

## **TITLE XI: BUSINESS REGULATIONS**

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## CHAPTER 110: BUSINESS LICENSES

### Section

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### ***Cross-reference:***

*Tow service pool, see § 33.04*

### **§ 110.01 DEFINITIONS.**

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

***BUILDING.*** Any structure enclosed by walls on all sides, covered by a roof and requiring permanent location on the ground. Tents, temporary frames covered by soft material or structures built without a building permit are excluded from this definition.

***BUSINESS.*** Any person, organization, group, association or corporation shall include any person who shall engage in the selling or display for sale of goods, wares, merchandise, food or beverages of any kind at retail or wholesale to the general public in the town, in which a person acquires personal property for use, storage or consumption, or who provides services or advertising from an office within the town or provides entertainment for a fee or

admission charge within the town and who maintains the following: An office, place of distribution, sales location, sample location, warehouse, storage place or other operational place of business which is located in the town and which the person maintains, occupies or uses, either permanently or temporarily, either directly or indirectly, and either by himself or herself or through an agent, subsidiary or association.

(B) Notwithstanding any of the provisions contained herein, no person, organization, group or association providing professional services regulated and licensed by the state shall be denied permission to continue furnishing the professional services or assessed any penalty under § 110.99, should the person, organization, group or association refuse to obtain a license.  
(Ord. 1984-3, passed 5-7-1984; Am. Ord. 1989-11, passed 12-21-1989)

### **§ 110.02 LICENSE REQUIRED.**

No person, organization, group or association shall engage in selling, or display for sale of goods, wares, merchandise, advertising, food or beverages of any kind at retail or wholesale, provide services from an office within the town, or provide entertainment for a fee or admission charge within the town without first obtaining a license from the Town Clerk-Treasurer.  
(Ord. 1984-3, passed 5-7-1984) Penalty, see § 110.99

### **§ 110.03 LICENSE APPLICATION AND FEES.**

(A) Before issuing a license, each business shall file with the Clerk-Treasurer an application on forms provided by the town.

(B) Before issuing a license, the Clerk-Treasurer shall receive from each applicant for each location as follows:

- (1) A photostatic copy of a valid state retail certificate (if business is a retail business); and
- (2) A fee in the amount of \$30.

(C) Any person, organization, group or association requiring a business license shall apply for and pay for the same no later than 3 business days before the first date of commencing business in any calendar year.

(D) Each license shall be for the calendar year of issue.  
(Ord. 1984-3, passed 5-7-1984; Am. Ord. 1989-6, passed 7-20-1989)

#### § 110.04 DISPLAY OF LICENSE.

Each business shall display the issued license in a place clearly visible to the Town Marshal.  
(Ord. 1984-3, passed 5-7-1984) Penalty, see § 110.99

#### § 110.05 EXCEPTIONS.

(A) *Charitable, educational, or religious organizations.* Any person, organization, group or association requiring a license as set forth in § 110.02 above, but engaging in the activity on behalf of and solely for the benefit of any bona fide local (county), public, charitable, educational or religious organization shall apply for and be issued a license, but shall be exempted from paying for a business license.

(B) *Garage and yard sales.* Any person, organization, group or association requiring a license fee as set forth in § 110.02 above, selling his, her or its own used merchandise from their garage, basement or yard and offering the merchandise for sale no more than 2 days in any given 6 months shall be exempted from applying for and paying a business license.

(C) *Farm produce.* Any person, organization, group or association requiring a license as set forth in § 110.02 above, selling only local (county) produce, which is grown by that person, organization, group or association and engaging in such selling for less than 45 days in any calendar year shall be exempted from applying for and paying for a business license.

(D) *Disabled veterans.* Any disabled veteran issued a peddler's license by the Auditor of the County, pursuant to applicable state laws, shall not be required to obtain a business license, provided that person's business is limited to those activities covered by the peddler's license.  
(Ord. 1984-3, passed 5-7-1984; Am. Ord. 1985-3, passed 5-6-1985; Am. Ord. 1989-11, passed 12-21-1989)

#### § 110.06 CONDITIONS OF LICENSE APPROVAL, REVOCATION, AND TRANSFER.

(A) *Approval of application.* Each applicant for a license must show compliance with the appropriate ordinances, rules, regulations and statutes of the town, county or state and in relation to public health, safety and welfare.

(B) *Revocation of license.* In the event any licensee fails to comply with the conditions set forth in division (A) above, the Clerk-Treasurer shall cause the license to be revoked. Before commencing operations again, the licensee must apply for a new license, show proof of compliance with conditions set forth in division (A) above and pay a license fee as set forth in § 110.03.

(C) *Revocation not exclusive.* The revocation of a license shall not act as a bar to the town proceeding to prosecute in accordance with § 110.99.

(D) *Transfer.* Any person holding a license pursuant to the provisions of this chapter, who sells the business requiring the license, may assign the license to the purchaser, provided the purchaser is continuing the same business at the same location. Both the seller and purchaser shall sign a request for

transfer which shall be filed with the Clerk-Treasurer. A transfer fee of \$5 shall be paid if the transfer is approved.  
(Ord. 1984-3, passed 5-7-1984)

**§ 110.07 SALE ON PUBLIC RIGHT-OF-WAY LAND.**

The issuance of a business license shall not give any business the right to sell goods, wares, merchandise, food, beverages or provide entertainment on or within any public right-of-way, street, alley, sidewalk, parking lot or from any land owned by any governmental unit without the express written consent of the owner of the land.  
(Ord. 1984-3, passed 5-7-1984)

**§ 110.08 ENFORCEMENT.**

The Town Marshal or his or her deputy is hereby authorized to enforce the provisions of this chapter.  
(Ord. 1984-3, passed 5-7-1984)

**§ 110.09 PROCEDURES FOR THE DENIAL, SUSPENSION OR REVOCATION OF LICENSES OR PERMITS.**

(A) *Denial, suspension or revocation.* A license or permit may be denied by an agent of the town with authority over the license or permit, or once issued, may be suspended or revoked by the Town Manager or his or her designee for any of the following causes:

- (1) Fraud, misrepresentation or incorrect statement contained in the application, or made in carrying on the licensed or permitted activity;
- (2) Expiration or cancellation of any required bond or insurance;
- (3) Actions unauthorized or beyond the scope of the license or permit granted;

(4) Violation of any regulation or provision of the code of ordinances applicable to the activity for which the license or permit has been granted, or any regulation or law of the state so applicable;

(5) The licensee or permittee or its employees or agents engaging in the practice of unfair, unjust, inequitable, illegal or fraudulent acts or practices in connection with the license or permit activity;

(6) The license or permit holder, for any reason, ceasing to be qualified to receive or maintain a license or permit;

(7) The licensee or permittee engaging in conduct or committing an offense which reflects on the licensee's or permittee's fitness to hold a license or permit; or

(8) The licensee or permittee violating any law, ordinance, regulation, order or decision of a public official pertaining to the license or permit.

(B) *Hearing.* The Town Manager shall not suspend or revoke a license under this section without first holding a hearing to investigate and examine the qualifications and conduct of the licensee or permittee. The Town Manager shall serve notice of and conduct the hearing as follows:

- (1) The Town Manager shall preside over and conduct the hearing in an informal manner, giving the affected applicant, licensee or permittee and any other person who has relevant information an opportunity to participate to the extent necessary to provide due process and full consideration of all facts and issues. The Town Manager may require that testimony be given under oath.
- (2) Following the hearing, the Town Manager shall cause written notice of his or her decision to be served on the applicant, licensee or permittee by certified mail or by the Town Marshal. If the decision is adverse to the applicant, licensee or permittee, the decision shall include the following:

(a) Factual and legal basis for the decision as well as any aggravating or mitigating circumstances which were taken into consideration as a basis for the decision;

(b) A statement of the licensee's right to appeal the decision to the Town Council and the time limitations in which to do so; and

(c) The term of the suspension or revocation and the requirements or conditions, if any, for future reinstatement.

*(C) Right to appeal to the Town Council; time requirement.*

(1) Whenever an applicant, licensee or permittee wishes to appeal a decision of an authorized agent of the town not to issue or renew a license or permit, or the Town Manager's decision to suspend or revoke a license or permit, the applicant, licensee or permittee shall have the opportunity to appeal the decision to the Nashville Town Council.

(2) The applicant, licensee or permittee shall deliver a written notice of appeal to the Town Manager, either by registered or certified mail, return receipt requested or by personal service with a signed receipt. If the notice is not delivered to the Town Manager within 20 days after the date of the issuance of the decision from which the appeal is taken, then the applicant, licensee or permittee shall forfeit the appeal.

*(D) Emergency suspension by the Town Manager.*

(1) (a) Notwithstanding the hearing provisions of this section, the Town Manager temporarily may suspend the license or permit without a hearing if he or she:

1. Receives reliable information that:

a. The conduct of the licensed business or permitted activity or the condition

of the associated premises creates or maintains a condition adverse to the public welfare; or

b. The licensee or permittee is charged in any court with an offense which reflects on the licensee or permittee's fitness to hold a license or permit; and

2. Finds that an emergency exists.

(b) In that case, the Town Manager shall notify the licensee or permittee of the emergency temporary suspension. The notice shall also inform the licensee or permittee of a Town Manager's hearing to be held within 10 business days of the issuance of the emergency temporary suspension.

(2) Upon written application of the licensee or permittee prior to the Town Manager's hearing scheduled under this section, the Town Manager shall set a Town Manager's hearing to be held within 2 business days following the Town Manager's receipt of the written application. The hearing shall be conducted under the procedures established hereinabove of this section.

(3) If the Town Manager fails for any reason to timely schedule and conduct a Town Manager's hearing as required by this section, the emergency temporary suspension of the license or permit shall terminate. However, the Town Manager may proceed to suspend or revoke the license or permit under the procedures of division (A) of this section.

(Ord. 2002-02, passed 3-21-2002)

#### **§ 110.99 PENALTY.**

Any person, organization, group or association failing to comply with the provisions of this chapter shall be subject to a fine of \$50 per day. Each day a violation continues shall be deemed a separate violation.

(Ord. 1984-3, passed 5-7-1984; Am. Ord. 1989-6, passed 7-20-1989)

## **CHAPTER 111: ALCOHOLIC BEVERAGES**

### Section

- 111.01 Application for permit
- 111.02 Compliance to Alcoholic Beverage Act required
- 111.03 Issuance of permits

### **§ 111.01 APPLICATION FOR PERMIT.**

All proper parties making application to retail liquor within the corporate limits of the town may be granted a retailer's permit.

(Ord. passed - -1937)

### **§ 111.02 COMPLIANCE TO ALCOHOLIC BEVERAGE ACT REQUIRED.**

Applicants for a retailer's permit to retail intoxicating liquors must otherwise be duly qualified to obtain retailer's permits under terms and provisions of the Alcoholic Beverage Act enacted by the legislature of 1935 and in Chapter 226 of the Acts of 1935.

(Ord. passed - -1937) Penalty, see § 10.99

### **§ 111.03 ISSUANCE OF PERMITS.**

Permits may be issued to all applicants, therefore to all parties making application for the permits, provided the applicants for the permits shall have complied in full detail with all the provisions and requirements as provided in Chapter 226 of the Acts of 1935, and being an Act concerning Alcohol and Alcoholic Beverages to promote temperance and declaring an emergency.

(Ord. passed - -1937)



## CHAPTER 112: AMUSEMENTS

### Section

- 112.01 License required; designated businesses
- 112.02 Application for license
- 112.03 Fees
- 112.04 Charitable entertainments
  
- 112.99 Penalty

### **§ 112.01 LICENSE REQUIRED; DESIGNATED BUSINESSES.**

(A) It shall be unlawful for any person or combination of persons however organized, whether real or corporate, to engage in any business for profit of providing entertainment or amusement to others within the town limits without first having obtained a license issued by the town authorizing the engagement in that business.

(B) The businesses required to be licensed by this chapter are billiard parlors, bowling alleys, carnivals, circuses, dance halls, fortune telling, merry-go-rounds, poolrooms, skating rinks, theaters and other similar and related activities.  
(Ord. 1970-, passed 10-5-1970) Penalty, see § 112.99

### **§ 112.02 APPLICATION FOR LICENSE.**

(A) The town will provide application forms which will request the name of the applicant, his or her permanent address, his or her local address, the type of business he or she will engage in and period of time for which he or she is requesting a license.

(B) The application for license completely filled out together with the fee required by this chapter will

be delivered to the Clerk-Treasurer who is hereby empowered to issue a license upon finding the application in due form and being in receipt of full payment of the fee in cash. The license will include the name of the licensee, the type of business he or she is authorized to conduct, and the expiration date of the license. The Clerk-Treasurer will maintain a record of all applications and licenses.

(Ord. 1970-, passed 10-5-1970) Penalty, see § 112.99

### **§ 112.03 FEES.**

The Clerk-Treasurer shall collect fees for licenses issued pursuant hereto according to the following schedule:

(A) Billiard parlor, bowling alley, poolroom and skating rink licenses will cost \$100.00 and the license must be renewed annually.

