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Apache Junction, AZ Code of Ordinances

CHAPTER 8: BUSINESS

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ARTICLE 8-1: GENERAL BUSINESS AND LICENSING PROVISIONS

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§ 8-1-1 DEFINITIONS.

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

ADVERTISEMENT. The attempt by publication, dissemination, solicitation, signage or circulation to induce directly or indirectly any person to enter into any transaction with persons conducting business activities within or outside the city.

APPROPRIATE LICENSE. A privilege license that has been issued pursuant to the provisions of Apache Junction Tax Code, Chapter 8A, Article III, Licensing and Recordkeeping; or a business or operating license that has been issued pursuant to the provisions of this chapter.

A.R.S. Arizona Revised Statutes.

BUSINESS ACTIVITY. To practice, transact or carry on any trade, business, game or amusement, calling, profession or occupation, or the renting, leasing or licensing for use of real property with the object of gain, benefit or advantage.

BUSINESS LICENSE. A license issued to a person conducting non-taxable business activity within the city.

CARNIVAL COMPANY. A collection of shows, exhibitions, feats of strength, merchandise booths, games of skill, fortunetelling, games of chance, wheels of fortune or any other amusement device presented or offered upon the streets or vacant property within the city, other than circuses, animal shows or side shows with circuses.

CASUAL ACTIVITY or (SALE). A transaction of an isolated nature made by a person who neither represents himself or herself to be nor is engaged in a business activity. **CASUAL ACTIVITY** never includes the sale, rental, leasing or licensing for use of real property; nor does it include the sale of merchandise purchased or manufactured for the purpose of resale.

CITY. The City of Apache Junction.

CLERK. The City Clerk or designee.

DEPARTMENT OF PUBLIC SAFETY. The department within the city responsible for the protection of life and property and for the enforcement of the laws of the State of Arizona and the City of Apache Junction.

LICENSE. A business or operating license.

MASSAGE ESTABLISHMENT. Any place of business or establishment conducting business activity wherein any massage therapy techniques are administered, practiced or used.

MASSAGE THERAPIST. An individual who is either licensed or specifically exempted under A.R.S. Title 32, Chapter 42.

MERCHANDISE. Any new or used object, wares, goods, commodities, personalty and intangibles, real estate, amusements, food concessions or services.

NON-TAXABLE BUSINESS ACTIVITY. A person conducting business activity within the city, the income of which is not taxable in whole or in part pursuant to any section in Apache Junction Tax Code, Chapter 8A, Article IV or which meets the provisions of Apache Junction Tax Code, Chapter 8A, Regulation 8A-460.4.

OPERATING ACTIVITY. All activities conducted by a person who is deemed not to be in business.

OPERATING LICENSE. A license issued to a person conducting operating activities within the city.

PEDDLER. Any person operating as a solicitor, peddler, hawker, salesperson, vendor of goods, wares, merchandise, newspapers, magazines or services, and who goes from door to door, or to only one door in the city; or who offers such items for sale along a parade route on real property other than their own.

PERSON. An individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, limited liability company, the federal government, this state, any political subdivision or agency of this state, or such person's legal representative. **PERSONS** affiliated through common ownership, or where one person owns another person, are considered separate **PERSONS** for licensing purposes.

PERSON DEEMED NOT TO BE IN BUSINESS. A person who is either:

- (1) A federally exempt organization which has received a determination of exemption under 26 U.S.C. § 501(c);
- (2) The federal government, the State of Arizona, any other state or any political subdivision, department or agency;
- (3) A public educational entity operated pursuant to any provision of A.R.S. Title 15; or
- (4) Any person who engages or attempts to engage in a casual activity at a swap meet.

PREMISES. Any building, structure, lot or other area at which business activity is conducted. When the premise involves a building or structure, that premises shall include all outside areas including the parking lot.

PRIVILEGE LICENSE. A license issued pursuant to the provisions of Apache Junction Tax Code, Chapter 8A, Article III, Licensing and Recordkeeping to a person conducting taxable business activity within the city.

SALE. A transaction of any type where the title or ownership of tangible personal property or real property exchanges hands for a consideration of any type; or where the promise or completion of a service is exchanged for a consideration of any type.

STREET BALLYHOO. Any person advertising by means of any vehicle containing amplifiers, phonographs, loudspeakers, music rolls, microphones, broadcasting, radio, public address system or music of any description, operating upon the public streets or public grounds of the city.

TAXABLE BUSINESS ACTIVITY. A person engaged in business within the city, the income of which in whole or in part is taxable pursuant to any section in Apache Junction Tax Code, Chapter 8A, Article IV.

TEMPORARY LOCATION. Operating the same kind of business, for which a business license has been issued, at such location for no more than 7 consecutive days, except that food and beverage concession trailer vendors shall be limited to no more than 5 consecutive days at each temporary location.

VALID. Any license subject to the provisions of this chapter that has not expired, or has not been suspended, cancelled or revoked.

VENDOR. Any person soliciting or making a sale, or causing any advertisement for a product or service.

ZONING ADMINISTRATOR. The city official who initially determines zoning and land development compliance, as appointed by the development services director.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-1-2 CITY CLERK; DUTIES.

(A) It shall be the duty and responsibility of the City Clerk to administer the provisions of this chapter and pursuant to this duty shall issue, renew, deny, suspend, cancel or revoke privilege, business and operating licenses.

(B) It shall be the duty of the City Clerk to file complaints with the City Attorney against all persons violating any of the provisions of this chapter.

(C) It shall be the duty of the City Clerk to prepare and issue an appropriate license for every person required to pay a license fee, and to state in each license the amount thereof, the period of time covered thereby, the name of the person for whom issued, the specific business activities conducted by the licensee, and the location and place of business where the business activities are carried on.

(D) It shall be the duty of the City Clerk, or deputy, before issuing a license under this chapter to require from every applicant a sworn application, on a form to be furnished by the city.

(E) The City Clerk may appoint license inspectors, and it shall be the duty of such inspector to inspect places of business activity subject to the provisions of this chapter and Apache Junction Tax Code, Chapter 8A, and report all violations to the City Clerk.

(F) No greater or lesser amount of license and/or registration fee shall be charged or received for any license issued hereunder than is provided for in this chapter, and no license shall be issued for any period of time other than as provided in this chapter.

(G) In no case shall any mistake made by the City Clerk in stating, fixing or collecting the amount of any license and/or registration fee prevent, prejudice or estop the city from collecting the correct amount due as provided by this chapter.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-1-3 OTHER REGULATORY PROVISIONS.

(A) Where any business activity is subjected to a certificate of health or sanitary examination, before any license is issued, the applicant must produce such certificate or permit from the County Health Department, as provided for in A.R.S. § 36-136 as amended.

(B) No license may be issued until the zoning administrator has provided preliminary verification that the business is in an approved zone. The Zoning Administrator shall furnish such verification within 5 business days of the request.

(C) In the event the Zoning Administrator subsequently disapproves the formal zoning certificate, the City Clerk shall revoke the person's appropriate license.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-1-4 CRIMINAL PENALTIES.

Any person violating any of the provisions of this chapter, shall be deemed guilty of a misdemeanor and, if no other penalty is provided herein, shall upon conviction, be punished pursuant to the provisions of Vol. I, § 1-1-11.

(Am. Ord. 1296, passed 5-1-2007)

ARTICLE 8-2: SPECIFIC LICENSING AND REGISTRATION PROVISIONS

Section

- 8-2-1 License required
- 8-2-2 General rules
- 8-2-3 Peddler registration required
- 8-2-4 Application to City Clerk
- 8-2-5 Licensing; fees
- 8-2-6 Permits; fees
- 8-2-7 Delinquency penalty
- 8-2-8 Unlawful activities
- 8-2-9 Suspension, revocation and cancellation of license
- 8-2-10 Notice of hearing and appeal

§ 8-2-1 LICENSE REQUIRED.

(A) The following persons shall obtain a privilege license and pay the appropriate licensing fees pursuant to the provisions of Apache Junction Tax Code, Chapter 8A, Article III, Licensing and Recordkeeping:

- (1) Persons conducting any taxable business activity;
- (2) Federally exempt organizations who have unrelated business income, as defined in 26 U.S.C. § 512, from any business activity; and
- (3) Municipal government entities who have income from any of the following sources:
 - (a) Renting, leasing or licensing for use of real property to other than another department or agency of the municipality;

(b) Producing, providing or furnishing electricity, electric lights, current, power, gas or water to consumers or ratepayers; or

(c) Sales of tangible personal property to the public, when similar tangible personal property is available for sale by other persons.

(B) Any person conducting any non-taxable business activity within the city shall obtain a business license pursuant to the provisions in this chapter.

(C) In order to maintain the public's safety and interests, persons deemed to not be in business shall obtain an operating license pursuant to the provisions of this chapter.

(D) Any person who hires peddlers, either as employees, brokers or agents, to operate within the city shall acquire the appropriate license. Peddlers shall operate under such person's license; but shall be required to register with the City Clerk pursuant to the provisions of Vol. I, § 8-2-3.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-2-2 GENERAL RULES.

(A) Any person having a business or operating license shall have such license converted to a privilege license and shall pay the appropriate license fee if it is found that such person is conducting taxable business activity within the city.

(B) No person may apply for a license for another person, and no licensee may allow another person to use his or her license. All licenses issued hereunder shall be nontransferable and non-assignable.

(C) A person engaged in or conducting 1 or more businesses at 2 or more locations, or under 2 or more business names shall procure a license for each such location or business name. A **LOCATION** is a place of a separate business establishment. This division does not apply to persons solely renting, leasing or licensing for use of real property.

(D) A person engaged in or conducting business at 2 or more locations using the same business name may designate 1 such license required under division (C) above for tax reporting purposes.

(E) A new license is not required when a licensee has an address change; however, such licensee must provide the City Clerk with written certification that the licensee had changed business locations.

(F) A separate license is not required for each type of business activity provided that the each type of business activity is conducted by the same person, using the same business name, and at the same business location. Every person shall have his or her license updated with the City Clerk before engaging in any new business activity.

(G) Should questions arise as to form of business, interpretations of this chapter shall be based upon form indicia contained in the following: Apache Junction Tax Code, Chapter 8A, Arizona Revised Statutes; Internal Revenue Code; and rules and regulations prescribed by the Internal Revenue Service.

(H) All transfers of ownership, including changes in type of business entity, shall be considered to be a new business and, as such, shall be required to obtain an appropriate license and pay the required license fee.

(I) An appropriate license shall be displayed in a conspicuous place at each business or operating location. This division does not apply to persons solely renting, leasing or licensing for use of real property. Licensees conducting business activity at temporary locations shall have available either the license or a copy of the license at the temporary location. Every person having a license under the provisions of this article shall produce and exhibit the license upon demand by any city police officer or city tax and licensing official.

