

BUSINESS AND OCCUPATIONS

CHAPTER 5

Article 1. Public Amusements in General

Sec. 5-1. Bond or liability insurance required for exhibitions, carnivals, circuses, or amusement rides.

No person shall conduct, operate, manage, or sponsor any exhibition, carnival, or circus, ferris wheel, merry-go-round, go-carts, or any amusement ride of any kind operated for hire or for the purpose of promoting or advertising any trade or business, without first filing with the city secretary a bond or certificate of liability insurance in the amount of at least one hundred thousand dollars (\$100,000) per person and three hundred thousand dollars (\$300,000) per occurrence indemnifying the public against bodily injury and/or property damage sustained by reason of the operation of said amusement. Said bond or certificate of insurance shall be subject to approval by the city attorney. This section shall apply to all persons, whether or not a license is required by any other provisions of this chapter. (Ord. 88-83, 10-25-83, §5-1)

Sec. 5-2. Definitions.

The term "exhibition" or "exhibitions" as used in this article and Article 2 shall be held to mean and include circus's, menageries, carnivals, sideshows, and other similar enterprises which are operated for hire or for the purpose of promoting or advertising any trade or business, but shall not be held to mean western style rodeos. The term "carnival" or "carnivals" as used in this article and in Article 2 means and includes amusement activities, rides, merry-go-rounds, booths for the conduct of games of skill, food dispensing facilities and sideshows. A carnival shall not include gambling devices, games of chance, lotteries, punch boards or other activities in violation of state or federal law or city ordinances.

An exhibition, carnival, or circus shall be exempt from Articles 1 and 2 hereof if it is sponsored or given for the benefit of and if all proceeds from such operations are retained by (1) the Big Spring Independent School District or a school or a parent teacher association thereof and conducted entirely on property of said district, or (to) a local church and conducted entirely on property of said church or any local organization that sponsors the carnival and mans it with all local volunteer or otherwise labor and does not include rides or merry-go-rounds. An exhibition deemed to be an educational exhibit, as determined by the city manager, shall be exempt from Article 1. (Ord. 8-8-83, 10-25-83, Ord. 8-12-86.)(Ord. of 4-13-93)

Sec. 5-3 to 5-10. Reserved.

Article 2. Exhibitions, Carnivals or Circuses

Division 1. Generally

Sec. 5-11 to 5-20. Reserved.

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Division 2. License

Sec. 5-21. Unlawful without license.

It shall be unlawful for any person to conduct or operate any exhibition, carnival, or circus within the city limits without first obtaining a license to do so from the city manager or his designated representative. Any person conducting or operating an exhibition, carnival or circus, or in any manner connected with or taking part in same within the city limits without first applying for and obtaining said license shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding two hundred dollars (\$200.00). A separate offense shall be deemed committed on each day any violation occurs or continues. (Ord. of 5-26-39, §§2,4; Ord 88-83, 10-25-83, §5-21, §4-14-98)

Sec. 5-22. Application required.

Any person desiring to conduct or operate any exhibition, carnival or circus within the city limits shall make application for a license to the city manager and file the same with the city secretary not less than two (2) weeks prior to the time when it is desired to conduct or operate same. Said application shall give the name and permanent address of the owner, and if owned by a company or corporation, or association, the application shall show said fact and shall also show the name of the manager or other officer in charge of said exhibition, carnival or circus. In any event, the application shall show the person in active charge and control of operating or conducting the exhibition, carnival or circus. The application shall further give a list of all shows, rides, booths and any other businesses and attractions operated in connection with the exhibition, carnival or circus, listing same by name and with a description of each premises on which the exhibition, carnival or circus is operated or conducted. Said premises shall be kept in clean and orderly condition during the operating thereof and after the conclusion thereof shall be restored to the same condition it was in prior to the operation thereof, reasonable wear and tear excepted, and any trash or debris originating therefrom shall be removed from any surrounding property by applicant at applicant's expense. (Ord. of 5-26-39, §2; Ord. 88-83, 10-25-83, §5-22, §4-14-98)

Sec. 5-23. City Manager action on application.

After an application is filed under this division, the city secretary shall refer the same to the city manager for action, and if the city manager or his representative is convinced from the evidence submitted that the owner of the carnival is solvent and that he has in the past, and proposes to while showing in the city, conducted the carnival in a decent, law-abiding and orderly manner, the city manager or his representative shall approve the application. (Ord. of 5-26-39,§2, §4-14-98)

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Sec. 5-24. License fee; exemption; administrative fee.

As a conditional requirement to the licensing of any exhibition, carnival or circus to operate in the city the applicant for said license shall pay to the city secretary a license fee in the sum of two hundred and fifty dollars (\$250.00); however, if an exhibition is deemed to be an educational exhibit as determined by the city manager, then the foregoing license fee shall be waived and in lieu thereof the applicant shall pay to the city secretary an administrative fee in the amount of twenty-five dollars (\$25.00) to help defray some of the time and expense in processing the application and issuing the license. (Ord. of 5-26-39, §3; Ord. 88-83, 10-25-83, §5-24, Ord. of 8-12-86)(Ord. of 04-13-93)

Sec 5-25. Issuance.

Upon approval of an application for a license under this division by the city manager or his representative and payment of the fee prescribed by section 5-24, the city secretary shall issue a license to the applicant to show and exhibit the carnival in the city. Such license shall not issue, however, unless the applicant complies with section 5-1, if applicable (Ord. of 5-26-39, §3, §4-14-98)

Sec. 5-26. Term.

A license issued under this division shall cover one appearance in the city and shall be good only for as many days as the exhibition, carnival or circus remains continuously in the city, and a new license shall be required each time the exhibition, carnival or circus returns to the city. (Ord. of 5-26-39, §3; Ord 88-83, 10-25-83, §5-26)

Sec. 5-27. Permitted operations under license.

Any person obtaining a license to conduct or operate an exhibition, carnival or circus within the city limits shall have the right to show, obtain and operate only those shows, rides, booths, and other attractions which are under the direct charge and supervision of the owner or operator of the exhibition, carnival or circus, and it shall be unlawful for any person to conduct or operate in connection with the exhibition, carnival or circus, any show, attraction, or concession of any kind or character independent of the ownership and management of said exhibition, carnival or circus. The license granted to said exhibition, carnival or circus shall cover and permit only those shows, attractions and concessions which are owned and operated by the person applying for the license. (Ord. of 5-26-39, §5; Ord 88-83, 10-25-83, §5-27)

Sec 5-28. Advertising Restrictions.

Any placards, handbills, posters and other advertising materials used, placed or caused to be placed by applicant or agent of the applicant in the public right-of-way or on public property in publicizing their exhibition, carnival or circus shall be unlawful and shall constitute a misdemeanor. Any placards, handbills, posters and other advertising materials used, placed or caused to be placed by applicant or agent of the applicant on private property without the permission of the owner or person in charge thereof in publicizing their exhibition, carnival or circus shall be unlawful and shall constitute a misdemeanor. Said materials shall be removed by applicant at the applicant's expense. The city manager reserves the right to deny an applicant's license for failure to adhere to the provisions of this subsection in reviewing an application under this division.(Ord. of 4-14-98)

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Sec 5-29 to 5-35. Reserved.

Article 3. Dances and Dance Halls

Sec. 5-36. Definitions.

The term "public dance", as used in this article, shall be taken to mean any dance or hall to which admission can be had by payment of a fee, or by the purchase, possession or presentation of a ticket or token, or at which a charge is made for caring for clothing and other property, or any other dance to which the public generally may gain admission, with or without the payment of a fee. The term "public dance hall", as used herein, shall be taken to mean any room, place or space in which a public dance or public ball is held, or any room, place or space where dancing is permitted. (Ord. of 8-13-63, §1)

Sec. 5-37. Dance hall license required.

It shall be unlawful for any person to hold or conduct any public dance within the city, unless the dance hall in which the same is held is licensed or such purpose. It shall likewise be unlawful for any person to dance at any public dance hall that is not duly licensed and any person engaging in a dance or dancing at an unlicensed public dance hall shall be deemed guilty of disorderly conduct and a misdemeanor. The owner, proprietor, manager, or person in charge of any unlicensed public dance hall who permits or condones any person to engage in a dance shall also be guilty of a misdemeanor. (Ord. of 8-13-63, §2,12)

Sec. 5-38. Application.

(A) Any person, firm, association, or partnership, or corporation desiring a license under this article shall file with the city secretary a written sworn application for said license on a form furnished by the city secretary, which application shall state:

- (1) The location, by street and number, of the place, space or building and room or floor, and the size of said room or space, which is proposed to be used for the public dance hall, and a description of all parking areas which are to be owned, leased, controlled or used by applicant or provided by applicant for customers and the name and address of the applicant.
- (2) A description of the ventilation and toilet facilities of said dance hall.
- (3) If the applicant is an individual, that he is a lawabiding citizen of the state; that he has not been convicted of a felony or a misdemeanor involving moral turpitude; and the length of his residence in the city.
- (4) If the applicant is a firm, association or partnership, all of the information prescribed in paragraph (3) of this subsection as to each individual composing the firm, association or partnership and as to each operator or person in charge of the operation of the public dance hall.

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- (5) If the applicant is a corporation, that the applicant is organized and chartered under the corporation laws of the state applicable to said corporation or, if a foreign corporation, that said corporation has complied with the laws of this state applicable to said corporation and the same information with reference to each officer and stockholder of the corporation and the operator or person in charge of the operation of the public dance hall to be licensed as is prescribed in paragraph (3) of this subsection in addition thereto, a statement as to the names of the officers, incorporators and stockholders, and the amount of interest owned by each.
 - (6) The previous occupation or employment of the applicant for a period of five (5) years next preceding the filing of the application.
 - (7) The name and resident address of each proposed employee of applicant and that each employee is a law abiding citizen of the state; that each employee has not been convicted of a felony or a misdemeanor involving moral turpitude; and the length of residence of each employee in the city.
 - (8) The previous occupation or employment of each proposed employee of applicant for a period of five (5) years next preceding the filing of the application.
- (B) The information given in said application is for the purpose of determining whether or not the applicant and applicant's employees are fit and proper persons to operate a public dance hall. It shall be unlawful to misrepresent the kind and character of said dance hall to be operated, or any other fact or statement made in said application, and any misrepresentation of any person, club or organization for the purpose of avoiding the provisions of this article shall, in addition to the other penalties prescribed by law be cause for revocation or cancellation of the license. (Ord. of 8-13-63, §4; Ord. of 2-26-85; Ord. of 8-13-85)

Sec. 5-39. Application approval.

- (A) No license shall be granted pursuant to this division unless it shall appear, upon inspection and investigation by the chief of police, fire marshal and the building inspector that the premises to be used for the purpose of operating a public dance hall comply with the laws of the state and the ordinances of the city regulating health and sanitation, the fire regulations, the zoning regulations, the building code, and all other applicable ordinances, and that the proposed dance hall is properly ventilated and supplied with sufficient toilet conveniences, and is a safe and proper place for the purpose for which it is used, as determined by regulations adopted by the city, and that the statements in the application are true and correct. Said officers shall, in their respective capacities, note their approval or disapproval on the application for the license. §12-14-93

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- (B) No license shall be issued until the applicant and each individual composing the firm, association or partnership and each officer and stockholder of the corporation involved and the operator or person in charge of the public dance hall and all of applicants employees have been photographed by the city police department for identification and investigation purposes. Applicants shall notify the city police department within three (3) days of the termination of any employee. Applicants shall cause any newly hired employee to go to the city police department within three (3) days of the date that said employee is hired. Provided, however, this photographing requirement shall not apply if alcoholic beverages are neither sold, served nor consumed on the premises. (Ord. of 8-13-63, §§3,5; Ord. of 2-26-85; Ord of 8-13-85)

Sec. 5-40. Fee.

An annual fee of twenty-five (\$25.00) shall be charged for each dance hall license, which fee shall be paid prior to issuance of the license. (Ord. of 12-14-93)

Sec. 5-41. Issuance or refusal.

When the conditions of this article have been complied with, a dance hall license shall be issued by the city secretary and certified to and approved by the chief of police. No such license shall be effective until it has been so approved. In the event the chief of police refuses to approve a license, such action shall be final unless the applicant shall, within ten (10) days after the refusal, file a written appeal with the city secretary, addressed to the city council, requesting a hearing by the council upon the question as to whether or not his application shall be granted. In the event such appeal is filed, the chief of police shall provide the council with a record of all proceedings theretofore had with reference to the application in question, including the written application, together with the action of the chief of police and the reasons for such action. The city council shall, within thirty (30) days, grant a hearing thereon to determine the correctness of the action of the chief of police, at which hearing the council may make such investigations as it may see fit, whether or not all the pertinent facts appear in the application. It shall be discretionary with the city council as to whether or not the license shall be granted and such action as the council say take thereon shall be final and conclusive. (Ord. of 8-13-63, §§2,15)

Sec. 5-42. Contents; posting.

A dance hall license issued under this article shall state on its face to whom it is issued, the date of expiration, the address and location of such dance hall and shall be signed by the city secretary and posted by the licensee in a conspicuous place and in such a manner and position that it may be easily read at any time of the day or night. (Ord. of 8-13-63, §14)

Sec. 5-43. Term; expiration; renewal.