(B) Theater licenses will cost \$5.00 and the license must be renewed annually.

(C) Carnival and circus licenses will cost \$50.00 per day and will be issued for a stated number of days, full payment in cash being required in advance. Only 1 such license may be issued to a person in any 6-month period of time.

(D) Dance hall, fortune telling and merry-go-round licenses will cost \$2.50 per day and will be issued for a stated number of days not exceeding 30 days, full payment in cash being required in advance. Only 1 such license may be issued to a person in any 30-day period of time.

(E) A license for any other entertainment or amusement business not herein specifically named will cost \$5.00 per day.

(Ord. 1970-, passed 10-5-1970) Penalty, see § 112.99

#### **§ 112.04 CHARITABLE ENTERTAINMENTS.**

It shall be unlawful for any person to use any ticket, poster, placard, badge or other advertisement in the promotion of any dance, bazaar, picnic, game, theater or other entertainment or performance purporting to be given for charitable purposes, unless the names of the persons or organizations intended to be benefited by the receipts from the entertainment or performance are stated on the ticket, poster, placard, badge or other advertisement.

(Ord. 4-6-70, passed 4-6-1970) Penalty, see § 112.99

#### **§ 112.99 PENALTY.**

Any person or combination of persons however organized, whether real or corporate, who violates any provision of this chapter shall be fined upon conviction thereof, any sum of money not exceeding \$100. A separate offense of this chapter shall be deemed to have occurred each day a violation is committed.

(Ord. 5-4-70, passed 5-4-1970; Am. Ord. 1970-, passed 10-5-1970)

## CHAPTER 113: FOOD MARKETS

### Section

#### *General Provisions*

- 113.01 Definitions
- 113.02 Minimum sanitation requirements
- 113.03 Sale of unwholesome, adulterated or misbranded food
- 113.04 Disease control
- 113.05 Approval of plans

#### *Permits*

- 113.15 Permit required
- 113.16 Separate permits; nontransferable
- 113.17 Inspection; compliance
- 113.18 License and fees

#### *Inspection of Food Markets*

- 113.35 Frequency of inspection
- 113.36 Procedure when violations noted
- 113.37 Authority to inspect and to copy records
- 113.38 Final inspection; prosecution or hearing for violators
- 113.39 Revocation of permit
- 113.40 Suspension of permit
- 113.41 Reinstatement of permit
  
- 113.99 Penalty

#### *GENERAL PROVISIONS*

##### **§ 113.01 DEFINITIONS.**

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

***BROWN COUNTY.*** Those rural and urban areas which are under the jurisdiction of the County Health Officer and shall not apply to incorporated cities or towns, except as provided for under authority of Chapter 80, Indiana Acts of 1953, and Chapter 118, Indiana Acts of 1957.

***EMPLOYEE.*** Any person who comes in contact with any utensil or equipment in which food is prepared or stored, or who is employed in a room or place in which food is prepared, processed, displayed or sold.

***FOOD.*** All articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof.

***FOOD MARKET.*** Retail grocery, meat market, poultry market, fish market, fresh fruit and vegetable market, delicatessen, confectionery, cheese shop, candy kitchen, nut store, retail bakery store or any other establishment where food intended for human consumption is manufactured, produced, stored, prepared, processed, handled, transported, sold or offered for sale at retail.

**HEALTH OFFICER.** The County Health Officer, or his or her authorized representative.

**PERSON.** Includes, but is not limited to any individual, partnership, copartnership, firm, company, corporation, association, joint-stock company, trust, estate or municipality, or his, her or its legal representative or agent.

**UTENSIL.** All containers, or any equipment of any kind or nature with which food comes in contact after delivery to a food market, during storage, preparation, processing, display or sale. (Ord. 2-65, passed 4-20-1965)

### **§ 113.02 MINIMUM SANITATION REQUIREMENTS.**

All food markets shall comply with the minimum sanitation requirements specified by the Indiana State Board of Health as now provided in its Regulation HFD 19 or as the same may be hereafter changed or amended. This regulation and any changes and amendments thereto which may be hereafter adopted or promulgated are by reference incorporated herein and made a part hereof, 2 copies of which are on file in the office of the Board of Health of the county for public inspection.

(Ord. 2-65, passed 4-20-1965) Penalty, see § 113.99

### **§ 113.03 SALE OF UNWHOLESOME, ADULTERATED OR MISBRANDED FOOD.**

(A) It shall be unlawful for any person to sell through a food market any food which is unwholesome, adulterated or misbranded.

(B) Samples of food may be taken and examined by the Health Officer as often as may be necessary to determine freedom from contamination, adulteration, or misbranding. The Health Officer may, on written notice to the owner/operator, impound and forbid the sale of any food which is unwholesome, adulterated or misbranded, or which he or she has probable cause to believe is unfit for human consumption,

unwholesome, adulterated or misbranded; provided, that in the case of misbranding which can be corrected by proper labeling, the food may be released to the operator for correct labeling under the supervision of the Health Officer. The Health Officer may also cause to be removed or destroyed any dairy product, meat, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit or other perishable articles which in his or her opinion are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe. (Ord. 2-65, passed 4-20-1965) Penalty, see § 113.99

### **§ 113.04 DISEASE CONTROL.**

(A) No person who is affected with any disease in a communicable form or is a carrier of such a disease shall work in any food market, and no food market shall employ any such person or any person believed to be affected with any disease in a communicable form or of being a carrier of a disease. If the food market manager has reason to believe that any employee has contracted any disease in a communicable form or has become a carrier of disease, he or she shall notify the Health Officer immediately.

(B) When the Health Officer has reason to believe there exists a possibility of transmission of infection from any food market employee, the Health Officer is authorized to require any or all of the following measures:

(1) The immediate exclusion of the employee from all food markets;

(2) The immediate closing of the food market concerned until no further danger of disease outbreak exists in the opinion of the Health Officer; and/or

(3) Adequate medical examination of the employee and of his or her associates with such laboratory examinations as may be indicated.

(Ord. 2-65, passed 4-20-1965) Penalty, see § 113.99

**§ 113.05 APPROVAL OF PLANS.**

All food markets which are hereafter constructed or altered shall conform with the applicable requirements set forth in § 113.02 of this chapter. Properly prepared plans and specifications shall be submitted to and approved by the Health Officer as may be required before starting any work. (Ord. 2-65, passed 4-20-1965) Penalty, see § 113.99

***PERMITS***

**§ 113.15 PERMIT REQUIRED.**

(A) (1) It shall be unlawful for any person to operate a food market in the county, who does not possess a valid permit from the Health Officer. The permit shall be posted in a conspicuous place in the food market. Only persons who comply with the applicable requirements of this chapter shall be entitled to receive and retain a permit.

(2) The permit for a food market shall be for a term of 1 year beginning January 1 and expiring December 31 of the same year and shall be renewed annually. Any permit issued by the Health Officer shall contain the name and address of the person to whom the permit is granted, the address of the premises for which the same is issued and such pertinent data as may be required by the Health Officer.

(B) No permit or renewal thereof shall be denied or revoked on arbitrary or capricious grounds. (Ord. 2-65, passed 4-20-1965) Penalty, see § 113.99

**§ 113.16 SEPARATE PERMITS; NONTRANSFERABLE.**

A separate permit shall be required for each food market operated or to be operated by any person. A permit issued under this chapter is not transferable. (Ord. 2-65, passed 4-20-1965)

**§ 113.17 INSPECTION; COMPLIANCE.**

A permit shall be issued to any person on application after inspection and approval by the Health Officer; provided, that the food market complies with all the applicable provisions of this chapter. (Ord. 2-65, passed 4-20-1965)

**§ 113.18 LICENSE AND FEES.**

(A) It shall be unlawful for any person to operate a food market in Brown County who does not possess a valid license for the operation of such an establishment. The license shall be for a term of 1 year beginning January 1 and expiring December 31 of the same year and shall be renewed annually. The license shall be provided by the County Health Department, if there is presented at that office a valid permit from the Health Officer, together with \$5, or with \$5, if the application for license is made on or after June 1.

(B) A separate license shall be required for each food market operated or to be operated by any person. A license issued under this chapter is not transferable.

(C) Mobile food markets owned by a person operating a food market which is licensed under the provisions of this chapter, and possessing a valid permit from the Health Officer to operate such a food market, shall be exempt from the provisions of this section. (Ord. 2-65, passed 4-20-1965) Penalty, see § 113.99

***INSPECTION OF FOOD MARKETS***

**§ 113.35 FREQUENCY OF INSPECTION.**

At least once each 3 months, the Health Officer shall inspect each food market for which a permit is required under the provisions of this chapter. (Ord. 2-65, passed 4-20-1965)

**§ 113.36 PROCEDURE WHEN VIOLATIONS NOTED.**

If during the inspection of any food market the Health Officer discovers the violation of any of the sanitation requirements in § 113.02 of this chapter, he or she shall issue a written order listing the violations to the proprietor or, in his or her absence, to the person in charge and fixing a time within which the proprietor of the food market shall abate and remedy the violations. A copy of the written order shall be filed with the records of the Health Department. (Ord. 2-65, passed 4-20-1965)

**§ 113.37 AUTHORITY TO INSPECT AND TO COPY RECORDS.**

The person operating the food market shall, upon the request of the Health Officer, permit the Health Officer or his or her authorized representative access to all parts of the food market and shall permit the Health Officer or his or her authorized representative to collect evidence and/or exhibits and to copy any or all records relative to the enforcement of this chapter. (Ord. 2-65, passed 4-20-1965)

**§ 113.38 FINAL INSPECTION; PROSECUTION OR HEARING FOR VIOLATORS.**

(A) If upon a second and final inspection the Health Officer finds that a food market, person or employee is violating any of the provisions of this chapter which were in violation on the previous inspection, and concerning which a written order was issued, the Health Officer shall furnish evidence of the violation to the prosecutor having jurisdiction in the county in which the violation occurs, and he or she shall prosecute all persons violating the provisions of this chapter.

(B) As an alternate measure, the Health Officer may promptly issue a written order to the permittee of the food market to appear at a certain time, no later

than 10 days from the date of final inspection, and at a place in the county fixed in the order to show cause why the permit issued under the provisions of § 113.15 should not be revoked. (Ord. 2-65, passed 4-20-1965)

**§ 113.39 REVOCATION OF PERMIT.**

The Health Officer upon the hearing, if the permittee should fail to show cause, shall revoke the permit and promptly give written notice of the action to the permittee. The Health Officer shall maintain a permanent record of his or her proceedings filed in the office of the Health Department. (Ord. 2-65, passed 4-20-1965)

**§ 113.40 SUSPENSION OF PERMIT.**

(A) Any permit issued under this chapter may be temporarily suspended by the Health Officer without notice of hearing for a period of not to exceed 30 days, for any of the following reasons:

(1) Insanitary or other conditions which in the Health Officer's opinion endangers the public's health; or

(2) Interference with the Health Officer or any of his or her authorized representatives in the performance of their duties.

(B) This is provided, however, that upon written application from the permittee, served upon the Health Officer within 15 days after the suspension, the Health Officer shall conduct a hearing upon the matter after giving at least 5 days' written notice of the time, place and purpose thereof to the suspended permittee; provided further, that any such suspension order shall be issued by the Health Officer in writing and served upon the permittee by leaving a copy at his or her usual place of business or by delivery of registered or certified mail to that address.

(Ord. 2-65, passed 4-20-1965)

**§ 113.41 REINSTATEMENT OF PERMIT.**

Any person whose permit has been suspended may at any time make application to the local Health Officer for the reinstatement of his or her permit.  
(Ord. 2-65, passed 4-20-1965)

**§ 113.99 PENALTY.**

(A) Any person who violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor. On conviction the violator shall be punished for the first offense by a fine of not more than \$500; for the second offense by a fine of not more than \$1,000; and for a third offense and each subsequent offense by a fine of not more than \$1,000 to which may be added imprisonment for any determinate period not exceeding 90 days.

(B) Each day of operation of a food market in violation of § 113.15 of this chapter or after the expiration of the time limit for abating insanitary conditions and completing improvements to abate the conditions, as ordered by the Health Officer, shall constitute a distinct and separate offense.  
(Ord. 2-65, passed 4-20-1965)



## CHAPTER 114: FOOD SERVICE

### Section

#### *General Provisions*

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- 114.02 Minimum requirements for food-service establishments
- 114.03 Selling of unwholesome and contaminated food prohibited
- 114.04 Approval of plans

#### *Permits*

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- 114.17 Inspections
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#### *Inspection of Food-Service Establishments*

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### **GENERAL PROVISIONS**

#### **§ 114.01 DEFINITIONS.**

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

**ADULTERATED AND MISBRANDED.** As provided in Article 5, Chapter 157, Acts of 1949, known as the Indiana Food, Drug and Cosmetic Act.

**BROWN COUNTY.** Those rural and urban areas which are under the jurisdiction of the County Health Officer and shall not apply to incorporated cities or towns, except as provided for under authority of Chapter 80, Indiana Acts of 1953.

