

TITLE XI: BUSINESS REGULATIONS

Chapter

110. ALCOHOLIC BEVERAGES

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CHAPTER 110: ALCOHOLIC BEVERAGES

Section

110.01 Liquor retailer permits

§ 110.01 LIQUOR RETAILER PERMITS.

The Town Council hereby consents that liquor retailer permits may be issued by the Indiana Alcoholic Beverage Commission to applicants otherwise qualified under the laws of Indiana for premises located within the town.

(1991 Code, § 110.01) (Ord. 70-6, passed 12-28-1970)

CHAPTER 111: PEDDLERS AND VENDORS

Section

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§ 111.01 DEFINITIONS.

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

COMMODITY. Any product, merchandise, real or personal property, intangible property or asset, publication, ticket, membership or enrollment, or any service or labor to be performed by contract or subscription other than as an employee of the person for whom the service or labor is performed.

PEDDLER. Any person who, without appointment, invitation, or other form of prior arrangement and consent by the owner or person in charge of any premises, or his or her presumptive agent, calls at any residence, office, business establishment, or other organization for the purpose of selling any commodity, except as provided in § 111.02 below.

SELL. Tendering, offering, demonstrating, or exhibiting for purchase, order, lease, subscription, enrollment, or other acceptance any commodity in exchange for money, barter in kind, or other valuable payment, either present or future.

STREET VENDOR. Any person who, in any street, sidewalk, or other public place or common area, sells any commodity by standing, walking about, or operating from a portable stand, pull cart,

wagon, van, or similar conveyance not constituting a fixed and established place of business, except as provided in § 111.02 below.

(1991 Code, § 111.01) (Ord. 83-10, passed 10-3-1983)

§ 111.02 EXCEPTIONS.

The following are not considered peddlers or street vendors for purposes of this chapter:

(A) A producer, manufacturer, or wholesaler, or his or her authorized representative or salesperson, who calls upon a wholesale or retail merchant for the purpose of persuading the merchant to stock, order, or accept on consignment any commodity for distribution or resale to others in the course of his or her business;

(B) A person who, subject to the statutory authority of the Park Board, has been granted by them a concession to sell any commodity within the public parks, or other property under their authority, and who limits the conduct of the activity to those premises and according to the rules and requirements as the Park Board may establish; and/or

(C) A person who sells any commodity as part of a bona fide fund-raising effort in support of a nonprofit charitable, educational, cultural, scientific, religious, or civic organization or purpose, and no part of the proceeds from the sale is paid to or retained by the person for his or her own benefit, other than as reimbursement for personal out-of-pocket expenditures incurred in the activity.

(1991 Code, § 111.02) (Ord. 83-10, passed 10-3-1983)

§ 111.03 LICENSE REQUIREMENT; APPLICATION.

(A) It is unlawful for any person to act as a peddler or street vendor without having a valid peddler's or street vendor's license.

(B) An application for a peddler's or street vendor's license must be submitted on a form to be prescribed by and filed with the Clerk-Treasurer. The application shall state or provide the following information:

- (1) The applicant's full name, current address, and address of permanent residence, if different;
- (2) Whether the application is for:
 - (a) A peddler's license; or
 - (b) A street vendor's license.

(3) The driver's license number of the applicant and license plate number of any motor vehicle to be used for purposes of peddling or street vending, if applicable;

(4) The nature of the commodity or commodities to be sold;

(5) The name and address of any person whose commodities will be sold by the applicant as agent or representative for that person, or else a statement that the applicant will operate as an independent vendor;

(6) As the Clerk-Treasurer shall determine, either a recent color photograph of suitable size for affixture to the application and license, or else a physical description of the applicant including approximate height, weight, hair color, eye color, race or skin color, and age; and

(7) A statement as to whether or not the applicant has ever been convicted in this or any other state, the United States, or any foreign country of a misdemeanor or felony committed in connection with previous peddling or street vending activities, or is under indictment therefor and, if so, the particulars thereof.

(8) The Police Department will run a criminal background check on each individual that will be in town soliciting.

(9) Any other information reasonably determined relevant by the Clerk-Treasurer.

(10) The Clerk-Treasurer reserves the right to refuse to issue a permit to any person or business and shall have the right to revoke a permit previously issued in violation of permit rules.

(C) The Clerk-Treasurer may require the applicant to submit with the application any documentation reasonably necessary to substantiate any of the above information. In addition, the Clerk-Treasurer may also require the applicant to submit evidence that he or she is duly registered with the Indiana Department of Revenue for the collection and payment of any sales taxes applicable to the commodities to be sold; and, if any commodity to be sold is a food product for human consumption other than commercially processed food sold in prepackaged form, that the applicant meets all requirements and has all permits that may be required by the Indiana State or Noble County Board of Health. It is a violation of this chapter to knowingly provide or submit any false information or documentation with the application. Nothing in this section shall be construed to bar a person from holding both a peddler's license and a street vendor's license, but a separate application shall be required for each license. (1991 Code, § 111.03) (Ord. 83-10, passed 10-3-1983; Am. Ord. 2013-04, passed 10-14-2013) Penalty, see § 111.99

§ 111.04 ISSUANCE OF LICENSE.

