

## **ARTICLE 11 LICENSES**

### **SECTION 11.1**

All license authorized or required to be issued by the City of Mt. Vernon shall be issued only upon written application from the applicant to the City Clerk, which application shall contain the name and address of the applicant, the license applied for, the term of the license and conditions thereof, and all other facts necessary to be stated under terms of ordinances or articles governing the issuance of such license, and such application shall be accompanied by the license fee provided therefor.

All license shall be granted for a period of one year only, ending on the thirtieth (30<sup>th</sup>) day of April next succeeding, except as otherwise expressly provided by ordinance, and shall be signed by the City Clerk and sealed with the official seal of the City. Such license as are required to be approved by any other person, such as the

Liquor Control Commissioner for Dram Shop license, shall be so approved prior to licensing. The City Clerk shall keep a register of all license issued by the City.

In the event any applicant for any license shall have previously been licensed on an annual basis and shall apply for renewal thereof; and by reason of the terms hereof shall have to apply on or before

April 30 for renewal of a license which does not by its term expire until June 30 or some other date after April 30, applicant shall be required to pay only a pro-rated license fee based on the number of months from the expiration date of his current license to April 30 of the next year.

### **SECTION 11.2      AUCTIONS AND AUCTIONEERS**

It shall be unlawful for any person within the City to exercise or engage in the business, trade or vocation of an auctioneer, to sell or vend at public auction any goods, wares, merchandise or real estate without first having obtained a license therefor, provided that this section shall not apply to sales made by any public official by virtue of any judicial order or process or by virtue of any power or authority contained in any mortgage or security instrument. The fee for each license issued hereunder shall be for one year, one hundred dollars (\$100.00); for six months, sixty dollars (\$60.00); for one month, thirty dollars (\$30.00); and for one day, six dollars (\$6.00). Each applicant for a license hereunder shall execute and deliver to the City Clerk a bond payable to the City in the penal sum of \$500.00, conditioned upon the strict observance of ordinances of the City regulating auctions and auctioneers. It shall be unlawful for any auctioneer or any agent or employee thereof to sell or offer for sale at public auction any goods, wares, or merchandise upon a street, alley, sidewalk, or other public ground.

### **SECTION 11.3      BARBERS AND BARBER SHOPS**

(a) It shall be unlawful for any person to operate a barber shop within the City limits without first having obtained a license therefor. Each applicant therefor shall present proof that the applicant and each person who shall be employed as a barber in such barber shop, shall hold a

certificate of registration issued by the Department of Registration of the State of Illinois and a statement upon the application for license as to the number of chairs to be used in the shop. The fee for such a license shall be twenty dollars (\$20.00), plus ten dollars (\$10.00) for each barber chair operated or intended to be operated in such barber shop in addition to one.

(b) Every barber or person in charge of such barber shop shall maintain the shop in a clean and sanitary condition. Every barber shop shall be kept well lighted and ventilated. No barber shall work in or operate a barber shop while suffering from any contagious or venereal disease. No barber shall serve any person with a communicable or contagious disease of the face or scalp.

(c) The license issued hereunder to a barber or barber shop may be revoked for cause in the violation of any terms of this ordinance by any barber operating herein.

(d) No person shall keep open any barber shop within said City for business before the hour of 8:00 A.M. and after the hour of 6:00 P.M. of each week day, except Saturday, on which day the hour shall be 8:00 P.M., nor shall any barber shop be open for business on any Sunday or on any of the following legal holidays: New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, and Armistice Day.

#### **SECTION 11.4      BILLPOSTING, DISTRIBUTION OF ADVERTISEMENTS, AND BILLBOARDS**

(a) No person shall carry on the business of posting handbills, posters, cards, signs, circulars, or advertisements of any kind (hereinafter called billposting), or distributing handbills, cards, circulars, samples of merchandise or advertisements of any kind within the City without first having obtained a license therefor. Each applicant shall pay the annual license fee of thirty dollars (\$30.00) for a license for billposting. Each applicant shall pay the license fee of thirty dollars (\$30.00) for a license for distributing handbills, cards, circulars, samples of merchandise and advertisements of any kind except that the fee for a license for one day shall be three dollars (\$3.00).

Applications for such license shall be made to the City Clerk and shall contain a statement of the nature of the article, merchandise, card, or advertisement to be distributed or posted and the name of the applicant and the name of the manufacturer or distributor of such article or service advertised.

No person, whether licensed hereunder or not, shall post or place any handbill, sign, poster, circular, advertisement, or any other thing upon any sidewalk, street, alley, or other public place, nor shall he post or place any article upon any lamp post, telegraph, telephone, or electric light pole, fire hydrant, or any tree, private wall or door, or any private structure or property without the consent of the owner in writing thereof.

(b) The term "billboard" is hereby defined to mean, and for the purpose of this section shall be construed to mean, any structure the sole or primary purpose of which is to be used for the display of advertisements or notices.

No billboard shall be erected in the City of Mt. Vernon by any person unless a license shall first have been obtained therefor from the City Clerk. Each application shall state the location for such billboard and if same is to be located on private property. The fee for each such license for each

billboard shall be five dollars (\$5.00) per year.

No billboard shall be permitted to become unsightly by reason of the accumulation of old bills thereon or dilapidated or in lack of repair; nor shall any billboard be constructed or located in violation of any other provision of the Revised Code of Ordinances of the City of Mt. Vernon; nor shall any billboard be constructed or maintained so as to constitute a health, fire, or safety hazard.

## **SECTION 11.5      DANCING AND DANCE HALLS**

A. No person shall hold or conduct any dance or dances or operate or maintain a dance on either public or private property or whether for profit or not, without first obtaining a license therefor. The fee for such license shall be \$200.00 per annum; provided, however, that no license shall be required for dancing in any private lodge or club and no fee shall be charged for license for any dances for charitable purposes only.

B. Any person desiring a license under the foregoing paragraph shall make application to the City Clerk, which application shall be accompanied by the annual license fee as herein provided. Such application shall be referred to the Mayor who shall approve or reject such application. In the event such application is approved by the Mayor, a license shall be issued by the Clerk to such applicant, signed by the Mayor and countersigned by the Clerk, who shall keep a complete record of all such licenses issued.

C. No person licensed by virtue of Subparagraph A herein above shall permit his establishment to be open for the above purposes except between the following hours, which will be the permitted hours of opening:

(1)      Monday-Thursday

Between the hours of 6:00 a.m. of one day and 1:00 a.m. of the succeeding day of each day from Monday through Thursday inclusive.

(2)      Friday and Saturday

Between the hours of 6:00 a.m. of one day and 2:00 a.m. of the succeeding day of each day from Friday through Saturday inclusive.

(3)      Sunday

From 12:00 p.m. to 10:00 p.m. on Sunday, but such opening on Sunday shall be permitted only for those establishments which are also a restaurant as defined within Section 6.9(p) 3 of the Revised Code of Ordinances.

(4)      Christmas Day

Notwithstanding the foregoing provisions, no licensee shall permit his establishment to be open on Christmas Day of each year.

(5)      New Year's Day

Notwithstanding any other provision herein, a person licensed by virtue of Subparagraph A herein may permit his establishment to be open for the above purposes between the hours of 6:00 o'clock a.m. on New Year's Eve and 8:00 o'clock a.m. on New Year's day or until normal permitted hours as provided above for said day, whichever is later; provided, however, that entry to the licensed establishment shall be denied to all persons at 2:00 o'clock a.m. on New Year's Day, and no person shall be permitted to enter or reenter the establishment after said time until the licensed establishment thereafter opens for normal permitted hours as provided above. All persons or patrons within the licensed establishment at said 2:00 o'clock a.m. on New Year's Day shall be permitted to remain and to be a patron of the establishment, although no person shall be permitted reentry upon exiting or leaving the licensed establishment until the establishment thereafter opens for normal permitted hours as provided above.

(6) General Provisions.

Each licensee shall require and have all customers off and out of the premises within twenty (20) minutes after the closing times provided herein, which twenty (20) minutes shall be considered a grace period to allow time for closing and for all customers to leave the premises, but any and all dance or dances shall cease at the closing hours herein specified.

**SECTION 11.6      HOUSE MOVERS**

(a) No person shall remove or move any buildings along public streets, alleys, or public places within the City, unless he shall first have obtained a license of a house mover. The fee for such license shall be one hundred dollars (\$100.00) per annum and each applicant shall first execute and deliver to the City Clerk a bond in the sum of \$5,000.00, conditioned upon the applicant's curing and paying for any and all damages which shall be sustained to any streets, alleys, sidewalks, or other public places or any telegraph, telephone, or electric light pole, or wire within the City.

The applicant shall further furnish to the City a policy of public liability insurance, issued by a company or companies approved by the City Clerk, which shall protect and indemnify the City from all judgments, costs, and expenses which may accrue against said City in consequence of the granting of such license, in the amount of not less than \$50,000.00 for each person and \$100,000.00 for each occurrence.

(b) No person shall move or remove any building or structure along public streets, alleys, or other public places of the City, even though he may be licensed as a house mover hereunder, without having first obtained a building permit therefor from the City Clerk under the Building Code. Such licensed house mover shall make application for such permit upon forms supplied by the City Clerk and shall state thereon the building proposed to be moved, its present location and proposed location, the route to be taken, and the time required therefor. No permit shall be issued for moving or removing of any structure which, because of size or description would not be permitted upon the location where it is proposed to be moved, and in particular, no building shall be moved to any place within the fire limits which shall not comply with the Building Code.

Such application for permit shall be referred by the City Clerk to the City Manager, City Engineer, and Building Official, and shall determine whether such permit may be issued under provision of ordinances of the City, and whether the route and proposed method of moving is feasible and safe, considering public welfare.

(c) Each licensed house mover who shall have a permit to move any building or structure shall, during such move, keep and maintain adequate warning devices upon such structure, including red flashing lights or other similar warning devices during the hours of darkness. Any such house mover shall declare any damage or injury to any public street, sidewalk, or public place caused or occurring during such move.

## **SECTION 11.7      TRANSIENT MERCHANTS**

(a) “Transient merchant” shall mean any person who is engaged temporarily in the retail sale of goods, wares, or merchandise within the City and who, for the purpose of conducting such business, occupies any building, room, vehicle, structure of any kind, or vacant lot. However, this Ordinance does not apply to any person selling goods, wares, or merchandise which are raised, produced, or manufactured by him; to any person selling vegetables, fruit, or perishable farm products at an established City market; to any person operating a store or refreshment stand at a resort; to any person operating a stand or booth on or adjacent to property owned by him or upon which he resides; to any person operating a stand or booth at a State or County Fair; or to any person operating a stand or booth at a trade show, exposition, convention, or similar event.

“Itinerant vendor” shall mean any person who transports tangible personal property for retail sale within the City who does not maintain in the City an established office, distribution house, sales house, warehouse, service center, or residence from which such business is conducted. However, this Ordinance does not apply to any person who delivers tangible personal property within this City who is fulfilling an order for such property which was solicited or placed by mail or other means. The term “itinerant vendor” shall not include a person who makes sales within the City during each week during the calendar year or a person who makes sales within the City not less than five days of each week during a consecutive 120-day period.

“Person” shall mean an individual, corporation, partnership, trust, firm, association, or other entity.

(b) It is a violation of this Ordinance for any person, either as principal or agent, to conduct business as a transient merchant or itinerant vendor within the City without first complying with the requirements of Section 2a of the Retailers' Occupation Tax Act (35 ILCS 120/2a) by obtaining a certificate of registration and without first having obtained a license under this Ordinance. The license obtained hereunder shall be prominently displayed and visible at all times, and said license shall be returned to the office of the City Clerk upon expiration of the license or upon the transient merchant or itinerant vendor ceasing sales, whichever occurs first.

(c) Any person who wishes to obtain a license as a transient merchant or itinerant vendor shall file a written license application with the City Clerk. The license application shall be under oath and shall include the applicant's name, permanent business address (which must include a street address), residence address of the principal (and if the applicant is a corporation, the residence addresses of its officers), the location at which the applicant intends to do business, the nature of the business the applicant intends to conduct, a copy of the applicant's certificate of registration under the Retailers' Occupation Tax Act, a complete inventory of the goods the applicant intends to offer for sale, and a list of all licenses to conduct business as a transient merchant or an itinerant vendor obtained by the applicant in the City of Mt. Vernon in the 12 months preceding the date of filing of the application. In addition, the applicant shall provide a copy of a written lease or other written

evidence from the owner of the location where the applicant proposes to sell indicating permission of the owner to use the location.

(d) Prior to issuance of the license, each applicant shall file with the City Clerk a cash deposit in the amount of One Thousand Dollars (\$1,000.00), unless waived by the City Clerk in accordance with this Ordinance. The City Clerk shall waive the cash deposit requirement unless, within the 12-month period preceding the application, there has been filed with the City Clerk either a certified copy of a Court Judgment against the applicant or three written complaints from consumers or other persons describing a loss or damage as the result of the purchase of merchandise from the applicant or as the result of the negligent or intentionally tortious act of the applicant or as the result of conducting business or making sales within the City as transient merchant or itinerant vendor without a license. The City Clerk shall hold the cash deposit for two years for the benefit of any person who suffers loss or damage as the result of the purchase of merchandise from said person licensed under this Ordinance or as the result of the negligent or intentionally tortious act of the person licensed under this Ordinance. The City Clerk shall pay any portion of the cash deposit to any person in accordance with a Judgment or other Order of the Jefferson County, Illinois Circuit Court without making an independent finding as to the amount of the cash deposit that is payable to that person; any balance of the cash deposit held by the City Clerk two years after the expiration of a license of a person under this Ordinance shall be refunded by certified mail to the person; provided, however, that if the person shall fail to keep the City Clerk informed of a current mailing address that said bond shall be forfeited to the City after one attempt by the City Clerk to refund the bond by certified mail.

(e) Except as hereinafter provided, each transient merchant or itinerant vendor shall pay a licensing fee at the rate of \$75.00 per day, payable prior to issuing of the license, which license shall state the specific dates (month, day, and year) that the license is valid.

Notwithstanding the foregoing, transient merchants or itinerant vendors who are leasing floor space within a commercially zoned building or other retail space at a mall or shopping center for a period of more than 30 days but less than 120 days, shall pay a licensing fee of \$150.00 for a license which shall bear the same expiration date as the lease term; provided, however, (1) that a copy of the written lease must be filed with the City Clerk at the time the license application required within Paragraph (c) herein is filed; (2) the license application must also be signed by the person stated as lessor within the lease; and (3) the license shall be issued in the joint names of the lessor (owner) and lessee (transient merchant or itinerant vendor), and the license shall state the location subject of the license.