**CLOSED.** Fitted together snugly, leaving no openings large enough to permit the entrance of vermin.

**CORROSION-RESISTANT MATERIAL.** A material which maintains its original surface characteristics under prolonged influence of the food, cleaning compounds and sanitizing solutions which may contact it.

**EASILY CLEANABLE.** Readily accessible and of such material and finish, and so fabricated that residue may be completely removed by normal cleaning methods.

**EMPLOYEE.** Any person working in a food-service establishment who transports food or food containers, who engages in food preparation or service, or who comes in contact with any food, food utensils or equipment.

**EQUIPMENT.** All stoves, ranges, hoods, tables, counters, food or utensil carts, refrigerators, sinks, dishwashing machines, steam tables and similar items, other than utensils, used in the operation of a food-service establishment.

**FOOD.** Any raw, cooked or processed edible substances, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.

**FOOD-CONTACT SURFACES.** Those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces with which food may come in contact and drain back into food or onto surfaces normally in contact with food.

**FOOD-PROCESSING ESTABLISHMENT.** A commercial establishment in which food is processed or otherwise prepared, packaged or manufactured for human consumption.

**FOOD-SERVICE ESTABLISHMENT.** Any food-service establishment; restaurant; coffee shop; cafeteria; short-order café; luncheonette; grill; tea room; sandwich shop; soda fountain; tavern; bar; cocktail lounge; night club; industrial feeding establishment; private, public or nonprofit organization or institution; a catering kitchen; a commissary or similar place in which food or drink is

prepared for sale or for service on the premises or elsewhere; and any other eating or drinking establishment or operation where food is served or provided for human consumption with or without charge. The term **FOOD-SERVICE ESTABLISHMENT**, however, shall not include a food establishment licensed by the State Board of Health or one that is known as a food market or vending machine.

**HEALTH OFFICER.** The County Health Officer, or his or her duly authorized representative.

**KITCHENWARE.** All multi-use utensils other than tableware used in the storage, preparation, conveying or serving of food.

**MOBILE FOOD-SERVICE ESTABLISHMENT.** Any food-service establishment capable of being readily moved from location to location; one without a fixed location.

**PERISHABLE FOOD.** Any food of a type or in such condition as may spoil.

**PERSON.** Not limited to, any individual, partnership, copartnership, firm, company, corporation, association, joint-stock company, trust, estate or municipality, or his, her or its legal representative or agent.

**POTENTIALLY HAZARDOUS FOOD.** Any food which consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish or other food capable of supporting growth of infectious or toxigenic micro-organisms.

**SAFE TEMPERATURES.** As applied to potentially hazardous food, shall mean food temperatures of 45°F or below, and 140°F or above.

**SANITIZE.** Effective bactericidal treatment of clean surfaces of equipment and utensils by a process which has been approved by the Health Officer as being effective in destroying micro-organisms, including pathogens.

**SEALED.** Free of cracks or other openings which permit the entry or passage of moisture.

**SINGLE-SERVICE ARTICLES.** Cups, containers, lids or closures, plates, knives, forks, spoons, stirrers, paddles, straws, placemats, napkins, doilies, wrapping materials, and all similar articles which are constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic or other readily destructible materials, and which are intended by the manufacturers and generally recognized by the public as for 1 usage only, then to be discarded.

**TABLEWARE.** All multi-use eating and drinking utensils, including flatware (knives, forks and spoons).

**TEMPORARY FOOD-SERVICE ESTABLISHMENT.** Any food-service establishment which operates for a temporary period of time, not to exceed 2 weeks, in connection with a fair, carnival, circus, public exhibition or similar transitory gathering.

**WHOLESOME.** In sound condition, clean, free from adulteration and otherwise suitable for use as human food.

(Ord. 3-65, passed 4-20-1965)

#### **§ 114.02 MINIMUM REQUIREMENTS FOR FOOD-SERVICE ESTABLISHMENTS.**

All food-service establishments, mobile food-service establishments, and temporary food-service establishments shall comply with the minimum requirements specified by the State Board of Health as now provided in its Regulation HFD 17 or as the same may be hereafter changed or amended. This regulation and any changes and amendments thereto which may be hereafter adopted or promulgated are by reference incorporated herein and made part hereof, 2 copies of which are on file in the office of the County Clerk for public inspection.

(Ord. 3-65, passed 4-20-1965) Penalty, see § 114.99

#### **§ 114.03 SELLING OF UNWHOLESOME AND CONTAMINATED FOOD PROHIBITED.**

(A) It shall be unlawful for any person to sell through a food-service establishment, mobile food-service establishment or temporary food-service establishment any food which is unwholesome, adulterated or misbranded.

(B) Samples of food may be taken and examined by the Health Officer as often as may be necessary to determine freedom from contamination, adulteration, or misbranding. The Health Officer may, on written notice to the owner or operator, impound and forbid the sale of any food which is unwholesome, adulterated or misbranded, or which he or she has probable cause to believe is unfit for human consumption, unwholesome, adulterated or misbranded; provided, that in the case of misbranding which can be corrected by proper labeling, the food may be released to the operator for correct labeling under the supervision of the Health Officer. The Health Officer may also cause to be removed or destroyed any dairy product, meat, meat product, seafood, poultry, poultry product, confectionery, bakery product, vegetable, fruit or other perishable articles which, in his or her opinion, are unsound or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe.

(Ord. 3-65, passed 4-20-1965) Penalty, see § 114.99

#### **§ 114.04 APPROVAL OF PLANS.**

All food-service establishments and mobile food-service establishments which are hereafter constructed or altered shall conform with the applicable requirements set forth in § 114.02. Properly prepared plans and specifications shall be submitted to and approved by the Health Officer as may be required before starting any construction work.

(Ord. 3-65, passed 4-20-1965)

**PERMITS****§ 114.15 PERMITS REQUIRED.**

It shall be unlawful for any person to operate a food-service establishment, mobile food-service or temporary food-service establishment in the county who does not possess a valid permit from the Health Officer. The permit shall be posted in a conspicuous place in the food-service establishment, mobile food-service establishment or temporary food-service establishment. Only persons who comply with the applicable requirements of this chapter shall be entitled to receive and retain a permit. The permit for a food-service establishment and a mobile food-service establishment shall be for a term of 1 year beginning January 1 and expiring December 31 of the same year and shall be renewed annually. The permit for a temporary food-service establishment shall be for the term of 1 continuous operation. Any permit issued by the Health Officer shall contain the name and address of the person to whom the permit is granted, the address of the premises for which the same is issued, and other pertinent data as may be required by the Health Officer.

(Ord. 3-65, passed 4-20-1965) Penalty, see § 114.99

**§ 114.16 SEPARATE PERMITS MANDATORY.**

A separate permit shall be required for each food-service establishment, mobile food-service establishment or temporary food-service establishment operated or to be operated by any person. A permit issued under this chapter is not transferable.

(Ord. 3-65, passed 4-20-1965) Penalty, see § 114.99

**§ 114.17 INSPECTIONS.**

A permit shall be issued to any person on application after inspection and approval by the Health Officer; provided, that the food-service establishment, mobile food-service establishment or temporary food-service establishment complies with all the applicable provisions of this chapter.

(Ord. 3-65, passed 4-20-1965)

**§ 114.18 DENIAL OR REVOCATION OF PERMIT.**

No permit or renewal thereof shall be denied or revoked on arbitrary or capricious grounds.

(Ord. 3-65, passed 4-20-1965)

**LICENSES****§ 114.30 LICENSES REQUIRED.**

(A) It shall be unlawful for any person to operate a food-service establishment or mobile food-service establishment in the county who does not possess a valid license for the operation of that establishment. The license shall be for a term of 1 year beginning January 1 and expiring December 31 of the same year and shall be renewed annually.

(B) The license shall be provided by the County Health Department, if there is presented at the County Health Department a valid permit from the Health Officer, together with \$5, if the application for license is made on or after June 1.

(Ord. 3-65, passed 4-20-1965) Penalty, see § 114.99

**§ 114.31 FEES FOR TEMPORARY OPERATION.**

Any person who desires to operate a temporary food-service establishment in the county shall, after securing a permit from the Health Officer, obtain from the County Health Department a license for a temporary food-service establishment. The license shall be provided by the County Health Department, if there is presented at that office a valid permit from the Health Officer, together with \$5, for each day of operation, not to exceed \$20, for any 1 continuous operation.

(Ord. 3-65, passed 4-20-1965)

**§ 114.32 SEPARATE LICENSES MANDATORY.**

A separate license shall be required for each food-service establishment or temporary food-service establishment operated or to be operated by any person. A license issued under this chapter is not transferable.  
(Ord. 3-65, passed 4-20-1965) Penalty, see § 114.99

**§ 114.33 LICENSE AND FEE EXCEPTION.**

No license shall be required and no license fee shall be paid for food-service establishments, mobile food-service establishments or temporary food-service establishment operated by religious, educational, or charitable organizations. However, these establishments shall comply with the other provisions of §§ 114.15 through 114.17 of this chapter.  
(Ord. 3-65, passed 4-20-1965)

***INSPECTION OF FOOD-SERVICE ESTABLISHMENTS***

**§ 114.50 FREQUENCY OF INSPECTION.**

At least once each 3 months, the Health Officer shall inspect each food-service establishment and mobile food-service establishment for which a permit is required under the provisions of this chapter.  
(Ord. 3-65, passed 4-20-1965)

**§ 114.51 PROCEDURE.**

If during the inspection of any food-service establishment or mobile food-service establishment the Health Officer discovers the violation of any of the requirements in § 114.02 of this chapter, he or she shall issue a written order listing the violations to the proprietor or, in his or her absence, to the person in charge, and fixing a time within which the proprietor of the food-service establishment or mobile food-

service establishment shall abate and remedy the violations. A copy of the written order shall be filed with the records of the Health Department.  
(Ord. 3-65, passed 4-20-1965)

**§ 114.52 AUTHORITY TO INSPECT AND TO COPY RECORDS.**

The person operating the food-service establishment or mobile food-service establishment shall, upon the request of the Health Officer, permit the Health Officer or his or her authorized representative access to all parts of the food-service establishment or mobile food-service establishment, and shall permit the Health Officer or his or her authorized representative to collect evidence and/or exhibits and to copy any or all records relative to the enforcement of this chapter.  
(Ord. 3-65, passed 4-20-1965)

**§ 114.53 FINAL INSPECTION; PROSECUTION OR HEARING FOR VIOLATORS.**

If upon a second and final inspection the Health Officer finds that the food-service establishment or mobile food-service establishment, person, or employee is violating any of the provisions of this chapter which were in violation on the previous inspection, and concerning which a written order was issued, the Health Officer shall furnish evidence of the violation to the prosecutor having jurisdiction in the county in which the violation occurs, and he or she shall prosecute all persons violating the provisions of this chapter; or the Health Officer may promptly issue a written order to the permittee of the food-service establishment to appear at a certain time, no later than 10 days from the date of final inspection, and at a place in the county fixed in order to show cause why the permit issued under the provision of § 114.15 should not be revoked.  
(Ord. 3-65, passed 4-20-1965)

**§ 114.54 REVOCATION OF PERMIT.**

The Health Officer upon the hearing, if the permittee would fail to show cause, shall revoke the permit and promptly give written notice of the action to the permittee. The Health Officer shall maintain a permanent record of his or her proceedings filed in the office of the Health Department.  
(Ord. 3-65, passed 4-20-1965)

**§ 114.55 SUSPENSION OF PERMIT.**

(A) Any permit issued under this chapter may be temporarily suspended by the Health Officer without notice or hearing for a period of not to exceed 30 days, for any of the following reasons:

(1) Insanitary or other conditions which in the Health Officer's opinion endangers the public's health; or

(2) Interference with the Health Officer or any of his or her authorized representatives in the performance of their duties.

(B) (1) Provided, however, that upon written application from the permittee, served upon the Health Officer within 15 days after the suspension, the Health Officer shall conduct a hearing upon the matter after giving at least 5 days' written notice of the time, place, and purpose thereof to the suspended permittee;

(2) Provided, further, that any such suspension order shall be issued by the Health Officer in writing and served upon the permittee by leaving a copy at his or her usual place of business or by delivery of registered or certified mail to that address.  
(Ord. 3-65, passed 4-20-1965) Penalty, see § 114.99

**§ 114.56 REINSTATEMENT OF PERMIT.**

Any person whose permit has been suspended may at any time make application to the Health Officer for the reinstatement of his or her permit.  
(Ord. 3-65, passed 4-20-1965)

***INSPECTION OF TEMPORARY FOOD-SERVICE ESTABLISHMENTS*****§ 114.70 FREQUENCY OF INSPECTION.**

At least once in each 24-hour period, the Health Officer shall inspect each temporary food-service establishment for which a permit is required under the provisions of this chapter.  
(Ord. 3-65, passed 4-20-1965)

**§ 114.71 PROCEDURE.**

If during the inspection of any temporary food-service establishment the Health Officer discovers the violation of any of the requirements in § 114.02 of this chapter, he or she shall order the immediate correction of the violation.  
(Ord. 3-65, passed 4-20-1965)

**§ 114.72 AUTHORITY TO INSPECT AND TO COPY RECORDS.**

The person operating the temporary food-service establishment shall, upon the request of the Health Officer, permit the Health Officer or his or her authorized representative access to all parts of the temporary food-service establishment and shall permit collecting evidence and/or exhibits and copying any or all records relative to the enforcement of this section.  
(Ord. 3-65, passed 4-20-1965)

**§ 114.73 REVOCATION OF PERMIT FOR CONTINUED OPERATION.**

Upon failure of any person maintaining or operating a temporary food-service establishment to comply with any order of the Health Officer, it shall be the duty of the Health Officer summarily to revoke the permit of the person and establishment and to forbid the further sale or serving of food therein. Any person continuing to sell or serve food in a temporary food-service establishment, the permit of which has

been revoked, shall be subject to the penalties provided in § 114.99 of this chapter.