(J) No license issued by the city shall be presumed to apply to any business activity which is a part of interstate commerce; or which such business activity is conducted as an agency or department of the United States government for which the government has failed to make provisions allowing states and municipalities to so license.

(K) The granting of a license is not deemed as evidence or proof that the licensee has complied with the provisions of this chapter, or other provisions of the Apache Junction city code, nor shall it stop the prosecution by the city for any violation of the Apache Junction city code.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-2-3 PEDDLER REGISTRATION REQUIRED.

(A) Notwithstanding the provisions in Vol. I, § 8-2-1, any person operating as a peddler shall register with the City Clerk and obtain an identification card showing the registration.

(B) Applicants for registration shall be required to furnish 2 recent satisfactory photographs of the applicant, one to be attached to the applicant's identification card and the other to be retained by the City Clerk's office. In the event the applicant is unable to supply such photographs, photographs will be supplied by the City Clerk's office for a fee of \$3 each. The City Clerk shall require the applicant to file his or her fingerprint identification with the City Clerk's office.

(C) Peddlers applying for registration shall be required to furnish to the City Clerk's office a complete description of the product to be sold in the city, together with information regarding sales methods to be used and references that will enable the City Clerk to determine whether or not the applicant is qualified to receive an identification card as provided herein.

(D) If approved, issuance of an identification card under the provisions of this article shall be completed within 15 days after the applicant has given the required information.

(E) Identification cards under this article shall be issued upon payment of a \$25 registration fee and shall be valid for the duration of the related license, unless the City Clerk discovers any of the following:

- (1) He or she has a criminal record;
- (2) He or she is associated with a company that has engaged in fraudulent dealings; or
- (3) The proposed sales proposition includes some element of trickery, fraud or deceit.

(F) Identification cards shall be assigned the same status and duration as the person's related license: active, suspended, canceled or revoked.

(G) Identification cards issued under the provisions of this article may be suspended, cancelled or revoked pursuant to the provisions of Vol. I, § 8-2-8 subject to hearing and appeal pursuant to the provisions of Vol. I, § 8-2-9.

(H) Peddlers wishing to continue peddling activities within the city shall apply for a new identification card upon expiration of the current identification card.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-2-4 APPLICATION TO CITY CLERK.

(A) An application for a license and/or identification card under this article shall be made on forms furnished by the city. Every application shall be accompanied by an application fee in the amount provided in Vol. I, § 8-2-5. In the event a license and/or identification card is not issued, the application fee shall not be refunded but shall be applied to cover the cost of processing the application.

(B) All licenses shall be valid only for 1 year from the date issued unless renewed each year by paying the appropriate fee(s) on or before the last business day of the month prior to the annual anniversary of the original issuance of such license. Payment for renewal must be received within the City Clerk's office by such date to be deemed filed and paid.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-2-5 LICENSING; FEES.

(A) The business license fee set out in the following schedule is hereby established for all non-taxable business activities.

(B) Notwithstanding any other required fee, all dealers in alcoholic beverages shall submit a \$50 non-refundable application fee to the city prior to the Council public hearing on the state liquor license application to cover the cost of conducting such public hearing. This fee shall apply to all new, owner-transfer, person-transfer, and location-transfer applications.

(C) A massage therapist operating as an independent contractor within the city and not as an employee of a massage establishment shall obtain the appropriate license pursuant to the provisions of this chapter.

(D) In any action brought under or arising out of any of the provisions of this article, the fact that the person (defendant) is engaged in any business activity for which a license is required by this article, or that the party has conducted an advertisement for such activity shall be prima facie evidence of such party's liability to pay the required fee.

(E) The conviction and punishment of any person for conducting any business activity without a license shall not excuse or exempt such person from the payment of any license fee due or unpaid at the time of such conviction.

(F) The fee schedule for licenses issued under this chapter shall be as follows:

<i>Type of License</i>	<i>Initial Fee</i>	<i>Renewal Fee</i>
Business license (basic)	\$50	\$50
Duplicate or replacement license	\$25	\$25
Operating license	\$0	\$0

(Am. Ord. 1296, passed 5-1-2007)

§ 8-2-6 PERMITS; FEES.

(A) Circus and/or carnival businesses must have approval of the Director of Public Safety, and are required to provide certificate of insurance naming as additionally insured the City of Apache Junction officials, employees and citizens. A privilege license is mandatory for such businesses. Applications for such business activities shall be submitted to the City Clerk no later than 6 working days prior to the date the event begins.

(B) Notwithstanding the provisions of division (B) above and other requirements deemed necessary to protect the health, safety and general welfare of the public, circuses and/or carnival companies operating under the auspices of local non-profit organizations are exempt from the permit fee prescribed herein.

(C) Persons already in possession of an appropriate license, other than those solely licensed as peddlers, who wish to operate at temporary locations as defined by Vol. I, § 8-1-1 shall pay a \$10 permit fee for each such location. Payment of such fee shall be valid for the term of the license.

(D) Permit fees are in addition to licensing fees detailed in Vol. I, § 8-2-5 and in Apache Junction Tax Code, Chapter 8A, Article III, Licensing and Recordkeeping. The following permit fees shall be applied:

<i>Type of Permit</i>	<i>Initial Fee</i>	<i>Renewal Fee</i>
Distiller's permit	\$225.00	\$22.50
Brewer's permit	\$225.00	\$22.50
Winer's permit	\$225.00	\$22.50
Hotel-motel permit to sell all spirituous liquors by individual portions and in the original containers	\$450.00	\$45.00
Hotel-motel permit to sell all spirituous liquors	\$450.00	\$45.00
Hotel-motel permit to sell beer and wine by individual portions and in the original containers	\$150.00	\$15.00
Hotel-motel permit to see beer by individual portions and in the original containers	\$112.50	\$11.25
On-sale retailer's permit to sell all spirituous liquors by individual portions and in the original containers	\$300.00	\$30.00
On-sale retailer's permit to sell beer and wine by individual portions and in the original containers	\$150.00	\$15.00
On-sale retailer's permit to sell beer by individual portions and in the original containers	\$112.50	\$11.25
Off-sale retailer's permit to sell all spirituous liquors	\$112.50	\$11.25
Off-sale retailer's permit to sell beer and wine	\$112.50	\$11.25

Off-sale retailer's permit to sell beer	\$75.00	\$7.50
Club permit to sell all spirituous liquors	\$75.00	\$7.50
Restaurant permit to sell all spirituous liquors	\$450.00	\$45.00
Fortuneteller, palmist (with approval of the director of public safety)	\$1,200.00	\$1,200.00
Sexually oriented business	\$500.00	\$500.00
Each employee	\$100.00	\$50.00
Circus/carnival (per day)	\$300.00	\$150.00

(Am. Ord. 1296, passed 5-1-2007)

§ 8-2-7 DELINQUENCY PENALTY.

(A) When any license fee provided for herein shall become due and unpaid, the same shall become delinquent and the City Clerk shall add thereto a penalty of \$25.

(B) No license shall be issued or renewed by the City Clerk until the license or registration fees that are delinquent and the penalties added thereto have been paid in full.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-2-8 UNLAWFUL ACTIVITIES.

(A) It shall be unlawful for any person to conduct any business or operating activity within the city without first having procured the appropriate license from the city.

(B) It shall be unlawful for any person to conduct any business activity using a suspended, cancelled or revoked license.

(C) It shall be unlawful for any person to conduct any business or operating activity within the city without complying with any and all regulations of such activity designated in this chapter.

(D) It shall be unlawful for any person licensed as provided in this chapter to operate under any name or conduct business under any designation not specified on such license.

(Am. Ord. 1296, passed 5-1-2007) Penalty, see Vol. I, § 1-1-11

§ 8-2-9 SUSPENSION, REVOCATION AND CANCELLATION OF LICENSE.

(A) An appropriate license shall be suspended for any person who fails to renew the license and pay the required renewal fee in a timely manner. The suspension period shall not exceed a 90-day period. If the license is renewed with the appropriate payment of renewal fee and related penalty during the suspension period, the status of the license shall be restored to current.

(B) Licenses issued under the provisions of this chapter shall be cancelled for any of the following reasons:

- (1) License renewal has not been completed within 90 days of expiration;
 - (2) The licensee notifies the City Clerk in writing with appropriate signature that the business has been closed, sold or moved out of the city; or
 - (3) The licensee, upon adequate identification, verbally notifies the City Clerk that the business has been closed, sold or moved out of the city.
- (C) Licenses issued under the provisions of this chapter may be revoked after notice and hearing, for any of the following causes:
- (1) Fraud, misrepresentation or false statement contained in the application for license;
 - (2) Any violation of this chapter; or
 - (3) Conducting a business activity in violation of the Arizona Revised Statutes.
- (D) Revoked licenses may be reinstated only after the cause of such revocation has been fully corrected.
- (E) A person whose license has been suspended, cancelled or revoked shall be issued a notice to cease business operations within the city.
- (Am. Ord. 1296, passed 5-1-2007)

§ 8-2-10 NOTICE OF HEARING AND APPEAL.

- (A) To suspend or revoke a license, the City Clerk shall deliver or mail by certified mail to the business address as shown by the license application, a written notice that such license is suspended or revoked. The reason for such suspension or revocation shall be set forth in the notice. The notice shall also contain the licensee's rights and procedures to appeal such suspension or revocation. A suspended or revoked license shall be surrendered to the City Clerk on demand.
- (B) The City Clerk shall grant on demand to any licensee whose license has been revoked or suspended a full hearing on the merits of such suspension or revocation. Appeal of the City Clerk's action to a hearing officer appointed by the City Manager, pursuant to division (C) below, shall not be had prior to the hearing. Demand for hearing shall be made within 10 working days of receipt of the City Clerk's notice of suspension or revocation, and failure to demand a hearing within that time will constitute a full waiver. After considering evidence presented at the hearing, the City Clerk shall make a decision to uphold or repeal the license suspension or revocation; and shall deliver or mail by certified mail to the business address as shown on the license application the results of the decision.
- (C) Any person aggrieved by the City Clerk's decision pursuant to division (B) above shall have the right of appeal to the designated hearing officer. The appeal shall be filed with the City Manager within 14 working days after receipt of the City Clerk's decision. The appeal shall contain a written statement setting forth fully the grounds for the appeal. The hearing officer shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as provided for notice of hearing on revocation. The decision and order of the hearing officer shall be final and conclusive, except any person aggrieved may pursue any proper judicial proceedings.

(D) No person may reapply for any license after denial, revocation or non-renewal of such license unless the cause for such denial, revocation or non-renewal has been removed or corrected.