(f) If any person makes retail sales as a transient merchant or itinerant vendor without having obtained a license under this ordinance, the Mt. Vernon Police Department, as the direction of the City Manager, may hold the inventory, truck, or other personal property of the person until he obtains a license to conduct business as a transient merchant or itinerant vendor. If the property has been held by the City of Mt. Vernon for more than 60 days and the person whose property is being held has not obtained a license under this Ordinance, the City may petition the Circuit Court of Jefferson County, Illinois for an Order for the sale of the property being held. If the Court finds that the person whose property is held has not obtained a license under this Ordinance, the Court may order and authorize the City to sell the property. The proceeds of the sale of the property less reimbursement to the City of the reasonable expenses for the storage and sale of the property shall be deposited in the General Corporate Fund of the City.

(g) It shall be prima facie evidence that a person is a transient merchant or itinerant vendor under this Ordinance if the person does not transact business from a fixed location or if the person does not own or lease for a term of at least six months the property from which business is conducted.

(h) Each transient merchant or itinerant vendor immediately upon expiration of his license shall remove all temporary buildings and structures erected by him or by his benefit and shall place the location at which he makes sales in a clean and neat condition. No transient merchant or itinerant vendor shall advertise, represent, or hold forth the sale of goods, wares, or merchandise as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver, wholesale, manufacturer's wholesale, closing-out sale, or any sale of goods damaged by fire, smoke, water, or otherwise, unless he shall as part of the description of his inventory in his application for license under oath state the facts supporting such description of such sale.

(i) The Mt. Vernon Sweet Corn and Watermelon Festival, the Cedarhurst Craft Fair, and any other event designated by the City Manager as a community-sponsored event shall constitute a trade show, exposition, convention, or similar event; no person participating in and sanctioned by the authorizing body sponsoring the Mt. Vernon Sweet Corn and Watermelon Festival, the Cedarhurst Craft Fair, or other community-sponsored event shall be deemed to be a transient merchant or itinerant vendor. Provided, however, that in the event any person shall be exempted from complying with the licensing statutes or regulations of another governmental entity by reason of holding a valid license issued under this Ordinance, then the designation of the Mt. Vernon Sweet Corn and Watermelon Festival and the Cedarhurst Craft Fair hereunder and the designation of any other event as a community-sponsored event by the City Manager shall constitute a license to engage in the retail sales described within this Ordinance.

## **SECTION 11.8      JUKEBOXES**

No person shall place or operate any jukebox or other similar amusement device or combination thereof, from which music or other amusement may be obtained by the deposit of money or other token in any public or private place for operation by or the amusement of the general public without first having obtained a license therefor. The license fee for each such jukebox or other amusement device shall be fifty dollars (\$50.00) per year. Each application for license shall include, in addition to other information required on all such licenses, a description of each such jukebox or other such amusement device, including the factory model or other identification number, and the denomination of coin or coins required for its operation.

Each license issued hereunder shall be exhibited in a conspicuous place on the machine or in the room in which the juke box or other amusement device is operated. No such juke box or other amusement device shall be operated by any person in such a manner as to cause a disturbance or breach of peace.

## **SECTION 11.9      PAWN BROKERS**

(a) Any person within the City who loans money on deposit of personal property, or deals in the purchase or possession of personal property on condition of selling the same back again to the

pledger or depositor, or loans money on deposit of pledge or personal property, bonds, notes, or other valuable things or securities, or who loans or advances money on personal property by taking chattel mortgage security thereon and takes or receives such personal property into his possession, is hereby declared to be a pawn broker.

No person shall exercise or carry on the business of a pawn broker within the City without first having obtained a license therefor. The fee for each license shall be two hundred dollars (\$200.00) per annum and each applicant shall, prior to receiving such license, deposit a bond in the amount of one thousand dollars (\$1,000.00) with the City Clerk.

(b) Every pawn broker shall keep a written record in which shall be entered in ink at the time of each loan or taking of pledge, an accurate account and description of all goods or other things pawned or pledged, the amount of money or valuables owned thereon, the time of such pledge, the rate of interest to be paid on such loan, and the name and residence of the person making such pawn or pledge. No person shall change, erase, or destroy any original entry in such written record. Each pawn broker shall at the time of each loan, deliver to the person pawning or pledging any article or thing, a memorandum signed by the pawn broker and containing the substance of the entry required to be made in such written record, kept by such pawn broker. No charge shall be made by any pawn broker for the giving of such memorandum or making of such written record. The written record required hereby shall be open to the inspection of any police officer or law enforcement official at all reasonable times.

(c) No pawn broker shall purchase any second-hand goods, articles, or things offered to him as a pawn or pledge.

(d) Each pawn broker required to be licensed hereunder shall deliver to the Police Department of the City before 12:00 o'clock noon each day a true copy of the written record required herein to be kept, showing all personal property and other things received by or pawned to him during the preceding day. No pawn broker licensed hereunder shall receive in pawn or pledge any article from any minor, intoxicated person, or person under any legal disability.

**SECTION 11.10: POOL AND BILLIARDS, PIN-BALL, BOWLING ALLEYS, SHOOTING GALLERIES AND COIN-OPERATED AMUSEMENT DEVICES**

**DEFINITIONS**

(a) “Coin Operated Device”, shall mean any amusement device or machine operated by means of the insertion of a coin, token or similar object for the purpose of amusement or skill and for the playing of which a fee is charged; provided said term shall not include a merry-go-round, a rocking horse or other similar rides designed and operated for use only by minors.

(b) “Device” shall mean each pool, billiard or similar table, each pinball machine, each alley of a bowling alley, each gallery of a shooting gallery, and each coin-operated amusement device.

(c) “Operator” shall mean any person, owner, firm, corporation partnership, association or club which sets up for his or its own operation or for operation by another or leases or distributes for the purpose of operation by another, any device herein defined whether such setting up for

operation, leasing or distributing, be for a fixed charge or rental, or on the basis of receipt of or a division of the income derived from such a device or otherwise.

(d) "Proprietor" shall mean any person, firm, corporation, partnership, association, or club which, as owner, lessee, or otherwise has under his, or its, control any establishment, place, or premises in or at which such device is placed or kept for use or play, or on exhibition for the purpose of use or play.

(e) "Pool Hall" or "Business where a principal business activity is pool or billiard tables" shall mean:

- (1) any premises where there is situated more than six (6) pool or billiard tables or similar tables; or
- (2) any premises where there is situated more than one(1) but less than seven (7) pool or billiard tables or similar tables and where pool or billiard or similar tables are a principal business activity upon the premises; pool or billiard or similar tables shall be considered a principal business activity if (i) said pool, billiard or similar tables represent more than one-third of the total number of devices licensed under Section 11.10 of the Revised Code upon the premises, or (ii) the floor space occupied by the pool, billiard and other similar tables and the space within three feet of each table exceed fifty percent (50%) of the total floor space of the room where the tables are situated; or (iii) the premises derives a significant or substantial portion of its gross revenue from pool, billiard or other similar tables; significant or substantial being twenty percent (20%) or more.

#### License Required.

No operator or proprietor, or other person shall place, have, operate, maintain or keep any pool, billiard or similar table or any pin-ball machine or any bowling alley or any shooting gallery or any coin-operated amusement device upon any premises within the City of Mt. Vernon without a license first having been obtained for each table, machine, alley, gallery, and coin-operated amusement device (hereinafter called "device license").

#### Application.

An application for device license(s) shall be made to the City Clerk and shall be in writing and under oath signed by the operator or proprietor as above-described.

The application shall state the name, address and telephone number of the applicant; the address of each premises where a device will be placed; the name, address, and telephone number of each the proprietor of each premises; and the name, address, and telephone number of each operator for each table, machine, gallery, or coin-operated amusement device; and the name, description, State of Illinois license tag tax number, and serial number of each device proposed to be licensed.

The primary responsibility to submit an application and obtain a license shall be that of the operator for the licensed device, but if said operator shall fail to comply with the provisions of this

Section then the proprietor shall submit the application and obtain the license(s).

No license shall be issued to any person in default of any payment to the City including but not limited to any licensing fees under this Section or any Article of the Revised Code, any other charge or fee imposed by the Revised Code, any tax imposed by the City of Mt. Vernon, or any charge for water, sewer or garbage services or to any person in default on any loan agreement or contract with the City.

#### Terms of License.

The license fee for each licensed device placed at or upon any premises licensed under Article 6 of the Revised Code of Ordinances of the City of Mt. Vernon shall be Seventy-five Dollars (\$75.00) per annum for each device; the license fee for each licensed device at any other premises shall be Fifty Dollars (\$50.00) per annum for each device. The license fee shall be non-refundable and shall be non-proratable, and no license shall be transferable to any other device, except as specifically herein provided. Each licensed device shall have a separate license (which shall consist of a numbered sticker issued by the City Clerk). If a licensee desires to place additional devices or if a licensee desires to substitute an unlicensed device for a previously licensed device then a new application for license shall be filed; a licensing fee for each additional device shall be assessed but no fee shall be assessed for substituted devices. In addition, if any licensee moves a licensed device from one premises to another, the licensee shall, prior to the relocation, advise the City Clerk in writing of the relocation of the licensed device and shall provide such other information as may be required by the City Clerk.

#### Display of License.

The device license for each licensed device shall be exhibited in a conspicuous place on the licensed device and the licensed device shall at all times be kept and placed in plain view of any person who may frequent or be upon any premises where such device is kept, placed or used.

#### Inspection.

Each premises where a licensed device is placed and each licensed device shall be subject to inspection by agents of the City of Mt. Vernon, including but not limited to law enforcement officials at all times; consent to said inspection is a condition of and requirement of the license issued hereunder and of the placement of a licensed device within a premises, and said consent shall be deemed to be irrevocable permission for such inspection. Refusal of any operator, proprietor or any employee or agent of same to allow or permit inspection shall be deemed grounds for revocation of all licenses for any devices situated upon the premises subject of the refusal and denial of any license for any device to be placed upon said premises for a period of twelve (12) months from the date of the refusal.

#### Gambling Prohibited.

No operator, proprietor, employee or other agent of same or other person shall allow or permit any gambling upon any premises where any device is placed.

No person, nor any entity in which same has any interest, who has been convicted (including a no contest or similar plea) of any gambling offense as prescribed by any criminal code, statute,

ordinance, or regulation of the United States or of any State or of any political subdivision of either shall be eligible to hold any device license issued hereunder for a period of one (1) year from date of the conviction for a single offense, three (3) years from date of conviction for a second offense, and permanently in the event of a conviction for a third offense.

If any gambling offense involving a device resulting in a conviction of any person (including a no contest or similar plea) shall occur at any premises, all licenses for any devices placed upon the premises may be revoked and if said license or licenses are revoked, no license shall be granted to any person for a period of one (1) year from date of revocation for the placement of any device upon the premises if said premises shall continue to be owned, leased or subject to the control of the owner of the premises as of the date of the gambling offense or subject to the a control of any person related thereto; "Related" means being employed by, owning stock in, being a partner in, having any interest directly or indirectly in or being related by blood or marriage in the following relationships: spouse, parent, step-parent, grandparent, step-grandparent, child, stepchild, grandchild, step-grandchild, brother, step-brother, sister, step-sister, uncle or aunt.

#### Additional Regulations.

No owner, proprietor, employee or other agent of same or other person shall permit any disturbance or disorderly conduct upon any premises where any device is placed.

No "pool hall" or "business where a principal business activity is pool or billiard tables" shall allow any minor under 16-years of age to enter upon the premises, to remain upon the premises, to engage in any game or to use any such device. Any premises also licensed under Article 6 of the Revised Code of Ordinance shall not permit any person under 18-years of age to enter upon the premises, to remain upon the premises or to engage in any game or to use any such device, except as expressly and specifically authorized by said Article 6. Each pool hall or business where a principal business activity is pool or billiard tables shall have an unobstructed view of the interior of the room from the front exterior or from the front sidewalk or street adjacent to the premises where such device is located. No pool hall or business where a principal business activity is pool or billiard tables shall be open to business on Sunday except between the hours of 12:00 p.m. and 6:00 p.m. nor shall same be open to business between the hours of 1:00 a.m. to 6:00 a.m. on any day; provided that premises licensed under Article 6 of the Revised Code of Ordinances shall be subject to the hours of operation as provided within said Article 6.

No business or premises (excluding a pool hall or business where a principal business activity is pool or billiard tables) whose primary business is coin-operated devices shall be open to business on Sunday except between the hours of 12:00 p.m. and 6:00 p.m., nor shall same be open to business between the hours of 11:00 p.m. to 6:00 a.m. on Monday, Tuesday, Wednesday, or Thursday or from 12:00 a.m. until 6:00 a.m. on Friday or Saturday.

#### Liability of Operator or Proprietor for Acts of Agent.

Every act of or admission of whatsoever nature constituting a violation of any provision of this Section by any officer, director, manager, or other agent or employee of any operator or proprietor as herein defined shall be deemed to be the act of the operator or proprietor and the operator or proprietor shall be punishable and shall be ineligible to hold a license in the same manner as if the act or admission had been done or admitted by the operator or proprietor personally.

## Penalties.

Any operator or proprietor or any other person found guilty of violating any of the provisions of this Section shall each be fined not less than \$50.00 nor more than \$200.00 for each device not displaying a proper license; and a separate offense shall be deemed to have been committed on each day on which such violation occurs or continues.

In addition to any penalty or fine imposed for violations of this Section, the City Clerk may revoke any license for any violation of this Section after affording the licensee due notice and opportunity to be heard in his own defense.