(Ord. 3-65, passed 4-20-1965) Penalty, see § 114.99

**§ 114.99 PENALTY.**

(A) Any person who violates any of the provisions of this chapter shall be deemed guilty of a misdemeanor. On conviction, the violator shall be punished for the first offense by a fine of not more than \$500; for the second offense by a fine of not more than \$1,000; and for a third and each subsequent offense by a fine of not more than \$1,000 to which may be added imprisonment for any determinate period not exceeding 90 days.

(B) Each day of operation of a food-service establishment, mobile food-service establishment or temporary food-service establishment in violation of §§ 114.15 through 114.18 and 114.30 through 114.33, or after the expiration of the time limit for abating insanitary conditions and completing improvements to abate the conditions, constitutes a separate offense.

(Ord. 3-65, passed 4-20-1965)



**CHAPTER 115: HORSE-DRAWN CARRIAGE BUSINESS**

Section

*General Provisions*

- 115.01 License required
- 115.02 Definitions
- 115.03 Horse-drawn vehicles
- 115.04 Animal care and control guidelines

*Licenses*

- 115.15 Applications for horse-drawn carriage business license
- 115.16 Public liability
- 115.17 Issuance of licenses
- 115.18 Operation of horse-drawn carriage business
- 115.19 Weather conditions
- 115.20 Denial, suspension, revocation of license
- 115.21 Fees
- 115.22 Transfers
  
- 115.99 Penalty

**GENERAL PROVISIONS**

**§ 115.01 LICENSE REQUIRED.**

The operation of any horse-drawn vehicle upon the streets of the town for the purpose of transporting persons for hire or as a contractual service is a violation of this chapter unless operated in accordance with valid licenses issued pursuant to this chapter. The Clerk-Treasurer of the town is hereby authorized to issue up to a maximum of 3 licenses concurrently pursuant to this chapter for the operation of horse-

drawn carriage businesses. Application shall be made and fees paid for same no later than 3 business days before the first day of commencing business in any calendar year. Licenses are annually renewable. However, should a license holder from the previous year not apply by April 1 of the application year, that license shall become available to other applicants. (Ord. 2003-03, passed 6-19-2003; Am. Ord. 2009-07, passed 5-21-2009)

**§ 115.02 DEFINITIONS.**

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

**CARRIAGE.** All vehicles drawn by animal power such as, but not limited to: wagons, carriages, surreys, buckboards, tumbrels, carts, sulkeys and sleighs.

**HORSE.** All draft animals used to draw vehicles such as, but not limited to: horses, mules, oxen, camels, burros, water buffalo, and reindeer. (Ord. 2009-07, passed 5-21-2009)

**§ 115.03 HORSE-DRAWN VEHICLES.**

Only vehicles constructed and equipped as follows may be licensed:

(A) Carriages shall have wheels with spokes of no less than 1-1/4 inch diameter and with a rubber covering thick enough to protect the streets from damage and keep noise to a minimum;

(B) All carriages shall be equipped with brakes, taillights and turn signals on the rear of the vehicle;

(C) Carriages shall be equipped with front lights on both sides that will emit light to the front and side. They shall be visible from a distance of 500 feet;

(D) Each carriage shall be equipped with a device to catch horse manure from falling to the pavement; device must be installed and operating properly, or manure must be picked up;

(E) Each carriage shall be equipped with a chemical to be poured over horse urine by drivers so as to break down and eliminate accumulated agents and odor;

(F) Each carriage shall be equipped with a slow-moving vehicle sign approved by the state and attached to the rear of the vehicle; and

(G) No carriage shall be larger in capacity than to transport 6 passengers. It shall be equipped with a safety strap across the carriage entrance.  
(Ord. 2003-03, passed 6-19-2003)

#### **§ 115.04 ANIMAL CARE AND CONTROL GUIDELINES.**

(A) The animal shall be maintained in a clean condition, free of manure and well groomed.

(B) (1) Any 1 animal shall not be worked more than 8 hours in any given 24-hour period, or more than 48 hours in any given 7-day period.

(2) A log book shall be maintained for any horse in the carriage trade.

(C) An owner, operator, or custodian of a horse engaged in the horse-drawn carriage trade shall:

(1) Provide that the harness, shoes, bridle and any other equipment for the horse fits properly, is

in good working condition and shall not cause injury or pain to the horse or pose a safety hazard to any person;

(2) Not use curb bits, twisted wire, twisted wire snaffles, spurs, bucking straps, flank straps or similar devices;

(3) Not drive, use or work an injured, sick, diseased or lame horse in the horse-drawn carriage trade;

(4) Keep a record of horse-shoeing and hoof care; and

(5) Never allow a horse with a missing shoe to pull a carriage.

(Ord. 2003-03, passed 6-19-2003) Penalty, see § 115.99

### ***LICENSES***

#### **§ 115.15 APPLICATIONS FOR HORSE-DRAWN CARRIAGE BUSINESS LICENSE.**

(A) Applications for horse-drawn carriage business licenses shall be made to the Clerk-Treasurer on forms provided by that office. The application shall contain but not be limited to the following information:

(1) The name and business address of the applicant;

(2) The number of carriages to be operated pursuant to the license, the seating capacity, the manufacturer and a photograph of each carriage; and

(3) A route and operation schedule for the business which has been approved by the Town Marshal.

(B) The application shall be verified under oath and include a written agreement by the applicant to operate the business, if licensed, strictly in accordance with the terms of this chapter and to indemnify and hold harmless the town for all judgments, losses and expenses arising out of the operations permitted by the license.

(C) The Clerk-Treasurer of the town shall be provided with a certification from a licensed veterinarian that each horse is physically fit to engage in the horse-drawn carriage trade and is free of any disease or internal parasites. Recertification shall be required within 30 days prior to application or annual renewal application.

(D) The Clerk-Treasurer shall be provided with an inspection certification from the Town Manager, for each horse-drawn vehicle to be used in the business, certifying that the vehicle conforms to all of the requirements of § 115.02 of this chapter.

(Ord. 2003-03, passed 6-19-2003)



**§ 115.16 PUBLIC LIABILITY.**

(A) Before a license required by § 115.01 shall be issued or renewed, the applicant shall post or maintain with the Clerk-Treasurer either an indemnity bond or a policy of public liability insurance, approved as to form by the Town Attorney, and a signed agreement that the licensee will indemnify and hold harmless the town, its Council members, agents and employees from any and all loss, costs, damages or expenses, by reason of any and all liability which may result from or arise out of granting of the license for the operation of a carriage for which a license is issued; and that the licensee will pay any and all loss or damage that may be sustained by any person resulting from or arising out of the legal or negligent operation or maintenance of a carriage. The bond or policy of insurance shall be maintained in its original amount by the licensee at his or her expense at all times during the period for which the license is in effect. In the event that 2 or more licenses are issued to 1 licensee, 1 such bond or policy or insurance may be furnished to cover 2 or more vehicles. If a claim is paid during any period of coverage which causes the aggregate amount of available insurance to fall below \$300,000, the licensee shall enter the market place and purchase additional layers of insurance so that there is a minimum of \$300,000 of available insurance during the remainder of the policy period.

(B) The limit of liability upon any bond or policy posted pursuant to division (A) above shall in no case be less than \$500,000 for death or injury of 1 person, \$1,000,000 for total liability for death or personal injury arising out of any 1 event or casualty, and \$75,000 for property damage.

(C) Any bond posted pursuant to this section shall be accompanied by good and sufficient sureties approved by the Clerk-Treasurer of the town.

(D) The Clerk-Treasurer shall notify the licensee under this chapter of any claim of which the town has notice, where the claim arises from the operation or maintenance of any carriage.

(E) The licensee under this chapter shall notify the Clerk-Treasurer of any claim of which the licensee has notice, where the claim arises from the operation or maintenance of any carriage.

(Ord. 2003-03, passed 6-19-2003)

**§ 115.17 ISSUANCE OF LICENSES.**

Upon receipt of the completed application pursuant to § 115.15 of this chapter, filing of bond or insurance as required by § 115.16 and payment of the license fees provided in § 115.21, the Clerk-Treasurer shall issue a horse-drawn carriage business license to the applicant, if a license is available to be issued.

(Ord. 2003-03, passed 6-19-2003)

**§ 115.18 OPERATION OF HORSE-DRAWN CARRIAGE BUSINESS.**

Horse-drawn carriage businesses shall be operated only in accordance with the following regulations:

(A) A copy of the horse-drawn carriage license shall be carried by the carriage driver or the carriage. The Clerk-Treasurer, upon issuance of the license, shall issue that number of duplicates as requested in the application, identifying each carriage listed in the application.

(B) Each carriage shall be operated by a holder of a valid Indiana driver's license issued pursuant to state statute and shall have the license on his or her person at all times when operating the vehicle.

(C) When carrying persons for hire or by contract, the vehicle shall be operated only upon the routes and during the hours approved by the Town Marshal, which approval shall not be unreasonably withheld.

(D) When picking up or discharging passengers, horse-drawn vehicles shall park only in "stands" designated in their respective routes. Horse carriage stands must be approved by the Town Council and be so marked.

(E) Horse-drawn vehicles, when in motion, shall be operated only in the curb-most traffic lane on any public street, and the driver shall obey all applicable state and local traffic laws, chapters and regulations.

(F) No horse-drawn vehicle shall be operated on a public street unless a valid bond or public liability insurance policy, as specified in this chapter, is on file with the Clerk-Treasurer.

(G) Rates shall be prominently displayed at the boarding area so as to advise prospective clientele of the rates and fares.

(H) Occupancy of a horse-drawn carriage shall not exceed a total load of more than 1,000 pounds, not including the carriage.

(I) No passengers shall be allowed to ride on any part of the vehicle which is in motion, except on designated seating upon the vehicle. Passengers should not be allowed in the driver's seat, only operators and owners.

(J) The driver shall not solicit patronage in a loud tone of voice or in any manner to annoy or obstruct the movement of a person, or follow any person for the purpose of soliciting patronage.

(K) Special events can be approved by the Town Manager. Special events are for special limited usage and time.

(L) The horse may not be allowed to exceed a walk while working in the town, with the exception of a short route on Van Buren Street as determined by the Town Marshal, so as not to hinder the flow of traffic.

(Ord. 2003-03, passed 6-19-2003) Penalty, see § 115.99

**§ 115.19 WEATHER CONDITIONS.**

(A) An owner, operator or custodian of a horse engaged in the horse-drawn carriage trade shall not drive, use or work a horse on a public street or byway in the town:

(1) During periods when the temperature exceeds that deemed safe to work the horse as determined by the Town Manager;

(2) During periods when it is snowing; or

(3) During other periods determined by the Town Council by rule as being dangerous or unsuitable.

(B) Water should be available for horses. (Ord. 2003-03, passed 6-19-2003) Penalty, see § 115.99

**§ 115.20 DENIAL, SUSPENSION, REVOCATION OF LICENSE.**

(A) Any violation of this chapter by the holder of a license issued hereunder shall be grounds for suspension or revocation of the license by the Clerk-Treasurer.

(B) Any denial of a license application shall be subject to review by the Town Council upon request of the applicant.

(C) A variance may be granted from these rules and regulations by the Town Manager, not to exceed 30 days. (Ord. 2003-03, passed 6-19-2003) Penalty, see § 115.99

**§ 115.21 FEES.**

The fees for licenses under this chapter shall be as follows:

<i>Horse-drawn Carriage Business License</i>	
License fee: \$50.00 (rental per parking space)	plus \$57.00 (administrative)

(Ord. 2003-03, passed 6-19-2003)

**§ 115.22 TRANSFERS.**

Any person holding a license pursuant to the provisions of this chapter, who sells the business requiring the license, may assign the license to the purchaser, provided the purchaser is continuing the same business at the same location. Both the seller and the purchaser shall sign a request for transfer which shall be filed with the Clerk-Treasurer. A transfer fee of \$5 shall be paid if the transfer is approved.

(Ord. 2003-03, passed 6-19-2003)

**§ 115.99 PENALTY.**

(A) Any person, organization, group or association failing to comply with the provisions of this chapter shall be subject to a fine of \$50 per day.

(B) Each day a violation continues shall be deemed a separate violation.

