

## CHAPTER 5. BUSINESS REGULATIONS AND LICENSES

Article 1.	Business Regulations and Licenses
Article 2.	Adult Entertainment
Article 3.	Massage Establishments

### Article 1. Business Regulations and Licenses

5-101 LICENSE REQUIREMENTS. It shall be unlawful for any person, either as principal or agent, to carry on, engage in or pursue any of the trades, occupations or businesses as set out in this Article, without having first paid the prescribed license fee and obtained a license from the Public Safety Director.

5-102 NEW GOODS PUBLIC AUCTIONS: LICENSE FEES. The license fee for the conducting of a new goods public auction, as it is defined and regulated by sections 58-1014 through 1023 of the Kansas Statutes Annotated, shall be twenty-five dollars (\$25.00) for each day that the applicant proposes to operate the public auction. (Code 1990)

5-103 HAWKERS, PEDDLERS OR VENDORS. For hawkers, peddlers or other vendors from stands, wagons, cars or other vehicles of any goods, wares, merchandise, fruits, vegetables or articles, and hawkers and peddlers or other vendors canvassing from place to place, or from house to house on foot, any goods, wares, merchandise, fruits, vegetables or other articles, the license fee shall be the sum of five dollars (\$5.00) per day or twenty-five dollars (\$25.00) per year: Provided, That said license fee shall not apply to hawkers, peddlers or vendors or producers, or their agents and employees, engaged in the sale of farm or garden products, or fruits grown by said persons within the State of Kansas. There shall be no soliciting after five o'clock (5:00) P.M. (Code 1969)

5-104 PENALTY. Any person, corporation, partnership or association violating the provisions of this Article shall, upon conviction thereof, be fined in any amount not to exceed one hundred dollars (\$100.00) or be imprisoned not to exceed thirty (30) days or be both so fined and imprisoned. Each day during or on which a violation occurs or continues shall constitute a separate offense. (Code 1969)

### Article 2. Adult Entertainment

5-201 RESERVED FOR FUTURE USE.

5-202 DEFINITIONS. For the purposes of this article and unless the context plainly requires otherwise, the following definitions are adopted:

202.1 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.

202.2 ADULT ENTERTAINMENT BUSINESS means any business including but not limited to:

- A. Adult media outlets;
- B. Adult motion picture theaters;
- C. Juice bars;
- D. Establishments providing live dancers, models, entertainers or other performers, having as a material portion of its business the offering of entertainment, stock in trade or materials, scenes or other presentations predominantly distinguished or characterized by emphasis or depiction or description of an erotic nature including, but not limited to, depiction or descriptions of "specified sexual activities" or "specified anatomical areas" (separately defined) to which the public, patrons or members are invited or admitted and wherein an entertainer, manager, or server, provides adult entertainment to a member of the public, a patron or a member.

202.3 ADULT MEDIA means magazines, books, videotapes, movies, slides, paraphernalia or other media which are distinguished or characterized by their emphasis in matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" (separately defined)

202.4 ADULT MEDIA OUTLET means any establishment that rents, sells or offers for viewing or other use any adult media, and which meets at least one of the following tests: (1) more than fifty percent of the gross floor area is devoted to adult media; (2) or more than fifty percent of the gross sales (including rentals) on an annual basis result from the sale or rental of adult media.

202.5 ADULT MOTION PICTURE THEATER means an enclosed building used for presenting or showing, for money or other consideration, movie or video films or pictures or other materials distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" (separately defined) for observation by customers therein.

202.6 ENTERTAINER means any person who provides adult entertainment within an adult entertainment premises as defined in this section, whether or not a fee is charged or accepted for entertainment.

202.7 MANAGER means any person who manages, directs, administers or is in charge of the affairs and/or conduct of any portion of any activity involving adult entertainment occurring at any adult entertainment premises.

- 202.8 OPERATOR means any person operating, conducting or maintaining an adult entertainment business.
- 202.9 PERSON means any individual, partnership, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity or other entity or groups of persons however organized.
- 202.10 PUBLIC PLACE means any area generally visible to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots and automobiles whether moving or not.
- 202.11 SERVER means any person who serves food or drink at an adult entertainment business.
- 202.12 SPECIFIED ANATOMICAL AREAS means (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.
- 202.13 SPECIFIED SEXUAL ACTIVITIES means sexual conduct, being actual or simulated, acts of human masturbation; sexual intercourse; or physical contact, in an act of apparent sexual stimulation or gratification, which a person's clothed or unclothed genitals, pubic areas, 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. (Ord. 1943, Sec. 1)