(A) Whenever an application has been filed, information and documentation have been provided to the satisfaction of the Clerk-Treasurer, and all other requirements have been complied with by the applicant in accordance with § 111.03 above, the Clerk-Treasurer shall issue and provide to the applicant a license. The license shall be of a form prescribed by the Clerk-Treasurer, but shall include the information prescribed in § 111.03(B)(1) through (B)(6). However, if the information provided in

accordance with § 111.03(B)(7) is affirmative, provisions set forth in I.C. 25-1-1.1-1 *et seq.* shall be followed. A license fee of \$25 shall be paid to the town before a license is issued. A license issued under this section shall expire on December 31, of such year. When the license is issued, the Clerk-Treasurer shall file one copy of the application and provide one copy to the Town Marshal, both copies annotated as to the date of issuance of the license.

(B) A license issued under this section applies only to the original applicant and is not transferable by any means.

(1991 Code, § 111.04) (Ord. 83-10, passed 10-3-1983; Am. Ord. 2013-04, passed 10-14-2013)

§ 111.05 CARRYING LICENSE.

Any person licensed as a peddler or street vendor shall carry his or her license upon his or her person at all times when engaging in peddling or street vending activities, and it is unlawful for the person to refuse to show the license to any police officer, or to any citizen who has been approached for the purpose of peddling or street vending, who demands to see the license.

(1991 Code, § 111.05) (Ord. 83-10, passed 10-3-1983) Penalty, see § 111.99

§ 111.06 COMPLIANCE WITH OTHER LAW; MISREPRESENTATION.

The issuance and possession of a peddler's or street vendor's license shall not be construed to authorize a person to engage in peddling or street vending activities, except in strict compliance with the provisions of all other laws and ordinances which may be directly or incidentally applicable thereto. The issuance and possession of a license does not imply, and it is unlawful for any person in any way to represent that it does imply, that the town warrants or vouches for the quality or fairness of price of any commodity or for the integrity or reliability of the peddler or street vendor or any person whom he or she represents.

(1991 Code, § 111.06) (Ord. 83-10, passed 10-3-1983)

§ 111.07 UNLAWFUL PEDDLING ACTIVITIES.

(A) It is unlawful to engage in any peddling activity, except in compliance with the following specific regulations.

(1) Any person who does not wish to be called upon by any peddler may post or erect a sign at, or clearly visible from, the door or other entrance to his or her premises, with the sign saying "No Solicitors," "No Peddlers," or other wording of clearly similar meaning and intent; and all peddlers shall be obliged to respect the sign and shall not enter upon or approach the premises for the purpose of selling any commodity.

(2) No peddler shall employ harassing, annoying, or coercive selling tactics by refusing to leave when a sale has been declined; by returning to any premises with undue and unreasonable frequency, or returning at all when specifically told not to return; by continuously or insistently ringing a doorbell or knocking on a door when a door is not answered; by threatening or implying any harm to a person or his or her property if a sale is refused; or by indicating or implying that the health, safety, or welfare of a person, or his or her property, will be jeopardized by failure to buy or use any commodity, when there is no substantial basis in fact or probability for the allegation.

(B) The regulations imposed on peddling activities by this section are applicable whether or not a peddler possesses a valid license as herein provided; and any person found to be peddling without a license, but also in violation of this section, commits, and may be cited and prosecuted for, two separate offenses.

(C) No peddler shall disturb the repose of the inhabitants of any private residence by calling there at prior to 9:00 a.m. or after 7:00 p.m., nor on a Sunday or legal holiday.
(1991 Code, § 111.07) (Ord. 83-10, passed 10-3-1983; Am. Ord. 2013-04, passed 10-14-2013)
Penalty, see § 111.99

§ 111.08 UNLAWFUL STREET VENDING ACTIVITIES.

(A) It is unlawful to engage in any street vending activity, except in compliance with the following specific regulations.

(1) No street vendor shall enter upon any private premises for the purpose of selling any commodity without the knowledge and consent of the owner or other person in charge of the private premises.

(2) No street vendor shall conduct his or her selling activities in any public park, unless he or she is eligible to do so under § 111.02(B) above.

(3) No street vendor shall dispose or erect any display, sign, stand, conveyance, or vehicle in a way as to substantially obstruct any public way or thoroughfare, pose a hazard or inconvenience to the public, or impair the use and enjoyment of public property and facilities by others. However, a street vendor utilizing a motor vehicle may occupy one legal parking space for a period not to exceed two hours at any one time, provided that a lesser time limit is not otherwise imposed for the use of the parking space.

(B) The regulations imposed on street vending activities by this section are applicable whether or not a street vendor possesses a valid license as herein provided, and any person found to be engaged in street vending activities without a license, but also in violation of this section, commits, and may be cited and prosecuted for, two separate offenses.

