

TITLE XI: BUSINESS REGULATIONS

Chapter

- 110. GENERAL LICENSING AND REGISTRATION PROVISIONS**
- 111. COMMERCIAL SOLICITORS**
- 112. PAWNBROKERS; SECOND-HAND DEALERS**
- 113. ALCOHOLIC BEVERAGES**

CHAPTER 110: GENERAL LICENSING AND REGISTRATION PROVISIONS

Section

Licensing Provisions; Fees

- 110.01 Policy
- 110.02 Fee schedule
- 110.03 License refusal; revocation
- 110.04 Administration; records
- 110.05 Fee assessment; issuance of license
- 110.06 Exhibition of license
- 110.07 Remedies
- 110.08 Prior ordinances; application
- 110.09 License regulations

Registration Provisions; Fees

- 110.20 Imposition of fee
- 110.21 Exemption
- 110.22 Application procedure
- 110.23 Renewal; application

Municipal Gross Receipts Tax

- 110.35 Imposition of tax
- 110.36 General provisions
- 110.37 Specific exceptions
- 110.38 Dedication
- 110.39 Effective date

LICENSING PROVISIONS; FEES

' 110.01 POLICY.

(A) The Governing Body hereby declares that the licensing or regulation of businesses not otherwise exempt by law is conducive to the promotion of the health and general welfare of the village and hereby imposes a license fee and a separate license on each place of business conducted by the same person.

Tularosa - Business Regulations

(B) The Governing Body hereby finds the fees enumerated in ' 110.02 reasonably related to the expenses of regulating the businesses therein described and issuing licenses.
(^75 Code, ' 5-3-1)

' 110.02 FEE SCHEDULE.

(A) Any person engaged in any business hereinafter listed shall, before commencing business and, if appropriate, annually thereafter, as provided in ' 110.05 secure a license from the Clerk-Treasurer therefore, and shall pay a license fee according to the following schedule and rates:

(1) Masseurs: \$35 per annum.

(2) Itinerant peddlers, vendors, hawkers, photographers and persons other than itinerant vendors who shall temporarily bring into the village stock or samples of goods, wares or merchandise and offer the same for sale at public auction or private sale, either present or future; provided that nothing herein shall apply to any resident of the state selling wood, fruits, farm or garden produce of their own raising or fresh meat butchered from animals of their own raising; provided further, that these fresh meats meet all sanitation and inspection requirements of state law: \$35 for two consecutive days.

(3) Traveling shows, sparring exhibits, wrestling exhibits, which shall furnish a certificate of liability insurance with minimum limits of \$100,000/\$300,000 per incident: \$35 per annum.

(4) Circuses and carnivals; such persons shall furnish a certificate of liability insurance with minimum limits of \$100,000/\$300,000; the Governing Body has authority to exempt circuses and carnivals sponsored by civic clubs or non-profit organizations: \$35 for two consecutive days.

(5) Amusements and amusement parks, excluding dances: \$35 for two consecutive days.

(6) Fortune tellers, clairvoyants, palmists and similar occupations: \$35 per annum.

(7) Auctioneers; this division (A)(7) shall not apply to any auction or judicial sale held pursuant to state law: \$35 per annum.

(8) Automatic selling machines or devices, slot weighing machines and other coin-operated devices: \$35 per annum (each).

(9) Tree cutting or trimming; such persons shall furnish a certificate of liability insurance with minimum limits of \$1,000,000/\$300,000 and \$50,000 property damage: \$35 per annum.

(10) Fairs, festivals and fiestas sponsored and conducted by charitable fund raising organizations at special events not to exceed two days per event involving one or more separate booths and/or vendors approved by the organization: \$25 per function.

(11) Tatoo parlor: \$35 per annum.

(B) A separate license is hereby imposed on each place of business conducted or maintained by the same person.

(75 Code, ' 5-3-2) (Am. Ord. 165, passed 10-17-1995; Am. Ord. 168, passed 3-19-1995; Am. Ord. 217, passed 12-20-2005)

' 110.03 LICENSE REFUSAL; REVOCATION.

(A) For the purpose of regulation, the Governing Body may refuse to grant a license or revoke a license.

(B) No license application shall be refused until after a public hearing conducted in accordance with the Battershell Guidelines at which the applicant or licensee shall be given an opportunity to be heard.

(C) At a public hearing concerning the refusal or revocation of a license, the applicant or licensee and representative of the village shall be allowed to present evidence, either orally or in writing, relevant to the effect of the business on the health, safety or welfare of citizens of the village. The license shall be refused or revoked if a majority of the members of the Governing Body:

(1) Find that the business of the applicant or licensee is substantially detrimental to the health, safety or welfare of the citizens of the village;

(2) The applicant or licensee is guilty of violating an ordinance of the village relating to the granting of a license; or

(3) The applicant or licensee is guilty of violating any ordinance of the village relative to the business.