#### 5-203 LICENSE REQUIRED FOR ADULT ENTERTAINMENT BUSINESS.

- 203.1 It is unlawful for any person to operate or maintain an adult entertainment business in the city unless the owner, operator or lessee thereof has obtained an adult entertainment business license from the city, or to operate such a business after such license has been revoked or suspended by the city.
- 203.2 It is unlawful for any entertainer, employee or manager to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed adult entertainment business.
- 203.3 It shall be prima facie evidence that any adult entertainment business that fails to have posted, in the manner required by this section, an adult entertainment business license, has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer, employee or manager who performs any service or entertainment in an adult entertainment business in which an adult entertainment license is not posted, in the manner required by this section, had knowledge that such business was not licensed. (Ord. 1943, Sec. 1)

5-204 MINORS ACCESS FOR BUSINESSES ENGAGED IN THE SALE OR RENTAL OF ADULT MEDIA. Any business not licensed as an adult entertainment establishment which sells or rents adult media shall restrict the access of minors as follows:

204.1 Adult entertainment related movies, videotapes, or other electronic media shall be restricted to persons eighteen (18) years of age or older. If an establishment that is not otherwise prohibited from providing access to persons under 18 years of age sells, rents, or displays movies, videos, or other electronic media that have been rated 'X' or rated 'NC-17' by the motion picture rating industry ('MPAA'), or which have not been submitted to the MPAA for a rating, and which consist of images which are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas, said movies, videos, or other electronic media shall be located in such a way that access is limited to persons at least eighteen (18) years of age and shall not be visible from outside the premises or from areas within the premises where persons under the age of eighteen (18) are allowed.

204.2 Access to adult media shall be restricted to persons at least eighteen (18) years of age. (Ord. 1943, Sec. 1)

5-205 RECORDS MAINTENANCE FOR BUSINESSES ENGAGED IN THE SALE OR RENTAL OF ADULT MEDIA. Any business not licensed as an adult entertainment establishment which devotes more than ten percent of its floor area that is used for the display of sale or rental merchandise to the display of "adult media," as defined in Section 5-202, shall keep accurate records of sales, including but not limited to sales receipts, showing the percentage of gross sales of the business derived from the sale or rental of adult media. Such records shall be made available for inspection at reasonable times and places, upon request by a representative of the codes administration office of the city or any other city official acting in their official capacity. The records shall document each sale or rental of adult media, the gross receipts from each sale or rental, and shall indicate the date of such sale or rental. Any record inspected by or obtained by the city shall be used only for the purpose of determining whether or not the business is an "adult media outlet" as defined in Section 5-202. No records or information contained therein shall be divulged to any person other than officers, agents, or employees of the city, including attorneys or accountants employed or retained by the city, excepting that the records of information may be divulged to the extent reasonably necessary for the enforcement of this section. (Ord. 1943, Sec. 1)

5-206 LICENSE REQUIRED FOR MANAGERS, SERVERS AND ENTERTAINERS. It is unlawful for any person to work as an entertainer, server or manager at an adult entertainment business without first obtaining a license to do so from the city, or to work as an entertainer, server or manager at an adult entertainment business after such person's license to do so has been revoked or suspended. (Ord. 1943, Sec. 1)

5-207 LICENSE, CLASSIFICATION AND FEES.

207.1 The license year for all fees required under this article shall be from January 1<sup>st</sup> through December 31<sup>st</sup>. The application for a license shall be accompanied by a

certified or cashier's check or money order; and no application shall be considered complete until such fee is paid.

207.2 All licenses shall be issued for a specific location and shall be nonrefundable and nontransferable.

207.3 The classification of licenses and fees for each shall be as follows:

- A. Adult entertainment business license fee is two hundred fifty dollars per year;
- B. Adult entertainment manager's license fee is twenty dollars per year;
- C. Adult entertainer's license fee is twenty dollars per year;
- D. Adult entertainment server's license fee is twenty dollars per year. (Ord. 1943, Sec. 1)

#### 5-208 LICENSE APPLICATION.

208.1 Adult Entertainment Business License. All persons desiring to secure a license to operate an adult entertainment business under the provisions of this article 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 entertainment business. All applications shall be submitted on a form supplied by the city clerk and shall require the following information:

- A. The name, residence address, home telephone number, occupation, date and place of birth and social security number of the applicant;
- B. The name of the adult entertainment business, a description of the adult entertainment to be performed or undertaken on the licensed premises, and the name of the owner of the premises where the adult entertainment business will be located;
- C. The names, residence addresses, social security numbers and dates of births of all partners, if the applicant is a partnership; and if the applicant is a corporation, the same information for all corporate officers, directors and stockholders who own more than ten percent or greater interest in the corporation;
- D. The addresses of the applicant, or of all partners, or of all corporate officers and directors for the five years immediately prior to the date of application;
- E. A statement from the applicant, or from all partners, or from all corporate officers and directors whether any such person or entity, in previously operating in this or any other 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 of the business activity subjected to the suspension or revocation;

- F. A statement of the business, occupation or employment of the applicant, or of all partners, or of all corporate officers and directors for the three years immediately preceding the date of the application;
- G. A statement from the applicant, or from each partner, or from each corporate officer and director, that each such person has not been convicted of, released from confinement for conviction of, or diverted from prosecution on:
  - 1. A felony criminal act within five years immediately preceding the application, or
  - 2. A misdemeanor criminal act involving sexual offenses, prostitution, promotion of prostitution, sexual abuse of a child, pornography or related offenses as defined in the Kansas Criminal Code, or involved controlled substances or illegal drugs or narcotics offenses as defined in the Kansas Controlled Substances Act or other statutes or ordinances within two years immediately preceding the application.

