Place of public accommodation – means and shall include every establishment within the City that is open to the public and offers any product, service or facility. The term place of public accommodation shall include, but not be limited to, all taverns, hotels, motels, apartment hotels, apartment houses with one (1) or more tenant units, restaurants or any place where food or beverages are sold, retail and wholesale establishments, hospitals, theaters, motion picture houses, museums, bowling alleys, golf courses and all public conveyances, as well as the stations or terminals thereof. The term place of public accommodation shall not, however, include: (1) a religious organization; (2) any hotel, motel, restaurant or theater operated by a nonprofit fraternal or social association/corporation which restricts its facilities and services to the members of such association/corporation and their guests; or (3) any nonprofit fraternal or social association/corporation, or bona fide civic, political or religious organization, when the profits of such association/corporation or organization, above reasonable and necessary expenses, are solely for its benefit or mission.

(l) Religious organization - means an entity, association, or group such as a church, mosque, temple, synagogue, or other entity, association, or group principally devoted to religious practice or religious teaching.

(m) Rent - means to lease, to sublease, to let or otherwise to grant the right to occupy premises not owned by the occupant in exchange for payment or other consideration.

(n) Rental housing - means any real property, consisting of ~~more~~ one (1) or more dwelling units, which is required to obtain a license or permit pursuant to the provisions of Chapter 5 of the Code.

(o) Respondent - means the individual or entity against whom a complaint alleging discrimination or retaliation has been filed with the City.

(p) Sexual orientation - means an individual's actual or perceived (by the individual or another) emotional, romantic, or sexual attraction to other people, such as heterosexual, homosexual, bisexual, pansexual or asexual.

(Ord. No. 1004, § 1(5-1002), 10-10-2019)

### **5-1003. UNLAWFUL PRACTICES.**

(a) Employment. It shall be an unlawful discriminatory practice for an employer, because of the sexual orientation or gender identity of an otherwise qualified individual:

i. to refuse to hire or employ such individual, to bar or discharge such individual from

employment, or to otherwise discriminate against such individual in compensation or in terms, conditions or privileges of employment without a valid business necessity;

ii. to limit, segregate, classify or make any distinction in regard to employees, or to follow any employment procedure or practice that, in fact, results in discrimination, segregation or separation, without a valid business necessity;

iii. to discharge, expel or otherwise discriminate against any person because such person has opposed any practices or acts forbidden under this Article or because such person has filed a complaint, testified or assisted in any proceeding under this Article.

(b) Housing. It shall be an unlawful discriminatory practice:

i. for an individual or entity to discriminate against any individual in the terms, conditions or privileges of the sale or lease of real property or the lease of rental housing, or in the provision of services or facilities in connection therewith, including but not limited to those as set forth in Chapter 8, Article 9 of the City code, because of sexual orientation or gender identity;

ii. for any individual or entity to discriminate against any individual in such individual's use or occupancy of rental housing because of the sexual orientation or gender identity of individuals with whom such individual associates.

(c) Public Accommodation. It shall be an unlawful discriminatory practice for the owner, operator, lessee, manager, agent or employee of any place of public accommodation to refuse, deny or make a distinction, directly or indirectly, in offering its goods, services, facilities, privileges, advantages and accommodations to any individual because of sexual orientation or gender identity.

(Ord. No. 1004, § 1(5-1003), 10-10-2019)

#### **5-1004. EXCEPTIONS.**

Nothing in this article shall:

(a) prohibit a fraternal or social association/corporation in fact not open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodging to its members or from giving preference to its members;

(b) prohibit a religious organization or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, from limiting the sale, rental or occupancy of real property or rental housing which it owns or operates for other than a commercial purpose to individuals of the same religion, or from giving preference to such individuals, unless membership in such religion is restricted on account of sexual orientation or gender identity;

(c) prohibit an employer from requiring an employee, during the employee's hours at work, to adhere to reasonable dress or grooming standards not prohibited by other provisions of Federal, State, or local law;

(d) be construed to mean that an employer shall be forced to hire unqualified or incompetent personnel, be forced to discharge qualified or competent personnel, or be forced to retain personnel when there is a legitimate non-discriminatory or non-retaliatory reason to terminate employment;

(e) be construed to prohibit an employer from requiring all of its employees, as a condition of employment, to utilize the employer's applicable established internal human resource procedure(s) to address any allegation of discrimination or retaliation in the workplace. The enforcement by an employer of any such requirement shall not, in itself, be deemed a violation of this article;

(f) be construed to require any person or entity subject to this article to make changes requiring a building permit to any existing facility, except as otherwise required by law;

(g) be construed to prohibit an employer or place of public accommodation to post signs for restrooms and dressing rooms based on gender, or to approve, permit, authorize, or serve as a defense to conduct that would constitute the crimes of lewd and lascivious conduct or voyeurism as defined and prohibited by state law or the City code;

(h) apply to the extent the application or enforcement hereof is found, by a court of competent jurisdiction, to violate a person's rights protected under the Kansas Preservation of Religious Freedom Act, K.S.A. 60-5301 et seq., as amended.

