**TITLE XI: BUSINESS REGULATIONS**

Chapter

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**CHAPTER** **110:** **LICENSING CONDITIONS**

Section

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**110.01 LICENSE REQUIRED FOR CERTAIN BUSINESSES.**

No person shall engage in the following businesses within the city without first having secured a license to operate:

(A) Junk dealer;

(B) Operator of junk yard;

(C) Transient merchant; and

(D) Pawn broker.

(Ord. 91‑1, passed 8‑5‑1991) Penalty, see  10.99

**110.02 LICENSE APPLICATION.**

(A) Any person, firm or corporation desiring to operate any of the businesses above described shall make application in writing to the City Council, which application shall contain the following information:

(1) Name of applicant;

(2) Address, current residence of the applicant and the premises where the business is or will be located or conducted; and

(3) The nature and extent of the proposed business operation.

(B) Upon review of the application, the City Council may, by majority vote, grant such license attaching thereto such conditions and terms as are reasonable for the safe and sanitary operation of such business and the comfort, health, repose and safety of the public and thereupon such license shall be issued by the Finance Officer. The City Council shall have the right to revoke any license granted under this chapter if it determines upon investigation and after hearing that any term or condition of the license, or any law or ordinance governing such business has been violated; and, providing that, notice of the hearing shall be served upon the licensee at least five days before the hearing either by personal service or by mailing a copy of the same to the person at the address given in the application.

(Ord. 91‑1, passed 8‑5‑1991)

**110.03 LICENSE CONDITIONS.**

The following conditions may be a part of each license issued hereunder.

(A) No junk dealer shall carry on a business at or from any other place than the premises designated and described in the application and license and all junk of any kind described shall be kept wholly within the boundaries of such premises.

(B) It shall be unlawful for any junk dealer to burn junk or refuse on the premises covered by said license or any other place within the city.

(C) The wrecking and dismantling of old cars for the purpose of securing parts shall be done wholly inside of the buildings occupied by said junk dealer or within the enclosure hereinafter provided for and shall not in any event be done upon the highway, street or alleys of the city or outside the premises described in the application and license.

(D) In all cases where the business of a junk dealer is to be conducted in a vacant lot or lots, or in a partially enclosed structure, the Council shall have the right to inspect and determine whether or not the appearance of the lot or lots distract from the sightliness of the area in which such premises may be located and, in the event the Council finds the appearance of the lot or lots does distract from the appearance of the area, no license shall be granted until such lot or lots have an enclosure with a tight, well‑constructed and well‑painted fence of at least seven feet in height, or of a sufficient height to cut off the public view. After the construction of such fence, it shall be at all times suitable maintained and kept in repair by the licensee. In no event shall any such licensee permit any advertising matter of any sort to be placed upon said fence; except that, such licensee may use, but not to exceed 50 square feet of said fence, for the purpose of advertising his or her business.

(Ord. 91‑1, passed 8‑5‑1991) Penalty, see  10.99

**110.04 LICENSING AND BONDING.**

The provisions of this chapter with reference to transient merchants shall not apply to traveling salespersons doing business exclusively with retailers, merchants, manufacturers, jobbers or with public officials, nor to the distribution or sale of newspapers, nor to the distribution or sale of personal property where the proceeds are to be used exclusively for religious, charitable or benevolent purposes, nor to the distribution or sale of religious, political, economic or educational tracts, pamphlets or periodicals, where the proceeds are to be used exclusively for religious, charitable or benevolent purposes.

(Ord. 91‑1, passed 8‑5‑1991)

**CHAPTER 111: ALCOHOLIC BEVERAGES**

Section

111.01 Sunday sales

**111.01 SUNDAY SALES.**

Any alcoholic beverage licensee, licensed under subd. (3) of SDCL  35‑4‑2, may sell or allow to be sold alcoholic beverages on Sunday.

(Ord. 91‑1, passed 8‑5‑1991)

**CHAPTER 112: CABLE COMMUNICATION FRANCHISES**

Section

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***GENERAL PROVISIONS***

**112.01 SHORT TITLE.**

This chapter shall be known and cited as the Cable Communications Regulatory Ordinance.