All licenses issued under this article by the city shall be obtained on an annual basis and shall automatically expire at midnight on the 31st day of August of each year. Before the license issued under this article shall be renewed, the person requesting said renewal shall make application for said renewal and the renewal thereof shall be subject to all of the requirements and conditions as an original application for a license issued under this article, and the renewal of the license shall not be

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granted without the approval of the chief of police, the building inspector and the fire marshall, as is required in the case of original applications, and without the payment of the fees required by section 5-53. (Ord. of 2-26-85)(Ord. of 12-14-93)

Sec, 5-44. **Cancellation revocation or suspension.**

- (A) If a public dance hall licensed under the provisions of this article is not being conducted in accordance with the laws of this state or this article, the chief of police may, at any time, give notice in writing to the operator, licensee, manager or other person in control of the operation and maintenance of said public dance hall that the license issued for the operation and maintenance of said dance hall has been canceled, revoked or suspended.

- (B) The notice of the cancellation, revocation or suspension shall state the specific grounds therefore and shall state that it shall become a final cancellation, revocation or suspension after the expiration of ten (10) days from the date of the service of same upon the operator, licensee, manager or the person in charge unless, on or before the expiration of said ten (10) days the licensee, operator, or manager or other person in charge shall file with the city secretary a written appeal addressed to the city council in which it is requested that the council grant him a hearing upon the question, whether or not the license shall be canceled, revoked or suspended. Said appeal shall operate as a stay or postponement of the cancellation, revocation or suspension until the city council grants a hearing and makes a final decision. Said hearing shall be held within thirty (30) days after the date of the filing of said appeal, and the action and judgement of the council, after hearing all the evidence and facts, shall be final and conclusive as to all parties.

- (C) The chief of police or city council, as applicable is hereby authorized and empowered to cancel, revoke or suspend the license of any person issued hereunder in the manner and after notice and opportunity for hearing as prescribed herein, under any of the following conditions:
 - (1) For violation of any of the provisions of this article.
 - (2) For violation of the prescribed hours of operation provided herein.
 - (3) For permitting the presence on the premises of a person or persons under the influence of intoxicating liquor or drugs.
 - (4) For permitting disorderly conduct or immoral practices on the premises.
 - (5) For permitting gaming or gambling of any form or in any manner whatsoever upon or in said licensed premises.

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- (6) For permitting the violation, or for violation of the law or laws of the state or of the ordinances of the city.
- (7) For failing to keep the premises in a clean and safe condition as required by the fire, building, health regulations, and other ordinances of the city.
- (D) "Premises" as used in this article in addition to any other ordinary and usual definition of the term, also includes any private parking area which is owned, leased, controlled or used by the licensee or provided by licensee for customers. (Ord. of 8-13-63, §§10,16; Ord. of 2-26-85)

Sec 5-45. Duty of chief of police relative to licenses.

The chief of police shall examine all applications for dance hall licenses and make recommendations with references to applications for dance hall licenses. (Ord. of 8-13-63, §9)

Sec. 5-46. Transfer of license.

No license issued under the provisions of this article shall be transferred without the written consent of the city council. (Ord. of 8-13-63, §7)

Sec. 5-47. Maintenance of dance hall premises.

All public dance halls shall be kept at all times in a clean, healthful and sanitary condition and all rooms connected therewith shall be kept open and the entire place shall be well lighted. (Ord. of 8-13-63, §8)

Sec. 5-48. Conduct prohibited.

It shall be unlawful for any person in charge of any public dance hall to permit any boisterous or disorderly person to enter, be, or remain in or to assist in any such public dance hall or public dance, and it shall be unlawful for any person to conduct himself in a boisterous or disorderly manner in any public dance hall or at any public dance. No intoxicated, gross-mannered or vulgar person or person of indecent character shall be permitted in any dance hall and no person shall be admitted who conducts himself in a gross or vulgar manner. No indecent, freak or immodest dances shall be allowed. (Ord. of 8-13-63, §8)

Sec. 5-49. Authority to vacate premises.

The chief of police, or other persons under his direction, shall have the power, and it shall be his duty to cause any place, hall or room where any public dance is held or given to be vacated whenever any provision of this article is being violated or whenever any indecent act is committed, or when any disorder of a gross, violent or vulgar character shall take place therein. (Ord. of 8-13-63, §8)

Sec. 5-50. Enforcement.

The chief of police, or other persons under his direction, shall have the authority to enforce the provisions of this article and all rules, regulations, and ordinances relating to public dances and public dance halls. In making determinations as to proper cleanliness and sanitation conditions, fire

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safety requirements, building regulations, uses and requirements, etc., the chief of police or other persons under his direction shall work with and seek the aid of the proper city department administering such regulations for the city. (Ord. of 8-13-63, §§8,9)

Sec. 5-51. Cumulative remedies.

Any remedy prescribed by this article for the enforcement of the same shall be merely cumulative and shall not preclude resort to any other remedy provided by law. (Ord. of 8-13-63, §13)

Sec. 5-52. Hours of operation.

No person shall engage in the operation of any public dance hall within the city between the following hours: after 2:00 o'clock a.m. and before 7:00 o'clock a.m. on any day; provided, further, on Sunday no person shall engage in the operation of any dance hall within the city between the following hours on Sunday: 7:00 o'clock a.m. and before 12:00 o'clock noon. (Ord. of 2-26-85)

Sec. 5-53 to 5-65. Reserved.

Article 4. Pool Halls

Division 1. Generally

Sec. 5-66. Definitions.

For the purposes of this article, the following words and phrases shall have the meaning herein ascribed to them:

- (A) Pool. Any game which is played upon a table surrounded by ledges or cushions, with or without pockets, and upon which balls are impelled by a stick or cue.
- (B) Pool hall. Any room, building or space located within the city in which there are more than two (2) pool or billiard tables for the use and enjoyment of the general public, regardless of whether or not there is a charge for the playing of pool or billiards.
- (C) Pool or billiard table. Any table surrounded by a ledge or cushion, with or without pockets, upon which balls are impelled by a stick or cue. (Ord. of 8-20-63, §2; Ord. of 3-27-73, §1)

Sec. 5-67. Compliance with article.

The operation of any public pool hall or billiard table or tables shall be in the manner and under the conditions as prescribed by this article. (Ord. of 8-20-63, §1)

Sec. 5-68. Location in certain zones prohibited.

No public pool hall or pool table shall be operated in the city in any "SF-1", "SF-2", "SF-3", "GR", "MF", or "P" Districts, as defined and designated by the zoning regulations of the city, which

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were finally passed and approved on the 5th day of June, 1961 together with all the amendments thereto. Provided, however, this Section 5-68 shall not apply if alcoholic beverages are neither sold nor consumed on the subject premises. (Ord. of 8-20-63, §3J; Ord. of 3-27-73, §2)

Sec. 5-69. Location near church of school.

No public pool hall or pool table shall be operated in the city within three hundred (300) feet of a church or school. The three hundred (300) feet measurement shall be made from the closest point of the school or church building to the closest point of the building containing such pool hall. This Section 5-69 shall not apply if alcoholic beverages are neither sold nor consumed on the subject premises. (Ord. of 8-20-63, §3K)

Sec 5-70. Hours of operation.

No person shall engage in the operation of any public pool hall or pool table or tables within the city between the following hours: after 2:00 o'clock a.m. and before 7:00 o'clock a.m. on any day; provided, further, on Sunday no person shall engage in the operation of any public pool hall or pool table or tables within the City between the following hours on Sunday: 7:00 o'clock a.m. and before 12:00 o'clock noon. (Ord. of 8-13-63, §3L; Ord. of 2-13-79; Ord. of 8-28-84)

Sec 5-71. Inspections

The city manager shall have the authority to appoint or designate a person to make periodic inspections of premises licensed under this article for the purpose of determining whether or not such premises is in compliance with the health, plumbing and sanitary and other ordinances of the city. (Ord. of 8-20-63, §5)

Secs. 5-72 to 5-80. Reserved

Division 2 License

Sec 5-81. Required.

It shall be unlawful for any person to operate, for profit or personal gain, any public pool hall or billiard table or tables in the city without first obtaining a license from the city secretary for such purposes. (Ord of 8-20-63, §§1, 3C)

Sec 5-82. Application.

(A) Any person, firm, association, or partnership, or corporation desiring a license under this article shall file with the city secretary a written, sworn application for such license, which application shall state;

- (1) The location, by street and number, of the place, space or building and room or floor, and the size of such room or space, which is proposed to be used for the public pool hall or billiard table or tables, and a description of all parking areas which are to be owned, leased, controlled or used by applicant or provided by applicant for customers and the name and address of the applicant.

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- (2) If the applicant is an individual, that he is a law abiding citizen of the state; that he has not been convicted of a felony or a misdemeanor involving moral turpitude; and the length of his residence in the city.
 - (3) If the applicant is a firm, association, or partnership, all of the information prescribed in paragraph (2) of this subsection as to each individual composing the firm, association or partnership and as to each operator or person in charge of the operation of the public pool hall or billiard table or tables.
 - (4) If the applicant is a corporation, that the applicant is organized and chartered under the corporation laws of this state applicable to said corporation, or, if a foreign corporation, that such corporation has complied with the laws of the state applicable to said corporation and the same information with reference to each officer and stockholder of the corporation and the operator or the person in charge of the operation of the public pool hall, billiard table or tables to be licensed as is prescribed in paragraph (2) of this subsection; in addition thereto, a statement as to the names of the incorporators or stockholders, and the amount of interest owned by each.
 - (5) The previous occupation or employment of the applicant for a period of five (5) years next preceding the filing of his application.
 - (6) The name and resident address of each proposed employee of applicant and that each employee is a law abiding citizen of the state; that each employee has not been convicted of a felony or a misdemeanor involving moral turpitude; and the length of residence of each employee in the city.
 - (7) The previous occupation or employment of each proposed employee of applicant for a period of five (5) years next preceding the filing of the application.
- (B) The information given in such application is for the purpose of determining whether or not the applicant and applicant's employees are fit and proper persons to operate a public pool hall or billiard table or tables. It shall be unlawful to misrepresent the kind and character of said pool hall, billiard table or tables to be operated, or any other fact or statement made in said application, and any misrepresentation of any person, club or organization for the purpose of avoiding the provisions of this article shall, in addition to the other penalties prescribed by law, be cause for revocation or cancellation of the license. (Ord. of 8-20-63, 3E, F; Ord. of 8-28-84; Ord 8-13-85)

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Sec 5-83. Application approval

- (A) No license shall be granted pursuant to this division unless it shall appear, upon investigation by the chief of police, fire marshal and the building inspector that the premises to be used for the purpose of operating a public pool hall or billiard table or tables comply with the laws of the state and the ordinances of the city regulating health and sanitation, the fire regulations, the zoning regulations, the building code, and all other applicable ordinances, and that the statements in the application are true and correct. Such officers shall, in their respective capacities, note their approval or disapproval on the application for the license.
- (B) No license shall be issued until the applicant and each individual composing the firm, association, or partnership and each officer and stockholder of the corporation involved and the operator or person in charge of the public pool hall, billiard tables, and all of the applicant's employees have been photographed at the City Police Department for identification and investigation purposes Applicants shall notify the City Police Department within three (3) days of the termination of any employee. Applicants shall cause any newly hired employee to go to the City Police Department to be photographed within three (3) days of the date that said employee is hired. Provided, however, this photographing requirement shall not apply if alcoholic beverages are neither sold, served, nor consumed on the premises. (Ord. of 8-20-63, §3D; Ord. of 8-28-84; Ord. of 8-13-85) (Ord. of 12-14-93)

Sec 5-84. Fee.

There shall be an application processing fee of fifty dollars (\$50.00) for processing the application for the license under this division and said amount shall not be prorated. Said amount shall accompany the application or renewal application and said amount shall not be refunded once the application has been processed even if the application is denied. In addition, there shall be a photographing fee of \$4.00 for each employee and this fee shall accompany the application; in the case of newly hired employees, this fee shall be paid before the newly hired employee is photographed. If an application is denied before an employee is photographed then the photographing fee as to said employee shall be refunded but shall not be refunded once an employee is photographed. If applications for a dance hall license and for a public pool hall, billiard table or tables license are made at the same time by the same applicant, then applicant shall only have to pay one application processing fee and one photographing fee in order to obtain both licenses and shall not have to pay separate fees for each license. (Ord. Of 8-20-63, §3N; Ord. of 8-28-84, Ord. of 8-13-85)

Sec. 5-85. Issuance or refusal.

In the event the chief of police, fire marshal, or building inspector fails to approve the issuance of a license to any applicant under this division, the action of such official shall be final, unless the applicant shall, within (10) days after the refusal to grant such license, file a written appeal with the city secretary, addressed to the city council, requesting a hearing by the council upon the question as to whether or not his application shall be granted. In the event such appeal is filed, the chief of police shall provide the council with a record of all proceedings theretofore had with reference to the application in question, including the written application, together with the action

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of the officials and the reasons for such action. The council shall, within thirty (30) days, grant a hearing thereon to determine the correctness of the action of such officials, at which hearing the council may make such investigation as it may see fit, whether or not all the pertinent facts appear in the application. It shall be discretionary with the council as to whether or not a license shall be granted and such action as the council may take thereon shall be final and conclusive. (Ord. of 8-20-63, §3H) (Ord. of 12-14-93)

Sec. 5-86. No vested right conferred.