(Am. Ord. 1296, passed 5-1-2007)

ARTICLE 8-3: PEDDLERS

Section

8-3-1 Unlawful activities

8-3-2 Exemptions

8-3-3 Other regulatory requirements

§ 8-3-1 UNLAWFUL ACTIVITIES.

(A) It is unlawful for any person to erect or maintain any booth, stand or counter; or to keep or maintain any wagon, cart, vehicle, movable booth or stand for the purpose of barter or trade upon any city right-of-way which includes but is not limited to sidewalks, streets and alleys.

(B) It is unlawful for any appropriately licensed and registered peddler to erect or maintain any booth, stand, counter, wagon, cart or vehicle on any private property without first having provided a letter of permission from the business or property owner, and complied with all other applicable provisions of the city code and other regulations as may be adopted by the city.

(C) It is unlawful for any peddler in the course of his or her business to ring the doorbell or knock at any building whereon a sign bearing the words "no peddlers, solicitors or canvassers" or any similar verbiage is exposed to public view.

(D) It is unlawful for any person operating as a peddler to ring the doorbell or knock at any building within the city before the hour of 9:00 a.m. or after the hour of 6:00 p.m.

(E) It shall be unlawful for any person to operate as a peddler without first having registered with the City Clerk, without having a valid identification card in possession while conducting the business activity, or when failing to exhibit the card upon request by any resident or employee of the city.

(Am. Ord. 1296, passed 5-1-2007; Am. Ord. 1367, passed 10-5-2010) Penalty, see Vol. I, § 1-1-11

§ 8-3-2 EXEMPTIONS.

Newspaper deliverers are exempt from the provisions of this article for the sale of newspaper subscriptions.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-3-3 OTHER REGULATORY REQUIREMENTS.

Any peddler conducting business along parade routes or at parades shall provide the city with proof of insurance coverage for any vehicle that is used in conjunction with such peddling activities, and shall provide the city with an acceptable certificate of insurance naming the city, its officers and employees as additional insureds. The coverage shall be a minimum of \$1,000,000 per event per occurrence, \$2,000,000 aggregate.

(Am. Ord. 1296, passed 5-1-2007)

ARTICLE 8-4: AUCTIONS, PAWNSHOPS AND SECOND HAND DEALERS

Section

8-4-1 Definitions

8-4-2 Suspension of license; appeal

8-4-3 Reports required

§ 8-4-1 DEFINITIONS.

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

ABANDONED PROPERTY. Property to which the owner has relinquished all right, title, claim and possession, with intention of not reclaiming it or resuming its ownership, possession or enjoyment.

AUCTIONEER. Any person who shall operate an auction house or who, as a principal or agent, shall offer any article for sale by public outcry, and where the items offered at auction are sold immediately to the highest bidder.

AUCTION HOUSE. Any establishment in which the business of auctioning articles is carried on for sale by public outcry, and where the items offered for auction are sold immediately to the highest bidder.

DEALER. Any person engaged in the business of purchasing or selling secondhand or cast-off material of any kind, such as any vehicle parts or accessories, machinery, iron, copper, brass, lead, zinc, tin, steel, aluminum, metal pipe and other metals, metal alloys, metallic cables, wire, ropes, cordage, bottles, bagging, rags, rubber, paper and other like materials which are purchased from persons other than the original manufacturer or authorized distributor selling same for money, credit or exchange. For the purposes of this article, the terms **SCRAP DEALER** and **JUNK DEALER** shall have the same meaning as dealer. These provisions shall not apply to any person engaged solely in recycling metal cans, paper, cardboard and glass.

PAWN TRANSACTION. Either the act between the pawnbroker and a person pledging tangible personal property or extending credits on the security of pledged goods, or the act of purchasing tangible personal property with an expressed or implied agreement or understanding

that it may be redeemed or repurchased by the seller for a fixed or variable price within a fixed or variable period of time.

PAWNBROKER. Any person engaged in business activity of pawn brokering, or the business of loaning money for himself or herself or for any other person, receiving as security for the repayment thereof, pawn transactions or pledges of personal property, or the business of purchasing personal property and reselling or agreeing to resell the article to vendors, their personal representatives or their assignees, at prices agreed upon at or before the time of such purchase, whether the business be principal or sole business so carried on, managed or conducted, or merely incidental to, in connection with or a branch or department of some other business or businesses.

PAWNSHOP. Any room, store or place in which the business is engaged in, carried on or conducted.

SECONDHAND DEALER. Any person engaged in conducting, managing or carrying on the business of buying, selling, trading or exchanging, or otherwise dealing in secondhand goods, wares, merchandise or articles, or old coins and money, jewelry, precious metals, semi-precious stones and similar items, whether the business be the principal or sole business so carried on, managed or conducted or be merely incidental to, in connection with, or managed, or conducted or be merely incidental to, in connection with, or a branch or a department of some other business. The term **ANTIQUÉ DEALER** shall have the same meaning as "secondhand dealer". The term **SECONDHAND DEALER** shall not be construed to include trade-ins, dealers, or auctioneer in articles of property, the transfer of title to which is required by the laws of the state to be evidenced by written instrument and recorded in the office of the department of the state or county government.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-4-2 SUSPENSION OF LICENSE; APPEAL.

(A) Notwithstanding any other provisions of this chapter, the license of any auction house, dealer, pawnbroker or secondhand dealer shall be revoked for 1 year upon a showing that the operator or an employee of the establishment has been convicted of violating any of the provisions of A.R.S. Title 44, Chapter 11, Article 3 in the conduct of business of the establishment.

(B) Operators and employees of an auction house, dealer, pawnbroker or secondhand dealer shall be subject to all other license revocation, suspension and appeal procedures as prescribed by A.R.S. Title 44, Chapter 11, Article 3.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-4-3 REPORTS REQUIRED.

(A) Every person engaged in the business of auction house, dealer, pawnbroker or secondhand dealer shall make out and deliver to the Chief of Police a true, complete and legible report of all goods and articles received on deposit or consignment, in pawn, pledge, trade or exchange or by purchase. The report shall be made upon forms furnished by the city and shall be delivered within 24 hours after the receipt of the property concerned. Each sheet shall contain the following:

- (1) A description of the property; including brand name, model and serial number, if any;
- (2) The amount loaned or paid for the property, or amount allowed in trade;
- (3) The number of the pawn ticket, if any is given;
- (4) The date and time when property was received;
- (5) The signature of the person from whom the property was received;
- (6) The name (printed), address and age of the person. The reporting party shall require each person to show proof of his or her name by exhibiting state or federal identification;
- (7) A description of the person, consisting of height, weight, race, date of birth, driver's license number, complexion and hair color; and
- (8) The vehicle model and license number used in making delivery.

(B) No article shall be sold or exchanged by any auction house, dealer, pawnbroker or secondhand dealer until it shall have been in the custody thereof for 10 calendar days after making out and delivering to the Chief of Police the report required under division (A) above. Provided that in the case of an article consigned to an auction house, such article shall not be sold or exchanged until after it shall have been in the custody thereof for 3 days after delivering to the Chief of Police the report required under division (A) above. This division shall not apply to redemption of pawned or pledged articles.

(C) Every person engaged in the business of dealer or secondhand dealer shall record the description of every article sold for an amount of \$25 or more. He or she shall also record the name and address of the purchaser of such articles. This record shall be held by the dealer or secondhand dealer for at least 30 days after the sale.

(D) Upon notification by representatives of the Police Department that goods and articles received on deposit or consignment, in pawn, pledge, trade, exchange or purchase, are the fruits of a crime, no auction house, dealer, pawnbroker or secondhand dealer shall dispose of the property. Interest upon the goods and articles pawned or pledged shall cease to accrue on the date of the notification.

(E) Every person engaged in the business of auctioneer, dealer, pawnbroker or secondhand dealer shall prominently display a copy of these provisions in a conspicuous place on the premises of the business.

(F) Every person engaged in the business of auctioneer, dealer, pawnbroker or secondhand dealer, who, in the conduct of his or her business, comes into possession of abandoned property, shall turn over the property to the Police Department for which a receipt shall be issued. If ownership of the property is not established within 90 days after delivery to the Police Department, the property shall be returned to the person from whom the Police Department obtained possession. This division shall not apply to unredeemed pawned or pledged articles.

(G) The business premises of any auction house, dealer, pawnbroker or secondhand dealer, along with their transaction records and stock of goods and articles, shall be open at reasonable hours to reasonable inspection by representatives of the police department or the City Clerk's office.

(H) No person engaged in the business of auctioneer, dealer, pawnbroker or secondhand dealer shall knowingly permit a person whose license is under suspension to be employed in any capacity of such establishment.

(Am. Ord. 1296, passed 5-1-2007)

ARTICLE 8-5: MASSAGE ESTABLISHMENTS

Section

- 8-5-1 Definitions
- 8-5-2 Application
- 8-5-3 Inspection of premises
- 8-5-4 Requirements for establishments
- 8-5-5 Permitted locations
- 8-5-6 Unlawful activities; inspection of premises; hours of service
- 8-5-7 Change of location or employment
- 8-5-8 Suspension and revocation of license

§ 8-5-1 DEFINITIONS.

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

MASSAGE THERAPY. Any activity as defined in A.R.S. § 32-4201.5 and any amendments thereto that is undertaken to increase wellness, relaxation, stress reduction, pain relief and postural improvement, or to provide general or specific therapeutic benefit.

PRINCIPAL. Any decision maker in the management or operation of a massage establishment.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-5-2 APPLICATION.

(A) Any person desiring to obtain a business license to operate a massage establishment shall make application for same to the City Clerk.

(B) In addition to the information contained on the standard license application form furnished by the city, each principal in a business applying to operate a massage establishment shall submit the following additional information:

- (1) The full legal name and current residence address of each principal;
- (2) Any other names by which each principal has been known;
- (3) Written proof that the each principal is over the age of 18 years;
- (4) Each principal's height, weight and hair and eye color;

(5) One portrait photograph of the principal, at least 2 inches by 2 inches in size, taken within the previous 6 months;

(6) The business license history of each principal, whether that license was issued by this city, another city or any state; and whether the license was ever revoked or suspended, the reason therefore, and the business activity or occupation subsequent to such suspension or revocation;

(7) All felony convictions of each principal and the grounds of the conviction; and

(8) A copy of the principal's license issued pursuant to A.R.S. Title 32, Chapter 42.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-5-3 INSPECTION OF PREMISES.

(A) Any applicant for a license pursuant to this article shall personally appear at the clerk's office and shall present the application and additional required information.

(B) No license to operate a massage establishment shall be issued or renewed if any principal has been convicted within the last five years of any felony or other offense involving moral turpitude or if the application as deliberately falsified.

