

TITLE XI: BUSINESS REGULATIONS

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CHAPTER 110: PUBLIC TRANSPORTATION

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' 110.01 SHORT TITLE.

This chapter may be known and may be cited as the APublic Transportation Chapter of the Village of Jones Creek, Texas@.
(Ord. 100, passed 8-21-1978)

' 110.02 DEFINITIONS; RULES OF CONSTRUCTION.

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

ADULT. Any person 18 years of age or older.

BUS. Any vehicle designed to transport more than six passengers at any one time.

CHILD. Any person under the age of 18 years.

COUNCIL. The Village Council of Jones Creek, Texas.

OWNER. The person in whose name legal title to a vehicle is currently registered by the state=s Department of Highways and Public Transportation as well as any other person having possession thereof to the exclusion of such registered owner under the terms of any lease or other oral or written agreement, but does not include the United States, the state, or any political subdivision, agency, or department thereof.

PERSON. Any natural person as well as any partnership, association, or corporation.

VEHICLE FOR HIRE. Any bus used to transport passengers for money or other valuable consideration upon the public streets within the corporate limits of the village.

VILLAGE. The Village of Jones Creek in Brazoria County, Texas.

(B) Any word or phrase not hereinabove specially defined shall be given its usual and customary meaning.

(C) Whenever the context so requires, the singular shall include the plural number, and conversely, the masculine shall include the feminine and neuter genders.

(D) In any prosecution in the Municipal Court of the village or any other court of competent jurisdiction, proof that a bus registered in the name of any private person is transporting passengers shall be prima facie evidence that such passengers are being transported for money.
(Ord. 100, passed 8-21-1978)

' 110.03 PROHIBITED ACTS.

(A) It shall be unlawful for any person to operate any vehicle as a vehicle for hire unless the owner thereof has first obtained and there is displayed on such vehicle a current permit to so operate it.

(B) It shall be unlawful for the owner of any vehicle to allow any other person to operate the same as a vehicle for hire unless such owner has first obtained and there is displayed thereon a current permit to so operate it.

(Ord. 100, passed 8-21-1978) Penalty, see ' 110.99

' 110.04 APPLICATION.

The owner of one or more buses desiring to use the same as vehicles for hire shall file with the Village Secretary/Administrator a written application stating the name and business address of the owner, the number of buses expected to be used, the make, model, motor number, and current registration number of each bus, the location of the place or places where such buses shall be garaged, and the proposed location or locations within the village at which passengers shall be loaded and unloaded. At the next regular meeting of the Council, or sooner if a special meeting thereof is called for such purpose, such application shall be granted or refused in whole or in part by the affirmative vote of a majority of the Aldermen present and voting at such meeting.
(Ord. 100, passed 8-21-1978)

' 110.05 PERMITS.

(A) In the event an application to use one or more buses as vehicles for hire is granted by the Council, a separate permit for each bus so authorized shall be issued and signed officially by the Secretary/Administrator under the seal of the village. Each permit shall be dated on the date of its issuance; shall bear a serial number; shall show the name and address of the owner; shall contain the make, model, motor number, and current registration of the bus; shall show that the owner has been authorized by the Council to operate the same as a vehicle for hire until December 31 next following the date of its issuance; and shall show that such permit is subject to revocation at any time by the Council.

(B) All permits issued under this section shall expire on December 31 next following the date of issuance but, unless revoked as provided in ' 110.06, it may be automatically renewed to December 31 of the year next following upon the owner tendering to the Secretary/Administrator the fee prescribed in ' 110.08. Each bus shall have displayed thereon at all times, and clearly visible to any prospective passenger, the permit issued for such bus.
(Ord. 100, passed 8-21-1978)

' 110.06 NON-TRANSFER AND REVOCATION OF PERMITS.

Any permit issued under the provisions of this chapter shall not be transferable from one owner to another or from one bus to another regardless of the fact that such other bus is owned by the same owner. Any such permit may be revoked upon an majority vote of the members of the Council taken at any regular or special meeting thereof whenever it shall appear to the Council that the owner has violated any provision of this chapter or has failed to comply with any requirements of this chapter. Provided, however, written notice of such meeting and the impending revocation of such permit shall be given to the owner in question by depositing the same in the U.S. Mail, first class postage prepaid, directed to such owner at the address set forth on the application. Provided further, that at such meeting the owner shall be permitted any witnesses or evidence in person or through counsel prior to the taking of such vote. Provided further, that where the owner is the holder of more than one permit, the Council may but need not revoke all permits for a violation of any provision of this chapter or the failure to comply with any requirements of this chapter.
(Ord. 100, passed 8-21-1978)

' 110.07 INSURANCE.

(A) The owner of any bus for which a permit to operate the same as a vehicle for hire is issued pursuant to the terms of this chapter shall, prior to using such bus as a vehicle for hire, obtain and during the life of the permit therefor maintain with respect to each bus so operated a policy of insurance issued by a company authorized to do business in the state, indemnifying the owner and any other person allowed by the owner to operate any such bus as a vehicle for hire, in the sums following:

(1) A minimum of \$100,000 due to death or bodily injury sustained by any one person and a minimum of \$300,000 where more than one person has been killed or injured, caused by a single accident and arising out of the ownership, maintenance, or operation of such bus;

(2) A minimum of \$50,000 for injury to or destruction of property, including the loss of use thereof caused by accident and arising out of the ownership, maintenance, or operation of such bus;

(3) A minimum of \$10,000 for bodily injury or death to any one person from an accident caused by uninsured motorists and a minimum of \$20,000 where more than one person has been killed or injured by uninsured motorists; and

(4) A minimum of \$2,500 medical liability in case of injury to passengers while boarding, riding, or exiting such bus.

(B) Each policy or certificate of insurance shall be approved by the Village Attorney and filed with the Village Secretary/Administrator prior to any bus being used as a vehicle for hire pursuant to any permit. All policies and certificates so filed shall remain in the possession of the Secretary/Administrator and the owner shall immediately cease using any bus as a vehicle for hire upon notification that a policy or certificate for such bus has been cancelled. Thereafter, the owner shall not resume the use of such bus for such purpose until a new policy or certificate complying with this section has been approved by the Village Attorney and filed with the Secretary/Administrator. Provided, however, this section shall not apply to any bus operating under the regulations of the state's Railroad Commission, which comes into or passes through the village for the purpose of loading or unloading passengers.

(Ord. 100, passed 8-21-1978)

' 110.08 PERMIT FEES.

The fee for each permit issued pursuant to this chapter shall be \$36 per year payable in advance. In the case of an initial permit granted for less than a full year, the fee shall be prorated according to the number of months for which the permit is issued and shall be paid prior to its issuance. In the case of an initial permit issued for a full year or a reissued permit, such fee shall be paid on or before December 31 of the year next preceding the year for which such permit is issued.