The granting of any license under the terms of this division shall in no event be construed as the granting or conferring of any vested right to the licensee or operator, but shall be subject to revocation, cancellation or suspension as provided in section 5-89. (Ord. of 8-20-63, §3G)

Sec. 5-87. Term; expiration.

All licenses issued under this article by the city shall be obtained on an annual basis and shall automatically expire at midnight on the 31st day of August of each year. (Ord. of 8-20-63, §3N; Ord. of 8-28-84)

Sec. 5-88. Renewal.

Before a license issued under this article shall be renewed, the person requesting such renewal shall make application for said renewal and the renewal thereof shall be subject to all of the requirements and conditions as an original application for a license issued under this article, and the renewal of the license shall not be granted without the approval of the chief of police, city health officer, the building inspector and the fire marshal, as is required in the case of original applications, and without the payment of the fees required by Section 5-84. (Ord. of 8-20-63, §3N, O; Ord. of 8-28-84)

Sec. 5-89. Cancellation, revocation or suspension.

- (A) If a public pool hall or billiard table licensed under the provisions of this division is not being conducted in accordance with the laws of the state or this article, the chief of police may, at any time, give notice in writing to the operator, licensee, manager or other person in control of the operation and maintenance of said public pool hall or billiard table that the license issued for the operation and maintenance of said pool hall or billiard table has been canceled, revoked or suspended. The notice of cancellation, revocation or suspension shall state the specific grounds therefore and shall state that it shall become a final cancellation, revocation or suspension after the expiration of ten (10) days from the date of the service of same upon the operator, licensee, manager or the person in charge, unless, on or before the expiration of such ten (10) days, the licensee, operator or manager or other person in charge shall file with the city secretary a written appeal addressed to the city council in which it is requested that the council grant him a hearing upon the question whether or not the license shall be canceled, revoked or suspended. Such appeal shall operate as a stay or postponement of the cancellation, revocation or suspension until the city council grants a hearing and makes a final decision. Such hearing shall be held within thirty (30) days after the date of the filing of such appeal, and the action and judgement of the council, after hearing all the evidence and facts, shall be final and conclusive as

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to all parties.

- (B) The Chief of Police or City Council, as applicable is hereby authorized and empowered to cancel, revoke or suspend the license of any person issued hereunder in the manner and after notice and opportunity for hearing as prescribed herein under any of the following conditions:
- (1) For violation of any of the provisions of this article.
 - (2) For violation of the prescribed hours of operation provided herein.
 - (3) For permitting the presence on the premises of a person or persons under the influence of intoxicating liquor or drugs.
 - (4) For permitting disorderly conduct or immoral practices on the premises.
 - (5) For permitting gaming or gambling of any form or in any manner whatsoever upon or in said licensed premises.
 - (6) For permitting the violation, or for violation of the law or laws of the state or of the ordinances of the city.
 - (7) For failing to keep the premises in a clean and safe condition as required by the fire, building and health regulations and other ordinances of the city. (Ord. of 8-20-63, §3I, M; Ord. of 7-24-84; Ord. of 8-28-84)
- (C) "Premises" is used in this article in addition to any other ordinary and usual definition of the term, also includes any private parking area which is owned, leased, controlled or used by the licensee or provided by licensee for customers. (Ord. of 8-28-84)

Sec. 5-90 to 5-109. Reserved.

Article 5. Itinerant Licensing

Division 1. In General

Sec. 5-110. Definitions.

The following words, terms, and phrases, shall have the meaning ascribed to them when used in this Article, except when the context clearly indicates otherwise.

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- (A) Itinerate Merchant. Any person, or his/her agent, employee, servant, or representative, who sells or offers for sale merchandise or services, other than food or drink:
1. from a tent, vehicle, or place which is not a permanent building or structure, for any period of time; or
 2. from a permanent building or structure for a period which is forty-five (45) days or less;
- (B) Peddler. Any person who travels from house to house or place to place selling, or offering for sale, merchandise or services which may be immediately or subsequently delivered or performed;
- (C) Solicitor. Any person taking orders for future delivery, intangible services, or for subscriptions, from house to house, from place to place, on the streets, or in any public place, which orders are not taken at one established location or private premises;
- (D) Roadway Food Vendor. Any person that offers food or drink for sale from a roadway from a motor vehicle that makes intermittent stops between sales on city streets (i.e. ice cream truck);
- (E) Fixed Location Food Vendor. Any person that offers food or drink for sale from a fixed location, either in a parked motor vehicle or temporary structure.

(Ord. of 6-11-63; Ord. of 7-8-69; Ord. of 4-27-82, §5-110; Ord. of 11-8-16)

Sec. 5-111. License Required.

It shall be unlawful for any person, or for any person, firm, or corporation to engage in business as a(n) itinerate merchant, peddler, solicitor, roadway food vendor, or fixed location food vendor without having first obtained a license therefore from the Chief of Police.

(Ord. of 8-12-58, §9(5); Ord. of 5-22-79, §2; Ord. of 4-27-82; Ord. of 6-25-85, §5-111, Ord. of 7-6-10; Ord. of 11-8-16)

Sec. 5-112. Activities Exempted.

The following activities shall be exempt from the licensing requirements of this Article:

- (A) The agent or representative of a jobber or wholesaler calling on customers on a regularly established route;
- (B) Any sales of merchandise damaged by smoke or fire, or of bankrupt concerns, where such stocks have been acquired from merchants of the city regularly licensed and engaged in business, provided, however, no such stocks of merchandise shall be augmented by new goods;

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- (C) Persons living in Big Spring who hold “garage sales,” which consist of sale of used domestic merchandise for two (2) days or less duration, no more than twice (2) times per year;
- (D) Art exhibits where participating artists sell their original works and which do not contain any sales of artwork purchased elsewhere and held for resale, providing said art exhibits are sponsored by a local responsible organization;
- (E) The sale of agricultural products grown by the seller in this county that have conformed to the requirements provided in Section 5-117(B)(3) of this Article;
- (F) Peddlers selling to or soliciting orders from retail business houses only;
- (G) Peddlers going to a house or place at the express invitation of the owner or occupant of such house or place;
- (H) Persons engaged in a business or activity of which the State or Federal government has exclusive authority to regulate;
- (I) Persons distributing or selling newspapers, pamphlets, handbills, or other written or printed matter sold or distributed for the purpose of disseminating news, information, or religious materials;
- (J) Governmental entities;
- (K) Persons or transactions associated with solicitations of bona-fide non-profit charitable organization;
- (L) Persons or transactions associated with bona-fide trade shows, exhibits, expositions, or conventions, where all purchases, sales, or exchanges are made in connection with, and within the confines of the trade show, exhibit, exposition, or convention site;
- (M) Persons or transactions associated with fairs, rodeos, festivals, or other events sponsored by civic or community organizations, schools, churches, the Chamber of Commerce, or local government entity. (Ord. of 11-8-16)

Sec. 5-113. Penalty.

Any person, firm, or corporation violating any provision of this Article shall be fined not less than Fifty Dollars (\$50.00) or more than Two Hundred Dollars (\$200.00) for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues. (Ord. of 11-8-16)

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Division 2. Licensure

Sec. 5-114. Application for Licensure.

(A) Applicants, and each agent of the primary applicant, shall make a sworn application to the Chief of Police upon forms furnished by the Police Department of the City. Each application shall give the following information:

1. Full name and all information contained on driver's license of the applicant and each agent or employee working under the permit;
2. Permanent home address and present local address of the applicant;
3. Name and home office address of applicant's employer;
4. If the applicant owns or uses a motor vehicle in connection with his/her business, a description of such motor vehicle and the license number of same;
5. A brief description of the merchandise or services to be sold;
6. A statement as to whether or not the applicant has been convicted of any felony and the disposition of same;
7. A site plan to be drawn by the applicant, not to scale, which need only show the location to be used by the applicant or his/or her designee and to be made the basis of the permit. The applicant shall submit an additional site plan for each location to be occupied during the term of a permit;
8. Proposed duration of temporary sales operation;
9. Written permission of the owner of the land or building where the sales are to take place (itinerate merchant and fixed location food vendor only);
10. A copy of the applicant's Texas limited sales and use tax permit; and
11. A description of the proposed parking spaces to be used and the proposed manner to dispose of trash/litter.

(B) Roadway Food Vendors and Fixed Location Food Vendors. In addition to the requirements listed above, each Roadway Food Vendor or Fixed Location Food Vendor shall obtain a food permit issued by the Fire Marshall certifying compliance with the Texas Food Establishment Rules.

(Ord. of 9-12-50, §§1,2; Ord. of 6-11-63; Ord. of 5-22-79, §13; Ord. of 4-27-82; Ord. of 6-25-85, §5-122, Ord. of 12-9-86; Ord. of 11-8-16)

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Sec. 5-116. Additional Requirements for Roadway Food Vendors.

(A) The special provisions set for this Section shall apply to Roadway Food Vendors and shall be in addition to other provisions found elsewhere in city code. A Roadway Food Vendor shall:

1. Vend only when the motor vehicle is lawfully stopped;
2. Vend only from the side of the motor vehicle that is positioned away from moving traffic and as near as possible to the curb or side of the street;
3. Shall not vend to a person standing in a roadway;
4. Shall not stop on the left side of a one-way street to vend;
5. Shall not stop in a congested area where vending might impede or inconvenience the public;
6. Shall not back up, do a U-turn, or reverse a motor vehicle for the purpose of vending;
7. Shall not vend on a street adjacent to a public school;
8. Shall activate the special flashing lights required Section 5-116(C)(4) whenever stopped on the street for the purposes of vending;
9. Shall not activate the required flashing lights if not stopped on the street for the purpose of vending;
10. Shall extend the required stop signal arm required by Section 5-116(C)(6) whenever stopped on the street for the purpose of vending;
11. Shall not extend the required stop signal arm when the motor vehicle is in motion nor at any time the motor vehicle is stopped for a purpose other than vending;
12. Shall not stop a motor vehicle for the purposes of vending within one hundred feet (100') of a street intersection;
13. Shall not be in operation, doing business, or going from place to place after sunset or before 9:00 a.m. or after 8:00 p.m.

(B) Conclusive Police Judgment. For the purposes of this Section, the judgment of a police officer exercised in good faith shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced or a stop is for a temporary or stationary period of time.

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- (C) Operator and Vehicle Requirements. An operator shall comply with the following requirements:
1. The operator shall comply with all permitting requirements as a peddler or Food Service Establishment unless modified or amended by the provisions of this Section;
 2. No permit shall be issued to an operator unless a certificate is furnished to the Chief of Police establishing that the operator is insured for the following amounts:
 - i. public liability insurance in the amount of not less than three hundred thousand dollars (\$300,000) for injuries, including those resulting in death, resulting from any one (1) occurrence and on account of any one (1) accident; and
 - ii. property damage insurance in the amount of not less than twenty-five thousand dollars (\$25,000) for damages on account of any one (1) accident or occurrence.
 3. The insurance certificates shall contain an agreement signed by the insurance company that, prior to modification, cancellation, or termination of the subject policy, written notice shall be sent to the City by said insurance company;
 4. Install on the motor vehicle, signal lamps mounted at the same level and as high and widely spaced as practicable. These lamps shall be five (5) to seven (7) inches in diameter and shall display two (2) alternately flashing yellow lights on the motor vehicle and all lights shall be visible at five hundred feet (500') in normal sunlight upon a straight level street;
 5. Must display on the rear and front door of the motor vehicle a sign with a white background and red letters, in uniform block letters that are three to five inches in height (3" – 5"), a warning that shall read: "WARNING: WATCH FOR CHILDREN NEAR THIS VEHICLE AND STOP BEFORE PASSING WHEN ARM IS EXTENDED";
 6. Shall install on each motor vehicle to be used for vending, an octagonal stop signal arm that is eighteen inches (18") by eighteen inches (18") that can be extended horizontally from the left side of the motor vehicle that duplicates the design of a standard octagonal stop sign as set forth in the State Manual of Uniform Traffic-Control Devices. This arm shall be red and white in color and contain two (2) alternately flashing lights three (3) to five (5) inches in diameter at the top and bottom thereof, visible at three hundred feet (300') to the front and rear in normal sunlight upon a straight level street.

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The color of the two (2) lights facing the front shall be red, and the two (2) lights facing the rear shall be red. The bottom of the signal arm shall be forty-two inches (42") above the street.

- (D) Duty of Other Drivers. The duty of a driver meeting or overtaking a Roadway Food Vendor stopped on the street, shall stop no less than twenty five (25') feet from the front or rear of said Roadway Food Vendor when the flashing lights and stop signal arm described herein are in use. After stopping, the driver may proceed past such Roadway Food Vendor at a reasonable and prudent speed not to exceed fifteen miles per hour (15 mph) and shall yield the right-of-way to any pedestrian crossing the roadway to or from the Roadway Food Vendor. The driver of a vehicle on a street with separate roadways separated by a divider of any form, need not stop upon meeting or passing a Roadway Food Vendor on the parallel roadway.
- (E) Inspection of Motor Vehicle Required. A Roadway Food Vendor shall not use any motor vehicle for vending purposes that has not first been inspected by the Police Department and found to be in compliance with the requirements of this Section.
- (F) Denial or Revocation of License. A license provided for in this Article shall be denied or revoked upon the failure of a motor vehicle used by a Roadway Food Vendor to pass an inspection conducted by the Police Department certifying that the motor vehicle is in compliance with all provisions of this Section. (Ord. of 11-8-16)

Sec. 5-117. Processing Fee.