(1991 Code, § 111.08) (Ord. 83-10, passed 10-3-1983) Penalty, see § 111.99

§ 111.09 REVOCATION OF LICENSE; APPEAL; REINSTATEMENT.

(A) A license issued pursuant to this chapter shall be revoked by the Clerk-Treasurer under any of the following circumstances:

(1) If it is found that the license holder has provided false information in connection with the license application;

(2) If the license holder, during the term of the license, admits guilt or is convicted of:

(a) Any violation of this chapter;

(b) A violation of the law of any state, federal law, or the law of any foreign country in connection with peddling or street vending activities and constituting a misdemeanor or felony; and/or

(c) Any combination consisting of two or more instances of violation of a county ordinance or other town ordinance, and the offense was committed while engaging in peddling or street vending activities within the town.

(3) If the Clerk-Treasurer directly or indirectly receives written complaints from at least five citizens regarding the license holder's peddling or street vending activities during the term of the license, provided that the complaints must be based on allegations substantiated by factual description of related violations of this chapter or of other applicable laws or ordinances. It shall not be a sufficient complaint merely that the citizen regards the activity as objectionable or a nuisance per se.

(B) Whenever a license is revoked under this section, the Clerk-Treasurer shall send written notice by regular mail to the current address of the license holder, or to the address of his or her permanent residence if the listed current address is no longer valid, notifying him or her of the revocation and the reason therefor, his or her right to appeal as herein provided, and that within 48 hours of the receipt of the notice the license holder is required to either personally surrender his or her license at the office of the Clerk-Treasurer, or to deposit same in the U.S. mail addressed to the office of the Clerk-Treasurer, and to forthwith cease all peddling or street vending activities within the town. It is a violation of this chapter for any person to fail to surrender their license as herein provided. The Clerk-Treasurer shall concurrently notify the Town Marshal of the license revocation. However, when a license is revoked under this section, the license holder may appeal the decision to the Town Council, either in writing or by personal appearance. The Town Council shall act on the appeal at its next regular meeting, or sooner if it so wishes, and may uphold the revocation or may find that, in consideration of all circumstances, the revocation is not warranted or necessary and order the Clerk-Treasurer to reinstate the license. If so reinstated, the Clerk-Treasurer shall immediately return the license to the license holder by regular mail and notify the Town Marshal of the reinstatement. When a license is revoked and is not reinstated as herein provided, the license holder is ineligible to apply for another license for at least one year, and any application must be approved by the Town Council.

(1991 Code, § 111.09) (Ord. 83-10, passed 10-3-1983) Penalty, see § 111.99

§ 111.99 PENALTY.

Any person, peddlers, street vendor, firm or corporation violating any provision of Ord. 83-10 or Ord. 2013-04 shall be punishable by a fine of not less than \$100 for each violation and each day that a violation continues is considered a separate offense if not otherwise comprising a discrete act and violation and shall be required to pay the Town Attorney fees, court costs, costs and expenses associated with any litigation to enforce this chapter or collect any fine.

(1991 Code, § 111.99) (Ord. 83-10, passed 10-3-1983; Am. Ord. 2013-04, passed 10-14-2013)

CHAPTER 112: PRIVATE REFUSE HAULERS

Section

- 112.01 Definitions
- 112.02 Rules and regulations
- 112.03 License for refuse hauler
- 112.04 License revocation; procedures

- 112.99 Penalty

§ 112.01 DEFINITIONS.

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

GARBAGE. Waste, animal, fruit, and vegetable matter, used or intended for food, or that attends the preparation, use, cooking, dealing in, or storing of meat, fish, fowl, fruit, or vegetables, and all other putrescible wastes, except sewage and body wastes.

PRIVATE HAULER. Any person, firm, or corporation engaged in the collecting, hauling, and disposing of any garbage or rubbish for hire.

RUBBISH. Ashes, cans, metal waste, broken glass, crockery, dirt, sweepings, boxes, lumber, wood, leaves, grass, weeds, paper, or litter of any kind, except trees, large limbs, or debris from demolition or construction of buildings.

(1991 Code, § 112.01) (Ord. 67-4, passed 6-24-1967)

§ 112.02 RULES AND REGULATIONS.

Every private hauler shall collect, haul, and transport all garbage and rubbish in strict compliance of the following rules and regulations.

(A) The collection vehicle shall be so covered as to eliminate flies and keep garbage and rubbish from falling, blowing, or being scattered from the vehicle.

(B) A canvas or cloth cover or enclosure shall not be deemed a sufficient cover or enclosure for the collection vehicle.

(1991 Code, § 112.02) (Ord. 67-4, passed 6-24-1967) Penalty, see § 112.99

§ 112.03 LICENSE FOR REFUSE HAULER.

