

## **Title 5**

### **BUSINESS REGULATIONS**

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**Chapter 5.08**

**ADULT BUSINESSES**

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**Article I. Adult Bookstores and Motion Picture Theaters**

**5.08.010 Findings and purpose of provisions.**

The city council determines and declares that adult bookstores and adult motion picture theaters, as hereinafter defined, have serious objectionable characteristics, particularly when several of such businesses are located in close proximity to each other and in close proximity to schools and residences; that such concentration tends to create a “skid row” atmosphere and have a detrimental effect upon the adjacent area; that regulation of the location and covenant of these types of businesses is necessary to insure that such adverse effects will not contribute to the blight or downgrading of neighborhoods or deter or interfere with other businesses which are needed and desirable in the city. It is the purpose and intent of this chapter to provide for the orderly regulation of the business of adult bookstores and adult motion picture theaters by establishing certain minimum requirements for the issuance of a permit to operate such businesses and certain minimum standards for the conduct of this type of commercial operation in order to protect the public health and welfare of the residents of the city. (1960 code § 2A.1)

**5.08.020 Definitions.**

For the purpose of this chapter, the following words and phrases shall have the meaning hereinafter set forth:

A. “Adult bookstore” means any building or portion thereof used by an establishment having as a substantial or significant portion of its stock-in-trade for sale to the public books, magazines and other publications which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or having as any part of its stock for sale mechanical or electrical devices

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which are distinguished or characterized by their emphasis on use for specified sexual activities or stimulation of specified anatomical areas.

B. "Adult motion picture theaters" means a building or portion thereof, or area, whether open or enclosed, used for the presentation of motion pictures distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons or customers.

C. "Specified anatomical areas" means less than completely and opaquely covered human genitals, pubic region, buttock and female breast below the point immediately above the top of the areola.

D. "Specified sexual activities" means any of the following:

1. Human genitals in the state of sexual stimulation or arousal;
2. Acts of human masturbation, sexual intercourse, sodomy, or bestiality; or
3. Fondling or other erotic touching of human genitals, pubic region, buttock or female breast. (1960 code § 2A.2)

**5.08.030 Permit – Required.**

It is unlawful for any person, association, partnership or corporation to engage in, conduct, carry on, or permit to be engaged in, conducted or carried on, in or on any premises in the city, the operation of an adult bookstore or an adult motion picture theater without a valid permit issued pursuant to the provisions of this article. (1960 code § 2A.3)

**5.08.040 Exemption from permit requirements.**

The provisions of this article shall not apply to any person who is engaging in, conducting or carrying on a lawful business as an owner or operator of an adult bookstore or an adult motion picture theater, in compliance with all applicable laws, as of the effective date of the ordinance codified in this article. (1960 code § 2A.9)\*

\*Code reviser's note: Ordinance 969, codified in Article I of Chapter 5.08 LMC, was adopted October 23, 1978.

**5.08.050 Permit – Application – Information required.**

Any person, association, partnership or corporation desiring to obtain a permit to operate an adult bookstore or adult motion picture theater shall make an application to the city council, accompanied by a nonrefundable fee in the amount of \$50.00, containing the following information:

- A. The full true name and any other names used by the applicant;
- B. The present address and telephone number of the applicant;
- C. The proposed address of the adult bookstore or adult motion picture theater;
- D. Each residence or business address of the applicant for the three years immediately preceding the date of the application and the inclusive dates of each such address;
- E. Written proof that the applicant is at least 18 years of age;
- F. Two photographs of the applicant, at least two inches by two inches, taken within six months immediately preceding the date of the application; one photograph shall be retained by the city council, and one photograph shall be affixed to the permit;

G. The applicant's business, occupation and employment history for the three years immediately preceding the date of application;

H. The business license or permit history of the applicant; whether such applicant has ever had any license or permit issued by any agency or board, city, county or state, revoked or suspended, or has had any professional or vocational license or permit revoked or suspended, and the reason therefor;

I. All criminal convictions, except traffic violations, and a statement of the dates and places of such convictions;

J. Corporate and/or Partnership Applicants.

1. If the applicant is a corporation, the names of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and names and residence addresses of each of its current officers and directors and of each stockholder holding more than five percent of the stock in the corporation.

2. If the applicant is a partnership, the application shall set forth the name and residence addresses of each of the partners, including limited partners.

3. If one or more of the partners is a corporation, the provisions of this section pertaining to corporate applicants shall apply.

4. The applicant corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer;

K. The name and address of the owner and lessor of the real property upon which or in which the business is to be conducted, and a copy of the lease or rental agreement;

L. Such other identification and information as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application. (1960 code § 2A.4(a))

**5.08.060 Permit – Application – Investigation.**

The city council shall undertake whatever investigation it may deem necessary into the background of the applicant and the information

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contained in the application, and may request a written report from the chief of police concerning any or all matters stated in the application. (1960 code § 2A.4(b))

**5.08.070 Permit – Issuance restrictions.**

A permit shall be issued to an applicant within a reasonable time after receipt of a completed application pursuant to LMC 5.08.050, subject to the completion of such investigation as may be required to verify any information contained therein; provided, that:

A. The applicant has not knowingly made a material false statement in the application for the permit;

B. The applicant, if an individual, or in the case of an applicant which is a corporation or partnership, any of its officers, directors, holders of five percent or more of the corporation's stock, or partners, has not within five years immediately preceding the date of the filing of the application been convicted in a court of competent jurisdiction of any of the following offenses: Sections 266i, 315, 316, 318, or subdivision (b) of Section 647 of the California Penal Code, or any offense which requires registration as a sex offender with the chief of police under Penal Code Section 290, or any offense in another state which, if committed in this state, would have been punishable as one or more of the foregoing offenses;

C. The applicant is at least 18 years of age;

D. The operation of the adult bookstore or adult motion picture theater proposed by the applicant would comply with all applicable laws, including, but not limited to, health, zoning, and fire and safety requirements and standards;

E. The location of the adult bookstore or adult motion picture theater proposed by the applicant would not be in violation of any of the provisions of LMC 5.08.100, 5.08.110 or 5.08.120. (1960 code § 2A.4(d))

**5.08.080 Permit – Granted by council resolution.**

Permits required by this article shall be granted or revoked only by resolution passed by the city council. (1960 code § 2A.4(c))

**5.08.090 Permit – Transfer conditions.**

No permit issued pursuant to this article shall be

assigned or transferred except upon permission of the city council, after submission of an application by the proposed assignee or transferee, as required by LMC 5.08.050 through 5.08.080, payment of a transfer fee of \$50.00, completion of a proper investigation, and adoption of a resolution permitting transfer or assignment of the permit. 30 days after the sale or transfer of any interest in an adult bookstore or adult motion picture theater, any permit previously issued authorizing the operation of either such business shall be null and void. (1960 code § 2A.7)

**5.08.100 Permit – Display requirements.**

A permit issued to any applicant to operate an adult bookstore or an adult motion picture theater shall be displayed in an open and conspicuous public place on the premises. (1960 code § 2A.5)

**5.08.110 Premises – Location restrictions.**

A. No adult bookstore or adult motion picture theater shall be located on any property, or any portion thereof, which is within 1,000 feet of any property or portion thereof used for any elementary school, junior high school or public playground.

B. No adult bookstore or adult motion picture theater shall be located on any property, or any portion thereof, which is within 1,000 feet of any other property or portion thereof on which an adult bookstore or an adult motion picture theater is located and doing business.

C. No adult bookstore or adult motion picture theater shall be located on any property, or portion thereof, which is within 1,000 feet of any lot or parcel of property, or portion thereof, which is located in a zone district which designates single-family or multiple-family residential uses as permitted uses. (1960 code § 2A.6)

**5.08.120 Hours of operation – Merchandise display restrictions.**

A. Adult bookstores and adult motion picture theaters shall conduct business, and the premises shall be open to the public, only between the hours of 9:00 a.m. and 12:00 midnight.

B. No adult bookstore or adult motion picture theater shall advertise, or display portions of, or posters concerning any of its stock-in-trade (such as books, magazines or motion pictures) in such a way as to render such advertisement or display visible

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from any public street, thoroughfare, private residence or business premises, if such advertisement or display contains photographs or language depicting or referring to specified sexual activities or specified anatomical areas. (1960 code § 2A.5)

**5.08.130 Revocation of permit – Grounds – Public hearing required.**

A. Grounds for Initiation of Permit Suspension or Revocation Proceedings. Suspension or revocation proceedings may be initiated by the chief of police if, after due investigation, the chief of police or the city manager finds and determines that the permittee, his agent or employee has:

- 1. Permitted any disturbance of the public order or decorum by any noisy, riotous or disorderly conduct on the premises;
- 2. Permitted any lewd, dissolute or intoxicated person to be or remain on the premises;
- 3. Permitted any conduct which would, if prosecuted as a similar offense, constitute a violation of state law prohibiting:
  - a. Sexual crimes including, but not limited to, Penal Code sections 266, 266a, 266c, 266d, 266e, 266f, 266h, or 266i;
  - b. Distribution or exhibition of harmful matter, including, but not limited to Penal Code section 313.1;
  - c. Lewd or obscene conduct including, but not limited to, violations of Penal Code sections 314, 315, 316, 318, 318.5, or 318.6; or
  - d. Disorderly conduct, including, but not limited to, Penal Code section 647, subsections (a), (b), (d), and (f);
- 4. Allowed conduct which would constitute a violation of Health and Safety Code sections 11054 through 11058 to occur on or adjacent to the premises;
- 5. Knowingly permitted any persons under 18 years of age to enter or remain upon the premises;
- 6. Failed to abide by all laws and ordinances now in effect or which may hereafter be duly enacted.

B. Permit Suspension or Revocation Proceedings. The chief of police may initiate the suspension or permanent revocation of any permit granted pursuant to this article if the chief of police determines that such action is necessary in order to prevent any further violations of this chapter or the laws of this state.

1. Notice. The chief of police shall give written notice of each local or state law violation warranting the initiation of revocation proceedings, which shall be served upon the permittee, in person or by mail, or posted on the premises at the business address listed in the permit.

2. Administrative Hearing. At least 10 but not more than 30 days after service of the notice of permit suspension or revocation proceedings, the city manager shall conduct an administrative hearing.

a. Written notice of the time and place of hearing on the matter shall be given by the city clerk to the permittee and to the chief of police, and upon receipt of such notice of hearing, the chief of police shall forward to the city manager all notices and reports to the matter.

b. Upon the hearing on the matter, the city manager may take such action or make such order as the city manager may deem just and proper in the disposition of the matter, including reinstating the permit, suspending the permit for a specified period of time, or permanently revoking the permit. The decision of the city manager shall be final. (Ord. 1582 § 1, 2000; 1960 code § 2A.8)

**Article II. Display of Sexually Explicit Reading Material**

**5.08.150 Findings and purpose of provisions.**

The city council finds and declares that there exists in the city a tendency toward a display of adult magazines and books in liquor stores, grocery markets, drugstores and other retail outlets in such a manner that children, often of tender years, are exposed to explicit sexual activity and showing human genitals and pubic regions in a sexually explicit manner. The city council finds that such exposure establishes a tone in the community inconsistent with morality and good order. The council, therefore, finds that it is in the best interest of public health, safety and welfare to restrict the display of reading material with sexually explicit covers and to adopt the following regulations so that the adverse impacts of such material on children and the community as a whole will be kept to a minimum. (1960 code § 2A.12)

**5.08.160 Definitions.**

The following words and phrases used in this article shall be defined as follows:

A. "Commercial establishment" means any place of business in which minors are permitted in the city;

B. "Sexually explicit covers" means any picture, photograph, drawing, decoration or other illustration depicting specified sexual activities or specified anatomical areas, as defined in LMC 5.08.020. (1960 code § 2A.13)

**5.08.170 Display restrictions – Commercial establishments.**

No person shall display reading material having sexually explicit covers in any commercial establishment in the city except as provided in this article. (1960 code § 2A.14)

**5.08.180 Display restrictions – Establishments with "adults only" areas.**

Reading material having sexually explicit covers may be displayed in a commercial establishment in an area set aside and clearly posted for adults only. "Adults only" areas shall be visible from the cash register or sales center of the store. No items frequently purchased by children shall be located in the vicinity of the "adults only" area, and the material with sexually explicit covers shall be displayed in such a manner that sexually explicit depictions are not readily visible to patrons in other areas of the store. Minors shall not be permitted to enter an "adults only" area. (1960 code § 2A.15)

**5.08.190 Materials with opaque covers.**

Reading materials having sexually explicit covers may be displayed in an area open to the general public in a commercial establishment only if the cover depictions are not visible. Opaque display units showing only the top two inches of magazine covers shall be deemed to comply with this section. (1960 code § 2A.16)

**5.08.200 Violation deemed nuisance – Enforcement and abatement costs made special assessment against parcel.**

A. Notwithstanding any other section of this code, no criminal penalty is provided for the violation of this article. Violation of any section or sections of this article is declared to be a public nuisance and may be abated by the city.

B. Pursuant to Government Code Section 38773.5, the cost of the abatement of the nuisance shall constitute a special assessment against the parcel on which the nuisance exists. Such assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to levy, collection and enforcement of municipal taxes shall be applicable to such special assessment. (1960 code § 2A.17)

**Article III. Adult Picture Arcades**

**5.08.310 Findings and purpose.**

A. Enclosed or concealed booths and unlit or dimly lit areas within picture arcades greatly increase the potential for misuse of the premises, including unlawful conduct of a type which may result in unsanitary conditions and facilitate transmission of disease.

B. The provisions of this article are necessary in order to reduce the opportunity for, and therefore the incidence of illegal conduct and potential unhealthy and unsanitary conditions within picture arcades, and to facilitate the inspection of the interior of the premises thereof by law enforcement personnel. (Ord. 1252 § 1, 1987)

**5.08.320 Picture arcade defined.**

As used in this article, "picture arcade" means any room in any business to which the public can gain admittance wherein one or more coin or slug-operated, or electrically, electronically, or mechanically controlled still or motion picture machines or projectors or video monitors are designed, operated or maintained to show adult still or motion pictures or videos to five or fewer persons per machine, projector or monitor at any one time. (Ord. 1252 § 1, 1987)

**5.08.330 Visibility of interior.**

It is unlawful for any person, partnership, corporation or other entity to own, operate, maintain or manage an adult picture arcade in any business unless the complete interior of the portion of the premises where the pictures can be viewed is continuously open and fully visible to any person entering the premises containing such picture

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arcade. Booths within picture arcades wherein still or motion pictures or videos are viewed shall be prohibited unless the bottom 36 inches' portion (measured from the floor upward) of the door or entrance of each booth is removed and is continuously open. (Ord. 1252 § 1, 1987)

### 5.08.340 Minimum lighting requirements.

A minimum level of two foot-candle illumination shall be maintained during hours of operation in all parts of any adult picture arcade which are open to the public. (Ord. 1252 § 1, 1987)

### 5.08.350 Application.

Any business providing picture arcades lawfully in existence on November 1, 1987, and made illegal by the provisions of this article shall conform to the provisions thereof within 90 days of adoption of the ordinance codified in this article. (Ord. 1252 § 1, 1987)

## Article IV. Live Adult Entertainment

### 5.08.410 Purpose and intent.

A. Purpose. It is the purpose of this article to:

1. Establish reasonable and uniform regulations to prevent the concentration of live adult entertainment businesses and their close proximity to other adult-oriented businesses and incompatible uses, while allowing the location of live adult entertainment in certain areas; and

2. Regulate live adult entertainment businesses in order to promote the health, safety, and general welfare of the citizens of the city.

B. Intent. It is the intent of this article to provide location, development, and operating regulations to regulate the time, place, and manner of the operation of live adult entertainment businesses in order to minimize the negative secondary effects associated with these businesses including, but not limited to, increased crime, decreased property values, and the deterioration of neighborhoods which can be brought about by the concentration of adult businesses in close proximity to each other or proximity to other incompatible uses, including churches, parks, playgrounds, schools, and residential zones and legal nonconforming residential uses. In addition to its prior findings, determinations, and declarations regarding the negative secondary effects associated with adult-oriented bookstores, motion picture theaters, and arcades,

and the display of adult magazines and books, the city council finds that it has been demonstrated in various communities that the concentration of adult businesses tends to create a "skid row" atmosphere and have a detrimental effect upon the adjacent area, to cause an increase in the number of transients in the area, and to increase crime. In addition to mitigating the effects described above, the city desires to ensure that such adverse effects will not contribute to the blight or downgrading of neighborhoods or deter or interfere with other businesses which are needed and desirable or cause other businesses and residents to move elsewhere.

C. Not Purpose, Intent, or Effect. The provisions of this article have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including adult-oriented materials. Similarly, it is not the intent or the effect of this article to restrict or deny access by adults to adult-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of adult-oriented entertainment to their intended market, nor is it the intent or the effect of this article to condone or legitimize the distribution of obscene material. (Ord. 1885 § 4 (Exh. B), 2009)

### 5.08.420 Definitions.

For the purposes of this article, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this article shall have the meanings given them in this section.

A. "Adult-oriented business" shall mean any business which offers or engages in the following activities and uses:

1. Adult Bookstore. An "adult bookstore" as that term is defined in Article I of this chapter;

2. Adult Motion Picture Theater. An "adult motion picture theater" as that term is defined in Article I of this chapter;

3. Adult Picture Arcade. An "adult picture arcade" as that term is defined in Article III of this chapter; and

4. Live Adult Entertainment Business. A "live adult entertainment business" defined in subsection D of this section.

B. "Entertainer" shall mean any person performing live adult entertainment, with or without compensation.

C. Establishment of a Live Adult Entertainment Business. The “establishment of a live adult entertainment business” shall mean any of the following:

1. The opening or commencement of a live adult entertainment business as a new business;
2. The conversion of an existing business, whether or not an adult-oriented business, to a live adult entertainment business;
3. The addition of a live adult entertainment business to any other existing adult-oriented business;
4. The change in the location of an existing live adult entertainment business to a new building or site; or
5. A change to the building, site, or interior configuration for an existing live adult entertainment business which increases the total floor area or performance area by more than 10 percent.

D. “Live adult entertainment business” means a business that features as a regular and substantial course of its conduct any type of dance, performance, show, exhibition, or other activity by an entertainer physically present at the business and which is characterized by an emphasis on the display of specified anatomical areas, or the performance of physical human body activity that depicts or relates to specified sexual activities whether or not the anatomical areas are covered, or both.

E. Patron. A “patron” means any member of the public who is a customer, buyer, guest, or visitor entering a live adult entertainment business to observe a performance or otherwise patronize the business.

F. “Specified anatomical areas” means less than completely and opaquely covered human genitalia, pubic region, buttock and female breast below a point immediately above the top of the areola, and human male genitalia in a discernibly turgid state even if completely and opaquely covered.

G. “Specified sexual activities” means human genitalia in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; or fondling or other erotic touching of human genitalia, buttocks, or female breasts. (Ord. 1885 § 4 (Exh. B), 2009)

#### **5.08.430 Live adult entertainment business permit.**

A. Permit Required. It is unlawful for any person to establish, own, or operate a live adult entertainment business in the city, unless the person first obtains a permit in compliance with this article. A live adult entertainment business may not be established by right.

B. Application. Any person who wants to establish, own, or operate a live adult entertainment business within the city shall apply to the city as provided in LMC 5.08.450 for investigation and action as provided in LMC 5.08.460.

C. Compliance. A permit for a live adult entertainment business shall be subject to and comply with all the provisions of this article including all location, development, and operating regulations.

D. Eligibility. All persons are eligible to apply for a live adult entertainment business permit except the following persons who shall be ineligible as provided herein:

1. Any person determined by the police chief pursuant to LMC 5.08.460(B) to be prohibited from establishing, owning, or operating a live adult entertainment business shall be ineligible to apply for a permit for a period of one year from the date of the determination; or

2. Any person, or any business owned, operated, or controlled by a person, previously granted a live adult entertainment business permit by the city that was revoked or suspended pursuant to LMC 5.08.500, abandoned as provided in LMC 5.08.490, or surrendered as provided in subsection E of this section shall be ineligible to apply for a permit for a period of one year from the date of revocation, suspension, or surrender.

E. Transferability. A live adult entertainment business permit may be sold, transferred, or assigned by the permittee, or by operation of law, to any person who has:

1. Submitted the background materials to the police chief required by LMC 5.08.450(P)(1); and

2. After a background investigation, been determined by the police chief, or his or her designee, pursuant to LMC 5.08.460(B) to not be prohibited from establishing, owning, or operating a live adult entertainment business.

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Any sale, transfer, or assignment not complying with this section shall be deemed to be a voluntary surrender of the live adult entertainment business permit.

F. Other Permits. The grant of a live adult entertainment permit is not intended to excuse compliance with any other regulation that would otherwise apply to the building or property where the live adult entertainment business is located, including but not limited to the Uniform Building, Uniform Fire, Uniform Electrical and Uniform Plumbing Codes. Likewise, the grant of a live adult entertainment permit is not intended to excuse compliance with any other regulation that would otherwise apply to the development construction of a building or property. (Ord. 1885 § 4 (Exh. B), 2009)

### 5.08.440 Location.

A. Zoning. A live adult entertainment business shall not be established in any zoning district other than the heavy industrial (I-3) zoning district, subject to the regulations set forth in this article.

#### B. Separation.

1. Specified Land Uses. Within the heavy industrial (I-3) zoning district, it is unlawful to establish a live adult entertainment business within 1,000 feet of the following specified land uses:

a. Any licensed facility for the instruction or care of minors (for example, including but not limited to a school or licensed child care center, preschool center, or nursery), or any site identified on the general plan land use map as a potential future school location for the instruction of minors;

b. Any approved facility that meets the definitions of “commercial amusement facility” or “commercial recreation facility,” as those terms are defined in LDC Part 11, which is open to minors;

c. A residential zoning district; the residential area of a planned unit development permit; any site with a general plan land use designation that is residential or transferable development credit (TDC) receiver (R) site; or any legally existing “dwelling unit” as that term is defined in LDC Part 11. This separation requirement shall not apply to living quarters approved for surveillance purposes in an approved industrial use;

d. Any land designated the education and institutions (E) zoning district;

e. Any approved business licensed by the Department of Alcohol and Beverage Control to

sell alcohol for consumption, whether on site or off site;

f. “Parks” or “park and recreational area, public,” as those terms are defined in LDC Part 11 with the exception of trails, or any site identified on the general plan land use map as a potential future park location;

g. A public library;

h. A church or other religious facility or institution used primarily for the purpose of religious exercise; and

i. Any other adult-oriented business.

2. Measurement. The distance between the live adult entertainment business and a specified land use shall be measured in a straight line, without regard to intervening structures, from the closest exterior wall of building to be occupied by the live adult entertainment business to the closest property line of the specified land use, except that the distance between the proposed live adult entertainment business and another adult-oriented business or business selling alcohol for off-site consumption shall be measured in a straight line, without regard to intervening structures, from the closest exterior walls of the buildings for the respective establishments. (Ord. 1901 § 3 (Exh. A § 8), 2010; Ord. 1885 § 4 (Exh. B), 2009)

### 5.08.450 Application.

Any person who wants to establish, own, or operate a live adult entertainment business within the city shall file with the community development department a permit application on a standard form supplied by the city and shall pay the application filing fee as established by the city council as provided herein. The applicant has the responsibility and the burden to supply evidence to justify the grant of a live adult entertainment business permit.

All applications shall include the following information collated in one original set and two separate and identical collated copies:

A. Identity of the Applicant. The applicant shall provide the following identifying information:

1. If the applicant is an individual, the individual shall state his or her legal name and any aliases, and the current addresses for the individual’s primary place of business and residence.