(Ord. 2011‑03, passed 7‑6-2011)

**112.02 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When not inconsistent with the context, words in the singular number include the plural number. The word shall is always mandatory and not merely directory. The word may is directory and discretionary and not mandatory.

***ADMINISTRATOR.*** The Mayor or similar chief administrator of the city as may be elected or appointed.

***APPLICANT.*** Any multichannel video program distributor that submits an application to the city in accordance with  112.21 of this chapter.

***BASIC CABLE SERVICE.*** Any service tier which includes the lawful retransmission of local television broadcast signals and any public, educational and governmental access programming required by the franchise to be carried on the basic tier. ***BASIC CABLE SERVICE***, as defined herein, shall not be inconsistent with 47 U.S.C.  543(b)(7).

***CABLE PROGRAMMING SERVICE.***

(1) Any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than:

(a) Video programming carried on the basic service tier;

(b) Video programming offered on a pay‑per‑channel or pay‑per‑program basis; or

(c) A combination of multiple channels of pay‑per‑channel or pay‑per‑program video programming offered on a multiplexed or time‑shifted basis so long as the combined service:

1. Consists of commonly identified video programming; and

2. Is not bundled with any regulated tier of service.

(2) ***CABLE PROGRAMMING SERVICE*** as defined herein shall not be inconsistent with the definition as set forth in 47 U.S.C.  543(l)(2) and 47 C.F.R.  76.901(b) (1993).

***CABLE SERVICE.*** The one‑way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

***CABLE SYSTEM*** or ***SYSTEM.*** The meaning ascribed to it in applicable federal law.

***CITY.*** The City of Kimball.

***CITY COUNCIL.*** The Kimball City Council.

***FCC.*** The Federal Communications Commission.

***FRANCHISE.*** An initial authorization, or renewal thereof issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a cable system or other MVPD facility.

***FRANCHISE AREA.*** The area within the legal boundaries of the city.

***GRANTEE.*** The person who is granted a franchise in the city pursuant to this chapter, its agents and employees, lawful successors, transferees or assignees.

***GROSS REVENUE.***

(1) Only that monthly revenue received from basic cable service, cable programming service and pay television directly by the grantee from the operation of its system within franchise area.

(2) The term ***GROSS REVENUES*** shall not include any other revenue billed or received by the grantee including, but not limited to, installation fees, franchise fees, late fees, any fees itemized and passed through as a result of franchise imposed requirements or any taxes or fees on services furnished by the grantee imposed directly on any subscriber or user by any municipality, state or other governmental unit and collected by the grantee for such governmental unit.

***MULTICHANNEL VIDEO PROGRAM DISTRIBUTOR*** or ***MVPD.*** A person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, an OVS provider or a television receive‑only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming.

***OPEN VIDEO SERVICES*** or ***OVS.*** Any video programming services provided to any person by a franchisee certified by the FCC to operate an open video system pursuant to 47 U.S.C.  573, as may be amended, regardless of the facilities used.

***PAY TELEVISION.*** The delivery over the system of pay‑per‑channel or pay‑per‑program audio-visual signals to subscribers for a fee or charge, in addition to the charge for basic cable service or cable programming services.

***PERSON.*** Any person, firm, partnership, association, corporation, company or other legal entity.

***STANDARD INSTALLATION.*** Any residential installation which can be completed using a drop of 150 feet or less.

***STREET.*** The surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, path, court, sidewalk, parkway, drive or any easement or right‑of‑way now or hereafter held by the city.

***SUBSCRIBER.*** Any person who lawfully receives cable service.

***VIDEO PROGRAMMING.*** Programming provided by, or generally considered comparable to programming provided by a television broadcast station.

(Ord. 2011‑03, passed 7‑6-2011)

***FRANCHISE PROVISIONS***

**112.15 FRANCHISE REQUIRED.**

It shall be unlawful for any person to construct, operate or maintain a cable system or MVPD facility or to provide cable service, video programming or other MVPD services, including OVS, in the city without a franchise authorizing the same, unless applicable federal or state law prohibits the citys enforcement of such a requirement.

(Ord. 2011‑03, passed 7‑6-2011) Penalty, see  10.99

**112.16 GRANT OF FRANCHISE.**

Any franchise that is granted in the city shall be subject to the terms and conditions contained herein.