Every person desiring to engage in the business of a private hauler shall make application to the town Clerk-Treasurer, setting forth the name of the person, the residence thereof, and business name and address, together with a description of the vehicle to be used in the collection of garbage or rubbish. Before issuing a license, the Clerk-Treasurer shall determine that the vehicles to be used for the purposes have satisfactorily met the requirements of § 112.02 above. Each license issued shall expire one year following the date of issuance. There shall be a fee of \$50 charged for issuance of the licenses yearly. (1991 Code, § 112.03) (Ord. 67-4, passed 6-24-1967; Am. Ord. 83-12, passed 10-3-1983) Penalty, see § 112.99

§ 112.04 LICENSE REVOCATION; PROCEDURES.

(A) If, prior to the expiration of any license, the Town Council certifies, in writing, to the Clerk-Treasurer that the licensee is not conforming to the provisions of this chapter, the Clerk-Treasurer shall forthwith revoke the license following the procedures set forth in division (B) below.

(Ord. 67-4, passed 6-24-1967)

(B) (1) In case any license has been revoked, the licensee shall, within three business days, have the right to appeal to the Town Council from the revocation.

(2) Notice of appeal shall be filed in writing with the town Clerk-Treasurer, who shall fix the time and place for a hearing, which shall be held not later than one week thereafter.

(3) The town Clerk-Treasurer shall notify all members of the Town Council of the time and place of the hearing not less than 24 hours in advance thereof. A majority of the Town Council members shall constitute a quorum to hear the appeal.

(4) The appellant may appear and be heard in person or by counsel.

(5) If, after hearing, a majority of the members of the Town Council present at the meeting declare in favor of the licensee, the license shall be fully reinstated; otherwise, the order appealed from shall become final.

(1991 Code, § 112.04)

§ 112.99 PENALTY.

Any person violating any of the provisions of this chapter, or refusing to comply with any of the provisions therein contained, shall, upon conviction, be fined in any sum of not less than \$25 nor more than \$300, and each day's continuance of the violation or failure shall be deemed a separate and distinct offense.

(1991 Code, § 112.99) (Ord. 67-4, passed 6-24-1967; Am. Ord. 83-12, passed 10-3-1983)

CHAPTER 113: SEXUALLY-ORIENTED BUSINESSES

Section

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GENERAL PROVISIONS

§ 113.01 PURPOSE.

It is the purpose of this chapter to regulate sexually-oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the town, and to establish reasonable and

uniform regulations to prevent the deleterious secondary effects of sexually-oriented businesses within the town. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually-oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material. (Ord. 0106, passed 6-25-2001)

§ 113.02 DEFINITIONS.

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

ADULT ARCADE. Any place to which the public is permitted or invited wherein coin-operated or slug-operated, or electronically, electrically, or mechanically controlled, still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing “specified sexual activities” or “specified anatomical areas.”

ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. A commercial establishment which has a significant or substantial portion of its stock in trade, or derives a significant or substantial portion of its revenues, or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space, to the sale or rental, for any form of consideration, of any one or more of the following:

(1) Books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, videocassettes, compact discs, slides, or other visual representations, which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas;” and/or

(2) Instruments, devices, or paraphernalia, which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of oneself or others.

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

(1) Persons who appear semi-nude;

(2) Live performances which are characterized by the exposure of “specified anatomical areas” or “specified sexual activities;” and/or

(3) Films, motion pictures, videocassettes, slides, or other photographic reproductions, which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “ specified anatomical areas.”

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

(1) Offers public accommodations, for any form of consideration, and which regularly provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas;” and which regularly advertises the availability of the material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio, or television; and/or

(2) Offers a sleeping room for rent for a period of time less than ten hours.

ADULT MOTION PICTURE THEATER. A commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions, which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas,” are regularly shown, for any form of consideration.

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

CONTROLLING INTEREST. The power, directly or indirectly, to direct the operation, management, or policies of a business or entity, or to vote 20% or more of any class of voting securities of a business. The ownership, control, or power to vote 20% or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation, or policies of the business.

DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS UPON. The dominant or principal theme of the object described by the phrase. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas,” the films so described are those whose dominant or principal character and theme are the exhibition or description “specified anatomical areas” or “specified sexual activities.”

EMPLOY, EMPLOYEE, and EMPLOYMENT. Any person who performs any service on the premises of a sexually-oriented business, on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. **EMPLOYEE** does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

ESTABLISH OR ESTABLISHMENT. Include any of the following:

- (1) The opening or commencement of any sexually-oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually-oriented business, to any sexually-oriented business;
- (3) The addition of any sexually-oriented business to any other existing sexually-oriented business; and/or
- (4) The relocation of any sexually-oriented business.

HEARING OFFICER. The President of the Town Council of Rome City or a designee of the President of the Town Council.

LICENSEE. A person in whose name a license to operate a sexually-oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually-oriented business license. In case of an “employee,” it shall mean the person in whose name the sexually-oriented business employee license has been issued.

NUDITY or A STATE OF NUDITY. The showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple.

OPERATE OR CAUSE TO BE OPERATED or OPERATOR. To cause to function or to put or keep in a state of doing business. **OPERATOR** means any person on the premises of a sexually-oriented business who is authorized to exercise overall operational control of the business, or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually-oriented business, whether or not that person is an owner, part owner, or licensee of the business.