(Ord. 2003-03, passed 6-19-2003)

***Cross-reference:***

*Suspension, revocation or denial of license,  
see § 115.20*



**CHAPTER 116: ITINERANT MERCHANTS**

Section

*General Provisions*

116.01 License required

*License Procedures*

- 116.15 Application and fees
- 116.16 Date of application
- 116.17 Term of license
- 116.18 Display of license
- 116.19 Definitions
- 116.20 Exceptions
- 116.21 License approval, revocation or transfer
- 116.22 Sale within public right-of-way or from public lands

*Revocation Procedure; Appeal*

- 116.35 Revocation procedure
- 116.36 Appeal procedure

*Alternative Compliance*

- 116.45 Requirements
  - 116.46 Application
  - 116.47 Processing of complaints
  - 116.48 Loss of status
  - 116.49 Review of revocation
- 116.99 Penalty

**GENERAL PROVISIONS**

**§ 116.01 LICENSE REQUIRED.**

(A) No person, organization, group or association shall engage in any temporary or transient selling or display for sale of goods, wares, merchandise, advertising, food or beverages of any kind, at retail or wholesale, or provide services from any 1 locality or in traveling from place to place within the town, or provide entertainment for a fee or admission charge within the town, without first obtaining a license from the Town Clerk-Treasurer.

(B) Notwithstanding any of the provisions contained herein, no person, organization, group or association providing professional services regulated and licensed by the State of Indiana shall be denied permission to continue furnishing the professional services or assessed any penalty under this chapter should the person, organization, group or association refuse to obtain a license.  
(Ord. 1998-3, passed 9-17-1998)

**LICENSE PROCEDURES**

**§ 116.15 APPLICATION AND FEES.**

Before issuing a license, each business shall file with the Clerk-Treasurer an application on forms provided by the town. The Clerk-Treasurer shall receive from each applicant for each location as follows:

(A) A photostatic copy of a valid Indiana Registered Retail Merchants Certificate (if business is a retail business);

(B) A fee in the amount of \$10 per day of operation. Operation during any part of a day shall be considered a full day;

(C) The name, residence and post-office address and phone number of the person, firm or corporation making the application; and if a firm or corporation, the name, address and phone number of the members of the firm or officers of the corporation, as the case may be;

(D) If the applicant is a corporation, then there shall be stated on the application form the date of incorporation, the state of incorporation, and if the applicant is a corporation formed in a state other than the State of Indiana, the date on which the corporation qualified to transact business as a foreign corporation in the State of Indiana;

(E) A statement showing the kind of business proposed to be conducted, the actual dates for which the applicant desires to transact business, and if for the purpose of transacting such business any permanent or mobile building, structure or real estate is to be used for the exhibition by means of samples, catalogues, photographs and price lists or sale of goods, wares or merchandise; the location of the proposed place of business; and a verified statement from the owner(s) of the real estate that seller has permission to use the real estate for the sale of goods for the time period indicated;

(F) A detailed inventory and description of the goods, wares and merchandise to be offered for sale, the manner in which the same is to be advertised for sale and the representations to be made in connection therewith, and any and all details necessary to locate and identify all goods, wares and merchandise to be offered for sale; and

(G) The application shall be verified by signature of the applicant or his or her authorized agent.  
(Ord. 1998-3, passed 9-17-1998)

#### § 116.16 DATE OF APPLICATION.

Any person, organization, group or association requiring a business license shall apply for and pay for the same no later than 3 business days before the first date of commencing business in any calendar year.  
(Ord. 1998-3, passed 9-17-1998)

#### § 116.17 TERM OF LICENSE.

A license issued under this subchapter is valid for any 15-day period during the calendar year. Additionally, a license issued under this subchapter is not renewable.  
(Ord. 1998-3, passed 9-17-1998)

#### § 116.18 DISPLAY OF LICENSE.

Each business shall display the issued license in a place clearly visible to the Town Marshal.  
(Ord. 1998-3, passed 9-17-1998)

#### § 116.19 DEFINITIONS.

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

***BUILDING.*** Any structure enclosed by walls on all sides, covered by a roof and requiring permanent location on the ground. Tents, temporary frames covered by soft material, or structures built without a building permit are excluded from this definition.

***BUSINESS.*** Any person, organization, group or association engaging in the selling or display for sale for goods, wares, merchandise, food or beverages; providing services; or providing entertainment for a fee or admission charge.

***ORGANIZATION, GROUP or ASSOCIATION.***  
Any organization, group or association claiming to be a single legal entity and therefore entitled to purchase a single license for the organization, group or

association. The organization, group or association must furnish the Clerk-Treasurer with a list of its individual members at the time of making application and furnish evidence that the organization, group or association is, in fact, doing business as a single entity, keeping a single set of books, a single deposit of their incomes, and paying expenses of doing business and state sales tax as a single entity. Failure to make such proof shall constitute an admission that each individual member of the organization, group or association is an individual business therefore required to purchase separate licenses.

**TEMPORARY.** That which is to last for a limited time only, as distinguished from that which is indefinite in its duration.

**TRANSIENT.** One who or that which is temporary.  
(Ord. 1998-3, passed 9-17-1998)

**§ 116.20 EXCEPTIONS.**

(A) *Exhibitors.* Individual exhibitors shall be exempted from applying for and paying for an itinerant business license, provided the exhibitor is sponsored by a current Nashville business license holder. The sponsor and the individual exhibitors shall not be required to satisfy the definition of organization, group or association as set forth in § 116.19, provided the exhibition is at a single location and is limited to 4 consecutive days.

(B) *Charitable, educational or religious organizations.* Any person, organization, group or association requiring a license as set forth in § 116.01 above, but engaging in the activity on behalf of and solely for the benefit of any bona fide local (Brown County), public, charitable, educational or religious organization shall apply for a license, but shall be exempted from paying for a business license.

(C) *Garage and yard sales.* Any person, organization, group or association requiring a license fee as set forth in § 116.01 above, selling his, her or its own used merchandise from the garage, basement

or yard and offering the merchandise for sale no more than 2 days in any given 6 months, shall be exempted from applying for and paying for a business license.

(D) *Farm produce.* Any person, organization, group or association requiring a license as set forth in § 116.01 above, selling only local (Brown County) produce, which is grown by that person, organization, group or association and engaging in such selling for less than 45 days in any calendar year, shall be exempted from applying for and paying for a business license.

(E) *Veterans.* Any veteran shall be exempted from applying for and paying for a business license.

(F) *Commercial agents.* The provisions of this subchapter shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business.

(G) *Governmental action.* The provisions of this subchapter shall not apply to sheriffs, constables or other public officers selling goods, wares and merchandise according to law. Additionally, this subchapter shall not apply to bona fide assignees or receivers appointed in this state selling goods, wares and merchandise for the benefit of creditors.  
(Ord. 1998-3, passed 9-17-1998)

**§ 116.21 LICENSE APPROVAL, REVOCATION OR TRANSFER.**

(A) *Approval of application.* Each applicant for a license must show compliance with the appropriate ordinances, rules, regulations and statutes of the Town of Nashville, County of Brown and State of Indiana, and in relation to public health, safety and welfare.

(B) *Revocation of license.* In the event any licensee fails to comply with the conditions set forth in division (A) of this section, the Clerk-Treasurer shall cause the license to be revoked. Before commencing operations again, the licensee must apply for a new license.

(C) *Revocation not exclusive.* The revocation of a license shall not act as a bar to the town proceeding to prosecute violations in accordance with this chapter.

(D) *Transfer.* Itinerant merchants licenses shall not be transferable.  
(Ord. 1998-3, passed 9-17-1998)

#### **§ 116.22 SALE WITHIN PUBLIC RIGHT-OF-WAY OR FROM PUBLIC LANDS.**

The issuance of a business license shall not give any business the right to sell goods, wares, merchandise, food, beverages or provide entertainment on or within any public right-of-way, street, alley, sidewalk, parking lot or from any land owned by any governmental unit without the express written consent of the owner of the land.  
(Ord. 1998-3, passed 9-17-1998)

#### ***REVOCATION PROCEDURE; APPEAL***

#### **§ 116.35 REVOCATION PROCEDURE.**

Any license issued pursuant to this chapter may be revoked by the Clerk-Treasurer on behalf of the Board of Trustees after notice and an inquiry has been made for any of the following causes:

(A) Any fraud, misrepresentation or false statement contained in the application for license;

(B) Any fraud, misrepresentation or false statement made in connection with the selling of goods, wares or merchandise;

(C) Any violation of this chapter;

(D) Conducting the business licensed under this chapter in an unlawful manner or in such manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the

public. Notice of a possible revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and requesting any information from the licensee regarding a denial; this notice shall be mailed, postage prepaid, to the licensee at his or her last known address at least 10 days prior to the date set for the revocation by the Clerk-Treasurer.

(Ord. 1985-3, passed 5-6-1985)

#### **§ 116.36 APPEAL PROCEDURE.**

Any person aggrieved by the decision of the Clerk-Treasurer in regard to the denial of application for a license as provided for in this chapter, or by a decision of the Clerk-Treasurer in connection with the revocation of a license as provided herein, shall have the right to appeal to the Board of Trustees. This appeal shall be taken by filing with the Board of Trustees within 14 days after notice of the decision of the Clerk-Treasurer has been mailed to the person's last known address, a written statement setting forth the grounds for the appeal. The Board of Trustees shall set the time and place for a hearing on the appeal and notice of the hearing shall be given to the person by registered or certified mail, return receipt requested, at least 10 days prior to the hearing date. The order of the Board of Trustees on the appeal shall be final.

(Ord. 1985-3, passed 5-6-1985)

#### ***ALTERNATIVE COMPLIANCE***

#### **§ 116.45 REQUIREMENTS.**

The provisions of this chapter shall not apply to solicitors representing member companies, firms, corporations or partnerships of a trade association recognized by the town, or the solicitors of individual companies, firms, corporations or partnerships which:

(A) Subscribe to and are bound by policy statement code or regulation established either by the

company, firm, corporation or partnership individually, or subscribe to and are bound by the policy statement, code or regulation of a trade association of which the company, firm, corporation or partnership is a member in good standing and which policy statement, code or regulation requires that:

(1) The offer of products or services for sale, either through oral representation or advertising literature, shall be truthful and accurate as to price, grade, quality, make, value, performance, quantity, currency or model and availability;

(2) The terms of any guaranty offered by the seller in connection with the sale shall be furnished to the buyer in writing and shall clearly state the nature and extent of such guaranty; and

(3) The policy statement, code or regulation prohibits the initiation or continuation of any deceptive or unlawful trade practices as defined by any statute or ordinance in force and effect within this jurisdiction.

(B) Recognize a responsibility to consumers for violations of either its policy statement, code or regulation or deceptive and/or unlawful trade practices, statutes and ordinances by the solicitors of its products or services, even if the company, firm, corporation or partnership had no knowledge of the violation or acts, and this lack of knowledge is the result of failure by the company, firm, corporation, or partnership to establish procedures whereby it would be kept informed of the activity of the solicitors selling its products or services; or

(C) Have established a procedure for processing consumer complaints within a reasonable time and providing for consumer redress if, after the fact-finding is completed, it is determined that the consumer was aggrieved by a violation of the policy statement, code or regulation or a statutory deceptive or unlawful practice.

(D) Festival exception.

(1) Itinerant merchants who participate in festivals or similar activities which have been

pre-approved by the Town Council and which have a representative or fiscal agent who can handle the application process may be licensed for a period of up to 7 consecutive days for a single payment of \$15 per merchant.

(2) The holder of a license under this exception shall be permitted to conduct business on public streets, alleys, sidewalks or parking lots within the area designated by the Town Council in its approval of the festival for which the merchant's license has been issued.

(Ord. 1985-3, passed 5-6-1985; Am. Ord. 2008-02, passed 4-17-2008) Penalty, see § 116.99

**§ 116.46 APPLICATION.**

Application for alternative compliance as provided in this chapter shall be completed and alternative compliance status shall be granted upon the filing of the following information and items with the Clerk-Treasurer:

(A) Five current copies of the policy statement, code or regulation which meet the requirements specified in § 116.21;

(B) A notarized statement containing the name of the company, firm, corporation, or partnership subscribing thereto, and listing the address, telephone number and the name of the executive within the company, firm, corporation or partnership designated to administer the policy statement, code or regulation. In the case of a trade association making application on behalf of its membership based upon an association policy statement, code or regulation, which the membership must subscribe to and be bound by, the application must contain the above-required information for each of its individual members which desire alternative compliance status, and, in addition, must list the name, address and telephone number of the officer or agent in charge of administering the association policy statement, code or regulation; and

(C) The application, whether submitted by an individual company, firm, corporation or partnership, or by a trade association recognized by the town on its

membership's behalf, must be signed by the chief executive officer of the individual applicant or trade association applicant and must be notarized.

(Ord. 1985-3, passed 5-6-1985) Penalty, see § 116.99

#### § 116.47 PROCESSING OF COMPLAINTS.

(A) A consumer complaint against a company, firm, corporation or partnership having alternative compliance status may be filed in the following ways:

(1) A consumer may register a complaint against an alternative compliance company, firm, corporation, or partnership or trade association with the Clerk-Treasurer in person, by telephone or in writing; or

(2) A consumer or his or her duly authorized representative, including but not limited to legal counsel, may file a written complaint directly with the alternative compliance company, firm, corporation, partnership or trade association, so long as the Clerk-Treasurer receives a copy of the directly submitted complaint, and so long as the written complaint filed directly with the alternative compliance company, firm, corporation, partnership or trade association clearly indicates that the Clerk-Treasurer has been notified.