2. If the applicant is a partnership, the applicant shall state the partnership’s full and complete

name, whether the partnership is general or limited, and the current address for the partnership’s principal place of business. In addition, the applicant shall provide the names and aliases for all partners as well as their current residential addresses. The applicant shall also attach to the application a current copy of the partnership agreement to the application.

3. If the applicant is a corporation, the applicant shall state the corporation’s full and complete name, corporate identification number, the state where it is incorporated, the date of its incorporation, and evidence that the corporation is qualified to do business and in good standing under the laws of California. In addition, the applicant shall provide the name of the registered corporate agent and the address of the registered agent for service of process. The applicant shall also provide the names and aliases and capacities of all officers and directors. The applicant shall further state the names and aliases for each controlling member of the corporation. A controlling member of a corporation shall mean any person owning or controlling more than 20 percent of the corporation’s voting stock.

4. If the applicant intends to operate the live adult entertainment business under any name other than that of the applicant, the applicant shall file and maintain a fictitious business name statement in Alameda County. The applicant shall also attach to the application proof of registration of the fictitious name.

B. Contact Information. The applicant’s telephone number and address where correspondence related to the application, including the notice of action, is to be delivered.

C. Location. The street address, building number, and assessor’s parcel number for the property where the proposed live adult entertainment business is to be established or operated. The applicant shall also describe all other businesses on the property.

D. Signatures. The applicant shall sign the application under penalty of perjury stating that the information contained in the application is true and correct, and shall provide satisfactory written proof that he or she is at least 18 years of age. However, if the applicant is a partnership or corporation, a partner or an officer with the authority to bind the business entity shall sign the application under penalty of perjury stating that the information con-

tained in the application is true and correct, and shall provide satisfactory written proof that he or she is at least 18 years of age.

The application shall also be signed by the property owner authorizing the applicant to apply for a live adult entertainment business permit to be established and operated at the business site.

E. Prior Applications. The applicant shall state whether the city previously denied an application by the applicant for a live adult entertainment business permit. If an application was denied, the applicant shall also state the date when it was denied.

F. Prior Permits. The applicant shall state whether he, she, or the business entity was previously granted a live adult entertainment business permit by the city. If a prior permit was granted, the applicant shall also state the date when the permit was issued, and if applicable, the date when the permit was surrendered, suspended, or revoked.

G. Other Live Adult Entertainment Permits. The location of any other adult-oriented business permitted, owned, or operated by the applicant in the city or any other jurisdiction. The applicant shall also state whether he, she, or the business entity applying to the city for a live adult entertainment business permit was ever denied a permit for an adult-oriented business use by any other public agency, or had a permit of an adult-oriented business use revoked or suspended by any other public agency. If an application was denied, or a permit was revoked or suspended, by another public agency, the applicant shall also state the name of the other public agency and the date when the application was denied or the date when the permit was revoked or suspended.

H. Verification. The application shall contain the following verification which shall be completed and signed by the applicant, or person signing the application on behalf of the business entity:

I hereby acknowledge and agree that I have read and understand Article IV of Chapter 5.08 of the Livermore Municipal Code for Live Adult Entertainment Businesses, including the location, development, and operating regulations contained therein; and, hereby further acknowledge and agree that I intend to and shall comply therewith.

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

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I. Property Owner. The application shall contain the following statement which shall be completed and signed by a property owner with a controlling interest in the proposed site for the live adult entertainment business:

I am the owner of the property located at \_\_\_\_\_ [insert address, or the current assessor parcel number(s) for undeveloped land]. I understand and consent to the applicant's establishment of a live adult entertainment business on the property.

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

The property owner's signature shall be notarized no less than 90 days prior to the date the application is submitted to the city. The applicant shall also provide proof of the property owner's controlling interest in the proposed site.

J. Business Description. The applicant shall provide an exact description of the proposed live adult entertainment business, as well as any accessory or ancillary uses to be conducted along with the live adult entertainment business, including:

1. A description of the business activities to be conducted;
2. A statement whether the entertainers will be topless, bottomless, or totally nude;
3. The proposed hours of operation;
4. The job titles and descriptions for all employees, independent contractors, entertainers, and other persons who will be working or performing at the live adult entertainment business;
5. The number of employees, independent contractors, and entertainers expected to be present during hours of operation and during hours when the business is open to the public, and which employees, independent contractors, and entertainers are expected to be at the business when it is not open to the public;
6. Whether the proposed business is a franchise or is affiliated with other businesses, and the identities, street addresses, and contact information of those other businesses.

K. Site Plan. The applicant shall also submit a scale site plan showing all existing and proposed structures, parking areas including a description of the parking stalls serving the business, landscaping, walls, driveways, curb cuts, signs including size and proposed design, garbage receptacle storage areas, lighting, ground- and rooftop-mounted

equipment, and topographical features of the property for the proposed site for the live adult entertainment business. Included with the site plan shall be a table or other appropriate means of describing the total area in square feet of the space to be used for the business and a breakdown of the total floor area identifying how many square feet will be devoted to different subcategories of space including but not limited to office, lobby, patron assembly area, performance area, storage, restrooms and other open and enclosed areas and facilities. In addition, the site plan shall indicate on the building for the live adult entertainment business the locations of all existing and proposed doors and windows, which shall conform to the corresponding locations on the diagram of interior configuration. The applicant shall also show the location of the other businesses on the property that were identified in subsection C of this section.

L. Diagram of Interior Configuration. The applicant shall submit a scale diagram showing the existing and proposed interior configuration of the building for the live adult entertainment business, including:

1. The total floor area for the building;
2. The floor areas open to the public and the floor areas restricted to entertainers and employees;
3. The location of all entrances and exits;
4. The location of the performance area for live entertainment;
5. The location and configuration for all seats and tables for the live adult entertainment business;
6. The location of all existing and proposed entrances, windows including size, exits, hallways, offices, rooms, restrooms, cooking areas, storage areas, table areas, stages, booths, seating areas, manager stations, dressing rooms, and other tenant improvements;
7. All dividing structures including but not limited to walls, fences, rails, and partitions, and for each dividing structure identify its height, material, and whether it is fully opaque or partly or fully transparent;
8. The floor area and location of any and all accessory and ancillary uses to be conducted in the same building as the live adult entertainment business; and

9. Such other improvements as may be necessary to show the interior layout of the live adult entertainment business will comply with the development and operating regulations in this article, the Livermore Development Code, and the Municipal Code.

M. Lighting Studies. The applicant shall submit photometric studies by a licensed lighting engineer documenting satisfaction of the interior and exterior lighting requirements in the development regulations set forth in LMC 5.08.470.

N. Traffic Study. The applicant shall submit a traffic study identifying any significant traffic impacts during the morning or evening commute peak periods. The traffic study must show that the live adult entertainment business is served by streets and highways adequate to carry the type and quantity of traffic generated by the use from the standpoint of location or proximity and width of right-of-way. The traffic study shall also identify improvements necessary to mitigate the traffic impacts. Upon written request by the applicant, this requirement may be modified or waived by the community development director if it is found the proposed use will not have significant traffic impacts in the morning or evening commute peak periods.

O. CEQA Compliance. The applicant shall complete and submit an environmental assessment form describing the project and its potential environmental impacts for purposes of complying with the California Environmental Quality Act (CEQA) and shall pay any applicable CEQA application and filing fees.

P. Information for Police Chief's Review. All applicants for a live adult entertainment business permit shall consent to a background investigation to determine whether he, she, or the business is eligible to receive a live adult entertainment business permit, or is otherwise prohibited. In furtherance of that purpose, the applicant shall provide the following information in a sealed envelope as part of the application:

1. Background Materials. The applicant shall complete and sign the standard background investigation form supplied by the Livermore police department, and shall provide a copy of the driver's license or identification card issued by a state department of motor vehicles, a passport size photograph, and fingerprints taken by the Liver-

more police department or at a facility approved by the Livermore police department. The applicant shall also state the full name and any aliases, date of birth, Social Security number, employment history or occupation for the five years prior to the application, as well as every residential and employment address for the five years prior to the application, for each of the following:

a. Individual who is an applicant, or signs the application on behalf of a business entity; and

b. All partners, or all controlling members of a corporation, for a business entity applicant.

2. Security Program. The applicant shall prepare and submit a security program satisfying the security requirements of the operating regulations set forth in LMC 5.08.480(R).

Q. Fees. The city council shall establish by resolution an application fee for a live adult entertainment business permit based upon the estimated reasonable costs to process the application and administer the regulations set forth in this article.

R. Data Summary. The applicant shall submit an itemized list, describing how he, she, or the business entity intends to comply with each of the development regulations in LMC 5.08.470 and each operating regulation in LMC 5.08.480. The applicant shall also provide the required information or refer the city to a document or plan submitted with the application, and page number(s) thereon, where the information can be found. (Ord. 1901 § 3 (Exh. A § 9), 2010; Ord. 1885 § 4 (Exh. B), 2009)

#### **5.08.460 Investigation and action on application.**

An application for a live adult entertainment business permit shall be time and date stamped upon receipt. The application shall be forwarded to the city's community development director, or his or her designee, for investigation and action as provided in this section. The community development director, or his or her designee, shall conduct a preliminary investigation to determine whether the applicant is eligible to apply for a live adult entertainment business permit. If the applicant is ineligible, the application will be returned to the applicant. If the applicant is eligible, the community development director, or his or her designee,

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shall receive the application and immediately commence the review for completeness and thereafter investigation. Also, upon receipt of an application, the community development director, or his or her designee, shall immediately label and forward the sealed envelope containing the information for the police chief's review to his or her attention for review as to completeness, and for investigation and reporting to the community development director as provided herein.

### A. Determination of Completeness.

1. Police Department. Within 20 calendar days of the date the application is received and stamped, the police chief, or his or her designee, shall report to the community development director whether the sealed envelope contains the information required by LMC 5.08.450(P) for the police chief's review.

2. Community Development Department. Within 30 calendar days of the date the application is received and stamped, the community development director, or his or her designee, shall determine whether it is complete and contains all the information required by LMC 5.08.450.

a. Complete. If the application is determined to be complete and to contain the required information, the community development director shall investigate the application to determine whether it shall be granted or denied. As part of that investigation, the police chief, or his or her designee, shall examine the information provided in the sealed envelope and conduct an investigation to determine whether the security program is adequate and any of the persons identified by the applicant are prohibited from establishing, owning or operating a live adult entertainment business.

b. Incomplete. If the application is determined to be incomplete, the community development director, or his or her designee, shall mail the applicant written notice of the determination and the reasons therefor. The applicant shall have 30 calendar days from the notice date to submit an amended application correcting the deficiencies. Failure to submit an amended application within the 30-day period shall automatically void the application. An amended application shall be time and date stamped upon receipt. If timely, the amended application shall be forwarded to the community development director and police chief to again determine, within 30 calendar days of the

date the amended application was received, whether the application is complete and contains the required information. The evaluation and notification shall continue as provided herein until the application is determined to be complete or the application is voided.

B. Police Department Investigation. The police chief, or his or her designee, shall investigate the information and materials provided by the applicant to determine whether the applicant, or any partner or controlling members of a corporation for a business entity applicant, is prohibited from establishing, owning, or operating a live adult entertainment business for the reasons set forth in subsection D of this section. In addition, the police chief, or his or her designee, shall review the security program to determine whether it is adequate for the proposed live adult entertainment business.

C. Determination Whether to Grant or Deny. Within 60 calendar days of the date when the application for a live adult entertainment business permit is deemed complete, the community development director, or his or her designee, shall investigate the application and either grant the permit subject to the conditions contained in this article, including the location, development, and operating regulations contained therein, or deny the application. The decision on the application shall be delivered via certified mail to the applicant. Any denial of an application shall be accompanied by a written statement articulating the reasons why the application was denied. The determination whether to grant or deny an application for a live adult entertainment business permit shall be based upon the following:

1. Grounds to Grant. The community development director, or his or her designee, shall grant an application for a live adult entertainment business permit where the information submitted by the applicant substantiates all of the following findings:

- a. The applicant is over the age of 18 years;
- b. The required application fees have been paid;
- c. The applicant is eligible to apply for a live adult entertainment business permit;
- d. The business description complies with the definition of a live adult entertainment business;

e. The property owner consents to the operation of a live adult entertainment business on the site;

f. The site for the live adult entertainment business complies with the location regulations set forth in LMC 5.08.440;

g. The site plan and interior configuration of the proposed live adult entertainment business complies with the development regulations set forth in LMC 5.08.470;

h. The proposed live adult entertainment business described in the application complies with the operating regulations set forth in LMC 5.08.480;

i. The police chief provides a report finding:

i. The individual signing the application, or any partner or controlling members of a corporation for a business entity applicant, is or are not prohibited from establishing, owning, or operating a live adult entertainment business as provided in subsection D of this section.

ii. The security program satisfies the requirements of the operating regulations set forth in LMC 5.08.480(R) for the proposed live adult entertainment business.

2. Grounds to Deny. The community development director, or his or her designee, shall deny an application for a live adult entertainment business permit where the information submitted by the applicant substantiates any one of the following findings:

a. The applicant is not over the age of 18 years;

b. The required application fees have not been paid;

c. The applicant is ineligible to apply for a live adult entertainment business permit;

d. The business description does not comply with the definition of a live adult entertainment business;

e. The property owner does not consent to the operation of a live adult entertainment business on the site;

f. The site for the live adult entertainment business does not comply with the location requirements set forth in LMC 5.08.440;

g. The site plan and interior configuration of the proposed live adult entertainment busi-

ness does not comply with the development regulations set forth in LMC 5.08.470;

h. The proposed live adult entertainment business described in the application does not comply with the operating regulations set forth in LMC 5.08.480;

i. The police chief provides a report finding:

i. The individual signing the application, or any partner or controlling members of a corporation for a business entity applicant, is or are prohibited from establishing, owning, or operating a live adult entertainment business as provided in subsection D of this section;

ii. The security program does not satisfy the requirements of the operating regulations set forth in LMC 5.08.480(R) for the proposed live adult entertainment business.

j. The application does not contain the information required by this article; or

k. The application contains a false, misleading, or fraudulent statement of material fact.

D. Prohibited. The following persons are prohibited from establishing, owning, or operating a live adult entertainment business:

1. Any person who, within the one-year period immediately preceding the date the application was filed, was convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or of any violation of any provision of Sections 313 through 318 or Section 647 of the California Penal Code;

2. Any person who, within the one-year period immediately preceding the date the application was filed, was convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Health and Safety Code Section 11590, or any violation of any provision of Sections 11350 through 11391 or Section 11550 of the California Health and Safety Code; or

3. Any person who is on probation, parole, under court supervision, or currently registered with a state or law enforcement agency, due to a conviction for conduct violating any provision of the statutes set forth in subsections (D)(1) and (2) of this section, or who has otherwise absconded or failed to successfully complete any term or condi-

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tion of sentencing for a violation of any provision of said statutes. (Ord. 1885 § 4 (Exh. B), 2009)

### 5.08.470 Development regulations.

The building and site occupied by a live adult entertainment business shall be subject to the following development regulations:

A. Full View Manager's Station. The interior of the live adult entertainment business shall have at least one permanent manager's station which provides a vantage point from which all interior floor areas of the business accessible by patrons, including the entrance but not the interior of patron restrooms, can be observed in a direct line of sight.

B. Performance Area. A live adult entertainment business shall have only one performance area. The performance area shall consist of a single stage at least 18 inches above the level of the floor. The performance area shall be separated by a distance of at least six feet from the nearest area accessible by patrons. The six-foot separation shall be marked by a fixed railing or other fixed physical barrier at least 30 inches in height and designed to obstruct any physical contact between an entertainer and a patron.

C. Restricted Entertainer Facilities. Dressing room and restroom facilities shall be provided for the exclusive use of entertainers in a location that cannot be accessed or viewed by patrons.

D. Entertainer and Patron Separation. A pathway or entrance and exit to the performance area from the dressing room facilities shall be provided for the exclusive use of the entertainers. If a pathway crosses any area accessible by the public, it shall provide a minimum three-foot-wide walk aisle for entertainers, bounded by a wall, railing, fence, or other permanent barrier running the length of the walkway designed to prevent patrons from touching the entertainers. If a transparent separation is used, it shall be made from an unbreakable material or tempered glass.

E. No Enclosed Booths or Similar Enclosed Areas. Except for restrooms as provided in this article, no interior floor areas of live adult entertainment business accessible by patrons shall be enclosed. In addition, the business shall not have enclosed booths or similar enclosed areas. Likewise, areas designed for private use by patrons to

the exclusion of other patrons, through the use of a partition, door, wall, curtain, or other material, are prohibited.

F. Exterior Sign. Exterior signage shall comply with the Livermore Development Code, building code, and development standards and design standards and guidelines applicable to the heavy industrial (I-3) zoning district.

G. Sound Attenuation. The building for the live adult entertainment business shall have sufficient sound absorbing insulation, or utilize other sound attenuation measures, to prevent noise generated inside the building from being audible in any other businesses occupying the same building as the live adult entertainment business, within any other building on the property where the live adult entertainment business is located, or on any adjacent property or the public right-of-way.

H. Openings and Entries. All building openings, entries, exits and windows for the live adult entertainment business shall be located, covered or screened in such a manner to ensure the performance area cannot be observed from outside the building. The building shall have a separate entrance and exit for the exclusive use of entertainers. Except in an emergency, entertainers shall not enter or exit the building through the patron entrances and exits. Entrance to the building for the live adult entertainment business from another business in the same building, or on the same property, is prohibited. In the event an accessory or ancillary use is conducted along with the live adult entertainment business, said use shall be physically separated from the live adult entertainment business to prohibit direct and indirect observation of its patron and performance areas.

I. Accessibility. The doors to the building for the live adult entertainment business shall not be locked during business hours.

J. Separate Restrooms. The building for the live adult entertainment business shall provide and maintain separate restrooms for male patrons and employees, and female patrons and employees. Male patrons and employees shall be prohibited from using a restroom designated for females, and female patrons and employees shall be prohibited from using a restroom designated for males. At no time shall a male and female occupy the same restroom at the same time. The restrooms shall not contain any television monitors or other motion

picture or video projection, recording, or reproduction equipment. The restrooms shall also be free from any materials describing or depicting specified anatomical areas or specified sexual activities.

K. Lighting. A live adult entertainment business shall comply with the following lighting standards:

1. Exterior Lighting Level. All exterior areas for the live adult entertainment business, including the parking lot and areas for pedestrian and vehicle access to or from the business, shall be illuminated from dusk to two hours after the close of operation with a lighting system which provides an average maintained horizontal illumination of one foot-candle of light evenly distributed at ground level. The required lighting level is established in order to provide sufficient illumination of the parking areas, walkways, and outdoor areas serving the business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct.

2. Interior Lighting Level. All interior areas of the live adult entertainment business shall be illuminated at a minimum of five foot-candles, except during performances when the illumination may be reduced to 1.25 foot-candles.

L. Garbage and Garbage Receptacles. The exterior garbage receptacles for the live adult entertainment business shall be locked so that minors are not exposed to sexually oriented materials or sexually oriented merchandise. All items which may constitute biohazard waste shall be properly disposed of in approved biohazard refuse containers, readily available to both staff and patrons. These items shall be lawfully removed from the premises on a daily basis. The exterior areas for the live adult entertainment business shall be kept free of litter.

M. Parking. The adult live entertainment business shall comply with the parking regulations of the Livermore Development Code including but not limited to Chapter 4.04 LDC.

N. Visibility from Public Street. No opaque fencing or gate(s) shall be installed between the adjacent public streets and the building or the parking lot used for the live adult entertainment business. (Ord. 1901 § 3 (Exh. A § 10), 2010; Ord. 1885 § 4 (Exh. B), 2009)

#### **5.08.480 Operating regulations.**

A live adult entertainment business shall comply with the following operating regulations:

A. Prohibited Conduct. Every permittee, owner, operator, responsible managing employee, and security guard for the live adult entertainment business shall actively discourage and prevent any conduct that would violate any provision of Sections 313 through 318 or Section 647 or Section 290 of the California Penal Code, and any provision of Sections 11350 through 11391 or Section 11550 of the California Health and Safety Code. It shall be a breach of this regulation if a permittee, owner, operator, or responsible managing employee of the live adult entertainment business fails to call the police department for service when such person knew, or should have known, the prohibited conduct was occurring or the individuals engaging in the conduct did not respond to efforts to discourage the conduct.

B. Minors Prohibited. No person under the age of 18 years of age shall be allowed inside the building where the live adult entertainment business is operated.

C. Clothing. Except for entertainers while performing onstage in the performance area, all persons including entertainers, employees, owners, operators, and patrons in the areas of the live adult entertainment business open to patrons, shall wear at a minimum an opaque covering which covers their specified anatomical areas at all times in the areas open to patrons. The application of an opaque covering simulating the appearance of specified anatomical areas required to be covered shall not satisfy this regulation.

D. Performances. No entertainer shall perform at the live adult entertainment business except upon the stage in the performance area. No entertainer shall perform within six feet, measured horizontally, of any patron at the live adult entertainment business.

No permittee, owner, operator, or responsible managing employee of the live adult entertainment business shall permit any person, other than an entertainer while performing onstage in the performance area, to engage in any type of dance, performance, show, exhibition, or other activity characterized by an emphasis on the display of specified anatomical areas with less than fully opaque coverage, or the performance of physical

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human body activity that depicts or relates to specified sexual activities whether or not the anatomical areas are covered.

E. No Physical Touching. When present at a live adult entertainment business, no entertainer shall have physical contact with any patron and no patron shall have physical contact with an entertainer involving the touching of the specified anatomical areas, whether clothed or unclothed. This prohibition does not extend to incidental touching. Patrons shall be advised of the separation and no physical touching requirements by signs conspicuously displayed and placed on the barrier between patrons and entertainers. At a minimum, the sign shall be one foot by one and one-half feet with letters not less than one inch in size.

F. No Direct Payment. No entertainer shall solicit or accept any money directly from a patron.

G. No Alcohol. Alcohol shall not be allowed, sold, dispensed, consumed, or stored inside or outside of the live adult entertainment business.

H. No Employment. A permittee, owner, operator, or responsible managing employee of a live adult entertainment business is prohibited from allowing any person, subcontractor, or entertainer, to work or perform at the business, who:

1. Within the one-year period immediately preceding the date the application was filed, was convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or of any violation of any provision of Sections 313 through 318 or Section 647 of the California Penal Code;

2. Within the one-year period immediately preceding the date the application was filed, was convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Health and Safety Code Section 11590, or any violation of any provision of Sections 11350 through 11391 or Section 11550 of the California Health and Safety Code; or

3. Is on probation, parole, under court supervision, or currently registered with a state or law enforcement agency, due to a conviction for conduct violating any provision of the statutes set forth in subsections (H)(1) and (2) of this section, or who has otherwise absconded or failed to successfully complete any term or condition of sentencing for a violation of any provision of said statutes.

The permittee shall maintain a list of all employees and subcontractors working, and all entertainers performing, at the live adult entertainment business. The permittee shall also maintain a daily list of all employees and subcontractors working, and all entertainers performing, at the live adult entertainment business. The permittee shall make the lists of employees and entertainers available to the police chief, or his or her designee, upon request and without delay during normal business hours.

I. Registration of Employees and Entertainers. Each permittee shall register, and request a background investigation by the Livermore police department for, every person employed or subcontracted to work at the live adult entertainment business within five days of the person's first day of work. Likewise, each permittee shall register, and request a background investigation by the Livermore police department for, every entertainer performing at the live adult entertainment business within five days of the entertainer's first performance. The permittee shall pay the actual reasonable costs for the background investigation by the Livermore police department.