(Ord. 2011‑03, passed 7‑6-2011)

**112.17 GRANT OF NON-EXCLUSIVE AUTHORITY.**

(A) A grantee shall have the right and privilege to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, public ways and public places now laid out or dedicated and all extensions thereof, and additions thereto in franchise area, poles, wires, cables, underground conduits, manholes and other television conductors and fixtures necessary for the maintenance and operation in franchise area of a cable system.

(B) A franchise shall be non-exclusive, and the city reserves the right to grant a similar use of said streets to any MVPD at any time; provided, however, that, all franchises shall contain the same terms and conditions as this franchise in order that one MVPD is not granted a competitive advantage over another.

(C) (1) In the event a MVPD commences operation without a franchise or is granted a franchise to operate by the city, and the terms and conditions of which do not comply with this chapter, then any other grantees shall have the right either:

(a) To opt in to the competitors franchise by providing ten days prior written notice to the city; or

(b) To petition the city for modifications to its franchise, in which case the city shall work in good faith with the affected grantee(s) to review and adopt modifications which the grantee(s) deem necessary, review and approval by the city shall not be unreasonably withheld, delayed or conditioned.

(2) Before granting an additional franchise, the city shall give written notice to all grantees of any new application, identifying the applicant for such additional franchise and providing at least 30 days prior notice of the date, time and place at which the city shall consider and/or determine whether such additional franchise should be granted.

(D) Every franchise shall apply to the entire service area of the city, as it exists now or may later be configured.

(E) In the event the city grants one or more additional franchises or one or more non‑franchised MVPDs commence providing cable service in the city, a grantee shall have the right to terminate or reduce the term of this franchise in its sole discretion.

(F) Neither the city nor grantee(s) may unilaterally alter the material rights and obligations set forth in this franchise. In the event of a conflict between any other ordinance and this franchise, the franchise shall control.

(Ord. 2011‑03, passed 7‑6-2011)

**112.18 FRANCHISE TERM.**

A franchise shall be in effect for a period of up to 20 years from the effective date of the agreement, unless renewed, revoked or terminated sooner as herein provided.

(Ord. 2011‑03, passed 7‑6-2011)

**112.19 TERRITORIAL AREA INVOLVED.**

A franchise shall be granted for the corporate boundaries of the city, as it exists from time to time. In the event of annexation by the city, or as development occurs, any new territory shall become part of the area covered; provided, however, that, a grantee(s) shall not be required to extend service beyond its present system boundaries unless there is a minimum of 25 homes per cable mile as measured from the last fiber node or terminating amplifier.

(Ord. 2011‑03, passed 7‑6-2011)

**112.20 WRITTEN NOTICE.**

All notices, reports or demands required to be given in writing under this chapter shall be deemed to be given when delivered personally to any officer of the grantee or the citys administrator of this chapter as specified in a franchise.

(Ord. 2011‑03, passed 7‑6-2011)

**112.21 APPLICATION FOR NEW FRANCHISE.**

(A) An application for an initial franchise to provide video programming shall be in writing on a form provided by the city which shall contain, where applicable:

(1) The applicants name;

(2) The business address of the applicant;

(3) The name and contact information of a designated contact for the applicant;

(4) A description of the geographic area that the applicant proposes to serve;

(5) The term of the franchise proposed by the applicant;

(6) Whether the applicant holds an existing authorization to access the public rights‑of‑way in the subject franchise service area as described under para. (b)(5) of 47 C.F.R.  76.41;

(7) Any additional information required by applicable state or local laws, if any;

(8) The signature of an authorized officer of the applicant acknowledging the certification of the contents of the application and the applicants agreement to all terms and conditions of the proposed franchise which are contained therein; and

(9) (Optional) The amount of the franchise fee the applicant offers to pay, if any.

(B) The initial franchise application may be evaluated according to the following criteria, and approved within 180 days after the city deems the application is complete. In the event applicant is already authorized to occupy the rights‑of‑way, the time for review and approval will be 90 days.

(1) The evidence of legal, technical and financial ability required in the applicants proposal will be such as to assure the ability to complete the entire system within a reasonable time from the date the franchise is granted. The city will also consider the applicants ability to operate the system and provide the necessary cable services or video programming in compliance with the terms of this chapter.

(2) The Administrator or designee shall prepare a report and make his or her recommendations respecting such application to the Council.