- (A) Processing Fees. Each application for licensure shall be accompanied by payment of the processing fee provided for in Appendix A. These fees shall be applied to the expenses incurred in processing the application and enforcing the regulations of this Article.
- (B) Exemptions. The following shall be exempt from the processing fees required in this Section, but are nonetheless required to comply with the requirements of licensure:
 1. Itinerate Merchants, Roadway Food Vendors, and Fixed Location Food Vendors that are owned and operated by full-time residents of Big Spring or Howard County;
 2. Itinerate Merchants, Roadway Food Vendors, and Fixed Location Food Vendors that are operated solely by bona-fide non-profit organization; and
 3. Persons offering for sale agricultural products grown or produced by them in this county shall not be required to pay the fees required by this Section, but must provide satisfactory proof that they have produced or grown the products to be peddled and the products have been approved by the Health Department.

(Ord. of 11-8-16)

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Sec. 5-118. Denial or Revocation of Permit; Issuance; Contents.

(A) Each application shall be referred to the Chief of Police for investigation and approval of the proposed sales area with regard to City Zoning ordinances. The Chief of Police shall also investigate with regards to the other requirements of this Article. Any application for licensure may be denied or such license may be revoked for any of the following reasons:

1. Any misrepresentation or false statement contained in the application for licensure;
2. A violation of any of the provisions of this Article;
3. Conviction of any crime involving moral turpitude;
4. Conviction of any crime constituting a breach of the peace, or a violation of any city ordinance or state law, or when the incident constituting the basis of such crime occurred during the course of business conducted under licensure;
5. Proposed operation would not comply with federal or state law or city ordinance, including zoning restrictions and Texas Food Service Establishment Rules;
6. Failure to provide parking spaces, which need not be paved, sufficient in number to accommodate the number of automobiles reasonably expected to be parked at any one time, taking into consideration the type, size, and quantity of merchandise to be offered for sale, in addition to those parking spaces required under the zoning ordinance for existing businesses;
7. Blocking access to city streets or driveways;
8. Failure to provide adequate trash containers for the proposed use; and
9. Failure to report and/or remit sales tax collected for the City of Big Spring to the State Comptroller.

(B) Upon denial or revocation of a license under this Article, the Chief of Police shall notify the applicant or licensee, in writing, of the reason for such denial or revocation. The applicant or licensee shall have a right to appeal to the City Council upon the denial or revocation of a license. After an applicant for a license under this Article has complied with the provisions and requirements herein and upon payment of the fees prescribed in Appendix A, the Chief of Police shall issue the applicant a license certifying compliance. Such license, when issued, shall be signed by the Chief of Police and shall be dated as of the date of its issuance. Any license not signed and dated or a license issued in violation of this Article shall be void.

(Ord. of 11-8-16)

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Sec. 5-119. Display of License Required.

Every license issued under the authority of this Article shall be displayed upon the request of any City Official, customer, police officer, or the owner or occupant upon whose property the licensee is using for business purposes. (Ord. of 11-8-16)

Sec. 5-120. Hours of Operation.

It shall be unlawful for any person to peddle or solicit any goods, wares, merchandise or services between the hours of 6:00 p.m. and 9:00 a.m. Monday through Saturday and at any time on Sunday. Roadway Food Vendors shall conform to the hours of operation provided for in Section 5-116(A)(13) of this Article. Itinerate Vendors and Fixed Location Food Vendors shall be authorized to operate at any hour on any day of the week. (Ord. of 11-8-16)

Sec. 5-121. Expiration.

Each license issued under the authority of this Article shall be valid from the date of issuance until expiration or revocation. Itinerate Merchants, Peddlers, and Solicitors Permits shall be valid for a period not to exceed ten (10) days. Roadway Food Vendor and Fixed Location Food Vendor Permits shall be valid for a period not to exceed six (6) months. (Ord. of 11-8-16)

Sec. 5-122 - 5-150 Reserved.

(Ord. of 9-12-50, §2; Ord. of 6-11-63; Ord. of 5-22-79, §14; Ord. of 4-27-82; Ord. of 6-25-85, §5-123, Ord. 12-9-86)(Ord. of 8-12-50, §3; Ord. of 5-22-79, §15; Ord. of 4-27-82; Ord. of 6-25-85, §5-124, Ord. 12-9-86)

Article 6. Regulation of Oil and Gas Production

Sec. 5-151. Definitions.

For the purpose of this article all technical or oil and gas industry words and phrases used herein and not specifically defined herein shall have that meaning customarily attributed to them by the oil and gas industry. The following words and terms wherever and whenever used or appearing in this article shall have the scope and meaning hereinafter defined and set out in connection with each:

- (A) Applicant. Any person who applies for a drilling permit hereunder.
- (B) Approved, approved type, or approved design. Improvements, equipment or facilities of a type or design approved by the chief building inspector.
- (C) Building code. The portion of this Code or any ordinance of the city known by that title and all amendments thereto.
- (D) Building permit. The permit required by the building code.

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- (E) Chief building inspector. The chief building inspector of the city or his successor.
- (F) Completion of drilling. A well is completed, for the purpose of these regulations, thirty (30) days after the drilling crew has been released. The drilling crew is released within the meaning of this paragraph when work at the wellsite for drilling or completing the well is suspended, either temporarily or permanently.
- (G) Derrick. Any structure, improvement, equipment or facility, and each and every part thereof, whether completed or not, and which is required or used or useful for or in connection with drilling, operating, or maintaining a well for the production of oil, gas or other hydrocarbons from the earth together with all parts of and appurtenances to such structure, improvement, equipment or facility, including but not limited to, foundations and sills therefore, pump-houses, engine-houses, or housings, pipe-racks, posting, walkways, mud-ditches and crown block.
- (H) Designated agent. The designated agent of applicant or permittee.
- (I) Diligence. That the drilling derrick is in its operating position over the well, properly anchored and supported and that an operating crew is on duty at the drill site at all times.
- (J) Drill Site. The premises used during the drilling and subsequent life of a well or wells, which is necessary for the safe operations thereof.
- (K) Drilling. Entry into the site with equipment and/or personnel for the specific purpose of actually opening a well hole intended to produce oil or gas.
- (L) Erect. To built, construct, install, assemble, put together, improve, alter, move, reconstruct, restore, renovate, renew or repair any building, structure, improvement or facility, or any part or portion thereof or foundations therefore, or appurtenance thereto, whether or not such building, structure, improvement or facility is completed, or to work upon, or in any way assist in such erection.
- (M) Flammable liquids. Oil and other fluid hydrocarbons, including liquified gases or other flammable liquids, having a flash point below two hundred (200) degrees Fahrenheit. The flash point of all commodities shall be determined by the Elliot, Abel, Abel-Pensky, or Tag closed cap testers, but the Tag closed cap tester, standardized by the United States Bureau of Standards, shall be authoritative in case of dispute. All tests shall be in accordance with the methods adopted by the American Society for Testing Materials, and approved by the American Standards Association, or their successors.
- (N) Gas. The gaseous components or vapors occurring in or derived from petroleum or natural gas.

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- (O) Lessee. The possessor of the right to explore and recover minerals from the premises.
- (P) Lessor. The owner of the mineral rights.
- (Q) Maintained. To repair, or otherwise keep or place in working condition, and also to permit, or authorize to exist, regardless of whether any actual maintenance work is done. For the purposes of this chapter, an oil well, well-hole, derrick and production equipment, shall be deemed to be "maintained" upon the premises in and upon which the same were or are being drilled, erected or installed, until the following tasks are accomplished:
- (1) Every part of such derrick and production equipment shall be removed from the drill site.
 - (2) All requirements for abandonment established by the state and any other regulatory authority having jurisdiction must be met.
 - (3) All sumps, cellars, rotary mud, concrete, oil and rubbish must be removed and the drill site cleaned and all ditches must be leveled.
- (R) All property of the city which may have been disturbed or damaged by the operations at the drill site shall be repaired and cleaned as needed and restored to substantially the same condition as existed at the time of the issuance of the permit. Maintenance. The repair and replacement of parts of a structure when the repair or replacement does not alter or lessen the strength or stability of the structure.
- (S) Non-urbanized drilling site. A drill site shall be considered non-urbanized if no occupied commercial, residential or industrial structure exists in use within one thousand (1,000) feet of the proposed well-hole.
- (T) Occupied structure. Only those structures that are regularly occupied by persons at least twenty (20) hours per week.
- (U) Oil. Petroleum and other fluid hydrocarbons obtained from the earth.
- (V) Operate. To work or act upon, or to cause or permit natural or artificial forces to function in connection with any structure, plant, equipment, machinery, or facility with the purpose of utilizing the same for the purpose for which it was or is erected or maintained, or for any other purpose and when used with reference to a well, well-hole, derrick or production equipment, means and includes any acts or functions performed or permitted to occur in connection with such well, well-hole, derrick or production equipment, from and after the completion of the drilling of the well, for the purpose of producing or obtaining oil, gas, or other hydrocarbons from the ground, and for the purpose of collecting and handling the same and making

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deliveries thereof at the well or from the shipping tanks or lease tanks in the vicinity of the well. "Operate" includes all functions performed or permitted to occur in connection with such production, collection, handling, and delivery, including the repair, re-conditioning, restoration, perforating, redrilling or deepening of said well or well-hole, and the dehydration or cleaning of said oil prior to making such deliveries as aforesaid.

- (W) Operator. The person, whether owner, lessee, or independent contractor, actually in charge and in control of the drilling, maintenance, operation or pumping of a well or lease.
- (X) Owner. A person who has legal or equitable title to the surface of the drill site.
- (Y) Permit or drilling permit. The written, typed or printed permission issued to applicant by the chief building inspector under the authority of this article.
- (Z) Permittee. Any person to whom a permit has been granted and issued under and pursuant to the term of this chapter by the code enforcement administrator.
- (AA) Person. An individual; a receiver; a trustee; a partnership; a joint adventure; a firm; an unincorporated association; a syndicate; a club; a society; a trust; a private corporation; a public corporation; a municipal corporation; a county, a state, or national government; a commission; a water district; a utility district; a political subdivision; and a drainage, irrigation, levee, reclamation, flood control or water conservation district, whether acting for himself or itself or in any representative capacity.
- (BB) Production equipment: Pumping equipment, tubing, pipes, gauges, meters, valves, oil and gas separators, sumps, flow tanks, production tanks, shipping tanks, lease tanks, shipping pumps, loading racks and all other structures, machinery, equipment and facilities, and each and every part thereof, whether completed or not, required for or used or useful in connection with the operation, repair, reconditioning, redrilling or maintenance of a well or well-hole, and the collection, handling and delivery of oil, gas or other hydrocarbons therefrom, and which structures, machinery, equipment and facilities are not included in the "derrick," "well," or "well-hole," as heretofore defined. "Production equipment" also includes any wash tanks, dehydration plant or other equipment or facility operated or maintained by or in behalf of the operator of said well for the purpose of separating sand, water and other foreign substances from the oil, gas or other hydrocarbons produced or obtained by said operator prior to shipping or delivering said oil from the shipping tanks or lease tanks at the well, or in the vicinity thereof.
- (CC) Redrilling. The deepening of an existing oil well or otherwise drilling beyond the extremities (to the side) of the existing well casing. The provisions of this chapter relating to drilling shall be equally applicable to redrilling.

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- (DD) Structure. That which is built or constructed; a tank, edifice, or building of any kind.
- (EE) Suspended operations. The approved temporary suspension of drilling or re-drilling operations pending a resumption of operations or abandonment.
- (FF) Tank. A container, covered or uncovered, used in conjunction with the drilling or production of an oil well, for holding or storing liquids at or near atmospheric pressure.
- (GG) Urbanized drilling site. A drill site shall be considered urbanized where an occupied commercial, residential or industrial structure exists within one thousand (1,000) feet of the proposed well-hole.
- (HH) Well head. A well head is composed of the bradenhead, Christmas tree and all well connections. (Ord. of 3-11-80, §1)

Sec. 5-152. Permit required; acts constituting nuisances.

- (A) No person shall conduct any drilling or re-drilling within the corporate limits of the City of Big Spring without having obtained a permit for said drilling or re-drilling under this article.
- (B) It is hereby declared a nuisance for any person to conduct any drilling operations within one thousand (1,000) feet of the property line of any school of the Big Spring Independent School District without the prior written consent of the Board of Trustees of said district, or within one thousand (1,000) feet of the property line of any parochial school without the prior consent of the board of trustees or other governing body of said parochial school. It is hereby declared a nuisance for any person to conduct any drilling operations within one thousand (1,000) feet of a property line of any hospital, convalescent home, orphanage or nursing home located within the city limits without prior written consent of the owner or owners thereof. It is hereby declared a nuisance for any person to conduct any drilling or re-drilling operation outside the city limits closer than one thousand (1,000) feet to any occupied structure other than a school, hospital, convalescent home, orphanage, or nursing home located within the city limits without obtaining a permit for said drilling or re-drilling under this article.
- (C) It is hereby declared a nuisance for any person to construct any storage tank or tanks within one thousand (1,000) feet of the property line of any school of the Big Spring Independent School District without the prior written consent of the board of trustees of said district, or within one thousand (1,000) feet of the property line of any parochial school without the prior written consent of the board of trustees or the governing body of said parochial school or within one thousand (1,000) feet of any hospital, convalescent home, orphanage or nursing home located within or outside the city limits without the prior written consent of the owner or owners thereof. (Ord. of 3-11-80, §2)

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Sec. 5-153. Review and action on permit application; approval or disapproval of operations.