The statement shall also indicate the applicant, each partner or each corporation officer and director has not been convicted of a municipal ordinance violation, within two years immediately preceding the application where such municipal ordinance violation involved sexual offenses, indecent exposure, prostitution or sale of controlled substances or illegal drugs or narcotics;

- H. A full set of fingerprints and a photograph, to be taken by the public safety department, of the applicant, or of all partners if the applicant is a partnership, or of all corporation officers and directors if the applicant is a corporation;
- I. If the applicant is a corporation, a current certificate of registration issued by the Kansas Secretary of State;
- J. A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of this article regulating adult entertainment businesses;
- K. Provision of a statement, acknowledged by a notary public, of the owner of the property giving written consent for the use of the property by an adult entertainment business.
- L. Failure to provide the information and documentation required by this subsection shall constitute an incomplete application which shall not be processed. (Ord. 1943, Sec. 1)

208.2 Adult Entertainment Manager, Server or Entertainers License. All persons desiring to secure a license under the provisions of this article to be an adult entertainment manager, server or entertainer shall make a verified application with the city clerk. All applications shall be submitted in the name of the person proposing to be an adult entertainment manager, server or entertainer. All applications shall be submitted on a form supplied by the city clerk and shall require the following information:

- A. The applicant's name, home address, home telephone number, date and place of birth, social security number and any stage names, aliases or nicknames used in entertaining;
- B. The name and address of each adult entertainment business where the applicant intends to work as a manager, server or entertainer, and an intent to hire statement from an adult entertainment business that is licensed, or that has applied for a license, under the provisions of this article, indicating the adult entertainment business intends to hire the applicant to manage, serve or entertain on the premises;
- C. A statement from the applicant that the applicant has not been convicted of, released from confinement for conviction of, or diverted from prosecution on:
  - 1. A felony criminal act within four years immediately preceding the application, or
  - 2. A misdemeanor criminal act involving sexual offenses, prostitution, promotion of prostitution, sexual abuse of a child, pornography or related offenses as defined in the Kansas Criminal Code, or involved controlled substances or illegal drugs or narcotics offenses as defined in the Kansas Controlled Substances Act or other statutes or ordinances, within two years immediately preceding the application.
  - 3. The statement shall also indicate the applicant 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, indecent exposure, prostitution or sale of controlled substances or illegal drugs or narcotics;
- D. A full set of fingerprints and a photograph, to be taken by the public safety department, of the applicant;
- E. The applicant shall present to the city clerk who shall copy documentation that the applicant has attained the age of eighteen years at the time the application is submitted. Any of the following shall be accepted as documentation of age:
  - 1. A motor vehicle operator's license issued by any state, bearing the

applicant's photograph and date of birth.

2. A state-issued identification card bearing the applicant's photograph and date of birth,
3. An official and valid passport issued by the United States of America,
4. An immigration card issued by the United States of America,
5. Any other form of picture identification issued by a governmental entity that is deemed reliable by the city clerk, or
6. Any other form of identification that is deemed reliable by the city clerk.

F. Failure to provide the information required by this subsection shall constitute an incomplete application and shall not be processed. (Ord. 1943, Sec. 1)

208.3 Application Processing. Upon receipt of a complete application for an adult entertainment business or an adult entertainment business manager, server or entertainer license, the city clerk shall immediately transmit one copy of the application to the public safety director for investigation of the application. In addition, the city clerk shall transmit a copy of the application to the community development director, codes administrator, and the fire marshal. It shall be the duty of the public safety director to investigate such application to determine whether the applicant is qualified to be issued the license applied for. The public safety director shall report the results of the investigation to the city clerk not later than ten working days from the date the application is received by the city clerk. It shall be the duty of the community development director, codes administrator and the fire marshal to determine whether the structure where the adult entertainment business will be conducted complies with the requirements and meets the standards of the location section of this ordinance, and applicable health, zoning, building code, fire and property maintenance ordinances of the city. The community development director, codes administrator and the fire marshal 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. Upon receipt of the reports from the public safety director, community development director, codes administrator and fire marshal, 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 entertainment business and for an adult entertainment business manager, server or entertainment license shall be approved or disapproved within forty-five 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. (Ord. 1943, Sec. 1)



5-209 EXAMINATION OF APPLICATION--ISSUANCE OF LICENSE - DISAPPROVAL.