### **SECTION 11.11      SHOWS, THEATRICALS, AND AMUSEMENTS**

No person shall engage in, conduct, or carry on any show, theatrical, or amusement without first having obtained a license therefor. The license fee for such show, theatrical, or amusement shall be as follows:

- (a) Circus or circus parade: sum of seventy-five dollars (\$75.00) per day.
- (b) Carnivals and like amusement companies: seventy-five dollars (\$75.00) per day.
- (c) Performances in theaters, tents, rooms, halls, or on the streets, other than circuses or carnivals, which are advertised more than six days, sum of forty dollars (\$40.00) per day; where advertised less than six days, the sum of seventy-five dollars (\$75.00) per day; provided, however, that the licensee of any theater, hall, or any place for giving of entertainment may procure an annual license for the sum of five hundred dollars (\$500.00) per year; provided, further, that if any such licensee has more than one such place or location for the giving of entertainment, then such licensee may procure a license for each additional place for the sum of one hundred fifty dollars (\$150.00) per annum.
- (d) Skating rinks: sum of two hundred dollars (\$200.00) per annum.
- (e) Performances and exhibitions not otherwise enumerated herein: rate of twenty dollars (\$20.00) per day.

### **SECTION 11.12      TERMITE AND OTHER PEST CONTROL CONTRACTORS OR EXTERMINATORS**

No person shall engage in business in the City as a termite or other pest control contractor or exterminator without first having obtained license therefor. Any person who shall apply any solution, compound, or method to any structure or land for the purpose of controlling, killing, or exterminating any termite or other pest, shall be deemed to have engaged in the business of termite or other pest control extermination. Each application for license hereunder shall, in addition to information required on all license applications in the City, state his previous experience in such business and any other places where the applicant has previously rendered pest control service, and in the event the applicant shall be a corporation or firm, then it shall state the name and address of the Manager or Supervisor.

The fee for each such license shall be fifty dollars ( \$50.00) per-annum and every license issued hereunder shall bear a legend conspicuously printed at the top:

“The granting of this license does not imply or infer approval of the holder or of this ability by the City of Mt. Vernon”.

Prior to treating any structure or performing services on any premises within the City of Mt. Vernon, each licensee shall first present to the City Clerk a certificate of liability insurance in a company or companies approved by the City Clerk in the amount of not less than fifty thousand dollars (\$50,000.00) for bodily injury by reason of any accident or occurrence, and twenty-five thousand dollars (\$25,000.00) for any property damage and such licensee shall first give bond to the City in the amount of one thousand dollars (\$1,000,00), conditioned upon and indemnifying the City against damages to any person to whom the City may be or claimed to be liable by reason of:

1. Failure of the licensee to observe ordinances of the City;
2. Failure of the licensee to observe any rule or regulation promulgated under the authority of any ordinance regulating licensee;
3. Negligence of the licensee in performing services.

Such certificate of insurance shall be furnished annually by the person prior to any license issued hereunder.

### **SECTION 11.13      VEHICLES FOR HIRE**

The term “vehicle for hire” shall mean and include any vehicle used to transport, haul, or carry passengers or property for a fee or charge.

No person shall charge, receive, or demand any pay or thing of value for the hauling or transporting of passengers or property within the City without first having obtained a license therefor. The fee for each such license shall be:

- (1) For each automobile, taxi, or other vehicle used for the transportation of passengers, thirty dollars (\$30.00) per annum.
- (2) For each other vehicle for hire, fifteen dollars (\$15.00) per annum.

### **SECTION 11.14      REGULATIONS FOR MASSAGE ESTABLISHMENTS AND MASSAGE SERVICES**

#### **A.      Definitions**

For the purposes of this Section, the following words and phrases shall have the meanings respectively ascribed to them:

- (1)      Administrative Official: The City Manager of the City of Mt. Vernon, Illinois or his

authorized representative.

- (2) Employee: Any and all persons other than masseurs or masseuses who render any service for the licensee and who receives compensation directly from the licensee but has no physical contact with customers or clients.
- (3) Licensee: The operator of a massage establishment.
- (4) Massage: Any method or pressure on, friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of external soft parts of the body with the hands or with the aid of any mechanical or electrical apparatus or appliance, with or without such supplementary aids as rubbing alcohol, liniments, antiseptic oils, powder, cremes, lotions, ointments, or other similar preparations commonly used in this practice.
- (5) Masseur or Masseuse: Any person who, for any consideration whatsoever, engages in the practice of massage as above defined.
- (6) Massage Establishment: Any establishment having its place of business where any person, firm, association or corporation engages in or carries on or permits to be engaged or carried on, any of the activities mentioned in subparagraph (4) hereof.
- (7) Massage Services: The providing of a massage or massages by any person, firm, association, or corporation.
- (8) Massage Therapist: A person who is licensed by the Illinois Department of Professional Regulation under 225 ILCS 57/1 et seq.
- (9) Person: Any individual, co-partnership, firm, association, joint stock company, corporation, or any combination of individuals of whatever form or character.
- (10) Sexual or Genital Area: The sexual or genital area of any person shall include the genitals, pubic area, buttocks, anus, or perineum of any person, or the vulva or breasts of a female.

B. Massage Establishment License Required

It shall be unlawful for any person to engage in, to conduct or carry on, or to permit to be engaged in, conducted, or carried on, upon any premises in the City of Mt. Vernon, the operation of a massage establishment as herein defined without first having obtained a massage establishment license from the City Clerk, after the approval of the Administrative Official.

No masseur or masseuse require to obtain a permit under this Ordinance shall give a massage or provide any massage service upon any premises in the City of Mt. Vernon except at a massage establishment licensed hereunder.

C. Application and Fee

Every applicant for a permit to maintain, operate or conduct a massage establishment shall file an application in duplicate, under oath, with the City Clerk upon a form provided by the City Clerk, and pay a non-refundable filing fee of \$100.00. The City Clerk shall, within five days thereafter, refer copies of such application and all additional information to the Inspection Bureau and the Administrative Official, The Inspection Bureau shall within 30 days inspect the premises proposed to be operated as a massage establishment, and make recommendations to the Administrative Official concerning compliance with the Codes of the City of Mt. Vernon. Upon receipt of the recommendations of the Inspection Bureau, the Administrative Official shall notify the applicant as to whether his application has been granted, denied, or held for further investigation.

The period of such additional investigation shall not exceed an additional 30 days unless otherwise agreed to by the applicant. The Administrative Official shall advise the applicant in writing as to whether the application has been granted or denied. If the application is denied or held for further investigation, the Administrative Official shall advise the applicant in writing of the reason for such refusal.

The failure or refusal of the applicant to promptly give any information relevant to the investigation of the application, or the refusal or failure of applicant to appear at any reasonable time and place for examination under oath regarding said application, or the refusal of applicant to submit to or cooperate with any inspection required by this Section, shall be grounds for denial of the application.

D. Application Information for License For Massage Establishment

The application for a license to operate a massage establishment shall set forth the exact nature of the massage to be administered and the proposed place and facilities therefor.

In addition thereto, any applicant for a license, and each partner or limited partner of an applicant, if a partnership applicant, and each officer and director of a corporate applicant and any stockholder of a corporate applicant holding more than 10% of the stock of the corporate applicant, shall furnish the following information.

- (1) Written proof that each individual is at least 18 years of age.
- (2) All residential addresses for the past three years.
- (3) The business, occupation, or employment of each individual for the three years immediately preceding the date of application.
- (4) The previous experience of the individual in massage or similar business.
- (5) Whether the individual has had any license or permit denied revoked, or suspended in the City of Mt. Vernon or in the State of Illinois or any other state or City for a massage establishment, the reason therefor, and the business activity or occupation of the individual subsequent to such suspension, revocation, or denial.
- (6) Any conviction, forfeiture of bond, or plea or nolo contendere upon any criminal violation or City ordinance violation (except minor traffic violations), within a five

year period.

- (7) If the applicant is a corporation, or a partner of any partnership is a corporation, then the name of the corporation shall be set forth exactly as shown in the Articles of Incorporation, together with the state of incorporation, and proof of authority to do business in the State of Illinois.
- (8) If the applicant is licensed as a massage therapist, a copy of the current license issued by the State of Illinois, Department of Professional Regulation.

E. Massage Establishment License

Upon receipt of the recommendations of the Inspection Bureau and with the information contained in the application, together with all additional information provided therein, the Administrative Official shall direct the issuance of a license by the City Clerk to the applicant to maintain, operate, or conduct a massage establishment, unless the Administrative Official shall find:

- (1) That the operation of the massage establishment as proposed by the applicant, if permitted, would not comply with the applicable laws of the State of Illinois and the City of Mt. Vernon, including but not limited to the building, health, planning, housing, fire prevention, and zoning codes of the City of Mt. Vernon; or
- (2) That the applicant or any other person who shall be directly or indirectly engaged in the management and operation of the massage establishment has been convicted of:
  - a. a felony,
  - b. an offense involving sexual misconduct with children,
  - c. any provision of Article 11 of Illinois Criminal Code (720 ILCS 511-1 et seq);  
or
- (3) That the operation of the massage establishment as proposed by the applicant, if permitted, would violate the provisions of this ordinance.
- (4) The applicant or any person described within paragraph 11.14 (D) has had a massage establishment license or masseur or masseuse permit revoked within the immediately preceding 5-years by the City, the State of Illinois or any other government entity.

The license provided herein shall be for a initial term ending April 30 next, following the issuance of the license, unless sooner suspended or revoked. Such license must be renewed annually, and any renewal shall be for a term of one year from May 1 to April 30.

F. Revocation or Suspension of Massage Establishment License

Any license issued for a massage establishment may be revoked or suspended by the

Administrative Official after a hearing, for a good cause. The Administrative Official shall give to the licensee at least ten (10) days written notice of the charges and an opportunity for a public hearing before the Administrative Official, at which time the licensee may present evidence bearing upon the question. Cause for revocation or suspension shall include the violation of the provisions of this ordinance or of any criminal statute of the State of Illinois by the applicant, or by any employee of the licensee or any masseuse or masseur employed by the licensee; provided that the violation of this ordinance or any criminal law of the State of Illinois shall not be a cause for revocation or suspension unless the licensee shall have had actual or constructive knowledge of such violations in the exercise of due diligence.

It shall also be cause for revocation or suspension that the applicant has made a false statement on any application for permit under this ordinance, or in the event that the licensee shall refuse to permit any authorized police officer or authorized member of the Inspection Bureau or of the Fire Department of the City of Mt. Vernon, to inspect the premises or the operations thereof at reasonable times.

Upon a license being revoked, the person to whom the license was issued shall be prohibited from receiving a license or permit under this Ordinance for a period of 5-years from date of revocation.

G. Necessary Facilities for Massage Establishments

No massage establishment shall receive a permit or be operated, established, or maintained, unless the establishment shall comply with each of the following minimum regulations:

- (1) All massage tables, bath tubs, shower stalls, bath areas and floors shall have surfaces which may be readily disinfected.
- (2) Separate bathing, dressing, locker, toilet, and massage room facilities shall be provided for female and male patrons, so that female and male patrons may be served simultaneously in the event that patrons of both sexes are permitted.
- (3) The premises shall have adequate equipment for disinfecting and sterilizing nondisposable instruments and materials used in administering massages. Such nondisposable instruments and materials shall be disinfected after use on each patron.
- (4) Toilet facilities shall be provided in convenient locations. When five or more employees or patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Lavatories or wash basins shall be provided with both hot and cold running water and shall be installed in either the toilet room or vestibule. Lavatories or wash basins shall be provided with soap and a dispenser and with sanitary towels.
- (5) Closed cabinets shall be provided for use in the storage of clean linens, towels, and other materials shall be kept in properly covered containers or cabinets which shall be kept separate from the clean storage areas.

H. Operating Requirements for Massage Establishments

- (a) Every portion of the massage establishment, including appliances and apparatus, shall be kept clean and operated under sanitary conditions.
- (b) Price rates for all services shall be prominently posted in the reception area in a location available to all prospective customers.
- (c) All employees, including masseurs and masseuses, shall wear clean, non-transparent outer garments covering the sexual and genital areas, and such outer garments shall be restricted in use to the massage establishment.
- (d) A separate dressing room for each sex must be available on the premises, with individual lockers for each employee, masseuse and masseur.
- (e) Doors to the dressing rooms shall open inward and shall be self-closing.
- (f) All massage establishments shall be provided with clean laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in a sanitary manner.
- (g) The sexual or genital areas of patrons must be covered with towels, cloths, or undergarments when in the presence of an employee, masseur, or masseuse.
- (h) It shall be unlawful for any person in a massage establishment to place his or her hand upon, or to touch with any part of his or her body, or to fondle in any manner, or to massage, a sexual or genital area of any person.
- (i) No masseur or masseuse, employee or licensee, shall perform, offer, or agree to perform any act which shall require the touching of the patron's genital area.
- (j) All walls, ceilings, floors, pools, showers, baths and steam rooms and any other physical facilities shall be in good repair and maintained in a clean and sanitary condition.
- (k) Oils, cremes, lotions, and other preparations used in administering massages shall be kept in clean, closed containers or cabinets.
- (l) No masseur or masseuse shall administer a massage to a patron exhibiting any skin fungus, skin infection, skin inflammation, or skin eruption, unless a physician duly licensed by the State of Illinois shall certify in writing that such person may be safely massaged, describing the conditions under which such massage may be performed.
- (m) Each masseur or masseuse shall wash his or her hands in hot running water, using the proper soap or disinfectant before administering any massage to any patron.

#### I. Inspection

The Inspection Bureau and the Fire Department shall, from time to time, and at least twice a year, make an inspection of each massage establishment granted a license under the provisions of this ordinance for the purpose of determining that the provisions of this ordinance are complied with. Such inspection shall be made at reasonable times and in a reasonable manner. It shall be unlawful for

any licensee to fail to allow such inspection officer access to the premises or to hinder such inspection officer in any manner.

J. Employment

It shall be unlawful for any owner, operator, proprietor, manager or other person in charge of any massage establishment, to employ any person who is not at least 18 years of age.

K. Transfer of License

No license for the operation of a massage establishment shall be transferable except with the written consent of the Administrative Official; provided, however, that upon the death or incapacity of the licensee, the massage establishment may continue in business for a reasonable period of time to permit an orderly transfer of the license to the personal representative of the licensee or to a transferee of the license.

L. Display of License or Permit

The massage establishment and each masseur or masseuse shall display a valid current license or permit in a conspicuous place within the massage establishment so that the same may be readily seen by persons entering the establishment.

M. Permit for Masseur or Masseuse

Any person who engages in the practice of massage as herein defined shall file an application for a permit as a masseur or masseuse, which application shall be filed with the City Clerk upon the form provided by the Clerk, and shall pay a non-refundable filing fee of twenty-five dollars (\$25.00) for the original application and ten dollars (\$10.00) for each renewal application.