1. Background Information. When registering an employee or entertainer, a permittee shall provide the police chief with the following identifying information for the worker or entertainer for background investigation:

- a. Full name and aliases;
- b. Date of birth;
- c. Social Security number;
- d. One passport size photograph;
- e. One copy of the driver's license or identification card issued by a state department of motor vehicles; and
- f. Fingerprints taken by the Livermore police department.

2. Investigation. The police chief shall investigate the information and materials provided.

a. The registration shall be accepted if the police chief, or his or her designee, determines that the employee, subcontractor, or entertainer:

- i. Provided all the background information required by subsection (I)(1) of this section;
- ii. Was not convicted of a violation of any statute identified as prohibited conduct in subsection A of this section within the one-year pe-

riorod prior to working or performing at the live adult entertainment business; and

iii. Is not on probation, parole, under court supervision, or registered, due to a conviction

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for conduct violating any provision of the statutes set forth in subsection A of this section, or who has otherwise absconded or failed to successfully complete any term or condition of sentencing for a violation of any provision of said statutes.

b. The registration shall be denied if the police chief, or his or her designee, determines the employee, subcontractor, or entertainer:

i. Did not provide all the background information required by subsection (I)(1) of this section;

ii. Was convicted of a violation of any statute identified as prohibited conduct in subsection A of this section within the one-year period prior to working or performing at the live adult entertainment business;

iii. Is on probation, parole, under court supervision, or registered, due to a conviction for conduct violating any provision of the statutes set forth in subsection A of this section, or who has otherwise absconded or failed to successfully complete any term or condition of sentencing for a violation of any provision of said statutes; or

iv. Provided information for investigation determined to be materially incorrect, false, or misleading.

3. Report and Confidentiality. After investigation, the police chief, or his or her designee, shall advise the permittee whether the registration for an employee, subcontractor, or entertainer was accepted. The background information shall be maintained by the police department as confidential information. Except as may be required by law, the chief of police, and his or her designee, shall not release any information received as part of the background investigation.

J. Hours of Operation. A live adult entertainment business shall be open for business only between the hours of 10:00 a.m. and 12:00 midnight on any particular day.

K. Responsible Managing Employee. The permittee, or an owner, operator, or responsible managing employee for the live adult entertainment business shall be present in the manager's station at all times during all business hours to observe all areas accessible by all patrons, except the interior of patron restrooms, to ensure compliance with the operating regulations in this section.

L. Occupancy. The live adult entertainment business shall comply with the maximum occupancy load established by the fire marshal at all times.

M. Inspections. Permittee, and all owners, operators, employees and security of the live adult entertainment business shall permit representatives of the police department, fire department, planning department, building department and other city departments, and the county health department, to inspect the business for the purpose of ensuring compliance with the applicable development and operating regulations, and other applicable laws. Said inspections shall be conducted in a reasonable manner and shall be permitted of the interior areas at any time the business is open, and of the exterior areas at any time.

N. Amplified Sound. No loudspeakers or sound equipment shall be used in an adult entertainment establishment for the amplification of sound to a level discernible by the public beyond the walls of the building or portion thereof in which the adult entertainment establishment is conducted.

O. Interior Signs. Signs, advertisements, displays or other promotional materials depicting or describing specified anatomical areas or specified sexual activities shall not be shown or exhibited so as to be discernible by the public beyond the interior of the building.

P. Observation from Public Right-of-Way. No live adult entertainment business shall be operated in any manner that allows any portion of the interior of the business to be viewed from any public right-of-way, except for a five-foot area measured horizontally from an entrance when it is otherwise screened to prevent the observation of the interior of the building and does not have any interior signs identified in subsection O of this section. This provision shall apply to any display, decoration, sign, show window, or other opening. No exterior door or window on the premises shall be propped or kept open at any time while the business is open, and any exterior windows shall be covered with opaque covering at all times.

Q. Posting of California Penal Code Section 314. The following language from California Penal Code Section 314, or such other language as prepared by the city attorney following an amendment to that statute from time to time by the state legis-

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lature, shall be posted inside the live adult entertainment business in plain view of all patrons entering the business:

California Penal Code § 314:

Every person who willfully and lewdly either:

(1) exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or

(2) procures, counsels, or assists any person so to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor.

Upon the second and each subsequent conviction under subdivision 1 of this section, or upon a first conviction under subdivision 1 of this section after a previous conviction under California Penal Code Section 288, every person so convicted is guilty of a felony, and is punishable by imprisonment in state prison.

R. Security Program. Live adult entertainment businesses shall establish and maintain a security program in order to preserve the public peace and safety. At a minimum, the program shall include elements that meet the following:

1. Prohibited Conduct. The program shall describe the activities to be implemented by the permittee to prevent the prohibited conduct identified in subsection A of this section.

2. Management. At all times it is open for business, a live adult entertainment business shall have a responsible managing employee on site who shall be at least 18 years of age. The permittee shall designate and identify for the police chief a responsible managing employee to receive all complaints and be responsible for preventing violations of the regulations set forth in this article from occurring at the live adult entertainment business.

3. Security Company. The program shall identify a security company to provide on-site security services for the live adult entertainment business that meets the following requirements:

a. The security company shall not be owned, operated, or controlled by the permittee, or any partner or member of a business entity that is the permittee, and any owner, operator, employee,

or entertainer of the live adult entertainment business;

b. The security company shall have a valid license in accordance with the California Business and Professions Code and be bonded in the minimum sum of \$1,000,000. The security company shall only assign security guards to the live adult entertainment business that are employed by the security company and that are not employed by, or affiliated in any capacity with, the permittee, or any partner or member of a business entity that is the permittee, or any owner, operator, employee, or entertainer of the live adult entertainment business;

c. Every security guard assigned to the live adult entertainment shall be registered as provided in subsection I of this section;

d. At least one security guard shall be on duty inside the live adult entertainment business at all times when it is open for business. The permittee shall also provide one additional security guard for every 25 people occupying the business in excess of the first 25 applicants;

e. The security guards shall be uniformed in a manner so as to be readily identifiable as a security guard at all times while on duty. The program shall describe the uniform;

f. In addition to interior security guard(s), at least one security guard shall patrol and monitor the exterior building, including all entrances and exits and the parking lot areas, during all business hours, with surveillance of the site continuing for two hours after closing; and

g. A security guard supplied by the security company is prohibited from acting as a door person, ticket seller, ticket taker, or sole occupant of the manager's station while acting as a security guard.

4. Exterior Video Monitoring. A live adult entertainment business shall install, maintain in good working order, and provide to the security company for its use, a security system that visually records and monitors the exterior premises of the property including all entrances and exits and parking lot areas. All video recordings shall be retained by the security company for a minimum of 60 days and made available to the police department without delay upon request. A sign indicating compliance with this provision shall be posted on the premises. The sign shall not exceed two by three

feet and shall at a minimum be one foot by one and one-half feet.

S. Private Commercial Use. No permittee, owner, or operator of a live adult entertainment business shall allow a live adult entertainment business to be rented, leased, or otherwise used for a private commercial use or for a private party, to the exclusion of all other patrons, unless the permittee gives prior written notice to the police chief and the private party agrees to comply with all development and operating regulations and conditions of approval imposed upon the live adult entertainment business, including the security program.

T. Changes. No permittee, owner, or operator of a live adult entertainment business shall make any changes to the interior floor plan, exterior site plan, or hours of operation described in the permit application unless approved in advance in writing by the city of Livermore.

U. Updated Background Information. Every permittee, owner, and operator of a live adult entertainment business shall be under a continuing obligation to provide the police chief current information regarding the information requested in LMC 5.08.450(A) and subsections (I)(1) and R of this section.

One year after a live adult entertainment business permit was issued, the permittee, owner, and operator of the live adult entertainment business shall submit to the police chief either:

1. An affidavit certifying under penalty of perjury that the information and materials required by LMC 5.08.450(A) and subsections (I)(1) and R of this section and contained in the application have not changed; or

2. Updated background materials required by LMC 5.08.450(A) and subsections (I)(1) and R of this section for re-investigation using the processes previously described herein.

A permittee, owner, or operator of a live adult entertainment business shall notify the police chief within 72 hours of any conviction of a permittee, owner, or operator of a violation of a statute identified in LMC 5.08.460(D), and conviction of a registered worker or entertainer of a violation of a statute identified in subsection A of this section. (Ord. 1885 § 4 (Exh. B), 2009)

#### **5.08.490 Abandonment.**

A. Failure to Inaugurate Use. Failure to initiate the live adult entertainment business use within 12 months from the date the permit is issued shall be deemed an abandonment of permit and the use. This time period shall be extended by the city, up to a maximum of 12 additional months, upon a showing that the permittee is actively pursuing development entitlements, building permits, and a certificate of occupancy for the live adult entertainment business.

B. Discontinued Use. Any discontinuance of a permitted live adult entertainment business for a period of more than 60 consecutive days shall be deemed an abandonment of the live adult entertainment business permit and use. This subsection shall not apply to a discontinuance resulting from the suspension of a live adult entertainment business permit as provided in LMC 5.08.500(E). (Ord. 1885 § 4 (Exh. B), 2009)

#### **5.08.500 Revocation.**

A. Grounds for Revocation. Any live adult entertainment business permit issued pursuant to the provisions of this article may be revoked upon the presentation of evidence showing any of the following:

1. That the building or structure in which the live adult entertainment business is located does not comply with the applicable building, fire, electrical, plumbing, health, and zoning requirements of the Livermore Municipal Code and the Livermore Development Code;

2. That the live adult entertainment business has been conducted in a manner inconsistent with the development or operating regulations contained in this article;

3. That the live adult entertainment business being conducted differs substantially from what was described in the permit application and required by LMC 5.08.450(J), (K), or (L), and the substantial differences are grounds as provided in LMC 5.08.460(C)(2) that would have justified denial of the permit if known when the application was considered;

4. That the permittee has failed to obtain or maintain all required city, county and state licenses and permits for the business;

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5. That the permit is being used to conduct an activity different from that for which it was issued;

6. That the permit application contained a material misstatement of fact, a material misrepresentation, or was not completed truthfully;

7. An owner, operator, patron, employee, or entertainer of the adult business is found guilty of, or pleaded nolo contendere to, a violation of any statute identified as prohibited conduct in LMC 5.08.460(D) or 5.08.480(A), and that such offense or alleged offense occurred on the property where the live adult entertainment business is located. If the conduct is that of a patron, revocation must be based upon a finding that the owner, operator, or employee, of the adult business failed to take reasonable and appropriate measures to control the conduct of a patron or assisted the patron in the conduct for which he or she is convicted; or

8. That the permittee's security program has not adequately deterred unlawful conduct by the employees, entertainers, or patrons of the live adult entertainment business, and the permittee has not updated its safety program to adequately address the conduct. This finding may be established by evidence showing the occurrence of conduct prohibited by LMC 5.08.480(A) resulting in convictions when the evidence shows a permittee, owner, operator, responsible managing employee, or security guard either knew or should have known that the conduct was occurring. However, this finding shall not be established based upon a conviction resulting from a call for service to the Livermore police department by a permittee, owner, operator, responsible managing employee, or security guard consistent with the permittee's security plan.

B. Revocation Hearing. Upon request of the police chief, or his or her designee, the planning commission shall conduct a public hearing regarding the revocation of a live adult entertainment business permit. The request shall be submitted to the city clerk, and a copy of the request shall be delivered to the permittee. The request may be accompanied by a notice of immediate suspension as provided for in subsection E of this section.

1. Within 60 days of the request by the police chief, or his or her designee, the planning commission shall hold a public hearing to consider the request to revoke a live adult entertainment permit. Failure by the planning commission to hold a pub-

lic hearing within that time period shall be deemed a denial of the request.

2. Written notice of hearing on the proposed permit revocation, together with written notification of the specific grounds of complaint against the permittee, shall be personally delivered or sent by certified mail to the permittee at least 30 days prior to the hearing. Notice of the hearing shall be made pursuant to California Government Code Sections 65091 and 65905.

3. The planning commission shall decide to revoke, to not revoke, or to not revoke but add conditions to, the live adult entertainment business permit. The planning commission's decision shall be based upon written findings of one or more of the grounds set forth in subsection A of this section. The planning commission shall make its decision within 30 days of the public hearing, which decision shall be hand-delivered or sent by certified mail to the permittee, and mailed to all property and business owners within 300 feet of the live adult entertainment business.

C. Appeal Hearing. The planning commission's decision may be appealed to the city council by submitting a written notice of appeal to the city clerk within 14 days of the planning commission's written decision. The timely filing of an appeal shall stay the planning commission's decision, and preserve the status quo of the permit prior to that decision, until the city council's final decision on the appeal. The appeal shall be heard by the city council at a public hearing.

1. Within 60 days of the date the appeal was received, the city council shall hold a public hearing to consider an appeal of the planning commission's decision on the request to revoke a live adult entertainment permit. Failure by the city council to hold a public hearing within that time period shall be deemed to be an approval and adoption of the planning commission's decision as the city council's decision, and a rejection of the appeal.

2. Written notice of the appeal hearing shall be personally delivered or sent by certified mail to the permittee, and the appellant if different from the permittee, at least 30 days prior to the hearing. Notice of the hearing shall be made pursuant to California Government Code Sections 65091 and 65905.

3. The city council's consideration of the appeal shall be a de novo hearing.

4. The city council shall approve, conditionally approve, or reject the planning commission's decision of the revocation of the live adult entertainment business permit. The city council's decision shall be based upon written findings of one or more of the grounds set forth in subsection A of this section. The city council shall make its decision within 30 days of the public hearing, which decision shall be hand-delivered or sent by certified mail to the appellant and the permittee, and mailed to all property owners within 1,000 feet of the live adult entertainment business. Notice of the city council's decision and its findings shall include citation to the California Code of Civil Procedure Section 1094.8.

D. Conduct of Hearings. The public hearings contemplated by this section and held by the planning commission and the city council shall include the following procedures:

1. All parties involved shall have the right to offer testimonial, documentary, and tangible evidence bearing upon the issues and may be represented by counsel. A hearing shall not be bound by the formal rules of evidence. Any relevant evidence may be presented that is the sort upon which reasonable persons are accustomed to rely in the conduct of serious matters;

2. The city shall first present the grounds for revocation. The permittee shall then be afforded the opportunity, but is not required, to respond. The parties shall have the right to cross-examine a witness who provides evidence by live testimony. The hearing body shall also accept information from the public during the public comment portion of the hearing provided it satisfies the requirements in this section. The hearing body may direct questions to the city, permittee, or any other party related to the evidence presented by said party.

3. The time periods set forth in this section may be extended for a reasonable time based upon the mutual agreement of the city, permittee, and any appellant as the case may be. Any extension sought by a license holder shall not be considered delay on the part of the city or constitute failure by the city to provide for prompt decisions on permit revocations.

E. Notice of Immediate Suspension. The police chief may order the immediate suspension of a live adult entertainment business permit, and direct the cessation of the business and use, pending a revo-

cation hearing before the planning commission, when a notice for a revocation hearing includes either of the following grounds:

1. Three or more patrons, employees, or entertainers of the adult business are found guilty of, or pleaded nolo contendere to, separate misdemeanor or felony offenses of any provision of the statutes set forth in LMC 5.08.480(A), that such offenses occurred on the property where the live adult entertainment business is located, and evidence shows a permittee, owner, operator, responsible managing employee, or security guard either knew or should have known that the conduct was occurring; or

2. The city's building official has opined that the building or structure in which the adult business is conducted is not in compliance with the current approved and adopted edition of the various Uniform Building, Uniform Fire, Uniform Electrical and Uniform Plumbing Codes adopted by the city and is an immediate threat to the health, safety and welfare of the employees or patrons of the business or of the general public.

In an appeal of the planning commission decision upholding the suspension of a live adult entertainment permit, the permit shall remain suspended pending final decision by the city council. (Ord. 1901 § 3 (Exh. A § 11), 2010; Ord. 1885 § 4 (Exh. B), 2009)

#### **5.08.510 Judicial review.**

A. Application. Any applicant whose application for a live adult entertainment business permit has been denied shall be afforded prompt judicial review of that decision.

B. Revocation and Suspension. Following the exhaustion of the administrative remedies set forth in this article, an appellant or permittee aggrieved by the city council's decision on an appeal of a planning commission after public hearing on the suspension or request to revoke a live adult entertainment permit shall be afforded prompt judicial review. The city shall make reasonable efforts to expedite such review and shall comply with the provisions of California Code of Civil Procedure Section 1094.8 and any subsequent or applicable statutes or rules of the courts of law of the state or nation which specify the prompt judicial review to be provided. (Ord. 1885 § 4 (Exh. B), 2009)

## 5.12.010

### Chapter 5.12

#### ALARM SYSTEMS

Sections:

- 5.12.010 Definitions.
- 5.12.020 Applicability to existing alarms.
- 5.12.030 Exemptions to chapter applicability.
- 5.12.040 Permit – Required.
- 5.12.050 Permit – Application and issuance.
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- 5.12.160 Direct connections.
- 5.12.170 Alarm board maintenance.
- 5.12.180 False alarm – Public nuisance.
- 5.12.190 Enforcement of provisions.

#### **5.12.010 Definitions.**

1.a. “Alarm agent” means any person who is employed by an alarm business operator, either directly or indirectly, who does not respond to activated alarms but whose duties include any of the following: maintaining, leasing, servicing, repairing, altering, installing, replacing or moving on or in any building, structure or facility, any alarm system.

b. Exemption. The provisions of this section do not include a person who engages in the manufacture or sale of an alarm system from a fixed location and who neither visits the location where the alarm system is to be installed, nor designs the scheme for physical location and installation of the alarm system in a specific location.

2. “Alarm business” means the business of any person consisting of: selling and installing, maintaining, servicing, altering, replacing or moving any alarm system or component parts thereof in or on any building, structure or facility responding to alarm systems.

3. “Alarm business operator” means any person who operates any business engaged in the sale and

installation, maintenance, alteration or servicing the alarm systems, or which responds to such alarm systems. Alarm business operator does not include a business which merely sells from a fixed location or manufactures alarm systems, unless such business services, installs, monitors or responds to alarm systems at protected premises.

4. "Alarm system" means any assembly of equipment and devices designed to signal the presence of a potential hazard which terminates at the police department communications center, relayed by an alarm answering service or any other audible or silent alarm device to which the police are expected to respond. In this chapter, the term "alarm system" includes the terms "automatic robbery alarm systems," "burglar alarm systems," "robbery alarm systems," "manual robbery alarm systems" and "intrusion alarms" as those terms are defined in this chapter. Fire alarm systems and alarm systems which monitor temperature, humidity or anything other than an unauthorized intrusion into a premises or an attempted burglary or robbery at a premises are specifically excluded from the provisions of this chapter.

5. "Alarm user" means any person on whose premises an alarm system is maintained within the city, except for alarm systems on motor vehicles or proprietary systems. If, however, an alarm system on a motor vehicle is connected with an alarm system at a premises (other than a proprietary system), the person using such a system is an alarm user. Also excluded from this definition and from the coverage of this chapter are persons who use alarm systems to alert or signal persons within the premises in which the alarm system is located, of an attempted burglary, unauthorized intrusion or robbery attempt. If such a system, however, employs an audible signal emitting sounds or a flashing light or beacon designed to signal persons outside the premises, such system shall be within the definition of alarm system and shall be subject to this chapter.

6. "Annunciator" means the instrumentation on an alarm console at the receiving terminal of a signal line which through both visual and audible signals shows when an alarm device at a particular location has been activated or indicates line trouble.

7. "ANSI" means the American National Standards Institute.

8. "Answering service" means a telephone answering service which receives emergency sig-

nals from alarm systems on a continuous basis through trained employees, and thereafter immediately relays the messages from such signals by live voice to the communication center of the police department.

9. "Audible alarm" means any device or system designed to signal the presence of a potential hazard which when activated is capable of being heard within the premises or the immediate area thereof.

10. "Automatic dialing system" means an alarm system which automatically sends over regular telephone lines, by direct connection or otherwise, a prerecorded voice message indicating the existence of the emergency situation that the alarm system is designed to detect.

11. "Automatic robbery alarm system" means an alarm system in which the signal transmission is initiated by the action of the robber.

12. "Central station" means an office to which remote alarm and supervisory signaling devices are connected, where operators supervise the circuits and where guards are maintained continuously to investigate signals.

13. "Central station equipment" means the signal receiving, recording or retransmitting equipment installed in the central station.

14. "Central station system" means a system in which the operation of electrical protection circuits and devices are signaled automatically to, recorded in, maintained and supervised from a central station having trained operators and guard in attendance at all times.

15. "Commercial alarm" means an alarm installed on premises which are primarily used for one or more of the following:

- a. Business providing sales, service or both;
- b. Public agency or nonprofit entity or organization providing service to the general public or a significant segment thereof. The term "commercial alarm" does not include any alarm installed on premises primarily used for residential purposes.

16. "Communications center" means the city police department communications center maintained to receive and dispatch telephone and radio messages requiring action of police, fire and other departments of the city.

17. "Direct connect" means an alarm system which has the capability of transmitting system signals to and receiving them at an agency maintained

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by a local governmental agency, such as a city or police communications center.

18. "Direct line" means a telephone line leading directly from a central station to the communications center of the city that is for use only to report emergency signals on a person-to-person basis.

19. "Emergency" means the occurrence of a criminal event which requires the immediate response of local law enforcement, fire or medical agencies.

20. "False alarm" means the activation of an alarm system through mechanical failure, malfunction, improper installation or maintenance or the negligence of the owner, lessee or of his employees or agents. Such terminology does not include, for example, alarms caused by hurricanes, tornadoes, earthquakes or other violent, uncontrollable acts of nature.

21. "Robbery alarm system" means an alarm system signaling a robbery or attempted robbery.

22. "Interconnect" means to connect an alarm system to a voice-grade telephone line, either directly or through a mechanical device that utilizes a standard telephone for the purpose of using the telephone line to transmit an emergency message upon the activation of the alarm.

23. "Intrusion alarm system" means an alarm system signaling an entry or attempted entry into the area protected by the system.

24. "Local alarm system" refers to a signaling system which when activated causes an audible and/or visual signaling device to be activated in or on the premises within which the system is installed.

25. "Manual hold-up alarm system" means an alarm system in which the signal transmission is initiated by the direct action of the person attacked or by an observer of the attack.

26. "Modified central station" means an office to which remote alarm and supervisory signaling devices are connected, where operators supervise the circuits. Such modified central station is not listed by Underwriters' Laboratories.

27. "Police chief" means the chief of police of the police department or his designated representative.

28. "Police" or "police department" means the Livermore police department.

29. "Primary trunk line" means a telephone line leading directly into the communications center of

the city for the purpose of handling emergency calls on a person-to-person basis, and which is identified as such by a specific number included among the emergency numbers listed in the telephone directory issued by the telephone company and covering the service area within the police department's jurisdiction.

30. "Proprietary system" means an alarm system sounding and/or recording alarm and supervisory signals at a control center located within the protected premises, and under the supervision of the proprietor of the protected premises. If a proprietary system includes a signal line connected directly or by means of an automatic dialing device to a police communications center, a central station, modified central station or answering service, it thereby becomes an "alarm system" as defined in this section.

31. "Remote signaling system" means an alarm signaling system which, when activated by an alarm device, transmits a signal from an alarm signaling device to a central location, other than the communications center, where appropriate action is taken to investigate and respond to the signal.

32. "Signal line" means the transmission line through which the signal passes from one of the elements of the signal transmission to another.

33. "Special trunk line" means a telephone line leading into the communications center of the city which has the primary purpose of handling emergency signals or messages originating either directly or through a central location from automatic dialing devices.