(^75 Code, ' 5-3-3) (Am. Ord. 217, passed 12-20-2005)

' 110.04 ADMINISTRATION; RECORDS.

(A) The Village Clerk or Deputy shall prepare all licenses authorized by this code and countersign the same under the seal of the village.

(B) The Village Clerk or Deputy shall keep a full and complete record of all licenses issued with the names of the parties in whose favor they are drawn, including dates, amounts, numbers and purposes for which given.

(C) Licenses shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of the licensee, the class of license issued and the kind of goods to be sold thereunder, the amount of fee paid, if any, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in the peddling.

(^75 Code, ' 5-3-4) (Am. Ord. 217, passed 12-20-2005)

' 110.05 FEE ASSESSMENT; ISSUANCE OF LICENSE.

(A) (1) On or before the annual renewal date for each license issued, every person engaging in a business, described in ' 110.02, shall apply for a business license for the following year.

(2) Every person filing an application for a business license shall include in the application the amount of gross receipts of the business done during the previous calendar year within the village. No business license shall be issued to any person who has not furnished to the village the information required in this section.

(3) (a) All applications for a new business shall contain a detailed description including:

1. Nature of business and both the physical address and mailing address of the business;
2. Hours of operation;
3. Site plan if new construction or modification of existing structures is required;
4. Site plan and size of sign complying with Chapters 151 and 153;
5. Current New Mexico combined reporting system number or copy of application for such identification number.

(b) This shall be reviewed to assure conformance with current zoning, use, health and sanitation, and noise regulations.

(B) Upon receipt of the application, the original shall be referred to the Chief of Police, who shall cause the investigation of the applicant to be made as he or she deems necessary for the protection of the public good and to the Fire Chief and Planning and Zoning Commission all of whom shall note their concurrence or non-concurrence provided that if non-concurrence is noted, the reason shall be stated.

(C) If, as a result of the investigation, the applicant is found to be unsatisfactory, the Chief of Police, Fire Chief and Planning and Zoning Commission shall endorse on the application the reasons for the same and return the application to the Village Clerk or Deputy, who shall notify the applicant that no permit can be issued without the approval of the Governing Body, after a hearing held pursuant to ' 110.03. The Village Clerk or Deputy shall notify the applicant of the time and place of the hearing before the Governing Body.

(D) If, as a result of the investigation, the applicant is found to be satisfactory, the Chief of Police, Fire Chief and Planning and Zoning Commission shall endorse on the application approval and the Village Clerk or Deputy shall execute a permit, addressed to the applicant for the carrying on of the business applied for, upon payment of the prescribed license fee. The license shall be signed by the Village Clerk or Deputy and the Mayor and a list of such licenses shall be made part of the consent agenda of the next regular meeting of the Governing Body.

(E) (1) As soon as convenient, on or before the annual renewal date each year, the Governing Body shall give notice of the business license fee to each business and not less than five days' notice of a hearing when protest may be made as to the fee assessment.

(2) If the Governing Body determines at the hearing that the business license fee is reasonably related to the expense to the village of regulating of and issuing of the license, the business license fee shall be assessed upon the business.

(3) Upon payment of its business license fee, the Village Clerk or Deputy shall issue a business license to the business.

(`75 Code, ' 5-3-5) (Am. Ord. 204, passed 5-20-2003; Am. Ord. 217, passed 12-20-2005)

' 110.06 EXHIBITION OF LICENSE.

The license issued to each person hereunder shall, at all times, be exhibited in a prominent place in the particular place of business or office.

(`75 Code, ' 5-3-6)

' 110.07 REMEDIES.

All remedies provided herein and by state law are of equal application hereto and the village may use any of them in collecting license fees.

(`75 Code, ' 5-3-7)

' 110.08 PRIOR ORDINANCES; APPLICATION.

This chapter does not apply to taxes or fees liability for payment of which was incurred prior to its effective date, or to any act done prior thereto. The payment, collection or enforcement of taxes is to be accomplished according to the provisions of appropriate ordinances previously in force and in every manner as though this code of ordinances had not been enacted.

(`75 Code, ' 5-3-8)

110.09 LICENSE REGULATIONS.

The Board of Trustees has the power to adopt additional rules and regulations with respect to all licenses and licensing actions, as specified herein, if the Board determines the regulations are in the public interest.