(3) A public hearing shall be set prior to any grant of a franchise, at a time and date approved by the Council. Within 30 days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted and, if granted, subject to what conditions.

(4) The city may consider any additional information that it deems applicable.

(C) (1) By submitting an application, the applicant shall be deemed to have acknowledged the validity of the contents of the application and agreed to all of the terms and conditions thereof. If the application is approved by the Council, it shall be executed by the Administrator. Such execution by the Administrator shall be deemed the grant of a franchise for ail purposes, and the applicant shall be deemed a grantee, as defined herein. Upon approval of the Council and execution by the Administrator, the grantee shall also deliver any insurance certificates required herein that have not been previously delivered with the application.

(2) Upon submission of the application and the execution thereof by the Administrator, the grantee shall be bound by all the terms and conditions contained herein.

(Ord. 2011‑03, passed 7‑6-2011)

**112.22 CONSTRUCTION AND OPERATIONS STANDARDS.**

(A) A grantee shall obtain all required permits from the city before commencing any construction upgrade or extension of the system. The city shall impose no permit fees upon a grantee.

(B) If, at any time during the period of a franchise, the city shall elect to alter, or change the grade or location of any street, alley or other public way, a grantee shall, at its own expense, upon reasonable notice by the city, remove and relocate its poles, wires, cables, conduits, manholes and other fixtures of the system. If the city reimburses other occupants of the street, a grantee shall be likewise reimbursed.

(C) A grantee shall, on request of any person holding a moving permit issued by the city, temporarily move its wires or fixtures to permit the moving of buildings with the expense of such temporary removal to be paid by the person requesting the same, and a grantee shall be given not less than ten days advance notice to arrange for such temporary changes. A grantee shall have the authority to trim any trees upon and overhanging the streets, alleys, sidewalks or public easements of the city so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee.

(D) Nothing contained in this chapter shall relieve any person from liability arising out of the failure to exercise reasonable care to avoid injuring the grantees facilities.

(E) In areas where all other utility lines are placed underground, the grantee shall construct and install its cables, wires and other facilities underground. In any area where one or more public utilities are aerial, the grantee may construct and install its cables, wires and other facilities from the same pole with the consent of the owner of the pole.

(F) A grantee shall at all times construct and operate its system in accordance with applicable FCC technical specifications.

(G) In the event that the use of any part of the system is discontinued for any reason for a continuous period of 12 months, or in the event such systems or property has been installed in any street or public place without complying with the requirements of this chapter, or the rights granted hereunder have been terminated, cancelled or have expired, the grantee shall, subject to the rights of the city to acquire the system as specified herein, promptly remove from the streets, or public places all such property and poles of such system other than any which the city may permit to be abandoned in place. In the event of such removal, the grantee shall promptly restore the street or other area from which such property has been removed to a condition satisfactory to the city.

(H) Any property of the grantee to be abandoned in place shall be abandoned in such a manner as the city may prescribe. Upon permanent abandonment of the property of the grantee in place, it shall submit to the city an instrument to be approved by the city, transferring to the city the ownership of such property.

(I) All cable and passive equipment for cable television reception service installed by the grantee at a subscribers location shall remain the property of the grantee and the grantee shall have the right to remove said cable and equipment. Upon termination of service to any subscriber, the grantee shall promptly remove all its above ground facilities and equipment from the premises of such subscriber upon his or her request.

(J) No poles or other wire‑holding structures shall be erected by the grantee without prior approval of the designated representative of the Council with regard to locations, height, type or any other pertinent aspect, which approval shall not be unreasonably withheld. However, no locations of any pole or wire-holding structure of the grantee shall be a vested interest and such poles or structures shall be removed or modified by the grantee at its own expense whenever the Council or its designated representative determines that the public convenience would be enhanced thereby.

(K) Where poles or other wire‑holding structures already existing in use in serving the city are available for use by the grantee, but it does not make arrangements for such use, the Council may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable.

(L) Where the city or a public utility serving the city desires to make use of poles or other wire‑holding structures of the grantee, but agreement therefore with the grantee cannot be reached, the Council may require the grantee to permit such use for such consideration as is just and reasonable and upon such terms as the Council determines the use would enhance the public convenience and would not unduly interfere with the grantees operations.