(i) be construed to preclude any person from filing a complaint under this Article from seeking any other relieve under local, state or federal law.  
(Ord. No. 1004, § 1(5-1004), 10-10-2019)

#### **5-1005. DEFENSES.**

It shall be a defense to any allegation of an unlawful discriminatory practice:

(a) that the individual or entity did not know the Aggrieved Individual's sexual orientation or gender identity.

(b) that the individual or entity acted in good faith and had reasonable grounds for believing that an act or omission was not a violation of this Article.

(c) that any adverse action taken against the Aggrieved Individual would have been taken regardless of the individual's sexual orientation or gender identity (i.e. the Aggrieved Individual violated the law, a workplace rule, a lease provision or policy applicable to all similarly situated individuals, such as employees, lessees, customers, etc.).

(Ord. No. 1004, § 1(5-1005), 10-10-2019)

#### **5-1006. ENFORCEMENT.**

(a) Any person aggrieved by an alleged violation of this article may file a written, verified complaint with the city clerk. The complaint may be filed personally or through an attorney (or if a minor, through the minor's parent, legal guardian or attorney). Any such complaint shall state sufficient information to identify the factual information supporting

the alleged unlawful discriminatory practice, and shall state the names and contact information of the Aggrieved Individual, the individual(s) and/or entity/entities alleged to have committed the unlawful discriminatory practice(s), and a description of the alleged unlawful conduct.

(b) The complaint form must be filed within sixty (60) days after the alleged unlawful discriminatory practice, unless the act complained of constitutes a continuing pattern or practice of discrimination, in which event it must be filed within sixty (60) days after the last act of discrimination. If the complaint contains allegations of alleged unlawful employment discrimination and the Aggrieved Individual's Employer has an internal human resources procedure to address allegations of discrimination in the workplace (an "Internal Process") and the Employer also has a policy prohibiting discrimination in the workplace on the basis of an individual's sexual orientation or gender identity, then the Aggrieved Individual must first exhaust this Internal Process before the City will process a complaint, in which case the time to file such complaint is extended to thirty (30) days after the date of the final decision in the Internal Process. The Investigator may waive this prior exhaustion requirement upon demonstration to the Investigator's satisfaction that prior exhaustion of the Internal Process would be futile. Futility shall be conclusively established if the Employer fails to render a final decision on the Aggrieved Individual's complaint within forty- five (45) days from the date of the filing of the complaint.

(c) The complaint form shall be submitted to the Investigator. Upon receipt of a complete complaint, the Investigator shall notify the Respondent(s) of the complaint, providing sufficient details related to the complaint so the Respondent(s) may respond. The Investigator shall give the Respondent(s) thirty (30) days to file a written answer to the complaint, and to provide any documentation or evidence related to the complaint. The Investigator may, at the request of Respondent(s), extend the answer period an additional thirty (30) days. If the Respondent(s) charged with violating the provisions of this article is the City, the City will engage an independent investigator who shall not otherwise be an employee, agent, or contractor of the City and shall not have any association with the complainant or the Respondent(s).

(d) Following the conclusion of the answer period, the Investigator may initiate an investigation period for further investigation, requesting that the complainant and/or Respondent(s) provide additional information, documentation or testimony as needed to facilitate the investigation of the complaint. This investigation period shall be concluded within sixty (60) days after the Investigator's last request for information, unless the Investigator notifies the complainant and the Respondent(s) in writing of the need for additional time and reason(s) therefore.

(e) Within thirty (30) days after the conclusion of the investigation period, the Investigator will review all evidence received during the investigation and make a determination, within the Investigator's sound discretion, whether probable cause exists that the Respondent(s) committed an unlawful discriminatory practice.

(f) If the Investigator finds that probable cause does not exist, then the Investigator shall notify the complainant and the Respondent(s), and no further action shall be taken by the City. Any individual making false, malicious, or unfounded accusations against a person or entity subject to this article is guilty of a violation and upon conviction thereof

shall be punished by a fine of \$100.00 for each such violation.