(Ord. 100, passed 8-21-1978)

' 110.09 CAPACITY, ROUTES, AND SIZE OF VEHICLES.

(A) At no time shall any bus used as a vehicle for hire carry more passengers than it has seating capacity, based on the formula of a maximum of two adults per bus seat and three children per bus seat.

(B) If required by the Council, an owner shall establish other routes and bus stops in addition to those contained in the application required by ' 110.04 at no expense to the village. Provided, however, no route or bus stop shall be approved without a plan for the route or stop first being submitted to the Council for approval.

(C) Large buses designed to operate interstate or in interstate commerce may not be used as vehicles for hire except upon that portion of the public streets within the village maintained by the state=s Department of Highways and Public Transportation.

(Ord. 100, passed 8-21-1978) Penalty, see ' 110.99

' 110.10 QUALIFICATIONS FOR OPERATORS.

(A) Each person operating a bus as a vehicle for hire, including the owner of such bus, shall meet the following minimum qualifications:

(1) Obtains and carries at all times when operating such bus a current chauffeur=s license issued by the state=s Department of Public Safety;

(2) Observes all traffic laws and ordinances of the state and the village when operating such bus; and

(3) Is of good moral character with no previous convictions for the crime of theft or any felony.

(B) If the owner of a bus knowingly permits a person not meeting these qualifications to operate the same as a vehicle for hire, the permits of such owner may be revoked.

(Ord. 100, passed 8-21-1978)

' 110.11 INSPECTION OF VEHICLES.

(A) Each bus operated as a vehicle for hire shall be required to pass the annual state inspection and display such state inspection sticker.

(B) Each bus used as a vehicle for hire shall undergo an annual inspection by the Village Marshal

designed to ensure that such bus has effective systems for exhaust, brakes, steering, lights, power, signals, wheels, tires, and a seat belt for the driver. This inspection shall be made prior to the use of such bus pursuant to an initial permit issued under this chapter and thereafter annually during the month of January of each year for which such permit is reissued at a time convenient to the Village Marshal.

(C) The village reserves the right to inspect any bus used as a vehicle for hire at any other time during the year, such other inspection to be made at a time designated by the Village Marshal.

(D) The permits of any owner using or permitting the use of any bus as a vehicle for hire when such vehicle does not pass any such inspections may be revoked.

(Ord. 100, passed 8-21-1978)

' 110.99 PENALTY.

(A) Any person violating any provision of ' 110.03 shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed \$500.

(B) Each day any violation of ' 110.03 continues or occurs shall constitute a separate offense.
(Ord. 100, passed 8-21-1978)

CHAPTER 111: DRILLING AND MINING

Section

- 111.01 Short title
- 111.02 Definitions; rules of construction
- 111.03 Drilling prohibited
- 111.04 Exceptions
- 111.05 Proof of violation
- 111.06 Conflict with statutes

- 111.99 Penalty

' 111.01 SHORT TITLE.

This chapter shall be known and may be cited as the AProspecting, Drilling, and Mining Chapter of the Village of Jones Creek, Texas@.
(Ord. 92, passed 3-20-1978; Ord. 312, passed 7-24-1997)

' 111.02 DEFINITIONS; RULES OF CONSTRUCTION.

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

OTHER MINERALS. Includes any substance other than oil and gas having value for mining purposes aside from the soil itself.

PERSON. Includes an individual, a corporation, or an association.

(B) Any word or phrase not specifically defined in division (A) above shall be given its usual and customary meaning.

(C) In any prosecution hereunder in the Municipal Court of the village, or any other court of competent jurisdiction, the complaint charging a violation of this chapter need not negative the existence of any exception contained herein, but the existence of the same may be raised by the defendant in such prosecution by way of defense.

(Ord. 92, passed 3-20-1978)

' 111.03 DRILLING PROHIBITED.

It shall be unlawful for any person to prospect or drill for, or to mine, oil, gas, or other minerals within the corporate limits of the village.

(Ord. 92, passed 3-20-1978; Ord. 312, passed 7-24-1997) Penalty, see ' 111.99

' 111.04 EXCEPTIONS.

It is an exception to the application of ' 111.03 if such prospecting, drilling, or mining:

(A) Is not within the thickly settled portion of said village, nor within 200 feet of any private residence situated therein; and

(B) Is authorized by a special permit issued by the Village Secretary/Administrator upon the affirmative vote of a majority of the members of the Village Council present and voting at any special or regular meeting of such Council. In this connection, in authorizing the issuance of such special permit, the Village Council shall specify and there shall be included in such special permit a list of conditions under which such prospecting, drilling, and mining shall be permitted and which shall be designed to eliminate any nuisance which would otherwise be created by such prospecting, drilling, and mining and to ensure the preservation of the health, safety, and welfare of the inhabitants of said village. Such permit shall be for the time authorized by the Village Council, which shall be specified therein; it shall not be transferable or assignable; and for each such permit a fee determined by the Village Council at the time of the granting of such permit shall be charged and collected from the permittee prior to the issuance thereof. In determining the amount of each permit fee, the Village Council shall consider the amount of time required by the Council and the officers of the village to process and hear such application and to monitor compliance therewith based on the complexity of the application and the terms and conditions of the permit, as well as the problems likely to be encountered by the permittee in the mining or drilling operation authorized by the permit and in complying with the terms thereof. Provided further, such permit may be revoked by the affirmative vote of a majority of the members of the Village Council present and voting at any special or regular meeting of such Council, after notice in writing and an opportunity to be heard has been afforded such permittee, upon a finding that any of such conditions have been violated by said permittee, and, in such event, none of the permit fee shall be refundable to the permittee.

(Ord. 92, passed 3-20-1978; Ord. 206, passed 5-7-1986; Ord. 312, passed 7-24-1997)

' 111.05 PROOF OF VIOLATION.

In any prosecution under this chapter in the Municipal Court of said village, or any other court of competent jurisdiction, proof that any person committed an act prohibited by this chapter or omitted an act required by this chapter shall be prima facie proof that such act or omission, as the case may be, was done knowingly and intentionally.

(Ord. 312, passed 7-24-1997)

' 111.06 CONFLICT WITH STATUTES.

This chapter is cumulative of, and in addition to, all other ordinances of the village on the same subject and all such other ordinances including, but not being limited to Ord. 206, read, passed, and adopted on May 7, 1986, are hereby expressly saved from repeal; but where this chapter conflicts or overlaps with any other ordinance of the village, whichever imposes the more stringent regulations or penalties, as the case may be, shall prevail.

(Ord. 312, passed 7-24-1997)

' 111.99 PENALTY.

Any violation of this chapter shall be a misdemeanor punishable by a fine not to exceed \$500; and each day any such violation continues or occurs shall constitute a separate offense.