(C) In addition, the building safety department shall inspect any premises proposed as the site of a massage establishment and shall make separate recommendations to the clerk concerning compliance with the provisions of § 8-5-5.

(Ord. 1367, passed 10-5-2010)

§ 8-5-4 REQUIREMENTS FOR ESTABLISHMENTS.

No massage business license for a massage establishment shall be issued or renewed unless inspection by the Building Safety Division of Development Services Department indicates the site of the proposed establishment complies with each and all of the following minimum requirements:

(A) Minimum lighting shall be provided in accordance with the Uniform Building Code or equivalent is the current code that the Building Official relies on, and, in addition, at least 1 artificial light of not less than 60 watts shall be provided in each room or enclosure where services are performed on patrons and shall be in use whenever those services are being performed;

(B) Minimum ventilation shall be provided in accordance with the Uniform Building Code or other current code which the Building Official relies on;

(C) Adequate equipment shall be provided for disinfecting and sterilizing instruments used in administering or practicing any massage therapy techniques;

(D) Hot and cold running water shall be provided at all times;

(E) Closed cabinets shall be provided and used for storage of clean linens;

(F) Adequate bathing, dressing and toilet facilities shall be provided for patrons. A minimum of 1 dressing area, 1 toilet and 1 wash basin shall be provided for each massage establishment;

provided, however, that if male and female patrons are to be served simultaneously at the establishment, a separate massage room and separate dressing areas shall be provided for male and female patrons;

(G) All walls, coiling, floors, pools, showers, bathtubs, steam rooms and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms and cabinets, shower compartments and toilet rooms shall be thoroughly cleaned each day the business is in operation. Bathtubs shall be thoroughly cleaned after each use;

(H) Clean and sanitary towels shall be provided for each patron. The headrest of each table shall be provided with a clean and sanitary towel, paper towel or sheet for each patron;

(I) A minimum of 1 separate wash basin shall be provided in each massage establishment, which basin shall provide soap or detergent and hot and cold running water at all times, and shall be located within or as close as practical to the area devoted to the performing of massage services. In addition, there shall be provided at each wash basin sanitary towels placed in permanently installed dispensers; and

(J) A massage establishment shall at all times comply with all applicable city ordinances, county, state and federal regulations.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-5-5 PERMITTED LOCATIONS.

(A) A properly licensed massage therapist or health care professional shall only be permitted to provide massage therapy at the following business locations:

- (1) Full service beauty salon, spa, health club, fitness center or massage establishment;
- (2) Medical establishment of a health care professional; and
- (3) In the home or business location of a client by any massage therapist having an appropriate license.

(B) A massage establishment shall not be permitted in any residential area.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-5-6 UNLAWFUL ACTIVITIES; INSPECTION OF PREMISES; HOURS OF SERVICE.

(A) It shall be unlawful:

(1) For any person to conduct or operate a massage establishment on the same premises whereon is also conducted the business of a cocktail lounge, photography studio, motel studio, art studio, telephone answering service, motion picture theater or bookstore; and

(2) For any person to practice or administer any massage or touching techniques, whether for a fee or gratuity:

- (a) In a manner or under circumstances intended to arouse, appeal to or gratify sexual desires;
 - (b) To any other person whose genital organs are not covered by opaque material;
 - (c) While dressed in such a way as the genital organs, buttocks or female breast or breasts are not covered by opaque material; or
 - (d) In any way touch the genital organs of the individual receiving treatment.
- (B) For any massage establishment to hire as an employee or independent contractor to conduct massage therapy without a valid massage therapist license issued pursuant to A.R.S. Title 32, Chapter 42.

(Am. Ord. 1296, passed 5-1-2007) Penalty, see Vol. I, § 1-1-11

§ 8-5-7 CHANGE OF LOCATION OR EMPLOYMENT.

(A) A change in location of a massage establishment may be approved by the City Clerk provided that all ordinances and regulations of the city are complied with. The City Clerk shall order inspections of the proposed premises by the Building Safety Division as required by Vol. I, §§ and 8-5-5.

(B) Notification shall be made to the City Clerk by a massage establishment whenever a massage therapist begins or leaves the employ of the establishment.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-5-8 SUSPENSION AND REVOCATION OF LICENSE.

In addition to the provisions contained in Vol. I, § 8-2-9(C), the license of a massage establishment may be revoked or denied renewal upon any of the following grounds:

(A) That any principal or employee of the business has been convicted in a court of competent jurisdiction within the last 10 years of a felony or of any offense involving prostitution, sexual behavior, indecent exposure or pornography;

(B) That the licensee is has been convicted of untrue, fraudulent, misleading or deceptive advertising within the last 10 years;

(C) That the licensee has been found liable of willful negligence in the business of massage therapy or operating a massage establishment within the past 10 years; or

(D) That the licensee is engaged in the business of massage therapy under a false or assumed name, or is impersonating another establishment of a like or different name.

(Am. Ord. 1296, passed 5-1-2007; Am. Ord. 1367, passed 10-5-2010)

ARTICLE 8-6: SWAP MEET OPERATIONS

Section

8-6-1 Definitions

8-6-2 License required

8-6-3 Unlawful practices of swap meet proprietor

8-6-4 Unlawful practices of swap meet vendors

8-6-5 Regulations

§ 8-6-1 DEFINITIONS.

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

SWAP MEET. A place of commercial activity, popularly known as a swap meet, flea market or park-and-swap, open to the general public for the purchase of merchandise on the premises, which place is available to the general public who wish to sell or barter merchandise on the premises, whether such sellers or vendors are in the business of vending or are making casual sales or some combination thereof and which place is normally composed of stalls, stands or spaces allotted to vendors at least 1 of whom does not occupy the same allotted space or spaces on an uninterrupted continuous daily basis.

SWAP MEET PROPRIETOR. Any person who rents, sells, donates or otherwise makes available to swap meet vendors any space within premises owned or controlled by the proprietor for the purpose of a swap meet sale.

SWAP MEET VENDOR. Any person located upon the premises of a swap meet for the purpose of conducting business activity at a swap meet.

VENDOR REGISTRATION LOG. A well-bound volume kept by the proprietor to identify vendors.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-6-2 LICENSE REQUIRED.

(A) Swap meet proprietor is a person deemed to be engaged in a taxable business activity. Thus, that person is required to obtain a privilege license with the city.

(B) Swap meet vendors shall obtain the appropriate license with the city before engaging in business or operating activities at a swap meet.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-6-3 UNLAWFUL PRACTICES OF SWAP MEET PROPRIETOR.

In addition to the provisions in Vol. I, § 8-2-8, it is unlawful for a swap meet proprietor to fail to comply with the following requirements:

(A) To permit any person to engage in the sale of merchandise upon parking or other areas owned or controlled by the swap meet proprietor whenever such areas or sites are not specified on the proprietor's license;

(B) To fail to control the entrance to and exit of all swap meet vendors and merchandise from the premises by the physical presence and personal supervision on the premises of the swap meet proprietor or his designated agents during the hours of operation of the swap meet;

(C) To fail to keep an accurate vendor registration log for a period of 4 years;

(D) To fail to make available the vendor registration log for inspection by the City Clerk or the department of public safety; and

(E) To fail to inquire of any vendor entering the premises of the swap meet proprietor for the purpose of doing business, the status of the vendor's compliance with current city licensing regulations.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-6-4 UNLAWFUL PRACTICES OF SWAP MEET VENDORS.

In addition to the provisions in Vol. I, § 8-2-8, it is unlawful for a swap meet vendor to fail to comply with the following requirements:

(A) To fail to post, at the swap meet vendor's assigned location, in a conspicuous place so as to be clearly seen by the public, the appropriate license that has been issued by the city; and

(B) To engage in sales at locations other than the vendor's sales location assigned that day by the proprietor.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-6-5 REGULATIONS.

(A) For the purpose of this article, the vendor registration log shall contain for each swap meet vendor a separate and distinct daily entry of the name, address, vehicle license numbers; tax, business or operating license number, drivers license number and other descriptive information in a form approved by the City of Apache Junction, of any swap meet vendor entering the premises of the swap meet proprietor for the purpose of a swap meet.

(B) The swap meet proprietor shall make no distinction between swap meet vendors conducting business activities and those conducting casual sales. All vendors at a swap meet shall be considered to be conducting business or operating activities.

(Am. Ord. 1296, passed 5-1-2007)

ARTICLE 8-7: YARD SALES

Section

8-7-1 Definition

8-7-2 Regulations

8-7-3 Conditions under which business license is required

§ 8-7-1 DEFINITION.

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

YARD SALE. The retail sale of merchandise by the resident of a specific residential address, and which complies with the definition of "casual activity" as defined in Vol. I, § 8-1-1.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-7-2 REGULATIONS.

(A) Yard sales shall only be conducted by the owner or resident of the specific residential address.

(B) Yard sales shall be limited to no more than 4 times per calendar year per address at a maximum of 4 days each time.

(C) At no time shall any yard sale be permitted to operate if, in the judgment of the Public Safety Director, a traffic or parking hazard has been created.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-7-3 CONDITIONS UNDER WHICH BUSINESS LICENSE IS REQUIRED.

(A) Any individual operating a yard sale in excess of the number of times permitted under Vol. I, § 8-7-2(B) shall be considered to be operating a business and shall be required to obtain an appropriate license.

(B) Any yard sale licensed as a business under the provisions of this article shall be wholly conducted within a screened or fenced area constructed of opaque materials. All such screened or fenced areas shall be constructed in accordance with applicable city zoning regulations.

(Am. Ord. 1296, passed 5-1-2007)

ARTICLE 8-8: LICENSING REQUIREMENTS FOR SPECIAL COMMUNITY AND PRIVATE EVENTS

Section

8-8-1 Definitions

8-8-2 Special event sponsor requirements

8-8-3 Special event vendor requirements

8-8-4 Community event sponsor requirements

8-8-5 Community event vendor requirements

8-8-6 Private event sponsor requirements

8-8-7 Private event vendor requirements

§ 8-8-1 DEFINITIONS.

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

COMMUNITY EVENT. An event not exceeding 4 consecutive days in any calendar year which is conducted, organized and sponsored solely by non-profit organizations and is open to all participants on an equal basis. The **COMMUNITY EVENT** shall have the purpose of promoting or benefitting the city and its residents and/or the sponsoring non-profit organizations. The **COMMUNITY EVENT** does not preclude having for-profit financial sponsors who receive name or title recognition. Non-profit organizations shall not lend their name or non-profit status to any entity or organization, for-profit or otherwise, in order to meet the requirements of a **COMMUNITY EVENT**.