(75 Code, 5-3-9)

2006 S-3

*REGISTRATION PROVISIONS; FEES***110.20 IMPOSITION OF FEE.**

There is imposed on each place of business conducted in this municipality a business registration fee of \$35. The fee is imposed pursuant to NMSA ' 3-38-3, as it now exists or is amended and shall be known as the business registration fee. The business registration fee may not be prorated for businesses conducted for a portion of the year.

(Ord. 124A, passed 8-16-1988)

110.21 EXEMPTION.

No business registration fee shall be imposed on any business which is licensed under ' ' 110.01 through 110.09 above, pursuant to NMSA ' 3-38-1.

(Ord. 124A, passed 8-16-1988)

110.22 APPLICATION PROCEDURE.

Any person proposing to engage in business within the municipal limits of the village shall apply for and pay a business registration fee for each outlet, branch or location within the municipal limits of the village prior to engaging in business unless the person is required to obtain a business license fee under ' ' 110.01 through 110.09 above.

(Ord. 124A, passed 8-16-1988)

110.23 RENEWAL; APPLICATION.

(A) On or before the first anniversary date of the issuance of the Business Registration Certificate any person with a place of business in the village and subject to this subchapter shall apply for renewal of business registration with the Clerk-Treasurer. Any person who fails to pay the registration fee by the anniversary date shall pay a late fee of \$10 per year.

(B) Any person filing an application for issuance or renewal of any business registration shall include in the application his or her current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number.

(Ord. 124A, passed 8-16-1988; Am. Ord. 205, passed 11-18-03)

2004 S-2

MUNICIPAL GROSS RECEIPTS TAX

' 110.35 IMPOSITION OF TAX.

There is imposed on any person engaging in business in this municipality an excise tax equal to one-fourth of one percent of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts Tax Act, and this subchapter is pursuant to the Municipal Local Option Gross Receipt Taxes Act as it now exists or as it may be amended, and shall be known as the Amunicipal gross receipts tax.@

(Ord. 227, passed 12-18-2007)

' 110.36 GENERAL PROVISIONS.

This section hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensation Tax Act as it now exists or as it may be amended.

(Ord. 227, passed 12-18-2007)

' 110.37 SPECIFIC EXEMPTIONS.

No municipal infrastructure gross receipts tax shall be imposed on the gross receipts arising from:

(A) Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point in the municipality to another point outside the municipality.

(B) A business located outside the boundaries of the municipality on land owned by that municipality for which a state gross receipts tax distribution is made pursuant to NMSA ' 7-1-6.4C.

(Ord. 227, passed 12-18-2007)

' 110.38 DEDICATION.

Revenue will be undedicated.

(Ord. 227, passed 12-18-2007)

' 110.39 EFFECTIVE DATE.

The effective date of the municipal gross receipts tax shall be either January 1 or July 1, whichever date occurs first after the expiration of three months from the date Ordinance 227 is adopted, unless an

election is held on the question of approving this ordinance, in which case the effective date shall be either January 1 or July 1, whichever date occurs first after the expiration of three months from the date when the results of the election are certified to be in favor of its adoption and the adopted ordinance has been delivered or mailed to the Taxation and Revenue Department.

(Ord. 227, passed 12-18-2007)

2009 S-6

CHAPTER 111: COMMERCIAL SOLICITORS

Section

- 111.01 Definitions
- 111.02 License required
- 111.03 Exemptions
- 111.04 Application
- 111.05 Fees and duration
- 111.06 Licenses and identification
- 111.07 Regulations generally
- 111.08 Suspension or revocation of license
- 111.09 Appeals
- 111.10 Renewals

' 111.01 DEFINITIONS.

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

COMMERCIAL SOLICITORS. Those persons engaged in the practices enumerated herein and shall include all persons engaged in solicitation activities within the village who are required to obtain business licenses or registrations under other provisions of this title.

SOLICITATION ACTIVITIES. The practices of solicitors as listed in divisions (1) and (2) under **SOLICITOR**.

SOLICITOR. Any person, whether a resident of the village or not, including an employee or agent of another, traveling either by foot, automobile, truck or other type of conveyance, who engages in the practice of going door-to-door, house-to-house-to-house or along any streets within the village:

(1) Selling or taking orders for or offering to sell or take orders for goods, merchandise, wares or other items of value for future delivery or for services to be performed in the future for commercial purposes; or

(2) Requesting contribution of funds, property or anything of value or of the pledge of any type of future donation or selling or offering for sale any type of property, including, but not limited to goods, tickets, books and pamphlets, for political, charitable, religious or other noncommercial purposes.
(Ord. 164, passed 10-17-1995)

' 111.02 LICENSE REQUIRED.