(Ord. 92, passed 3-20-1978; Ord. 312, passed 7-24-1997)

CHAPTER 112: COIN OPERATED MACHINES; GAME ROOMS

Section

- 112.01 Short title
- 112.02 Purpose
- 112.03 Definitions
- 112.04 Issuance of license and payment of fee
- 112.05 Termination of license
- 112.06 Disclaimer
- 112.07 Additional regulations
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- 112.99 Penalty

' 112.01 SHORT TITLE.

This chapter shall be known and may be cited as the AGame Room for Coin Operated Machines License Chapter of the Village of Jones Creek, Texas@.
(Ord. 417, passed 6-16-2009)

' 112.02 PURPOSE.

(A) An interest has been expressed in opening a game room for coin operated machines, as hereinafter defined, in the village and a public need exists to identify and license such establishments.

(B) The installation and use of coin operated machines, as hereinafter defined, creates a public interest that, without regulation, may lead to conduct which causes or imminently threatens to cause material and substantial disruption of the community or an invasion of the rights of others including, but not limited to, the free flow of traffic on the public highway within the village.

(C) The desire of the Village Council to protect the public safety, health, morals, and general welfare of all the citizens will be fulfilled by enacting the reasonable rules and regulations regarding the operation of game rooms for coin operated machines and the installation and use of such machines contained in this chapter.

(Ord. 417, passed 6-16-2009)

' 112.03 DEFINITIONS.

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

COIN OPERATED MACHINE. A skill or pleasure machine or device, or an electronic, electro mechanical, or mechanical contrivance, operated by the payment or insertion of coins, tokens, paper currency, or any other consideration that are designed, made, or adapted solely for bona fide amusement purposes, and that by operation of chance or a combination of skill and chance afford or reward the user, in addition to any right of replay, an opportunity to receive exclusively non-cash merchandise prizes, toys, novelties, or a representation of value redeemable for those items, having a wholesale value available from a single play of the game or device of not more than ten times the amount charged to play the game or device once or \$5, whichever is less.

EXCLUDED MACHINE. Any of the following:

(1) A machine that awards the user non-cash merchandise prizes, toys, or novelties solely and direct from the machine, including claw, crane, or similar machines;

(2) A machine from which the opportunity to receive non-cash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, varies depending upon the user's ability to throw, roll, flip, toss, hit, or drop a ball or other physical object into the machine, or a part thereof, including basketball, skee-ball, golf, bowling, pusher, or similar machines; and

(3) A machine or any device defined in Tex. Penal Code ' 47.01 as a gambling device, or any activity prohibited or described in Tex. Penal Code Ch. 47.

GAME ROOM FOR COIN OPERATED MACHINE. Any building, or portion thereof, used primarily for the exhibition or displaying of coin operated machines other than exclusively for excluded machines. A building, or part thereof, has such primary use where at least 51% of the total square footage of such building, or any part thereof, exclusive of rest rooms, storage rooms, or other areas from which the public is usually excluded by the operator, is used for the exhibition or displaying of coin operated machines other than excluded machines, or at least 51% the gross revenues derived from any use of such building is derived from the operation of coin operated machine other than excluded machines located therein.

LICENSEE. The owner, operator, or lessee of the premises on which there is located a game room for coin operated machines to whom a license to operate the same has been issued under ' 112.04. (Ord. 417, passed 6-16-2009)

' 112.04 ISSUANCE OF LICENSE AND PAYMENT OF FEE.

(A) An owner, operator, or lessee of a game room for coin operated machines shall be required to

secure a license to operate the same by paying to the village an annual inspection and coin operated machine game room license fee of \$60 per machine. Upon payment of such fee, a license to operate a game room for coin operated machines on the premises described and containing the number of coin operated machines specified therein shall be issued by the Village Secretary/Administrator. The licensee may not increase the number of machines on the licensed premises without paying an additional fee, in which case the Village Secretary/Administrator shall amend the license to reflect the increase in the number of machines.

(B) The license required by division (A) above shall automatically expire on December 31 following its issuance or amendment without regard to the date such license was issued or amended, but may be automatically renewed for the succeeding calendar year upon payment of the annual fee specified above on or within ten days after January 1 of each year.

(C) Failure to pay the annual fee on or within ten days after January 1 of each year will result in an additional late fee in an amount equal to 20% of the fee actually due or 20% of the previous year's fee, whichever is greater, in order to obtain the renewal of a license.

(D) A license to operate a game room for coin operated machines shall automatically expire if the licensee sells, transfers equity, or otherwise disposes of the licensed premises and a new license must be procured by the new owner before a game room for coin operated machines may be operated on such premises.

(E) The village shall not refund any portion of the fee paid by a licensee after the license is issued, nor shall it prorate or reduce in amount any fee due to the village if a license is issued after January 1 of any year or if there is a reduction in the number of coin operated machines located on the licensed premises.

(F) The village shall have the authority to seal any coin operated machine located at any game room for coin operated machines for which a license fee has not been secured. A \$5 fee will be charged for the release of any machine sealed for non-payment of said license fee.

(G) The license shall be conspicuously posted inside the building on the licensed premises.

(H) The following restrictions, regulations, controls, and limitations shall apply to all game rooms for coin operated machines.

(1) All building and fire code standards must be met. Inspection by the Building Official and certificate of occupancy and specific use permit shall be obtained before license is issued.

(2) No alcoholic beverages shall be served or allowed on the premises for on-premises consumption. This prohibition also applies outdoors on the premises.

(3) The game room may be open for business 24 hours per day, seven days per week.

(4) One off-street parking space shall be furnished for each two machines, plus one space per employee per shift.

(5) The game room for coin operated machines shall not operate within 300 feet of a church, school, daycare, or hospital. As used herein, **CHURCH** means any facility that is owned by a religious organization and is used primarily for religious services, **SCHOOL** means a private or public elementary or secondary school or a daycare center, as defined by Tex. Human Resources Code ' 42.002; and **HOSPITAL** means a place for the reception of persons sick or infirm in body or mind, and includes a clinic with separate offices for two or more health care professionals.

(Ord. 417, passed 6-16-2009; Ord. 459, passed 12-4-2012) Penalty, see ' 112.99

' 112.05 TERMINATION OF LICENSE.

(A) The Village Council may terminate any license to maintain and operate a game room for coin operated machines when the licensee is in violation of any provision of this chapter, any other ordinance of the village, or any applicable state or federal law on regulation. Such termination by the Village Council shall be upon the affirmative vote of a majority of the members of the Village Council present and voting at any regular or special meeting thereof held after at least ten days prior written notice sent by certified mail, return receipt requested, and addressed to the licensee at the premises, specifying the particular violation or violations. Any decision of the Village Council thereon shall be entered upon the minutes of such meeting. Any decision of the Village Council thereon shall be final and non-appealable.