PERSON. Individual, proprietorship, partnership, corporation, association, or other legal entity.

REGULARLY FEATURES or REGULARLY SHOWN. A consistent or substantial course of conduct, so that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually-oriented business.

SEMI-NUDE MODEL STUDIO.

- (1) Any place where a person or persons who regularly appear in a state of semi-nudity, or in modeling sessions characterized by the exposure of “specified anatomical areas,” are provided for money, or any form of consideration, to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

(2) It is a defense to prosecution for any violation of this chapter that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

(a) By a college, junior college, or university supported entirely or partly by taxation;

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

(c) In a structure:

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

2. Where, in order to participate in a class, a student must enroll at least three days in advance of the class.

SEMI-NUDE or STATE OF SEMI-NUDITY. A state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER ESTABLISHMENT. A business or commercial establishment that as one of its principle business purposes offers, for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of “specified sexual activities” or when one or more of the persons is semi-nude. The definition of sexually-oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

SEXUALLY-ORIENTED BUSINESS. An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, semi-nude model studio, or sexual encounter establishment.

SEXUALLY-ORIENTED ENTERTAINMENT ACTIVITY. The sale, rental, or exhibition, for any form of consideration, of books, films, videocassettes, magazines, periodicals, or live performances, which are characterized by an emphasis on the exposure or display of specific sexual activity.

SPECIFIED ANATOMICAL AREAS. Human genitals, anus, cleft of the buttocks, or the female breast.

SPECIFIED SEXUAL ACTIVITY. Any of the following:

(1) Sex acts, normal or perverted, including intercourse, oral copulation, masturbation, or sodomy; and/or

(2) Excretory functions as a part of or in connection with any of the activities described in division (1) above.

TRANSFER OF OWNERSHIP OR CONTROL. Any of the following:

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

VIEWING ROOM. The room, booth, or area where a patron of a sexually-oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.
(Ord. 0106, passed 6-25-2001)

§ 113.03 CLASSIFICATION.

Sexually-oriented businesses shall be classified as follows:

(A) Adult arcades;

(B) Adult bookstores, adult novelty stores, adult video stores;

(C) Adult cabarets;

(D) Adult motels;

(E) Adult motion picture theaters;

(F) Adult theaters;

(G) Semi-nude model studios; and/or

(H) Sexual encounter establishments.

(Ord. 0106, passed 6-25-2001)

*LICENSING***§ 113.15 LICENSE REQUIRED.**

(A) It shall be unlawful for any person to operate a sexually-oriented business in Rome City without a valid sexually-oriented business license.

(B) It shall be unlawful for any person to be an “employee,” as defined in this chapter, of a sexually-oriented business in Rome City without a valid sexually-oriented business employee license.

(C) (1) An applicant for a sexually-oriented business license or a sexually-oriented business employee license shall file, in person, at the office of the town Clerk-Treasurer a completed application made on a form provided by the town Clerk-Treasurer. The application shall be signed by the applicant and notarized. An application shall be considered complete when it contains the information required in divisions (C)(1)(a) through (C)(1)(e) as follows:

(a) The applicant's full true name and any other names used in the preceding five years;

(b) Current business address or another mailing address of the applicant;

(c) Written proof of age, in the form of a copy of a birth certificate or a picture identification document issued by a governmental agency;

(d) If the application is for a sexually-oriented business license, the business name, location, legal description, mailing address, and phone number (if one currently exists) of the proposed sexually-oriented business; and

(e) If the application is for a sexually-oriented business license, the name and address of the statutory agent or other agent authorized to receive service of process.

(2) The information provided pursuant to divisions (C)(1)(a) through (C)(1)(e) above shall be supplemented in writing by certified mail, return receipt requested, to the town Clerk-Treasurer within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(D) An application for a sexually-oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who are required to comply with §§ 113.36 and 113.38 below shall submit a diagram meeting the requirements of those sections.

(E) If a person who wishes to operate a sexually-oriented business is an individual, he or she shall sign the application for a license as applicant. If a person who wishes to operate a sexually-oriented

business is other than an individual, each officer, director, general partner, or other person who will participate directly in decisions relating to management and control of the business shall sign the application for a license as applicant. Each applicant must be qualified under § 113.16 below and each applicant shall be considered a licensee if a license is granted.

(F) (1) A person who possesses a regular business license is not exempt from the requirement, if applicable, of obtaining a sexually-oriented business license and complying with the regulations in this chapter.

(2) A person who operates a sexually-oriented business and possesses a video center license or theater license shall comply with the requirements and provisions of this chapter, when applicable.

(G) (1) The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the town Clerk-Treasurer on a confidential basis, except that the information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order.

(2) The information provided by a sexually-oriented business license applicant in connection with the application for a license under this chapter shall be maintained by the town Clerk-Treasurer. (Ord. 0106, passed 6-25-2001) Penalty, see § 113.99

§ 113.16 ISSUANCE OF LICENSE.