Persons who shall be licensed as a physical therapist by the Illinois Department of Professional Regulation under 225 ILCS 90/1 et seq and persons who shall be licensed as a massage therapist by the Illinois Department of Professional Regulations under 225 ILCS 57/1 et seq shall be exempt from the provisions of this Ordinance requiring a permit for masseur or masseuse.

N. Application for Masseur or Masseuse Permit

The application for a permit for a masseur or a masseuse shall contain the following:

- (1) Name and residence.
- (2) Social Security Number
- (3) Written evidence that the applicant is at least 18 years of age.
- (4) Business, occupation, or employment of the applicant for 3 years immediately preceding the date of application.
- (5) Whether the applicant has ever been convicted of, pleaded nolo contendere

to, or suffered a forfeiture of bond on a charge of committing any violation of the City Ordinances or State Statute (except minor traffic violations). In the event any answer is in the affirmative, then the applicant shall state the place and court in which such conviction, plea, or forfeiture was had, the specific charge, and the sentence imposed as a result thereof.

- (6) Whether the applicant has within the immediately preceding 5-years had a permit for a masseur or masseuse or license for a massage establishment revoked by the City, by the State of Illinois or other governmental entity; such revocation shall make the applicant ineligible to receive a permit.
- (7) The applicant shall further undergo a physical examination and present the written results thereof for contagious and communicable diseases which shall include a recognized blood test for syphilis, a culture for gonorrhea, a test or tests which will demonstrate freedom from tuberculosis, and each test shall have been made by a licensed physician and all laboratory tests shall be in laboratories approved by the City of Mt. Vernon. The applicant shall then present a certificate with the results of each such examination signed by a physician licensed in the State of Illinois stating that the person examined is either free from any contagious or communicable disease or is incapable of communicating any of such diseases to others. Each applicant shall undergo the physical examination provided herein and present to the City Clerk the certificate required herein prior to the commencement of employment and at least once each 12 months thereafter.

O. Issuance of Permit for Masseur or Masseuse

The Administrative Official shall direct the issuance by the City Clerk of a permit for a masseur or masseuse within 21 days following the application and the providing of all information required by this ordinance, unless the Administrative Official finds that the applicant for a permit has been convicted of a felony, an offense involving sexual misconduct with children, or any violation of Article 11 of the Illinois Criminal Code (750 ILCS 5/11-1 et seq), or unless he finds that the applicant has failed to provide all the information and certificates required by this ordinance or fails to meet the requirements of this Ordinance.

Each permit for a masseur or masseuse, pursuant to this ordinance, shall terminate on April 30 following its issuance, and any renewal shall be for a one year term commencing May 1 and ending April 30 thereafter.

P. Revocation of Permit for Masseur or Masseuse

A permit for masseur or masseuse may be revoked or suspended where it appears that the masseur or masseuse has been convicted of any offense which would be cause for denial or a permit upon an original application, has made a false statement on an application for a permit, or has committed an act in violation of this ordinance. The Administrative Official shall give the permit holder a written notice specifying the grounds for suspension or revocation. The permit holder may, within ten (10) days from the date of such revocation or suspension, file a written request for public hearing, which hearing shall be held within ten (10) days after the filing of request for same, and at which time the permit holder may present evidence bearing upon the question. The Administrative

Official shall then issue a written order as to whether the permit shall be revoked or suspended within five (5) days after the date of hearing.

Upon a permit being revoked the person to whom the permit was issued shall be prohibited from receiving a license or permit under this Ordinance for a period of 5-years from date of revocation.

Q. Exceptions as to License

No massage establishment license nor masseur or masseuse permit shall be required for hospitals, nursing homes, sanitaras, or persons holding an unrevoked certificate to practice medicine under the laws of the State of Illinois, or to persons working under the personal direction of any such persons or in any such establishments, nor shall this ordinance apply to barbers or cosmetologists lawfully carrying out their profession and holding a valid unrevoked license or certificate of registration issued by the State of Illinois.

R. Advertising

No massage establishment, no masseur or masseuse, nor any other person, shall place, publish or distribute, or cause to be placed, published or distributed, any advertising matter that depicts any portion of the human body that would reasonably suggest to prospective patrons that any services are available other than those services permitted by this ordinance, or which would reasonably suggest that employees, masseurs, or masseuses are dressed in any manner other than that permitted by this ordinance.

S. Out Call Massage and Registration

Any person who provides any massage or masseuse services at any hotel or motel must first register his or her name and his or her State license number with the owner, manager, or person in charge of such hotel or motel. No out call massage service may be operated other than by a massage therapist licensed by the State of Illinois, Department of Professional Regulation, and each out call massage or massage service is subject to the provisions this ordinance.

T. Prohibited Massages and Massage Services

No person (including but without limitation any person licensed hereunder or any massage therapist) shall:

- (a) provide a massage or massage services unless all masseurs and masseuses and all employees shall wear a clean non-transparent outer garment covering their sexual and genital areas.
- (b) provide a massage or massage services unless the sexual or genital areas of patrons are covered with towels, cloths, or undergarments when in the presence of an employee, masseur or masseuse.
- (c) provide a massage or massage services in such a manner or in such a way as to place

his or her hand upon, or to touch with any part of his or her body, or to fondle in any manner, or to massage, the sexual or genital area of any person.

- (d) perform, offer, or agree to perform any act which shall require the touching of a patron's genital area.

U. Violation and Penalty

Each person who shall violate the provisions of this ordinance shall, upon conviction thereof, be subject to the penalty provisions of Article 22 of the Revised Code of Ordinances of the City of Mt. Vernon, and a separate offense shall be deemed to have been committed upon each day that a violation shall continue. In addition, each person who shall violate the provision of this Ordinance shall be subject to suit for an injunction.

V. Severability

If any section, subsection, subdivision, paragraph, or part of this ordinance is for any reason held to be unconstitutional or invalid by any final court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance.

**SECTION 11.15      REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES**

**(Adopted by Ordinance 2003-55 which identifies information reviewed by and findings of the City Council all of which are incorporated herein by reference thereto, the same as if set out verbatim herein.)**

**SECTION 11.15.1    Purpose and Intent.**

It is the purpose and intent of Section 11.15 to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the City, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of Section 11.15 have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of Section 11.15 to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of the Section to condone or legitimize the distribution of obscene materials.

**SECTION 11.15.2    Definitions.**

The words and phrases defined herein shall have the meanings hereinafter ascribed to them unless a different meaning is clearly indicated by the context.

- (1) *Adult Cabaret* means any commercial establishment, except an adult theater, semi-nude model studio, or sexual encounter center, including but not limited to a nightclub, bar, restaurant, or gentlemen's club, which regularly features any one or more of the following:
  - (a) persons who appear semi-nude or in a state of semi-nudity;

(b) live performances which are characterized by their emphasis upon exposure of “specified sexual activities” or “specified anatomical areas.”

(2) *Adult Motel* means a motel, hotel or similar commercial establishment which offers private accommodations to the public, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas” and which advertises the availability of such sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, and which (i) offers a sleeping room for rent for a period of time less than ten hours or (ii) allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten hours.

(3) *Adult Store* means 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:

(a) books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that are characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas;” or

(b) instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities.”

(c) films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by their emphasis upon matters exhibiting or describing “specified sexual activity” or “specified anatomical areas” and which are shown within a viewing room as hereinafter defined on still or motion picture projectors, slide projectors or similar machines or computers or other image producing machines.

A principal business purpose exists if the establishment has a significant or substantial portion of its stock in trade or derives a significant or substantial portion of its revenues or

devotes a significant or substantial section of its sales or display or floor space to the sale or rental for any form of consideration any one or more of the items described above. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as an adult store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult store so long as one of its principal business purposes are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(4) *Adult Theater* means a theater, concert hall, auditorium or similar commercial establishment which has a room(s) for viewing or viewing areas, each of which are 150 square feet or greater in size and which for any form of consideration regularly features any one of the following:

(a) films, motion pictures, video cassettes, slides or similar photographic

reproductions which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas” are regularly shown for any form of consideration;

(b) persons who appear semi-nude or in a state of semi-nudity or live performances which are characterized by their emphasis upon the exposure of “specific sexual activities” or “specific anatomical areas”.

(5) *Building and Zoning Official* means Building Official (also known as the Chief Building Inspector) established under Article 5 of the Revised Code of Ordinances.

(6) *Dancer or performer* means an employee who dances or otherwise performs in an adult cabaret or adult theater.

(7) *Distinguished or Characterized by an Emphasis Upon* means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or description of Specified Sexual Activities or Specified Anatomical area,” the films so described are those whose dominant or principal character and theme are the exhibition or description “specified anatomical areas” or “specified sexual activities.”

(8) *Employ, Employee, and Employment* describe and pertain to any person who performs any service on the premises of a business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. A person who performs a service shall be considered a employee, regardless of whether said person receives a fee, tips, or other form of consideration or no payment or consideration of any kind. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

(9) *Escort* means a person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie for another person.

(10) *Escort Agency* means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(11) *Establishment* means and includes any of the following:

(a) The opening or commencement of a sexually oriented business as a new business;

(b) The conversion of an existing business, whether or not a sexually oriented business, to any of the sexually oriented businesses defined in Section 11.15;

(c) The relocation of any such sexually oriented business.

(d) A sexually oriented business or premises on which the sexually oriented business is located.

(12) *Hearing Officer* shall mean the City Manager of the City of Mt. Vernon or his designee; if the City Manager is unavailable, and in absence of any other designation by the City Manager, the Assistant City Manager shall be the hearing officer.

(13) *Knowledge* or *With Knowledge* means: A person knows or acts knowingly or with knowledge of the nature or attendant circumstances of his conduct, which constitutes the violation, when he is consciously aware that his conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists. A person also knows or acts knowingly or with knowledge of the result of his conduct, which constitutes the violation, when he is consciously aware that such result is practically certain to be caused by his conduct.

(14) *Licensee* means a person in whose name a license has been issued.

(15) *Nude* or *State of Nudity* means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or anal cleavage with less than a fully opaque and non-transparent covering, the showing of the female breast with less than a fully opaque and non-transparent covering of any part of the nipple and areola, or the showing of the covered male genitals in a discernibly turgid state.

(16) *Operate* or *Cause to Operate* or *Operator* shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, or has an ownership interest in the business.

(17) *Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(18) *Premises* means the real property upon which the sexually oriented business is located, and all appurtenances thereto and the structure and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to subsection 11.15.7 of this Ordinance.

(19) *Public Park* or *Recreation Area* means public land which has been designated for park or recreational activities including but not limited to a park, playground, nature trails,

swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths or similar public land open to the public within the City of Mt. Vernon which is under the control, operation, or management of the City or other governmental, charitable, or not-for-profit authority.

(20) *Public Place* means any location frequented by the public or where the public is present or likely to be present or any location where a person may reasonably be expected to be observed by members of the public or any location that is readily visible to the public or any location where the public has a right to go or is invited.

(21) *Regularly Features* means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the establishment.

(22) *Religious Institution* means any church, synagogue, mosque, temple, regular place of worship or building which is used primarily for religious worship and related religious activities.

(23) *Residential District or Use* means the R-1, Low Density Residential; R-2, Medium Density Residential; R-M2, Medium Density and Mobile Home; R-3, High Density Residential; and R-MH, Planned Mobile Home Districts described within Article 21 of the Revised Code of Ordinances. *Residential Use* means any dwelling or structure used or occupied for living quarters of any person or property upon which there is situated a residential structure, dwelling unit or other living quarters.

(24) *School* means any public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergarten, elementary schools, primary schools, intermediate schools, junior high schools, high schools, secondary schools, continuation schools, special education schools, junior colleges, and universities. School includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.

(25) *Semi-Nude or Semi-nudity* means a state of dress in which non-transparent and opaque clothing covers from view no more than the human buttocks, anus, anal cleft and cleavage, pubic area, male genitals, female genitals, vulva and the female breast below a horizontal line across the top of the areola at its highest point and the human male genitals in a discernibly turgid state, even if completely and opaquely covered. This definition shall include the entire lower portion of the human female breasts, but shall not include any portion of the cleavage of the human breasts exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel, provided the areola and nipple are not exposed in whole or in part.

(26) *Semi-nude Model Studio* means any place where a person, who regularly appears in a state of semi-nudity is provided for money or any form of consideration to be viewed or observed or sketched or drawn or painted or sculptured or photographed or similarly depicted by other persons. Semi-nude Model Studio shall not include a modeling class operated: (a) By a college, junior college, or university supported entirely or partly by taxation; or (b) By a private college or university which maintains and operates educational programs in which

credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or (c) In a structure: (i) which has no sign visible from the exterior of the structure and other advertising that indicates a semi-nude person available for viewing and (ii) where, in order to participate in a class a student must enroll at least three days in advance of the class; and (iii) where no more than one model is on the premises at any one time.

(27) *Sexual Encounter Center* means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (b) 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 semi-nudity.

The requirement of a raised stage within Section 11.15.26 (3) is not applicable to sexual encounter centers, but each and every other provisions of Section 11.15.26 shall apply. A

principal business purpose exists if the services offered are intended to generate business income.

(28) *Sexually Oriented Business* means an adult store, adult cabaret, adult motel, adult theater, sexual encounter center, escort agency, or semi-nude model studio.