(B) Pending such meeting, the Mayor may issue a written order suspending such license. A copy of such order shall be posted at each entry into the licensed premises and a copy shall be sent to the licensee with the above mentioned notice. It shall be unlawful for the licensee to operate and for the owner of any premises to permit any coin operated machine on the licensee premises to be operated during such suspension. If a majority of the Aldermen present and voting at such meeting do not vote to terminate such license, such suspension shall be automatically lifted.

(Ord. 417, passed 6-16-2009; Ord. 431, passed 6-15-2010) Penalty, see ' 112.99

' 112.06 DISCLAIMER.

By issuing the required license, the village is not certifying the installation or use of coin operated machines and by applying for a license, the licensee acknowledges that the village is not certifying or sanctioning the installation or use of such machines. By the acceptance of a license under this chapter, the licensee acknowledges that the installation and use of the machines which are the subject of this chapter may be found to violate state law. By the acceptance of a license issued under this chapter, the license fee paid belongs to the village and will not be refunded.

(Ord. 417, passed 6-16-2009)

' 112.07 ADDITIONAL REGULATIONS.

(A) A culpable mental state is not required for the commission of an offense under this chapter.

(B) No offense committed and no fine, forfeiture, or penalty incurred prior to the effective date of this chapter is to be affected by the adoption of this chapter, but the punishment for any offense committed and the recovery of any fines or forfeitures incurred prior to such date shall take place as if this chapter had not been adopted.

(Ord. 417, passed 6-16-2009)

' 112.08 CONFLICT WITH STATUTES.

(A) Nothing contained in this chapter shall cause any rights heretofore vested to be altered, affected, or impaired in any way and all such rights may be hereafter enforced as if this chapter had not been adopted.

(B) This chapter is cumulative of, and in addition to, all other ordinances of the village on the same subject and all such other ordinances are hereby expressly saved from repeal; but where this chapter conflicts or overlaps with any other ordinance of the village, whichever imposes the more stringent regulations or penalties, as the case may be, shall prevail.

(Ord. 417, passed 6-16-2009)

' 112.99 PENALTY.

Any violation of this chapter shall be a misdemeanor punishable by a fine not to exceed \$500; and each day, or part of each day, any such violation continues or occurs shall constitute a separate offense.
(Ord. 417, passed 6-16-2009; Ord. 431, passed 6-15-2010)

CHAPTER 113: PEDDLERS AND SOLICITORS

Section

General Provisions

- 113.01 Short title
- 113.02 Conflict with statutes
- 113.03 Mental state
- 113.04 Prior offenses
- 113.05 Rights unaffected
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Permits/Specific Regulations

- 113.20 Permit required
- 113.21 Exemptions
- 113.22 Application
- 113.23 Attachments to application
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- 113.26 Prohibited activities
- 113.27 Suspension or revocation of permit
- 113.28 Appeals
- 113.29 Renewals

- 113.99 Penalty

GENERAL PROVISIONS

' 113.01 SHORT TITLE.

This chapter shall be known and may be cited as the APeddlers, Solicitors, and Itinerant Vendors Chapter of the Village of Jones Creek, Texas@.
(Ord. 450, passed 1-17-2012)

' 113.02 CONFLICT WITH STATUTES.

This chapter is cumulative of, and in addition to, all other ordinances of the village on the same subject and all such other ordinances are hereby expressly saved from repeal; but where this chapter conflicts or overlaps with any other ordinance of the village, whichever imposes the more stringent regulations or penalties, as the case may be, shall prevail.
(Ord. 450, passed 1-17-2012)

' 113.03 MENTAL STATE.

A culpable mental state is not required for the commission of an offense under this chapter.
(Ord. 450, passed 1-17-2012)

' 113.04 PRIOR OFFENSES.

No offense committed and no fine, forfeiture, or penalty incurred prior to the effective date of this chapter is to be affected by the adoption of this or forfeitures incurred prior to such date shall take place as if this chapter had not been adopted.
(Ord. 450, passed 1-17-2012)

' 113.05 RIGHTS UNAFFECTED.

Nothing contained in this chapter shall cause any rights heretofore vested to be altered, affected, or impaired in any way and all such rights may be hereafter enforced as if this chapter had not been adopted.
(Ord. 450, passed 1-17-2012)

' 113.06 DEFINITIONS.

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

PUBLIC WAY. All areas that are legally open to public use including public streets, rights-of-way, sidewalks, roadways, highways, parkways, alleys, parks, and the interior and areas surrounding buildings open to the public.

SOLICITATION ACTIVITIES. The practice of solicitors described in the definition of solicitor.

SOLICITOR. Any person who goes door to door, or along any streets within the village for the purpose of either: selling, renting, or leasing any goods or services; or requesting contribution or

pledges of any type for political, charitable, religious, or other similar purposes.

SPECIAL EVENT. Any occasion including, but not limited to, exhibitions, village-wide celebrations, festivals, or similar events to be held in the defined area for a period not to exceed three consecutive days.

STAND. Any table, bench, booth, rack, cart, or any other than a vehicle which is used to sell, rent, or lease goods or service.

VEHICLES. Anything mobile used for the displaying, storing, or transporting of goods or services. This term includes, but is not limited to, trailers, trucks, and automobiles.

VENDING ACTIVITIES. The practices of a vendor as described in the definition of ***VENDOR.***

VENDOR. Any individual, separately including each agent, servant, or employee, or any corporation or other legal entity, who sells or offers to sell goods or services on any public way from a vehicle or a stand.

VILLAGE. The Village of Jones Creek, Texas.
(Ord. 450, passed 1-17-2012)

PERMITS/SPECIFIC REGULATIONS

' 113.20 PERMIT REQUIRED.

It shall be unlawful for any person to engage in either solicitation activities or vending activities within the village without first obtaining a permit from the village for the activity in question.
(Ord. 450, passed 1-17-2012) Penalty, see ' 113.99

' 113.21 EXEMPTIONS.

The following persons shall be excluded from the requirements of this subchapter:

(A) Any person under the age of 18, unless such person is acting as an agent or representative of an adult who is or would be required to obtain a vendor=s or a solicitor=s permit if engaged in the same activities as the minor in question;

(B) Newspaper carriers engaged in home delivery by subscription;

(C) Persons selling agricultural products grown by them or members of their immediate family;
and

(D) Local charitable and non-profit organizations, religious organizations, and schools; provided, however, that at least 72-hours= advance written notice of the time, date, place, and type of proposed vending or solicitation activity has been provided to the Village Secretary/Administrator. (Ord. 450, passed 1-17-2012)

' 113.22 APPLICATION.