34. "Subscriber" means a person who buys and/or leases or otherwise obtains an alarm signaling system and thereafter contracts with or hires an alarm business to monitor and/or service the alarm device.

35. "Telephone company" means the utility that furnishes telephone service to the city. (Ord. 1218 § 2, 1986)

### 5.12.020 Applicability to existing alarms.

A. The provisions of this chapter shall be applicable to persons now having any alarm system as described in this chapter.

B. Alarm systems must be brought within standards set forth in this chapter within 90 days of the effective date of the ordinance codified in this chapter. (Ord. 1218 § 2, 1986)

**5.12.030 Exemptions to chapter applicability.**

The provisions of this chapter are not applicable to audible alarms affixed to motor vehicles, or proprietor alarms designed to alert the occupants of a building only, of a potential hazard, and to which the police are not expected to respond. A proprietor alarm system which emits a sound or light discernible from the exterior of the building shall not be exempt. (Ord. 1218 § 2, 1986)

**5.12.040 Permit – Required.**

A. A permit shall be required for each alarm system installed, connected, operated or maintained, or caused to be installed, connected, operated or maintained within the city limits of the city.

B. A separate permit shall be required for:

1. Each separate building protected by an alarm system;
2. Each separate business entity within a mall or other shared building.

C. Each permit shall represent a separate system, and false alarm records shall be kept for each separate alarm.

D. Each permit issued for a separate building or business entity shall be subject to the permit fee.

E. The permit shall be kept on the premises the alarm system is designed to protect, and presented to police officer or other city official upon request. (Ord. 1218 § 2, 1986)

**5.12.050 Permit – Application and issuance.**

A. The issuing authority shall be the chief of police.

B. Application Forms. Applications for all permits required under this chapter shall be filed with the chief of police accompanied by the requisite fee. The chief of police shall prescribe the form of the application, and request such information as is necessary to evaluate and act upon the permit application.

C. Investigation of Applications; Alarm Business and Alarm Agent. The chief of police shall conduct an investigation of the applicant to determine his character, reputation and moral integrity; provided, further, the chief of police, at his discretion, may dispense with the investigation upon being furnished with an authenticated copy of a current permit issued by another governmental agency. The permit shall be denied if the character, reputation or moral integrity of the applicant is

determined to be inimical to the safety or general welfare of the community, or if the applicant falsifies any information in the permit application.

D. Alarm Systems, Proprietor Alarms, Audible Alarms. Permits shall be issued to the person owning, using or possessing the alarm system, proprietor alarm or audible alarm. Alarm businesses shall procure and process applications for their commercial subscribers. The subscribers shall forward the completed application to the alarm business servicing the system, and the permit fee shall be collected from the subscriber by the alarm business and transmitted, together with the application, forthwith to the chief of police. Where the proprietor alarm or audible alarm is in operation and not serviced by a business, the application for the permit and payment of the permit fee shall be made directly to the chief of police.

E. Nontransferable. No permit issued pursuant to the provisions of this chapter shall be transferable. (Ord. 1218 § 2, 1986)

**5.12.060 Permit – Fee.**

A. The permit fee shall be paid in the amount designated by city council resolution.

B. The permit shall be renewable and fee payable annually within 30 days of the expiration date of the permit.

C. Fee Exemptions. The United States Government, the state of California, counties, municipal corporations, departments thereof and other governmental entities are exempt from the fee requirement. (Ord. 1218 § 2, 1986)

**5.12.070 Licensing.**

A. Alarm Business. A business license issued pursuant to Chapter 3.08 LMC shall be required of all permits engaging in an alarm business within the city limits. In addition, each alarm business is required to be licensed by the state, and to comply with the provisions set forth in Chapter 11.6 (commencing with Section 7590) of the Business and Professions Code. Each alarm business shall file with the chief of police a copy of its state license.

B. Alarm Agent. Each alarm agent is required to be licensed by the state, and to comply with the provisions set forth in Chapter 11.6 (commencing with Section 7590) of the Business and Professions Code. In addition, each alarm agent shall file with the chief of police a current copy of his or her state license. (Ord. 1218 § 2, 1986)

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### 5.12.080 Permit – Suspension or revocation – Grounds.

A. The chief of police may suspend or revoke a permit on the following grounds:

1. The violation of any of the provisions of this chapter or failure to comply with the same.

2. When the alarm system actuates excessive false alarms and thereby constitutes a public nuisance.

3. Where the applicant or permittee knowingly makes any false, misleading or fraudulent statement of a material fact in the application for a permit of in any report or record to be filed with the city.

4. Failure to pay the fines for excessive false alarms within 14 days after receipt of the letter advising of such false alarms.

5. Failure to renew the permit and pay the renewal fee within 30 days after its expiration.

B. The suspension shall become a revocation 15 days after the order of suspension becomes effective, unless the permittee files an appeal of the order of suspension with the chief of police and requests a hearing.

C. If a permit is revoked pursuant to this chapter, the permittee shall surrender the permit to the chief of police.

D. A revoked permit shall not be reinstated for a period of one year from the time of its revocation. At that time the alarm user must reapply for an alarm system permit and pay the permit fee.

E. Upon showing that the alarm system has been replaced or completely renovated and the problem eliminated, and with the approval of the chief of police, the alarm user may apply for, pay the required fee and be issued a permit prior to the elapse of one year's time. (Ord. 1218 § 2, 1986)

### 5.12.090 Permit – Suspension or revocation – Hearing.

A. When an appeal of a suspension and a request for a hearing are filed with the chief of police, the order of suspension shall be stayed pending a determination by the chief of police as to the validity of the suspension.

B. The chief of police shall mail a notice to the permittee setting forth the time, place and nature of the hearing seven business days prior to the hearing.

C. The permittee may have the suspension decision set aside by giving written notice of the cause

of the false alarm problem and steps taken to correct it, within 15 days of the notice of suspension, and upon approval of the chief of police.

D. If the chief of police upholds the order of suspension, such suspension shall immediately become a revocation. If the order is reversed, the suspension shall be dissolved immediately. (Ord. 1218 § 2, 1986)

### 5.12.100 Appeal procedure.

A. Any permittee may appeal the decision of the chief of police by filing a written notice of appeal with the city clerk within five business days after the decision.

B. Such appeal shall be heard by the city council, which may affirm, amend or reverse the decision, or take other action deemed appropriate, subject to the same limitations as placed on the chief of police, as contained in LMC 5.12.080.

C. The city clerk shall give written notice of the time and place of the hearing to the appellant.

D. In conducting the hearing, the city council shall not be limited by the technical rules of evidence. (Ord. 1218 § 2, 1986)

### 5.12.110 Rules and regulations – Police chief authority.

The chief of police is authorized to establish rules and regulations for the governance of alarm systems in the city, and in administering such rules and regulations the chief of police may take such actions as may be required to insure operation of all alarm systems. (Ord. 1218 § 2, 1986)

### 5.12.120 Alarm system standards.

A. Equipment, Devices or Components. All alarm systems, equipment and devices installed within the city shall have the Underwriters' Laboratories (UL) approval. Such approval is not required if:

1. The alarm system is under UL testing and may be installed for a period of not to exceed six months, unless UL approval received prior; or

2. The alarm system receives the approval of the chief of police and has been shown to be substantially equivalent to, or to exceed UL testing standards.

a. The burden shall be upon the applicant to show equivalency.

b. The chief of police may require documentation and certification from a qualified authority to make exception determination.

B. Back-up Power Supply. All alarm systems shall have back-up power supply which:

1. Automatically assumes operation of the alarm system should interruption to power occur to the system;

2. Transfer from primary to back-up power supply must occur without activating the alarm; and

3. Supply adequate power to the alarm system for a minimum of four hours.

C. Audible Alarm Systems.

1. Audible alarm systems may not emit a sound or siren similar to those utilized on emergency vehicles, or for air raid/disaster warnings. Variable pitch sound shall be deemed similar to the sound of sirens, and prohibited. Such systems must be equipped with automatic shut-off or reset timing devices, which allows the alarm to sound no longer than 15 minutes after activation. Notice shall be posted on or near the alarm, in a position legible from ground level adjacent to the building, containing the name and phone number of a person to be notified to render repairs or service at any time, day or night, the alarm sounds.

2. The systems must be able to discern between open and closed circuit. If open circuit is detected, the system shall not reset, eliminating reactivation of the system every 15 minutes.

D. Instruction as to Operation of Alarm System. It shall be the responsibility of the alarm business or alarm agent installing or repairing, operating or maintaining an alarm system to instruct the subscriber and/or occupant, or permittee in possession of the property the alarm system is designed to protect, in the proper use and operation of the alarm system. This shall include all necessary instruction in turning on/off the alarm, and in avoiding false alarms. It is the responsibility of the permittee to instruct all employees or other persons with access to or control over the premises for which the alarm system is designed to protect, in the proper use and operation of the alarm system, including all necessary instruction in turning on/off the alarm, and in avoiding false alarms.

E. Service Notification. Each alarm business, alarm agent or permittee shall notify the police department whenever a subscriber's or permittee's alarm system is under service or repair, and the

system may be activated causing police response. (Ord. 1218 § 2, 1986)

#### **5.12.130 Connection fee.**

A. A person permitted to have an alarm system terminate at the police department alarm board shall pay the actual cost of connection and any fee incurred if subsequently disconnected. The permittee shall give 15 days prior written notice to the chief of police when the permittee intends to discontinue service or disconnect the alarm system.

B. In addition, a monthly rental/maintenance fee shall be charged. The monthly fee is to be set by council resolution. The fee is to be paid quarterly, at the beginning of each quarter. The fee is nonrefundable and not proratable. (Ord. 1218 § 2, 1986)

#### **5.12.140 Alarm agent requirements.**

Every person engaged in the business of making, selling, repairing, servicing, altering, replacing, removing or installing a burglar alarm system shall carry on his person, at all times while so engaged, a valid alarm-agent permit issued pursuant to the provisions of this chapter, and shall display such permit to any police officer upon request. (Ord. 1218 § 2, 1986)

#### **5.12.150 Unlawful acts designated.**

A. Alarm Business. No person shall engage in, conduct or carry on an alarm business without first applying for and receiving a permit therefor in accordance with the requirements of this chapter, and comply with the provisions set forth in Chapter 11.6 (commencing with Section 7590) of the Business and Professions Code of the state.

B. Alarm Agent. No person shall engage in, represent himself to be or operate as an alarm agent without first applying for and receiving a permit therefor in accordance with the provisions of this chapter, and comply with the provisions set forth in Chapter 11.6 (commencing with Section 7595) of the Business and Professions Code of the state.

C. Alarm Systems. No person shall own, operate, install, connect, maintain or cause to be, an alarm system without obtaining an alarm permit in accordance with the provisions of this chapter. No person shall operate, install, connect, maintain, or cause to be, an alarm system on suspended permit or revoked.

## 5.12.160

D. Audible Alarm System. No audible alarm may sound for a period of 15 minutes each time the alarm is activated. No audible alarm shall emit a sound similar to that of a siren.

E. Automatic Calling Devices.

1. No person shall use, operate, cause, arrange, adjust, program or otherwise provide or install any device or combination of devices that will upon activation, mechanically, electronically or by other automatic means, call and deliver a pre-recorded message to any phone number used to receive emergency or administrative messages by the police department communications center.

2. Such devices may be used to deliver messages to an alarm company or answering service, which in turn will call the police department and relay the message by live voice. (Ord. 1218 § 2, 1986)

### 5.12.160 Direct connections.

A. Only commercial intrusion or robbery alarm systems are allowed to terminate at the police department communications center alarm board. An alarm user or alarm agent must apply for a permit for such a direct connection. Permits are subject to the approval of the chief of police.

B. The chief of police shall base his determination of approval upon the following considerations:

1. Need for police department monitoring of one particular alarm versus the need for police department monitoring of other alarms;

2. Demands of other police department operations; and

3. Availability of space, equipment and personnel.

C. The chief of police shall base determination of denial or disconnection upon the following considerations:

1. Lack of compelling need for the police department to monitor one particular alarm over other alarms;

2. Improper training of alarm personnel at the alarm location resulting in excess false alarms;

3. Failure to pay the prescribed fees;

4. Intentional activation of alarm systems for reasons or offenses other than probable burglaries or robberies;

5. Failure of responsible persons to respond at any time to location of an errant alarm for maintenance repairs, or when requested by officers to

secure premises or open premises for search for possible suspects or evidence of a crime, and

6. Failure to comply with any other provisions of this chapter. (Ord. 1218 § 2, 1986)

### 5.12.170 Alarm board maintenance.

A. The city shall have the authority to contract with one licensed alarm business to install and maintain an annunciator panel, meeting standards set by the chief of police in the communications center at the police department.

B. This section applies only to the annunciator panel or connections to the annunciator panel. A permittee, allowed to terminate his/her alarm system in the communications center of the police department, may contract with any licensed alarm business of his/her choice for the sale, installation, maintenance, and/or servicing of the alarm system installed on its premises.

C. The permittee, or alarm business contracted to service the permittee's alarm system, shall be responsible for obtaining the leased telephone line between the permittee's system and the alarm board in the communications center, and interface equipment if required.

D. Contracted alarm businesses shall repair and maintain the monitoring system in good and operable condition. The contractor shall respond immediately to requests for repairs at any time, day or night. The contractor shall maintain a readily available supply of parts and equipment necessary for repairs and maintenance.

E. Services provided by the contractor pursuant to this chapter shall be under the supervision of the chief of police, and performed to his reasonable satisfaction.

F. The contractor shall have the exclusive right to manage the alarm board system, including the exclusive right to provide alarm system users connections, subject to satisfactory performance of agreement.

G. Indemnification. The contractor shall indemnify the city from suits, actions, etc., arising out of performance, or failure to perform, of the contractor pursuant to this chapter. (Ord. 1218 § 2, 1986)

### 5.12.180 False alarm – Public nuisance.

A. False alarms originating from alarm systems for which a permit is required, or has been issued

pursuant to the provisions of this chapter, shall be deemed excessive and a public nuisance whenever:

1. Three or more false alarms are activated within any 30-consecutive-day period; or

2. Six or more false alarms are activated within any 90-consecutive-day period.

B. Fines shall be assessed as follows:

1. A \$25.00 fine shall be assessed for each false alarm in excess of that number allowed for any 30-consecutive-day period.

2. A \$50.00 fine shall be assessed for each false alarm in excess of that number allowed for any 90-consecutive-day period.

C. Administrative Action.

1. After the second false alarm within any 30-consecutive-day period, a warning letter shall be mailed to the alarm user advising them of the fine and/or possible suspension of their alarm permit for further false alarm activations.

2. After the fourth false alarm within any 30-consecutive-day period, a letter of intent to suspend the alarm user's permit shall be mailed, advising them that if a fifth false alarm is activated within the 30-day period, their permit shall be suspended.

3. After the fifth alarm within any 30-consecutive-day period, a letter of suspension shall be mailed to the alarm user advising him/her that his/her alarm system has been put on a no-police-response status, that further activation of the alarm system is a violation of this chapter and is subject to prosecution, and of the procedure for appealing the suspension.

4. After any 30- to 90-consecutive-day period in which an alarm user has excessive false alarms, a letter shall be mailed to the alarm user advising them of the number of excessive false alarms, and the amount of the fine due the city. The fine shall be paid within 14 days after receipt of the letter or the alarm user's permit shall be suspended, and their alarm system placed on a no-police-response status. (Ord. 1218 § 2, 1986)

prosecution for violation of any of the provisions of this chapter. All remedies shall be cumulative and the use of one or more remedies by the city shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter. The amount of any permit fee shall be deemed a debt to the city. An action may be commenced in the name of the city in any court of competent jurisdiction for the amount of any delinquent permit fee. All permit fees shall be deemed delinquent 30 days after they are due and payable. (Ord. 1218 § 2, 1986)

#### **5.12.190 Enforcement of provisions.**

The conviction or punishment of any person for violation of the provisions of this chapter or for failing to secure a permit as required by this chapter shall not relieve the person from paying the permit fee due and unpaid at the time of the conviction, nor shall payment of any permit fee prevent criminal

Chapter 5.16

BINGO

Sections:

- 5.16.010 Bingo defined.
- 5.16.020 Organizations eligible to conduct games.
- 5.16.030 Permit – Application requirements.
- 5.16.040 Permit – Term and fees.
- 5.16.050 Investigation.
- 5.16.060 Permit – Contents.
- 5.16.070 Permit – Posting on premises – Transferability.
- 5.16.080 Premises open to public – Participation restrictions.
- 5.16.090 Operation and staffing of games.
- 5.16.100 Profits and proceeds – Recordkeeping requirements.
- 5.16.110 Prizes.
- 5.16.120 Minors and intoxicated persons prohibited.
- 5.16.130 Financial interest prohibited when.
- 5.16.140 Suspension of games and revocation of permit – Conditions.
- 5.16.150 Appeal procedure.
- 5.16.160 Violation – Penalty.

5.16.010 Bingo defined.

“Bingo” means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card which conform to numbers or symbols selected at random. (1960 code § 5B.1)

5.16.020 Organizations eligible to conduct games.

Pursuant to Penal Code Section 326.5, those organizations exempt from the payment of tax by Revenue and Taxation Code Section 23701(a), (b), (d), (e), (f), (g) and (1), as well as mobile home park associations and senior citizens’ organizations, are hereby allowed to conduct bingo games in the city if the organizations have complied with this chapter. (1960 code § 5B.2)

5.16.030 Permit – Application requirements.

A. Any organization desiring to conduct a bingo game shall file an application with the chief of police. The application shall contain the following information:

1. The name of the organization and a copy of its certificate of eligibility issued by the franchise tax board if the organization is exempt from

taxes by Revenue and Taxation Code Section 23701(a), (b), (d), (e), (f), (g) and (1). If the applicant claims eligibility as a mobile home association or a senior citizens’ organization, a statement describing the membership and purposes of the organization should be submitted;

2. The name and signature of at least two officers, including the presiding officer of the organization;

3. The location where the bingo game will be conducted, together with the occupancy capacity of such place.

B. The application shall be filed by the applicant under penalty of perjury. (1960 code § 5B.3)

5.16.040 Permit – Term and fees.

A permit shall be valid for one year. The fee for the permit shall be set by resolution in an amount to cover the actual costs of administration. If an application is denied, one-half of the fee shall be refunded. (Ord. 1183 § 1, 1985; Ord. 1162 § 1, 1984; 1960 code § 5B.4)

5.16.050 Investigation.

Upon receipt of the application and fee, the chief of police shall have 14 days either to issue the permit or to deny it with a written statement of the reasons for doing so. During that time he may consult with the building inspector, fire department or any other city agency to determine if the location of the game meets applicable city standards. (1960 code § 5B.5)

5.16.060 Permit – Contents.

The permit shall contain the following information:

- A. The name of the organization;
- B. The address where the bingo game is authorized to be conducted;
- C. The occupancy capacity of the room;
- D. The expiration date of the permit. (1960 code § 5B.6)

5.16.070 Permit – Posting on premises – Transferability.

A permit shall be kept on the premises where bingo is conducted. A separate permit shall be required for each location where bingo games are conducted. Permits shall not be transferable from one location to another. (1960 code § 5B.7)

**5.16.080 Premises open to public – Participation restrictions.**

Bingo games shall be open to the public. It is unlawful for any person to participate in a bingo game unless such person is physically present at the time and place the bingo game is being conducted. (1960 code § 5B.9)

**5.16.090 Operation and staffing of games.**

A bingo game shall be staffed by members of the organization which obtained the permit. The members shall not receive a profit, wage or salary from any bingo game. Only the organization which obtained the permit shall operate, promote and supervise the game. (1960 code § 5B.10)

**5.16.100 Profits and proceeds – Recordkeeping requirements.**

In order to assure compliance with subsections A and B of this section, organizations shall keep complete records of both the profits and proceeds collected from the operation of bingo games. Such records shall be retained for at least three years. No organization required to keep records shall refuse to allow authorized representatives of the city to examine such records at reasonable times and places:

A. Requirements of Exempt Organizations. Organizations exempt from taxation pursuant to Revenue and Taxation Code Section 23701(d) shall keep all profits derived from bingo in a special fund or account, and the profits shall not be commingled with any other fund or account. Such profits shall be used only for charitable purposes.

B. Requirements of Other Eligible Organizations. All other eligible organizations authorized to conduct bingo games shall keep all proceeds in a special fund or account, and shall not commingle them with any other fund. The proceeds may be used for the following purposes:

1. Prizes not exceeding \$250.00 in cash or kind, or both, for each separate game;
2. Ten percent of the proceeds (after deduction for prizes) or \$500.00, whichever is less in any one month, may be used for rental expenses, overhead and administrative expenses;
3. Any remaining proceeds shall be used only for charitable purposes. (1960 code § 5B.12)

**5.16.110 Prizes.**

The total value of prizes awarded during the conduct of any bingo game shall not exceed \$250.00 in cash or kind, or both, for each separate game which is held. (1960 code § 5B.13)

**5.16.120 Minors and intoxicated persons prohibited.**

No person under the age of 18 years shall be allowed to participate in any bingo game. No person who is obviously intoxicated shall be allowed to participate in a bingo game. (1960 code § 5B.8)

**5.16.130 Financial interest prohibited when.**

It is unlawful for any individual, corporation, partnership or other legal entity, except the organization authorized to conduct a bingo game, to hold financial interest in the conduct of such bingo game. (1960 code § 5B.11)

**5.16.140 Suspension of games and revocation of permit – Conditions.**

A. If any bingo game is conducted in violation of this chapter, the chief of police, or his representative, may stop any bingo game in progress and initiate proceedings in accordance with this section.

B. If a permit has been issued and the chief of police determines that the permit is revocable because of violation of this chapter, he shall serve the permittee a notice of intent with the reason for the proposed revocation. The notice shall provide for revocation within seven days after service of the notice, unless the permittee requests an informal hearing with the chief of police.

C. The chief of police shall give at least five days' prior written notice of the time and place of the hearing. A written decision shall be issued within seven days after the hearing. (1960 code § 5B.14)

**5.16.150 Appeal procedure.**

Application for appeal of a revocation of denial of a permit may be made to the city council by filing a written notice with the city clerk within 14 days following the decision. (1960 code § 5B.15)

**5.16.160 Violation – Penalty.**

No person shall pay or receive a profit, wage or salary from any bingo game authorized under this

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chapter. Payment or receipt of a profit, wage or salary shall be punishable by a fine up to \$10,000, and is a misdemeanor. Any other violation of this chapter shall be a misdemeanor. (1960 code § 5B.16)

**Chapter 5.20**

**CARDROOMS**

Sections:

- 5.20.010 Cardroom defined.
- 5.20.015 Exception – Fundraisers by nonprofit organizations.
- 5.20.020 Chapter does not permit games prohibited by state law.
- 5.20.030 License – Required.
- 5.20.040 License – Application – Fingerprints required – Renewal – Continuing obligation to provide current information.
- 5.20.050 License – Only one license per person – Transferability.
- 5.20.060 License – Fee – Exceptions.
- 5.20.070 License – Denial by chief of police – Grounds.
- 5.20.080 Change of location – Approval required.
- 5.20.090 Employee work permits – Required when.
- 5.20.100 Employee work permits – Application.
- 5.20.110 Employee work permits – Issuance restrictions.
- 5.20.120 Employee work permits – Term – Renewal not required upon change in place of employment.
- 5.20.130 Employee work permits – Denial conditions – Appeal.
- 5.20.140 Suspension and revocation of license and work permits.
- 5.20.150 Number of tables – Limitation.
- 5.20.160 Operation – Rules and regulations.
- 5.20.170 Patron safety and security.