(A) Upon the filing of a completed application under § 113.15(C) above for a sexually-oriented business license, the town Clerk-Treasurer shall immediately issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the town to deny or grant the license. Within 40 days of the initial filing date of the completed application, the Clerk-Treasurer shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Clerk-Treasurer shall approve the issuance of a license, unless one or more of the following is found to be true.

(1) An applicant is less than 18 years of age.

(2) An applicant has failed to provide information as required by § 113.15 for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this chapter has not been paid.

(4) An applicant has been shown to have committed a violation of §§ 113.18(A), 113.22(B), 113.38(A)(1), 113.38(A)(2), or 113.38(A)(3) of this chapter within the previous year.

(5) In the case of a sexually-oriented business license application, the premises are not in compliance with the interior configuration requirements of this chapter.

(B) Upon the filing of a completed application for a sexually-oriented business employee license, the Clerk-Treasurer shall issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the Town to deny or grant the license. Within 40 days of the initial filing date of the receipt of a completed application, the Clerk-Treasurer shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Clerk-Treasurer shall approve the issuance of a license, unless one or more off the following is found to be true.

(1) The applicant is less than 18 years of age.

(2) The applicant has failed to provide information as required by § 113.15 above for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this chapter has not been paid.

(4) The applicant has been shown to have committed a violation of §§ 113.18(A), 113.38(A)(1), 113.38(A)(2), or 113.38(A)(3) of this chapter within the previous year.

(C) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually-oriented business, the address of the sexually-oriented business. The sexually-oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually-oriented business so that it may be easily read at any time. A sexually-oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing and shall produce the license for inspection upon request by a law enforcement officer or other town official performing functions connected with the enforcement of this chapter.

(Ord. 0106, passed 6-25-2001)

§ 113.17 FEES.

The initial license and annual renewal fees for a sexually-oriented business license or a sexually-oriented business employee license shall be set by the Town Council at an amount determined by the Council as sufficient to pay the cost of administering this chapter. In no event shall the fees exceed \$200 for the initial fee of a business and \$100 for annual renewal; and \$100 for the initial employee license and \$50 for annual renewal.

(Ord. 0106, passed 6-25-2001)

§ 113.18 INSPECTION.

(A) Sexually-oriented business operators and sexually-oriented business employees shall permit officers or agents of Rome City who are performing functions connected with the enforcement of this chapter to inspect the portions of the sexually-oriented business premises where patrons are permitted, for the purpose of ensuring compliance with this chapter, at any time the sexually-oriented business is occupied by patrons or open for business.

(B) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.
(Ord. 0106, passed 6-25-2001) Penalty, see § 113.99

§ 113.19 TRANSFER OF LICENSE.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually-oriented business under the authority of a license at any place other than the address designated in the sexually-oriented business license application.
(Ord. 0106, passed 6-25-2001) Penalty, see § 113.99

§ 113.20 EXPIRATION OF LICENSE.

Each license shall remain valid for a period of one calendar year from the date of issuance, unless otherwise suspended or revoked. The license may be renewed only by making application and payment of a fee as provided in §§ 113.15 and 113.17. Application for renewal should be made at least 90 days before the expiration date, and when made less than 90 days before the expiration date, the expiration of the license will not be affected.
(Ord. 0106, passed 6-25-2001)

§ 113.21 SUSPENSION.

The town shall issue a written letter of intent to suspend a sexually-oriented business license for a period not to exceed 30 days if it is determined that the sexually-oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this chapter. The town shall issue a written letter of intent to suspend a sexually-oriented employee license if it is determined that the employee has knowingly violated this chapter.
(Ord. 0106, passed 6-25-2001)

§ 113.22 REVOCATION.

(A) *Letter of intent to revoke.* The town shall issue a letter of intent to revoke a sexually-oriented business license or a sexually-oriented business employee license if a cause of suspension in § 113.21 occurs and the license has been suspended within the preceding 12 months.

(B) *Factors determining revocation.* The town shall issue written intent to revoke a sexually-oriented business license, if the officer determines that:

(1) The sexually-oriented business licensee has knowingly given false or misleading information in the application for the sexually-oriented business license;

(2) The sexually-oriented business licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) The sexually-oriented business licensee has knowingly allowed prostitution on the premises;

(4) The sexually-oriented business licensee knowingly operated the sexually-oriented business during a period of time when the license was suspended; and/or

(5) The sexually-oriented business licensee has knowingly allowed any specified sexual activity to occur in or on the licensed premises.

(C) *Effect of appeal on revocation.* The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(D) *Nature of revocation.*

(1) When, after the notice and hearing procedure described in § 113.23 below, the Hearing Officer revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually-oriented business license or sexually-oriented business employee license for one year from the date revocation becomes effective, provided that, if the conditions of § 113.23(B) are met, a provisional license will be granted pursuant to that section.

(2) If, subsequent to revocation, the town Clerk-Treasurer finds that the basis for the revocation based on division (B)(1) of this section has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date the revocation became effective.