- 209.1 If the applicant for an adult entertainment business or an adult entertainment 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, approve a license as provided for by law, provided a license shall not be approved to any person ineligible pursuant to Section 5-210.
- 209.2 The record of the governing body shall show the action taken on the application, and if the license is approved 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.
- 209.3 If an application for a license is disapproved, the applicant shall be immediately notified by registered or certified mail to the applicant's address as shown on the application, and the notification shall state the basis for such disapproval. (Ord. 1943, Sec. 1)

5-210 LICENSE - INELGIBILITY AND DISQUALIFICATION. No person is eligible nor shall a license be issued to:

- 210.1 An adult entertainment business applicant if one or more of the following conditions exist:
- A. The applicant's premises is located within five hundred feet of any school, church, licensed child care center, park, or single-family residential zoning district (including mobile home zoning district). Measurements shall be made in a straight line from the nearest point on the property line of such school, church, licensed day care center, or single-family residential zoning district;
  - B. The applicant's premises is located within five hundred feet of any other adult entertainment use for which there is a license issued. Measurement shall be made in a straight line without regard to intervening structures or objects, from the nearest point of any exterior wall of the building housing the adult entertainment to the nearest point of the exterior walls of the building housing such other adult entertainment businesses;
  - C. The applicant's premises is located in any zoning district other than the commercial zoning district (C-3);
  - D. The applicant failed to supply all of the information requested on the application;

- E. The applicant gave materially false, fraudulent or untruthful information on the application;
- F. The applicant's proposed premises does not comply with or meet the requirements of the applicable health, zoning, building code, fire and property maintenance ordinance of the city; provided, that upon a showing that the premises meets such requirements and that the applicant is otherwise qualified, the application shall be subject to reconsideration by the governing body;
- G. The applicant has had an adult entertainment license revoked or suspended in this or any other city or county during the past five years.

210.2 An applicant for an adult entertainment manager, server or entertainer license if one or more of the following conditions exists:

- A. The employer for who the applicant intends to work does not have or is ineligible to receive an adult entertainment business license for any of the reasons stated in subsection 201.1 of this section;
- B. The applicant has been convicted, released from incarceration for conviction, or diverted on any of the crimes set forth in Section 5-208.1(G) during the time period set forth in said section;
- C. The applicant failed to provide all of the information required on the application;
- D. The applicant gave materially false, fraudulent or untruthful information on the application;
- E. The applicant has had an adult entertainment manager, server or entertainer license revoked or suspended in this or any other city or county during the past five years. (Ord. 1943, Sec. 1)

5-211 STANDARD OF CONDUCT. The following standards of conduct shall be adhered to by all adult entertainment business licensees, their employees, all adult entertainment managers, servers, entertainers and patrons of adult entertainment businesses, while on or about the premises of the business:

211.1 Age Restriction. Only persons eighteen years of age or older shall be permitted on the premises of any adult entertainment business.

211.2 Exterior Observation. The premises of all adult entertainment businesses will be so constructed to include an anteroom, foyer, partition or other physical barrier on all customer entrances that will insure observation of the interior of the premises is not observable from the exterior of the building. 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. Any change to the exterior of the

building will require site plan approval by the planning commission.

- 211.3 Exterior Display. All adult entertainment businesses shall comply with the following sign requirements in addition to the requirements of the Gardner Zoning Ordinance. No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the exterior of the building. Neither the performance nor any photograph, drawing, sketch or other pictorial or graphic representation of a performance displaying any portion of the breasts below the top of the areola or any portion of the pubic hair, buttocks, genitals and/or anus may be visible outside of the adult entertainment business. Window areas shall not be covered or made opaque in any way. No signs shall be placed in any window. A one-square-foot sign may be placed on the door to state hours of operation and admittance to adults only.
- 211.4 Nudity Prohibited. No employee, server or entertainer in an adult entertainment business shall appear nude, unclothed, in less than opaque attire or in any fashion that exposes to view any specified anatomical area.
- 211.5 Certain Acts Prohibited.
- A. No employee, server or entertainer shall perform any specified sexual activities as defined in this article, wear or use any device or covering exposed to view which simulates 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.
  - B. No employee, server, entertainer or patron of an adult entertainment business shall knowingly touch, fondle or caress any specified anatomical area of such employee, server, entertainer or patron 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.
  - C. No employee, server or entertainer of an adult entertainment 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.
  - D. No adult entertainer shall solicit, demand or receive a payment or gratuity from any patron or customer for any act prohibited by this article and no adult entertainer shall receive any payment or gratuity from any customer for any entertainment except as follows:
    - 1. While such entertainer is on the stage a customer or patron may place such payment or gratuity into a box affixed to the stage; or