It shall be the responsibility of the chief building inspector to review impartially and to approve or disapprove all applications for drilling permits. The chief building inspector, based upon the criteria established herein, may require the applicant for a permit hereunder to do those things necessary to insure the health, safety, and welfare of the citizens of the city. Items required shall be clearly stated in the permit issued hereunder. The chief building inspector is hereby authorized to approve or disapprove the actions of the permittee not otherwise covered by the permit application during the drilling and post-drilling operations in accordance with the terms of this article only. The chief building inspector shall issue or deny a permit within ten (10) days of receipt of a properly completed application for drilling at a non-urbanized drilling site. The chief building inspector shall issue or deny a permit within thirty (30) days of the receipt of a properly completed application for drilling at an urbanized drilling site.

- (A) If the chief building inspector denies a drilling permit, he shall notify the applicant in writing of such denial and the reasons therefore.
- (B) If the chief building inspector grants a drilling permit, the permit, in a form as determined by the chief building inspector, shall be mailed to the applicant. (Ord. of 3-11-80, §3)

Sec. 5-154. Form of permit application; permit fee.

- (A) Applications for permits to drill or redrill any oil or gas well shall be made in writing to the chief building inspector and shall include the following:
 - (1) The legal description of the proposed drill site and the legal description of the real property in the city which the applicant proposes to explore for oil and gas purposes. A map shall be attached to the application, which map shall clearly show and outline the proposed drill site with reference to existing city streets or city limits.
 - (2) A statement of what property the applicant has the right, by reason of ownership or permission of the owner, to pass through and enter for drilling purposes and a further statement that the applicant agrees, in finally locating the well, not to pass through or enter any property where he does not have such right.
 - (3) The proposed location, type, kinds, size and amount of major equipment and a general description and the method of operation of the proposed well.
 - (4) The proposed method of handling and using any product proposed to be developed at the well site and the proposed method of disposing of all waste products anticipated.

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- (5) A statement from a licensed surveyor or registered professional engineer verifying the drill site as being either an urbanized or a nonurbanized drilling site as defined herein.

- (B) Each application shall state the maximum depth to which the applicant desires to drill, and each application shall be accompanied by an application fee of ten cents (10¢) per foot of depth. The maximum fee for any one well shall be one thousand dollars (\$1,000.00). Should the applicant drill to greater depth than that stated in his application, a supplemental fee shall be required based upon the increased depth. (Ord. of 3-11-80, §4)

Sec. 5-155. Engaging an expert to assist inspector on permit applications.

The chief building inspector is authorized to engage a person qualified in petroleum engineering, petroleum geology, or the oil industry as necessary to determine whether to issue or deny a permit and to assist the chief building inspector in the writing of a permit. When funds are sufficient, payment for such services is to be made from the permit fees received hereunder. (Ord. of 3-11-80, §5)

Sec. 5-156. Bond required; amounts, conditions.

Prior to the issuance of any permit hereunder, the applicant shall furnish the chief building inspector with a bond in the principal sum of fifty thousand dollars (\$50,000) per drill site. Such bond shall be executed by an insurance company authorized to do business in the state, as surety, and with applicant as principal, naming the city for the benefit of the city conditioned that the permittee will comply with the terms and conditions of this article. In addition, the bond will be conditioned that the applicant will promptly pay fines, penalties and other assessments imposed upon applicant by reason of the breach of any of the terms, provisions and conditions of this article, and that the applicant will promptly restore to their former condition streets, sidewalks and other public property which may be damaged in drilling operations; and that the applicant will comply with all fencing, screening and site restoration requirements of this article. If at any time the chief building inspector should find the applicant's bond to be insufficient for any reason, he may require the applicant to file a new bond. (Ord. of 3-11-80, §6)

Sec. 5-157. Reduction of amount of bond.

Upon written request from a permittee, who has complied with all the provisions of this article, the chief building inspector may permit a reduction of the permittee's bond to a sum of not less than ten thousand dollars (\$10,000) per drill site for the remainder of the time such well produces. (Ord. of 3-11-80, §7)

Sec. 5-158. Insurance required; types, amounts.

Prior to issuance of any permit hereunder, applicant shall furnish the chief building inspector with a certificate of insurance showing a valid policy or policies of public liability insurance, covering bodily injuries and property damage. Said insurance shall be written by a company authorized to do business in this state. Such policies shall provide for the following minimum coverage:

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- (A) Bodily injuries and general liability one occurrence: \$3,000,000 in an urbanized area.
- (B) Property damage, \$2,000,000 in an urbanized area.
- (C) Bodily injuries and general liability one occurrence: \$1,000,000 in a non-urbanized area.
- (D) Property damage \$500,000 in a non-urbanized area. (Ord. of 3-11-80, §8)

Sec. 5-159. Waiver of bond and insurance to financially responsible person.

The chief building inspector may waive the requirements for surety bond and policies of insurance as required herein as to any permittee who is financially responsible and capable of meeting obligations for amounts in excess of seven million five hundred thousand dollars (\$7,500,000) upon permittee filing with chief building inspector in lieu of any such surety bond or insurance policies a letter of acceptance and indemnity approved by the city attorney, bonding and obligating such permittee to abide by the conditions for which surety bond and insurance policies are required as prescribed herein, and agreeing to indemnify and hold the city harmless from anyway and all liability growing out of or attributable to the granting of any and all permits to such permittee including acts or omissions of the city, its officers, agents, and employees in connection with said drilling permit. (Ord. of 3-11-80, §9)

Sec. 5-160. Minimum distance of well-hole from occupied structure.

In each case of drilling or redrilling, the distance from any well-hole to any occupied structure shall be a minimum of three hundred (300) feet, unless permittee obtains written consent from the owners and tenants of said occupied structure and furnishes said written consent to the chief building inspector prior to issuance of said permit. (Ord. of 3-11-80, §10)

Sec. 5-161. Minimum distance of storage tank in conjunction with well from occupied structure.

In each case the distance from any storage tank or tanks in conjunction with any well to any occupied structure shall be a minimum of three hundred (300) feet. (Ord. of 3-11-80, §11)

Sec. 5-162. Minimum distance of well-hole and tanks from streets.

In each of a well-hole drilled under a permit issued under this article and from all storage tanks installed after the effective date of this article to the nearest traveled public or private street right-of-way shall be a minimum of one hundred fifty (150) feet. (Ord. of 3-11-80, §12)

Sec. 5-163. Vehicular access route to site.

A vehicular access route to the site may be established at the discretion of the chief building inspector after consideration of all of the circumstances including but not limited to the existing width, load-bearing capability, and composition of all streets proposed to be included in the access route; residential densities; potential interference with pedestrian and bicycle traffic; the presence of effective traffic control; and the general character of the areas through which the proposed access route would pass. (Ord. of 3-11-80, §13)

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Sec. 5-164. Compliance with permit gas to drilling location and as to operations.

The oil or gas well drilled pursuant to any drilling permit shall be drilled only within the properties through which such well was proposed to pass unless the permittee secures approval of the chief building inspector to cause such well to pass through other properties. No permittee shall drill, operate, or maintain any oil or gas well except in conformity with the terms and conditions of a permit issued under this article. (Ord. of 3-11-80, §14)

Sec. 5-165. Representative operations supervisor.

The applicant or permittee shall designate a competent representative who shall be responsible for the supervision of drilling operations and the carrying out of the conditions of any permit. Such representative shall be available at all times during drilling operations and shall be the responsible contact agent of the applicant or the permittee who the chief building inspector may require to carry out the provisions of the permit. (Ord. of 3-11-80, §15)

Sec. 5-166. Marking well location; road and ground surfacing.

- (A) The well location shall be clearly marked by staking or other suitable means and identified as the "drill site."

- (B) Prior to commencement of any drilling operations all private roads used for access to the drill site and the drill site itself shall be surfaced so as to prevent excessive dust and mud and in a manner adequate to support the weight of mobile fire-fighting equipment. Surfacing may be by boards, rock, gravel, shell, or any other material that is oiled and maintained so as to prevent excessive dust and mud. (Ord. of 3-11-80, §16)

Sec. 5-167. Permit transfer approval.

All permits granted under this article shall be transferable upon approval of the chief building inspector, after a determination that all requirements of this article are met by the transferee. (Ord. of 3-11-80, §17)

Sec. 5-168. Lapse of permit; time; work without permit permitted.

The drilling permit shall become null and void unless the permit is accepted by the applicant in its entirety in writing, filed with the chief building inspector within thirty (30) days from the effective date thereof, and no work on such drill site shall be commenced until such permit is issued and accepted. The drilling permit shall become null and void unless drilling is commenced within one hundred eighty (180) days of the effective date of the permit. (Ord. of 3-11-80, §18)

Sec. 5-169. Same, extension of time.

Whenever a person holding a permit pursuant to the provisions of this article wishes to request an extension of the time within which drilling operations are required to be commenced to a period beyond one hundred eighty (180) days after the effective date of the permit, a request for such extension shall be filed with the chief building inspector in writing and be accompanied by a fee in the amount of one hundred twenty-five dollars (\$125.00) for each well for which an extension is requested.

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Such request for an extension shall set forth facts showing good cause for the chief building inspector to allow additional time for the commencement of the well. When good cause is shown, the chief building inspector shall grant an extension not to exceed an additional one hundred eighty (180) days. (Ord. of 3-11-80, §19)

Sec. 5-170. Indemnification of city for damage.

The permittee shall indemnify and save harmless the city, its officers, agents and employees from any and all claims, causes of action and damages of every kind, for injury to or death to any person and damages to property arising out of the operation under any drilling permit and including acts or omissions of the city, its officers, agents, and employees in connection with said drilling permit. (Ord. of 3-11-80, §20)

Sec. 5-171. Filing of "Potential" or "Plug and Abandon" report.

A copy of the "Potential" or "Plug and Abandon" report of any well furnished to the Texas Railroad Commission shall be concurrently filed by the permittee with the chief building inspector. (Ord. of 3-11-80, §21)

Sec. 5-172. Storage of equipment and materials restricted.

- (A) No equipment shall be stored on the site which is not essential to the everyday operation of the oil well located thereon.
- (B) Lumber, pipes, and casing shall not be left on the site, except when drilling operations are being conducted on the site.
- (C) No equipment shall be stored except within the fenced areas of the site. (Ord. of 3-11-80, §22)

Sec. 5-173. Compliance with regulations as to slush pits.

The slush pit or pits at each drilling site shall at all times be in compliance with all state and federal requirements. (Ord. of 3-11-80, §23)

Sec. 5-174. Fencing of site.

- (A) Within thirty (30) days after production has been established, the permittee shall enclose the well, together with its surface facilities and storage tanks by a substantial, smooth eleven (11) gauge or heavier galvanized steel net wire fence a minimum of six (6) feet in height and provided with barbed wire supporting arms and a minimum of three (3) strands of barbed wire installed at the top of each post and properly built so as ordinarily to prevent the entry of unauthorized persons into the enclosure, with all gates thereto to be kept locked when the permittee or his employees are not within the enclosure. This applies also to each existing producing drill site in the city together with its surface facilities and storage tanks.
- (B) Wells, which when in operation, have no externally moving parts, are excepted from the fencing requirements of this section; however, all storage tanks and surface facilities must be fenced as required herein. (Ord. of 3-11-80, §24)

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Sec. 5-175. Landscaping or screening of set.

- (A) Within ninety (90) days after production has been established on an urbanized drill site containing a well which when in operation has external; moving parts, the permittee shall have completed either adequate landscaping or screening composed of shrubbery to a minimum of six (6) feet in height, but in any event tall and thick enough to shield the drilling site from public view, or physical fencing and screening which effectively shields the drill site from public view. Such required landscaping or screening is subject to the approval of the chief building inspector concerning its adequacy in meeting the requirements of this section. Said landscaping or screening must be maintained so as to shield the drill site from public view so long as production continues on the drill site. This applies also to each existing producing urbanized drill site in the city containing a well which when in operation has externally moving parts.
- (B) Wells which when in operation have no externally moving parts are excepted from the fencing requirements of this section; however, all storage tanks and surface facilities must be fenced as required herein. (Ord. of 3-11-80, §25)

Sec. 5-176. Noise, vibration, odor, etc., restricted.

- (A) All drilling and production equipment installed or operated upon any drill site shall be so constructed, operated and maintained that no noise, vibration, odor, or other harmful or annoying substances or effects therefrom which can be eliminated or diminished by the use of modern and approved types of equipment silencers or greater care, shall ever be permitted to result from operations on any drill site to the injury or annoyance of persons in the vicinity of such drill site. Proven technological and mechanical improvements in methods of drilling and production and in the type of equipment and methods will reduce noise, vibration, odors or the harmful effects of annoying substances.
- (B) The engines used in connection with the drilling of any oil well or any production equipment shall be equipped with an exhaust muffler or mufflers, or an exhaust muffler box, sufficient to suppress noise and to prevent the escape of obnoxious gases, fumes, sparks, ignited carbon, or soot. Type and design of any muffler or muffler box shall be approved by the chief building inspector and by the fire chief or his authorized representative.
- (C) At an urbanized drilling site, the operation of oil field production equipment shall not increase the ambient noise level at any given time by more than three (3) decibels in any octave band, when measured at a distance of one hundred fifty (150) feet from the oil field production equipment in question. The ambient noise level, for the purpose of this section, shall be the average of sound level meter ratings taken consecutively at any given time from four (4) or more diametrically opposite positions within an area of not more than five hundred (500) feet nor less than two hundred (200) feet from the oil field production equipment in question; all such readings to be taken at a distance and in a manner so as to obtain the surrounding

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noise level as distinguished from the noise level produced by the oil field production equipment. However, if the ambient noise level is less than seventy (70) decibels, the production equipment shall not generate a noise level in excess of seventy (70) decibels measured at a distance of one hundred fifty (150) feet from such equipment.