The application for a permit shall contain all of the following information on each applicant (which includes each employee or other agent who will conduct or assist in any vending and solicitation activities):

(A) Names, current and former residence, and business addresses within the last five years, current residence, business telephone number, and occupation;

(B) Social Security number and date and place of birth;

(C) A complete physical description of the applicant, i.e., sex, race, ethnic origin, height, weight, color of hair and eyes, and any identifying characteristics (tattoos, scars);

(D) Two recent full-face passport photographs two-inches by two-inches (one photo shall be kept with the application and the other attached to the permit);

(E) A valid state driver=s license including number and date of expiration (only non-drivers may submit other positive identification such as a passport or birth certificate);

(F) A complete description of the goods or services to be sold or a complete disclosure of the object of the solicitation, its purposes, and sponsors;

(G) Name and address of the owner of the property at the location from which the goods or services will be displayed or offered to the public or a statement that the applicant will travel from door to door for the purpose of offering goods or service or otherwise engaging in solicitation activities;

(H) If the goods or services to be sold are to be transported in or displayed from a vehicle, the vehicle owner=s name, address, telephone number, liability insurer, and insurance policy number and the year make, model, color, VIN identification number, and vehicle license plate number;

(I) Statement under oath, sworn, or affirmed and subject to the penalty of perjury that the applicant has not been convicted within the last five years of any of the following crimes: sale or possession of narcotics or other dangerous drugs, rape, robbery, murder, burglary, fraud, theft, forgery, child molestation, or any other crime involving moral turpitude; and

(J) A signed waiver and agreement to provide such other information as may be required in order for the Village Marshal=s Department to conduct a background investigation as to the fitness of the applicant to engage in honest, safe, healthy, and clean vending and solicitation activities within the village.

(Ord. 450, passed 1-17-2012)

' 113.23 ATTACHMENTS TO APPLICATION.

The following documents shall be attached to each application:

(A) Rental agreement, contract, lease, or power of attorney from the owner of the property the applicant intends to use, granting the applicant the rights to use the property to sell specified goods or services; and

(B) If food products are to be sold, a copy of all food handling licenses and permits which may be required by the state=s Department of Health, the county=s Health Department, and federal Food and Drug Administration showing strict compliance with all rules, regulations, and laws requiring proper and sanitary handling of food products.

(Ord. 450, passed 1-17-2012)

' 113.24 BONDS.

(A) As a prerequisite to obtaining a permit, each solicitor and vender (and each of their agents, servants, and employees who shall engage in solicitation and vending activities within the village) shall furnish good and sufficient surety bond executed by the solicitor or vendor, as principal, and a corporate surety (authorized to transact such business in the state and who has appointed a registered agent for service of process with a permanent address in the county) in the amount of \$5,000.

(B) Upon any breach of the principal=s obligation on the surety bond, the principal and/or surety shall be liable to the village and/or any person aggrieved for damages, cost of court, and attorneys fees caused by any act or omission of the solicitor or vendor (or their agents, servants, or employees) for breach of contract, fraud, deceptive trade practices, negligence, product liability, or any other cause of action. Each surety bond shall be approved in writing by the Village Attorney and it shall be in a form approved by the Village Attorney.

(C) The obligation of the corporate surety shall continue for a period of at least two years from the date of the vending or solicitation activities and for such longer period of time as may be necessary to conclude any litigation still pending at the end of the two-year period.

(Ord. 450, passed 1-17-2012)

' 113.25 SPECIAL EVENTS.

Vendors or solicitors wishing to engage in vending and solicitation activities at any special event shall apply to the Village Secretary/Administrator for a temporary permit. An application for such permit shall be made at least 72 hours prior to the beginning of the event. A temporary permit shall be valid only for the duration of the special event. Fees for such temporary permit shall be \$15 per applicant. Persons issued a temporary permit shall comply with all of the restrictions and regulations set forth in the chapter.

(Ord. 450, passed 1-17-2012)

' 113.26 PROHIBITED ACTIVITIES.

The following restrictions shall apply to all persons engaged in solicitation activities or vending activities within the village:

(A) Solicitors shall conduct solicitation activities only between the hours of 9:00 a.m. and 8:00 p.m.;

(B) No person shall engage in solicitation activities at any residence or business which has posted a notice that solicitors are not welcome, are not invited, are prohibited, or are restricted by similar prohibitory notice;

(C) No stand, vehicle, or other facility used by a vendor or a solicitor shall impede access to the entrance or driveway of any residence, building, or public facility, nor shall it occupy any part of a public right-of-way or sidewalk. All stands or other facilities used by either a vendor or a solicitor must be removed from public property during non-operating hours;

(D) No vendor or solicitor shall conduct business within 15 feet of any handicapped parking space or access ramp or within 100 feet of a fire hydrant, fire escape, bus stop, loading zone, or driveway of a fire station, the Village Marshal=s office, or a medical facility;

(E) All vendors selling food products or beverages shall provide two trash receptacles adjacent to the stand or vehicle. All trash or debris accumulating within 20 feet of a stand or vehicle shall be promptly collected by the vendor or solicitor and deposited in such trash receptacles;

(F) A vending or solicitation permit shall be valid only for the location specified in the permit. No other locations shall be used for such activities;

(G) Vending and solicitation activities shall not be conducted within 300 feet of any school between the hours of 8:00 a.m. and 4:00 p.m. on school days;

(H) No vendor or solicitor operating from a vehicle or otherwise using a vehicle in his or her activities shall stop, stand, or park the vehicle within 100 feet of any intersection, nor shall he or she conduct activities in such a way as would increase traffic congestion or delay, constitute a hazard to life

or property, interfere with an abutting property owner=s use of such owner=s property, or obstruct access to emergency vehicles; and

(I) No vendor shall engage in the sale of food or beverages until all proper licenses and permits have been secured from Health Department authorities. Equipment used by the vendor shall be subject to state and federal inspections at all times, including at the time of the application and at periodic intervals thereafter.

(Ord. 450, passed 1-17-2012) Penalty, see ' 113.99

' 113.27 SUSPENSION OR REVOCATION OF PERMIT.

(A) After written notice to and an opportunity for the holder of such permit to be heard, any permit issued under this chapter may be suspended or revoked by the Village Secretary/Administrator for any of the following reasons:

(1) Fraud or misrepresentation in the application for the permit;

(2) Fraud or misrepresentation in the course of conducting the solicitation or vending activities allowed by the permit;

(3) Conducting the business of vending or soliciting in a manner which is prohibited under this chapter;

(4) Conducting the business of vending or soliciting in such a manner as to create a public nuisance or constitute a danger to the public health, safety, or welfare;

(5) Arrest or indictment for any felony or misdemeanor crime involving moral turpitude while holding a solicitation or vending permit from the village; or

(6) Cancellation of Health Department authorization for food or beverage vending due to an uncorrected health or sanitation violation.