2. While such entertainer is not on the stage and is clothed so as to not expose to view any specified anatomical area, a customer or patron may either place such payment or gratuity into the entertainer's hand or under a leg garter worn by such entertainer at least four inches below the bottom of the pubic region.
- E. No owner, operator, manager or other person in charge of the premises of an adult entertainment premises shall:
1. Knowingly permit alcoholic liquor or cereal malt beverages to be brought upon or consumed on the premises;
  2. Knowingly allow or permit the sale, distribution, delivery or consumption of any controlled substance or illegal drug or narcotic on the premises;
  3. Knowingly allow or permit any person under the age of eighteen years of age to be in or upon the premises;
  4. Knowingly allow or permit any act of prostitution or patronizing prostitution on the premises; or
  5. Knowingly allow or permit a violation of this article or any other city ordinance, provision or state law.

211.6 SIGNS REQUIRED. All adult entertainment businesses 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, which shall read as follows:

**THIS ADULT ENTERTAINMENT BUSINESS  
IS REGULATED AND LICENSED  
BY THE CITY OF GARDNER, 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 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 and/or genitals.

\*Not permitted to demand or collect any payment or gratuity from any customer for entertainment, except as follows:

While such entertainer is on the stage, by placing such payment or gratuity into a box affixed to the stage, or

While such entertainer is not on the stage, by either placing such payment or gratuity into the entertainer's hand, or under the entertainer's leg garter.

**CUSTOMER'S ARE:**

\*Not permitted to be upon 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.

211.7 LIGHTING REQUIRED. The premises of all adult entertainment businesses shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than 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.

211.8 CLOSED BOOTHS OR ROOMS PROHIBITED. The premises of all adult entertainment businesses shall be physically arranged in such manner that the entire interior portion of any booths, cubicles, rooms or stalls is visible from a common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, drapes or any other obstruction whatsoever.

211.9 VENTILATION AND SANITATION REQUIREMENTS. The premises of all adult entertainment businesses shall be kept in a sanitary condition. Separate dressing rooms and rest-rooms for men and women shall at all times be maintained and kept in a sanitary condition.

211.10 HOURS OF OPERATION. No adult entertainment business may be open or in use between the hours of two a.m. and nine a.m. on any day other than a Sunday when business may not be open between the hours of two a.m. and twelve noon. (Ord. 1943, Sec. 1)

5-212 LICENSE--POSTING OR DISPLAY.

212.1 Every person, corporation, partnership or association licensed under this article as an adult entertainment business shall post such license in a conspicuous place and manner on the adult entertainment facility premises.

212.2 Every person holding an adult entertainment server, manager or entertainer license shall post his or her license in his or her work area on the adult entertainment facility premises so it shall be readily available for inspection by city authorities responsible for enforcement of this article. (Ord. 1943, Sec. 1)

5-213 MANAGER ON PREMISES.

213.1 At all times the premises is open for business, an adult entertainment manager shall be on duty at an adult entertainment business. The name of the manager on duty shall be prominently posted during business hours.

213.2 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 entertainer's license or an adult entertainment server's license and that such licenses are prominently posted. (Ord. 1943, Sec. 1)

5-214 INSPECTORS AND INSPECTIONS. All adult entertainment businesses shall permit representatives of the public safety 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 application regulations and laws. (Ord. 1943, Sec. 1)

5-215 SUSPENSION, REVOCATION OR NONRENEWAL OF LICENSE.

215.1 Whenever the city clerk has information that:

- A. The owner or operator of an adult entertainment business or a holder of an adult entertainment manager, server or entertainer license has violated, or knowingly allowed or permitted the violation of, any of the provisions of this article; or
- B. There have been recurrent violations of provisions of this article that have occurred under such circumstances that the owner or operator of an adult entertainment business knew or should have known that such violations were committed; or
- C. The adult entertainment business license or the adult entertainment manager, server or entertainer license was obtained through false statements in the application for such license, or renewal thereof; or
- D. The adult entertainment business licensee or the adult entertainment 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 entertainment business license has become disqualified from having a license by a conviction as provided in Section 5-208.1(G); or
- F. The holder of an adult entertainment manager, server or entertainer license has become disqualified from having a license by a conviction as provided in Section 5-208.2(C).

215.2 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:

- A. Suspend the license for up to ninety days;
- B. Revoke the license for the remainder of the license year;
- C. Place the license holder on administrative probation for a period of up to one year, on the condition that no further violations of this article occur during the period of probation. If a violation does occur and after a hearing the violation is determined to have actually occurred, the license shall be revoked for the remainder of the license year. (Ord. 1943, Sec. 1)

#### 5-216 RENEWAL.

216.1 A license may be renewed by making application to the city clerk on application forms provided for that purpose. Licenses shall expire on December 31<sup>st</sup> of each calendar year, and renewal applications for such licenses shall be submitted by October 31<sup>st</sup> of each calendar year.