- (D) At a non-urbanized drilling site, the operation of oil field production equipment shall not generate a noise level in excess of eighty (80) decibels at a distance of one hundred fifty (150) feet from said production equipment. (Ord. of 3-11-80, §26)

Sec. 5-177. Neatness, cleanliness, order; fire-fighting equipment.

- (A) All of the operation at the drill site shall be conducted in a careful and orderly manner, and the premises shall at all times be maintained in a neat, clean and orderly manner.
- (B) All fire-fighting equipment as required and approved by federal statutes shall be installed and maintained on the drill site at all times during drilling operations. In addition, each drill site shall, during drilling operations, be equipped with two (2) one hundred fifty (150) pound dry chemical fire extinguishers equipped with sheels and also equipped with fifty (50) feet of hose on each unit. (Ord. of 3-11-80, §27)

Sec. 5-178. Watchman.

At all times during the drilling process until the well is abandoned and plugged or complete as a producer and enclosed with a fence as herein provided, the permittee shall keep a watchman on duty on the premises; provided, however, it shall not be necessary to keep a watchman on duty on the premises when other workmen of permittee are on such premises. (Ord. of 3-11-80, §28)

Sec. 5-179. Casing quality.

- (A) All casing, including surface protection and production strings, shall be either seamless steel or equivalent quality oil well casing. Each production string of casing must meet or exceed the minimum internal pressure yield strength established under American Petroleum Institute standards.
- (B) Each joint and length of each particular casing string shall have prior to setting unconditionally passed a complete cold water test and the chief building inspector shall be furnished a copy of said test results. (Ord. of 3-11-80, §29)

Sec. 5-180. Minimum depth of surface casing, Cementing of casing.

No well shall be drilled within the city limits without properly setting surface casing to a minimum depth of one hundred (100) feet below the fresh water depth required by state law. No well shall be drilled within the city limits without cementing the surface casing by the pump and plug method with sufficient cement to completely fill all of the annular space behind such casing to the surface of the ground; and without cementing the production string by the pump and plug method with sufficient cement to completely fill all of the annular space behind the production string to at least five hundred (500) feet above the highest oil and/or gas bearing horizon. In the event a protection string of casing be required under the terms of this article, said protection string shall not

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be installed without cementing the protection string by the pump and plug method with sufficient cement to completely fill all the annular space behind the protection string to at least five hundred (500) feet above the highest oil and/or gas bearing horizon. (Ord. of 3-11-80, §80)

Sec. 5-181. Master valves, valve cocks, blow-out preventers.

No well shall be drilled within the city limits without properly equipping the surface casing when set with at least one (1) master valve, and without properly equipping the protection casing when set with at least one (1) master valve and one (1) fluid-operated ram type blow-out preventer, and without properly equipping the production casing during completion operations and workover operations with at least one master valve and at least one fluid operated ram type blowout preventer. On each well drilled, a valve cock or kelly cock shall be installed on the kelly used. Each blow-out preventer shall test a minimum of three thousand (3,000) pounds and its mechanical operation shall be tested at least once every twenty-four (24) hour period. All control equipment shall be in good working condition and order at all times. (Ord. of 3-11-80, §31)

Sec. 5-182. Drilling fluid.

No well shall be drilled within the city limits without using mud as the drilling fluid after the setting of surface casing as provided in section 5-180 hereof. Prior to the time the well reaches a total depth of five thousand (5,000) feet or the depth of the first known or encountered oil or gas bearing horizon whichever is the lesser depth, the weight of the mud laden drilling fluid shall be at all times maintained at a weight sufficient to contain the formation pressure. After the well reaches a total depth of five thousand (5,000) feet or the depth of the first known or encountered oil or gas bearing horizon, whichever is the lesser depth, the weight of the drilling fluid shall be maintained to provide a hydrostatic head necessary to contain the formation pressure. In reworking a well the drilling fluid shall be at all times maintained at a weight that will provide a hydrostatic head necessary to contain the formation pressure. (Ord. of 3-11-80, §32)

Sec. 5-183. Testing restrictions.

It shall be unlawful for any person in connection with the drilling or reworking operations of any well within the city limits to complete any drill stem test or tests except during daylight hours and then only if the well effluent during the test is produced through an adequate oil and gas separator to storage tanks, and the effluent remaining in the drill pipe at the time the tool is closed is flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe. (Ord. of 3-11-80, §33)

Sec. 5-184. Tubing quality.

All tubing used in any well within the city limits shall be seamless steel tubing meeting American Petroleum Institute standards for minimum internal pressure yield strength. (Ord. of 3-11-80, §34)

Sec. 5-185. Bradenheads.

Each well drilled within the city limits shall be equipped with a bradenhead with a working pressure sufficient to contain the formation pressure. Bradenheads shall not be welded. The bradenhead pressure shall be checked at two (2) or more times each calendar year and if pressure is found to exist, proper remedial measures shall be immediately taken to eliminate the source and the

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existence of the pressure. (Ord. of 3-11-80, §35)

Sec. 5-186. Christmas tree and well head connection maintenance.

The Christmas tree and all well head connections on each well existing within the city limits and on each well drilled pursuant to a permit under this section shall be maintained so as to operate safely. If a Christmas tree or a well connection is found to be leaking or otherwise ineffective, the chief building inspector may immediately revoke the permit. In the event the surface shut-in pressure of any well in the city limits exceeds two thousand (2,000) pounds per square inch, the flowing of the Christmas tree shall be equipped with an automatic closing safety valve in addition to the regular control valves. (Ord. of 3-11-80, §36)

Sec. 5-187. Compressor station shutdown devices and other precautionary measures.

The compressor station on each well existing within the city limits and on each well drilled pursuant to a permit under this section shall be equipped with an automatic shut-down device which shall be clearly marked and visible at all times. The compressor station and all pipes and valves connected thereto must meet or exceed the minimum internal pressure yield strength established under American Petroleum Institute standards and shall have prior to installation unconditionally passed a complete cold water test. All compressor stations shall be checked a minimum of once each three (3) months and the result of said check shall be sent to the chief building inspector upon request. Failure to comply with this section shall result in immediate cancellation of the drilling permit issued hereunder. (Ord. of 3-11-80, §37)

Sec. 5-188. Tank restrictions and requirements.

Except as provided in section 5-161 herein, within one thousand (1,000) feet of any occupied structure a maximum of two (2) five hundred (500) barrel tanks for crude oil storage may be constructed in connection with any one producing well within the city limits. There shall be no limitation on the size or number of storage tanks that may be constructed in the area more than one thousand (1,000) feet from any occupied structure. Each tank shall be equipped with flame arresters and shall be so constructed and maintained as to be vaportight. Each tank or tank battery shall also be surrounded with an earthen fire wall which shall at all times be free of vegetation and which will be at such distance from the tank as will under any circumstances hold and retain at least one and one-half (1-1/2) times the maximum capacity of such tank. The area outside each tank but contained within the earthen fire wall shall be properly drained at all times. A permittee may use, construct, and operate a steel conventional separator, and such other steel tanks and appurtenances as are necessary for treating oil, with each of such facilities to be so constructed and maintained as to vaportight. Each oil gas separator shall be equipped with both a regulation pressure relief safety valve and a bursting head. (Ord. of 3-11-80, §38)

Sec. 5-189. Plugging of abandoned wells.

When a well is abandoned it shall be the obligation of the permittee and the operator of the well to plug said well in accordance with the requirements of the Texas Railroad Commission. (Ord. of 3-11-80, §39)

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Sec. 5-190. Disposal of salt water.

The permittee shall make adequate provision for the disposal of all salt water or other impurities which he may bring to the surface. Disposal shall be made in a manner that will not contaminate the water supply, present or prospective, or injure surface vegetation. (Ord. of 3-11-80, §40)

Sec. 5-191. Monitoring inspector.

A well site inspector to be designated by the chief building inspector shall be responsible for the monitoring of drilling and production activities both at scheduled intervals and at any other times he may deem necessary to ensure the public safety and to ensure compliance with the term of this article. (Ord. of 3-11-80, §41)

Sec. 5-192. Time restriction on delivery of equipment and supplies.

Whenever practicable on an urbanized drilling site all delivery of equipment and supplies to the drill site shall be made only on Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m. This requirement shall not apply to drilling operations being conducted in a non-urbanized area. (Ord. of 3-11-80, §42)

Sec. 5-193. Transportation of oil and gas restricted.

When production has been established in any new well, the construction of a pipeline shall be started as soon as practical and economically feasible and thereon diligently prosecuted until such pipeline is completed in order to eliminate the trucking of oil. All oil and gas shall be shipped and transported through pipelines after those pipelines have been completed, except in cases in which such a method of transportation is found by the chief building inspector to be unfeasible. In such cases the shipping and transportation of oil by truck may be permitted at the discretion of the chief building inspector after consideration of all the circumstances including, but not limited to, the proximity of the well to existing and available pipelines, the availability of acceptable access routes to the drill site, and the frequency and size of transportation vehicles required to serve the well. In the instance of an oil spill, permittee may bring in a vacuum truck to clean said spill without the necessity of obtaining permission from the chief building inspector. (Ord. of 3-11-80, §43)

Sec. 5-194. Producing or nonproducing status of well.

If a well is placed in production, it shall be inspected periodically by the chief building inspector in accordance with the requirements of this article. A notification of status change from producing well to abandoned well shall become necessary for any well which has not produced, or which has not been used for subsurface injection into the earth of oil, gas, salt water, or oil field waste for a period of nine (9) months, unless permission to hold said well for a longer period of time is obtained from the Texas Railroad Commission. The operator shall upon request of the chief building inspector furnish verification of production for the purposes of this section. (Ord. of 3-11-80, §44)

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Sec. 5-195. Well abandonment requirements; removal of derricks when production started.

If a well is to be abandoned, the following requirements are applicable:

- (A) Within ninety (90) days after the completion of drilling operations or abandonment of further drilling, the derrick and all drilling equipment, including temporary tanks, shall be removed from the drill site. Well abandonment shall be in accordance with the requirements of all applicable laws and ordinances. Upon such well abandonment, the permittee shall restore the property as nearly as possible to its original conditions and shall remove all concrete foundations, oil-soaked soil, and debris. All holes or depressions shall be filled to the natural surface.
- (B) Drilling operations shall be prosecuted in a workmanlike manner until the well is completed or abandoned. Once a well is a producing well, it shall not be serviced with a permanent derrick.
- (C) The chief building inspector shall determine that the drill site and all facilities pertinent thereto have been restored to their original condition as nearly as practicable and that all requirements of this section have been satisfied.
- (D) After abandonment of a well by the operator, the drilling permit will be terminated if, to the satisfaction of the chief building inspector, all the conditions stated in this article have been fulfilled. (Ord. of 3-11-80, §45)

Sec. 5-196. Violations suspension or revocation of permit; appeals.

Any drilling permit may be suspended or revoked for any material violation of the conditions of the permit by the permittee or for persistent violation of any law by the permittee in the operation of any such well. The chief building inspector shall not revoke any permit without first giving the permittee ten (10) days written notice of the nature of the violations and the intention to revoke such permit. Permittee shall at once cease drilling operations after receipt of notice of intent to revoke this permit. If, within such ten (10) day period, the permittee requests a hearing before the chief building inspector, the chief building inspector shall grant such hearing within fifteen (15) days after the date of such request. At such hearing, evidence shall be presented to establish to the satisfaction of the chief building inspector the extent and nature of the violation which constitutes grounds for the revocation, and permittee shall be given an opportunity to cross-examine all witnesses testifying at such hearing. The permittee shall thereafter be permitted at that hearing, or at a continued hearing, if a continuance is requested by the permittee, to present evidence to disprove or explain such alleged violations.

The chief building inspector shall thereupon, after hearing all the evidence, determine whether or not the permit should be revoked, and his determination thereon shall be final. If the chief building inspector determines that the permit should be revoked, permittee may appeal the decision of the chief building inspector to the building board of adjustment and appeals in accordance with the ordinances of the city. In the event that the building board of adjustment and appeals determines that said permit should be revoked, permittee shall have recourse to the appropriate courts of this state to review such action by said building board of adjustment and

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appeals and the substantial evidence rule shall apply. (Ord. Of 3-11-80, §46)

Sec. 5-197. Penalty.

Notwithstanding any other provisions herein contained, violations of the provisions of this article shall be punishable by a fine of not to exceed two hundred dollars (\$200.00). A separate offense shall be deemed committed on each day an offense occurs or continues. (Ord. of 3-11-80, §47)

Sec. 5-198 to 5-220. Reserved.

Article 7. General Requirements for all Licenses and Permits

Sec. 5-221. Application.