**5.20.010 Cardroom defined.**

For the purpose of this chapter, a “cardroom” means any space, room or enclosure furnished or equipped with a table used or intended to be used as a card table for the playing of cards and similar games, and the use of which is available to the public or any portion of the public; provided, however, that this section shall not apply to any bona fide nonprofit society, club, fraternal, labor or other organization as defined in LMC 5.20.060. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

**5.20.015 Exception – Fundraisers by nonprofit organizations.**

The regulations in this chapter shall not apply to a nonprofit organization conducting a fundraiser using controlled games as a funding mechanism when the fundraiser is conducted in compliance with the requirements of Business and Professions Code Section 19986 and the regulations adopted by the Division of Gambling Control to effectuate that statute, and is preapproved by the Division of Gambling Control. A nonprofit organization shall obtain a temporary use permit as provided in the Livermore Development Code before conducting a fundraiser excepted from the regulations of this chapter. (Ord. 1901 § 3 (Exh. A § 12), 2010; Ord. 1883 § 1 (Exh. A), 2009)

**5.20.020 Chapter does not permit games prohibited by state law.**

The council of the city declares that it is not the intention of this chapter to permit the licensing of any cardroom for the playing of any game prohibited by the laws of the state, including, but not limited to, those games enumerated in Section 330 of the Penal Code of the state, which section includes banking and percentage games. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

**5.20.030 License – Required.**

A cardroom use may not be established by right. It is unlawful for any person, for himself, herself, or for any other person, to establish, own, or operate a cardroom in the city, unless the person first obtains the following:

A. A valid cardroom license from the city in compliance with this chapter; and

B. All valid licenses required by the California Department of Justice, Division of Gambling Control and the California Gambling Control Commission pursuant to the Gambling Control Act (California Business and Professions Code Section 19800 et seq., as it may be amended from time to time) for the cardroom, each person who has a financial interest in the cardroom, and for all key employees as that term may be defined by the Gambling Control Act and both Division 18, Title 4 and Division 3, Title 11 of the California Code of Regulations. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

**5.20.040 License – Application – Fingerprints required – Renewal – Continuing obligation to provide current information.**

A. Any person who wishes to establish, own, or operate a cardroom within the city shall file with the chief of police a license application on a standard form supplied by the city and shall pay an application filing fee as established by resolution of the city council. The applicant has the responsibility and the burden to supply evidence to justify the grant of a cardroom license. If the applicant is other than an individual, an officer of the business entity or an individual with the majority interest therein shall sign the application. All applications shall include the following information:

## 1. Identifying information:

a. If the applicant is an individual, the individual shall state his or her legal name, including any aliases, and address, and submit satisfactory written proof that he or she is at least 18 years of age.

b. If the applicant is a partnership, the applicant shall state the partnership's complete name, the address for the partnership's principal place of business, the names and current addresses of all partners, and whether the partnership is general or limited. The applicant shall also attach to the application a current copy of the partnership agreement.

c. If the applicant is a corporation, the applicant shall state the corporation's complete name and corporate identification number, the state of incorporation, the date of its incorporation, evidence that the corporation is qualified to do business and in good standing under the laws of California, the names, addresses, and capacities of all officers and directors, the names of any related parent or subsidiary corporations, and the name of the registered corporate agent and the address of the registered office for service of process.

d. If the applicant intends to operate the cardroom under any name other than that of the applicant, the applicant shall file and maintain a fictitious business name statement in Alameda County. The applicant shall also attach to the application proof of registration of the fictitious name.

2. The applicant's telephone number and address to which correspondence related to the

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application, including the notice of action, is to be delivered.

3. The street address, building number, and assessor's parcel number for the location where the proposed cardroom is to be established.

4. The applicant shall sign the application under penalty of perjury stating that the information contained in the application is true and correct.

5. The applicant also shall complete and sign the standard background investigation form supplied by the Livermore police department, and provide the following information and documents:

a. The full name and aliases, current home address, date of birth, social security number, and a copy of the driver's license or identification card issued by a state Department of Motor Vehicles for the applicant and each person who has a financial interest in the cardroom;

b. The past criminal record, if any, of the applicant and of all persons financially interested in the cardroom;

c. A passport-size photograph and the fingerprints of the applicant and of all persons financially interested in the cardroom taken by the Livermore police department;

d. The employment history, business, or occupation of the applicant for the three-year period immediately preceding the date the application is submitted; and

e. The residential and employment, business or occupation address for the applicant, each person who has a financial interest in the cardroom, all key employees, and all partners and controlling members of a corporation which will establish, own, and operate the cardroom.

6. A copy of each license issued by the California Department of Justice, Division of Gambling Control and the California Gambling Control Commission pursuant to the California Gambling Control Act, for the cardroom, for each owner who has a financial interest in the cardroom, and for each employee that was issued a license but is not required to obtain an employee work permit from the city pursuant to LMC 5.20.090.

7. Any approval by the California Department of Justice, Division of Gambling Control of an agent for the applicant along with the true names and addresses of any such agent.

8. Proof of registration of the cardroom by the California Department of Justice pursuant to

the Gambling Control Act and Chapter 6, Division 1, Title 11 of the California Code of Regulations.

9. A plan for the security and safety of patrons as required by LMC 5.20.170.

B. If an applicant has applied to the California Department of Justice, Division of Gambling Control and the California Gambling Control Commission for a license or registration required by the Gambling Control Act, but the state has not issued the license and registration prior to the applicant's application for a city cardroom license, the applicant shall provide the chief of police with true and correct copies of the completed applications furnished to the state. However, the applicant shall submit a true and correct copy of each license and registration prior to the city's issuance of a cardroom license.

C. A city-issued cardroom license shall be valid for a period of one year, unless revoked or suspended by the chief of police, or surrendered by a licensee. Any valid city cardroom license in effect on January 1, 2009, shall be deemed to have been awarded pursuant to this chapter on that date and shall expire December 31, 2010, unless revoked, suspended, or renewed prior to that date.

D. A cardroom licensee shall be under a continuing obligation to provide the chief of police current information regarding the items required by subsection A of this section. Applicant shall notify the chief of police within 10 calendar days of any changes to the items required by subsection A of this section, except for changes to a criminal record which shall be provided within 48 hours of any change.

E. A valid city cardroom license may be renewed in accordance with the following process:

1. The licensee shall file with the chief of police a renewal application no later than 60 days before the anniversary date of the license to be renewed, otherwise the licensee must submit an application for a new license;

2. The renewal application shall include the information required by subsection A of this section and comply with this chapter;

3. The renewal application shall include the following statement signed by the applicant under penalty of perjury:

I hereby state that the cardroom has been operated consistent with this chapter and/or the Gambling Control Act at all

times during the term of the license to be renewed; and that there has been no change in the fitness of the following persons to establish, own or operate a cardroom: each person who established, owned, or operated or had a financial interest in the cardroom, all key employees, and all partners and controlling members of a corporation.

Dated:\_\_\_\_\_ Signed:\_\_\_\_\_

4. The chief of police shall renew the cardroom license for an additional one-year term unless he or she finds the cardroom was not operated consistent with the requirements of this chapter and the Gambling Control Act or sufficient grounds exist pursuant to LMC 5.20.070 to deny the renewal application. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

**5.20.050 License – Only one license per person – Transferability.**

No person shall be granted a license to conduct more than one cardroom. No cardroom license shall be assignable or transferable. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

**5.20.060 License – Fee – Exceptions.**

A. A fee charged for a cardroom license, and any renewal thereof, shall be set by resolution in an amount to cover the actual cost incurred in administering the provisions of this chapter.

B. This fee shall be in addition to the business license tax imposed by LMC 3.08.060.

C. A nonprofit society, club, or fraternal, labor, or other organization having adopted bylaws and duly elected directors and members may be granted a license without fee by the chief of police when it appears the tables are for the exclusive use of members of the society, club, or fraternal, labor or other organization and no charge is made for any of the facilities.

D. A nonprofit organization as defined by Business and Professions Code Section 19986(h) may be granted a license without fee by the chief of police to conduct a fundraiser provided the fundraiser is approved by the California Department of Justice, Division of Gambling Control, and satisfies the regulations in both California Business and Professions Code Section 19986 and Chapter 1,

Division 3, Title 11 of the California Code of Regulations, as those regulations may be amended from time to time. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

**5.20.070 License – Denial by chief of police – Grounds.**

A. The chief of police shall deny any application for a cardroom license if:

1. The operation of a cardroom at the proposed location will aggravate the crime problems in the area, or otherwise be detrimental to crime prevention or be detrimental to the public peace, health, welfare or safety in the area; or

2. A report of the chief of police, fire chief, building official, or planning manager indicates that issuance of the license would result in a violation of the laws or regulations administered by those officials; or

3. The applicant, its owners, officers, or employees are unfit to operate a cardroom business. In making such determination, the chief of police may consider:

a. The commission of any acts by the applicant, its owners, officers, or employees involving dishonesty, fraud, or deceit with the intent to benefit substantially oneself or another, or substantially injure another;

b. The license and permit history of the applicant, its owners, officers, and employees, and whether such person in previously operating in this or another state under a license or permit has had such license or permit revoked, denied, or suspended, the reasons for such action, and the resulting actions of such persons;

c. Any previous convictions of the applicant, its owners, officers, and employees for any crimes involving dishonesty, fraud, or the use of narcotics; or

4. The applicant has failed to comply with or is not in conformance with any of the provisions of the Livermore Municipal Code, the Livermore zoning ordinance, or other laws applicable to the premises, equipment, or operation of the business for which a permit is requested; or

5. The applicant has knowingly made false statements in the application; or

6. The applicant has failed to obtain or maintain a license or registration required by the Department of Justice, Division of Gambling Con-

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trol, or the California Gambling Control Commission.

B. The action of the chief of police in denying such a license shall be subject to an appeal before the city manager. An appeal shall be filed with the city clerk within 10 days after the denial of such license. Upon failure to file such notice within the 10-day period, the action of the chief of police in denying such license shall be final and conclusive. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

### **5.20.080 Change of location – Approval required.**

No licensed cardroom may be moved to a new location within the city without prior approval by the chief of police. In addition to the requirements of this chapter, all cardroom locations must meet Development Code and all other applicable city requirements. (Ord. 1901 § 3 (Exh. A § 13), 2010; Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

### **5.20.090 Employee work permits – Required when.**

Cardroom employees must obtain a work permit from the chief of police. “Cardroom employees,” for the purpose of this chapter, are defined as dealers, overseers and others directly connected with the operation and supervision of the card tables. The term “cardroom employees” does not include waitresses, bartenders, culinary workers, and other employees not connected with the operation and supervision of a cardroom and whose duties do not require or authorize access to restricted areas. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

### **5.20.100 Employee work permits – Application.**

A. Applications for cardroom employee work permits shall be submitted under oath and contain the past criminal record, if any, of the applicant and any other information required by the chief of police.

B. The application shall also be accompanied by:

1. A photograph and fingerprints of the applicant.

2. A copy of a work permit issued by the California Gambling Control Commission pursuant to

the California Gambling Control Act. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

### **5.20.110 Employee work permits – Issuance restrictions.**

A work permit shall be issued only to citizens of the United States who have resided in the state of California for at least one year immediately preceding the submission of a work permit application. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

### **5.20.120 Employee work permits – Term – Renewal not required upon change in place of employment.**

A. Each application for a work permit shall be accompanied by a fee, the amount of which shall be set by resolution in an amount to cover the actual costs of administration. The work permit shall be valid for a period of one year. The fee shall not be returned in the event that the work permit is refused, revoked or suspended as provided in this chapter.

B. Only one work permit shall be required each year, even though the holder of the work permit may change his place of employment within the city. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

### **5.20.130 Employee work permits – Denial conditions – Appeal.**

A. The chief of police shall deny any such applicant a work permit if:

1. The applicant has previously been convicted of a felony or misdemeanor involving theft, dishonesty, fraud, or the use of narcotics; provided, however, that he or she may disregard such conviction if he or she finds and determines that mitigating circumstances exist, such as, but not limited to, evidence of rehabilitation, length of time elapsed since such conviction, the age of such person at the time of conviction, or the fact that the permit applied for is unrelated to such conviction; or

2. Any of the grounds for denial by the Gambling Commission, set forth in Business and Professions Code Section 19859, are present; or

3. The applicant has not obtained a work permit required by the California Gambling Control Commission as required by the Gambling Control Act or Chapter 2, Division 18, Title 4 of the Cali-

ifornia Code of Regulations, as those regulations may be amended from time to time.

B. In addition, pursuant to California Business and Professions Code Section 19912, the Department of Justice, Division of Gambling Control, may object to the issuance of a work permit, in which case the application shall be denied.

C. The action of the chief of police in denying such a work permit shall be subject to an appeal before the city manager. An appeal shall be filed with the city clerk within 10 days after the denial of such work permit. Upon failure to file such notice within the 10-day period, the action of the chief of police in denying such work permit shall be final and conclusive. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

#### **5.20.140 Suspension and revocation of license and work permits.**

A. The chief of police shall have the right for cause, after notice and a hearing, to revoke or suspend any cardroom license or cardroom work permit issued under this chapter, and to take possession of such permit. Any grounds upon which the chief of police shall be required to refuse to issue an initial cardroom license or cardroom work permit shall also constitute grounds for such revocation or suspension. In addition, the failure of a holder of a cardroom license or cardroom work permit to comply with the provisions of this chapter shall also constitute grounds for revocation or suspension of such license or work permit.

B. The chief of police shall also have the right to revoke or suspend any cardroom license or cardroom work permit by reason of abandonment by the licensee under the following conditions:

1. The operation of a cardroom has not commenced within one year after the issuance of the city cardroom license; or

2. The cardroom has failed to operate for a period of six consecutive months.

C. Before revocation or suspension, the chief of police shall notify the cardroom operator of his or her intent to revoke or suspend the cardroom license or cardroom work permit issued under this chapter, and to take possession of such permit. The notice shall list the grounds for the proposed revocation or suspension.

Within 10 days of the mailing of the notice, the cardroom operator may request a hearing with the

city manager, which shall be conducted within 30 days of the request. After the hearing, the city manager may either uphold or overturn the decision of the chief of police. If no hearing is requested within 10 days of the mailing of the notice, the proposed revocation or suspension shall take effect.

D. The decision of the city manager in this respect shall be subject to an appeal to the city council. An appeal shall be filed with the city manager within 10 days after the revocation or suspension. Upon failure to file an appeal within the 10-day period, the decision of the city manager shall be final and conclusive. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

#### **5.20.150 Number of tables – Limitation.**

The total number of tables allowed within the city shall be limited to one table per 4,200 residents of the city of Livermore.

When the chief of police determines that an additional card table is available based upon the population of the city of Livermore, he or she shall give notice to existing validly licensed cardrooms having less than the maximum number of tables allowed pursuant to LMC 5.20.160(D) that they are eligible to apply for the additional card table.

In the event more than one existing cardroom is eligible and applies for the additional card table, the chief of police shall first offer the additional card table to the cardroom that has executed a development agreement pursuant to LMC 5.20.160(Q). In the unlikely event that two or more cardrooms are equally eligible to receive the additional card table, the chief of police shall award the additional table by drawing lots.

In the event no eligible cardroom applies for the additional card table within 180 days after the chief of police delivers notice of its availability, the additional card table shall become available for use on a first come, first served basis by a new cardroom obtaining a license consistent with the terms and conditions of this chapter. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

#### **5.20.160 Operation – Rules and regulations.**

It is unlawful to operate a cardroom in violation of any of the following regulations and rules:

- A. Not more than one cardroom shall be located at any one address.

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B. Neither the operator nor any employee of a cardroom shall extend credit to a player, nor shall they accept IOUs or other notes, or otherwise loan money to any person on any ring, watch or other article of personal property for the purpose of securing tokens, chips or other representatives of money as an ante.

C. No games, except lowball, draw poker, without variations as defined by Hoyle, pinochle, pangini, rummy, contract or auction bridge, and Texas hold 'em, shall be played in any cardroom, and the rules and manner of play for such games shall be consistent with LMC 5.20.020.

D. Not more than 10 of the total number of tables allowed pursuant to LMC 5.20.150 shall be permitted in any single cardroom.

E. No more than eight players shall be permitted at a table.

F. Cardrooms shall be located on the ground floor and so arranged that at least 25 percent of the cardroom shall be plainly visible from the front door opening when such is opened. No wall, partition, screen or similar structure between the front door opening on the street and any card table located in the cardroom shall be permitted if it interferes with such visibility.

G. No person under 21 years of age shall be permitted at any card table or participate in any game played thereat. No person under age 21 shall be permitted to remain in a cardroom.

H. Cardrooms may operate seven days a week, with the following daily schedule: Monday, Tuesday, Wednesday and Thursday, from 10:00 a.m. to 2:00 a.m., and Friday from 10:00 a.m. continuous to 2:00 a.m. Monday morning, unless the chief of police determines that a reduction in the hours is necessary due to the number of calls for service or the inability of the licensee to implement a security plan acceptable to the chief of police. The chief of police has the discretion to give written approval to the continuous operation of a cardroom on national holidays or for tournament play.

I. All cardrooms shall be open to police inspection during all hours of operation.

J. Only table stakes shall be permitted. Each game shall have a maximum single bet of \$20.00.

K. The cardroom shall have assigned to it a person holding a valid card table work permit, whose duty it shall be to supervise the game and to see that it is played strictly in accordance with the terms of

this chapter and with the provisions of the Penal Code of the state. This person may have more than one table under his supervision. The licensee may act as a table operator or supervisor without having a work permit.

L. There shall be posted at every cardroom, in letters plainly visible from all parts thereof, signs stating that no game except lowball, draw poker without variations as defined by Hoyle, pinochle, pangini, rummy, contract or auction bridge, or Texas hold 'em shall be played in the cardroom. These signs shall also contain such other information relating to the regulations contained herein as the chief of police may require. A copy of this chapter shall also be conspicuously posted.

M. No person who is in a state of intoxication shall be permitted in any cardroom.

N. Loitering about the card tables shall not be permitted.

O. Cardrooms shall be operated consistent with the regulations established by the California Department of Justice, Division of Gambling Control and the California Gambling Control Commission for the operation of gambling establishments.

P. Each licensed cardroom may offer tournament play events with the prior written approval of the chief of police. A cardroom licensee shall give the chief of police notice at least five days before the event and provide a security plan to be approved in writing by the chief of police. All tournament play shall comply with the bet limits, number of players, number of tables, and all other provisions of this chapter and such conditions as may be imposed by the chief of police.

Q. A cardroom may offer expanded services, subject to the approval of a conditional use permit and a development agreement in conformance to the Livermore Development Code. The development agreement shall assure the cardroom of the expanded services, subject to conditions, and define the community benefit to be provided by the cardroom operator. The chief of police may revoke or suspend the expanded services for a cardroom following the same provisions for the suspension and revocation of license and work permits of LMC 5.20.140. All provisions of this chapter shall apply to an expanded services cardroom, except the following expanded services may be permitted:

1. Any game approved by the California Department of Justice, except Pai Gow played with

tiles, is permitted with the written consent of the chief of police. There shall be posted at every cardroom, in letters plainly visible from all parts thereof, stating the permitted games.

2. Not more than 10 players shall be permitted at the table.

3. Cardrooms may operate 24 hours per day, except for a nine-hour period on Monday between 2:00 a.m. and 11:00 a.m. The chief of police has the discretion to give written approval to the continuous operation of a cardroom on Monday for national holidays or for tournament play, provided the cardroom is closed during another nine-hour period during the week.

4. Each game shall have a maximum single bet of \$200.00.

R. Cardrooms shall conform to the Livermore Development Code. (Ord. 1901 § 3 (Exh. A § 14), 2010; Ord. 1892 § 1, 2009; Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

#### **5.20.170 Patron safety and security.**

Each cardroom licensee shall be responsible for the security and safety of patrons in the cardroom and in and around off-street parking areas and shall:

A. Provide at least one security guard in distinctive uniform attire not resembling the uniforms worn by the Livermore police department during all hours when the cardroom is open for business; and

B. Present and implement a security plan acceptable to the chief of police. (Ord. 1883 § 1 (Exh. A), 2009; Ord. 1563 § 1, 1999)

## **Chapter 5.24**

### **DANCES**

#### **Sections:**

- 5.24.010 Public dance defined.
- 5.24.020 Permit – Required.
- 5.24.030 Exemptions.
- 5.24.040 Permit – Application requirements.
- 5.24.050 Permit – Floor space required.
- 5.24.060 Permit – Grant or denial – Police chief authority.
- 5.24.070 Permit – Contents – Transferability.
- 5.24.080 Posting of permit and regulations.
- 5.24.090 Dance regulations.
- 5.24.100 Permit – Revocation conditions.
- 5.24.110 Appeal from permit denial or revocation.

#### **5.24.010 Public dance defined.**

“Public dance” means a gathering of persons in or upon any premises where dancing is participated in, either as the main purpose for such gathering, or as an incident to some other purpose, and to which premises the public may gain admission, with or without payment of a fee. (1960 code § 7A.1)

#### **5.24.020 Permit – Required.**

Prior to permitting, allowing or providing premises for the opening, conducting or carrying on of a public dance, a permit shall be obtained from the chief of police pursuant to the provisions of this chapter. An annual permit may be issued for a continuing series of public dances, or a permit may be issued for a specified date or dates. (1960 code § 7A.2)

#### **5.24.030 Exemptions.**

No license shall be required for a dance held on public property, including educational or recreational premises, where public officials acknowledge sponsorship of the dance in writing. (1960 code § 7A.3)

#### **5.24.040 Permit – Application requirements.**

At least 15 days prior to the date on which the dance is to be held, a written application, verified by the owner of the premises or lessee thereof, if any, shall be presented to the chief of police. The application shall be accompanied by a permit fee, the amount of which shall be set by resolution in an amount to cover the actual costs of administration. The permit fee is not refundable.

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The application shall contain the following information:

A. The name and residence address of the applicant or applicants, owner or lessee, if any. If any applicant is a partnership, the names and residence addresses of the partners; if any applicant is an association, the names and residence addresses of the officers; if any applicant is a corporation, the names and residence addresses of the officers and directors;

B. The name and address of the place for which the permit is desired or at which dance is to be or dances are to be held;

C. The number, dates, and hours of dances to be held under the permit;

D. The age group or age restrictions of participants;

E. A sketch or outline, with approximate measurements, showing the location and size of the dance area with respect to any counter or bar, or stools in connection therewith, and showing the size of the dance area;

F. The name and residence of the proprietor, operator, or other person in charge if other than the lessee or owner;

G. Whether alcoholic beverages are to be sold or served. (Ord. 1183 § 4, 1985; Ord. 1162 § 4, 1984; 1960 code § 7A.5)

### 5.24.050 Permit – Floor space required.

No permit shall be issued for the conduct of a public dance for any premises having less than 120 square feet designated for dancing, or whose dance-floor is within five feet of any counter or bar, or stools in connection therewith. (1960 code § 7A.4)

### 5.24.060 Permit – Grant or denial – Police chief authority.

The chief of police shall grant or deny the permit after causing an investigation of the application to be made. In making his determination, the chief of police shall consider any fact bearing on the suitability of the premises for a public dance, including a determination that the premises are in conformance with the requirements of Title 19 of the California Administrative Code and the Uniform Building Code for a public assembly; the character, reputation and moral fitness of those who will be in charge of the public dance; and the other facts set forth in the application. In the event the chief of po-

lice finds the granting of a permit could endanger the public peace, health or safety, he shall deny the application. The chief of police shall, based upon his investigation and the standards set forth herein, impose such conditions on the permit as are necessary for the protection of the public peace, health and safety, including additional police protection to be paid for in advance by the permittee. (1960 code § 7A.6)

### 5.24.070 Permit – Contents – Transferability.

Any permit issued under this chapter may not be assigned, transferred or loaned, and shall state that it is subject to revocation and the premises are subject to closing. (1960 code § 7A.10)

### 5.24.080 Posting of permit and regulations.

A copy of this chapter and the permit shall be posted in a conspicuous place on the premises at all times during the public dance. (1960 code § 7A.11)

### 5.24.090 Dance regulations.

The following regulations shall be a condition of any permit:

A. The premises on which any public dancing is being conducted shall be well-lighted. "Well-lighted" means no less than one footcandle at floor level.