It shall be unlawful for any commercial solicitor to engage in solicitation activities in the village without first obtaining a license from the village.
(Ord. 164, passed 10-17-1995) Penalty, see ' 10.99

' 111.03 EXEMPTIONS.

(A) Minors under the age of 18 who participate in solicitation activities are exempt from the licensing requirements of this section, except when they are acting as agents of adults covered by this section.

(B) Persons, organizations and other entities who are not otherwise required by the provisions of this code of ordinances to obtain business registrations and/or licenses shall be exempt from the licensing requirements of this section.
(Ord. 164, passed 10-17-1995)

' 111.04 APPLICATION.

The application for a commercial solicitor's license shall contain all information relevant and necessary to determine whether a particular license may be issued, including, but not limited to:

(A) Proof of the identity and residence address of the applicant;

(B) A brief description of the nature, character and quality of the goods, merchandise or services to be sold, if any;

(C) If a solicitor is employed or acting on behalf of another, the name, business address and telephone number of such person, firm, association, organization, company or corporation; and

(D) Tax identification number.
(Ord. 164, passed 10-17-95)

111.05 FEES AND DURATION.

(A) Each applicant for a commercial solicitation license under this section shall pay an annual license fee of \$35 per solicitor.

(B) A commercial solicitation license shall be valid from the date of issuance until the next December 31. No credit or refunds shall be given for partial years.
(Ord. 164, passed 10-17-1995)

111.06 LICENSES AND IDENTIFICATION.

(A) The license issued to a commercial solicitor shall be carried with the solicitor while he or she is engaged in the business of soliciting.

(B) While performing solicitations, each solicitor, whether or not commercial and whether or not exempt from the licensing requirements of this section, shall wear an identification badge which shall be worn in a way that the badge may be easily read and which shall indicate the name and organization of the solicitor.

(C) Commercial licenses and identification badges shall be used only by the person to whom they were issued and may not be transferred to any other person.
(Ord. 164, passed 10-17-1995)

111.07 REGULATIONS GENERALLY.

The following regulations apply to solicitors engaged in solicitation activities in the village.

(A) Solicitors shall be allowed to conduct solicitation activities only during daylight hours between sunrise and sunset.

(B) No solicitor shall engage in solicitation activities regulated under this section on village owned or controlled property without first procuring special authorization from the Board of Trustees.

(C) No person shall engage in solicitation activities in defiance of any notice exhibited by a resident or business indicating that solicitors are not welcome or not invited.

(D) No person shall engage in solicitation activities in defiance of a clear indication by occupants of a residence or operators or owners of a business that solicitors are not welcome or are not invited. As used in this section, clear indication shall include, but not be limited to posting of a notice on the property, verbal notice or, in the case of commercial solicitation activities, registration with the village

on a roster kept by the village for the purpose of indicating those places where commercial solicitors are neither invited nor welcome. It shall be the duty of each commercial solicitor to be currently informed of all persons and/or addresses on the no solicitors roster.

(E) Every solicitor, whether required to be licensed or not, shall immediately furnish his or her name, organization and address to any person who requests or demands that information while the solicitor is conducting solicitation activities.

(Ord. 164, passed 10-17-1995) Penalty, see ' 10.99

' 111.08 SUSPENSION OR REVOCATION OF LICENSE.

(A) Any license issued under this section may be suspended or revoked for any of the following reasons:

- (1) Fraud or misrepresentation in the application for license;
- (2) Fraud or misrepresentation in the course of conducting solicitation activities;
- (3) Conducting solicitation activities contrary to the conditions of the license; and

(4) Conducting solicitation activities in such a manner as to create a public nuisance or constitute a danger to the public health, safety or welfare.

(B) Upon suspension or revocation, the village shall deliver written notice to the license holder stating the action taken and the reasons supporting the action. The written notice shall be delivered to the license holder's place of business or mailed to the license holder's last-known address.

(C) No person who is required to be licensed by this section and whose license has been suspended or revoked shall engage in commercial solicitation activities until the required license has been reinstated or reissued.

(Ord. 164, passed 10-17-1995) Penalty, see ' 10.99

' 111.09 APPEALS.

Persons whose licenses have been suspended or revoked may appeal by filing a written notice of appeal with the village within ten days after receipt of the notice of suspension or revocation. The Board of Trustees shall hear and determine the appeal in accordance with the Battershell Guidelines, and its decision shall be final.

(Ord. 164, passed 10-17-1995)

' 111.10 RENEWALS.

Licenses may be renewed provided that an application for renewal and the appropriate license fees are received by the village no later than the expiration date of the current license. Applications received after the date shall be processed as new applications. The village shall review each renewal application to determine that the applicant is in full compliance with the provisions of this section. If the village finds that the application meets the requirements, the village shall issue a new license.