(M) The grantee shall at all times maintain on file with the City Auditor a schedule setting forth all rates and charges to be made to subscribers for basic cable service, including installation charges.

(N) During the term hereof, the city may regulate rates only if authorized to do so by the FCC regulations and, then, such regulation shall only be in accordance with the provisions of such regulations.

(Ord. 2011‑03, passed 7‑6-2011)

**112.23 SYSTEM PROVISIONS AND PUBLIC SERVICES.**

(A) *Operation and maintenance of system.* A grantee shall render effective service, make repairs promptly and interrupt service only for good cause and for the shortest time possible.

(B) *Emergency use.* A grantee shall comply with the emergency alert requirements of federal law.

(Ord. 2011‑03, passed 7‑6-2011)

***OPERATION AND ADMINISTRATION***

**112.35 INDEMNIFICATION BY CITY.**

(A) A grantee shall indemnify, defend and hold harmless the city, its officers, boards, committees, commissions, elected officials, employees and agents, from and against all liability, damages and penalties which they may legally be required to pay as a result of the exercise of a franchise granted pursuant to this chapter, except claims covered by workers compensation insurance or any claims arising from or related to the citys negligence. Nothing in this chapter relieves a person from liability arising out of the failure to exercise reasonable care to avoid injuring the grantees facilities while performing work connected with grading, regrading or changing the line of a street or public place or with the construction or reconstruction of a sewer or water system.

(B) In order for the city to assert its rights to be indemnified, defended and held harmless, the city must, with respect to each claim:

(1) Promptly notify a grantee in writing of any claim or legal proceeding which gives rise to such right;

(2) Afford the grantee the opportunity to participate in and fully control any compromise, settlement or other resolution or disposition of any claim or proceeding; and

(3) Fully cooperate with reasonable requests of the grantee, at the grantees expense, in its participation in, and control, compromise, settlement or resolution or other disposition of such claim or proceeding subject to division (B)(2) above.

(Ord. 2011‑03, passed 7‑6-2011)

**112.36 INSURANCE.**

A grantee shall maintain in full force and effect at its sole expense, a comprehensive general liability insurance policy, including contractual liability coverage, in protection of the city in its capacity as such. The policies of insurance shall be in the sum of not less than $300,000 for personal injury or death of any one person and $1,000,000 for personal injury or death of two or more persons in any one occurrence, $300,000 for property damage to any one person and $1,000,000 for property damage resulting from any one act or occurrence.

(Ord. 2011‑03, passed 7‑6-2011)

**112.37 FRANCHISE FEE.**

(A) A grantee will pay the city a monthly franchise fee in an amount agreed to by and between the city and the applicant, not to exceed 3% of the grantees gross revenues.

(B) The franchise fee shall be payable monthly, together with a brief report showing the basis for the computation.

(C) The period of limitation for recovery of any franchise fee payable hereunder shall be three years from the date on which payment by the grantee is due.

(Ord. 2011‑03, passed 7‑6-2011)

**112.38 CITYS RIGHT TO REVOKE; PROCEDURES.**

(A) The city reserves the right to revoke, terminate or cancel a franchise, if after strictly following the procedures required by division (B) below, it is determined that a grantee has violated any material provision of its franchise or this chapter and has failed to substantially cure said violation.

(B) (1) The city shall provide a grantee with written notice of a cause for revocation and the intent to revoke and shall allow the grantee 60 days subsequent to receipt of the notice in which to substantially cure the violation or to provide adequate assurance of performance. Together with the notice required herein, the city shall provide the grantee with written findings of fact which are the basis of the revocation. The grantee shall be provided the right to a public hearing affording due process before the Council prior to revocation, which public hearing shall follow the 60-day notice provided herein, the city shall provide the grantee with written notice of its decision together with written findings of fact supplementing said decision.

(2) After the public hearing and upon written determination by the city to revoke the franchise, the grantee may appeal said decision with an appropriate state or federal court or agency.

(3) During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires.

(4) Upon satisfactory correction by the grantee of the violation upon which said notice was given, the initial notice shall become void.