216.2 Upon timely application and review as provided for a new license, a license issued under the provisions of this article shall be renewed by issuance of a new license in the manner provided in this article.

216.3 If the application for renewal of a license is not made during the time provided in subsection (A) of this section, the expiration of such license shall not be affected, and a new application shall be required. (Ord. 1943, Sec. 1)

5-217 VIOLATION--PENALTY. It is unlawful for any person to violate any of the provisions of this article. Upon conviction thereof, such person shall be fined not less than one dollar nor more than five hundred dollars or be punished by incarceration for up to six months, or by both fine and incarceration. Each day's violation of, or failure, refusal or neglect to comply with, any provision of this article shall constitute a separate and distinct offense. (Ord. 1943, Sec. 1)

5-218 SEVERABILITY. If any section, subsection, paragraph, sentence clause or phrase in this article, or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decisions shall not affect the validity or the effectiveness of the remaining portions of this article, or any part thereof. (Ord. 1943, Sec. 1)

### Article 3. Massage Establishments.

5-301 DEFINITIONS. Words and terms used in this article shall have meanings as follow unless the context otherwise requires:

- 301.1 BATHHOUSE refers to the occupation of maintaining and operating for compensation any services of baths of all kinds, including all forms and methods of hydrotherapy.
- 301.2 BODY-PAINTING STUDIOS means the occupation of maintaining, operating and offering any services for compensation of applying paint or other substance, whether transparent or nontransparent, to or on the human body when such body is wholly or partially nude, by any means of application, technique, or process.
- 301.3 EMPLOYEE means 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.
- 301.4 MASSAGE means 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, liniment, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.
- 301.5 MASSAGE ESTABLISHMENT means 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 in subsection D of this section for compensation.
- 301.6 MASSEUR OR MASSEUSE means any person who, for any consideration whatsoever, engages in the practice of massage as defined in this article.
- 301.7 MODELING STUDIO refers to 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 photography, 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 nontransparent.
- 301.8 PATRON means any person over eighteen years of age who utilizes or receives the services of any establishment subject to the provisions of this article and under such circumstances that it is reasonably expected that he or she will pay money or give any other consideration therefor.
- 301.9 RECOGNIZED SCHOOL means 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 course of study or learning.

301.10 SPECIFIED ANATOMICAL AREAS means human genitals, pubic region; or buttock; or female breast or breasts or any combination of the foregoing. (Ord. 1943, Sec. 2)

5-302 PERMIT - REQUIRED. No person, firm, partnership, association or corporation shall operate a bathhouse, massage establishment, body painting studio or modeling studio as defined in this article, without first having obtained a permit therefor issued by the governing body of this city. 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 1<sup>st</sup> to December 31<sup>st</sup> of each calendar year. (Ord. 1943, Sec. 2)

5-303 PERMIT - APPLICATION - FEES.

303.1 Every applicant for a permit to maintain, operate or conduct any such establishment shall file an application with the city clerk and pay an annual filing fee to the city clerk of two hundred dollars which shall not be refundable or prorated.

303.2 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 name, address, and telephone number of each applicant, including stockholders holding more than ten percent of the stock of the corporation, any partner, when a partnership is involved, and any manager.

303.3 In addition to the foregoing, any applicant for a permit shall furnish the following information:

- A. Written proof that the applicant is at least eighteen years old;
- 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;
- D. The massage, bathhouse, modeling studio, and body painting studio business license history of the applicant; 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 or occupation subsequent to such action of suspension or revocation;
- E. Any criminal convictions, except minor traffic violations, fully disclosing the jurisdiction in which convicted and the offense for which convicted and the circumstances thereof;
- F. In the case of a bathhouse, massage establishment, modeling studio, or body

painting studio application, each person shall submit a health certificate from a duly licensed physician stating that the applicant has within thirty days prior thereto, been examined and found to be free of any contagious or communicable disease;

- G. Authorization for the city, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and qualifications of the applicants for the permit. (Ord. 1943, Sec. 2)

#### 5-304 PERMIT - ISSUANCE.

304.1 After the filing of an application in the proper form, the governing body shall examine the application, and after such examination, shall issue a permit for a massage establishment, modeling studio, or body painting studio, unless the governing body finds that:

- 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, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the city's building, zoning and health regulations.
- C. The applicant, if an individual; or any of the stockholders holding more than ten percent of the stock of the corporation, 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, have been convicted of any crime which would make any person ineligible to receive a permit under this article, unless such conviction occurred at least five years prior to the date of the application;
- 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, bathhouse, body painting studio, or modeling studio as defined in this article, 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.