(B) In the situation where the complaint is filed with the Clerk-Treasurer, the Clerk-Treasurer may notify the alternative compliance company, firm, corporation, partnership or trade association that the complaint has been lodged, either by sending the complaint in writing or by placing a collect call to the person, officer, agent, or employee designated by the company, firm, corporation or partnership to receive that information in its alternative compliance application.

(C) The complaint, as filed with the alternative compliance company, firm, corporation, partnership or trade association shall contain the following information:

(1) Name and address of consumer;

(2) Name or trade name of the product or service purchased;

(3) Name of the company, firm, corporation, or partnership that manufactured and/or distributed the product or service, if the name differs from the trade name of the product or service and if it is known by the consumer;

(4) Name of the solicitor involved in the transaction, if remembered by the consumer;

(5) Purchase date, if known;

(6) Identifying contract or receipt numbers, if available; and

(7) Copy of the contract, invoice or receipt, if available.

(D) Upon receipt of a consumer complaint or an official complaint against alternative compliance company, firm, corporation or partnership which does not necessarily involve a sales transaction, but alleges a violation of a deceptive or unlawful trade practice statute or ordinance in force and effect in the jurisdiction, the Clerk-Treasurer, the individual or his or her authorized representative shall submit the information surrounding the allegation to the person, officer, agent or employee designated by the company, firm, corporation, partnership or trade association to receive such complaints in its alternative compliance application.

(E) Each company, firm, corporation, partnership, or trade association on behalf of its membership that has received alternative compliance status shall, upon receipt of a complaint, file a written statement with the Clerk-Treasurer and the individual consumer complainant, or his or her duly authorized representative, containing the disposition of the complaint. The statement shall contain the findings of facts upon which the disposition was based and shall be filed within 20 business days from the date of receipt of the complaint.

(Ord. 1985-3, passed 5-6-1985)

**§ 116.48 LOSS OF STATUS.**

(A) Any company, firm, corporation or partnership having received alternative compliance status as provided for in this chapter, which fails to honor the provisions of the policy statement, code or regulation or which violates any of the other requirements for obtaining and maintaining alternative compliance status shall be subject to revocation of alternative compliance status for not less than 1 year.

(B) The authority to revoke the alternative compliance status, as provided in this chapter shall rest with the Clerk-Treasurer who shall consider the following criteria in making that determination:

(1) Failure by the company to file any responses with the Clerk-Treasurer concerning a consumer complaint(s) forwarded by the Clerk-Treasurer to the person, officer or agent or employees designated by the company, firm, corporation, partnership or trade association to receive the information;

(2) Failure to return money or replace products which were received by the consumer in a defective condition;

(3) A pattern of failure to deliver ordered goods without adequate explanation shall constitute grounds for automatic revocation. For purposes of this provision, a pattern shall be defined as 10 instances of failure to deliver without explanation; or

(4) Failure to correct or adequately explain repeated allegations of violation of statutory deceptive or unlawful trade practices in force and effect within the corporate limits of the company, firm, corporation, partnership or trade association or violation filed with the town as part of the application for alternative compliance even where a sale did not result, when such allegations have been forwarded by the Clerk-Treasurer, individual consumer, or his or her authorized representative to the person, officer, agent or employee designated by that company, firm, corporation or partnership to receive the material.

(C) Prior to a revocation of alternative compliance status becoming final, the Clerk-Treasurer shall give written notice at least 15 business days in advance of the effective revocation date to the company, firm, corporation or partnership informing it of the effective date of the revocation for that company, firm, corporation or partnership, and the finding upon which the determination was based, and in addition, notice that the company, firm, corporation or partnership can appeal the determination to revoke the alternative compliance status by filing a notice of review with the Clerk-Treasurer not later than 15 business days after receipt of the notice of revocation. (Ord. 1985-3, passed 5-6-1985)

**§ 116.49 REVIEW OF REVOCATION.**

(A) The determination of the Clerk-Treasurer to revoke the alternative compliance status of a company, firm, corporation or partnership as provided for in this chapter shall be subject to review. An appeal is perfected if the company, firm, corporation or partnership within 15 business days after receipt of the notice of revocation files a written petition for review with the Clerk-Treasurer.

(B) Upon receipt of a petition for review, the Clerk-Treasurer shall place petitioner on the agenda of the next regularly scheduled monthly meeting of the Board of Trustees, at which time the petitioner may present written and oral testimony and evidence contesting the revocation of its alternative compliance status. The Clerk-Treasurer may designate the Town Attorney to present to the Town Board of Trustees the findings upon which the revocation was made.

(C) The review panel shall notify the petitioning company, firm, corporation or partnership of its decision to either uphold or reverse the revocation within 30 days from the date of the review hearing. (Ord. 1985-3, passed 5-6-1985)

**§ 116.99 PENALTY.***(A) General.*

(1) Any person, firm or corporation failing to comply with the provisions of §§ 116.01 and 116.15 through 116.22 shall be subject to a fine of \$100 per day.

(Ord. 1998-3, passed 9-17-1998)

(2) Any person, firm or corporation failing to comply with the provisions of §§ 116.35, 116.36 and 116.45 through 116.49 shall be subject to a fine of \$100 per day up to a maximum penalty of \$2,500 per licensing period.

(Ord. 1985-3, passed 5-6-1985)

*(B) Separate violations.* Each day a violation continues shall be deemed a separate violation during any 1 licensing period.

(Ord. 1985-3, passed 5-6-1985; Am. Ord. 1998-3, passed 9-17-1998)

*(C) Enforcing officer.* The Town Marshal or his or her deputy is hereby authorized to enforce the provisions of this chapter.

(Ord. 1998-3, passed 9-17-1998)

## CHAPTER 117: TAXICABS

### Section

- 117.01 Application
- 117.02 Provisions

#### **§ 117.01 APPLICATION.**

The Town Board consents and agrees that all proper parties making application to operate a taxicab within the corporate limits may be granted a certificate to operate upon the filing of a fee of \$10 and the Board reserves the right to grant or reject any application for certificate.

(Ord. 1, passed 2-4-1946)

#### **§ 117.02 PROVISIONS.**

A certificate may be issued to applicants, providing applicants for certificates shall have complied in full detail with all the provisions and requirements as provided in I.C. 9-13-1-1 *et seq.*, being an act known as the Motor Vehicle Act of the state.

(Ord. 1, passed 2-4-1946)



## CHAPTER 118: SEXUALLY ORIENTED BUSINESSES

### Section

- 118.01 Purpose and intent
- 118.02 Definitions
- 118.03 Establishment and classification of businesses regulated
- 118.04 Measurement of distance
- 118.05 Location of sexually oriented businesses
- 118.06 Injunction
- 118.07 Inspection
- 118.08 Minors
- 118.09 Advertising regulations
- 118.10 Hours of operation
- 118.11 Nudity prohibited
- 118.12 Civil penalties; additional legal, equitable and injunctive relief
- 118.13 Immunity from prosecution

deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.  
(Ord. 1998-8, passed 6-1-1998)

### § 118.02 DEFINITIONS.

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

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

**PERSON.** An individual, proprietorship, partnership, corporation, association or other legal entity.

**PUBLIC BUILDING.** Any building owned, leased or held by the United States, the state, the county, the town, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used for governmental purposes.

**PUBLIC PARK or RECREATION AREA.** Public land which has been designated for park or recreational activities including, but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the town or county

### § 118.01 PURPOSE AND INTENT.

It is the purpose and intent of this chapter to regulate sexually oriented businesses to promote the health, safety, morals, the general welfare of the citizens of the Town of Nashville and County of Brown and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the town and county, thereby reducing or eliminating the adverse secondary effects from sexually oriented businesses. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to

which is under the control, operation, or management of the town or county park and recreation authorities.

**RELIGIOUS INSTITUTION.** Any church camp, church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.

**RESIDENTIAL DISTRICT OR USE.** A single-family, duplex, townhouse, multiple-family, retirement home, mobile home park or campground as defined in the Nashville and Brown County zoning ordinances.

**SCHOOL.** Any public or private educational facility including, but not limited to child daycare facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities. **SCHOOL** includes the school grounds but does not include facilities used primarily for another purpose and only incidentally as a school.

**SEXUALLY ORIENTED BUSINESSES.** An adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor, sexual encounter establishment, escort agency or semi-nude model studio, further defined as follows:

(1) **ADULT ARCADE.** An establishment where, for any form of consideration, 1 or more still or motion picture projectors, slide projectors or similar machines, or other image producing machines, for viewing by 5 or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS**.

(2) **ADULT BOOKSTORE, ADULT NOVELTY STORE** or **ADULT VIDEO STORE.** A commercial establishment which has a significant or

substantial portion of its stock-in-trade, has more than 10% of its total square footage of floor area or in excess of 50 square feet of floor area or derives 25% or more of its revenues to the sale or rental of any form of consideration, of any 1 or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by the depiction or description of **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS**;

(b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others;

(c) An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS**, and still be categorized as **ADULT BOOKSTORE, ADULT NOVELTY STORE** or **ADULT VIDEO STORE**. These other business purposes will not serve to exempt the establishment from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe **SPECIFIED ANATOMICAL AREAS** or **SPECIFIED SEXUAL ACTIVITIES**; or

(d) Regardless of the percentage of revenues from adult materials defined herein, any business which devotes any portion of its interior business space or advertising for any form of consideration or viewing of any of the adult materials defined herein shall be considered to be an **ADULT BOOKSTORE, ADULT NOVELTY STORE** or **ADULT VIDEO STORE** as defined by and governed by this chapter.

(3) **ADULT CABARET.** A nightclub, bar, restaurant “bottle club,” or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

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

(b) Live performances which are characterized by the exposure of **SPECIFIED ANATOMICAL AREAS**, the performance of **SPECIFIED SEXUAL ACTIVITIES** or by pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS**.

(4) **ADULT MOTEL.** A motel, hotel or similar commercial establishment which:

(a) Offers public accommodations, for any form of consideration; which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS** and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including, but not limited to newspapers, magazines, pamphlets or leaflets, radio or television;

(b) Offers a sleeping room for rent for a period of time less than 10 hours; or

(c) Allows a tenant or occupant to subrent the sleeping room for a time period of less than 10 hours.

(5) **ADULT MOTION PICTURE THEATER.** A commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of

**SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS** are regularly shown for any form of consideration.

(6) **ADULT THEATER.** A theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of semi-nudity or live performances which are characterized by exposure of **SPECIFIED SEXUAL ACTIVITIES** or **SPECIFIED ANATOMICAL AREAS**.

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

(8) **MASSAGE PARLOR.** Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with **SPECIFIED SEXUAL ACTIVITIES**, or where any person providing such treatment, manipulation, or service related thereto exposes his or her **SPECIFIED ANATOMICAL AREAS**. The definition of sexually oriented businesses shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

(9) **NUDE** or **SEMI-NUDE MODEL STUDIO.** Any place where a person, who regularly appears in a state of semi-nudity, is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons.

(10) **SEXUAL ENCOUNTER ESTABLISHMENT.** A business or commercial establishment that, as 1 of its primary business

purposes, offers for any form of consideration a place where 2 or more persons may congregate, associate or consort for the purposes of ***SPECIFIED SEXUAL ACTIVITIES*** when 1 or more of the persons is semi-nude. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

***SPECIFIED ANATOMICAL AREAS.***

(1) Less than completely and opaquely concealed:

(a) Human genitals, pubic region;

(b) Human buttocks, anus; or

(c) Female breasts below a point immediately above the top of the areola.

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

***SPECIFIED SEXUAL ACTIVITIES.***

(1) Human genitals in a state of sexual stimulation or arousal;

(2) Actual or simulated acts of human masturbation, sexual intercourse or sodomy; or

(3) Fondling or other erotic touching of human genitals, pubic region, buttock, anus or female breasts.

(Ord. 1998-8, passed 6-1-1998)

**§ 118.03 ESTABLISHMENT AND CLASSIFICATION OF BUSINESSES REGULATED.**

(A) The establishment of a sexually oriented business shall be permitted only in the appropriately designated zoning category; and

(B) It shall be subject to the following restriction. No person shall cause or permit the establishment of any of the following sexually oriented businesses, as defined above, within 1,000 feet of another such business or within 1,000 feet of any religious institution, school, boys' club, girls' club or similar existing youth organization, or public park or public building, or within 1,000 feet of any property zoned for residential use or used for residential purposes. Sexually oriented businesses are classified as follows:

(1) Adult arcade;

(2) Adult bookstore, adult novelty store or adult video store;

(3) Adult cabaret;

(4) Adult motel;

(5) Adult motion picture theater;

(6) Adult theater;

(7) Massage parlor;

(8) Sexual encounter establishment;

(9) Escort agency; or

(10) Nude model studio.