EVENT. An activity or gathering which meets any of the following criteria:

(1) Use of or impact/encroachment on any city street, sidewalk, alley or other right-of-way area (which includes any indirect impact that will affect the flow of typical vehicular or pedestrian traffic);

(2) Is likely to draw a crowd to a venue not properly suited and has the potential to require special accommodations, regulations, traffic control devices or public service personnel;

(3) Presence or participation of any for-profit or nonprofit vendor that intends to make a sale, advertise for sale, solicit sales, offer for sale, distribute business/organizational information, or provides a service or offer/advertise to provide a service and is not already properly licensed to do so by the City of Apache Junction; or

(4) Will require the approval of two or more city departments for inspections, assistance or permits.

NON-PROFIT ORGANIZATION. Any religious, social, fraternal or civic organization which has been designated as a 501C organization by the Internal Revenue Service and which has a valid operating license as provided for in Vol. I, § 8-2-1(C). Should questions as to form of business arise, interpretations of this section shall be based upon form indicia contained in the following:

Arizona Revised Statutes; Internal Revenue Code Rules and Regulations prescribed by the Internal Revenue Service.

PRIVATE EVENT. An event not exceeding 4 consecutive days in any calendar year which is conducted and sponsored by for-profit organizations, agencies or businesses. Those events may include non-profit organizations as cosponsors and/or participants. Non-profit organizations shall

not lend their name or non-profit status to any entity or organization, for-profit or otherwise, in order to meet the requirements of a **PRIVATE EVENT**.

SPECIAL EVENT. An event not exceeding 4 consecutive days in any calendar year which is conducted, organized and sponsored solely by non-profit organizations, has been approved as such by the Council during the annual budget process and which is open to all participants on an equal basis. The **SPECIAL EVENT** shall have the purpose of promoting or benefitting the city and its residents and/or the sponsoring non-profit organizations. The **SPECIAL EVENT** does not preclude having for-profit financial sponsors who receive name or title recognition. Non-profit organizations shall not lend their name or non-profit status to any entity or organization, for-profit or otherwise, in order to meet the requirements of a special event.

(Am. Ord. 1296, passed 5-1-2007; Am. Ord. 1391, passed 7-2-2013)

§ 8-8-2 SPECIAL EVENT SPONSOR REQUIREMENTS.

(A) The sponsor of any special event which includes vendors shall pay a fee of \$50 per day. This fee shall be paid no later than 10 working days in advance of the first day of the event. A penalty of \$5 per day shall be assessed for each working day the initial payment is late beginning with the working day immediately following the initial deadline. The special event fee shall not apply to those events which do not include vendors.

(B) The sponsor of any special event shall provide the City Clerk with the name, address and telephone number of the event coordinator or contact person at least 30 working days in advance of the event.

(C) The sponsor of any special event shall obtain a completed vendor application, on a form to be provided by the city, from each participating vendor and shall provide the city with these completed forms in addition to a complete list containing name, address and telephone number of each participating vendor no later than 7 working days following the last day of the event.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-8-3 SPECIAL EVENT VENDOR REQUIREMENTS.

(A) All special event vendors who engage or attempt to engage in a sale at a special event or who shall advertise or solicit services or products shall complete a special event vendor application in order to participate in the event. The completed form shall be submitted to the event sponsor.

(B) Non-profit organizations who participate as vendors at special events shall not be required to complete a special event application if their participation is limited to the distribution of literature or information relative to their organization.

(C) Massage therapists who wish to participate as a vendor at a special event shall be permitted to do so provided there is no charge for the service and that such service is provided in conjunction with a person holding a valid city business license and authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy or acupuncture.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-8-4 COMMUNITY EVENT SPONSOR REQUIREMENTS.

(A) The sponsor of any community event which includes vendors shall remit to the city a fee of \$15 per vendor for each event. The sponsor shall be responsible for collecting this fee from each participating vendor. These fees shall be paid in total to the city no later than 7 working days following the last day of the event. A penalty of \$5 per day shall be assessed for each working day that the total fee remains unpaid.

(B) The sponsor of any community event shall provide the City Clerk Department with the name, address and telephone number of the event coordinator or contact person at least 30 working days in advance of the event.

(C) The sponsor of any community event shall obtain a completed vendor application on a form to be provided by the city, from each participating vendor and shall provide the city with these completed forms in addition to a complete list containing the name, address and telephone number of each participating vendor no later than 7 working days following the last day of the event.

(D) The sponsor of any community event shall contact the Zoning Administrator to obtain any necessary zoning approval for the event.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-8-5 COMMUNITY EVENT VENDOR REQUIREMENTS.

(A) All community event vendors who engage or attempt to engage in a retail sale or who solicit or advertise in any form at a community event shall complete a special event vendor application in order to participate in the event. The completed form shall be submitted to the event sponsor.

(B) Non-profit organizations who participate as vendors at community events shall not be required to complete a community event application if their participation is limited to the distribution of literature or information relative to their organization.

(C) Vendors who have an appropriate license shall not be required to pay an additional vendor fee provided they are engaging in an activity covered by the license.

(D) Massage therapists who wish to participate as a vendor at a special event shall be permitted to do so provided there is no charge for the service and that such service is provided in conjunction with a person holding a valid city business license and who is authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy or acupuncture.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-8-6 PRIVATE EVENT SPONSOR REQUIREMENTS.

(A) The sponsor of a private event shall pay a fee of \$150 per day. This fee shall be paid no later than 10 working days in advance of the first day of the event. A penalty of \$15 shall be assessed for each working day the initial payment is late beginning with the working day immediately following the initial deadline.

(B) The sponsor of a private event shall remit to the city a fee of \$50 per vendor for each event. The sponsor shall be responsible for collecting this fee from each participating vendor. These fees shall be paid in total to the city no later than seven working days following the last day of the event.

(C) The sponsor of a private event shall provide the City Clerk Department with the name, address and telephone number of the event coordinator or contact person at least 30 working days in advance of the event.

(D) The sponsor of any private event shall obtain a completed vendor application, on a form to be provided by the city, from each participating vendor and shall provide the city with these completed forms in addition to a complete list containing the name, address and telephone number of each participating vendor no later than 7 working days following the last day of the event.

(E) The sponsor of any private event shall contact the Zoning Administrator to obtain any necessary zoning approval for the event.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-8-7 PRIVATE EVENT VENDOR REQUIREMENTS.

(A) All private event vendors who engage or attempt to engage in a sale at a private event shall complete a private event vendor application in order to participate in the event. The completed form shall be submitted to the event sponsor.

(B) Non-profit organizations who participate as vendors at private events shall not be required to complete a private event application if their participation is limited to the distribution of literature or information relative to their organization.

(C) Vendors who have an appropriate license shall not be required to pay any additional vendor fee provided they are engaging in an activity covered by the license.

(D) Massage therapists who wish to participate at a special event shall be permitted to do so provided there is no charge for the service and that such service is provided in authorized by the laws of this state to practice medicine, osteopathy, chiropractic, podiatry, naturopathy or acupuncture.

(Am. Ord. 1296, passed 5-1-2007)

ARTICLE 8-9: SALES WITHIN MOBILE HOME PARKS, RV PARKS AND MOBILE HOME SUBDIVISIONS

Section

8-9-1 Definition

8-9-2 Limitations on sales

8-9-3 Unlawful practices of event sponsors

§ 8-9-1 DEFINITION.

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

MARKET DAYS, COUNTRY STORE, BAZAAR DAYS AND THE LIKE. An event at a temporary location not exceeding 1 day per week conducted within a mobile home park, travel trailer park, recreation vehicle park or mobile home subdivision for the purpose of providing goods and services, hereafter referred to as **MARKET DAYS**.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-9-2 LIMITATIONS ON SALES.

(A) Any vendor who conducts business activity at a "market days" event shall obtain the appropriate license and pay the applicable license fee.

(B) Any vendor who conducts business activity at a "market days" event shall always be in possession of an appropriate license, and such license, or a copy thereof, shall be produced upon the request of any city official or the market days sponsor or coordinator.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-9-3 UNLAWFUL PRACTICES OF EVENT SPONSORS.

It is unlawful for any sponsor of a market days event to permit any vendor to set up at the event without vendor having first met all city licensing requirements.

(Am. Ord. 1296, passed 5-1-2007) Penalty, see Vol. I, § 1-1-11

ARTICLE 8-10: TEMPORARY FOOD AND BEVERAGE VENDORS

Section

8-10-1 Definitions

8-10-2 Limitations and conditions on license

§ 8-10-1 DEFINITIONS.

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

CART VENDOR. Anyone engaged in the business of selling or displaying for sale any food or beverage items on a temporary basis utilizing a cart. The carts shall not be in excess of 50 square feet and shall be non-motorized.

CONCESSION TRAILER VENDOR. Anyone engaged in the business of selling or displaying for sale any food or beverage items on a temporary basis utilizing a trailer. The trailers shall not be in excess of 128 square feet nor exceed 16 feet in length and shall be non-motorized.

GRAND OPENING. An event held by a permanent, licensed city business to announce its initial opening, new location or new ownership. Those events shall not extend to swap meet vendors, businesses with additional temporary locations, or to other cart and concession trailer vendors.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-10-2 LIMITATIONS AND CONDITIONS ON LICENSE.

Temporary food and beverage vendors shall be subject to the following limitations and conditions:

(A) The vendors shall only be permitted to operate on developed, commercially zoned property and shall not be authorized to operate on vacant lots;

(B) There shall be an open and operating permanent business on the site in order to accommodate the sanitary facilities access requirement of the Building Code. The temporary food and beverage vendor must also be able to use these facilities;

(C) The hours of operation for the vendors shall be limited to the hours that the on-site, permanent business is open;

(D) The vendor shall secure the permission of the sponsoring business owner;

(E) The number of open and operating temporary food and beverage vendors shall be limited to 1 per open and operating permanent business;

(F) No temporary food and beverage vendor shall operate within 300 feet of a like business selling the same item and in the same form or within 300 feet of another such vendor;

(G) The vendor shall keep the area clean of any litter or debris resulting directly from the business;

(H) The vendor shall be prohibited from operating within 600 feet of a school. In those cases where a school prohibits such activities within a distance in excess of 600 feet, the greater distance shall prevail;

(I) The temporary food and beverage vendors shall remove the cart when the permanent on-site business is not open. Open and operating concession trailer vendors may be permitted to leave their trailer on-site with the sponsoring business owner's permission;

(J) Inactive concession trailer vendors shall not leave their trailer on-site in lieu of placing it in a storage lot or similar facility regardless of the sponsoring owner's permission;

(K) The vendors shall be limited to 7 consecutive days maximum at each temporary location;

(L) Concession trailer vendors shall be limited to 5 consecutive days maximum at each temporary location. The vendor shall provide the City Clerk with the expected dates of closing; and

(M) All temporary food and beverage vendors shall be limited to 14 consecutive days maximum for grand opening events as defined in this article.