(g) If the Investigator finds that probable cause exists that an unlawful discriminatory practice was committed by Respondent(s), the Investigator shall notify the complainant and Respondent(s) and the Investigator may attempt to engage the parties in conciliation and encourage them to settle the complaint between the parties. Alternatively, the parties may, by mutual agreement, select and pay for, at their own cost, a mediator or arbitrator to mediate or arbitrate the discrimination complaint. The parties may elect to mediate the complaint at any point following the initial filing of the complaint. In the event that a Respondent agrees to mediate a complaint prior to filing the Respondent(s)' answer, the Investigator may stay the requirement of filing an answer. Any such stay shall be lifted in the event that mediation is unsuccessful or in the event that Respondent withdraws its consent to mediate in which case the Respondent shall be required to file its answer within fifteen (15) days following either the conclusion of the mediation, or the date of the Respondent's withdrawal of consent. The Investigator may extend the time for signing a settlement agreement for good cause and with written notice to the parties.

(h) If the complaint could not be conciliated and settled within sixty (60) days of the date of the Investigator's determination that probable cause exists (or by the last day of any extension, whichever is later), the complaint shall be set for a hearing before the hearing officer. The parties will be given at least ten (10) days' written notice of the date, time and place of the hearing. At such hearing, the parties shall be entitled to call witnesses and to present such other evidence as appropriate. The hearing shall be conducted in accordance with such procedures as may be established by the hearing officer which procedures shall generally be consistent with K.S.A. 77- 523 and K.S.A. 77- 524 of the Kansas administrative procedure act, as amended. The Hearing Officer shall also establish his or her own rules of evidence, which are not required to be the same rules of evidence used in courts of law. At such hearing the Aggrieved Individual and the Respondent(s) shall each be entitled to call witnesses and to present such other evidence as appropriate. The Investigator is not required to participate, but may also call witnesses and present such other evidence as he/she deems appropriate. The hearing officer shall issue a written determination within thirty (30) days of the date of the hearing. The determination shall indicate whether the preponderance of the evidence proves that Respondent committed the unlawful discriminatory practice against the complainant, and shall set forth the essential elements of the determination.

(i) If the hearing officer finds that a violation of this article has occurred, the hearing officer may award to the complainant a civil penalty in the amount of up to \$1,000.00 for each violation. In addition, the hearing officer shall have the authority to revoke or suspend any license or licenses issued by the City to a party found to be in violation of this article. The Hearing Officer's determination to revoke or suspend any license or licenses issued by the City shall not become effective until after the exhaustion of all appeal rights as provided for herein. The hearing officer may condition the reinstatement of any revoked or suspended license upon such terms and conditions as the hearing officer finds are fair and appropriate and reasonably calculated to effect compliance with the requirements of this article.

(j) Each party is to bear its own attorneys' fees, if any.

(k) Any party aggrieved by a determination of the hearing officer under this section



may appeal that determination to the District Court of Johnson County, Kansas, in accordance with K.S.A. 60- 2101(d), and amendments thereto. Within thirty (30) days of service of the notice of appeal pursuant to K.S.A. 60-2101(d), as amended, or within further time allowed by the court or by other provision of law, the City shall transmit to the court a certified copy of the written determination of the hearing officer and a certified copy all evidence presented at the hearing. On appeal, the district court may enter such order or judgment as justice shall require, and may award the prevailing party its court costs in accordance with State law.

(l) The Investigator shall maintain all evidence received during the investigation for a period of two (2) years after the deadline for appeal or completion of appeal, whichever is later. The hearing officer will maintain all evidence presented at the hearing for a period of two (2) years after the deadline for appeal or completion of appeal, whichever is later. In no event shall the Investigator or hearing officer permit or cause the loss or destruction of any evidence related to a complaint until all appeal rights have been fully and finally adjudicated.

(m) The filing of a complaint for the alleged violation of this article or a response thereto shall in no way preclude any party from seeking other relief under state or federal law. (Ord. No. 1004, § 1(5-1004), 10-10-2019)

#### **5-1005. CITY CONTRACTS.**

The City may condition any contract into which it may enter upon adherence to the requirements of this article, and a violation of this article may be a basis for the termination of any such contract. The hearing officer shall also communicate the finding of a violation to the mayor and city clerk so that the City may determine if the Respondent has any contracts with the City and if the violation found by the hearing officer may result in termination of such contracts or otherwise affect such contracts. (Ord. No. 1004, § 1(5-1005), 10-10-2019)

#### ~~**5-1006. SEVERABILITY.**~~<sup>30</sup>

~~Should any section, subsection, sentence, clause or phrase of this article, or the application thereof to any person or circumstance, be declared to be unconstitutional or invalid or unenforceable, such determination shall not affect the validity of the remaining portions of this article.~~  
(Ord. No. 1004, § 1(5-1006), 10-10-2019)

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<sup>30</sup> **Legal analysis: 5-1006. SEVERABILITY.** Delete as covered by general provisions in Chapter 1.