(Ord. 1998-8, passed 6-1-1998) Penalty, see § 10.99

**§ 118.04 MEASUREMENT OF DISTANCE.**

As regarding § 118.03(B), distance between any 2 sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any sexually oriented business and any religious institution, public or private elementary or secondary school, boys' club, girls' club or similar existing youth organization, public park or public building, or any properties zoned for residential use or used for residential purposes shall

also be measured in a straight line, without regard to intervening structures or objects from the nearest portion of the building or structure used as part of the premises where the sexually oriented business is conducted, to the nearest property line of the premises of a religious institution, public or private elementary or secondary school, boys' club, girls' club or similar existing youth organization, public park or public building, or any properties zoned for residential use or used for residential purposes.

(Ord. 1998-8, passed 6-1-1998)

**§ 118.05 LOCATION OF SEXUALLY ORIENTED BUSINESSES.**

(A) The Town of Nashville and County of Brown's zoning ordinance shall designate those areas in which sexually oriented businesses are permitted and this chapter shall govern their location and land use.

(B) In addition, any sexually oriented business shall be subject to the following restrictions:

(1) A person commits an infraction if he or she operates or causes to be operated a sexually oriented business within 1,000 feet of:

- (a) Any religious institution;
- (b) Any school;
- (c) The boundary of any residential district;
- (d) A public park adjacent to any residential district;
- (e) Public building;
- (f) A property line of a lot devoted to residential use; or
- (g) A boys' club, girls' club or similar existing youth organization.

(2) A person commits an infraction if he or she operates or causes to be operated a sexually oriented business within 1,000 feet of another such business, which will include any adult arcade, adult book store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor or any sexual encounter establishment.

(3) A person commits an infraction if he or she causes or permits the operation, establishment, or maintenance of more than 1 sexually oriented business within the same building or structure.

(Ord. 1998-8, passed 6-1-1998) Penalty, see § 10.99

**§ 118.06 INJUNCTION.**

A person who operates or causes to be operated a sexually oriented business in violation of this chapter's location restrictions is subject to a suit for injunction as well as prosecution for the criminal violation. This violation shall be punishable by a fine of \$1,000. If any injunction must be sought, attorneys' fees and costs will be assessed at the discretion of the Court against the sexually oriented business.

(Ord. 1998-8, passed 6-1-1998)

**§ 118.07 INSPECTION.**

(A) Any and all sexually oriented businesses as defined hereinabove shall permit representatives of law enforcement, the County Health Department, and the Fire Department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(B) Any and all sexually oriented businesses shall be inspected to the same extent as all other businesses are inspected, and any record of the sexually oriented business shall be made available to the public the same as other businesses' records are made available to the public.

(C) It shall be unlawful, and a person who operates a sexually oriented business or his or her agent or employee commits an infraction if he or she refuses to permit the lawful inspection of the premises at any time that it is occupied or open for business. (Ord. 1998-8, passed 6-1-1998) Penalty, see § 10.99

#### § 118.08 MINORS.

A person commits an infraction if he or she operates or causes to be operated a sexually oriented business and knowingly or with reasonable cause to know, permits, suffers or allows:

(A) Admittance of a person under 18 years of age to the business premises;

(B) A person under 18 years of age to remain at the business premises;

(C) A person under 18 years of age to purchase goods or services at the business premises; or

(D) A person who is under 18 years of age to work at the business premises as an employee. (Ord. 1998-8, passed 6-1-1998) Penalty, see § 10.99

#### § 118.09 ADVERTISING REGULATIONS.

(A) It shall be unlawful and a person commits an infraction if he or she operates or causes to be operated a sexually oriented business, and specifically advertises the presentation of any activity prohibited by any applicable state statute or local ordinance.

(B) It shall be unlawful and a person commits an infraction if he or she operates or causes to be operated a sexually oriented business, and displays or otherwise exhibits the materials and/or performances at the sexually oriented business in any advertising which is visible outside the premises. This prohibition shall not extend to advertising of the existence or location of the sexually oriented business.

(C) The permittee shall not allow any adult entertainment to be visible outside the premises.

(D) All off-street parking areas and premises entries of the sexually oriented business shall be illuminated from dusk to dawn with a lighting system which provides an average maintained horizontal illumination of 1 foot-candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

(E) Nothing contained in this section of the chapter shall relieve the operator(s) of a sexually oriented business from complying with the requirements of the town and county, commonly known as the Sexually Oriented Business Ordinance, as it may be amended from time to time, or any subsequently enacted town or county ordinance or regulations.

(Ord. 1998-8, passed 6-1-1998) Penalty, see § 10.99

#### § 118.10 HOURS OF OPERATION.

(A) It shall be unlawful and a person commits an infraction if he or she operates or causes to be operated a sexually oriented business, and allows the business to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service, between the hours of 12:00 midnight and 12:00 noon of any particular day, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service except pursuant to Indiana laws pertaining to alcoholic beverages.

(B) It shall be unlawful and a person commits an infraction if, working as an employee of a sexually oriented business, the employee engages in a

performance, solicits a performance, makes a sale, solicits a sale, provides a service or solicits a service between the hours of 12:00 midnight and 12:00 noon of any particular day.

(Ord. 1998-8, passed 6-1-1998) Penalty, see § 10.99

### **§ 118.11 NUDITY PROHIBITED.**

(A) The United States Supreme Court decision in Barnes v. Glen Theater Inc., 501 U.S. 111 S.Ct. 2456 (June 21, 1991), which upheld the rights of cities to prohibit live public exposure of a person's private parts, specifically applies to sexually oriented businesses, including those businesses where no alcoholic beverages are sold, served or consumed at the premises.

(B) Public nudity is prohibited within the town and county, including any sexually oriented business. Any sexually oriented business which is found in violation of this section may be enjoined from operation and shall be subject to the sanctions as provided in § 118.12.

(Ord. 1998-8, passed 6-1-1998)

### **§ 118.12 CIVIL PENALTIES; ADDITIONAL LEGAL, EQUITABLE AND INJUNCTIVE RELIEF.**

(A) In addition to whatever penalties are applicable under the State of Indiana Penal Code, if any person willfully fails or refuses to obey or comply with or violates any of the provisions of this chapter, that person, upon a judicial determination of the offense, shall be punished by a fine not to exceed \$2,000, in the discretion of the Court. Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation or noncompliance shall be considered as a separate offense.

(B) Nothing herein contained shall prevent or restrict the town or the county from taking such other lawful action in any court of competent jurisdiction as

is necessary to prevent or remedy any violation or noncompliance. Other lawful actions shall include, but shall not be limited to an equitable action for injunctive relief or an action at law for damages.

(C) All remedies and penalties provided for in this section shall be cumulative and independently available to the town and county, and the town and county shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law. This chapter may be enforced by the Town Council, the County Commissioners or the County Plan Department as well as by the Town Attorney, County Prosecutor, County Attorney, Plan Department Attorney or by such other attorney selected by the town, the county or the County Plan Commission.

(Ord. 1998-8, passed 6-1-1998)

### **§ 118.13 IMMUNITY FROM PROSECUTION.**

The town, the county and their designees, the Town Marshal's Office and the Brown County Sheriff's Department, all other departments and agencies, and all other town and county officers, agents and employees charged with enforcement of state and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable, good-faith trespass upon a sexually oriented business while acting within the scope of authority conferred by this chapter.

(Ord. 1998-8, passed 6-1-1998)



## CHAPTER 119: NEWSRACKS AND NEWSSTANDS

### Section

- 119.01 Definitions
- 119.02 Findings and purpose
- 119.03 Additional site locations
- 119.04 General prohibition
- 119.05 Notification process/time to cure
- 119.06 Injunction
- 119.07 Immunity from prosecution

### § 119.01 DEFINITIONS.

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

**NEWSPAPERS AND OTHER PUBLICATIONS.** Includes newspapers, periodicals, advertising circulars and all other printed materials which may be distributed through the use of newsracks.

**NEWSRACK.** Any unmanned, self-service or coin-operated box, container, storage unit or other dispenser located in or upon, or projecting onto, into or over any part of the public right-of-way, and which is installed, used or maintained for the display, sale or distribution of newspapers and other publications.

**PUBLIC RIGHT-OF-WAY.** That portion of the streets, alleyways, curbs and sidewalks owned by the town and generally traveled by the public at large.

**PUBLIC WAY.** That portion of sidewalks adjacent to the public right-of-way privately owned as well as all other privately owned property generally traveled by the public at large.  
(Ord. 1999-3, passed 5-18-2000)

### § 119.02 FINDINGS AND PURPOSE.

(A) The Town Council hereby finds as follows:

(1) That both public rights-of-way of the town and public ways in the town are currently being used to circulate newspapers and other publications;

(2) The substantial growth and the number of newspapers and other publications has produced a significant increase in the number of individual newsracks located on the public rights-of-way;

(3) The welfare of Nashville is inextricably tied to its scenic, historical and architectural characteristics. In order to protect these characteristics and to ensure the safety of pedestrians and vehicular traffic, it is necessary to prohibit the placement of newsracks and newsstands on the public rights-of-way;

(4) The placement and maintenance of individual newsracks in the public rights-of-way interferes with the free and unimpeded use of the public rights-of-way and threatens the health, safety and welfare of persons who use the public rights-of-way, including pedestrians, children, the aged, persons entering and leaving vehicles and buildings, drivers, persons performing essential utility, traffic control and emergency services and persons with disabilities;

(5) The placement of individual newsracks or newsstands of various shapes and sizes in the public rights-of-way significantly detracts from the aesthetic character of surrounding areas; and

(6) That there is no shortage of public way in the town of or other private property where newsracks and newsstands may be placed.

(B) Consistent with these findings, it is the purpose of this chapter to promote the health and safety of users of the public rights-of-way and to enhance the aesthetics of the town in a manner so as to do the following:

(1) Provide for pedestrian and driving safety and convenience;

(2) Restrict unreasonable interference with the flow of pedestrian or vehicular traffic, including ingress into and egress from any residence or place of business, or from the street to the sidewalk by persons exiting or entering parked or standing vehicles;

(3) Provide for the safety of the public and property during windstorms and other inclement weather;

(4) Provide reasonable access for the use and maintenance of poles, posts, traffic signs or signals, hydrants, mailboxes and access to locations used for public transportation purposes;

(5) Maintain and protect the values of surrounding properties; and

(6) Reduce unnecessary exposure of the public to personal injury and property damage.

(C) It is also the purpose of this chapter to ensure a diversity of viewpoints consistent with the First Amendment to the United States Constitution and to treat all newspapers and other lawful publications equally, regardless of their content.

(Ord. 1999-3, passed 5-18-2000)

### § 119.03 ADDITIONAL SITE LOCATIONS.

Should any party desire to establish a newsrack on a new site after the passage of this chapter, the

vendor shall submit the location of that proposed site to the Town Manager. The Town Manager, within a reasonable time, generally not exceeding 72 hours, will give a written opinion as to whether the proposed site is on public right-of-way or public way and as to the appropriateness of that site location under this chapter. In making this determination, the Town Manager will consult with the office of the Brown County Surveyor and review the official records which delineate public right-of-way.

(Ord. 1999-3, passed 5-18-2000)

### § 119.04 GENERAL PROHIBITION.

It shall be unlawful for any person to place a newsrack or a newsstand on the public rights-of-way of the town. Any existing newsstand or newsrack currently on the town public rights-of-way shall be removed or relocated to public ways or other private property within 30 days from the date of the passage of this chapter.

(Ord. 1999-3, passed 5-18-2000) Penalty, see § 10.99

### § 119.05 NOTIFICATION PROCESS/TIME TO CURE.

Any newsrack alleged to be in violation of this chapter will result in the owner of that newsrack being given notification of the violation, the reason for the violation and 20 working days from the date of the receipt of notice in which to remedy the alleged violation before the town will take any enforcement action.