(B) Upon suspension or revocation, the Village Secretary/Administrator shall deliver, or cause to be delivered, written notice to the permit holder stating the action taken and the reason supporting such action.

(C) Any written notice required by this section shall be delivered to the permit holder=s place of business or mailed to the permit holder=s last known address contained in the records of the Village Secretary/Administrator.

(Ord. 450, passed 1-17-2012)

' 113.28 APPEALS.

Applicants who are denied permits and permit holders whose permits have been suspended or revoked may appeal by filing a written notice of appeal with the Village Secretary/Administrator. The appeal must be filed within ten days after receipt of the notice of denial, suspension, or revocation, which receipt shall be deemed to have occurred no later than 15 days after mailing of the notice properly addressed to the person in question as provided in ' 113.27(B) above. The Village Council shall hear and determine the appeal at its next regular meeting or, at the discretion of the Mayor, at a special meeting called for such purpose, and the decision of a majority of the Aldermen present and voting at such meeting to affirm or reverse such denial, suspension, or revocation shall be final. Written notice of the result of such appeal shall be delivered, or cause to be delivered, by the Village Secretary/Administrator to the applicant or permit holder as provided above in ' 113.27(C). (Ord. 450, passed 1-17-2012)

' 113.29 RENEWALS.

Permits may be renewed, provided an application for renewal and permit fees are paid to the Village Secretary/Administrator before the first day of each month. Applications received after that date shall be processed as new applications. The Village Secretary/Administrator shall review each application for renewal to determine that the applicant is in full compliance with the provisions of this chapter. If the Village Secretary/Administrator finds that the application meets such requirements, the village shall issue a new permit. (Ord. 450, passed 1-17-2012)

' 113.99 PENALTY.

Any violation of this chapter shall be a misdemeanor punishable by a fine not to exceed \$500; and each day any such violation continues or occurs shall constitute a separate offense. (Ord. 450, passed 1-17-2012)

CHAPTER 114: SEXUALLY ORIENTED BUSINESSES

Section

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GENERAL PROVISIONS**' 114.01 PURPOSE.**

(A) It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the village, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the village. The provisions of this chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

(B) It is the intent of the Village Council that the location regulations of ' 114.25 are promulgated pursuant to Tex. Local Government Code Ch. 243.
(Ord. 470, passed 5-20-2014)

' 114.02 DEFINITIONS.

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

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

ADULT BOOKSTORE or ADULT VIDEO STORE. A commercial establishment that as one of its principal business purposes offers for sale or rental for any form of consideration, any one or more of the following:

(1) Books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe Aspecified sexual activities@ or Aspecified sexual areas@; or

(2) Instruments, devices, or paraphernalia which are designed for use in connection with Aspecified sexual activities@.

ADULT CABARET. A night club, bar, restaurant, or similar commercial establishment that regularly features:

- (1) Persons who appear in a state of nudity or semi-nudity;
- (2) Live performances which are characterized by the exposure of Aspecified anatomical areas@ or by Aspecified sexual activities@; or

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

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

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of Aspecified sexual activities@ or Aspecified anatomical areas@; and has a sign visible from the public right-of-way which advertises the availability of this type of photographic reproductions;
- (2) Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (3) Allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than ten hours.

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

ADULT THEATER. A theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of Aspecified anatomical areas@ or by Aspecified sexual activities@.

CHILDCARE FACILITY. A building used as a day nursery, children=s boarding home, child placement agency, religious or charitable encampment for children, or any other place for the care or custody of children under 16 years of age.

CHURCH. A building in which persons regularly assemble for worship, intended primarily for purposes connected with faith or for propagating a particular form of belief.

ESCORT. A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY. A person who, or business association that, furnishes, offers, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

ESTABLISHMENT. Includes any of the following:

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

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

NUDE MODEL STUDIO. Any place where a person who appears in a state of nudity or displays Aspecified anatomical areas@ is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other people who pay money or any form of consideration.

NUDITY or A STATE OF NUDITY.

- (1) The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or
- (2) A state of dress that fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

OPERATES or CAUSES TO BE OPERATED. To cause to function or to put or keep in operation. A person may be found to be operating, or causing to be operated, a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

PERSON. 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.

SEXUAL ENCOUNTER CENTER. A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex;
- or

(2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

SEXUALLY ORIENTED BUSINESS. An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS. Human genitals in a state of sexual arousal.

SPECIFIED SEXUAL ACTIVITIES. Includes any of the following:

(1) The fondling or other erotic 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; or

(4) Excretory functions as part of, or in connection with, any of the activities set forth in divisions (1) through (3) above.

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS. The increase in floor area occupied by business by more than 20%, as the floor area exists on the date of passage of this chapter.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS. Includes any of the following:

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

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

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

VILLAGE MARSHAL. The Village Marshal of the Village of Jones Creek or his or her designated agent.
(Ord. 470, passed 5-20-2014)

' 114.03 CLASSIFICATION OF BUSINESSES.

Classification of sexually oriented businesses are classified as follows:

- (A) Adult arcades;
 - (B) Adult bookstores or adult video stores;
 - (C) Adult cabarets;
 - (D) Adult motels;
 - (E) Adult motion picture theaters;
 - (F) Adult theaters;
 - (G) Escort agencies;
 - (H) Nude model studios; or
 - (I) Sexual encounter centers.
- (Ord. 470, passed 5-20-2014)

LICENSING

' 114.15 LICENSE REQUIREMENTS.

(A) A person commits an offense if he or she operates a sexually oriented business without a valid license issued by the village for the particular type of business.

(B) An application for a license must be made on a form provided by the Village Marshal. The application form shall be sworn to and shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of the total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(C) The applicant must be qualified according to the provisions of this chapter and the premises must be found to be in compliance with the law by the village=s Building Official.

(D) If a person who wishes to operate a sexually oriented business is an individual, he or she must sign the application for a license as the applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20% or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under ' 114.16 and each applicant shall be considered a licensee if a license is granted.

(Ord. 470, passed 5-20-2014) Penalty, see ' 114.99

' 114.16 ISSUANCE OF LICENSE.