304.2 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. (Ord. 1943, Sec. 2)

5-305 PERMIT—SUSPENSION OR REVOCATION. Rules and regulations pertaining to revocation and suspension of business permits shall be as follows:

305.1 Any permit issued for a massage establishment, bathhouse, modeling studio or body painting studio may be revoked or suspended by the governing body after a public hearing before the governing body where it is found that any of the provisions of this article are violated or where the permittee or any employee of the permittee, including a masseur or masseuse, has been convicted of any offense found in Section 5-308.1, and the permittee has actual or constructive knowledge of the violation or conviction or in any case, where the permittee or licensee refuses to permit any duly authorized public safety officer of the city or health inspector of the county department of health to inspect the premises or the operations therein.

305.2 The governing body, before revoking or suspending any permit, shall give the permittee at least ten days' written notice of the charges against him 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. (Ord. 1943, Sec. 2)

5-306 EMPLOYEE PERMIT - REQUIRED. No person shall be employed as an attendant, masseur, masseuse, model or as an employee of any kind of an establishment subject to the provisions of this article unless he or she has a valid employee's permit issued by the city pursuant to the provisions of this article. (Ord. 1943, Sec. 2)

5-307 EMPLOYEE PERMIT - APPLICATION - FEES.

307.1 Any person employed to perform any services in a massage establishment, bathhouse, modeling studio or body painting studio, as defined this article, shall file a written application with the city clerk and pay an annual filing fee to the city clerk of twenty-five dollars which shall not be refundable or prorated.

307.2 The application for an employee permit shall contain the following:

A. Name, address and telephone number;

B. Two portrait photographs at least two inches by two inches;

C. Applicant's weight, height, color of hair and eyes, and fingerprints;

- D. Written evidence that the applicant is at least eighteen years old;
- E. Business, occupation, or employment of the applicant for the three years immediately preceding the date of application;
- F. Whether such person has ever been convicted of any crime except minor traffic violations; if any person mentioned in this subsection has been so convicted, a statement must be made giving the place and court in which the conviction was obtained and the sentence imposed as a result of such conviction;
- G. The position or function the applicant is being hired to perform within such establishment;
- H. A statement in writing from a licensed physician in the state that he or she has examined the applicant and believes the applicant to be free of all communicable diseases;
- I. Authorization for the city, its agents, and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and qualifications of the applicant for the permit. (Ord. 1943, Sec. 2)

5-308 EMPLOYEE PERMIT - ISSUANCE. The city clerk shall issue an employee permit within twenty-one days following application unless he or she finds that:

- 308.1 The applicant for the employee permit has been convicted of:
  - A. A felony,
  - B. An offense involving sexual misconduct with children,
  - C. Obscenity, keeping or residing in a house of ill fame, solicitation of a lewd or unlawful act, prostitution or pandering;
- 308.2 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;
- 308.3 That 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;
- 308.4 In the case of a masseur or masseuse that the applicant has not successfully completed a resident course of study or learning from a recognized school under the provisions of this article. (Ord. 1943, Sec. 2)

5-309 EMPLOYEE PERMIT - REVOCATION. Employee permits may be revoked as follows:

309.1 An employee permit issued by the city clerk shall be revoked or suspended after a public hearing before the city clerk or the city clerk's designated representative, where it appears that the employee has been convicted of any offense enumerated in Section 5-308.

309.2 The city clerk, before revoking or suspending any employee permit, shall give the employee at least ten days' written notice of the examination into his or her conviction record and the opportunity for a public hearing before the city clerk or the city clerk's designated representative, at which hearing the relevant facts regarding the occurrence of the conviction shall be determined. (Ord. 1943, Sec. 2)

5-310 PERMITS - TRANSFER - OTHER LICENSES AND FEES. Rules and regulations pertaining to the transfer of permits, other licenses and fees shall be as follows:

310.1 No massage business, bathhouse, modeling studio, body painting studio, or employee permits are transferable, separate or divisible, and such authority as a permit confers shall be conferred only on the permittee named therein.

310.2 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 other ordinance of this city. (Ord. 1943, Sec. 2)

5-311 APPLICABILITY TO EXISTING BUSINESSES. Applicability to existing businesses shall be as follows:

311.1 The operators of any existing massage establishment, bathhouse, modeling studio or body painting studio are required to comply with all provisions of this article within ninety days of the effective date of the ordinance codified in this article.

311.2 Applicants for a masseur or masseuse permit may substitute one year's 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. (Ord. 1943, Sec. 2)

5-312 FACILITIES NECESSARY.

312.1 No permit to conduct a massage establishment, bathhouse, modeling studio or body painting studio shall be issued unless an inspection by the director of the county department of health or his or her authorized representative reveals that the establishment complies with each of 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'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 a 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 conformance with applicable city, state and federal law.
- C. Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or washbasins shall be provided with soap in a dispenser and with sanitary towels.