B. No disorderly conduct or behavior shall be permitted.

C. No person under the influence of intoxicating liquor, drugs or narcotics shall be admitted or permitted to remain in or upon the premises.

D. At all times during the holding of any dance, all doors leading from or opening into the place where the dance is held are to remain unlocked, unbarred, unfastened, and unobstructed. (1960 code § 7A.9)

### 5.24.100 Permit – Revocation conditions.

In the event any public dance is conducted in violation of this chapter or any law, the chief of police or his representative may revoke the permit and stop any dance in progress. (1960 code § 7A.7)

### 5.24.110 Appeal from permit denial or revocation.

In the event of any application denial or permit revocation, the aggrieved party may appeal the denial of his application or revocation of his permit

to the city council. Such appeal shall be made in writing within five days after the denial or revocation, and shall contain a specification of the facts upon which it is claimed that the denial or revocation was improper. The city manager shall set the matter for hearing within 10 days of receipt of the appeal, giving notice of the time and place of such hearing to the aggrieved party. The city council may affirm, modify or reverse the denial or revocation, based upon the standards set forth in this chapter. (1960 code § 7A.8)

## Chapter 5.28

### MASSAGE BUSINESSES AND MASSEURS

#### Sections:

- 5.28.010 Definitions.
- 5.28.020 Existing businesses – Applicability.
- 5.28.030 Existing businesses – Deadline for filing for new permit.
- 5.28.040 Massage establishment, outcall service – Permit – Required.
- 5.28.050 Applicant for massage establishment or outcall massage service permit to file application, pay filing fee.
- 5.28.060 Massage establishment, outcall service – Permit – Application information requirements.
- 5.28.070 Massage establishment, outcall service – Permit – Corporate applicants – Exceptions.
- 5.28.080 Duty to file application for masseur permit and pay investigation fee.
- 5.28.090 Masseur permit – Application information requirements.
- 5.28.100 Applications – Verification.
- 5.28.110 Applications – Referral to departments for inspection and recommendations.
- 5.28.120 Application – Hearing requirements.
- 5.28.130 Massage establishment, outcall service – Permit issuance conditions.
- 5.28.140 Massage establishment permit – Issuance restrictions.
- 5.28.150 Masseur permit – Issuance conditions.
- 5.28.160 Employees – Masseur permit required when – Register of employees.
- 5.28.170 Employees – Identification nameplate.
- 5.28.180 Employer to see that masseurs have permits.
- 5.28.190 Display of permits.
- 5.28.200 Name and place of business – Restrictions.
- 5.28.210 Sale or transfer of business voids permit.
- 5.28.220 Permits not transferable.
- 5.28.230 Patrons of massage establishment, outcall service – Register required.
- 5.28.240 Inspection of massage establishments.
- 5.28.250 Employees – Persons under 18 years prohibited.
- 5.28.260 Unlawful activities designated – Grounds for permit revocation.
- 5.28.270 Permit suspension or revocation conditions – Massage establishment or outcall service.

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- 5.28.280 Permit suspension or revocation conditions – Masseur.
- 5.28.290 Permit suspension or revocation conditions – Hearing required – Notice.
- 5.28.300 Denial, suspension or revocation of permit – Hearing – Council findings by resolution.

### 5.28.010 Definitions.

A. For the purposes of this chapter, the following words and phrases shall have the following meanings:

1. “Employee” means and includes all persons paid directly by the permittee on a monthly, weekly or hourly basis, except that persons, other than masseurs, rendering service as an independent contractor shall not be deemed an “employee” within the meaning of this chapter.

2. “Health officer” means the health officer of the county of Alameda, or his authorized representative.

3. “Massage” means a method of treating the external parts of the body for remedial or hygienic purposes by rubbing, stroking, kneading, adjusting or tapping with the hand or an instrument. “Massage” does not include therapy that is a means employed in the cure of disease, the management of disease or of diseased parts.

4. “Massage establishment” means any establishment wherein a massage is given, engaged in or carried on, or permitted to be given, engaged in or carried on, either as a primary or secondary function.

5. “Masseur” means any person who engages in the practice of massage, as defined in this section. “Masseur” shall also include masseuse, as the use of the masculine gender shall include in all cases the feminine gender as well.

6. “Outcall massage service” means any business not licensed as a massage establishment under the provisions of this chapter wherein the principal function is such that a massage is given, engaged in or carried on, or permitted to be given, engaged in or carried on.

7. “Person” means any individual, copartnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

B. The foregoing definitions shall not include hospitals, nursing homes, sanitariums, persons

holding an unrevoked certificate or license to practice the healing arts under the laws of the state, or persons working under the direction of any such persons in any such establishments. (1960 code § 12A.1)

### 5.28.020 Existing businesses – Applicability.

The provisions of this chapter shall be applicable to persons now engaged in the business herein regulated. Existing businesses of the kind referred to in this chapter shall conform with all provisions of this chapter, except that persons applying for a license hereunder may substitute two years’ experience in the operation of a massage establishment or an outcall massage service in the city for the requirement contained in either LMC 5.28.060 (B)(8) or 5.28.090(H). Masseur applicants may substitute one year’s experience for the same requirement. (1960 code § 12A.28)

### 5.28.030 Existing businesses – Deadline for filing for new permit.

Persons now engaged in the business referred to in this chapter and in LMC 5.28.020, either as an operator of a massage establishment or an outcall massage service, shall file for a permit required by LMC 5.28.040 within 30 days of the effective date of the ordinance codified in this chapter; failure to do so shall make continued operation of the place of business a violation of LMC 5.28.300. (1960 code § 12A.29)

### 5.28.040 Massage establishment, outcall service – Permit – Required.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the city, the operation of a massage establishment or an outcall massage service, as herein defined, without first having obtained a permit from the police department, issued pursuant to the provisions of this chapter. (1960 code § 12A.2)

### 5.28.050 Applicant for massage establishment or outcall massage service permit to file application, pay filing fee.

Every applicant for a permit to maintain, operate or conduct a massage establishment or outcall massage service shall file an application with the chief

of police upon a form provided by the chief of police, and shall pay a filing fee at the city administrative services department. The amount of the fee shall be set by resolution in an amount to cover the actual costs of administration. Evidence of the payment of the fee shall be presented with the application to the chief of police. (Ord. 1895 § 6, 2010; Ord. 1183 § 6, 1985; Ord. 1162 § 6, 1984; 1960 code § 12A.3)

**5.28.060 Massage establishment, outcall service – Permit – Application information requirements.**

A. The application for a permit to operate a massage establishment or an outcall massage service shall set forth the exact nature of the massage to be administered, the proposed place of business and facilities therefor, and the name and address of each applicant.

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

1. The two previous business and residential addresses immediately prior to the present or proposed business address of the applicant;
2. Written proof that the applicant is over the age of 18 years;
3. Applicant's height, weight, color of eyes and hair, and sex;
4. Two portrait photographs at least two inches by two inches;
5. Business, occupation or employment of the applicant for the 18 months immediately preceding the date of the application;
6. The massage or similar business license history of the applicant; whether such person, in previously operating in this or another city or state under license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation of applicant subsequent to such action or suspension or revocation;
7. All criminal convictions, and the reasons therefor;
8. a. Applicants must furnish a diploma or certificate of graduation from a school approved by the state, or otherwise recognized, wherein the method, profession or work of massage technicians is taught. The term "otherwise recognized" means and includes any school or institution of learning which has for its purpose the teaching of the the-

ory, method, profession or work of massage technicians, which school requires a resident course of study of not less than 70 hours to be given in not less than three calendar months before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning, showing the successful completion of such course of study or learning.

b. A school offering correspondence courses in massage, not requiring actual attendance in a class, shall not be deemed a "recognized school" for the purposes of this chapter. The chief of police shall have a right to confirm the fact that the applicant has actually attended classes in a recognized school;

9. A certificate from a medical doctor, stating that the applicant has, within 30 days immediately prior thereto, been examined and found to be free of any contagious or communicable disease;

10. Such other identification and information necessary to discover the truth of the matters hereinbefore specified as required to be set forth in the application;

11. Nothing contained herein shall be construed to deny to the chief of police the right to take the fingerprints and additional photographs of the applicant, nor shall anything contained herein be construed to deny the right of the chief of police to confirm the height and weight of the applicant;

12. a. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation; the names and residence addresses of each of the officers, directors, and each stockholder owning more than 10 percent of the stock of the corporation;

b. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant apply.

c. A corporation or partnership shall be deemed to have complied with the provisions of subsection (B)(1) of this section if the managing director or partner or managing employee of the business has the required diploma or certificate of graduation. (1960 code § 12A.4)

## 5.28.070

### **5.28.070 Massage establishment, outcall service – Permit – Corporate applicants – Exceptions.**

The provisions of LMC 5.28.060(B)(1), (2), (3), (4) and (7) relating to requirements for corporate applicants shall not apply to any of the following:

A. The corporation the stock of which is listed on a stock exchange in the state of California or in the city of New York, state of New York;

B. A bank trust company, financial institution or title company to which application is made or to whom a license is issued in a fiduciary capacity;

C. A corporation which is required by law to file periodic reports with the Securities and Exchange Commission. (1960 code § 12A.5)

### **5.28.080 Duty to file application for masseur permit and pay investigation fee.**

Any person who engages in the practice of massage, as defined in this chapter, shall file an application with the chief of police upon a form provided by the chief of police and shall pay an investigative fee at the city administrative services department. The amount of the fee shall be set by resolution in an amount to cover the actual costs of administration. Evidence of payment of the fee shall be presented with the application to the chief of police. (Ord. 1895 § 6, 2010; Ord. 1183 § 6, 1985; Ord. 1162 § 6, 1984; 1960 code § 12A.6)

### **5.28.090 Masseur permit – Application information requirements.**

The application for a masseur permit shall contain the following:

A. Name and residence address;

B. Social security number and driver's license number, if any;

C. Applicant's height, weight color of eyes and hair and sex, and date of birth;

D. Written evidence that the applicant is over the age of 18 years;

E. Business occupation or employment of the applicant for the 18 months immediately preceding the date of the application;

F. Whether such person has ever been convicted of any crime except misdemeanor traffic violations. If any person mentioned in this subsection has been so convicted, a statement must be made giving the place and court in which the conviction was had, the specific charge under which the conviction was

obtained, and the sentence imposed as a result of such conviction;

G. The chief of police shall have the right to take fingerprints and a photograph of the applicant with the right of the chief of police to confirm the information submitted;

H. 1. Applicants must furnish a diploma or certificate of graduation from a school approved by the state of California or otherwise recognized wherein the method, profession or work of massage technicians is taught. The term "otherwise recognized" means and includes any school or institution of learning which has for its purpose the teaching of the theory, method, profession or work of massage technicians which school requires a resident course of study of not less than 70 hours, to be given in not less than three calendar months, before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning, showing the successful completion of such course of study or learning;

2. A school offering correspondence courses in massage, not requiring actual attendance in a class, shall not be deemed a "recognized school" for the purposes of this chapter. The chief of police shall have a right to confirm the fact that the applicant has actually attended classes in a recognized school. (1960 code § 12A.7)

### **5.28.100 Applications – Verification.**

Every application for a permit under this chapter shall be verified by the applicant under penalty of perjury. (1960 code § 12A.9)

### **5.28.110 Applications – Referral to departments for inspection and recommendations.**

The chief of police, upon receiving an application for a massage establishment permit or an out-call massage service permit, shall refer the applications to the city building official, the fire chief, the Alameda County health department and the city planning department, which departments shall inspect the premises proposed to be devoted as a massage establishment or public bathhouse, and shall make separate written recommendations to the chief of police concerning compliance with the respective requirements within 10 days after receipt of the aforementioned referral. (1960 code § 12A.10)

**5.28.120 Application – Hearing requirements.**

When an application is filed for a permit under this chapter and the reports required by LMC 5.28.110 have been received, the chief of police shall fix a time and place for a hearing thereon. Not

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less than 10 days before the date of such hearing, the chief of police shall cause to be posted a notice of such hearing in a conspicuous place on the property in which or on which the proposed massage establishment or massage service is to be operated and shall, by certified mail, send a similar notice to the applicant. Such posting of notice shall be carried out by the police department. (1960 code § 12A.11)

**5.28.130 Massage establishment, outcall service – Permit issuance conditions.**

The chief of police shall issue a permit within 14 days following the hearing if all of the provisions of this chapter have been met, and shall issue a permit to all persons who have applied to perform massage services, unless he finds:

A. That the operation as proposed by the applicant, if permitted, would not comply with all applicable ordinances and laws, including, but not limited to, the city's building, zoning and fire ordinances, or regulations adopted by the chief of police, or the health ordinances or regulations of the county of Alameda;

B. That the applicant or any other person who will be directly engaged in the management and operation of a massage establishment or outcall massage service has been convicted of:

1. An offense involving conduct which requires registration pursuant to Section 290 of the Penal Code of the state;

2. An offense involving the use of force and violence upon the person of another that constitutes a felony;

3. An offense involving sexual misconduct with children;

4. An offense as defined under Sections 311, 647(a), 647a, 647b, 315, 316 or 318 of the Penal Code of the state;

C. If it reasonably appears that the location of the business, after review of the reports required by LMC 5.28.110, is not a suitable place in which to conduct or maintain such business or calling, or the applicant requesting such permit does not warrant the issuance thereof. (1960 code § 12A.12)

**5.28.140 Massage establishment permit – Issuance restrictions.**

No permit to conduct a massage establishment shall be issued unless an inspection conducted pur-

suant to LMC 5.28.110 reveals that the establishment complies with each of the following minimum requirements:

A. Construction of rooms used for toilets, tubs, steam baths and showers shall be performed in accordance with the provisions of this code, and conform to all applicable building regulations contained in Chapter 12.04 LMC and LMC Title 15.

B. Toilet facilities shall be provided in convenient locations. When five or more employees and patrons of different sexes are on the premises at the same time, separate facilities shall be provided. A single water closet per sex shall be provided for each 20 or more employees or patrons of that sex on the premises at any one time. All toilet rooms shall be equipped with self-closing doors opening in the direction of ingress to the toilet rooms. Toilets shall be designated as to the sex accommodated therein.

C. Lavatories or washbasins provided with both hot and cold running water shall be installed in either the toilet room or the vestibule. Lavatories or washbasins shall be provided with soap in a dispenser, and with sanitary towels.

D. 1. All portions of massage establishments shall be provided with adequate light and ventilation by means of windows or skylights, with an area of not less than one eighth of the total floor area, or shall be provided with artificial light and a mechanical operating ventilating system approved by the building official. When windows or skylights are used for ventilation, at least one-half of the required window area shall be operable.

2. To allow for adequate ventilation, cubicles, rooms and areas provided for patrons' use not served directly by a required window, skylight or mechanical system of ventilation shall be constructed so that the height of partitions does not exceed 75 percent of the floor-to-ceiling height of the area in which they are located. (1960 code § 12A.8)

**5.28.150 Masseur permit – Issuance conditions.**

The chief of police shall issue a masseur permit within 14 days following a hearing unless he finds that the applicant who will be directly engaged as a masseur has been convicted of:

A. An offense involving conduct which requires registration pursuant to Section 290 of the Penal Code of the state;

## **5.28.160**

B. An offense involving the use of force and violence upon the person of another that constitutes a felony;

C. An offense involving sexual misconduct with children;

D. An offense as defined under Sections 311, 647(a), 647a, 647b, 315, 316 or 318 of the Penal Code of the state. (1960 code § 12A.13)

### **5.28.160 Employees – Masseur permit required when – Register of employees.**

No operator of a massage establishment or an outcall massage service, as defined in this chapter, shall employ any person on the premises unless and until such person has been granted a masseur permit by the chief of police, as provided herein. The operator of such establishment must maintain a register of all persons so employed and their permit number, which register shall be available for inspection at all times during regular business hours. (1960 code § 12A.14)

### **5.28.170 Employees – Identification nameplate.**

The chief of police shall provide each employee licensed pursuant to this chapter with an identification nameplate, which shall contain a photograph of the employee, the full name and permit number assigned to the employee, and which must be worn during working hours on the chest portion of the body. (1960 code § 12A.15)

### **5.28.180 Employer to see that masseurs have permits.**

It shall be the responsibility of the holder of the permit for the massage establishment, or the employer of any such persons purporting to act as masseurs, to insure that each person employed as a masseur shall first have obtained a valid permit pursuant to this chapter. (1960 code § 12A.27)

### **5.28.190 Display of permits.**

Every person to who or for whom a permit shall have been granted pursuant to the provisions of this chapter shall display the permit in a conspicuous place so that the same may be readily seen by persons entering the premises; or persons engaged in an outcall massage service must have their permit available for inspection at all times. (1960 code § 12A.23)

### **5.28.200 Name and place of business – Restrictions.**

A. No person who is granted a permit issued pursuant to this chapter shall operate under any name or conduct his business under any designation not specified in his permit.

B. Permittees shall notify the police department of any changes in name or address of home or business. In case of any change of location or extension of the place of business, inspection thereof shall be made as required in this chapter, before use of the same for the purpose of such business, and an amended permit shall be issued within 30 days, if indicated, in order to show clearly the address or place of such new location or extension. No fee shall be charged either for such inspection or for such amended permit. (1960 code § 12A.17)

### **5.28.210 Sale or transfer of business voids permit.**

Upon sale or transfer of a massage establishment or an outcall massage service, the permit and license therefor shall be null and void. (1960 code § 12A.20)

### **5.28.220 Permits not transferable.**

No permit issued under the provisions of this chapter shall be transferable. (1960 code § 12A.25)

### **5.28.230 Patrons of massage establishment, outcall service – Register required.**

Every person who engages in or conducts a massage establishment or outcall massage service, as defined in this chapter, shall keep a daily register approved in form by the police department, of all patrons, the hour of patron's arrival, the room or cubicle assigned to patron, and the masseur who massaged the patron. This daily register shall, at all times during business hours, be subject to inspection by the health officer and by the police department, and shall be kept on file for one year. (1960 code § 12A.22)

### **5.28.240 Inspection of massage establishments.**

The police department and the health officer shall, from time to time, make an inspection of each massage establishment in the city for the purpose of determining compliance with the provisions of this chapter. (1960 code § 12A.24)

**5.28.250 Employees – Persons under 18 years prohibited.**

It is unlawful for the owner, proprietor, manager or any other person in charge of any massage establishment or outcall massage service to employ any person who is not at least 18 years of age. (1960 code § 12A.19)

**5.28.260 Unlawful activities designated – Grounds for permit revocation.**

It is unlawful for any person to massage any other person, or give or administer any bath or baths, or to give or administer any of the other things mentioned in this chapter which would violate the provisions of LMC 5.28.280(C). Any violation of this provision shall be deemed grounds for the revocation of the permit granted under this chapter. (1960 code § 12A.26)

**5.28.270 Permit suspension or revocation conditions – Massage establishment or outcall service.**

Any permit issued for a massage establishment or outcall massage service may be revoked or suspended by the chief of police, after a hearing conducted pursuant to LMC 5.28.290 in any case where any of the provisions of this chapter are violated, or where any employee of the permittee including masseurs, is engaging in immoral conduct or activities at permittee's place of business, or in any case where the permittee refuses to permit any fully authorized officer of the city to inspect the premises or the operations therein. Such permit may also be revoked or suspended by the chief of police, after hearing upon the recommendation of the health officer that such business is being managed, conducted or maintained without regard for the public health or health of patrons or customers, or without due regard to proper sanitation or hygiene. (1960 code § 12A.16)

**5.28.280 Permit suspension or revocation conditions – Masseur.**

Any masseur permit issued by the chief of police may be revoked or suspended after a hearing conducted pursuant to LMC 5.28.290 on any of the following grounds:

A. Violation of any of the provisions of this chapter applicable to masseurs;

B. Conviction of any crime requiring registration under Section 290 of the Penal Code of the state;

C. Violation of Section 311, 647(a), 647a, 647b, 650 2, 315, 316 or 318 of the Penal Code of the state. (1960 code § 12A.17)

**5.28.290 Permit suspension or revocation conditions – Hearing required – Notice.**

Prior to the revocation or suspension of any permit issued pursuant to the provisions of this chapter, a hearing shall be held by the chief of police. Written notice of the grounds for the hearing, as well as its time and place, shall be mailed to the permittee seven days prior to the hearing. Within 24 hours after the conclusion of the hearing, the chief of police shall provide written notice to permittee of his decision. (1960 code § 12A.18)

**5.28.300 Denial, suspension or revocation of permit – Hearing – Council findings by resolution.**

A. Within five days after receiving written notification that an application for a permit to operate a massage establishment or an outcall massage service, or for the practice of massage, or that a permit has been revoked or suspended, the applicant or permittee so affected may file with the city clerk a written statement, addressed to the city council, requesting a public hearing on the application before the council, and stating therein written exceptions to the findings of fact upon which the chief of police based his denial revocation or suspension. Such exceptions shall include, but not be limited to, statements why applicant or permittee believes the chief of police acted improperly or failed to act properly. Upon the filing of such statement, the council shall fix a time, date and place for a public hearing thereon, and shall notify the applicant or permittee thereof. In the case of an application which has been denied, the hearing shall be held at a regular meeting of the council not later than 30 days from the date on which the written statement was filed with the city clerk; in the case of a revocation or suspension of a permit, such hearing shall be held not later than 15 days from the date on which the written statement was filed with the city clerk. At the hearing, the applicant or permittee may present evidence in support of his statement. Any interested party may, in the discre-

## 5.32.010

tion of the city council, be allowed to participate in the hearing and present evidence in support of or in opposition to the applicant or permittee.

B. The council, by resolution, shall, no later than 15 days after the conclusion of the hearing, make findings of fact and either deny or grant the application for permit or, in the case of a revocation or suspension of permit, uphold or overrule the decision of the chief of police subject to any reasonable conditions thereto as it deems appropriate. The council in its resolution shall state the facts upon which its decision is based, and its ruling upon any exception to the chief of police's original findings of fact upon the application or the revocation or suspension. A copy of the resolution shall be served by mail upon the applicant and on parties to the hearing requesting same. The action of the city council, as declared by the resolution, shall be final. (1960 code § 12A.32)

## Chapter 5.32

### POOLROOMS AND BILLIARD ROOMS

#### Sections:

- 5.32.010 Permit – Required.
- 5.32.020 Permit – Application – Contents and fee.
- 5.32.030 Permit – Revocation conditions.
- 5.32.040 Minors prohibited on premises where alcoholic beverages are available.
- 5.32.050 Misrepresenting age to gain entrance prohibited when.
- 5.32.060 Maintaining private rooms prohibited.
- 5.32.070 Posting of chapter regulations required.