(Ord. 2011‑03, passed 7‑6-2011)

**112.39 SALE OR TRANSFER OF FRANCHISE.**

No sale or transfer of a franchise shall take place without the written approval of the city, which approval shall not be unreasonably withheld. All of the rights, privileges, obligations, duties and liabilities created by this franchise shall pass to and be binding upon the successor or assign of a grantee. Said approval shall not be required where a grantee grants a security interest in its franchise and assets to secure indebtedness.

(Ord. 2011‑03, passed 7‑6-2011)

**112.40 FRANCHISE RENEWAL.**

Any renewal of a franchise shall be done in accordance with applicable law, if any.

(Ord. 2011‑03, passed 7‑6-2011)

**112.41 FRANCHISE AMENDMENT.**

A grantee and the city may agree, from time to time, to amend a franchise. Such written amendments may be made at any time, in accordance with applicable law.

(Ord. 2011‑03, passed 7‑6-2011)

**112.42 MARKETING.**

A grantee shall have the right to conduct direct selling in the franchise area, including door to door sales, notwithstanding any peddler or solicitor laws or regulations to the contrary.

(Ord. 2011‑03, passed 7‑6-2011)

**CHAPTER 113: SEXUALLY-ORIENTED BUSINESSES**

Section

***General Provisions***

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***GENERAL PROVISIONS***

**113.01 DEFINITIONS.**

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

***EMPLOYEE.*** A person who works or performs in and/or for a sexually-oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

***ESTABLISHMENT.*** Any of the following:

(1) The opening or commencement of any such business as a new business;

(2) The conversion of an existing business, whether or not a sexually-oriented business, to any of the sexually-oriented businesses defined in this chapter;

(3) The addition of any of the sexually-oriented businesses defined in this chapter to any other existing sexually-oriented business; or

(4) The relocation of any such sexually-oriented business.

***NUDITY*** or ***STATE OF NUDITY.***

(1) The appearance of human bare buttock, anus, male genitals, female genitals or the areola or nipple of the female breast; or

(2) A state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

***OPERATOR.*** The owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

***PERMITTED OR LICENSED PREMISES.*** Any premises that requires a license and/or permit and that is classified as a sexually-oriented business.

***PERMITTEE*** and/or ***LICENSEE.*** A person in whose name a permit and/or license to operate a sexually-oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

***PERSON.*** An individual, proprietorship, partnership, corporation, association or other legal entity.

***SEMI‑NUDE.*** A state of dress in which clothing covers no more than the genitals, pubic region and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

***SEXUALLY-ORIENTED BUSINESSES.*** Those businesses defined as follows.

(1) ***ADULT CABARET.*** A nightclub or bar, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

(a) Persons who appear nude or in a state of nudity or seminude;

(b) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

(c) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(2) ***ADULT MOTION PICTURE THEATER.*** A commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

(3) ***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 nudity or live performances which are characterized by exposure of specified anatomical areas or by specified sexual activities.

(4) ***NUDE MODEL STUDIO.*** Any place where a person, who regularly appears in a state of nudity or displays specified anatomical areas, is provided money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons.

***SPECIFIED ANATOMICAL AREAS.*** Any of the following:

(1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

***SPECIFIED SEXUAL ACTIVITIES.*** Any of the following:

(1) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;

(3) Masturbation, actual or simulated;

(4) Human genitals in a state of sexual stimulation, arousal or tumescence; or

(5) Excretory functions as part of or in connection with any of the activities set forth in divisions (1) through (4) above.

***TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY-ORIENTED BUSINESS.*** 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; and/or

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

(Ord. 96‑10, passed 10‑7‑1996)

**113.02 MINORS.**

It is a violation of this chapter if a person operates or causes to be operated a sexually-oriented business, regardless of whether or not a permit has been issued for said business under this chapter and knowingly or with reasonable cause to know, permits, suffers or allows:

(A) Admittance of a person under 18 years of age to the business premises unless accompanied by a parent or guardian;

(B) A person under 18 years of age to remain at the business premises unless accompanied by a parent or guardian;

(C) A person under 18 years of age to purchase goods or services at the business premises without the specific consent of a parent or guardian; or

(D) A person who is under 18 years of age to work at the business as an employee.

(Ord. 96‑10, passed 10‑7‑1996) Penalty, see  113.99

**113.03 HOURS OF OPERATION.**

(A) It shall be unlawful and a violation of this chapter if a person operates or causes to be operated a sexually-oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and allows such business to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of 2:00 a.m. and 9:00 a.m. of any day.