312.2 The director of the county department of health shall certify that the proposed business establishment complies with all of the requirements of this article and shall give or send such certification to the city clerk; provided, that nothing contained in this section shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof. (Ord. 1943, Sec. 2)

#### 5-313 INSPECTIONS—IMMEDIATE RIGHT OF ENTRY.

313.1 Authorized city officials and the county department of health may from time to time make an inspection of each permitted establishment in this city for the purpose of determining that the provisions of this article are complied with.

313.2 Such inspections shall be made at reasonable times and in a reasonable manner.

313.3 It is unlawful for any permittee to fail to allow such inspection officer immediate access to the premises or to hinder such officer in any manner; provided, that 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. (Ord. 1943, Sec. 2)

5-314 EDUCATION REQUIREMENTS-MASSEUR OR MASSEUSE. Any person, including an applicant for a massage establishment permit, who engages or intends to engage in the practice of massage as defined in this article, 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 seventy hours of instruction in the theory, method or practice of massage. (Ord. 1943, Sec. 2)

5-315 IDENTIFICATION CARDS.

- 315.1 All or any employees issued a permit by the city clerk 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.
- 315.2 Such identification cards shall be laminated to prevent alteration; provided, that 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. (Ord. 1943, Sec. 2)

5-316 OPERATION REGULATIONS.

- 316.1 The operation of any bathhouse, massage establishment, modeling studio, or body painting studio shall be subject to the following regulations:
- A. Hours. Such business shall be closed and operations shall cease between the hours of twelve midnight and six a.m. each day;
  - B. Separation of Sexes. It is unlawful for customers of opposite sex to receive treatment in the same room or the same quarters at the same time;
  - C. Danger to Safety and Health. No service shall be given which is clearly dangerous or harmful in the opinion of the director of the county department of health to the safety or health of any person, and after such notice in writing to the licensee from such director;
  - D. Alcoholic Beverages. No alcoholic beverages or cereal malt beverages, nor the consumption thereof, shall be allowed, permitted, or suffered to be done in or upon any premises permitted under the provisions of this article.
  - E. Conduct of Premises. 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 any employees which constitute a violation of the provisions of this article; 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 same;
  - F. Every portion of a permitted establishment, including appliances, and personnel shall be kept clean and operated in a sanitary condition;
  - G. All employees shall be clean and wear clean outer garments which use is restricted to the permitted establishment; provisions for a separate dressing room for each sex must be available on the premises with individual lockers for

each employee; doors to such dressing rooms shall open inward and shall be self-closing;

- H. 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;
- I. The specified anatomical areas 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;
- J. 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;
- K. 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.

316.2 The city clerk or the city clerk's designated representative may, after a public hearing make and enforce reasonable rules and regulations not in conflict with, but to carry out, the intent of this article. (Ord. 1943, Sec. 2)

5-317 RESTRICTION OF BUSINESS TO PREMISES. All business or activity provided for under this article shall be conducted and performed on the respective premises; provided, that bathhouse 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; provided further, that all such services so rendered shall have received the prior approval of the city clerk or the city clerk's authorized representatives. (Ord. 1943, Sec. 2)

5-318 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 provisions of this article. The violation of any such provisions by any agent or employee of the permittee shall constitute a violation by the permittee. (Ord. 1943, Sec. 2)

5-319 EMPLOYEE AND PATRON REGISTERS. Current and daily registers shall be kept of employee and patrons as follows:

- 319.1 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 of the county department of health or by any authorized city official.

319.2 Every person who engages in or conducts a permitted establishment shall keep a daily register, and hours of arrival and, if applicable, the rooms or cubicles assigned. The daily register shall at all times during business hours be subject to inspection by health officials of the county department of health and authorized city officials and shall be kept on file for one year. (Ord. 1943, Sec. 2)

5-320 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 5-301, or that employees, masseurs or masseuses are dressed in any manner other than described in Section 5-316, nor shall any establishment indicate in the text of such advertising that any service is available other than those services described in Section 5-301. (Ord. 1943, Sec. 2)

5-321 UNDER EIGHTEEN YEARS - PROHIBITED ON PREMISES. Persons under the age of eighteen years shall be prohibited on the premises. No person shall permit any person under the age of eighteen years old 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. (Ord. 1943, Sec. 2)

5-322 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 any such establishment, nor shall this article apply to barbers or cosmetologists lawfully carrying out their particular profession or business and holding a valid, unrevoked license or certificate of registration issued by this state; nor shall this article apply to services of baths or hydrotherapy as such services are subordinate, incidental or accessories to some other business with no separate or distinct charge being made for such services. (Ord. 1943, Sec. 2)

5-323 VIOLATION - PENALTY. Any person, firm, partnership, association or corporation convicted of violating any of the provisions of this article shall be deemed guilty of a public offense and shall be fined in any sum not to exceed five hundred dollars, or be imprisoned not to exceed six months, or be both so fined and imprisoned. (Ord. 1943, Sec. 2)