(29) *Specified Anatomical Areas* means and includes any of the following:

- (a) the male genitals in a discernibly turgid state, even if fully and opaquely covered;
- (b) less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

(30) *Specified Sexual Activities* means and includes any of the following:

- (a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;
- (b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (c) masturbation, actual or simulated; or
- (d) excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

(31) *Transfer of Ownership or Control of a Sexually Oriented Business* means and includes any of the following:

- (a) The sale, lease or sublease of the business;
- (b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means;
- (c) The establishment of a trust, gift or other similar legal device which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

(32) *Viewing Room* shall mean a room, booth, or area having less than 150 square feet of floor space where a patron of a sexually oriented business is positioned or would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

### **SECTION 11.15.3 Classification of Businesses Regulated.**

Sexually oriented businesses shall be classified as follows:

- (1) Adult store
- (2) Adult cabaret
- (3) Adult motel
- (4) Adult theater
- (5) Escort agency
- (6) Semi-nude model studio

- (7) Sexual encounter center

#### **SECTION 11.15.4 Location of Sexually Oriented Businesses.**

- (1) The establishment of a sexually oriented businesses shall be permitted only in the Light Industrial District (I-1) as described within Article 21 of the Revised Code of Ordinances.
- (2) The sexually oriented business shall not be operated within 400 feet of
  - (a) a religious institution;
  - (b) a school;
  - (c) a public park;
  - (d) the boundary of any residential district;
  - (e) any property actually occupied, devoted to or utilized for residential use, whether zoned residential or not;
- (3) A sexually oriented business shall not be operated in the same building, structure or portion thereof containing another sexually oriented business classified pursuant to Section 11.15.3 herein or containing any business or premises licensed under Article 6 of the Revised Code of Ordinances or containing any business or premises licensed under Article 11, Section 11.14 of the Revised Code of Ordinances. In addition, a sexually oriented business shall not be operated within 800 feet of another sexually oriented business classified pursuant to Section 11.15.3 herein or within 800 feet of any business or premises licensed under Article 6 of the Revised Code of Ordinances or within 800 feet of any business or premises licensed under Article 11, Section 11.4 of the Revised Code of Ordinances. The sexually oriented business shall be situated within a single structure upon the premises or, if situated within more than one building each of said buildings shall be connected one to the other by an enclosed walkway, hall, or other similar manner (which shall be deemed to be part of the interior of the licensed premises) so that no patron or employee nor any other person is required to exit a building to the exterior of the sexually oriented business to enter another building.
- (4) For the purposes of this subsection measurements shall be made in a straight line without regard to intervening structures or objects from the nearest portion of the building or structure used as part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a business or use described within Section 11.15.4 (2).
- (5) For purposes of this subsection the distance between any two businesses described within subparagraph (3) above shall be measured in a straight line without regard to intervening structures or objects from the closest exterior wall of the structure in which each business is located.
- (6) The distance requirements and provisions of this subsection shall not be subject to variance.

#### **SECTION 11.15.5 Non-conforming Use for Sexually Oriented Business; Compliance.**

- (1) Any sexually oriented business lawfully established, lawfully located and lawfully

operating on the date of passage of Section 11.15 that is in violation of 11.15.4 is a non-conforming use. A non-conforming use will be permitted to continue at its existing location for a period of one year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty days or more; however, such non-conforming sexually oriented business shall during said one year period be required to comply with each provision of Section 11.15 except the location restriction and except any provision requiring structural remodeling or alteration of the premises. Such non-conforming use shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 800 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at the particular location is the conforming use and the later established business is non-conforming.

(2) A sexually oriented business lawfully established, lawfully located and lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of a sexually oriented business license, of a business or use described within Section 11.15.4(2) within 400 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 been revoked. No business described within Section 11.15.4(3) is permitted to locate within the distance restriction for sexually oriented businesses described within Section 11.15.4(3).

(3) Except as hereinafter provided, any establishment or any person subject to the provisions of Section 11.15 shall comply with the provisions and regulations of Section 11.15 immediately upon its effective date, including without limitation Section 11.15.13, 11.15.19, 11.15.23, 11.15.24, 11.15.25, 11.15.26, 11.15.27, and 11.15.28. Any establishment existing prior to the effective date of Section 11.15 shall apply for the license provided for by subsection 11.15.7 within thirty days of the effective date of Section 11.15. Any person employed by an establishment prior to the effective date of Section 11.15 shall apply for the license provided for by subsection 11.15.8 within thirty days of the effective date of Section

11.15. Any establishment existing prior to the effective date of Section 11.15 with regard to a provision requiring alteration to its structure or to its premises in order to comply with Section 11.15 shall fully comply with said provision within one hundred eighty days of the effective date of Section 11.15 unless said establishment is a non-conforming use which will terminate under Section 11.15.5.

(4) A sexually oriented business not lawfully established, not lawfully located or not lawfully operating by reason of any ordinance, statute, or code in effect immediately prior to the effective date of Section 11.15 shall immediately cease operation and shall cease conduct of business as Section 11.15 shall not be construed so as to allow any illegal use or use established in violation of law, including without limitation 65 ILCS 5/11-5-1.5, or 55 ILCS 5/5-1097.5 or Article 21 of the Revised Code of Ordinances, to continue as a non-conforming use.

## **SECTION 11.15.6 License Required.**

(1) No person shall operate a sexually oriented business without a valid sexually oriented

business license issued by the City.

(2) No person who operates a sexually oriented business shall employ a person to work and/or perform services on the premises of a sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license issued to such employee by the City.

(3) No person shall obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the City.

### **SECTION 11.15.7 Application for Sexually Oriented Business License.**

(1) An application for a sexually oriented business license, whether original or renewal, must be made by each operator or operators of the sexually oriented business on a form provided by the City. The application must be submitted to the City Clerk and shall be marked by the City Clerk with the date and time of receipt. The application shall be subject to approval or denial by the Building and Zoning Official of the City. The application form shall request and the applicant shall be required to provide information described within subparagraph (2) herein. The application form, upon filing with the City Clerk must be accompanied by the application fee and by each of the following described diagrams or drawings:

(a) a drawing showing the internal and external configuration of the premises, including all doors, entrances, exits, and the fixed structural internal features of the premises, plus the interior rooms, walls, partitions, stages, performance areas, hallways, restrooms, dressing rooms, and other rooms and showing each designated area where a patron(s) is not permitted access; and also a diagram or drawing which

includes the information needed to determine off-street parking and lighting requirements set out within Section 11.15.22. The drawings or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions to an accuracy of plus or minus six inches.

(b) a current certificate and straight line drawing prepared within thirty days prior to the application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 800 feet of the premises to be certified and any premises licensed under Article 6 of the Revised Code within 800 feet of the premises to be certified and any premises licensed under Article 11, Section 11.14 of the Revised Code within 800 feet of the premises to be certified; and the property lines of any established business or use described within Section 11.15.4(2) within 400 feet of the premises to be certified. For purposes of this subparagraph (b), a use shall be considered existing or established if it is in existence at the time an application is filed with the City Clerk.

(2) The application for a sexually oriented business license and the applicant shall be

required to provide the following information:

- (a) The name and current mailing address of the applicant(s);
- (b) Written proof of age in the form of a birth certificate or picture identification issued by a governmental agency of person signing application;
- (c) The single classification of license as found in Section 11.15.3 for which the applicant is filing;
- (d) The street address and legal description of the tract of land on which the establishment is to be located;
- (e) If an applicant wishes to operate a sexually oriented business which shall exhibit on the premises, in a viewing room of less than 150 square feet of floor space, films, videocassettes or other video reproductions which depict specified sexual activities or specified anatomical areas then the applicant (adult store) shall comply with the additional application requirements set forth in subsection 11.15.24.
- (f) An affirmative statement that the applicant(s) within the preceding 12-months has not had any license issued under Section 11.15 revoked.

(3) In the event that the sexually oriented business premises has not been constructed or reconstructed to accommodate the proposed sexually oriented business at the time the application is filed with the City Clerk, the Building Official shall base his approval or denial of the license upon the diagrams or drawings submitted pursuant to Section 11.15.7(1) and 11.15.7(2). Subject to Section 11.15.5, any sexually oriented business license issued prior to completion of the construction or reconstruction necessary to accommodate the sexually oriented business shall be subject to the condition that the sexually oriented business shall not open for business until the licensed premises is in strict compliance with the diagrams submitted with the application. Prior to the sexually oriented business opening for business the licensee shall make a request in writing to the City Clerk for an inspection and determination that the premises is in compliance with the diagrams. An inspection and determination by the Building Official and written notice of the determination to licensee shall be completed within ten business days of the filing of the written request with the City

Clerk. Upon filing of the written request by licensee with the City Clerk, the sexually oriented business may immediately open for business but the license shall be subject to revocation if the premises is not in strict compliance with the diagrams submitted by licensee with his application.

(4) The applicant has an affirmative duty to supplement an application with information received subsequent to the date that the application is filed with the City. None of the items set forth within subparagraph (1) and (2) herein, except the name and current address of the applicant(s) shall be required for a renewal application if the applicant states in writing under oath that the documents and information previously furnished to the City with the original application or previous renewals thereof remain correct and current.

(5) The approval or use of the diagrams or drawings required pursuant to subsection 11.15.7 shall not be deemed to be, and shall not be interpreted or construed to constitute, any other City approval otherwise required pursuant to other applicable City ordinances and/or State law.

### **SECTION 11.15.8 Application for a Sexually Oriented Business Employee License.**

(1) Applications for a sexually oriented business employee license to work and/or perform services as an employee in a sexually oriented business, whether original or renewal, must be personally submitted to the City Clerk by the person to whom the employee license shall issue; the City Clerk shall mark each application with the date and time of receipt. Each application for an employee license shall be accompanied by the application fee. Application forms shall be supplied by the City.

(2) Each applicant for an employee license shall be required to give the following information on the application form:

- (a) The applicant's name
- (b) Written proof of age in the form of a birth certificate or picture identification issued by a governmental agency.
- (c) Current mailing address
- (d) An affirmative statement that the applicant within the preceding 12 months has not had any license issued under Section 11.15 revoked.

### **SECTION 11.15.9 Additional Application Requirements.**

(1) Every application for a license under Section 11.15 shall contain a statement under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct.

(2) The person to whom an employee license shall issue shall sign the application for the license as applicant. If a person who wishes to operate a sexually oriented business is an individual he shall sign the application as applicant. If a person who wishes to operate is other than an individual, the person signing the application shall verify that he has the legal authority to legally bind the applicant.

(3) Personal information provided upon an application shall be confidential and shall not be disclosed to the public except to the extent required by Illinois or Federal law.

(4) An applicant at the time of filing of an application may make written demand that notice of decision on the application for a new license be given by personal delivery, although in such case the applicant must provide the City Clerk with the method (of the applicant's choice) by which the City Clerk can promptly contact the applicant and the applicant must present himself at the Office of the City Clerk for personal delivery; if the applicant does not make demand for personal delivery then the applicant is not required to provide a method of contact nor required to present himself at the Office of the City Clerk and the City Clerk may serve the decision on the applicant by personal delivery or by certified mail.

### **SECTION 11.15.10 Issuance of a Sexually Oriented Business License.**

(1) If application is made for a sexually oriented business license the Building and Zoning Official shall either approve or deny the issuance and the City Clerk shall issue the license or issue a written denial to an applicant within 20-days of the filing of application with the City Clerk. The Building and Zoning Official shall approve a license and the City Clerk shall issue

a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- (a) The applicant has failed to provide the information requested on the application form or has falsely answered a question or request for information on the application form;
- (b) The applicant is under the age of 18 years;
- (c) The applicant has had a sexually oriented business license or an employee license issued by the City of Mt. Vernon, Illinois revoked within the 12-months preceding the date of the application
- (d) Subject to subsection (3) below, the premises to be used for the sexually oriented business has been determined by the Building Department, Fire Department or Zoning Department of the City as not being in compliance with applicable Building, Zoning or Fire Codes;
- (e) The license fee required has not been paid;
- (f) The premises to be used for the sexually oriented business does not meet the location restrictions of 11.15.4 or the premises is physically or structurally not in compliance with one or more provisions of Section 11.15.
- (g) The applicant has refused or failed to permit inspection of the premises.

(2) A sexually oriented business license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the street address of the sexually oriented business and the Section 11.15.3 classification for which the license is issued. 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.

(3) Failure of an appropriate City Department or employee to timely complete a review or inspection, failure of the Building Official to approve or deny a license, or failure of the City Clerk to issue or deny a license shall not be grounds for refusing to issue a license within 20-days (or within the extended time period requested by the applicant) from the date the application is filed with the City Clerk. In the event the City Clerk fails to issue or deny a license within the time specified, the license will be deemed to have been issued. However, the licensee and the licensed premises must still comply with all provisions of Section 11.15 the same as if a license had been issued by the City Clerk, as the failure of the City to render a decision on an application does not excuse compliance by the licensee with any provision of Section 11.15, except the license requirement. The licensee is also subject to all provisions of Section 11.15 relating to renewal of license, suspension of a license or revocation of a license.

(4) A sexually oriented business license shall issue for only one classification as set forth in Section 11.15.3 and for only one designated premises.

(5) In the event that the Building Official determines that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in writing by the City Clerk of the reasons for the denial within 20-days of the filing of the completed application with the City Clerk, provided that the applicant may request in writing at any time before the notice is issued that such period be extended for an additional definite time period in order to comply with the requirements of Section 11.15.

(6) A sexually oriented business license shall be subject to annual renewal upon the written application of the applicant. The decision whether to renew a license shall be made within 20-days of the filing of the application with the City Clerk (unless extended by request of the applicant). The request for renewal shall be subject to the fee as set forth within Section 11.15.12.

(7) Denial of a new or original license, denial of renewal of a license, suspension of a license, or revocation of a license shall be subject to the licensing and appeal procedures as provided within subsection 11.15.17.

#### **SECTION 11.15.11 Issuance of a Sexually Oriented Business Employee License.**

(1) Upon the filing of an application for a sexually oriented business employee license, the City Clerk shall within one business hour issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- (a) The applicant has failed to answer or has falsely answered a question or has failed to provide information requested on the application form; or
- (b) The applicant is under the age of 18 years; or
- (c) the applicant has had a sexually oriented business license or employee license issued by the City of Mt. Vernon Illinois revoked with the twelve months preceding the date of the application.

(2) Denial of a license shall be in writing and shall state the reason for denial. In the event the City Clerk fails to render a written decision on an application within one business hour, the license will be deemed to have been issued. Failure of the City Clerk to render a decision on an application does not excuse compliance by the licensee with any provision of Section 11.15, except the license requirement; the licensee is also subject of all provisions

of Section 11.15 relating to renewal of a license, suspension of a license, or revocation of a license.

(3) A sexually oriented business employee license, if granted, shall state on its face the name of the person to whom it is granted and the expiration date. While engaged in employment or performing services on the sexually oriented business premises an employee shall at all times possess the license in such manner so that it is available for immediate inspection upon lawful request. This subparagraph does not require the employee to have the license on his or her person at all times.

(4) A sexually oriented business employee license shall be subject to annual renewal upon the written application of the applicant. The decision whether to renew a license shall be made within one business hour of the application being filed with the City Clerk. The renewal of the license shall be subject to the fee as set forth in subsection 11.15.12.