#### **5.32.010 Permit – Required.**

It is unlawful for any person to conduct, carry on, operate or maintain in the city any public poolroom or billiard room without written permit therefor granted by the city council. Such permit shall be required in addition to any license required by the city. (1960 code § 17.1)

#### **5.32.020 Permit – Application – Contents and fee.**

The permit to operate a poolroom or billiard room shall be granted or refused by the city council in its discretion, upon formal application therefor. Such application shall specify the name of the person applying for such permit, the location of the premises where it is proposed to conduct such poolroom or billiard room, and that the applicant is the only person to be in any manner connected with the management and control of such poolroom or billiard room. The application for a permit shall be accompanied by a \$10.00 fee. (1960 code § 17.2)

#### **5.32.030 Permit – Revocation conditions.**

A. The city council may at any time, for such cause as they or a majority of them, upon investigation, deem sufficient, revoke any permit granted under the provisions of this chapter, and it is especially ordained and declared that all such permits are held at the pleasure of the city council.

B. The conviction and punishment of any person conducting any poolroom and billiard room in the city for violation of any of the provisions of this chapter shall in no manner affect the power of the city council to revoke any permit granted by such

council to such person under the provisions of this chapter. (1960 code § 17.3)

**5.32.040 Minors prohibited on premises where alcoholic beverages are available.**

A. It is unlawful for any person conducting any public poolroom or billiard room or any servant or employee of such person to allow any person under the age of 21 years to enter, visit or remain in any public poolroom or billiard room conducted by or in the charge of any such person, or any servant or employee thereof, where alcoholic beverages are dispensed, served or consumed, or permitted to be dispensed, served or consumed, within such public poolroom or billiard room.

B. It is unlawful for any person under the age of 21 years to enter or remain in any public poolroom or billiard room in the city when alcoholic beverages are dispensed, served or consumed therein, and he is advised by the person conducting such public poolroom or billiard room or any servant or employee of such person, to leave the premises. (1960 code § 17.4)

**5.32.050 Misrepresenting age to gain entrance prohibited when.**

It is unlawful for any person under the age of 21 years, for the purpose of gaining entrance to any such public poolroom or billiard room in the city where alcoholic beverages are dispensed, served or consumed, or permitted to be dispensed, served or consumed, to represent to the person conducting such poolroom or billiard room or to any servant or employee of such person that such person is 21 years of age or upwards. The making of such representation for the purpose of remaining in any such public poolroom or billiard room in the city shall be deemed in violation of the provisions of this chapter. (1960 code § 17.5)

**5.32.060 Maintaining private rooms prohibited.**

A. It is unlawful for any person conducting any poolroom or billiard room in the city, or for any servant or employee of such person, to have or maintain in connection with such poolroom or billiard room any private room excepting rooms used exclusively as toilets or lavatories.

B. For the purposes of this chapter, "private rooms" shall be deemed to be those rooms the entire interiors of which are not exposed to view from the main entrance of such poolroom or billiard room, or from one of the main rooms regularly and habitually used by the general public for the playing of pool or billiards. (1960 code § 17.6)

**5.32.070 Posting of chapter regulations required.**

A copy of this chapter, furnished by the city clerk, shall be conspicuously posted and at all times kept posted in each room of every pool or billiard establishment in the city by the person conducting the same. The failure to post and keep posted such copy of this chapter shall be deemed a violation of this chapter by such person, and printed copies of this chapter shall be furnished every such person by the city clerk, upon application. (1960 code § 17.8)

**Chapter 5.36**

**SOLICITORS\***

Sections:

- 5.36.010 Solicitor’s permit required.
- 5.36.020 Permit application.
- 5.36.030 Procedures for permit issuance.
- 5.36.040 Expiration – Renewal.
- 5.36.050 Display of identification card.
- 5.36.060 Denial or revocation of solicitor’s permit.
- 5.36.070 Bond requirements.
- 5.36.080 Noncompliance a misdemeanor.

\*Prior legislation: 1960 code § 14.24.

**5.36.010 Solicitor’s permit required.**

Each person shall obtain a solicitor’s permit from the police department before engaging in the business of selling or soliciting at residences, or in a residential neighborhood, in the city.

The term “business of selling or soliciting” includes selling or soliciting orders for the sale of any goods, merchandise, magazines, papers, periodicals, services or any other form of business involving canvassing, peddling or soliciting from house to house or within public places.

This chapter does not apply to a person who solicits or sells only to established businesses or to a person who seeks voluntary contributions and does not offer any service or tangible thing in exchange. (Ord. 1371 § 1, 1991)

**5.36.020 Permit application.**

A person seeking a solicitor’s permit shall complete an application form and submit it to the police department. The application shall include the following information: (1) name; (2) social security number; (3) temporary address, if any; (4) permanent address; (5) driver’s license number; (6) physical description of the person; (7) telephone number; (8) whether the person has ever been arrested and the disposition of each arrest; (9) addresses for the past year; (10) employer’s name and address; and (11) the goods or services provided.

The police department shall also take fingerprints and a photograph of the person. (Ord. 1371 § 1, 1991)

**5.36.030 Procedures for permit issuance.**

After a person submits a completed application

as described in LMC 5.36.020, the following procedures apply:

A. The applicant shall pay a fee in the amount set by resolution of the city council to cover the cost of processing the application. The fee is to be paid to the city police department. This fee, however, shall not apply to an applicant who solicits or sells on behalf of a bona fide nonprofit organization which qualifies for tax exemption under California Revenue and Taxation Code Sections 206 and 214.

B. The applicant shall obtain a business license from the city finance division.

C. The applicant shall post a bond with the city finance division.

D. Within seven calendar days after the application is submitted and the fee paid, the city shall issue the permit, subject to other conditions in LMC 5.36.050 and the exceptions in LMC 5.36.060. The city shall issue the permit in the form of an identification card. The city shall retain the application form in its files. (Ord. 1908 § 20, 2010; Ord. 1371 § 1, 1991)

**5.36.040 Expiration – Renewal.**

A. The solicitor’s permit and the identification card expire one year after the date of issuance or at the time the business license expires, whichever is sooner.

B. The permit may be renewed by following the same procedures set forth in LMC 5.36.020 and 5.36.030 for a new application. (Ord. 1371 § 1, 1991)

**5.36.050 Display of identification card.**

A person engaging in the business of selling or soliciting under this chapter shall carry the identification card at all times while selling or soliciting, and shall display the identification card upon request. (Ord. 1371 § 1, 1991)

**5.36.060 Denial or revocation of solicitor’s permit.**

A. The police department shall deny an application, or revoke a permit already issued, if:

1. The applicant has previously been convicted of a felony or misdemeanor involving moral turpitude. The chief of police may disregard the conviction if he or she finds and determines that mitigating circumstances exist, such as evidence of

rehabilitation, length of time elapsed since such conviction, the age of the person at the time of conviction, or the fact that the permit applied for is unrelated to the conviction; or

2. The applicant has provided false information on the permit application.

B. The action of the chief of police in denying or revoking the permit may be appealed to the city council or such members of the council designated to hear appeals under LMC 3.08.400. If the applicant wishes to appeal, he or she shall file notice of appeal with the city clerk within 10 days after receiving written notice of the denial or revocation from the chief of police. Upon failure to file such notice within the 10-day period, the action of the chief of police shall be final.

C. If the applicant files an appeal, it shall be considered and decided within 14 days. If the permit is revoked, the person shall promptly return the identification card to the city. (Ord. 1371 § 1, 1991)

#### **5.36.070 Bond requirements.**

A. Each person who engages in the business of selling or soliciting under this chapter and who demands, accepts or receives payment or deposit of money in advance of delivery of the goods, merchandise, magazines, papers, periodicals or services shall first file a cash deposit or bond with the city finance division, except as provided in subsection C of this section.

B. The bond shall be in the amount of \$5,000 and executed by the solicitor and a surety company admitted to the surety business of the state. The bond shall be conditioned upon the delivery of the ordered goods, merchandise, magazines, papers, periodicals or services in accordance with the order, or the refund of the advance payment on the order. The bond shall name all persons residing in the city as obligees.

Any resident person aggrieved by the action of a solicitor shall have a right of action on the bond or cash deposit for recovery of the money advanced, or damages, or both. The bond shall remain in full force and effect, and in case of a cash deposit, shall remain on deposit with the city treasurer, for a period of 90 days after the expiration of the permit issued under this chapter.

C. The bond requirement of this section does not apply to a person engaged in interstate commerce. (Ord. 1908 § 21, 2010; Ord. 1371 § 1, 1991)

#### **5.36.080 Noncompliance a misdemeanor.**

A person who fails to comply with this chapter is guilty of a misdemeanor. (Ord. 1371 § 1, 1991)

**5.40.010**

**Chapter 5.40**

**TAXICABS AND OTHER  
FOR-HIRE VEHICLES\***

Sections:

Article I. General Operation Requirements

- 5.40.010 Definitions.
- 5.40.020 Operating public motor vehicle – City license and fee required.
- 5.40.030 Permits – City recordkeeping requirements.
- 5.40.040 Owner’s permit required.
- 5.40.050 Application for owner’s permit.
- 5.40.060 Hearing after filing of application for owner’s permit.
- 5.40.070 Appeals.
- 5.40.080 Owner’s permit not transferable – Change in ownership.
- 5.40.090 Revocation of owner’s permit.
- 5.40.100 Duties of certificate holder – Annual renewal.
- 5.40.110 Liability insurance – Indemnity.
- 5.40.120 Driver’s permit required.
- 5.40.130 Application for driver’s permit.
- 5.40.140 Eligibility for driver’s permit.
- 5.40.150 Driver’s permit, form, display, use.
- 5.40.160 Revocation or suspension of driver’s permits.
- 5.40.170 Hearing.
- 5.40.180 Schedule of rates, display.
- 5.40.190 Interference with inspection – Inspection of vehicles.
- 5.40.200 Operating regulations.
- 5.40.210 Maintenance of vehicles.

Article II. Taxi Stands

- 5.40.220 Location designated on owner’s permit.
- 5.40.230 Number of stands per owner.
- 5.40.240 Number of stands per block.
- 5.40.250 Use of stands required when.
- 5.40.260 Additional stands – Chief of police authority.
- 5.40.270 Leaving vehicles unattended – restrictions.

Article III. Taxicabs

- 5.40.280 Identification to be painted on vehicle.
- 5.40.290 Color scheme requirements.

- 5.40.300 Taximeter – Required – Location.
- 5.40.310 Taximeter – Owner to maintain accuracy.
- 5.40.320 Taximeter – Illumination.
- 5.40.330 Taximeter – Operation.
- 5.40.340 Taximeter – Inspection by chief of police – Inaccurate meters.
- 5.40.350 Taximeter – Unlawful practices designated.
- 5.40.360 Rates – Set by city council.
- 5.40.370 Rates – Computed by taximeter – Charging excess amounts prohibited.
- 5.40.380 Waybills – Contents required.
- 5.40.390 Waybills – Kept by owner for 90 days – Inspection.
- 5.40.400 Right of entry by police.
- 5.40.410 Taxicabs from other municipalities – Reciprocal privileges.

Article IV. Motorbuses

- 5.40.420 Service requirements generally – Refusal of unruly persons.
- 5.40.430 Reception and discharge of passengers.
- 5.40.440 Fares.
- 5.40.450 Passenger compartment to be lighted at night – Exceptions.
- 5.40.460 Stopping at railroad crossings required.
- 5.40.470 Routes – Changes prohibited without permission.
- 5.40.480 Failure to complete trip prohibited – Exception.

\*Prior legislation: 1960 Code Ch. 22; Ords. 1162 and 1183.

**Article I. General Operation Requirements**

**5.40.010 Definitions.**

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

A. “Automobile for hire” means an automobile or other auto-motor-propelled vehicle used in the transportation of passengers for hire over the public streets of the city and not over a defined route or upon a fixed schedule, and which is hired only upon a time basis; provided, however, that drive-yourself vehicles, hearses and ambulances are not included within such phrase.

B. “Chief of police” means the chief of police of the city of Livermore or his or her designee.

C. “City manager” means the city manager of the city of Livermore or his or her designee.

D. "Drive-yourself vehicle" means an automobile or other auto-motor-propelled vehicle offered to the public for hire for the transportation of passengers over the public streets of the city and without a driver being supplied therewith.

E. "Driver" means a person in direct and immediate possession or charge of driving or operating a taxicab, or public transportation vehicle.

F. "Motorbus" means an automobile or other auto or motor vehicle used in the transportation of passengers for hire over the public streets in the city on a defined route and upon a fixed schedule. Motorbus continuations of street railway lines or a part of a street railway system, and auto stages plying between the city and other cities shall not be included in the term. The term shall include motor buses used by airlines for transportation of their patrons.

G. "Motorcycle escort service" means the furnishing of a motorcycle and rider to lead or escort any funeral cortege or other procession for compensation or hire.

H. "Owner" means any person, firm, association or corporation having proprietary control of or right to proprietary control of any vehicle.

I. "Public transportation vehicle" means every for-hire, unmetered automobile, or motor-propelled vehicle having a seating capacity of no more than five persons, excluding the driver, used in the business of transporting passengers over city streets, irrespective of whether such operations extend beyond the city, and which is not regulated by the public utilities commission.

J. "Sightseeing bus" means an automobile or other auto-propelled vehicle used in the transportation of passengers for hire over the public streets of the city and adjacent highways leading to scenic, historic, educational, architectural and other places of interest, in order that the passengers may view the same. Sightseeing buses need not run over a defined route or upon a fixed schedule, but must have an established rate of fare which shall cover the entire trip.

K. "Street" or "highway" means a way or place of whatever nature publicly maintained and opened to the use of vehicular traffic.

L. "Taxicab" means a motor-propelled vehicle used for the transportation of passengers for hire over the public streets of the city and not over a defined route or upon a fixed schedule.

M. "Taximeter" means any instrument or device approved for use under the applicable laws of the state of California, which mechanically or electronically calculates the charge for the use of a taxicab. The taximeter registers such charge by means of figures, including dollars and cents, calculated by an initial charge and thereafter a charge for distance traveled or waiting time.

N. "Taxi stand" means a place designated by the chief of police for the use, while awaiting employment, of the particular taxicab authorized to utilize same. (Ord. 1544 § 1, 1999)

#### **5.40.020 Operating public motor vehicle – City license and fee required.**

A. Every person operating or having under control for operation in the city, as owner, lessee, agent or otherwise, any public motor vehicle as defined in LMC 5.40.010 shall, after obtaining a permit to do so, as required by this chapter, procure a city license from the license collector of the city, and pay a license fee therefor, as follows:

1. For each other public motor vehicle so owned or under control for operation, but not parked at a stand on a public street, the sum of \$24.00 per year; and

2. For each public motor vehicle permitted to be parked at a stand on a public street, the sum of \$120.00 per year.

B. In addition to the penalty provided by LMC 1.16.010, any such license may be collected by a civil action at law. (Ord. 1544 § 1, 1999)

#### **5.40.030 Permits – City recordkeeping requirements.**

Every official of the city, either sending or receiving any document pertaining to any owner's or driver's permit issued under the provisions of this chapter shall transmit to the city clerk a copy of the document (unless this chapter requires the original to be filed with the city clerk). All such documents shall be placed on file by the city clerk with the application pertaining to such permit. (Ord. 1544 § 1, 1999)

#### **5.40.040 Owner's permit required.**

It is unlawful for any person, partnership, firm, association or corporation, or the like, to provide taxicab or public transportation vehicle service in

## **5.40.050**

this city without an owner's permit issued pursuant to this chapter by the chief of police. (Ord. 1544 § 1, 1999)

### **5.40.050 Application for owner's permit.**

Applicants for an owner's permit shall file an application with the chief of police on forms to be furnished by the police department. The application shall include, at a minimum, the following:

A. The number of vehicles proposed to be operated.

B. A complete description of the vehicles proposed to be operated.

C. A complete description of the proposed operations.

D. The schedule of rates to be charged for the transportation of passengers in any and all vehicles operated by the owner.

E. The full color scheme and characteristic insignia to be used to designate the vehicles.

F. If the applicant proposes to operate a motorbus, the proposed routes and schedules.

G. Documentation from a licensed automobile mechanic that all vehicles to be operated under the owner's permit are safe and operable.

H. A seal from the Alameda County department of weights and measures indicating that the taximeter in each vehicle to be operated under the owner's permit is operating properly.

I. A statement that the applicant will maintain a mandatory controlled substance and alcohol testing certification program conforming to Part 40 of Title 49 of the Code of Federal Regulations for all drivers of vehicles operated under the owner's permit.

J. Payment of the application fee in the amount set by city council resolution. (Ord. 1544 § 1, 1999)

### **5.40.060 Hearing after filing of application for owner's permit.**

The chief of police shall hold a public hearing on the question of issuance of an owner's permit within 60 days after filing of a completed application with the chief of police. Notice of the hearing shall be advertised in a newspaper of general circulation and mailed to all existing holders of owners permits. If the application for an owner's permit is denied, the applicant shall not reapply for six months from date of denial. (Ord. 1544 § 1, 1999)

### **5.40.070 Appeals.**

All decisions of the chief of police are appealable to the city manager. If requested, an appeal hearing shall be held within 30 days of the request. The chief of police's decision shall remain in effect during that 30-day period. The decision of the city manager shall be final. (Ord. 1544 § 1, 1999)

### **5.40.080 Owner's permit not transferable – Change in ownership.**

No owner's permit shall be assignable or transferable. (Ord. 1544 § 1, 1999)

### **5.40.090 Revocation of owner's permit.**

An owner's permit may be revoked for any cause which would have warranted denial thereof in the first instance, for a failure to comply with any of the provisions of this chapter, a failure to comply with any conditions imposed upon the owner's permit or if operations have ceased for 10 consecutive days. If an owner's permit is granted, and operation of the service for which the permit is granted does not commence within four months of the date of the approval thereof, the permit shall be automatically null and void. Any revocation hearing shall be held before the chief of police. Ten days' written notice shall be provided to the owner's permit holder and the owner's permit holder shall have the opportunity to present at the hearing any evidence deemed relevant by the chief of police. If the owner's permit is revoked, the holder of the permit shall not reapply for six months from date of revocation. (Ord. 1544 § 1, 1999)

### **5.40.100 Duties of certificate holder – Annual renewal.**

A. Holders of owner's permits shall renew the permit annually. Upon payment of the nonrefundable administrative fee in the amount set by city council resolution, the chief of police shall renew the owner's permit if the owner has:

1. Accepted requests for service anywhere within the corporate limits of the city if vehicles and drivers are available.

2. Provided documentation from a certified automobile mechanic indicating that all vehicles covered by the owner's permit are safe and operable.

3. Obtained a seal from the Alameda County department of weights and measures indicating that the taximeters in all vehicles operated under the owner's permit are functioning properly.

4. Provided certification that all drivers of the vehicles operated under the owner's permit have passed drug and alcohol tests pursuant to Part 40 of Title 49 of the Code of Federal Regulations.

5. Notified the chief of police of a change in business or dispatch address or telephone number at least 72 hours before the change.

B. If the owner has not satisfied the conditions listed above, the chief of police shall not renew the owner's permit. The holder of a nonrenewed owner's permit may appeal the findings of the chief of police as set forth in LMC 5.40.070. (Ord. 1544 § 1, 1999)

#### **5.40.110 Liability insurance – Indemnity.**

A. No owner's permit shall be issued or continued in operation unless there is in full force and effect a policy of comprehensive general and automobile liability insurance in a form prescribed by the risk manager, executed by an insurance company approved by the risk manager with a Best's key rating of not less than "A VII," unless otherwise approved by the risk manager, whereby the owner and driver of each of the vehicles operating pursuant to the permit as well as the holder of the permit are insured against liability for damage to property and for injury to or death of any person as a result of the ownership, operation or other use thereof. The minimum liability limits shall not be less than \$1,000,000 combined single limit per occurrence applicable to all owned, nonowned and hire vehicles; provided, however, that a different amount may be required by the risk manager if deemed necessary.

B. Such policies of insurance shall contain endorsements providing that the policy will not be canceled until notice in writing has been given to the city, addressed in care of the chief of police, 1110 So. Livermore Avenue 94550, at least 30 days immediately prior to the time such cancellation becomes effective.

C. Such policies of insurance shall name the city, its officers, agents, and employees as additional insureds.

D. Holders of owner's permits, vehicle owners, and drivers shall indemnify, defend and hold harmless the city, its officers, agents, and employees,

from any loss, liability, claim, injury, or damage arising or alleged to arise from the acts or omissions of the holder of the owner's permit, vehicle owner, or driver in connection with the provision of transportation service pursuant to the owner's permit. (Ord. 1544 § 1, 1999)

#### **5.40.120 Driver's permit required.**

No person shall operate any vehicle described in LMC 5.40.010 upon the streets of the city and no person who owns or controls any such vehicle shall permit it to be so driven and no such vehicle licensed by the city shall be so driven unless the driver of the vehicle has first obtained and has then in force a driver's permit issued under the provisions of this chapter. (Ord. 1544 § 1, 1999)

#### **5.40.130 Application for driver's permit.**

Any person may apply for a permit to operate a vehicle defined in LMC 5.40.010 by filing with the chief of police, upon forms supplied by the police department, an application containing the following information:

A. Name, address, and age of applicant;

B. Convictions, if any, in the courts of any state of the United States or in any United States court within five years prior to application;

C. The endorsement of the owner by whom the applicant is to be employed as a driver or with whom the applicant is to contract for driving services;

D. Number, expiration date, and endorsements or restrictions of state of California driver's license. (Ord. 1544 § 1, 1999)

#### **5.40.140 Eligibility for driver's permit.**

A. Upon receipt of an applicant for a driver's permit, the chief of police shall conduct an investigation of the applicant and, on the basis of such investigation, shall either approve or deny the application. No permit shall be issued to any of the following persons:

1. Any person under the age of 18 years;

2. Any person convicted of any felony or misdemeanor offense which is reasonably and directly related to the functions involved in the operation of motor vehicles for hire. This restriction shall apply only to felony or misdemeanor convictions occurring within five years of the date of application;

## 5.40.150

3. Any person convicted of hit-and-run driving, of reckless driving, or of driving a vehicle while under the influence of intoxicating liquor and/or any drug within six months of the application, or upon conviction of any two or more of these offenses within five years of the date of application. However, no permit shall be issued to any person convicted of any offense described herein if such person was driving a motor vehicle for hire at the time the offense was committed;

4. Any person not possessing a valid state of California driver's license of the class required by state law for the type of motor vehicle for hire the applicant intends to drive;

5. The provisions of LMC 5.40.160 shall be applicable to any person applying for a permit hereunder.

B. Any person issued a driver's permit who subsequently is convicted of any felony or misdemeanor offense or who ceases to possess a valid state of California driver's license of the class required by state law for the type of motor vehicle such person drives shall immediately so inform his or her employer and the chief of police.

C. An applicant for a driver's permit may appeal the chief of police's decision not to issue a driver's permit pursuant to LMC 5.40.070. (Ord. 1544 § 1, 1999)

### 5.40.150 Driver's permit, form, display, use.

A. Upon approval of an application for a driver's permit and upon payment of the nonrefundable fee set by city council resolution, the chief of police shall issue a permit to the applicant. It shall bear the name and photograph of the applicant, date of expiration of the permit, and the name of the owner for whom the driver is authorized to operate a vehicle. Such permit shall be mailed to the owner named therein and shall be valid only so long as said driver continues in the employ of such owner.

B. Such permit shall be displayed in the vehicle being driven by the permittee in such a place as to be in full view of all passengers in such vehicle.