(Ord. 164, passed 10-17-1995)

CHAPTER 112: PAWNBROKERS; SECOND-HAND DEALERS

Section

- 112.01 License required
- 112.02 Bond
- 112.03 Records
- 112.04 Reports
- 112.05 Transactions with juveniles and the like
- 112.06 Evidence of ownership; prerequisite to certain transactions
- 112.07 Compliance required
- 112.08 Hours of business
- 112.09 Definition
- 112.10 Records required
- 112.11 Inspection permitted
- 112.12 Garage and yard sales

' 112.01 LICENSE REQUIRED.

No pawnbroker, person, firm or corporation whose business it is to trade or receive by way of pledge or pawn, any kind of personal property as security for the repayment of money loaned or advanced, shall engage in business within the village without having paid the required license fee and having obtained the license required by the provisions of this chapter.

(Ord. 133, passed 3-20-1990) Penalty, see ' 10.99

' 112.02 BOND.

(A) No person shall engage in the business of a pawnbroker without having executed and delivered to the village a bond to be approved by the Board of Trustees in the penal sum of \$10,000 with a corporate surety authorized by the laws of the state to write surety bonds therein, and conditioned for the conduct of the pawnbrokers business according to law and for the due and faithful observance of each and every provision of this chapter.

(B) The bond shall be for the benefit of the village and of each and every person damaged by a breach of any condition thereof.

(Ord. 133, passed 3-20-1990) Penalty, see ' 10.99

' 112.03 RECORDS.

(A) It shall be the duty of every person engaged in the business of a pawnbroker in the village to provide a well-bound book or ledger to be kept at his or her place of business, in which a record of all transactions had by the person shall be kept.

(B) The record shall contain an accurate and complete description of each and every article taken in as a pledge or purchased by him or her and shall list any identifying serial numbers or other identifying marks or numbers found on each article, together with an accurate and complete description of the parties from whom the goods are received or purchased, together with the name of the person or persons, his, her or their addresses, giving the house or street number of same, which book shall be open, at all times, to the inspection of any member of the Police Department, any member of the Board of Trustees or any person who shall be authorized by the Mayor, and there shall also be entered in such book the amount of the loan or purchase price of all articles or things pawned or bought, the rate of interest to be paid on the loan, if the transaction is a loan; and the other information as may from time to time be required by the Chief of Police.

(C) The book and record above required to be kept shall be written in the English language in a clear and legible manner.

(Ord. 133, passed 3-20-1990)

' 112.04 REPORTS.

(A) It shall be the duty of every person engaged in the business of a pawnbroker to furnish daily, an accurate and complete report, before 12:00 noon of each business day, to the Chief of Police, on blanks to be furnished by the director, which report shall show all property of every kind, received or purchased by him or her, together with the description of the property, including any identifying serial numbers or other identifying marks or numbers found on each article, and the description of the person's address.

(B) The report shall give the age, complexion, sex and approximate height of the person delivering the property to the pawnbroker, together with the time at which the property was received and the report shall contain any other information which, from time to time, may be required by the Chief of Police.

(Ord. 133, passed 3-20-1990)

' 112.05 TRANSACTIONS WITH JUVENILES AND THE LIKE.

It shall be unlawful for any person engaged in the business of pawnbroker in the village to buy or accept property as a pledge from any juvenile without the written consent of the parent or guardian of the juvenile to so deliver or dispose of the property, or to buy or accept property as a pledge from any person who is at the time intoxicated, from a habitual drunkard or from any person known by him or her to be a thief or an associate of thieves or a receiver of stolen property.

(Ord. 133, passed 3-20-1990) Penalty, see ' 10.99

' 112.06 EVIDENCE OF OWNERSHIP; PREREQUISITE TO CERTAIN TRANSACTIONS.

(A) It shall be unlawful for any person engaged in the business of a pawnbroker, to buy any property of any kind, or receive the same as a pledge, which property is distinctly and plainly marked as being the property of any person other than the party offering to sell or pledge the same unless the party offering to sell or pledge the same shall show satisfactory evidence, in writing, that he or she is the legal and lawful owner of the property.

(B) Failure to require written evidence shall be prima facie evidence of guilty knowledge on the part of such pawnbroker, his or her agents or employees, that the party offering to pledge or sell the same is not the rightful owner thereof, and shall be sufficient cause for the revocation of the license of the pawnbroker by the Board of Trustees after a public hearing.

(Ord. 133, passed 8-20-1990) Penalty, see ' 10.99

' 112.07 COMPLIANCE REQUIRED.