(5) Denial of a new or original license, denial of renewal of a license, suspension of a license or revocation of a sexually oriented business employee license shall be subject to the licensing and appeal procedures as provided within subsection 11.15.17.

#### **SECTION 11.15.12 Fees.**

- (1) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$120.00 non-refundable application, inspection and license fee.
- (2) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual \$12.00 non-refundable application and license fee.
- (3) All license applications and fees shall be submitted to the City Clerk.
- (4) The license fee described above shall be prorated from the date of application based on the number of months (or part thereof) remaining in the licensing period prior to expiration on April 30.

#### **SECTION 11.15.13 Inspection.**

- (1) Each applicant, licensee, or operator of a sexually oriented business shall permit representatives of the City, including but not limited to Building, Inspection, Zoning, Police & Fire personnel, and representatives of State agencies and entities to inspect the premises of and the activities upon a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business or any period that any employee or the licensee is on or within the premises. If an application for new license is pending and if the sexually oriented business is not open for business inspection shall occur between the hours of 8:00 a.m. to 5:00 p.m.
- (2) Inspection of the premises under the authority of this subsection shall be limited to visual assessment of the premises and of the activities conducted in areas to which a patron is permitted access or a patron is allowed access or is present or areas which are visible to a patron or to requests for inspection of any license as required under Section 11.15 and to requests related to the identification of individuals who reasonably appear to be in violation of any provision of Section 11.15. If an application for a new license is pending the inspection shall be for the purpose of determining whether the premises meet the applicable licensing requirements of subsection 11.15.10(1)(d) and (f).
- (3) No person who operates a sexually oriented business nor any agent or employee of same nor any patron shall refuse to permit such lawful inspection as set forth within paragraph (1) above, nor provide false information during the course of an inspection.
- (4) Nothing herein shall require any person entitled to make an inspection under paragraph (1) above to request the permission of a licensee or of an employee prior to an inspection of any area to which a patron is permitted or allowed access or is present or which is visible to a patron when a sexually oriented business is occupied or open for business as provided within subparagraph (1) above. In addition, nothing herein shall prohibit inspection of the premises at other times or in another manner if otherwise permitted by law.

#### **SECTION 11.15.14 Expiration of License.**

- (1) A sexually oriented business license shall be an annual license and shall expire on April 30 of each year and may be renewed only by making application as provided in subsection

11.15.7. Application for renewal shall be made at least twenty days before the expiration date. No application for renewal shall be made sooner than forty-five days before expiration.

(2) Each sexually oriented business employee license shall be an annual license and shall expire on April 30 of each year and may be renewed only by making application as provided in subsection 11.15.8. Application for renewal shall be made prior to the expiration of the license. No application for renewal shall be made sooner than thirty days before expiration of the license.

#### **SECTION 11.15.15 Suspension.**

(1) The City shall suspend a sexually oriented business license or employee license for a period not to exceed thirty (30) days if it determines by a preponderance of the evidence that the licensee has knowingly:

- (a) violated or is not in compliance with any provision of Section 11.15;
- (b) refused to allow an inspection of the sexually oriented business premises as authorized by subsection 11.15.13 or given false information during an inspection.

#### **SECTION 11.15.16 Revocation.**

(1) The City shall revoke or shall deny renewal of a sexually oriented business license or employee license if it determines by a preponderance of the evidence that any one of the following has occurred:

- (a) a licensee gave false or misleading information in the responses, drawings, or the material submitted during the application process;
- (b) a licensee has engaged in or with knowledge permitted any act which violates Section 11.15.26(1), (2), (3), (4), (5),(6), (9), or (10);
- (c) a licensee has engaged in or with knowledge permitted the possession, use, or sale of controlled substances on the premises;
- (d) a licensee has engaged in or with knowledge permitted the sale, use, possession, or consumption of alcoholic beverages on the premises;
- (e) a licensee has engaged in or with knowledge permitted prostitution on the premises;
- (f) a licensee has engaged in or with knowledge permitted gambling on the premises;
- (g) a licensee has engaged in or with knowledge permitted any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the licensed premises;
- (h) a licensee has with knowledge permitted a person under eighteen (18) years of age to enter the establishment or to remain on the premises;
- (i) a licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee of the business;
- (j) a licensee has with knowledge permitted another person to possess and use or represent the licensee's license as his own;
- (k) a licensee has engaged in or with knowledge permitted a person or persons to engage in "specified sexual activities" on the premises of the sexually oriented

business; provided that this subsection (k) shall not apply to the erotic movements or the erotic touching of one's own genitals, pubic area, buttocks, anus, or breasts, whether covered or uncovered, by a dancer or performer during the course of a live performance.

(l) a licensee has with knowledge operated the sexually oriented business or has been employed by a sexually oriented business during a period of time when the licensee's license was suspended.

(m) a cause of suspension in Section 11.15.15 occurs and the license has previously been suspended for any reason within the preceding twelve (12) months.

(n) a licensee failed to construct or establish the premises of the sexually oriented business in accordance with the requirements of Section 11.15.7(3).

(o) a licensee reconstructs or alters a licensed premises after the issuance of a license for the premises, such that the premises does not meet the location restrictions of Section 11.15.4 or such that the premises is physically or structurally not in compliance with one or more provisions of Section 11.15.

(p) with regard to a "license deemed to have issued", failure to meet any requirement within subsection 11.15.10 or 11.15.11, as applicable.

(2) When the City revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented business license nor a sexually oriented business employee license for one year from the date the revocation became effective. No period of any stay pending or during an appeal shall be included within the one year revocation period.

(3) Revocation of a license deemed to have issued for a reason limited to and related to the ineligibility of the applicant or of the premises for a license as set forth within subsection

11.15.10 or 11.15.11 shall not constitute a revocation for purposes of the disqualification of a license applicant on grounds that the applicant has had a license revoked within the 12-months preceding the date of an application for license. The purpose of this provisions is to prevent a licensee from suffering a detriment arising from the inaction or inability of the City in making or obtaining a prompt determination regarding issuance of a new license.

#### **SECTION 11.15.17 Licensing Procedure and Licensing Decisions.**

(1) Subject to subsection 11.15.9(4), if the City Clerk of the City of Mt. Vernon or his designee determines that facts exist for denial of a new license or denial of a renewal or suspension of a license or revocation of a license under Section 11.15, the City Clerk or his designee shall notify the applicant or licensee (respondent) in writing of the denial or of the intent to suspend or revoke the license, including the grounds therefor, by personal delivery or by U.S. certified mail. The notification shall include a statement of the respondent's rights of appeal under this subsection. The notification shall be personally served or mailed by certified mail to the mailing address on file with the City Clerk for the respondent. Within ten business days of receipt of such notice, the respondent may provide to the City Clerk or his designee a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended or revoked. If no response is received by the City Clerk then a final notice of denial, suspension, or revocation shall be served upon respondent by personal service or certified mail. If a response is received, within five business days of the receipt of the response, the City Clerk or Hearing Officer shall notify respondent

in writing of a hearing date on the respondent's denial, suspension or revocation proceeding. Within ten business days of the receipt of respondent's written response the Hearing Officer shall conduct a hearing at which hearing the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, to present evidence and witnesses on his own behalf and to cross-examine witnesses; witnesses shall be sworn and the proceeding recorded. The City Clerk shall also be represented by counsel and shall bear the burden of proving by a preponderance of the evidence the grounds for denying, suspending, or revoking the license. The Hearing Officer shall issue and serve upon respondent by personal service or by U.S. certified mail a written opinion within five business days after conclusion of the hearing. If applicable, respondent shall receive a final notice of denial or suspension or revocation which shall be included in the Hearing Officer's Order; said final notice shall include a statement advising the respondent of the right to appeal under this subsection. If the Hearing Officer finds that no grounds exist for denial of the license then the City Clerk or his designee shall issue the license to the applicant, or if the City Clerk fails to issue said license within two business days, the Hearing Officer shall issue the license. Business day means any day that City Hall is open to the public for the transaction of business.

(2) When a decision to deny, suspend or revoke a license becomes final, 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 seek judicial review and to appeal or challenge such action to any court of competent jurisdiction and proper venue. If a court action challenging the Hearing Officer's decision is initiated, the City shall timely and without delay prepare and transmit to the court a transcript of the hearing.

(3) An applicant for a new sexually oriented business license, as opposed to a renewal, may but is not required to participate in the appeal (hearing) process set forth within paragraph (1) above. An applicant whose application for a new license has been denied by the City Clerk and who disagrees with the decision may at the applicant's sole election: (i) participate in the appeal process as set forth within paragraph (1) above or (ii) give written notice to the City Clerk after notice of denial of the license, of the applicant's "Intent to Open" the sexually oriented business without a license on the tenth calendar day after the date of the Written Notice of Intent to Open is filed in the Office of the City Clerk; upon filing, said Notice shall be marked by the City Clerk with the date and time of filing. If the applicant elects to give Written Notice of Intent to Open as provided above, then the City of Mt. Vernon must within the 10-day period designated within the Notice of Intent to Open petition the Illinois Second Judicial Circuit Court or any Court of competent jurisdiction and proper venue and obtain injunctive relief or other appropriate relief. The Court in which the petition for injunctive relief or other judicial relief is filed shall determine whether the applicant meets the requirements for issuance of a sexually oriented business license under Section 11.15.10 and determine the validity of any provision thereof that the applicant does not meet and shall in accordance with Article XI, Part I of the Illinois Code of Civil Procedure or other applicable statute grant such relief as the Court deems necessary and appropriate. If the City fails to petition for injunctive relief or if the Court fails to issue the injunctive relief or grant such other relief as requested denying the license or enjoining the sexually oriented business from opening prior to expiration of the 10-day period described within the Notice of Intent to Open, the license shall be deemed to be issued, although the licensee and the licensed

premises must still comply with all provisions of Section 11.15 the same as if the license had been issued by the City Clerk, as a failure or inability of the City to obtain injunctive relief or other judicial relief does not excuse compliance by the licensee with any provision of Section 11.15, except the license requirement or such requirement as determined by a Court not to be applicable or enforceable. The license and licensee shall, except as provided within subsection 11.15.16 (3) also be subject to all provisions of Section 11.15 relating to renewal of a license, suspension of a license, or revocation of a license. If the City does not petition for injunctive relief or other judicial relief within the 10-day period described within the Notice of Intent to Open and if the license is deemed to be issued, the City may nonetheless petition the Court for injunctive relief or other judicial relief or initiate proceedings under subsection 11.15.17 to suspend or revoke the license; provided, however, that a "license deemed to be issued" shall be entitled to the same stay of proceedings to preserve the status quo as provided for a license actually issued by the City Clerk. In addition, if an applicant elects to seek an appeal to the City Hearing Officer of a decision of the City Clerk denying a license, the applicant shall still retain and be entitled to exercise its rights under this subparagraph and give the "Written Notice of Intent to Open" after the Hearing Officer issues a final notice of denial.

An applicant for a new sexually oriented business employee license, as opposed to a renewal, may but is not required to participate in the appeal (hearing) process set forth within paragraph (1) above. An applicant whose application for a new employee license has been denied by the City Clerk and who disagrees with the decision may at the applicant's sole election: (i) participate in the appeal process as set forth within paragraph (1) above or (ii) give written notice to the City Clerk after notice of denial of the license, of the applicant's "Intent to Be Employed" by the sexually oriented business without a license upon expiration of twenty-four hours from the date and time the Written Notice of Intent to Be Employed is filed in the Office of the City Clerk; upon filing, said Notice shall be marked by the City Clerk with the date and time of filing. If the applicant elects to give Written Notice of Intent to Be Employed as provided above, then the City of Mt. Vernon must within the 24 hour period designated within the Notice of Intent to Be Employed petition the Illinois Second Judicial Circuit Court or any court of competent jurisdiction and proper venue and obtain injunctive relief or other appropriate relief. The Court in which the petition for injunctive relief or other judicial relief is filed shall determine whether the applicant meets the requirements for issuance of a sexually oriented business employee license under Section 11.15.11 and determine the validity of any provision thereof that the applicant does not meet and shall in accordance with Article XI, Part I of the Illinois Code of Civil Procedure or other applicable statute grant such relief as the court deems necessary and appropriate. If the City fails to petition for injunctive relief or if the Court fails to issue the injunctive relief or grant such other relief as requested denying the license or enjoining the applicant from being employed prior to expiration of the 24-hour period described within the Notice of Intent to Be Employed, the license shall be deemed to be issued, although the licensee must still comply with all provisions of Section 11.15 the same as if the license had been issued by the City Clerk, as a failure or inability of the City to obtain injunctive relief or other judicial relief does not excuse compliance by the licensee with any provision of Section 11.15, except the license requirement. The license and licensee shall, except as provided within subsection 11.15.16(3), also be subject to all provisions of Section 11.15 relating to renewal of a license, suspension of a license, or revocation of a license. If the City does not petition the Court for injunctive relief or other judicial relief within the period described within the Notice of Intent to Be Employed and if the license is deemed to be issued, the City may nonetheless petition

for injunctive relief or other judicial relief or initiate proceedings under subsection 11.15.17 to suspend or revoke the license; provided, however, that a “license deemed to be issued” shall be entitled to the same stay of proceedings to preserve the status quo as provided for a license actually issued by the City Clerk. In addition, if an applicant elects to seek an appeal to the City Hearing Officer of a decision of the City Clerk denying a license, the applicant shall still retain and be entitled to exercise its rights under this subparagraph and give the “Written Notice of Intent to Be Employed” after the Hearing Officer issues a final notice of denial.

(4) Notwithstanding any provisions of this subsection, in the event the licensee appeals the denial of a renewal application or the suspension of a license or revocation of a license, the status quo immediately prior to such denial, suspension or revocation shall be maintained throughout the pendency of the appeal including the hearing process within subparagraph (1) above up to and including judicial review as provided within subparagraph (2) above. Upon a judicial decision being entered, the stay to preserve the status quo provided herein shall cease and the order or decision of the court shall determine whether an additional stay is appropriate, required or permitted by law.

#### **SECTION 11.15.18 Transfer of License.**

A licensee shall not transfer his/her license to another person, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the premises designated in the application.