(Am. Ord. 1296, passed 5-1-2007)

ARTICLE 8-11: SEXUALLY ORIENTED BUSINESS OPERATORS, MANAGERS; ADULT SERVICE PROVIDERS AND EMPLOYEES

Section

8-11-1 Legislative purpose

8-11-2 Definitions

8-11-3 Permit required: operators; managers; adult services; providers and employees

8-11-4 Exemptions

8-11-5 Applications

8-11-6 Investigations

8-11-7 Granting, denial, revocation and suspension; appeal

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§ 8-11-1 LEGISLATIVE PURPOSE.

(A) It is the purpose of this article to establish permitting procedures and regulations for sexually oriented businesses and their employees to promote the public health, safety and general welfare of the citizens of the City of Apache Junction, and to avoid and mitigate the detrimental secondary effects of sexually oriented businesses through content neutral regulations.

(B) It is not the purpose of this article to impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials, or to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

(C) This article is not intended to interfere with or suppress legitimate expression or any speech activities protected by the First Amendment to the United States Constitution nor is it intended to permit any use or activity which is otherwise prohibited or made punishable by law.

(D) In passage of this article, the Mayor and Council considered testimony and case law, studies and other documents which fully outline that adult oriented businesses may and do generate secondary effects which have proven to be detrimental to the public health, safety and welfare of the city as noted above. The City Clerk has all the documentation on file in his or her office with the original minutes of the case.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-11-2 DEFINITIONS.

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

ADULT ARCADE or PEEP SHOW. Any place to which the public is permitted or invited where coin-operated or slug-operated, or for any form of consideration, electronically, electrically or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to a person in a booth or a viewing room where the images so displayed depict or describe **SPECIFIED ANATOMICAL AREAS** or **SPECIFIED SEXUAL ACTIVITIES**.

ADULT BOOKSTORE, ADULT VIDEO STORE or ADULT NOVELTY STORE. A commercial establishment which as its principal business purpose offers for sale or rent 50% or more of its inventory for any form of consideration any 1 or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, computer generated images, motion pictures, video cassettes or video reproductions, slides or other visual representations that depict or describe "specified anatomical areas" or "specified sexual activities;" or

(2) Instruments, devices or paraphernalia that are designed for use in connection with "specified sexual activities," excluding condoms and other birth control and disease-prevention products.

ADULT CABARET. A nightclub, bar, restaurant or other commercial establishment permitted to serve alcoholic beverages pursuant to A.R.S. § 42-09(B), which regularly features, exhibits or displays as one of its principal business purposes:

(1) Individuals who appear in a state of nudity or semi-nudity;

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

(3) Films, motion pictures, video cassettes, slides or other photographic reproductions which depict or describe "specified anatomical areas" or "specified sexual activities."

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

(1) Offers public accommodations for any form of consideration; provides patrons with closed-circuit television transmissions, films, computer generated images, motion pictures, video cassettes, slides or other photographic reproductions that depict or describe "specified anatomical

areas" or "specified sexual activities" as 1 of its principal business purposes; and has a sign visible from the public right-of-way which advertises the availability of these adult-types of photographic reproductions;

(2) Offers a single sleeping room for rent less than 10 hours in a 24-hour period; or

(3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours in a 24-hour period.

ADULT LIVE ENTERTAINMENT ESTABLISHMENT. A commercial establishment that features either:

(1) Persons who appear in a state of nudity or semi-nudity; or

(2) Live performances that are characterized by the exposure of specified anatomical areas or specific sexual activities.

ADULT MOTION PICTURE THEATER. A means a commercial establishment, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown as 1 of its principal business purposes that depict or describe "specified anatomical areas" or "specified sexual activities."

ADULT SERVICES. Dancing, service of food or beverage, modeling, posing, wrestling, singing, reading, talking, sitting or listening, or other performances or activities conducted for any consideration in a sexually oriented business by an individual who is nude or is in a state of nudity during all or part of the time the person is providing the service.

ADULT SERVICES PROVIDER. Any individual who provides any adult services, whether an employee or independent contractor.

ADULT THEATER. A commercial establishment which regularly features, exhibits or displays, as 1 of its principal business purposes, individuals who appear nude, in a state of nudity or semi-nudity, live or by film, or plate negative, film or plate positive, film or tape designed to be projected on a screen for exhibition, or films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen, or any type of viewing booth or equipment, that expose or depict "specified anatomical areas" or "specified sexual activities."

BOOTH. A partitioned area in which coin or token operated video machines, projectors or other electronically or mechanically controlled devices are used in the regular course of business to produce still or moving picture images that expose or depict "specified anatomical areas" or "specified sexual activities."

CHIEF OF POLICE. The Director of Department of Public Safety, or his or her designated agent, whose duties are more fully described in Vol. I, Article 3-6 of the Apache Junction city code.

CITY MANAGER. The department director of the office of the City Manager, or his or her designated agent, whose duties are more fully described in Vol. I, Article 3-1.

DEVELOPMENT SERVICES DIRECTOR. The department director of the Apache Junction development services department, or his or her designated agent, whose duties are more fully described in Vol. I, Article 3-9.

EMPLOYEE. Any individual who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated as an employee, independent contractor, agent or otherwise and whether or not the individual is

paid a salary, wage or other compensation by the operator. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for delivery of goods to the premises.

ESCORT. An individual who for tips or any other consideration agrees or offers to act as a companion, guide or date for another individual or who agrees or offers to privately model or otherwise be clothed in lingerie or to privately perform a striptease for another individual.

ESCORT AGENCY. A person or business that furnishes, offers to furnish or advertises to furnish escorts as 1 of his or her or its principal business purposes for a fee, tip or other consideration.

ESTABLISHMENT. The opening or commencement of any sexually oriented business as a new business; or the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or the addition of any sexually oriented business to any other sexually oriented business; or the relocation of any sexually oriented business.

FIGURE MODEL. Any individual who for pecuniary compensation, consideration, hire or reward, poses in a modeling studio to be observed, sketched, painted, drawn, sculpted, photographed or otherwise depicted.

INDIVIDUAL. A human being.

LICENSE. Any license or temporary license issued or required by this chapter as a condition to operate a sexually oriented business, or issued to a manager, adult services provider or employee of a sexually oriented business.

LICENSEE or APPLICANT. An individual or person in whose name a permit to operate a sexually oriented business will be or has been issued, or a manager, adult services provider or employee authorized pursuant to this article.

MANAGER'S STATION. A permanently designated area marked accordingly within a sexually oriented business where a sexually oriented business manager is located in the normal course of operations.

MODELING STUDIO. A business which provides, for pecuniary compensation, monetary or other consideration, hire or reward, figure models who, for the purpose of sexual stimulation of patrons, display "specified anatomical areas" to be observed, sketched, photographed, painted, sculpted or otherwise depicted by persons paying such consideration.

NUDE, NUDITY or STATE OF NUDITY. The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft/cleavage or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any part of the nipple; or the showing of the covered male genitals in a discernibly turgid state.

OPERATE A SEXUALLY ORIENTED BUSINESS; OPERATOR. Supervising, managing, inspecting, directing, organizing, controlling or being responsible for or in charge of the conduct of activities of a sexually oriented business.

PATRON or CUSTOMER. An individual invited or permitted to enter and remain upon the premises of a sexually oriented business, whether or not for consideration.

SEMI-NUDE or SEMI-NUDE CONDITION. A state of dress in which clothing covers no more than the genitals, pubic region, buttocks, areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER CENTER. A business that as 1 of its primary purposes offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex; or activities between male and female persons and/or persons of the same sex when 1 or more of the persons is in a state of nudity or semi-nudity.

SEXUALLY ORIENTED BUSINESS. An adult arcade, adult bookstore, adult cabaret, adult live entertainment establishment, adult hotel/motel, adult motion picture theater, adult novelty store, adult theater, adult video store, escort agency, modeling studio, sexual encounter center and any combination thereof.

SEXUALLY ORIENTED BUSINESS MANAGER or MANAGER. An individual on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business.

SPECIFIED ANATOMICAL AREAS.

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

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

(3) Any device, costume or covering that simulates any of the body parts included in divisions (1) and (2) of this definition as referenced above.

SPECIFIED SEXUAL ACTIVITIES. Intercourse, oral copulation, masturbation or sodomy on the premises of an adult oriented business.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-11-3 PERMIT REQUIRED: OPERATORS; MANAGERS; ADULT SERVICES; PROVIDERS AND EMPLOYEES.

It is unlawful:

(A) For any person to operate a sexually oriented business without having secured a valid sexually oriented business operator permit issued pursuant to this article;

(B) For any person to serve as manager for a sexually oriented business without having secured a valid sexually oriented business manager permit issued pursuant to this article; and

(C) For any person to work as an employee in a sexually oriented business without having secured a valid sexually oriented business employee permit issued pursuant to this article.

(Am. Ord. 1296, passed 5-1-2007) Penalty, see Vol. I, § 8-11-12

§ 8-11-4 EXEMPTIONS.

The provisions of this article do not apply to any person who is engaging in, conducting or carrying on a lawful business as an owner or operator of any of the following businesses or activities:

(A) Physicians, surgeons, chiropractors, osteopaths, physical therapists, nurses or any other health care provider, or barbers or beauticians duly licensed or certified to practice their respective profession in the State of Arizona;

(B) Trainers of any amateur, semi-professional or professional athlete or athletic team;

(C) Any activity conducted or sponsored by any school district or governmental entity pursuant to any license issued by the State of Arizona or United States Government;

(D) Portions of performances in theater, concert hall, music hall or auditorium stage wherein the displays are an integral part of a dramatic or comedic presentation;

(E) Private or public schools providing a course of instruction in photography or photography studios which do not provide for consideration, photography equipment, models and a studio; or

(F) Modeling agencies, schools or services, except those which provide live modeling services for consideration, in which a patron may obtain an exclusive modeling exhibition in which he or she is the only observer.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-11-5 APPLICATIONS.

(A) Any person desiring to obtain a sexually oriented business operator, manager, adult services provider or employee permit shall make application to the City Clerk. The application shall be on a form prescribed by the Chief of Police and made available by the City Clerk.

(B) The application shall be signed under oath by each individual listed as an applicant and notarized, and shall be accompanied by the fee required under Vol. I, § 8-11-9.

(C) The application shall include 2 original duplicates of a current photograph and the fingerprints of each applicant. Fingerprints shall be taken at the Apache Junction Police Department, or by any other law enforcement agency if accompanied by a notarized verification by that agency, all at the sole expense of the applicant.