(3) If the license was revoked under divisions (B)(2), (B)(3), (B)(4), or (B)(5) of this section, an applicant may not be granted another license until at least one year has elapsed.
(Ord. 0106, passed 6-25-2001)

§ 113.23 HEARING; DENIAL, SUSPENSION, AND REVOCATION; APPEAL.

(A) *Hearing.*

(1) *Town intent to deny, suspend, or revoke license.* If the town Clerk-Treasurer determines that facts exist for denial, suspension, or revocation of a license under this chapter, the town shall notify the applicant or licensee (respondent), in writing, of the town's intent to deny, suspend, or revoke the license, including the grounds therefore, by personal delivery, or by certified mail.

(2) *Notification requirements.* The notification shall be directed to the most current business address or other mailing address on file with the town Clerk-Treasurer for the respondent. Within ten working days of receipt of the notice, the respondent may provide to the town Clerk-Treasurer a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended, or revoked.

(3) *Hearing procedures.* Within five days of the receipt of respondent's written response, the town Clerk-Treasurer shall notify respondent, in writing, of the hearing date on respondent's denial, suspension, or revocation proceeding. Within ten working days of the receipt of respondent's written response, the Hearing Officer shall conduct a hearing at which respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the town's witnesses. The hearing shall take no longer than two days, unless extended to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written opinion within five days after the hearing. If a court action challenging the town's decision is initiated, the town shall prepare and transmit to the court a transcript of the hearing within ten days after the issuance of the Hearing Officer's written opinion.

(4) *Decision of Hearing Officer.* If a written response from respondent is not received by the town Clerk-Treasurer within the time stated in division (A)(2) above, or if, after a hearing, the Hearing Officer concludes that grounds as specified in this chapter exist for denial, suspension, or revocation of the license, then the denial, suspension, or revocation shall become final five days after the Hearing Officer sends, by certified mail, written notice to the respondent that the license has been denied, suspended, or revoked. The notice shall include a statement advising the respondent of the right to appeal the decision to a court of competent jurisdiction. If the Hearing Officer finds that no grounds exist for denial, suspension, or revocation of a license, then within five days after the hearing, the Hearing Officer shall immediately withdraw the intent to deny, suspend, or revoke the license and shall notify the respondent in writing by certified mail of the action. The town Clerk-Treasurer shall contemporaneously therewith issue the license to the applicant.

(B) *Appeal.* An applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal the action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the town's enforcement of the denial, suspension, or revocation, the town shall immediately issue the aggrieved party a provisional license. The provisional license shall allow the aggrieved party to continue operation of the sexually-oriented business or to continue employment as a sexually-oriented business employee and will expire upon the court's entry of a judgment on the aggrieved party's appeal or other action to restrain or otherwise enjoin the town's enforcement.

(C) *Application of chapter during temporary license or provisional license periods.* Sexually-oriented businesses or sexually-oriented business employees operating or working under temporary licenses (as provided for in § 113.16) or provisional licenses (as provided for in § 113.23) shall be subject to the provisions of §§ 113.19, 113.35 through 113.37, and 113.99, as specified in this chapter. (Ord. 0106, passed 6-25-2001)

OPERATING REQUIREMENTS AND REGULATIONS**§ 113.35 HOURS OF OPERATION.**

No sexually-oriented business shall open to do business before 10:00 a.m. or remain open after 11:00 p.m., provided that a sexually-oriented business which has obtained a license to sell alcoholic beverages from the State of Indiana may remain open to sell alcoholic beverages under the terms of that license, but may not conduct sexually-oriented entertainment activity after 11:00 p.m.

(Ord. 0106, passed 6-25-2001) Penalty, see § 113.99

§ 113.36 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

(A) *Requirements.* A person who operates, or causes to be operated, a sexually-oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, videocassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually-oriented business license shall contain a diagram of the premises showing the location of all manager's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes, and restrooms and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object, and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Clerk-Treasurer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station or viewing room may be made without the prior approval of the town Clerk-Treasurer.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to division (A)(1) of this section.

(5) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less

than one foot candle as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(6) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

(7) It shall be the duty of the operator, and of any employees present on the premises, to ensure that not more than one person is present in a viewing room at any time. No person shall enter a viewing room that is occupied by another person.

(8) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no openings of any kind exist between viewing rooms. No person shall make an attempt to make an opening of any kind between viewing rooms.

(9) It shall be the duty of the operator, or of any employee, who discovers two or more patrons in a viewing room or discovers any person making or attempting to make an opening of any kind between viewing rooms, to immediately escort the persons from the premises.

(10) It shall be the duty of the operator, or of any employee, who discovers an opening of any kind between viewing rooms, to immediately secure the rooms and prevent entry into them by any patron until the time as the wall between the rooms has been repaired to remove the opening. Removal and repairing openings between viewing rooms shall be in a manner that is as structurally substantial as the original wall construction.