#### **SECTION 11.15.19 Alcoholic Beverages.**

(1) The sale, use, possession, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited. A business licensee shall have an affirmative duty to deny entry to any person in possession of alcoholic liquor and shall have an affirmative duty not to permit or allow any person in possession of alcoholic liquor to remain on premises. Each sexually oriented business shall insure that the attendant at each public entrance pursuant to Section 11.15.27(3) visually inspects each person and each bag, purse, pocket, package or article in the possession of any person desiring entry into the sexually oriented business and the business licensee shall have an affirmative duty to monitor and patrol the entire licensed premises and to enforce against all persons on the premises the prohibition against the sale, use, possession or consumption of alcoholic beverages on the premises.

(2) No licensee, employee, agent, patron or any other person shall sell, possess, use or consume alcoholic beverage upon the premises of a sexually oriented business.

#### **SECTION 11.15.20 Exterior Portions of Sexually Oriented Businesses.**

(1) No licensee of a sexually oriented business shall allow any semi-nude employee or the merchandise or activities of the sexually oriented business (except the parking, traffic, and pedestrian access activities of patrons) to be visible from any place outside the structure in which the sexually oriented business is situated. The licensee shall not permit any patron or patrons or other person to stand, congregate, loiter, or to gather in groups upon the exterior premises of the sexually oriented business or allow the vehicular parking and traffic areas and the pedestrian access areas to be used for any purpose except movement of traffic, parking

of motor vehicles and access of patrons and other persons to and from the sexually oriented business establishment.

(2) No licensee of a sexually oriented business shall allow the exterior portion of the sexually oriented business to have flashing lights, search lights, spot lights, photographs, silhouettes, drawings or pictorial representations in any manner. No exterior portion of the establishment shall be painted any color other than an achromatic color, although this subparagraph does not require the painting of an otherwise unpainted exterior portion of a sexually oriented business. "Exterior portion" shall mean any part of the physical structure of an establishment, including a wall, veneer, door, fence, roof, roof covering, window, or similar item which is visible from the public right-of-way or from any property adjoining the premises of the sexually oriented business or from any location off of the premises of the sexually oriented business. "Achromatic" means colorless, zero in saturation, or lacking in hue; for purposes of this subsection, the definition of achromatic shall include, without limitation, white, black, grays, tans, and light earth tones, but any bold, vivid, neon, fluorescent, or extremely bright coloration that attracts attention shall be excluded from the definition of achromatic.

(3) Notwithstanding any other City ordinance, Code, or regulation to the contrary, no operator of a sexually oriented business, no sexually oriented business nor any other person shall erect, construct, or maintain any sign for a sexually oriented business except one freestanding on-premises sign and one wall-flush mount on-premises sign, each of which shall comply with the provisions of Section 11.15.20 and Section 11.15.21. The display surface of each sign shall:

- (a) not contain any flashing lights;
- (b) be a flat plane, rectangular or square in shape;
- (c) not contain any photographs, silhouette, drawing or pictorial representation in any manner.
- (d) each letter forming a word shall be of solid color and each letter shall be of the same print type, size and color; the background behind such lettering on the display surface shall be of a uniform and solid color.

(4) No licensee shall advertise the presentation or occurrence of an act or availability of any service prohibited by Section 11.15.

### **SECTION 11.15.21 Signage.**

The number of signs and the size of each sign shall be as provided within Article 21, Section 21-126.6, Schedule of District of Sign Regulations relating to the I-1, Light Industrial Zoning District. No sign shall be a flashing sign, moving sign or constant motion sign. No off-premises sign shall be permitted for any sexually oriented business as all signage for a sexually oriented business within the zoning jurisdiction of the City shall be on the premises of the sexually oriented business; in addition, the sexually oriented business premises shall not be a location for an off-premises sign for any other sexually oriented business.

No provision relating to signage within Section 11.15.21 or 11.15.20 shall be subject to variance.

### **SECTION 11.15.22 Off-street Parking; Lighting.**

- (1) Off-street parking for sexually oriented businesses shall be provided as follows:
  - (a) Adult store: one space per 300 square feet of gross floor area, excluding viewing rooms and one space per viewing room.
  - (b) Adult cabaret: one space for each table or booth or three seats at counter or bar.
  - (c) Adult motel: one space per guest sleeping room.
  - (d) Adult theater: one space for each six seats of designated capacity.
  - (e) Semi-nude studio, Sexual encounter center, Escort agency: one space per 300 square feet of gross floor area.

All off-street parking areas and entrances to the premises of a sexually oriented business shall be illuminated from dusk to closing hours of operation (including grace periods) with a lighting system which provides an average maintained horizontal illumination of 5 foot candles of light on the surface of the parking areas and walkways. Illumination of the remaining external surface areas of the sexually oriented business shall be an average maintained horizontal illumination of not less than 2 foot candles of light or greater than 5 foot candles of light. This required lighting level is established in order to provide sufficient illumination to the parking areas and walkway areas serving the sexually oriented business for the personal safety of the patrons and employees of the sexually oriented business and to reduce the incidents of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises submitted with the application for license.

All lighting shall be shielded and arranged so that illumination is directed toward the surface areas of the licensed premises and not onto adjoining properties or into the skyward area above the licensed premises or the skyward area of a property adjoining the licensed premises, so that light trespass onto adjoining properties and light pollution (sky glow and/or glare) will be minimized. No light fixture shall be mounted or placed higher than 25 feet from the ground surface. Illumination from the sexually oriented business shall not exceed 1 foot candle 10 feet from the property boundary line on any property adjoining the premises of the sexually oriented business.

All parking areas and the exterior of the sexually oriented business shall be inspected at least once each day and all trash, debris, or other items discarded by patrons or other persons shall be removed from the premises or placed into closed trash receptacles, which receptacles shall be emptied at least weekly or when three-quarters full, whichever is most frequent. All trash, waste and garbage shall be removed from the premises at least once each week by a garbage or trash service or other lawful means.

#### **SECTION 11.15.23 Additional Regulations for Adult Motels.**

- (1) Evidence that a sleeping room in a hotel, motel, or a 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 ordinance.
- (2) No person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, shall rent or subrent a sleeping room to a person and, within ten hours from the time the room is rented, rent or subrent the same sleeping room again.

(3) For purposes of subsection (2) of this section, the terms “rent” or “subrent” means the act of permitting a room to be occupied for any form of consideration.

(4) Notwithstanding the provision of any other building or applicable code, the sleeping room shall not have less than 150 square feet of floor space.

(5) An adult motel shall not provide closed circuit television transmissions, films, motion pictures, video cassette slides or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specific anatomical areas” within any room or area, except within a sleeping room.

(6) The licensee of an adult motel shall insure that each sleeping room and accessory room are clean and sanitary. Such duty shall be fulfilled if the licensee (i) maintains a regular cleaning schedule of at least one cleaning per rental of the room, documented by appropriate logs; (ii) all garbage, trash, body fluids, and excrement discovered during each inspection and cleaning are immediately removed and all areas where same are present are cleaned with a disinfectant; (iii) all solid waste and debris generated within a room are removed from the room each time that a room is cleaned and placed in closed trash receptacles and all waste, debris and garbage generated by the adult motel is removed from the premises of the adult motel at least once each week by a garbage or trash service or other lawful means; (iv) not less often than once each week the entire room shall be cleaned with a disinfectant, including at least the floors, all walls within 48-inches of the floor, and all surface areas of any furniture, fixtures or appliances; and (v) all linen, including but not limited to towels, sheets and other similar non-disposal personal hygiene items shall be

changed and removed with each rental of a sleeping room and shall be laundered with soap or other disinfectant prior to re-use.

(7) Neither the business licensee nor any employee of an adult motel shall be nude or semi-nude when upon the premises of the sexually oriented business except within the sleeping room or other room occupied as the private personal room of same when no patron is present or during the bona fide use by same of a single sex restroom for its intended purpose. No patron shall be nude or semi-nude when a business licensee or any employee of the adult motel is present. No live entertainment shall be provided by a licensee within any room rented to or occupied by a patron nor within any room or other area upon the premises of an adult motel.

#### **SECTION 11.15.24 Additional Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos in Viewing Rooms.**

(1) No sexually oriented business, except an adult store shall exhibit 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.

(2) An adult store having one or more viewing rooms on the premises shall comply with the following requirements:

(a) 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, specifying the location of each viewing room, and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area with no dimension greater than eight (8) feet. The diagram shall also designate the place at which the license 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 shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The City shall waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(b) The above-described diagram shall be sworn to be true and correct by the applicant.

(c) No alteration in the configuration or location of a manager's station or a viewing room shall be made without the prior approval of the City.

(d) The licensee of the premises shall ensure that at least one licensed employee is on duty for each manager's station and situated in each manager's station at all times that any patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Each viewing room shall have one side completely open, with the open side being of the same width and height as the directly opposite wall of the viewing room. A viewing room shall have no other means or point of access except the open side. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premise 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 subsection must be by direct line of sight from the manager's station.

(f) The licensee shall ensure that at all times the view area specified in subsection (2)(e) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, benches, chairs, or other materials or in any manner.

(g) Each viewing room must be illuminated at all times in the manner described within subparagraph (h) below; no person shall enter or remain in any viewing room which is not illuminated.

(h) Each viewing room and the entire premises of the sexually oriented business 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 five (5.0) foot-candles as measured at the floor level. The lighting control or switch shall be inaccessible to any patron or other person except the licensee or an employee of the sexually oriented business.

(i) The licensee and each employee present on the premises shall ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(j) No licensee or employee present on the premises shall allow openings of any

kind to exist between viewing rooms or between a viewing room and any restroom or other adjoining room or to exist in any wall of a viewing room.

(k) No person shall make or attempt to make an opening of any kind between viewing rooms or other adjoining rooms.

(l) No door, curtain, or other covering or obstruction shall be attached, situated, or installed on any viewing room which obstructs or may obstruct the direct line of sight, in whole or in part, into the viewing room or any part thereof from the manager's station. No person (including a patron) shall obstruct the direct line of sight into the viewing room with any curtain, covering, or other article or item or in any manner.

(m) The licensee or an employee shall, during each business day, at hourly intervals inspect the walls within each viewing rooms to determine if any openings or holes exist.

(n) The licensee shall cause all floor coverings in viewing rooms to be nonporous, easily cleanable surfaces, with no rugs or carpeting. The licensee shall cause all wall surfaces and ceiling surfaces in viewing rooms to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used as the exterior surface within a viewing room within forty 48 inches of the floor.

(o) The licensee shall cause all walls of a viewing room to be constructed of material not readily susceptible to breach or any opening without the aid of a drill, saw or similar device or tool.

(p) The licensee and each employee present on the premises shall 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 subsection (2)(a) of this Section.

(q) The licensee and each employee present on the premises shall ensure that no specified sexual activity occurs in or on the licensed premises.

(r) The licensee and each employee present on the premises shall ensure that not more than one person is present in a viewing room at any time. No person (including an employee) shall enter a viewing room that is occupied by another person.

(s) A licensee or employee who discovers two or more patrons or other persons in a viewing room or discovers any person making or attempting to make an opening of any kind between viewing rooms shall immediately escort such persons from the premises.

(t) A licensee or employee who discovers an opening of any kind in a wall of a viewing room shall immediately upon discovery secure such room and prevent entry into the room by any patron until such time as the wall has been repaired to remove the opening. Repair of any opening in a viewing room shall be in a manner that is as structurally substantial as the original construction.

(u) The licensee shall post a conspicuous sign at each entrance within the interior of the sexually oriented business and within each viewing room, which sign shall state all of the following:

(i) That no loitering is permitted in viewing rooms.

(ii) That the occupancy of viewing rooms is limited to one person.

(iii) That the open side of a viewing is not permitted to be blocked or obstructed by any covering or article.

(iv) That any specified sexual activity on the premises is prohibited.

(v) That the making of openings between viewing rooms or any wall of

a viewing room is prohibited.

(vi) That violators will be required to leave the premises; repeat violators will be permanently barred from the premises.

(vii) That violations of Subparagraphs (ii), (iii), (iv), and (v) of this paragraph are unlawful.

(v) The licensee shall ensure that all seating surfaces in viewing rooms are constructed of or permanently covered by nonporous easily cleanable material.

(w) The licensee shall ensure that each viewing room is clean and sanitary.

Such duty shall be fulfilled if the licensee complies with the following cleaning procedures:

(i) The licensee shall maintain a regular cleaning schedule of at least one thorough cleaning per day, documented by appropriate logs.

(ii) The licensee shall direct and require an employee to inspect at hourly intervals each viewing room for garbage, trash, body fluids and excrement and to immediately upon discovery remove and clean all areas with a disinfectant. All solid waste generated by the business shall be collected from the premises for disposal at a lawful solid waste disposal facility at least once each week. Prior to collection, solid waste shall be stored in a manner that prevents access by animals or members of the public and which will not facilitate the creation of a health nuisance.

(iii) Thorough cleaning of the entire interior of a viewing room (except that portion four feet above the floor surface and the ceiling) shall be done using a disinfectant. Cleaning shall include floors, walls, seating, monitors, video cameras, and windows and other surfaces.

A person having a duty or required to perform an act under subsection (a) through (w) of subsection (2) above commits a violation if he knowingly fails to perform the act or fails to fulfill that duty.

(3) No sexually oriented business, except an adult store, shall have a viewing room as defined within Section 11.15.2(32). No viewing room shall exhibit a live performance. No adult store shall exhibit any film, videocassette, or other video reproduction, except within a viewing room.

#### **SECTION 11.15.25 Additional Regulations for Adult Theaters.**

(1) Each adult theater shall provide seating only in individual chairs with arms or in seats separated from each other by immovable arms and not on couches, benches or any other multiple person seating structures. The number of seats shall equal the maximum number of persons who may occupy the adult theater.

(2) Each adult theater shall have a continuous main aisle alongside the seating area in order that each person seated in the adult theater shall be visible from the aisle at all times. Excluding any public entrance(s) from the exterior of the sexually oriented business, each adult theater shall have its door or entryway or point of access constructed of such material and in such manner that not less than fifty percent of its door or entryway or point of access permits unobstructed visibility into adjoining areas from outside the door or entryway.

(3) Each adult theater shall have a sign posted at a conspicuous place at or near each

entranceway to the auditorium or similar area that lists the maximum number of persons that may occupy the auditorium area, which number shall not exceed the number of seats in the auditorium area.

(4) Each adult theater shall have an attendant on duty within each theater at all times that a theater is occupied by one or more patrons. No attendant, licensee, nor any other employee nor any patron upon the premises of an adult theater shall be nude or semi-nude, except as provided within subsection 11.15.26(3).