It shall be unlawful for any person to act as the agent, servant or employee of any person engaged in the business of a pawnbroker who does not keep a record book as required by the provision of this chapter, and who does not make reports to the Chief of Police as herein required.

(Ord. 133, passed 8-20-1990) Penalty, see ' 10.99

' 112.08 HOURS OF BUSINESS.

It shall be unlawful for any person engaged in the business of pawnbroker to keep such place of business, or to transact any business at such place of business, between the hours of 7:30 p.m. and 6:00 a.m., on the following day, and it shall be the duty of such person so engaged in business to keep such place of business closed between the hours above mentioned.

(Ord. 133, passed 8-20-1990) Penalty, see ' 10.99

' 112.09 DEFINITION.

Any person who shall engage in the business of purchase, sale, barter, trade, consignment or exchange of secondhand goods, wares or merchandise, whether in a fixed and established location of business or otherwise shall hereby be defined as a **SECOND-HAND DEALER**, provided that, transactions involving a trade-in of goods, wares or merchandise on the purchase of other goods, wares or merchandise where no cash is paid to the person making such trade-in shall not be defined as being in the business of **SECOND-HAND DEALER**.

(Ord. 133, passed 8-20-1990) Penalty, see ' 10.99

' 112.10 RECORDS REQUIRED.

Every secondhand dealer shall keep a permanent record on forms provided by the Chief of Police providing the following information:

(A) The date and hour of purchase of all second-hand goods, wares or merchandise.

(B) The name, age, address and physical description of the vendor.

(C) The amount of money paid in any such transaction.

(D) A complete and accurate description of the goods, wares or merchandise purchased.

(Ord. 133, passed 8-20-1990)

' 112.11 INSPECTION PERMITTED.

The records required by the provisions of this chapter, as well as all merchandise or articles purchased, shall at all times be open and available to inspection by the Chief of Police or any Village police officer.

(Ord. 133, passed 8-20-1990)

' 112.12 GARAGE AND YARD SALES.

(A) *Applicability of chapter.* Garage and yard sales, as defined below, need not be licensed or registered under the provisions of this chapter.

(B) *Definition. CONDUCT OF SALES.* Garage or yard sales are sales in which personal property and/or used merchandise is offered for sale, which are conducted on residential premises by one or more member of the family or families who live there, and to which the public is invited.

(C) *Permitted.* Garage and yard sales are permitted in the city provided that:

(1) Garage and yard sales shall only be held between the hours of 8:00 a.m. and 8:00 p.m. and shall not exceed three-consecutive days' duration. No more than three sales shall be held at a given residence in any 12-month period. No more than two garage or yard sales shall be conducted at the same location within 90 days of another such sale at such location by the same person(s).

(2) Garage and yard sales are intended for the sale of items normally accumulated by a household. No items shall be sold at a garage or yard sale which were specifically purchased for the purpose of resale.

(3) Signs may be erected no earlier than 6:00 a.m. on the first day of the sale and shall be removed by 9:00 p.m. on the last day upon which the sale is held.

(4) No garage or yard sale shall be conducted in such a manner as to create a nuisance or hazard.

(D) *Exemptions.* These provisions shall not apply to or affect the following:

(1) Persons acting pursuant to an order or process of a court of competent jurisdiction.

(2) Persons acting in accordance with their powers and duties as public officials.

(Ord. 133, passed 8-20-1990)

CHAPTER 113: ALCOHOLIC BEVERAGES

Section

General Provisions

113.01 Definitions

Licensing Provisions

113.15 License required
113.16 Application and fees
113.17 Tax period; date of payment
113.18 Persons prohibited from obtaining licenses
113.19 Special licenses
113.20 Revocation or suspension of licenses

Conditions for Possession and Sale

113.35 Delivery for resale
113.36 Consumption or sale in public places
113.37 Curb service
113.38 Possession in certain premises
113.39 Hours of sale
113.40 Drinking in certain places
113.41 Sale to intoxicated persons
113.42 Minors
113.43 Inspection of premises

GENERAL PROVISIONS

' 113.01 DEFINITIONS.

All words and terms used in this chapter shall be deemed to have and carry the meaning as defined by the laws of the state and, where words and terms are not defined by the laws of the state, then they shall be deemed to have and carry their common, ordinary meaning.

(^75 Code, ' 5-1-1)

*LICENSING PROVISIONS***' 113.15 LICENSE REQUIRED.**

(A) The sale, possession for the purpose of sale or offering for sale, manufacture or transportation of alcoholic liquors is hereby prohibited within the village, except upon the terms and conditions specified in this chapter and upon the terms and conditions specified by state statute.