(D) The application shall be deemed filed with the city when the City Clerk has received the required fee in full, a completed application with all information required under division (F) below, and the photograph and fingerprints of each applicant. In the case of a sexually oriented business operator permit application, the applicant shall file 4 copies with the City Clerk, including all addendum or attachments thereto, with 1 copy being kept on file with the City Clerk, 1 copy being forwarded from the City Clerk to the Chief of Police, 1 copy being forwarded to the Zoning Administrator, and 1 copy being forwarded to the Building Official. In the case of a sexually oriented business manager, adult services provider or employee permit, the applicant need only file 2 copies with the City Clerk, who shall retain one for official city records, and shall forward one to the Chief of Police for a background investigation.

(E) If a person desiring to operate a sexually oriented business is an individual, that individual must be listed as the applicant and also as the designated permit holder. If a person desiring to operate a sexually oriented business is a legal entity other than an individual, each officer, director or general partner of the entity, and any other individual who will participate directly or indirectly in decisions relating to management of the business, must be listed in the application as an applicant, and must provide their photograph and fingerprints as provided in division (C)

above, sign the application under oath witnessed by a notary public, and must provide all of the information required under division (F) of this section.

(F) In addition to other information as may be requested on the face of the application form, the application shall include the following information and items:

(1) Name, premises address, business mailing address if different than premises address, phone number of proposed sexually oriented business and emergency phone number;

(2) If the applicant is a corporation, the state and date of incorporation, and evidence that the corporation is in good standing under the laws of the State of Arizona, the name of the registered corporate counsel and agent, and address of the registered office for service of process;

(3) If the applicant is a partnership, names of all partners and whether the partnership is general or limited, as well as a copy of the partnership agreement;

(4) Each applicant's full true name and any other names, aliases or stage names used in the preceding 5 years;

(5) Each applicant's current residential mailing address and telephone number;

(6) A copy of each applicant's driver's license with picture or other picture identification issued by a governmental agency within the last 2 years;

(7) The issuing jurisdiction and the effective date of any license or permit relating to the operation of a sexually oriented business or relating to the provision of any adult services which is held or has been held at any time by any applicant or by the designated permit holder, whether any such license or permit has been revoked or suspended, and the reasons thereof;

(8) Any criminal conviction of any applicant or of the designated permit holder in the preceding 3 years for a sexual offense described in A.R.S. §§ 13-1401 through 13-1424, a racketeering offense as described in A.R.S. § 13-2301(D)(4), a prostitution offense as defined in A.R.S. §§ 13-3201 through 13-3214, a drug offense described in A.R.S. §§ 13-3401 through 13-3424, or a sexual exploitation of children offense described in A.R.S. §§ 13-3551 through 13-3559;

(9) The names of the sexually oriented business managers who will have actual supervisory authority over the operation of the business;

(10) An accurate to scale floor plan or diagram of the business premises clearly showing the configuration of the interior and exterior areas, including a statement of total floor space occupied by the business. The location of where the license will be conspicuously posted, as well as the location of the manager's station and overhead lighting fixtures, and all areas in which patrons will not be permitted to enter. The diagram need not be professionally drawn, but should be oriented to the north or to some designated street and shall be drawn to a designated scale or with marked dimensions sufficient to show the various interior dimensions;

(11) A certificate and straight line drawing prepared within 30 calendar days prior to application depicting the building and the portion thereof to be occupied by the sexually oriented business, and the property line of any other sexually oriented business located within 1,000 of the property line of any other sexually oriented business, as well as the property lines of any church, school, park, private residences and other businesses and uses delineated in Vol. II, §§ 1-17-1-12(A), 1-17-2-12(A), and Chapter 1; and

(12) The City Clerk may waive the foregoing diagram and drawing requirements for renewal applications if the applicant adopts a diagram and drawing which was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(G) Divisions (F)(10) and (F)(11) above are not applicable to applicants desiring a sexually oriented business manager, adult services provider or employee permit.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-11-6 INVESTIGATIONS.

(A) Upon receipt, the City Clerk shall forward a copy of the application to the Chief of Police, as well as to the Building Official and Zoning Administrator.

(B) For sexually oriented business manager, adult services provider and employee permit applications, the City Clerk need only send the copies to the Chief of Police for his or her investigation, except for permit applications relating to an adult bookstore, adult video or novelty store.

(C) The Chief of Police shall review the application for accuracy and shall conduct a criminal background investigation of the applicant.

(D) The Zoning Administrator shall determine whether the location of the business is in compliance with Vol. II, §§ 1-17-1-12(A), 1-17-2-12, and Chapter 1, or development standards as adopted by the city.

(E) The Building Official shall inspect the proposed premises and shall determine whether the proposed premises are in compliance with all building codes as adopted by the city.

(F) The Chief of Police, Zoning Administrator and Building Official shall each make separate recommendations to the City Clerk for the approval or denial of the permit.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-11-7 GRANTING, DENIAL, REVOCATION AND SUSPENSION; APPEAL.

(A) Upon receipt of a complete application for a sexually oriented business operator, manager, adult services provider or employee permit, payment of the required fees and completion of photograph and fingerprinting requirements under this article, the City Clerk shall issue to the applicant a temporary permit. The issuance of a temporary permit does not waive any right of city to revoke, deny or suspend for any defect, omission or misrepresentation in the application.

(B) Within 30 calendar days after the application for a sexually oriented business operator, manager, adult services provider or employee permit is filed with the city, the City Clerk shall, based on the recommendations of the Chief of Police, Zoning Administrator and Building Official, notify such applicant by prepaid first class certified mail, return receipt requested, whether the permit will be granted, denied or renewed. Failure by the City Clerk to issue such notice upon expiration of this time period shall be deemed as issuance of the permit.

(C) The City Clerk shall grant the permit or renewal application thereof if all requirements for the application have been completed, unless:

- (1) The applicant is under 18 years of age;
- (2) The application contains incomplete information to justify the issuance of a permit;
- (3) The required application has not been paid;

(4) The applicant has made false, misleading or fraudulent statements of material fact in the application;

(5) The building, structure, equipment or location proposed by the applicant for the sexually oriented business does not comply with the requirements pursuant to this article, and other health, fire, building, safety, development standards and zoning provisions enacted by the city; or

(6) The applicant is delinquent in payment to the city of taxes, fees, fines or penalties assessed against or imposed upon the applicant in relation to sexually oriented businesses

(D) In the case of the granting of a sexually oriented business operator permit, the permit shall state on its face the name of the licensee, the expiration date and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance.

(E) The City Clerk shall suspend a permit for a period of 10 working days if a licensee is not in compliance with this article.

(F) The City Clerk shall revoke a permit pursuant to this article if the licensee:

- (1) Has failed to come within compliance of any provision in this article within 10 working days from the last day of the suspension as provided in division (E) above;
- (2) Is convicted of 3 or more violations of this article in any 12-month period;
- (3) Is convicted or pleads guilty or no contest to offenses stated in Vol. I, § 8-11-5(F)(8); or
- (4) Is determined to have filed inaccurate information in the application.

(G) If the City Clerk determines that grounds exist for denial, suspension or revocation of a permit, the City Clerk shall notify the applicant by prepaid first class certified mail, return receipt requested, including the grounds for such action. The grounds shall make reference to the applicable sections and divisions of this article which have not been complied with or have been violated. The applicant may respond to the City Clerk within 10 working days in writing setting forth a statement as to why the permit should not be denied, suspended or revoked. The statement may also request a hearing. If a response is not received by the City Clerk in the time stated, the denial, suspension or revocation shall be final and the City Clerk shall send written notice to the applicant within 5 working days after expiration of the period for submitting a response by prepaid first class certified mail, return receipt requested.

(H) Within 5 working days after receipt of response, the City Clerk shall either:

- (1) Withdraw the denial, suspension or revocation determination, and will so notify the applicant as in the manner proscribed above; or
- (2) Schedule a hearing, a hearing officer designated by the City Manager and so notify the applicant in the manner noted above, including the date, time and place of the hearing. If the City Clerk fails to send a timely notification, the permit shall be deemed to continue as valid until the annual renewal date. The hearing will be conducted informally. All parties shall have a right to

offer testimonial, documentary and tangible evidence bearing on the issues. Each party may also be represented by an Arizona licensed attorney of their own choosing at their own expense, and shall have the right to confront and cross-examine witnesses. Although the Arizona rules of evidence will not apply at this hearing, any relevant evidence as determined by the hearing officer may be admitted that is the sort of evidence persons are accustomed to rely in the conduct of serious affairs. The hearing shall be scheduled not less than 15 nor more than 20 working days after receipt by the City Clerk of the request for a hearing. The applicant shall have the burden of proving by a preponderance of the evidence that the denial, suspension or revocation was arbitrary or capricious and was an abuse of discretion.

(I) The hearing officer shall render a written decision within 5 working days after completion of the hearing and shall notify the applicant of the determination by prepaid first class certified mail, return receipt requested. The decision shall be final at the end of 5 working days after it is mailed and shall constitute final administrative review. The applicant may continue to function under the permit pending receipt of the final decision of the hearing officer.

(J) The hearing officer's decision may be appealed to the Pinal Superior Court by special action or other appropriate procedure within 35 calendar days after mailing of the written decision to the applicant. If a licensee pursues a judicial appeal from a final administrative action, the licensee may continue to function under the permit pending completion of the judicial review.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-11-8 EXPIRATION AND RENEWAL.

(A) Each permit shall expire 1 year from the date of issuance and may be renewed only by making application as provided in Vol. I, § 8-11-5.

(B) The renewal application must be received 45 calendar days before the expiration date of the originally issued license.

(C) The City Clerk may deny an application for renewal for the reasons set forth in Vol. I, § 8-11-7.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-11-9 NON-TRANSFERABILITY.

(A) Permits issued pursuant to this article are not transferable.

(B) With regard to sexually oriented business operators, any transfer of ownership or control of the business causes any issued permit to be void. The new owner shall be responsible for obtaining a permit. Transfer of ownership and control includes the following:

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

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

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

(Am. Ord. 1296, passed 5-1-2007)

§ 8-11-10 OPERATION REQUIREMENTS.