C. Upon the termination of any driver's employment, the owner by whom such driver has been employed shall immediately give the chief of police written notice of such termination and shall

immediately surrender said driver's permit to the chief of police for cancellation. (Ord. 1544 § 1, 1999)

### 5.40.160 Revocation or suspension of driver's permits.

A. The chief of police shall revoke any driver's permit if:

1. Such driver becomes ineligible for the permit,

2. The driver's State of California Department of Motor Vehicles record includes four or more moving violations within the preceding 12-month period, or

3. The chief of police determines that the driver is a danger to the public safety.

B. The permit holder may request a hearing as provided in LMC 5.40.170. However, the driver may be suspended pending said hearing. (Ord. 1544 § 1, 1999)

### 5.40.170 Hearing.

A. Every driver whose permit has been suspended pending a hearing shall have the right to a hearing before the chief of police prior to revocation.

B. The chief of police shall give the permit holder written notice of intent to revoke the driver's permit. The notice shall set forth the ground or grounds for the chief of police's intention to revoke, and shall inform the permit holder that he or she has 10 days from the date of receipt of the notice to file a written request for a hearing. The permit may be revoked if a hearing request is not received within the 10-day period.

C. If the permit holder files a timely hearing request, the chief of police shall set a time and place for the hearing. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues and to be represented by counsel. (Ord. 1544 § 1, 1999)

### 5.40.180 Schedule of rates, display.

The schedule of rates shall be posted conspicuously in each vehicle operated under an owner's permit. The rates shall not be changed or modified without first filing the changed or modified rates with the chief of police 30 days before the effective date of the change or modification. (Ord. 1544 § 1, 1999)

**5.40.190 Interference with inspection –  
Inspection of vehicles.**

It is unlawful for an owner or driver of any vehicle defined in this chapter and operated in the city to interfere with or prohibit the chief of police from at any time inspecting or thoroughly examining any such vehicle. (Ord. 1544 § 1, 1999)

**5.40.200 Operating regulations.**

A. Capacity. No driver shall accept, take into the vehicle, or transport any larger number of passengers than the rated seating capacity of the vehicle.

B. Direct Route. Any driver employed to carry any passenger to a definite point shall take the most direct route which will carry the passenger safely and expeditiously to the point of destination.

C. Interference with Traffic Prohibited. Vehicles shall not be operated over public streets in search of or soliciting prospective passengers for hire in such a manner as to interfere with vehicular traffic.

D. Receipt. Every driver shall, if requested, give a correct receipt upon payment of the correct fare.

E. Refusal to Carry Passengers. It is unlawful for any driver operating under a permit issued pursuant to this chapter to refuse, when the vehicle is in service, to transport any person who represents himself or herself for carriage in an orderly manner and for a lawful purpose.

F. Occupants to Have Exclusive Use. When a taxicab or automobile for hire is engaged, the occupants shall have the exclusive right to the full and free use of the passenger compartment and it is unlawful for the owner or driver of such vehicle to solicit additional passengers contrary to that right. (Ord. 1544 § 1, 1999)

**5.40.210 Maintenance of vehicles.**

A. It shall be the responsibility of the owner to provide documentation from a licensed automobile mechanic that every vehicle operating under the owner's permit is safe and operable at the time of permit issuance and renewal.

B. The interior and exterior of each vehicle shall be clean and well-maintained and meet California Vehicle Code requirements at all times when in operation. (Ord. 1544 § 1, 1999)

**Article II. Taxi Stands**

**5.40.220 Location designated on owner's permit.**

The owner's permit shall designate a certain place, or places, where the permittee shall be allowed to stand any vehicle operated by the permittee as a taxicab, automobile for hire, or sightseeing bus, while awaiting employment. (Ord. 1544 § 1, 1999)

**5.40.230 Number of stands per owner.**

Not more than three taxi stands of one space each shall be granted to any permittee. (Ord. 1544 § 1, 1999)

**5.40.240 Number of stands per block.**

Not more than two taxicabs, automobiles for hire, or sightseeing buses shall be allowed to stand upon either side of a street within the limits of any one block. (Ord. 1544 § 1, 1999)

**5.40.250 Use of stands required when.**

The owner of any taxicab, automobile for hire, or sightseeing bus shall not permit any vehicle owned by him or her, nor shall any driver cause any such vehicle, to stand on any street while awaiting employment at any place other than the stand for which a permit has been granted. (Ord. 1544 § 1, 1999)

**5.40.260 Additional stands – Chief of police authority.**

The chief of police shall, in the interest of public safety and welfare, grant a permittee a maximum of three additional taxi stands if requested. Upon a determination that a number of stands exceeding one no longer serves the public interest, the chief of police may reduce the number of stands to that number originally granted. The chief of police may also change the location of additional stands upon a finding that the change is supported by considerations of public convenience or safety. The permittee may appeal any final action by the chief of police in the manner set forth in LMC 5.40.070. (Ord. 1544 § 1, 1999)

**5.40.270**

**5.40.270 Leaving vehicles unattended – restrictions.**

No owner shall permit any public motor vehicle operated by him or her, and no driver shall cause any such vehicle, to be parked unattended in any street stand for a period of time exceeding five minutes. (Ord. 1544 § 1, 1999)

**Article III. Taxicabs**

**5.40.280 Identification to be painted on vehicle.**

Every taxicab operated in the city shall have painted upon the side of the cab the name of the owner or the fictitious name under which the owner operates, together with the number of the permit granted to such owner. The lettering and signs to be displayed on any taxicab shall be subject at all times to the approval of the chief of police. (Ord. 1544 § 1, 1999)

**5.40.290 Color scheme requirements.**

Every owner operating a taxicab in the city shall adopt a characteristic color scheme and shall use it on all vehicles operated under the owner’s permit. No change whatsoever in the color scheme or distinguishing characteristics of any taxicab shall be made without written permission from the chief of police, and it is unlawful for any person soliciting patronage for any public motor vehicle to represent by word or sign, insignia or accoutrements, that the motor vehicle for which he is soliciting such patronage is a vehicle owned or operated by other than the actual owner. (Ord. 1544 § 1, 1999)

**5.40.300 Taximeter – Required – Location.**

It is unlawful for any owner or driver to operate any taxicab in the city unless such vehicle is equipped with a taximeter, the location of which shall be directly in front of the glove compartment or close thereby. (Ord. 1544 § 1, 1999)

**5.40.310 Taximeter – Owner to maintain accuracy.**

It shall be the duty of every owner operating a taxicab to keep such taximeter in perfect condition, so that such taximeter will at all times correctly and accurately indicate the correct charge for the distance traveled and waiting time. (Ord. 1544 § 1, 1999)

**5.40.320 Taximeter – Illumination.**

Each taximeter shall, while in use in the city, be equipped with an efficient illuminating device, either flexible or fixed, and so arranged as to enable the passengers to conveniently observe the meter and the amount of fare registered thereon. (Ord. 1544 § 1, 1999)

**5.40.330 Taximeter – Operation.**

Every taximeter required by this article shall register the charge to the nearest \$0.10, and be equipped with a flag or other mechanical device with the words “for hire” printed or stamped thereon. Such flag shall be so attached and connected to the mechanism of the taximeter as to cause such mechanism to operate when the flag is in a position other than upright, and indicate that the taxicab is not for hire, and which flag shall, when moved forward or downward, start the operation of the taximeter so that the same will operate in the manner described. (Ord. 1544 § 1, 1999)

**5.40.340 Taximeter – Inspection by chief of police – Inaccurate meters.**

Every taxicab shall be at all times subject to inspection by the chief of police, and the chief of police is hereby authorized to inspect any taximeter. Upon the discovery of any inaccuracy in the taximeter, the chief of police shall remove or cause to be removed any vehicle equipped with an inaccurate taximeter from the streets of the city until the taximeter has been adjusted. (Ord. 1544 § 1, 1999)

**5.40.350 Taximeter – Unlawful practices designated.**

It is unlawful for any driver of a taxicab, while carrying passengers, to display the flag or device attached to any taximeter required by this article in such a position as to denote that such vehicle is for hire or is not employed, or to have such flag or other attached device in such a position as to prevent the taximeter from operating. It is unlawful for any driver to throw such flag or device of a taximeter into a position which causes such taximeter to record when such vehicle is not actually employed, or to fail to throw the flag or other device on such taximeter into a nonrecording position each time a passenger is discharged and a fare collected. (Ord. 1544 § 1, 1999)

**5.40.360 Rates – Set by city council.**

No owner or driver of a taxicab shall charge a higher rate for the use of a taxicab than the rates set by city council resolution. (Ord. 1544 § 1, 1999)

**5.40.370 Rates – Computed by taximeter – Charging excess amounts prohibited.**

All charges for transportation of passengers in taxicabs operated in the city must be based on the charges indicated on the taximeter. It is unlawful for any owner, driver, or operator of any taxicab to charge any passenger any sum in excess of the sum indicated on the taximeter. (Ord. 1544 § 1, 1999)

**5.40.380 Waybills – Contents required.**

The driver of every taxicab shall keep a separate waybill of every service rendered as a driver, which shall include the following information:

- A. Location where passengers entered the vehicle;
- B. Time of entry;
- C. Number of passengers;
- D. Location where passengers were discharged; and
- E. Amount of fare collected. (Ord. 1544 § 1, 1999)

**5.40.390 Waybills – Kept by owner for 90 days – Inspection.**

The owner of every taxicab shall keep the waybills required by LMC 5.40.380 in his or her office files for a period of 90 days after the date of service rendered. The waybills shall at all convenient times be open to examination by the chief of police. The failure to keep a waybill or falsifying of any waybill by an owner or by a driver shall be grounds for revocation of his or her permit. (Ord. 1544 § 1, 1999)

**5.40.400 Right of entry by police.**

The chief of police shall have the right, at any time after displaying proper identification, to inspect any taxicab to determine whether any of the provisions of this chapter are being violated. (Ord. 1544 § 1, 1999)

**5.40.410 Taxicabs from other municipalities – Reciprocal privileges.**

The driver of a taxicab authorized to operate in any municipality other than this city may transport passengers from such municipality to a destination within or beyond the city limits of the city; provided, that the driver of such taxicab shall not seek or accept passengers within the city, except upon the return trip to such other municipality, and then only at a point designated by the chief of police, and shall accept only passengers whose destination is directed to a point beyond the limits of the city in the direction of the municipality from which such taxicab came. The requirements of this chapter shall not apply to the owner or driver of such taxicab while it is operated in compliance with the provisions of this section, and while similar privileges are granted by the municipality from which such taxicab came. (Ord. 1544 § 1, 1999)

**Article IV. Motorbuses****5.40.420 Service requirements generally – Refusal of unruly persons.**

No driver of any motorbus in the city shall at any time, unless such vehicle is filled to legal capacity, refuse to carry any person offering himself to be carried and tendering the fare for the same, to any place in the route of such vehicle; provided, however, that such driver shall refuse transportation to any person who is conducting himself in a boisterous or otherwise unruly manner. (Ord. 1544 § 1, 1999)

**5.40.430 Reception and discharge of passengers.**

It is unlawful for any motorbus operated in the city to receive or discharge passengers within any intersection of streets, and in all cases, such reception and discharge of passengers shall be at a point as near the curb as may be practicable, and shall be through and from the side of such motorbus nearest the street curb and on the right-hand side of the motorbus. The places of receiving and discharging passengers by motorbus shall be at all times subject to order of the chief of police. (Ord. 1544 § 1, 1999)

**5.40.440**

**5.40.440 Fares.**

It is unlawful for any person engaged in the business of operating a motorbus in the city to charge a greater fare than as shown on the schedule and tariff on file with the State Public Utilities Commission. (Ord. 1544 § 1, 1999)

**5.40.450 Passenger compartment to be lighted at night – Exceptions.**

No motorbus operated in the city, other than a motorbus used by an airline for transportation of its patrons, shall be operated in the nighttime unless, the passengers’ compartment thereof is kept continuously lighted. (Ord. 1544 § 1, 1999)

**5.40.460 Stopping at railroad crossings required.**

It is unlawful for any person operating a motorbus to permit, cause, or allow such vehicle to cross any railroad track in the city over which railroad trains are operated without bringing such vehicle to a full stop before crossing such railroad track; provided, that at any point where a flagman is stationed, such person operating such motorbus shall not be required to stop, unless warned or directed by such flagman to do so; provided, further, that at any point where a traffic officer is stationed, such person operating such motorbus shall comply with the direction of such traffic officer. (Ord. 1544 § 1, 1999)

**5.40.470 Routes – Changes prohibited without permission.**

No owner or driver of any motorbus operated in the city shall at any time change or alter the route of same except upon permission duly granted. (Ord. 1544 § 1, 1999)

**5.40.480 Failure to complete trip prohibited – Exception.**

It is unlawful for any driver of any motorbus in the city who has received a passenger for any announced or agreed trip, except for reasons beyond the control of the owner or driver, to fail to complete such trip in a timely manner and without any extra payment of fare, or to fail, refuse, or neglect to operate such motorbus between the termini and over the entire route specified in the permit granted to so operate. (Ord. 1544 § 1, 1999)

**Chapter 5.44**

**TOW CAR SERVICES**

Sections:

- 5.44.010 Purpose.
- 5.44.020 Definitions.
- 5.44.030 Nonexclusive franchise agreement.
- 5.44.040 Franchise fees.
- 5.44.050 Dispatch of tow cars.
- 5.44.060 Placement on tow rotation list.
- 5.44.070 Investigation.
- 5.44.080 Regulations.
- 5.44.090 Suspension from tow rotation list.
- 5.44.100 Removal from tow rotation list.
- 5.44.110 Appeal.
- 5.44.120 Authority of police chief.

**5.44.010 Purpose.**

It is the intent of this chapter to regulate the operation of tow car services dispatched by the city of Livermore police department pursuant to the authority conferred by the California Vehicle Code and to establish a franchise agreement and franchise fee for these services. (Ord. 1826 § 1, 2007)

**5.44.020 Definitions.**

Except where the context shall otherwise require, the definitions given in this section govern the construction of this chapter:

A. “Abandoned vehicle tows” means tows of vehicles left standing for a period of time greater than permitted under applicable state laws or municipal ordinances, and which vehicles have been tagged and marked for removal from public streets or property or from private property in accordance with law.

B. “Franchise” means nonexclusive franchise granted by the council for purposes of establishing tow car services for tow services dispatched by the Livermore police department.

C. “Police-generated tows” means tows requested by the police department in connection with official police business, and which tows may be of the following type: police-impounded vehicles, police emergency tows, VIN tows, and abandoned vehicle tows.

D. “Police impound” means tows of vehicles impounded by the police which vehicles are held to be used as evidence in a criminal case, and which must be stored until released by police department personnel.

E. "Police emergency tows" means tows of vehicles involved in accidents, and/or stalled vehicles obstructing traffic, and/or tows of vehicles whose driver is incapacitated or physically unable to drive the vehicle, and/or tows of vehicles whose driver has been arrested and/or detained and cannot drive the vehicle.

F. "Tow franchise agreement" means the non-exclusive franchise agreement entered into between the city and an owner of tow cars that defines the obligations, procedures and terms for police dispatched tow services.

G. "Tow car" means a motor vehicle which has been altered or designed and equipped for and exclusively used in the business of towing vehicles by means of a crane, hoist, tow bar, tow line or dolly, or is otherwise exclusively used to render assistance to other vehicles.

H. "Tow rotation list" means a list of qualified tow car operators engaged in the business of providing tow services who have entered into a franchise agreement with the city and shall be designated by the Livermore police department (LPD) for the purpose of rotating police dispatch of tow cars in accordance with this chapter, the franchise agreement and applicable state law.

I. "VIN tows" means tows of vehicles necessitating special procedures to ascertain vehicle identification numbers in compliance with the requirements of California Vehicle Code Section 10751. (Ord. 1826 § 1, 2007)

#### **5.44.030 Nonexclusive franchise agreement.**

The city council may from time to time enter into nonexclusive franchise agreements for tow car services dispatched by LPD. All franchise agreements may be entered into without competitive bidding. (Ord. 1826 § 1, 2007)

#### **5.44.040 Franchise fees.**

From time to time, rates shall be established pursuant to the terms of the franchise agreement and approved by the city council for fees to be paid to the city for the nonexclusive right to perform city-generated tows. (Ord. 1826 § 1, 2007)

#### **5.44.050 Dispatch of tow cars.**

Except as otherwise provided for in this chapter, LPD shall dispatch tow cars to perform tow services on a rotation basis from a rotation list estab-

lished and maintained in accordance with the provisions of this chapter and the franchise agreement. (Ord. 1826 § 1, 2007)

#### **5.44.060 Placement on tow rotation list.**

From time to time, the city shall solicit applications for tow car services. Any person engaged in the business of providing tow car service and desiring to be placed on the rotation list shall submit an application at the specified time. The application shall be in a form approved by LPD. The application shall be made under penalty of perjury and shall be accompanied by a signed franchise agreement. (Ord. 1826 § 1, 2007)

#### **5.44.070 Investigation.**

LPD shall investigate the facts listed in the application for tow car services. Within 30 days after completion of the investigation, LPD shall place the tow car operator on the rotation list unless any one of the following exists:

A. The applicant has been removed from the rotation list within the last 24 months;

B. A material statement made in the application is untrue;

C. A fact exists of which the police chief has knowledge which would be cause for removal or suspension of the applicant from the rotation list;

D. The applicant's business or storage facility is not located in the city;

E. The applicant has a felony conviction;

F. The rotation list already consists of five or more tow companies; or

G. The applicant fails to sign a tow franchise agreement. (Ord. 1826 § 1, 2007)

#### **5.44.080 Regulations.**

All persons on the rotation list shall comply with all of the following terms:

A. Comply with all laws of the state pertaining to tow cars and tow car service, including but not limited to satisfying minimum equipment standards, reporting to the California Highway Patrol all vehicles stored over 30 days and keeping records of vehicles stored for longer than 12 hours; and

B. Provide 24-hour service, seven days per week, including holidays, for towing, storage and release of vehicles; and

## 5.44.090

C. Have storage space inside a locked building for at least two vehicles; and

D. Have storage space in the open for at least 20 vehicles and storage space of 5,000 square feet; and

E. Provide adequate security for vehicles stored in the open, which security shall include no less than a six-foot fence or wall around the storage area; and

F. Furnish the police department with a copy of any report made to the Department of Justice of the state pursuant to Vehicle Code Section 10652, regarding vehicles stored for 30 days, which copy may be forwarded by regular mail; and

G. Store vehicles subject to a police impound within a secured storage facility. It is the discretion of the police officer to store the vehicle in either an inside or outside storage facility; and

H. Retain and safeguard any vehicle subject to a police impound until authorized by the police department to release same and the contents therein; and

I. Post a schedule of towing fees in a conspicuous place on the business premises; and

J. Charge reasonable towing fees not in excess of those charges made for similar services provided to any other public agency or private person; and

K. Maintain motor vehicle liability insurance and general liability insurance by a policy or policies having single limit bodily injury and property damage limits of not less than \$1,000,000 and provide city with a certificate of insurance evidencing same; and

L. Maintain receipts, with a copy placed in the towed or stored vehicle, whenever any item is removed from such vehicle; and

M. Maintain records of tow services and other services furnished, including a description of the vehicle, the nature of services rendered, and the time and location of calls, which records may be inspected by authorized employees of the city during regular business hours; and

N. Comply with such other rules and regulations promulgated by the police chief; and

O. Comply with all terms and conditions of the tow franchise agreement. (Ord. 1826 § 1, 2007)

## 5.44.090 Suspension from tow rotation list.

Any tow car service placed on the rotation list may be suspended by the police chief or his designee from such list if the tow car service fails to comply with any of the conditions, regulations or requirements of this chapter. Upon learning of grounds for suspension, the police chief or his designee shall immediately, by written notice, inform the owner of the tow car service of his action of suspension. The police chief or his designee may reinstate the tow car service to the rotation list upon satisfactory proof that the tow car service is in compliance with the conditions, regulations, and requirements of this chapter. (Ord. 1826 § 1, 2007)

## 5.44.100 Removal from tow rotation list.

A. Any tow car service placed on the rotation list may be removed from such list for one or more of the following grounds:

1. The tow car service has been suspended from the rotation list at least once and repeatedly or intentionally fails to comply with any of the conditions, regulations or requirements of this chapter.

2. The owner of the tow car service knew or should have known that his driver or drivers have violated the provisions of the Vehicle Code and have failed to take corrective action within a reasonable time.

3. The tow car service fails to perform the duties established by this chapter and the tow franchise agreement by any of the following: fails to timely answer calls, fails to respond to calls within a reasonable time, fails to maintain clean and orderly storage facilities, or at any time fails to clean the roadway of glass and debris at an accident scene.

4. The owner of the tow car service sells 51 percent or more of the business, provided the person or persons purchasing the business may apply for placement on the rotation list.

5. The owner of a tow car service applies for placement on the rotation list under another name.

6. When a fact exists which would constitute a ground for denial of an application pursuant to this chapter and the tow franchise agreement.

B. The police chief, upon learning of grounds for removal, shall immediately, by written notice, inform the owner of the tow car service of his action of removal and the grounds for removal. Within 10 days after receipt of the written notice,

the owner shall have the right to file a written request for a hearing before the police chief. If the owner files a timely hearing request, the police chief or the chief's designee shall set a time and place for the hearing. All parties involved shall have the right to offer testimony, documents, and tangible evidence at a hearing on the issues and to be represented by counsel. (Ord. 1826 § 1, 2007)

#### **5.44.110 Appeal.**

A. Within five business days after receiving written notification that any applicant has been denied placement on the rotation list, or any person suspended or removed from the rotation list, the applicant shall have the right to appeal such order by filing a written notice of appeal including a written statement stating the grounds of the appeal with the city clerk. The written statement shall include, but not be limited to, statements why the applicant believes the decision of the police chief should be reconsidered. Upon the filing of the notice of appeal and written statement, the city clerk shall set a time, date and place for a public hearing on the matter and, shall notify the applicant of the hearing. The hearing shall be heard at a regular meeting of the council not later than 30 days after the written notice and statement was filed with the city clerk.

B. Such appeal shall be heard by the city council, which may affirm, amend, or reverse the decision, or take other action deemed appropriate, subject to the limitations of the terms and conditions of the tow franchise agreement.

C. In conducting the hearing, the city council shall not be limited to the technical rules of evidence under the California Evidence Code.

D. If no appeal is filed within the time prescribed, the action of the police chief shall be final. Notwithstanding any other provision of this chapter, in the event that any appeal is filed, the appellant shall not be allowed to participate in any tows or be placed on the tow rotation list until such time as the appellant is approved or reinstated.

E. The council shall make findings of fact within 15 business days after the conclusion of the hearing. A copy of the findings shall be mailed to the appellant. The action of the city council shall be final. (Ord. 1826 § 1, 2007)

#### **5.44.120 Authority of police chief.**

The police chief for the city of Livermore is authorized to promulgate administrative rules and procedures necessary for the successful and effective implementation of this chapter including establishing and entering into tow franchise agreements subject to approval of the city manager and city attorney. Said administrative rules and procedures shall be in writing. (Ord. 1826 § 1, 2007)

**5.80.010**

**Chapter 5.80**

**MEDICAL MARIJUANA DISPENSARIES**

Sections:

5.80.010 Definitions.

5.80.020 Medical marijuana dispensary as a prohibited use.

**5.80.010 Definitions.**

“Medical marijuana dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is made available to or distributed by or distributed to one or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. All three of these terms are identified in strict accordance with California Health and Safety Code Section 11362.5 et seq.

A medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law:

A. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; or a facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code;

B. A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code;

C. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code;

D. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code;

E. A hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as such use complies strictly with applicable law, including but not limited to, California Health and Safety Code Section 11362.5 et seq. (Ord. 1828 § 1, 2007)

**5.80.020 Medical marijuana dispensary as a prohibited use.**

A medical marijuana dispensary as defined in LMC 5.80.010 shall not be established, operated, or maintained at any location within the city of Livermore. (Ord. 1828 § 1, 2007)