(B) It shall be unlawful and a person commits a violation of this chapter if, working as an employee of a sexually-oriented business, regardless of whether or not a permit has been issued for said business under this chapter, said employee engages in a performance, solicits a performance, makes a sale, solicits a sale, provides a service or solicits a service between the hours of 2:00 a.m. and 9:00 a.m. of any day.

(Ord. 96‑10, passed 10‑7‑1996) Penalty, see  113.99

***LICENSING REQUIREMENTS***

***AND CONDITIONS***

**113.15 LICENSE REQUIRED; APPLICATION.**

(A) It shall be unlawful for any person to operate a sexually-oriented business without a valid license issued by the citys Finance Officer or to employ a person who is not licensed as an employee of a sexually-oriented business.

(B) Except as hereinafter provided, it shall be unlawful for any person to perform as a sexually-oriented dancer or entertainer without a valid license.

(C) (1) An applicant, upon receipt by the Finance Officer of his or her application for sexually oriented business employee license, may work or perform services without an employee license until such time as the license is granted or the decision to deny the license becomes final as hereinafter provided. Upon receipt of the applicants completed application for an employee license, the Finance Officer shall issue the applicant a temporary work permit.

(2) The applicant shall keep the temporary work permit on his or her person or on the premises where the applicant is then working or performing services, and produce such permit for inspection upon request by a law enforcement officer or other authorized city official.

(D) An applicant for a sexually-oriented business license or employee license shall file in person at the office of the Finance Officer an application made on a form prescribed and provided by the Finance Officer. The applicant shall be qualified according to the provisions of this chapter. The application shall be signed under oath by the applicant and notarized. The application shall include, but not be limited to, the information as follows:

(1) The full true name and any other names used in the preceding five years;

(2) Current residential mailing address and telephone number;

(3) The name, business location, business mailing address and telephone number of the proposed sexually-oriented business;

(4) Written proof of age, in the form of a birth certificate, current drivers license with picture or other picture identification document issued by a governmental agency;

(5) A photograph of the applicant and two sets of the applicants complete fingerprints. The fingerprints, if not taken at the office of the Finance Officer or any other city location, shall be taken within the preceding one month by a law enforcement agency and accompanied by a notarized verification by that agency;

(6) If any prior license or permit has been denied, revoked or suspended the reasons therefor, the issuing jurisdiction and the effective date of such revocation or suspension; and

(7) All criminal charges, complaints, information or indictments in the preceding five years which resulted in a conviction, a plea of guilty or no contest for any offense described in SDCL Ch. 22‑22, 22‑23 and 22‑24.

(Ord. 96‑10, passed 10‑7‑1996)

**113.16 LICENSE ISSUANCE.**

(A) The Finance Officer shall approve or deny the issuance of a license to an applicant for a sexually-oriented business license or a sexually-oriented business employee license within 30 days after receipt of an application.

(B) The Finance Officer shall approve the issuance of license unless one or more of the following is found to be true:

(1) An applicant is under 18 years of age;

(2) An applicant is delinquent in the payment to the city of taxes, fees, fines or penalties assessed against or imposed upon the applicant in relation to a sexually-oriented business or arising out of any other business activity owned or operated by the applicant and licensed by the city;

(3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(4) An applicant has been convicted of a violation of a provision of this chapter, other than the offense of operating a sexually-oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect;

(5) The license application fee required by this chapter has not been paid;

(6) An applicant or the proposed establishment is in violation of or is not in compliance with this chapter; and/or

(7) An applicant has been convicted of any of the offenses set forth in SDCL Ch. 22‑22, 22‑23 or 22‑24.

(Ord. 96‑10, passed 10‑7‑1996)

**113.17 FEES.**

The annual non‑refundable application and license fee for a business allowing sexually-oriented dancing or exhibitions is $160. The annual application and license fee for a sexually-oriented dancer or performer is $90. The annual application and license fee for any other employee is $50.

(Ord. 96‑10, passed 10‑7‑1996)

**113.18 LICENSE DISPLAY.**

The license for a business allowing sexually-oriented dancing or exhibitions shall be displayed in a place clearly visible to the public and law enforcement.