(Ord. 1999-3, passed 5-18-2000)

### § 119.06 INJUNCTION.

A person who places a newsrack or causes a newsrack to be installed as described heretofore in violation of this chapter, after being notified pursuant to the terms and conditions of § 119.04, is subject to a suit for injunction. This violation shall be

punishable by a fine of \$1,000. The Town Attorney is authorized to bring any enforcement action for injunctive relief through the Brown Circuit Court, and the town shall be entitled to recover attorneys' fees and costs as assessed at the discretion of the Court against the offending vendor.  
(Ord. 1999-3, passed 5-18-2000)

**§ 119.07 IMMUNITY FROM PROSECUTION.**

The town and its designees, the Town Marshal and all other departments and agencies, and all other town officers, agents and employees charged with enforcement of state and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable, good-faith enforcement of this chapter while acting within the scope of authority conferred by this chapter.  
(Ord. 1999-3, passed 5-18-2000)



## CHAPTER 120: BUSINESS USE OF LAND FOR PARKING

### Section

#### *Regulation of Parking Spaces Used by the Nashville Express*

- 120.01 License required
- 120.02 Application for business use of town parking spaces
- 120.03 Public liability
- 120.04 Fees

#### *Yard Parking*

- 120.15 Permit required
- 120.16 Definition
- 120.17 Applications for yard parking operations
- 120.18 Operation of yard parking areas
- 120.19 Violation
- 120.20 Immunity from prosecution

#### **REGULATION OF PARKING SPACES USED BY THE NASHVILLE EXPRESS**

##### **§ 120.01 LICENSE REQUIRED.**

The Nashville Express is required to have a valid business license issued by the Clerk-Treasurer. The administrative fee referenced in § 120.04 will be paid in lieu of a separate business license fee. The Nashville Express is required to have a current Certificate of Public Convenience and Necessity issued by the Indiana Public Service Commission, proof of which will be filed with the Clerk-Treasurer at the beginning of each calendar year. (Ord. 1997-2, passed 4-17-1997)

##### **§ 120.02 APPLICATION FOR BUSINESS USE OF TOWN PARKING SPACES.**

(A) Application for use of town parking spaces for business purposes shall be made to the Clerk-Treasurer of the town on forms provided by that office. The application shall contain but not be limited to the following information:

(1) The name and business address of the applicant;

(2) The seating capacity, manufacturer, and photograph of the Nashville Express; and

(3) The application shall be verified under oath and include a written agreement by the applicant to operate the business, if licensed, strictly in accordance with the terms of this subchapter and to indemnify and hold harmless the town for all judgments, losses and expenses arising out of the use of the town parking spaces permitted by the license.

(B) The applicant shall submit proof of required operator licensing for all train drivers. In the event new train drivers are employed during the year, proof of licensing of the new driver(s) shall be submitted to the Clerk-Treasurer before they may operate the train. (Ord. 1997-2, passed 4-17-1997)

##### **§ 120.03 PUBLIC LIABILITY.**

(A) Before a license required by § 120.01 shall be issued or renewed, the applicant therefor shall post or maintain with the Clerk-Treasurer of the town either an indemnity bond or a policy of public liability

insurance, approved as to form by the Town Attorney, that the licensee will indemnify and hold harmless the town, its Council members, agents and employees, from any and all loss, costs, damages or expenses, by reason of any and all liability which may result from or arise out of the granting of the license for the operation of the Nashville Express for which a license is issued; and that the licensee will pay any and all loss or damage that may be sustained by any person resulting from or arising out of a legal or negligent operation or maintenance of the Nashville Express. The bond or policy of insurance shall be maintained in its original amount by the licensee at his or her expense at all times during the period for which the license is in effect. If a claim is paid during any period of coverage which causes the aggregate amount of available insurance to fall below \$300,000, the licensee shall enter the marketplace and purchase additional layers of insurance so that there is a minimum of \$300,000 of available insurance during the remainder of the policy period.

(B) The limit of liability upon any bond or policy posted pursuant to division (A) of this section shall in no case be less than \$500,000 for death or injury of 1 person; \$1,000,000 for total liability for death or personal injury arising out of any 1 event or casualty; and \$75,000 for property damage.

(C) Any bond posted pursuant to this section shall be accompanied by good and sufficient sureties approved by the Clerk-Treasurer.

(D) The Clerk-Treasurer shall notify the licensee under this subchapter of any claim of which the town has notice, where the claim arises from the operation or maintenance of the Nashville Express.

(E) The licensee under this subchapter shall notify the Clerk-Treasurer of any claim of which the licensee has notice, where the claim arises from the operation or maintenance of the Nashville Express.  
(Ord. 1997-2, passed 4-17-1997)

**§ 120.04 FEES.**

The annual fee for usage of town parking spaces under this chapter shall be as follows:

<i>Annual fee</i>	
Space fee: \$50	plus \$57
(rental per parking space)	(administrative)

(Ord. 1997-2, passed 4-17-1997)

***YARD PARKING***

**§ 120.15 PERMIT REQUIRED.**

Any person engaging in the practice of yard parking on his or her property shall first obtain a permit.

(Ord. 2001-05, passed 8-16-2001)

**§ 120.16 DEFINITION.**

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

***YARD PARKING.*** The practice of allowing vehicles to be parked on residential property in the town for any form of compensation.

(Ord. 2001-05, passed 8-16-2001)

**§ 120.17 APPLICATIONS FOR YARD PARKING OPERATIONS.**

Applications for yard parking operations shall be made to the Town Manager on forms provided by that office. The application shall contain but not be limited to the following information:

(A) The name and address of the applicant;

(B) The name and physical address of property;

(C) Name and address of property owner if different than the applicant, and the owner’s consent to the use of the property for yard parking; and

(D) The application shall include a written agreement by the applicant to operate, if permitted, strictly in accordance with the terms of this subchapter and hold harmless the town for all judgments, losses and expenses arising out of the permitted operations. (Ord. 2001-05, passed 8-16-2001)

**§ 120.18 OPERATION OF YARD PARKING AREAS.**

Yard parking operations shall comply with the following guidelines:

(A) Yard parking operations shall not solicit patronage in a loud tone of voice or in any manner to annoy or obstruct the movement of persons or vehicles or follow any person or vehicles for the purpose of soliciting patronage.

(B) Any fees shall be prominently displayed at the entrance of the parking area so as to advise prospective clientele prior to entry to the premises.

(C) Signs shall comply with §§ 153.085 through 153.098 of the Nashville Code of Ordinances.

(D) No off-premises activity related to the operation shall be allowed. (Ord. 2001-05, passed 8-16-2001) Penalty, see § 10.99

**§ 120.19 VIOLATION.**

Any person found in violation of this subchapter shall be given a courtesy warning. Violations occurring after this warning shall be subject to a fine in the sum of \$35 for each violation. Additionally, any person who is in violation of this subchapter may

be subject to a suit for injunction. The Town Attorney is authorized to bring any enforcement action for injunctive relief through the Brown Circuit Court, and the town shall be entitled to recover attorney fees and costs as assessed at the discretion of the Court against the offending parties.

(Ord. 2001-05, passed 8-16-2001)

**§ 120.20 IMMUNITY FROM PROSECUTION.**

The town and its designees, the Town Marshal, and all other departments and agencies, and all other town officers, agents and employees charged with enforcement of state and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable, good-faith enforcement of this chapter while acting within the scope of authority conferred by this chapter.

(Ord. 2001-05, passed 8-16-2001)



## CHAPTER 121: PEDICAB TAXIS

### Section

- 121.01 Preamble
- 121.02 Vehicular requirements
- 121.03 License application
- 121.04 Operation
- 121.05 Public liability
- 121.06 Suspension or revocation
- 121.07 Fees
- 121.08 Transfers
  
- 121.99 Penalty

(D) All pedicab taxis operated at night shall be equipped with lights visible for a distance of 500 feet from the front and rear of the vehicle and visible from the sides.

(E) Each pedicab taxi should be equipped with a slow moving vehicle sign approved by the Indiana Department of Transportation and mounted on the rear of the vehicle.

(F) No pedicab taxi should be larger in capacity than to transport the operator and three passengers. (Ord. 08-07, passed 9-18-2008)

### § 121.01 PREAMBLE.

The operation of any pedicab taxi vehicle upon the streets of the town for the purpose of transporting persons for hire or as a contractual service is a violation of this chapter unless operated in accordance with the terms set out herein and licensed by the town according to the licensing provisions of this chapter. (Ord. 08-07, passed 9-18-2008)

### § 121.02 VEHICULAR REQUIREMENTS.

(A) A pedicab taxi or "rickshaw" is any human-drawn or human-pedal powered vehicle carrying one or more passengers for hire or contract.

(B) Pedicab taxis shall have wheels with a rubber covering thick enough to protect the streets from damage and to keep noise to a minimum.

(C) All pedicab taxis should be equipped with brakes.

### § 121.03 LICENSE APPLICATION.

(A) Applications for a pedicab taxi business license shall be made to the Clerk-Treasurer on business license forms provided by that office. The application shall contain all information the Clerk-Treasurer deems necessary to identify the applicant but not less than the following information.

(1) The name and the business address of the applicant.

(2) The Social Security number or Federal Business ID number of the applicant.

(B) The application shall be verified by oath and include a written agreement by the applicant to operate the business if licensed, strictly in accordance with the terms of this chapter and to indemnify and hold harmless the town from any judgements, losses and

expenses arising out of the operation permitted by the license, and a bond or public liability insurance policy as required by § 121.05.

(C) Each application shall be accompanied by a route and operation schedule for the business which has been approved by the Town Marshall and a certification from the Town Marshall that the pedicab taxis used in the business conform with the requirements of this chapter.

(D) The town shall issue no more than 1 license per year with a maximum number of 2 pedicabs. The holder of the license may renew the license by applying with necessary fees between January 1 and April 1 of each year. If the holder fails to renew within said period, the Town Clerk-Treasurer may accept applications from any interested parties on the basis of time of applications, giving preference to the earliest filed.

(Ord. 08-07, passed 9-18-2008)

#### § 121.04 OPERATION.

Pedicab taxi business shall be operated only in accordance with the following rules and regulations.

(A) A copy of the license shall be carried by the pedicab taxi driver or in the pedicab taxi.

(B) Each pedicab taxi shall be operated by the holder of a valid driver's license.

(C) When carrying persons for hire or by contract, the vehicle shall be operated only upon the routes and during hours approved by the Town Marshall.

(D) For the purpose of loading or unloading passengers, the pedicab taxis may park at the "loading zones" designated by the Town Council. The Town Council may relocate these loading zones from time to time as necessary to maintain smooth and safe traffic conditions and for other concerns for public safety.

(E) Pedicab taxis when in motion shall be operated only in the curb-most traffic lane of any public street and the driver shall obey all applicable state and local traffic laws, rules and regulations.

(F) No passengers shall be allowed to ride on the vehicle except in the designated seating area no person other than the licensee or an employee of the licensee shall be allowed to peddle or steer the vehicle.

(G) The pedicab taxi operator or driver shall not solicit patronage in a loud tone of voice or manner that annoys the public or obstructs the movement of vehicular or pedestrian traffic.

(Ord. 08-07, passed 9-18-2008)

#### § 121.05 PUBLIC LIABILITY.

(A) Before a license shall be issued or renewed, the applicant shall post or maintain with the Clerk-Treasurer either an indemnity bond or a policy of liability insurance, by which the licensee will indemnify and hold harmless the town, its Council members, agents and employees from any and all loss, costs, damages or expenses, by reason of any and all liability which may result from or arise out of granting of the license for the operation of a pedicab taxi for which a license is issued, and that the licensee will pay any and all loss of damage that may be sustained by any person resulting from or arising out of the illegal or negligent operation or maintenance of a pedicab taxi. The bond or policy of insurance shall be maintained in its original amount by the licensee at his or her expense at all times during the period for which the license is in effect. In the event that two or more licenses are issued to one licensee, one such bond or policy of insurance may be furnished to cover two or more vehicles. If a claim is paid during any period of coverage which causes the aggregate amount of available insurance to fall below \$300,000, the licensee shall enter the marketplace and purchase additional layers of insurance so that there is a minimum of \$300,000 of available insurance during the remainder of the policy period.

(B) The limit of liability upon any bond or policy posted pursuant to division (A) above shall in no case be less than \$500,000 for death or injury of one person, \$1,000,000 for total liability for death or personal injury or property damage arising out of any one event or casualty.

(C) Any bond posted pursuant to this section shall be accompanied by good and sufficient sureties approved by the Clerk-Treasurer of the town.

(D) The Clerk-Treasurer shall notify the licensee under this chapter of any claim of which the town has notice where the claim arises from the operation or maintenance of any pedicab taxi.

(E) The licensee under this chapter shall notify the Clerk-Treasurer of any claim of which the licensee has notice where the claim arises from the operation or maintenance of any pedicab taxi.  
(Ord. 08-07, passed 9-18-2008)

**§ 121.06 SUSPENSION OR REVOCATION.**

(A) Any violation of this chapter by the holder of a license issued hereunder shall be grounds for the suspension or revocation of the license by the Clerk-Treasurer.

(B) Any suspension, revocation, or denial of a license application shall be subject for review of the Town Council made upon timely request of the applicant.  
(Ord. 08-07, passed 9-18-2008)

**§ 121.07 FEES.**

Pedicab taxi business license fee shall be \$100 plus an administrative fee of \$57.  
(Ord. 08-07, passed 9-18-2008)

**§ 121.08 TRANSFERS.**

Any person or corporation holding a license pursuant to the provisions of this chapter who sells the business may assign the license to the purchaser provided the purchaser is continuing the same business according to the route, loading zones, and other restrictions and conditions by said license. Both the seller and the purchaser may sign a request for transfer which must be approved by the Clerk-Treasurer and a transfer fee of \$35 must be paid before the license can be transferred.  
(Ord. 08-07, passed 9-18-2008)

**§ 121.99 PENALTY.**

Any person, corporation or other entity failing to comply with the provisions of this chapter shall be subject to a fine of not more than \$50 per day. Each day of violation shall be deemed a separate violation for the purpose of establishing the fine, in addition, the town may have any and all available remedies at law or equity to penalize or enjoin pedicab taxi operation in violation of this chapter.  
(Ord. 08-07, passed 9-18-2008)