An application for a license or permit under this chapter shall be in writing and sworn to and shall contain a statement that the applicant has never been convicted of a felony or misdemeanor involving moral turpitude. The application shall also state the place, date, charge and disposition of any arrests. A conviction or pending charge of a felony or misdemeanor involving moral turpitude or any misrepresentation in the application shall be grounds for denial or revocation of the license or permit. (Ord. of 11-13-84)

Article 8. Regulation of Sexually Oriented Commercial Establishments

Sec. 5-222. Distance Separation Required.

A person commits an offense if he operates or causes to be operated within one thousand (1,000) feet of a church, a public or private elementary or secondary school, a residential dwelling unit in which one or more person maintain a residence, a public park, a hospital, or another business of a type hereinafter enumerated in the this section, a business of one of the following types:

- (1) An adult bookstore as hereinafter defined.
- (2) An adult motion picture theater a hereinafter defined.
- (3) A business or enterprise which offers for a consideration nude human modeling.
- (4) A business or enterprise that offers for a consideration physical contact between persons when one or more of such persons are nude or semi-nude.
- (5) A bar, night club, or other similar commercial establishment that offers as entertainment, for the purpose of providing sexual stimulation to the customers of such establishment, live performances by a person or persons who expose specified anatomical areas or who perform specified sexual activities.

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- (6) An adult arcade as hereinafter defined.
- (7) An adult motel as hereinafter defined.
- (8) An adult theater as hereinafter defined.
- (9) An escort agency as hereinafter defined.

For the purpose of this section, distances shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building used by another business or enterprise so enumerated or to the nearest property line of the premises of a church, a public elementary or secondary school, or public park, a hospital or to the nearest portion of a building used as a residential dwelling unit in which one or more persons maintain a residence.

Sec. 5-223. Exception.

It shall be a defense to prosecution under subsection 3 above that the business or enterprise is one of the following:

- (1) A proprietary school licensed by the State of Texas.
- (2) A college, junior college or university supported entirely or partly by taxation.
- (3) 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.

Sec. 5-224. Sexually Oriented Commercial Establishment defined and Other Definitions.

When used in this section, the following words shall have the following meanings:

- (1) “Adult bookstore”: An establishment which as one of its primary business purposes offers for sale, rental or trade for any form of consideration books, magazines, periodicals or other printed materials, photographs, films, motion reproductions which are distinguished or characterized by an emphasis on matters depicting, describing or related to “specified sexual activities” or “specified anatomical area”, or instruments, devices or paraphernalia which is designed for use in connection with “specified sexual activity” or which depict “specified anatomical areas.”
- (2) “Adult motion picture theaters”: A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are distinguished or characterized by an emphasis on “specified sexual activity” or the exposure of “specified anatomical areas.”

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- (3) “Specified sexual activities.”
- (A) Human genitals in a state a sexual stimulation or arousal;
 - (B) Sex acts, normal or perverted, actual or stimulated, including intercourse, masturbation, oral copulation, sodomy;
 - (C) Fondling or other erotic touching of human genitals, pubic region, buttock or female breasts.
 - (D) Excretory functions as part of or in conjunction with any of the activities set forth in A through C above.
- (4) “Specified anatomical areas.”
- (A) Less than completely and opaquely covered:
 - (1) Human genital, pubic region;
 - (2) Buttocks; and
 - (3) Female breasts below a point immediately above the top of areola; and,
 - (B) Human male genitals in a discernibly turgid state even if completely and opaquely covered.
- (5) “Semi-nude”: A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breasts, as well as portions of the body covered by supporting straps or devices.
- (6) “Adult arcades”: Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devises are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on matters depicting, describing or relating to “specified sexual activities” or “Specified anatomical areas.”
- (7) “Adult motels”: A motel, hotel, or similar commercial establishment which:
- (A) Offer accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, film, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” and which has a sign visible from a public right-of-way which advertises the availability of this type of photo graphics; or

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- (B) Offers a sleeping room for rent for a period of time that is less than (10) hours; or
 - (C) Allows a tenant or an occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- (8) “Adult Theaters”: A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are distinguished or characterized by an emphasis on “specified sexual activities” or the exposure of “specified anatomical areas.”
- (9) “Escort”: A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who, for consideration, agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (10) “Escort agency”: 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) “Chief of Police”: means the Chief of Police of the City of Big Spring or their designated agent.
- (12) “Establishment”: means and includes any of the following:
- (A) the opening or commencement of any sexually oriented business as a new business;
 - (B) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business.
 - (C) the addition of any sexually oriented business to any other existing sexually oriented business; or
 - (D) the relocation of any sexually oriented business.
- (13) “License appeal board”: shall be the City Council with recommendations from the Planning and Zoning Commission.
- (14) “Licensee”: means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.
- (15) “Person”: means an individual, proprietorship, partnership, corporation, association, or other legal entity.

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- (16) “Customer”: means any person who:
- (A) is allowed to enter a sexually oriented business in return for the payment of an admission fee or any other form of consideration; or,
 - (B) enters a sexually oriented business and purchases, rents, or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or
 - (C) is a member of and on the premises of a sexually oriented business operating as a private club.
- (17) “Employee”: means any person who renders any work or service in the scope of employment, or pursuant to a contract as a contractor, for a sexually oriented business for pay.
- (18) “Operates or causes to be operated” means to cause to function or to put or keep in operation. The following persons operate or cause to be operated a sexually oriented business:
- (A) owner or part owner,
 - (B) licensee or applicant
 - (C) a person who performs any of the following activities:
 - (1) operates a cash register, cash drawer or other depository on the premises;
 - (2) displays or takes orders from any customer for any merchandise, goods, entertainment or other services,
 - (3) delivers or provides to any customer any merchandise, goods, entertainment or other services that are offered on the premises or
 - (4) acts as a door attendant to regulate entry of customers or other persons into the business, and
 - (D) a person who supervises or manages other persons in the performance of any of the activities in the above subsections.
- (19) “Owner or part owner”: means the proprietor, if a sole proprietorship, any and all general partners if a partnership, a member of any association, or the corporation if a corporation.

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- (20) “Premises”: means the parcel of land where a sexually oriented business is located and all buildings and improvements located on the parcel of land that are used in the operation of the sexually oriented business.
- (21) “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; or
 - (C) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Sec 5-225. Additional Regulations for Escort Agencies.

- (1) An escort agency shall not employ any person under the age of eighteen (18) years.
- (2) A person commits an offense if he acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years.

Sec 5-226. Additional Regulations for Adult Motion Pictures Theaters.

- (1) The requirements and provisions of this Code remain applicable to adult motion picture theater.
- (2) A person commits an offense if he allows a person under the age of eighteen (18) years in or on the premises of an adult motion picture theater.
- (3) A person under the age of eighteen (18) years commits an offense if he knowingly appears in a state of sem-nudity in or on the premises of an adult motion picture theater.

Sec 5-227. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

- (1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction which depicts “specified sexual activities” or “Specified anatomical area”, shall comply with the following requirements:
- (A) The application for a sexually oriented business license shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager’s stations 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-

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two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six(6) inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (B) The application shall be sworn to be true and correct by the applicant.
- (C) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Chief of Police or their designee.
- (D) It is duty of the owners and operator of the premises to ensure that at least one (1) employee is on duty 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. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's stations.
- (F) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in Subsection (E) remains unobstructed by any doors, walls, merchandise, display racks or other material at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (A) of this Section.
- (G) No viewing room can be occupied by more than one person at any time.

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- (H) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at as illumination of not less than one (1.0) footcandle as measured at the floor level.
- (I) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times when any patron is present in the premises.
- (J) A person having a duty under Subsections (A) through (H) of Subsection (1) above commits an offense if they knowingly fail to fulfill that duty.

Sec 5-228. Display of Sexually explicit Materials to Minors.

- (1) A person commits an offense if, in a business establishment open to persons under the age of seventeen (17) years, they display a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:
 - (A) human sexual intercourse, masturbation, or sodomy;
 - (B) fondling or other erotic touching of human genital, pubic region, buttocks, or female breasts;
 - (C) less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or
 - (D) human male genitals in a discernibly turgid state, whether covered or uncovered.
- (2) In this section “display” means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:
 - (A) It is available to the general public for handling and inspection; or
 - (B) The cover or outside packaging on the item is visible to members of the general public.

Sec 5-229. License Required.

- (1) It shall be unlawful for a person to operate a sexually oriented business within the City without a valid license issued by the City for that particular type of business.
- (2) It shall be unlawful for a person to operate a sexually oriented business located within the City unless the license is posted at or near the principal public entrance to the premises in such a manner that it will be conspicuous to patrons who enter the premises.

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- (3) In any prosecution under subsection (1) above, it shall be presumed that there was no license at the time of the alleged offense, unless a license was then posted as provided in subsection (2).
- (4) An application for a license must be made on a form provided by the Chief of Police. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- (5) The applicant must be qualified according to the provisions of this Chapter.
- (6) If a person who wishes to operate a sexually oriented business is an individual, they must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a twenty (20) percent or greater interest in the business must sign the application for license as applicant. Each applicant must be qualified under Section 5-230 and each applicant shall be considered a licensee if a license is granted.
- (7) The fact that a person possesses a valid license for any other type of business does not exempt them from the requirement of obtaining a sexually oriented business license.

Sec 5-230. Issuance of License.

- (1) The Chief of Police shall approve and issue any license required hereunder to an applicant or deny the issuance of the license within thirty (30) days after receipt of a complete and accurate application. The Chief of Police shall issue the license unless the Chief of Police finds one (1) or more of the following to be true:
 - (A) An applicant is under eighteen (18) years of age.
 - (B) An applicant or any applicant's spouse owes delinquent taxes, delinquent paving assessments or any other delinquent debts or obligations to the City arising out of the operation of a sexually oriented business unless an arrangement satisfactory to the City Manager has been made for the payment of such debt or obligations.
 - (C) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
 - (D) An applicant or an applicant's spouse has been convicted of a violation of a provision of this Chapter, other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding the application. The fact that a conviction is

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being appealed shall have no effect.

- (E) The license fee required by this Chapter has not been paid.
- (F) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding twelve (12) months and has demonstrated an inability to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers. Evidence of this disqualification shall consist of a pattern of arrest for disorderly conduct made on the premises of the sexually oriented business managed by the applicant.
- (G) An applicant or the proposed establishment is in violation of or is not in compliance with section 5-222, 5-225, 5-226, 5-227, 5-228, 5-233 and 5-237 of this ordinance.
- (H) An applicant or an applicant's spouse has been convicted of a crime:
 - (a) involving:
 - (i) any of the following offenses as described in Chapter 43 of the Texas Penal Code.
 - (aa) prostitution;
 - (bb) promotion of prostitution;
 - (cc) aggravated promotion of prostitution;
 - (dd) compelling prostitution;
 - (ee) obscenity;
 - (ff) sale, distribution, or display of harmful material to minors;
 - (gg) sexual performance by a child;
 - (hh) possession of child pornography;
 - (ii) any of the following offenses as described in Chapter 21 of the Texas Penal Code.
 - (aa) public lewdness;
 - (bb) indecent exposure;
 - (cc) indelicacy with a child;
 - (iii) Sexual assault or aggravated sexual assault as described Chapter 22 of the Texas Penal Code.
 - (iv) incest, solicitation of a child, or harboring a runaway child as described in Chapter 25 of the Texas Penal Code;
 - (v) criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

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- (b) for which:
 - (i) less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later case if the conviction is of a misdemeanor offense;
 - (ii) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
 - (iii) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.
 - (I) If, at the time an applicant is applying for a permit, the applicant is moving into a new structure or location or is changing the use of property so that it is necessary to obtain an occupancy permit, and the designated site or premises for the sexual oriented business fails to comply with all required City codes and ordinances necessary to obtain an occupancy permit.
 - (J) The applicant fails to have all permits and licenses required by the alcoholic beverage code and health department laws and regulations for the designated site and premises for the sexual oriented business.
- (2) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.
 - (3) An applicant who been convicted or whose spouse has been convicted of an offense listed in Subsection (1) (H) may qualify for a sexually oriented business license only when the time period required by Section 5-230 (1)(H)(b) has elapsed.
 - (4) The license, if granted, shall state on its face the name of the person or person to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

Sec 5-231. Fees.

The annual fee for a sexually oriented business license of FIVE HUNDRED AND NO/100 dollars (\$500.00). The fee will be used to offset the cost of administering the permits and inspections consistent with this ordinance.

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Sec 5-232 **Inspection.**

- (1) An applicant or licensee shall permit representatives of the police department, health department, fire department, planning and zoning department, inspections department, and code enforcement department of the City of Big Spring, or Howard County to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.
- (2) A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the City as outlined in paragraph (1) above, at any time it is occupied or open for business.
- (3) The provisions of the Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

Sec 5-233. **Expiration of License.**

Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 5-229. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be prevented by the filing of the application.

Sec 5-234. **Suspension.**

The Chief of Police shall suspend a license for a period not to exceed thirty (30) days if they determine that a licensee or any employee of a licensee has:

- (1) violated or is not in compliance with Section 5-222, 5-225, 5-226, 5-227, 5-228, 5-232 or 5-237 of this Chapter; or
- (2) engaged in excessive use of alcoholic beverages while on the sexually oriented business premises; or
- (3) refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter; or
- (4) knowingly permitted gambling by any person on the sexually oriented business premises; or
- (5) demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers. Evidence of this grounds for suspension shall consist of a pattern of arrest for disorderly conduct.

