

## CHAPTER V - BUSINESSES

### Article 1. - General

Note: Food Service Establishments ó ordinance repealed in its entirety by town council 2-26-2008

Note: Coin-Operated Machines ó ordinance repealed in its entirety by town council 10-16-2007 (Effective 7-1-2008.)

### Secs. 5-1—5-9. Reserved

### Article 2. - Motels<sup>1</sup>

#### Sec. 5-10. Scope of article.

- a) The purpose of this article is to set forth the minimum conditions for the maintenance of motels, exterior and interior, and all rooming units located within the motel, in the town.
- b) It is further declared that for all such motels this article shall:
  - 1) Establish minimum standards for basic equipment and facilities for safety from fire and accidents.
  - 2) Establish minimum standards for the amount of space for human occupancy.
  - 3) Establish minimum standards for the maintenance of a safe, sanitary and healthy environment.
- c) Additionally, this article will determine the responsibilities of owners and occupants of motels and rooming units and it will provide for the administration and enforcement of all such standards and responsibilities.

(Ord. No. 8-99, § 1, 9-14-1999)

#### Sec. 5-11. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Accessory building* means a building, the use of which is customarily incidental to that of a main building on the same lot, or on a contiguous lot under the same ownership.

*Building* means any structure having a roof and intended for the shelter, housing or enclosure of persons.

*Building code* means the state building code and any other state and local codes that are applicable.

*Director of health* means the director of health of the Central Connecticut Health District and shall include his agent.

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<sup>1</sup> **State law reference**—Lodginghouses, state statute §§ 19a-355 et seq., 21-48.

*Garbage* means the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

*Infestation* means the presence, or evidence of presence, within or contiguous to a main or accessory building or premises, of insects, rodents, vermin or other pests.

*Main building* means any building in which is conducted the main or principal use of the lot on which such business is situated.

*Motel* means any house or building or portion thereof, kept, used, maintained, advertised or held out to the public to be a place, where sleeping accommodations are offered for pay to transient guests.

*Occupant* means any individual received or lodged for hire in a motel.

*Owner* means any person who, alone or jointly or severally with others, shall have legal title to any motel.

*Premises* means a lot, plot or parcel of land, excluding any building or structure thereon, on which is situated a motel.

*Rooming unit* means any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping.

(Ord. No. 8-99, § 2, 9-14-1999)

**Cross reference**—Definitions generally, chapter I § 1-2 of this code book.

#### **Sec. 5-12. Applicability of article provisions.**

Every motel and all rooming units therein shall comply with the provisions of this article. This article, however, shall not infringe upon any other applicable state or municipal statute, ordinance or regulation. The statute, ordinance or regulation which provides the maximum protection for the health, safety and welfare of the people shall prevail.

(Ord. No. 8-99, § 3, 9-14-1999)

#### **Sec. 5-13. Licensing.**

- a) *Motel permit required; fees.* No person shall operate a motel unless that person holds a valid motel permit issued by the director of health in the name of the owner and the motel. The owner shall apply to the director of health for such permit, or renewal thereof, on an application prepared by the director of health. Fees as listed in the town fee schedule must accompany the application. Licenses shall be issued/renewed in the month of June on an annual basis.
- b) *Issuance of permit; display; transfer; expiration date.* The director of health shall issue the motel permit only after such motel has been inspected by the director of health, town building official, and the town fire marshal and found to be in compliance with applicable state statutes, town ordinances and town regulations. Upon issuance, the motel permit shall be displayed in a conspicuous place within the motel at all times. No

such permit shall be transferable. Every permit shall expire one (1) year from the date of issuance.

(Ord. No. 8-99, § 4, 9-14-1999)

**Sec. 5-14. Rooming unit standards and restrictions.**

- a) Every rooming unit shall be equipped with a complete bathroom fixture group consisting of a flush water closet, lavatory basin and bathtub or shower in good working condition and installed and maintained in a manner prescribed by ordinances, rules and regulations of the town and the state. Such fixture group shall be properly connected to an approved disposal system and to an approved pressure water system.
- b) All bathroom fixtures shall be maintained in a sanitary condition.
- c) Linen, blankets, bed coverings and mattresses shall be clean and well-maintained. Clean sheets and pillow cases shall be provided for each new occupant and/or provided on a weekly basis. All clean linen, blankets and other laundry shall be stored in a separate area in a sanitary manner.
- d) Drinking cups provided by the management shall be either single service, throwaway type or glass which is sanitized and wrapped at each change of occupancy.
- e) Extermination, necessary to prevent infestation, shall be provided by a professional exterminator, registered in the state.
- f) All floor coverings shall be maintained in a clean, sanitary and safe manner and in good repair.
- g) Adequate window screening shall be provided.
- h) All storage areas shall be maintained in a clean, sanitary and organized manner, free from combustible and flammable materials. Such materials shall be stored as approved by the town fire marshal.
- i) Every rooming unit shall be equipped with permanent heating facilities which are properly installed and maintained in a safe and acceptable working condition and capable of safely and adequately heating all rooming units and bathrooms located therein to a minimum temperature of sixty-five (65°) degrees Fahrenheit. No portable heating unit is permitted. Hot water shall be provided at a minimum of one hundred and twenty (120°) degrees Fahrenheit as measured at the tap or discharge point.
- j) Every rooming unit shall contain written notice, posted in a conspicuous spot, of the maximum number of occupants as follows:
  - 1) There shall not be less than five hundred (500) cubic feet of air to each occupant over twelve (12) years of age.
  - 2) There shall not be less than three hundred (300) cubic feet of air to each occupant under twelve (12) years of age.
  - 3) In an emergency situation, an owner or representative of a motel may request of the town social service director for an exemption from the applicability of these minimum space requirements. Such request must be made prior to the creation of an overcrowding situation or within forty-eight (48) hours thereof. The social services director may allow such exemption for a period not to exceed seventy-two (72) hours. Such exemption must be in writing.
- k) No rooming unit may contain temporary kitchen facilities including, but not limited to, a hot plate or similar device.