(11) It shall be the duty of the operator, at least once each business day, to inspect the walls between viewing rooms for openings of any kind.

(12) It shall be the duty of the operator to post conspicuous signs, in well-lighted entry areas of the business, stating all of the following:

- (a) That no loitering is permitted in viewing rooms;
- (b) That the occupancy of viewing rooms is limited to one person;
- (c) That sexual activity on the premises is prohibited;
- (d) That the making of openings between viewing rooms is prohibited;
- (e) That violators will be required to leave the premises; and
- (f) That violations of divisions (A)(12)(b) through (A)(12)(d) are unlawful.

(13) It shall be the duty of the operator to ensure that floor coverings in viewing rooms are easily cleanable, nonporous surfaces, with no rugs or carpeting.

(14) It shall be the duty of the operator to ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of, or permanently covered by, easily cleanable, nonporous material.

(15) It shall be the duty of the operator to ensure that premises are clean and sanitary. The duty shall be fulfilled if the operator complies with the following cleaning procedures.

(a) The operator shall maintain a regular cleaning schedule of at least two cleanings per day, documented by appropriate logs.

(b) The operator shall provide an employee to check all areas for garbage, trash, and body fluids and excrement, and to remove and clean all areas with a disinfectant. All solid waste generated by the business shall be collected from the premises for disposal at a lawful solid waste disposal facility at least twice each week. Prior to collection, solid waste shall be stored in a manner that prevents access by animals or members of the public and which will not facilitate the creation of a health nuisance.

(c) Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video camera, windows, and other surfaces.

(16) (a) The interior of the premises shall be configured in a manner that there is an unobstructed view from a manager's station of every area of the premises, including the interior of each viewing room, but excluding restrooms, to which any patron is permitted access for any purpose. A manager's station shall not exceed 32 square feet of floor area. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this division must be by direct line of sight from the manager's station.

(b) It is the duty of the operator to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this division remains unobstructed by any doors, curtains, walls, merchandise, display racks, or other materials or enclosures at all times that any patron is present on the premises.

(B) *Failure to fulfill duty.* It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(Ord. 0106, passed 6-25-2001) Penalty, see § 113.99

§ 113.37 LOITERING, MONITORING, AND EXTERIOR LIGHTING REQUIREMENTS.

(A) (1) It shall be the duty of the operator of a sexually-oriented business to:

(a) Initiate and enforce a no loitering policy within the external boundaries of the real property upon which the sexually-oriented businesses are located;

(b) Post conspicuous signs stating that no loitering is permitted on the property;

(c) Designate one or more employees to monitor the activities of persons on the property by visually inspecting the property at least once every 90 minutes or inspecting the property by use of video cameras and monitors; and

(d) Provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering.

(2) If used, video cameras and monitors shall operate continuously at all times that the premises is open for business. The monitors shall be installed within a manager's station.

(B) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(Ord. 0106, passed 6-25-2001) Penalty, see § 113.99

§ 113.38 ADDITIONAL REGULATIONS CONCERNING LIVE PUBLIC NUDITY.

(A) It is unlawful for a sexually-oriented business to knowingly violate the following regulations or to knowingly allow an employee, or any other person, to violate the following regulations.

(1) It shall be a violation of this chapter for a patron, employee, or any other person, knowingly or intentionally, to appear in a state of nudity in a sexually-oriented business, regardless of whether the public nudity is expressive in nature.

(2) It shall be a violation of this chapter for a person, knowingly or intentionally, to appear in a state of nudity in a sexually-oriented business, unless the person is an employee who, while semi-nude, shall be at least six feet from any patron or customer and on a stage at least two feet from the floor.

(3) It shall be a violation of this chapter for any employee, while semi-nude in a sexually-oriented business, to knowingly or intentionally receive any pay or gratuity directly from any patron or customer, or for any patron or customer to knowingly or intentionally pay or give any gratuity directly to any employee, while the employee is semi-nude in a sexually-oriented business.

(4) It shall be a violation of this chapter for any employee, while semi-nude, to knowingly or intentionally touch a customer or the clothing of a customer.

(B) A sign, in a form to be prescribed by the town Clerk-Treasurer and summarizing the provisions of divisions (A)(1) through (A)(4) above, shall be posted near the entrance of the sexually-oriented business in a manner as to be clearly visible to patrons upon entry.

(Ord. 0106, passed 6-25-2001) Penalty, see § 113.99

§ 113.99 PENALTY.

(A) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this chapter shall be fined an amount not to exceed \$2,500. Each day the violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(B) The Town Attorney is hereby authorized to institute criminal or civil proceedings, necessary for the enforcement of this chapter, to prosecute, restrain, or correct violations hereof. The proceedings, including injunction, shall be brought in the name of the town; provided, however, that nothing in this section, and no action taken thereunder, shall be held to exclude the criminal proceedings as may be authorized by other provisions of the town code, or any of the laws or ordinances in force in the town, or to exempt anyone violating this code or any part of the laws from any penalty which may be incurred. (Ord. 0106, passed 6-25-2001)