(5) Each theater shall be inspected at the conclusion of each film or performance or every five hours, whichever occurs more often, and any area of seating, aisle or floor where any semen, body fluid or other foreign substance is discovered shall be cleaned with a disinfectant and all debris or items discarded by patrons shall be removed from the theater and placed in a closed trash receptacle; provided all chairs or seats, aisles and floors shall in all events be disinfected at least one time daily. All debris and trash shall be removed from the premises at least once each week by a garbage or trash service or other lawful means.

#### **SECTION 11.15.26 Additional Regulations Concerning All Sexually Oriented Businesses.**

(1) No person shall knowingly within any area where a patron is permitted access or within any area visible to a patron within or upon a sexually oriented business premises, appear nude or in a state of nudity regardless of whether such nudity is expressive in nature. This subparagraph shall not be construed to apply to a person engaged in the bona fide use of a single sex restroom for its intended purpose or to an occupant(s), not otherwise visible to the public, within a room of an adult motel rented by one or more of the occupants when no licensee or employee of the sexually oriented business is present.

(2) No person shall, knowingly in a sexually oriented business engage in specified sexual activity, provided that this subparagraph (2) shall not apply to nor prohibit the erotic movements or the erotic touching of one's own genitals, pubic area, buttocks, anus, or breasts by a dancer or performer during the course of a live performance.

(3) Except as otherwise provided within Section 11.15, no person shall knowingly within any area where a patron is permitted access or within any area visible to a patron within or upon a sexually oriented business premises appear semi-nude unless the person is an employee who, while semi-nude (i) shall be at least 4 feet from any patron or customer and (ii) shall be on a permanent, securely fastened raised stage at least 2 feet above the floor and (iii) shall be within the interior of the structure of the sexually oriented business. This provision requires that the outer edge of the entire stage shall be at least 4 feet from any patron or patron seating; said 4 foot distance shall be clearly designated by a rail, by floor markings or by the seating and table arrangement; and, in addition, the licensee shall post clearly visible signs upon the stage, visible from all areas of patron seating near the stage, informing patrons of the 4 foot requirement. No patron shall knowingly enter upon any stage occupied by a semi-nude employee nor enter within 4 feet of the edge of the stage occupied by a semi-nude employee nor otherwise enter or remain at a distance within 4 feet or less from any semi-nude employee within a sexually oriented business. If any body part of either the semi-nude employee or the patron or customer is within a distance of 4 feet, same shall be considered to be an entry into the 4 foot prohibited area. This subparagraph shall not be construed to apply to a person engaged in the bona fide use of a single sex restroom for its intended

purpose or to an occupant(s), not otherwise visible to the public, within a room of an adult motel rented by one or more of the occupants when no licensee or employee of the sexually oriented business is present.

(4) No employee, while semi-nude in a sexually oriented business, shall receive any pay or gratuity from any patron or customer, nor shall any patron or customer pay or give any gratuity to any employee while said employee is semi-nude in a sexually oriented business; except, however, that tips or gratuities for dancers or performers while semi-nude may be paid or given if placed in a designated receptacle(s) within the premises not located on the dancing or performing stage and not located in violation of the distance requirement stated within subparagraph (3) above.

(5) No employee, while semi-nude, shall knowingly touch in any manner a patron or customer or the clothing of a patron or customer, nor shall any patron or customer knowingly touch in any manner an employee or the clothing of any employee while said employee is semi-nude in a sexually oriented business.

(6) No licensee or any employee upon the premises shall knowingly permit or allow any person upon the licensed premises to engage in or participate in any conduct which violates any provision of Section 11.15.26(1), (2), (3), (4), or (5).

(7) A sign stating the provisions of paragraph (1), (2), (3), (4), and (5) above shall be posted near each entrance of the sexually oriented business in such a manner as to be clearly visible to all patrons, employees, or other persons upon entering the sexually oriented business.

(8) Except as provided within Section 11.15.24(h) and Section 11.15.26(11), the interior premises of each sexually oriented business, except the sleeping room of an adult motel, shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place in which patrons are permitted access at an illumination of not less than two (2) foot candles as measured at the floor level. The licensee and any employee present on the premises shall insure that the illumination described above is maintained at all times that the premises is occupied by patrons or is open for business. The lighting control or switch shall be inaccessible to any patron or other person except the licensee or an employee of the sexually oriented business.

(9) No business licensee nor any employee present on the premises shall knowingly permit any patron 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 Section 11.15.7. Each such area where patrons are not permitted access shall be marked by an appropriate sign denying access. No patron shall enter or attempt to enter or remain in any area of the sexually oriented business which has been designated by a sign as an area in which patrons are not permitted.

(10) Except for a viewing room within an adult store or a sleeping room and its accessory room within an adult motel, no sexually oriented business shall have a private room or an individual room or a personal room for use by any patron; moreover, except within an adult motel, no area upon the same floor level within a building of a sexually oriented business where patrons are permitted access, excluding restrooms, shall be separated from other areas where patrons are permitted access by any door, curtain, obstruction, or other barrier which

blocks entry or access or which blocks visibility into said area; and no area within a structure of a sexually oriented business where patrons are permitted access but which is situated upon another floor level or within another building shall be separated by any locked door or other inaccessible barrier which blocks entry or access into said area and any such area shall have its door, entryway, or point of access constructed of such material and in such manner that not less than fifty percent of its door or entryway or point of access permits unobstructed visibility into adjoining areas from outside the door or entryway. Except for a sleeping room in an adult motel, no door or passageway or point of access or means of entry or access to any area within any sexually oriented business where patrons are permitted access shall have any lock or be capable of being barricaded or otherwise obstructed from other areas where patrons are permitted access; provided the public entrances on the exterior of a sexually oriented business may have a lock, although said public entrances shall remain unlocked at any time that a patron is upon the premises. Nothing herein shall prohibit a conference room, party room, or similar group facility upon the premises of a cabaret for which patron access is restricted by an attendant provided such room or facility meets all of the requirements of Section 11.15.

(11) All restrooms in a sexually oriented business shall be equipped with standard toilets, sinks, and other traditional lavatory facilities. Not less often than daily, restrooms shall be inspected by the sexually oriented business and cleaned with disinfectant, and any item discarded by a patron and other wastes shall be removed and each trash receptacle emptied. The interior of each restroom shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place within the restroom at an illumination of not less than fifteen (15) foot candles as measured at the floor level. It shall be the duty of the licensee and of any employee present on the premises to insure that the illumination described herein is maintained at all times that the sexually oriented business premises is occupied by patrons or open for business; the lighting control or switch shall be inaccessible to any patron or other person except the licensee or an employee of the sexually oriented business. No live performance nor any printed matter or video reproductions or similar materials characterized by or depicting or describing of "specified sexual activities" or "specified anatomical area" shall be provided, allowed or present at any time in the restrooms of the sexually oriented business. Separate male and female restrooms shall be provided for and used by the patrons and employees of the sexually oriented business. No female person shall use a restroom designated for a male person and no male person shall use a restroom designated for a female person. No restroom shall be used as a dressing room for any employee. The interior of each restroom shall not be visible to any person except from within the interior of the restroom.

(12) Separate male and female dressing rooms shall be provided for exclusive use by employees of the sexually oriented business and no patron shall be permitted or allowed access to said dressing rooms; nor shall the interior of the dressing room be visible to any person except from within the interior of the dressing room. No person, except the licensee or an employee of the sexually oriented business shall enter into any dressing room or other room provided for the exclusive benefit and use of an employee of a sexually oriented business; provided that this subparagraph shall not apply to an employee of another business solely on the sexually oriented business premises to deliver goods or materials, foods and beverages, or to perform maintenance or repairs to the premises, provided, however, that any such person shall remain in such areas only for the purpose and to the extent and time necessary to perform their job duties.

(13) The failure of a licensee to erect or maintain any sign or the failure of the sign to be visible shall not excuse any patron or other person from compliance with any provision of Section 11.15 nor shall same be a defense to any action against any patron or other person under subsection 11.15.32.

#### **SECTION 11.15.27 Prohibition Against Minors in a Sexually Oriented Business.**

(1) No person shall knowingly allow a person under the age of 18 years to be employed by a sexually oriented business nor shall any person knowingly allow a person under the age of 18 years to enter upon or remain upon the premises of a sexually oriented business nor shall a person knowingly allow a person under the age of 18 years to purchase any good or service from any sexually oriented business.

(2) No person under the age of 18 years shall be employed by a sexually oriented business nor shall any person under the age of 18 years enter upon or remain upon the premises of a sexually oriented business nor shall a person under the age of 18 years of age make any purchase of goods or services from any sexually oriented business.

(3) Each sexually oriented business shall insure that an employee is stationed as an attendant at each public entrance to the interior of the sexually oriented business at all times during such sexually oriented business' regular business hours. The attendant shall prohibit any person under the age of 18 years from entering the sexually oriented business. For purposes of preventing the violation of this subsection, the sexually oriented business may refuse to permit entry to any person who is unable to produce adequate written evidence of identity and of the fact that he or she is 18 years or older.

The licensee shall not permit entry of any person (except an employee of the sexually oriented business) into the sexually oriented business without first demanding and receiving from said person the presentation of some form of positive identification containing proof age 18 years or older issued by a public officer in the performance of his official duties. A reasonable belief by the licensee or his agent or his employee that a person is 18 years of age or over shall not be a defense to any action under this section unless said licensee, agent or employee shall have demanded and received some form of positive identification as above described that such person is 18 years of age or over.

No person shall give or furnish to any person under the age 18 years any false or fraudulent written, printed, or photostatic evidence of the age and identity of such person nor shall any person give or furnish to any person under the age of 18 years evidence of age and identification of any other person; nor shall any person under the age of 18 years present or offer to any licensee, licensee's agent or employee any written, printed or photostatic evidence of age and identity which is false, fraudulent, or not actually his own for the purposes of obtaining entry into an sexually oriented business, nor shall any person under the age of 18 years have in his or her possession any false or fraudulent written, printed or photostatic evidence of age and identity.

#### **SECTION 11.15.28 Hours of Operation.**

(1) No sexually oriented business, except for an adult motel, may remain open at any time except as follows:

(a) Monday-Saturday.

Between the hours of 9:00 a.m. and 12:00 p.m. on each day.

(b) Sunday.

All sexually oriented businesses shall be closed.

(2) Each licensee shall require and shall have all non-employees (which specifically includes but is not limited to all patrons and customers) off of the premises as defined within Section 11.15.2(18) within ten minutes after the closing times provided herein and shall require and have all employees, except cleaning and maintenance employees described within subparagraph (4), off of the premises within twenty minutes after the closing times provided herein, which 10-minutes and 20-minutes respectively shall be considered a grace period to all times for closing and for the named persons to leave the premises. Notwithstanding the grace period herein all business activities shall cease at the closing hours specified herein.

(3) Whenever time is referred to in this subsection, it shall be understood and is hereby enacted that the same shall be consistent with the official time of the City of Mt. Vernon, Illinois, whether the same shall be central standard time or central daylight savings time.

(4) No person, including but not limited to any employee, licensee or patron, except the business licensee (i.e. licensed operator) or a paid employee who is on duty for and actually engaged in cleaning or maintenance of the premises shall remain in or at a licensed premises after the closing and grace times specified herein above.

#### **SECTION 11.15.29 Notices.**

(1) Any notice required or permitted to be given by the City Clerk or any other City office, division, department or other agency under this ordinance to any applicant or licensee may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application filed with the City Clerk, or within any written notice of address change that has been received by the City Clerk. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail to a sexually oriented business is returned by the postal service, the City Clerk or his designee shall within 24-hours cause it to be posted at the principal entrance to the business, although only the mailing is required to be completed within any other time period or deadline established by Section 11.15.

(2) Any notice required or permitted to be given to the City Clerk by any person under this ordinance shall not be deemed given until and unless it is received in the office of the City Clerk.

(3) It shall be the duty of each applicant who is designated on the license application and each licensee to furnish notice to the City Clerk in writing of any change of mailing address.

#### **SECTION 11.15.30 Calculation of Time.**

The time within which any act required by Section 11.15 is to be done shall be computed by excluding the first day and including the last day, unless the last day is Saturday, Sunday, or a Federal or State

of Illinois holiday, in which case it shall be excluded. If the day immediately following each Saturday, Sunday or holiday is also a Saturday, Sunday or holiday then such succeeding day shall also be excluded.

### **SECTION 11.15.31 Injunction, Penalties and Remedies.**

- (1) A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 11.15 or any person who violates any provision of Section 11.15 is subject to a suit for injunction in any court of competent jurisdiction.
- (2) In addition, if any person, including but not limited to any licensee, employee, customer or patron, fails or refuses to obey or comply with or violates a provision of Section 11.15, such person, upon conviction of such violation by a court of competent jurisdiction shall be punished by a fine of not less than \$5.00 nor more than \$200.00. Each violation or non-compliance shall be considered a separate and distinct offense. Each day of continued violation or non-compliance shall be considered as a separate offense.
- (3) All remedies and penalties provided for in Section 11.15 shall be cumulative and independently available to the City and the City shall be authorized to pursue any and all remedies to the fullest extent allowed by law.

### **SECTION 11.15.32 Nuisance Declared**

Any sexually oriented business established in violation of Section 11.15 or operated or maintained with repeated or multiple violations of the provision of Section 11.15 shall be and the same is hereby declared to be unlawful and a public nuisance. For purposes of determining whether violations are “repeated” or “multiple” violations, any and all violations of Section 11.15 occurring within a twelve month calendar period shall be considered. The City may, in addition, to or in lieu of any other remedy set forth herein commence an action to enjoin or remove or abate such nuisance in such manner provided by law and shall take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance, and restrain and enjoin any person from establishing, operating or maintaining a sexually oriented business contrary to the provisions of Section 11.15.

### **SECTION 11.15.33 Severability.**

Section 11.15 and each subsection and provision of said Section 11.15 are hereby declared to be independent divisions and subdivisions and notwithstanding any other evidence of legislative intent it is hereby declared to be the controlling legislative intent that if any provision of said Section or the application thereof to any person or circumstance is held to be invalid the remaining section, subsections or provisions and the application of each section, subsection and provision to any person or circumstance other than to those to which it is held invalid shall not be affected thereby and it is hereby declared that such section, subsections and provisions would have passed independently of such section, subsection or provision so known to be invalid.