(^75 Code, ' 5-1-2)

(B) No license shall be issued under this chapter to any person who shall not, as a condition precedent, secure a license from the Bureau of Revenue, as provided by law.

(^75 Code, ' 5-1-3)

' 113.16 APPLICATION AND FEES.

Persons desiring to obtain a license to sell alcoholic liquors within the limits of the village shall file an application with the Village Clerk-Treasurer on or before June 15 of each year or prior to engaging in business in the case of new businesses, stating the location of the proposed place of business, the kind of license desired by the applicant and the date on which he or she intends to commence business. The application shall be accompanied by the required license fee to cover the period of time from the date of the application to June 30 following; the fee for less than one year to be determined by the provisions hereinafter set out. The application shall comply with state law.

(^75 Code, ' 5-1-5) (Am. Ord. 204, passed 5-20-2003)

' 113.17 TAX PERIOD; DATE OF PAYMENT.

(A) (1) All licenses shall be issued on a yearly basis, and the license tax period shall begin July 1 of each year and end June 30 following the date of issuance; provided that the tax shall be prorated as set forth in ' 113.16.

(2) In the case of persons desiring to continue a business for the sale of alcoholic liquors, the tax herein assessed shall be paid in a lump sum on or before July 1 in each year or may, at the applicant's option, be paid one-half on or before July 1 in each year and the remaining one-half on or before January 1 following.

(^75 Code, ' 5-1-8)

(B) It shall be unlawful for any person within the corporate limits of the village to possess, sell or transport any alcoholic liquors upon which the taxes and/or duties levied and required by the state and/or the United States of America have not been paid. The possession of alcoholic liquors in any container not bearing any stamp, inscription or symbol required by the laws of the state and/or the United States of America shall be prima facie evidence that the taxes and/or duties levied and required by the state and/or the United States of America, have not been paid on the alcoholic liquors.
(^75 Code, ' 5-1-12) Penalty, see ' 10.99

' 113.18 PERSONS PROHIBITED FROM OBTAINING LICENSES.

The following classes of persons shall be prohibited from receiving licenses under the provisions of this chapter:

- (A) Persons who have been convicted of two separate violations of this chapter in any calendar year or of any felony, except those persons restored to civil rights;
- (B) A person who is not a citizen of the United States;
- (C) A person under the age of 21 years;
- (D) A corporation which is not duly qualified to do business in the state;
- (E) A person who is not the real party in interest in the business to be conducted under the license for which application is made;
- (F) Any person who has not procured from the Bureau of Revenue a retailer's license, a dispenser's license or a club license in conformity with the laws of the state; and
- (G) Any person not qualified under the terms of this chapter.
(^75 Code, ' 5-1-9)

' 113.19 SPECIAL LICENSES.

Any person holding a dispenser's license may dispense alcoholic liquors at any fair or other public celebration held within the limits of the village, upon receiving a concession from the Governing Body of the fair or celebration; provided, however, that the dispensing is allowed by the laws of the state and all requirements of the laws of the state regulating dispensing of alcoholic liquors on the occasions as complied with.
(^75 Code, ' 5-1-10)

' 113.20 REVOCATION OR SUSPENSION OF LICENSES.

Revocation or suspension of any retailer's, dispenser's or club license shall not entitle the licensee to the refund of any portion of the village tax paid or relieve the licensee from the obligation of the payment of any deferred installment thereof.

(^75 Code, ' 5-1-11)

CONDITIONS FOR POSSESSION AND SALE**' 113.35 DELIVERY FOR RESALE.**

It shall be unlawful for any person to deliver any alcoholic liquors for resale in the village unless the person has complied with the provisions of the laws of the state in every respect as to permits, quantity, shipper and consignee and all other provisions of law.

(^75 Code, ' 5-1-4) Penalty, see ' 10.99

' 113.36 CONSUMPTION OR SALE IN PUBLIC PLACES.

It shall be unlawful to drink or consume alcoholic liquors for any person who is the owner or proprietor to sell, serve, furnish or permit drinking or consumption of alcoholic liquors in any public dance hall, pool room, bowling alley, street or in any public place, except inside of buildings in which is conducted a business, the business being duly licensed by the village to dispense alcoholic liquors and except as may be provided by ' 113.18 or by state law.

(^75 Code, ' 5-1-13) Penalty, see ' 10.99

' 113.37 CURB SERVICE.

It shall also be unlawful for any licensee to give any kind of curb service of alcoholic liquors, except in unbroken packages, outside of the building on the premises at which the licensee's business is operated, except to customers seated at tables.

(^75 Code, ' 5-1-14) Penalty, see ' 10.99

' 113.38 POSSESSION IN CERTAIN PREMISES.