(A) With the exception of escort services and modeling studios, the following operational regulations apply:

(1) The business shall maintain a daily log of all persons providing adult services on the premises, including their city permit numbers. The log shall cover the preceding 12-month period and shall be available for inspection upon request by the Chief of Police;

(2) A person below the age of 18 years may not observe nor provide any adult services;

(3) An individual may not provide adult services within the premises of the business except upon a stage elevated at least 18 inches above the floor level. All parts of the stage, or a clearly designated area thereof with which the adult services are provided, shall be a distance of at least 3 feet from all parts of a clearly designated area in which patrons may be present. The stage or designated area thereof shall be separated from the area in which patrons may be located by a barrier or railing, the top of which is at least 3 feet above floor level. An adult services provider or patron may not extend any part of their body over or beyond the barrier or railing;

(4) An adult services provider, in the course of providing any adult services, may not perform a specified sexual activity;

(5) Adult services may not be provided in any location which is not visible by direct line of sight at all times from a manager's station located in a portion of the premises which is not accessible to patrons;

(6) A manager shall be on the premises of a sexually oriented business at all times during which any adult services is provided on the premises;

(7) An adult services provider or employee may not at any time touch the breast, buttocks or genitals of a patron, nor may a patron touch the breast, buttocks or genitals of an adult services provider or employee;

(8) No adult services provider or employee, either before, during or after performances, shall have physical contact with any patron and no patron shall have physical contact with any adult services provider or employee before, during and after performances by such adult services provider or employee. This division shall only apply to physical contact on the premises of the sexually oriented business;

(9) No patron shall pay or give any gratuity to any adult services provider, and no adult services provider shall solicit any pay or gratuity from any patron;

(10) A sign setting forth the regulations in division (A)(2), (3), (7), (8) and (9) above shall be conspicuously posted visible from the entrance of the business in such a manner as to be clearly legible to patrons upon entry;

(11) No sexually oriented business shall operate in a manner that permits the observation of any material or activities depicting, describing or relating to "specified anatomical areas" or

"specified sexual activities" from any public way or from any location outside the building or area of the establishment. This provision shall apply to any display, decoration, sign, show window or other opening. No exterior door or window on the premises shall at any time be propped or left open while the business is in operation, and any exterior shall be covered with opaque covering at all times;

(12) The interior of the premises shall be configured in such a manner or with the use of mirrors that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video equipment and;

(13) No viewing room may be occupied by more than 1 person at anytime. There shall be no openings of any kind between viewing rooms or booths. The manager shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist. All floor coverings in viewing booths must be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(B) With respect to an adult cabaret, the requirements of this section shall apply to the extent that they are not in conflict with specific statutory or valid regulatory requirements applicable to persons permitted to dispense alcoholic beverages.

(Am. Ord. 1296, passed 5-1-2007) Penalty, see Vol. I, § 8-11-12

§ 8-11-11 OTHER LICENSES.

(A) A permit required by this article is in addition to any other license or permit required by the city, Pinal County or the State of Arizona.

(B) Persons engaging in activities described in this article shall comply with all other ordinances and laws, including but not limited to the Apache Junction Zoning Ordinance, the landscaping and screening regulations of the city, the Sign Code, as well as privilege and business license regulations set forth in Vol. I, Article 8-2 above.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-11-12 PENALTY.

(A) Any person violating any of the provisions of this chapter, shall be guilty of a Class 1 Misdemeanor, and shall be subject to the penalty and multiple charging provisions set forth in Vol. I, § 1-1-11.

(B) A licensee which is an enterprise shall be subject to the fine provided in A.R.S. § 13-803.

(C) In addition to criminal penalties described herein, a sexually oriented business which operates without having obtained a license or is operating under an expired license shall constitute a public nuisance which may be abated by a suit for injunctive relief.

(D) It is a defense to prosecution under Vol. I, § 8-11-3 that each item of descriptive printed, film or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, religious or scientific value.

(Am. Ord. 1296, passed 5-1-2007)

§ 8-11-13 APPLICABILITY.

This article shall apply to all persons engaged in the activities described herein, whether or not such activities were commenced before the effective date of this article. Persons so engaged as of the effective date of this article, shall be in full compliance with this article, including receipt of any required license and permit, within 180 calendar days after the effective date of this article.

(Ord. 1367, passed 10-5-2010)

§ 8-11-14 SEVERABILITY.

Each section of this article should be deemed severable and the invalidity of any provision of this article shall not affect the validity or enforceability of any other provision.

(Ord. 1367, passed 10-5-2010)

ARTICLE 8-12: NON-PRESCRIPTION PSEUDOEPHEDRINE PRODUCT SALES

Section

8-12-1 Purpose

8-12-2 Definitions

8-12-3 Access and seizure of unsecured products; hearing and procedure

8-12-4 Keeping of sales logs and submittal to law enforcement upon request

8-12-5 Prohibited sales to persons under 18 years of age

8-12-6 Right to refuse to sell

8-12-7 Penalty

§ 8-12-1 PURPOSE.

The purpose of this article is to decrease the availability of ephedrine derived from nonprescription drug products and other cold and allergy medications commonly used as a precursor in the production of methamphetamine. The Arizona State Legislature has yet to regulate ephedrine products which are combined with other active ingredients. These provisions are to supplement, not to substitute A.R.S. § 13-3401.01 *et seq.*

(Am. Ord. 1253, passed 1-3-2006)

§ 8-12-2 DEFINITIONS.

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

LICENSED PHARMACY TECHNICIAN. A person licensed by the state to assist a pharmacist.

PHARMACIST. A person licensed by the state in the art, practice, or profession of preparing, preserving, compounding, and dispensing medical drugs.

PROPER IDENTIFICATION. A recognized government-issued photo identification of a purchaser including, but not limited to, a driver's license, identification card or passport.

PSEUDOEPHEDRINE PRODUCT. A drug product commonly used in decongestants and can be illegally processed to make methamphetamine; ephedrine, nonpseudoephedrine, and phenylpropanolamine shall be included in this definition; in addition, a product containing ephedrine or pseudoephedrine that contains any detectable quantity of ephedrine or pseudoephedrine or its salts, optical isomers or salts of optical isomers; and product packaging that lists ephedrine or pseudoephedrine as an active ingredient shall constitute prima facie evidence that it is a product containing ephedrine or pseudoephedrine.

RETAIL COMMERCIAL ESTABLISHMENT. Any place of business that offers any pseudoephedrine product for sale or retail.

(Am. Ord. 1253, passed 1-3-2006)

§ 8-12-3 ACCESS AND SEIZURE OF UNSECURED PRODUCTS; HEARING AND PROCEDURE.

(A) Nonprescription pseudoephedrine products, shall only be available for retail sale at retail establishments with the assistance of a state licensed pharmacist, or permitted pharmacy technician. The pharmacist, or pharmacy technician, or other employee of a retail establishment shall keep all pseudoephedrine products, as defined, behind a store counter or otherwise in a manner that is inaccessible to customers without the assistance of a pharmacist or pharmacy technician licensed in this state per A.R.S. Title 32, Chapter 18.

(B) Any pseudoephedrine product found to be displayed in a retail establishment in violation of this article constitutes a public nuisance and is subject to seizure and disposal by the city.

(C) Products subject to seizure under this article may be seized by a peace officer pursuant to a search or seizure warrant or upon probable cause to believe that the products are subject to seizure. Before removing any products from the establishment, the peace officer shall give the operator of the establishment a reasonable opportunity to secure the products pursuant to this article, unless the operator has already been afforded an opportunity within the preceding consecutive 12-month period to secure such products.

(D) At the time of seizing any products under this section, the peace officer shall deliver a notice of intent to dispose of the seized products. This notice shall include the date and location of the seizure, an inventory of the items seized, a description of how a post-seizure hearing may be requested, the time limit for requesting that hearing, and a warning that failure to request the hearing in a timely manner will result in the disposal and destruction of the seized property. The notice required under this division shall be served on the managing agent, licensed pharmacist or pharmacy technician of the retail establishment present at the time of the seizure, or if that person cannot be identified at the time of the seizure, on any employee of the establishment.

(E) A person receiving a notice of intent to dispose under this section may request a post-seizure hearing with the Apache Junction Municipal Court to determine the validity of the seizure within 15 days of receiving the notice, excluding weekends and holidays. The court shall conduct the hearing within 10 days of the court's receipt of the request, excluding weekends and holidays. Failure to request the hearing in a timely manner, or failure to attend a scheduled hearing, constitutes a waiver of the right to challenge the validity of the seizure. At the hearing, the city shall have the burden of establishing by a preponderance of the evidence that the property was subject to seizure pursuant to this article. At the hearing, the court may admit any reliable and relevant evidence. If the court finds that the products were not subject to seizure, it shall order the immediate return of all seized items. If the court finds that the products were properly seized pursuant to this section, the court shall order that the products be forfeited to the city, and shall direct the city to destroy and dispose of the products.

(F) The requirements of this section are in addition to any requirements under state and federal law.

(Am. Ord. 1253, passed 1-3-2006)

§ 8-12-4 KEEPING OF SALES LOGS AND SUBMITTAL TO LAW ENFORCEMENT UPON REQUEST.

(A) The licensed pharmacist or pharmacy technician that sells pseudoephedrine products, shall record the name of the purchaser, their address, date of birth, the date of the transaction, and type of identification used in a manual or electronic log after verifying the purchaser's identification as defined herein.

(B) The log shall be available to law enforcement upon request for review and shall be submitted to the Police Chief when requested by the Police Department. The submission can be made by manual or electronic means or by any other means the Police Chief approves. The log is confidential and not subject to disclosure to any non-pharmacy, except law enforcement or by court order.

(Am. Ord. 1253, passed 1-3-2006)

§ 8-12-5 PROHIBITED SALES TO PERSONS UNDER 18 YEARS OF AGE.

Sales of nonprescription pseudoephedrine products to persons under 18 years of age are prohibited. Age of each purchaser of pseudoephedrine products shall be verified by the licensed pharmacist or pharmacy technician by inspecting proper identification as defined herein.

(Am. Ord. 1253, passed 1-3-2006)

§ 8-12-6 RIGHT TO REFUSE TO SELL.

Any licensed pharmacist or pharmacy technician at a retail establishment may refuse to sell any pseudoephedrine product, to any person, if the licensed pharmacist or pharmacy technician has reason to believe that the product will be used in the unlawful manufacture of methamphetamine. Facts that give rise to the belief that the product will be used unlawfully, include, but are not limited to a suspicious transaction as defined in A.R.S. § 13-3401; the

attempted purchase of pseudoephedrine products in excess of the amounts permitted by A.R.S. § 13-3401.01, (no more than 3 packages, not to exceed 9 grams of pseudoephedrine, without a valid prescription, unless licensed or permitted by state law); the attempt to purchase pseudoephedrine products in a series of transactions in an effort to circumvent the limitations on sales; or the attempt to purchase pseudoephedrine products in conjunction with other methamphetamine precursor products, such as red phosphorous or iodine. Any person who refuses to make a retail sale in accordance with this section is not liable to its customer or any other person for any loss or damage caused in whole or in part by the refusal to sell.

(Am. Ord. 1253, passed 1-3-2006)

§ 8-12-7 PENALTY.

(A) A violation of any provisions in this article is a class 2 misdemeanor.

(B) Enterprise liability is not applicable to this article.

(Am. Ord. 1253, passed 1-3-2006)