The Village Marshal shall approve the issuance of a license by the Village Secretary/Administrator to an applicant within 30 days after receipt of an application unless he or she finds one or more of the following to be true:

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

(B) An applicant or an applicant=s spouse is overdue in his or her payment to the village of taxes, fines, or penalties assessed against him or her or imposed upon him or her in relation to a sexually oriented business;

(C) 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;

(D) An applicant or an applicant=s spouse 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;

(E) An applicant is residing with a person who has been denied a license by the village to operate a sexually oriented business within the preceding 12 months, or is residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months;

(F) The premises to be used for the sexually oriented business have not been approved by the village=s Building Official as being in compliance with applicable laws and ordinances;

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

(H) An applicant has been employed in a sexually oriented business in a managerial capacity in the village within the preceding 12 months and has demonstrated that he or she is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers;

(I) An applicant for the proposed establishment is in violation of, or is not in compliance with, any section of this chapter; or

(J) An applicant or an applicant=s spouse has been convicted of a crime involving:

(1) Any of the following offenses as described in Tex. Penal Code Ch. 43:

- (a) Prostitution;
 - (b) Promotion of prostitution;
 - (c) Aggravated promotion of prostitution;
 - (d) Compelling prostitution;
 - (e) Obscenity;
 - (f) Sale, distribution, or display of harmful material to a minor;
 - (g) Sexual performance by a child; or
 - (h) Possession of child pornography.
- (2) Any of the following offenses as described in Tex. Penal Code Ch. 21:
- (a) Public lewdness;
 - (b) Promotion of prostitution;
 - (c) Aggravated promotion of prostitution;
 - (d) Compelling prostitution;
 - (e) Obscenity;
 - (f) Sale, distribution, or display of harmful material to a minor;
 - (g) Sexual performance by a child; or
 - (h) Possession of child pornography.
- (3) Any of the following offenses as described in Tex. Penal Code Ch. 21:
- (a) Public lewdness;
 - (b) Indecent exposure; or
 - (c) Indecency with a child.
- (4) Sexual assault or aggravated sexual assault as described in Tex. Penal Code Ch. 22;

(5) Incest, solicitation of a child, or harboring a runaway child as described in Tex. Penal Code Ch. 25;

(6) Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses; for which:

(a) Fewer than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(b) Fewer than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(c) Fewer than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(7) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant=s spouse.

(Ord. 470, passed 5-20-2014)

' 114.17 POSTING LICENSE.

The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(Ord. 470, passed 5-20-2014)

' 114.18 LICENSE FEE.

The annual fee for a sexually oriented business license shall be \$5,000.

(Ord. 470, passed 5-20-2014)

' 114.19 INSPECTION.

(A) An applicant or licensee shall permit representatives of the Marshal=s Department, Fire Department, and the village=s Building Official to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

(B) A person who operates a sexually oriented business or his or her agent or employee commits an offense if he or she refuses to permit a lawful inspection of the premises by a representative of the Marshal=s Department at any time it is occupied or open for business.

(C) The provisions of this section shall not apply to areas of an adult motel that are currently being rented by a customer as a permanent or temporary habitation.

(Ord. 470, passed 5-20-2014) Penalty, see ' 114.99

' 114.20 EXPIRATION OF LICENSE.

(A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in ' 114.16. Application for renewal should be made as least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license shall not be affected.

(B) When the Village Marshal denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Village Marshal finds that the basis for denial of renewal of the license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

(Ord. 470, passed 5-20-2014)

' 114.21 SUSPENSION.

The Village Marshal shall suspend a license for a period not to exceed 30 days if he or she determines that a licensee or an employee of a licensee has:

(A) Violated or is not in compliance with any section of this chapter;

(B) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;

(C) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter;

(D) Knowingly permitted gambling by any person on the sexually oriented business premises; or

(E) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(Ord. 470, passed 5-20-2014)

' 114.22 REVOCATION.

(A) The Village Marshal shall revoke a license if a cause of suspension in ' 114.21 occurs and the license has been suspended within the preceding 12 months.

(B) The Village Marshal shall revoke a license if he or she determines that:

(1) A licensee gave false or misleading information in the material submitted to the Village Marshal during the application process;

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

(3) A licensee, an agent, or an employee has knowingly allowed prostitution on the premises;

(4) A licensee, an agent, or an employee knowingly operated a sexually oriented business during a period of time when the licensee's license was suspended;

(5) A licensee has been convicted of an offense listed in ' 114.16(J) for which the time period required in ' 114.16(J)(6) has not lapsed;

(6) On two or more occasions within a 12-month period, a person or persons committed an offense, occurring in or on the licensed premises, of a crime listed in ' 114.16(J), for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time of offenses were committed;

(7) A licensee, an agent, or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term **SEXUAL CONTACT** shall have the same meaning as it is defined in Tex. Penal Code ' 21.01; or

(8) A licensee is delinquent in payment to the village for hotel occupancy taxes, ad valorem taxes, sales taxes, or other taxes related to the sexually oriented business.

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

(D) Division (B)(7) above not apply to adult motels as grounds for revoking the license unless the licensee, agent, or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(E) When the Village Marshal revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the Village Marshal finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under division (B)(5) above, an applicant may not be granted another license until the appropriate number of years required under

' 114.16(J)(6) has elapsed since the termination of any sentence, parole, or probation.
(Ord. 470, passed 5-20-2014)

' 114.23 APPEAL.

If the Village Marshal denies the issuance of a license, or suspends or revokes a license, he or she shall send to the applicant or licensee by certified mail, return receipt requested, written notice of his or her action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the applicant or licensee whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal to the state district court. An appeal to the state district court must be filed within 30 days after the receipt of notice of the decision of the Village Marshal. The applicant or licensee shall bear the burden of proof in court.
(Ord. 470, passed 5-20-2014)

' 114.24 TRANSFER OF LICENSE.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.
(Ord. 470, passed 5-20-2014) Penalty, see ' 114.99

' 114.25 LOCATION OF BUSINESS.

(A) A person commits an offense if he or she operates, or causes to be operated, a sexually oriented business within 1,300 feet of:

- (1) A church;
- (2) A public or private elementary school or secondary school, school zone;
- (3) A boundary of any residential district, as defined in Chapter 156;
- (4) A public park adjacent to any residential district, as defined in Chapter 156;
- (5) The property line of a lot devoted to residential use;
- (6) A childcare facility; or
- (7) Any building or structure in which alcoholic beverages are offered for sale.

(B) A person commits an offense if he or she causes or permits the operation, establishment,

substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,300 feet of another sexually oriented business.

(C) A person commits an offense if he or she causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(D) For the purposes of division (A) above, measurement shall be in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, childcare facility, public or private elementary school or secondary school, school zone, or building or structure in which alcoholic beverages are offered for sale; or to the nearest boundary of an affected public park, residential district, or residential lot.

(E) For the purposes of division (B) above, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to any intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(F) (1) Any sexually oriented business lawfully operating on the effective date of this chapter that is in violation of divisions (A), (B), or (C) above shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed 12 months, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use.

(2) If two or more sexually oriented businesses are within 1,300 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

(G) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, public or private elementary or secondary school, school zone, childcare facility, public park, residential district, or residential lot, or any building or structure in which alcoholic beverages are offered for sale within 1,300 feet of the sexually oriented business. This provision applies only to the renewal of a valid license and does not apply when an application for a license is submitted after a license has expired or has been revoked.