It shall be unlawful for any dispenser or retailer to sell or possess for the purpose of sale any alcoholic liquors at any location or place, except the licensed premises or the location permitted under ' 113.19.

(^75 Code, ' 5-1-15) Penalty, see ' 10.99

§ 113.39 HOURS OF SALE.

(A) Alcoholic liquors shall be served, delivered or consumed on licensed premises only during the following hours and days:

(1) On Mondays from 7:00 a.m. until midnight;

(2) On other weekdays from after midnight of the previous day until 2:00 a.m., then from 7:00 a.m. until midnight; and

(3) On Sundays only after midnight of the previous day until 2:00 a.m., except as provided in division (B) below.

(B) (1) Any holder of a dispenser's or club license may, upon payment of an additional fee of \$100, obtain a permit to sell, serve or permit the consumption of alcoholic liquors by the drink on the licensed premises on Sundays from 12:00 noon until midnight, except as otherwise provided in division (C) below. The permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee.

(2) The permit fee shall not be prorated.

(3) Sales made pursuant to this division (B) shall be called Sunday sales.

(C) Dispenser, retail and club licensees shall close their places of business during voting hours on the days of the primary election, general election, elections for officers of the village, and any other election as prescribed by the rules and regulations of the Director of the Department of Alcoholic Beverage Control. Dispenser, retail and club licenses shall also close places of business from 2:00 a.m. on Christmas Day until 7:00 a.m. on the day after Christmas.

(`75 Code, § 5-1-16)

' 113.40 DRINKING IN CERTAIN PLACES.

It shall be unlawful for any person to drink or consume any alcoholic liquors in any washroom or toilet of any dispenser or to drink or consume upon the premises of any dispenser any alcoholic liquors purchased therein in the unbroken package, except wine so purchased to be consumed with meals on the premises or to drink on the premises of any dispenser any alcoholic liquors obtained elsewhere.

('75 Code, ' 5-1-17) Penalty, see ' 10.99

' 113.41 SALE TO INTOXICATED PERSONS.

It shall be unlawful for any person to sell, serve, give or deliver alcoholic liquors to or to procure or aid in the procurement of any alcoholic liquors for any intoxicated person.

('75 Code, ' 5-1-18) Penalty, see ' 10.99

' 113.42 MINORS.

(A) It shall be unlawful for any retailer, dispenser, bartender, waiter or servant of any retailer or dispenser or any other person, except the parent or guardian of any minor or adult person into whose custody any Court has committed the minor for the time, outside of the actual, visible presence of the minor's parents, guardian or the adult person into whose custody any Court has committed the minor for the time, to do any of the following acts:

(1) To sell, serve or give any alcoholic liquor to a minor or to permit a minor to consume alcoholic liquor on the licensed premises;

(2) To buy alcoholic liquor for or to procure the sale or service of alcoholic liquor to a minor;

(3) To deliver alcoholic liquor to a minor; and/or

(4) To aid or assist a minor to buy, procure or be served with alcoholic liquor.

(B) It shall be unlawful for any person to permit any person under the age of 21 years to sell or serve alcoholic liquors, including wines and beer.

(C) It shall be unlawful for a minor to buy, receive or permit himself or herself to be served with any alcoholic liquor, except when accompanied by his or her parent, guardian or adult person into whose custody he or she has been committed for the time by some Court who is actually visibly and

personally present at the time the alcoholic liquor is bought or received by him or her or served or delivered to him or her.

(D) In the event any person, except a minor, shall procure any other person to sell, serve or deliver any alcoholic liquor to a minor by actual or constructive misrepresentation of any facts calculated to cause, or by the concealment of any facts the concealment of which is calculated to cause the person selling, serving or delivering the alcoholic liquors to the minor, that the minor is legally entitled to be sold, served or delivered alcoholic liquors, and actually deceiving him or her by the misrepresentation or concealment, then that person, and not the person so deceived by the misrepresentations or concealment, shall have violated this chapter.

(E) In any proceedings under division (A) above, it shall not be necessary for the prosecution or any person, official or party urging or contending that the section has been violated, to allege or prove that the parent, guardian or any adult person into whose custody any minor has been committed by any Court was not actually visibly and personally present at the time of the alleged violation, but the matters are matters of defense to be established and proved by the person against whom the prosecution or proceeding is brought.

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

MINOR. Any person under 21 years of age.

(`75 Code, ' 5-1-19) Penalty, see ' 10.99

' 113.43 INSPECTION OF PREMISES.

The Police Department shall inspect all places where alcoholic liquors are sold under license from the village as often as is necessary to check for compliance with this chapter.

(`75 Code, ' 5-1-20)

2003 S-1