(Ord. 96‑10, passed 10‑7‑1996) Penalty, see  113.99

**113.19 INSPECTION.**

(A) Any applicant, operator or licensee shall permit law enforcement officers, and any other federal, state, county or city agency in the performance of any function connected with the enforcement of this chapter, normally and regularly conducted by such agency, to inspect the premises of the business for the purpose of ensuring compliance with this chapter, at any time it is occupied or open for business, and shall not charge an admission fee for such inspection.

(B) It shall be unlawful for a licensee, operator or employee of such a business to refuse to permit a law enforcement officer or any agency enumerated in division (A) above to inspect the premises at any time the premises is occupied or open for business.

(Ord. 96‑10, passed 10‑7‑1996)

**113.20 LICENSE EXPIRATION.**

Each license shall expire on December 31 of each year and may be renewed only by making application as provided in this chapter. Such application should be made at least 30 days before the expiration date to ensure continuous operation.

(Ord. 96‑10, passed 10‑7‑1996)

**113.21 LICENSE SUSPENSION OR REVOCATION.**

(A) The Finance Officer shall suspend a license issued hereunder for a period not to exceed 30 days if he or she determines that the licensee or an employee of the licensee has:

(1) Refused to allow an inspection of the business premises; and

(2) Has violated any other provision of this chapter.

(B) (1) The Finance Officer shall revoke the license of a business if a cause for suspension set forth in the previous section occurs and the license has been suspended in the previous 12 months.

(2) The Finance Officer shall revoke the license of a sexually-oriented business if it is determined that:

(a) A licensee gave false or misleading information in the application;

(b) A licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;

(c) A licensee or an employee has knowingly allowed prostitution on the premises;

(d) A licensee or an employee knowingly operated the business during a period of time when the licensees license was suspended;

(e) A licensee has been convicted of an offense set forth in SDCL Ch. 22‑22, 22‑23 or 22‑24;

(f) A licensee or an employee has knowingly allowed any act or sexual activity, as defined herein, to occur on the licensed premises; and

(g) A licensee is delinquent in payment lo the city of taxes or fees related to the business or arising out of any other business activity owned or operated by the licensee and licensed by the city.

(Ord. 96‑10, passed 10‑7‑1996)

**113.22 HEARING.**

(A) (1) If the Finance Officer determines that grounds exist for denial, suspension or revocation of a license under this chapter, the applicant or licensee shall be notified in writing of the intent to deny, suspend or revoke, including a summary of the grounds therefor. Notification shall be by certified mail to the address on file with the Finance Officer. Within ten working days of receipt of said notice, the respondent may provide to the Finance Officer a written response which shall include a statement of reasons why the license or permit should not be denied, suspended or revoked, and may include a request for hearing.

(2) If a response is not received by the Finance Officer in the time stated, the denial, suspension or revocation shall be final and a notice of such shall be sent to the applicant or licensee.

(3) Within five working days after receipt of a response, the Finance Officer shall either withdraw the intent to deny, suspend or revoke the license and so notify the respondent by certified mail, or shall schedule a hearing before the City Council and shall notify the respondent in writing by certified mail of the date, time and place of the hearing. The hearing shall be scheduled not less than 15 days or more than 30 days after receipt by the Finance Officer of the request for hearing. The hearing shall be conducted in an informal manner and the respondent may be represented by counsel.

(4) The City Council shall render a written decision within 15 working days after completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent on file with the Finance Officer. In no event shall more than 60 days elapse between receipt by the Finance Officer of a request for a hearing and mailing by the City Council of a final decision to the respondent. The applicant or licensee may continue to work or perform services under his or her temporary work permit or license pending receipt of the final decision of the City Council. The decision shall be final at the end of five working days after it is mailed and shall constitute final administrative action.

(B) When the decision to deny, suspend or revoke a license becomes final, the applicant or licensee whose application has been denied or whose license has been suspended or revoked shall have the right to seek judicial review pursuant to state codified laws.

(Ord. 96‑10, passed 10‑7‑1996)

**113.99 PENALTY.**

Any person convicted of a violation of any provision of this chapter may be fined in an amount not to exceed the sum of $200.

(Ord. 96‑10, passed 10‑7‑1996)