(Ord. 470, passed 5-20-2014) Penalty, see ' 114.99

' 114.26 EXEMPTION FROM LOCAL RESTRICTIONS.

(A) If the Village Marshal denies the issuance of a license to an applicant because the location of the

sexually oriented business establishment is in violation of any provision of this chapter, then the applicant may, not later than ten calendar days after receiving notice of the denial, file with the Village Secretary/Administrator a written request for an exemption from the locational restrictions of this chapter.

(B) If the written request is filed with the Village Secretary/Administrator within the ten-day limit, the Village Council shall consider the request. The Village Secretary/Administrator shall set a date for the hearing within 60 days from the date the written request is received.

(C) A hearing by the Village Council may proceed if a quorum of the Village Council is present. The Village Council shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

(D) The Village Council may, in its discretion, grant an exemption from the locational restriction of this chapter if it makes the following findings:

(1) The location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;

(2) The granting of the exemption will not violate the spirit and intent of this chapter;

(3) The location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;

(4) The location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation, nor will it interfere with any efforts of urban renewal or restoration; and

(5) All other applicable provisions of this chapter will be observed.

(E) The Village Council shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the Village Council is final.

(F) If the Village Council grants the exemption, the exemption is valid for one year from the date of the Village Council's action. Upon expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of this chapter until the applicant applies for and receives another exemption.

(G) If the Village Council denies the exemption, the applicant may not reapply for an exemption until at least 12 months have elapsed since the date of the Village Council's action.

(H) The grant of an exemption does not exempt the applicant from any other provisions of this chapter other than the locational restrictions of ' 114.25.

(Ord. 470, passed 5-20-2014)

ADDITIONAL REGULATIONS/ENFORCEMENT

' 114.40 ADDITIONAL RESTRICTIONS FOR ESCORT AGENCIES.

(A) An escort agency shall not employ any person under the age of 18 years.

(B) A person commits an offense if he or she acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(Ord. 470, passed 5-20-2014) Penalty, see ' 114.99

' 114.41 ADDITIONAL RESTRICTIONS FOR NUDE MODEL STUDIOS.

(A) A nude model studio shall not employ any person under the age of 18 years.

(B) A person under the age of 18 years commits an offense if he or she appears in a state of nudity or semi-nudity in or on the premises of a nude model studio. It is a defense to prosecution under this section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

(C) A person commits an offense if he or she appears in a state of nudity or semi-nudity or knowingly allows another to appear in a state of nudity or semi-nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

(D) A nude studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(Ord. 470, passed 5-20-2014) Penalty, see ' 114.99

' 114.42 ADDITIONAL RESTRICTIONS FOR ADULT THEATERS.

(A) A person commits an offense if he or she knowingly allows a person under the age of 18 years to appear in a state of nudity or semi-nudity in or on the premises of an adult theater or adult motion picture theater.

(B) A person under the age of 18 years commits an offense if he or she knowingly appears in a state of nudity or semi-nudity in or on the premises of an adult theater or adult motion picture theater.

(C) It is a defense to prosecution under divisions (A) and (B) above if the person under 18 years was

in a restroom not open to the public view or persons of the opposite sex.
(Ord. 470, passed 5-20-2014) Penalty, see ' 114.99

' 114.43 ADDITIONAL RESTRICTIONS FOR ADULT MODELS.

(A) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(B) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he or she rents or subrents a sleeping room to a person and, within ten hours from the time the room is rented, he or she rents or subrents the same sleeping room again.

(C) For purposes of division (B) above, the terms *RENT* or *SUBRENT* mean the act of permitting a room to be occupied for any form of consideration.
(Ord. 470, passed 5-20-2014) Penalty, see ' 114.99

' 114.44 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT VIDEOS.

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

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager=s stations, the location of all overhead lighting fixtures, which lights are controlled by which switches and designating a portion of the premises in which patrons are not permitted. Only agents or employees shall have access to light switches. A manager=s station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer=s or architect=s blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Village Marshal may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration for the premises has not been altered since it was prepared.

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

(3) No alteration in the configuration or location of a manager=s station may be made without the prior approval of the Village Marshal.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager=s station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager=s station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two or more manager=s stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager=s stations. The view required in this division (A)(5) must be by direct line of sight from the manager=s station.

(6) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present on the premises to ensure that the view area specified in division (A)(5) above remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times that any patron is present on the premises, and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to division (A)(1) above.

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle as measured at the floor level.

(8) It shall be the duty of the owners and operator and it also shall be the duty of any agents and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

(B) A person having a duty under divisions (A)(1) through (A)(7) above commits an offense if he or she knowingly fails to fulfill that duty.

(Ord. 470, passed 5-20-2014) Penalty, see ' 114.99

' 114.45 DISPLAY OF SEXUALLY EXPLICIT MATERIALS TO MINORS.

(A) A person commits an offense if, in a business establishment open to persons under the age of 17 years, he or she displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

- (1) Human sexual intercourse, masturbation, or sodomy;

(2) Fondling or other erotic touching of human genitals, pubic region, buttocks, or that portion of the female breast below the top of the areola; less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or

(3) Human male genitals in a discernibly turgid state, whether covered or uncovered.

(B) In this section **DISPLAY** means to locate an item in such a manner that, without obtaining assistance from an agent or employee or the business establishment:

(1) It is available to the general public for handling and inspection; or

(2) The cover, outside packaging on the item, or contents of the item is visible to members of the general public.

(Ord. 470, passed 5-20-2014) Penalty, see ' 114.99

' 114.46 INJUNCTIVE RELIEF.

A person who operates, or causes to be operated, a sexually oriented business without a valid license or in violation of ' 114.25 is subject to a suit for injunction as well as prosecution for criminal violations.

(Ord. 470, passed 5-20-2014)

' 114.99 PENALTY.

(A) Except as provided by division (B) below, any person violating ' 114.25, upon conviction, is punishable by a fine not to exceed \$3,000 for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

(B) If the sexually oriented business is a nude model studio or sexual encounter center, then violation of ' ' 114.15(A) or 114.25 is punishable as a Class A misdemeanor.

(C) Except as provided by division (B) above, any person violating a section of this chapter other than ' 114.25, upon conviction, is punishable by a fine not to exceed \$3,000 for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

(D) It is a defense to prosecution under ' ' 114.15(A), 114.25, or 114.41(D) that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

(1) By a proprietary school licensed by the state, a college, junior college, or university supported entirely by or partly by taxation;

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

(3) In a structure:

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

(b) Where in order to participate in a class a student must enroll at least three days in advance of the class; and

(c) Where no more than one nude or semi-nude model is on the premises at any time.

(E) It is a defense to prosecution under ' ' 114.15(A) or 114.25 that each item of descriptive, printed, film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.

(Ord. 470, passed 5-20-2014)