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Sec 5-235. Revocation.

- (1) The Chief of Police shall revoke a license if a cause of suspension in section 5-234 occurs and the license has been suspended within the proceeding twelve (12) months.

- (2) The Chief of Police shall revoke a license if he determines that:
 - (A) a licensee gave false or misleading information in the material submitted to the Chief of Police during the application process; or
 - (B) a licensee or an employee has knowingly allowed possession, use, or sale of a controlled substance on the premises; or
 - (C) a licensee or any employee has knowingly allowed prostitution on the premises; or
 - (D) a licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended; or
 - (E) a licensee has been convicted of an offense listed in Section 5-230 (1)(H)(b) for which the time period required in Section 5-230 (1)(H)(b) has not elapsed; or
 - (F) on two (2) or more occasions within a twelve (12) month period, a person or persons committed an offense occurring in or on the licensee's premises of a crime listed in Section 5-230 (1)(H)(a), for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed; or
 - (G) a licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in section 21.01, Texas Penal Code; or
 - (H) a licensee is delinquent in payment to the City for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the sexually oriented business, after 10 days prior written notice, and a failure to discharge the tax delinquency
 - (I) a licensee fails to obtain a required occupancy permit, alcoholic beverage code permit or license, or a required health department license or permit after 10 days notice of such violation and a failure

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of licensee to correct such violation.

- (3) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (4) Subsection (2)(G) does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place with public view.
- (5) When the Chief of Police revokes a license, the revocation shall continue for one (1) year and licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective. If, subsequent to revocation, the chief of Police finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety(90) days have elapsed since the date the revocation became effective. If the license was removed under Subsection (2)(E), an applicant may not be granted another license until the appropriate number of years required under section 5-230 (1)(H)(b) has elapsed.

Sec 5-236. Appeal.

If the Chief of Police denies the issuance of a license, or suspends or revokes a license, the licensee shall have a right of appeal.

- (1) The Chief of Police shall send to the applicant, or licensee, by personal delivery or by certified mail return receipt requested, a written notice of the action taken and the reasons for the action taken. In the case of a suspension or revocation of an existing license, such written notice shall also be posted upon the business premises.
- (2) The applicant or licensee may not later than ten (10) calendar days after receiving such notice file with the Chief of Police a written request for an appeal. The filing of an appeal stays the action of the Chief of Police in suspending or revoking a license, or denying an application to continue the operation of the business, until the City Council makes a final decision and prompt judicial review.
- (3) The Chief of Police shall notify in writing the Director of Community Services and City Attorney of the appeal. The Director of Community services shall set a date for the hearing of said appeal before the planning and zoning commission with thirty (30) days of receipt of the appeal and provide notice of such hearing to the applicant or licensee at least ten (10) days prior to the hearing.
- (4) At a hearing on appeal before the planning and zoning commission they shall hear and consider evidence offered by any interested person, including the applicant, Chief of Police, Director of Community Services or their representative. The applicant shall have the burden of proof; however, the formal rules of evidence do not apply.

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- (5) Within thirty (30) days after the hearing before the planning and zoning commission, the City Council shall conduct a hearing and consider the recommendations of the planning and zoning commission and shall make a decision on the appeal. Disputes of fact shall be decided on the basis of substantial evidence. The decision of the City Council shall be final, subject to prompt judicial review by a state or federal court with jurisdiction.
- (6) An appeal to the state or federal court with jurisdiction must be filed within thirty (30) days after the order of the City Council is approved at a public meeting by the City Council conducted pursuant to the Open Meetings Law. The licensee shall bear the burden of proof in court.

Sec - 5-237. Transfer of License.

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

Sec 2-238. Penalty for Violation.

- (1) Any violation of this Chapter, upon conviction, is punishable as a Class C misdemeanor.
- (2) Any person violating a provision of this Chapter other Section 5-222, upon conviction, shall be fined an amount not to exceed FIVE HUNDRED AND NO/100 DOLLARS (5\$500.00) and for a violation of Section 5-222, a fine in an amount not to exceed TWO THOUSAND DOLLARS (\$2,000.00). Each day any violation of this ordinance shall continue shall constitute a separate offense.
- (3) The following are a defense to prosecution under this ordinance.
 - (A) A business operated by or employing a licensed psychologist, licensed physical therapist, licensed barber engaged in performing functions authorized under the license held; or
 - (B) A business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.
 - (C) Any exception stated in Section 5-223.

Sec 5-239. Notices.

- (1) Any notice required or permitted to be given by the Chief of Police, or any other official of a city office, division, department or other agency under this ordinance to any applicant, operator or owner of an establishment 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 for the permit, or transfer application that has been received by the Chief of Police or other city

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official, or any notice of address change that has been received by the Chief of Police or other city official. 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 is returned by the postal service, the Director or his designee shall cause it to be posted at the principal entrance to the establishment.

- (2) Any notice required or permitted to be given to the Chief of Police or other city official by any person under this ordinance shall not be deemed given until and unless it is received in the office of the Chief of Police or other city official.
- (3) It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the Chief of Police or other city official in writing of any change of residence or mailing address.

Sec 5-240. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 5-222 of this Chapter is subject to a suit for injunction as well as prosecution for criminal violations.

Sec 5-241. Conditional Use Permit Required.

No person shall operate a business of the type described in Subsection 2-222 without a conditional use permit authorizing such operation. The Director of Community Services shall provide the necessary forms, and shall establish the procedures for the application for and issuance of such permits. Such permits shall be issued by the Director of Community Services or their degree for which a fee of one hundred fifty dollars (\$150.00) shall be charged.

Sec 5-242. Purpose and Intent.

- (1) It is the purpose of this Chapter to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent a concentration of sexually oriented businesses within the City. The provisions of this Chapter 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 this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.
- (2) It is the intent of the City Council that the vocational regulations of Section 5-222 of the Chapter are promulgated pursuant to State and Federal law.
- (3) The provisions of this ordinance are considered cumulative of any other laws or ordinances; and if other laws or ordinances prohibit any conduct regulated by this ordinance, such prohibition shall effective. (Ord of 1-13-98)

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Article 9. Secondhand Goods Dealers

Sec. 5-243. Definitions.

- (A) Person. Shall mean any individual, firm, association, partnership, company, society, corporation, group, or entity of any nature whatsoever.

- (B) Secondhand Goods. Shall mean any article, material, item, fixture, or other personal property of any type, kind or nature whatsoever, or any portion thereof, of which prior use has been made in any manner whatsoever. The term “secondhand goods” shall also include all merchandise purchased by a Secondhand Goods Dealer for resale if not purchased from an authorized representative of the manufacturer or an authorized wholesaler for same. The term shall include, but not be limited to, scrap iron, zinc, tin, brass, copper, and lead, all other metals and their alloys, crafted precious metals, mechanical tools, garden tools, utensils, fixtures, furniture, electrical appliances and supplies, business machines, televisions, stereos, video cassette recorders, DVD and DVR units, digital and manual cameras, video cameras, telephones and related accessories and equipment, computer components, video game components, gas fittings, pipes and supplies, water fittings, bicycles, automobile or bicycle tires, casings, and inner tubes, any part, accessory or appliance of any automobile, motorcycle, bicycle or other vehicle, and any type of gun.

- (C) Exceptions. The term “Secondhand Goods Dealer” shall not include the following:
 - 1) Any person in retail business who does not purchase any secondhand goods or junk for resale but acquires the same solely by means of trade-in on similar new goods.

 - 2) Any person who acquires drinking water or beverage containers of metal, glass or plastic for the purpose of recycling.

- (D) Second Hand Goods Dealer. Any person who engages, whether full or part time, buying, selling, trading, leasing, accepting for sale on consignment, accepting for deposit in pledge for any purpose, accepting for auction, or auctioning any secondhand goods. The term “Secondhand Goods Dealer” shall specifically mean, but not be limited to, any pawnbroker, salvage or junk dealer, secondhand furniture dealer, secondhand automotive parts dealer, flea market vendor, crafted precious metal dealer, business machine dealer, and all others who habitually engage in the business of dealing in secondhand goods. (Ord. of 5-10-11)

Sec. 5-244. Records Required.

- (A) Each Secondhand Goods Dealer, or person who shall purchase any kind of secondhand good for Twenty Five Dollars (\$25.00) or more, or who shall receive on consignment or for trade, lease or auction any secondhand good that has a reasonable value of Twenty Five Dollars (\$25.00) or more shall keep consecutively

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numbered receipts and record thereon consecutively, permanently and legibly at the time of purchase or deposit each such article purchased or received.

1. The dealer shall record in that receipt book and on the appropriate receipt the date of the transaction and an accurate description of the person selling or delivering the article, including the person's name, race, sex, age, and residence address, and the dealer shall further require presentation and recordation of the number of either the seller's military identification, driver's license, or approved state identification card.
 2. The Secondhand Goods Dealer shall also record on the same receipt an accurate description of the item purchased or received. That description shall be with such specificity as would enable one to identify the particular item with reasonable certainty. The description shall specifically include, when available, any brand name, serial number, model, color, descriptive marking, or other readily discernible identifying characteristic of the item.
 3. In addition to the foregoing records requirements, before any Secondhand Goods Dealer shall purchase or receive articles of any description under this section, the dealer shall secure from the person selling or delivering the article a sworn statement indicating that the person has legal, marketable title such article.
- (B) When disposing of a large item pursuant to Section 5-246(B) of this Article, the Secondhand Goods Dealer shall record the sale on consecutively numbered receipts, indicating the description of the item, the sale price of the item, an accurate description of the person purchasing or receiving that item, including the person's name, race, sex, age, residence address, and a number from either that person's military identification, driver's license, or approved state identification card.
- (C) The Secondhand Goods Dealer may keep separate receipt books for acquisition of items and disposition of items so long as each contains consecutively numbered receipts. Each Secondhand Goods Dealer shall retain copies of the consecutively numbered receipt books herein required, which copies shall be available for surrender to the City of Big Spring Police Department upon request. Such copies for surrender to the Police Department shall be arranged in consecutive receipt number order. (Ord. of 5-10-11)

Sec. 5-245. Accessibility of Records to Police.

Secondhand Goods Dealers shall maintain the records required by this Article for a minimum of twelve (12) months from the date of purchase of the goods. The records must be accessible at all times to the Big Spring Police Department or any other peace officer, and all such police or peace officers shall have the right at all times to examine such records and obtain copies thereof when investigating lost or stolen articles, or in determining whether or not persons are complying with the provisions of this Chapter.

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All Secondhand Goods Dealers shall make their employees aware of these requirements and post a copy of this Article in a conspicuous place at their places of business.

Any person dealing in secondhand goods, or purchasing same, who fails or refuses to comply with the provisions of this Article or allows another person to fail or refuse to so comply, or any person who fails to permit any police or peace officer to, at any time, inspect the records required under this Article shall be deemed guilty of a misdemeanor. (Ord. of 5-10-11)

Sec. 5-246. Retention of Property.

- (A) No person shall sell or remove from a Secondhand Goods Dealer's place of business any secondhand good that was purchased by the dealer for Twenty Five Dollars (\$25.00) or more or received by the dealer on consignment or for trade, lease or auction with a reasonable value of Twenty Five Dollars (\$25.00) or more, within seven business days after the dealer has purchased or acquired the same. All articles received which the dealer shall sell shall be kept separate and apart from all other articles so that they may be fully identified for a full seven business days after they have been received by the dealer. Should a Secondhand Goods Dealer store such items at a place other than his usual and regular place of business and in plain sight, that dealer shall register such location and describe the location in particular with the Big Spring Police Department.
- (B) Any item subject to this section which is functionally indivisible and occupies space in excess of 25 cubic feet may be sold after three business days by the dealer so long as the dealer complies with the recordation requirements of Section 5-244(B) of this Article.

(Ord. of 5-10-11)

Sec. 5-247. Prohibited Purchases.

No Secondhand Goods Dealer shall receive or purchase any secondhand good:

- (A) From an intoxicated person; or
- (B) That has had its serial number or other identifying number removed or tampered with.

(Ord. of 5-10-11)

Sec. 5-248. Purchases from Minors.

A Secondhand Goods Dealer may not purchase any secondhand goods, articles, or other property from a person under eighteen (18) years of age except upon the written consent of the parent or guardian of such minor. When any purchase is made from a minor with such consent, a notation of the same shall be made on the record herein required to be kept by such dealer and the written consent shall become part of the record and require the same retention period. (Ord. of 5-10-11)

BUSINESS AND OCCUPATIONS

Sec. 5-249. Offense and Penalty.

Any person who fails or refuse to comply with any provision of this Article shall be guilty of a misdemeanor and upon conviction shall be subject to a minimum fine of one-hundred dollars (\$100.00) excluding court costs and a maximum fine of two-hundred dollars (\$200.00) excluding court costs. Each item of secondhand goods involved and each day that such violation occurs shall constitute a separate offense. (Ord. of 5-10-11)

Sec. 5-250. Compliance with Other Laws and Ordinances.

Nothing in this Article excuses noncompliance with any other federal, state or local law, rule or permit requirement that applies to a person or business that regulates the purchase, reporting, or sale of any secondhand good covered herein. This law is not intended to be repugnant or contradictory to any other such law or requirement. Therefore, if such other law or requirement is more restrictive or impose greater penalties, then the more restrictive provision shall govern. (Ord. of 5-10-11)