(Ord. No. 8-99, § 5, 9-14-1999)

**Sec. 5-15. Premises standards.**

- a) All premises shall be graded and maintained so as to prevent the accumulation of stagnant water thereon.
- b) All premises shall be kept free from species of weeds or plant growth which are noxious or detrimental to the public health and/or in excess of a height of six (6) inches.
- c) All premises shall be maintained in a clean and sanitary condition, free from any accumulation of rubbish or garbage.
- d) All premises shall have sufficient containers kept secure in a sanitary condition for the disposal of garbage and rubbish.

(Ord. No. 8-99, § 6, 9-14-1999)

**Sec. 5-16. Exterior and interior structure standards.**

- a) All principal and accessory buildings shall be maintained structurally sound and in good repair.
- b) Every foundation, exterior wall, roof and all other exterior surfaces shall be maintained in a workmanlike fashion, and in such condition as to exclude rodents. The foundation elements shall adequately support the building at all points.
- c) Every exterior and interior wall shall be free of holes, breaks, loose or rotting boards or timbers and any other condition which might admit rain or dampness to the interior portions of the halls or to the occupied spaces of the building. All exterior and interior surface material must be adequately protected with paint, stain or siding in accordance with acceptable standards, and all siding material must be kept in good repair.
- d) Stairs and other exit facilities shall be adequate for safety, as provided in the building code, and shall comply with the following:
  - 1) Every stair, porch and appurtenance attached thereto shall be constructed as to be safe to use and capable of supporting the loads to which it is subjected, as required by the building code, and shall be kept in sound condition and good repair.
  - 2) Where deemed necessary for safety, every flight of stairs which is more than two (2) risers high shall have handrails located as required by the building code, and every porch which is more than two (2) risers high shall have handrails so located and of such design as required by the building code. Every handrail and balustrade shall be firmly fastened and shall be maintained in good condition.
- e) Every exterior window and basement hatchway shall be substantially tight and shall be kept in sound condition and repair.
- f) Every window shall be fully supplied with glass window panes, or an approved substitute, which are without open cracks and holes.

(Ord. No. 8-99, § 7, 9-14-1999)

**Sec. 5-17. Electric service standards.**

- a) Each rooming unit shall have electric service and outlets and/or fixtures capable of providing at least three (3) watts per square foot of floor area and shall have at least one (1) floor to wall-type outlet for each six (6) square feet or fraction thereof of floor area. In no case shall there be fewer than two (2) outlets.
- b) Convenient switches for turning on one (1) light in each room or passageway shall be located so as to permit the area ahead to be lighted.

- c) Every public hall and stairway in buildings containing three (3) or more rooming units shall be adequately lighted at all times so as to provide at least six (6) footcandles of light at the tread or foot level.
  - d) Every public hall and stairway in buildings containing not more than two (2) rooming units may be supplied with conveniently located light switches controlling an adequate lighting system which may be turned on when needed, in place of full-time lighting.
- (Ord. No. 8-99, § 8, 9-14-1999)

**Sec. 5-18. Responsibility of occupants.**

All tenants shall be responsible for maintaining the rooming unit in which he resides and shall exhibit a degree of personal hygiene within the rooming unit so as to maintain safe and sanitary conditions in compliance with this article. At no time shall a tenant infringe upon any neighboring rooming units due to odor, vermin or any other result emanating from poor sanitary practices.

(Ord. No. 8-99, § 9, 9-14-1999)

**Sec. 5-19. Enforcement of article provisions.**

- a) The director of health and the town fire marshal have concurrent responsibility for the enforcement of the provisions of this article. Both the director of health and fire marshal may periodically inspect any motel and its premises for violations of this article.
- b) Upon discovery by either the director of health or the town fire marshal of any violation of the provisions of this article, such director of health or fire marshal shall immediately notify the owner of the motel. Such notice shall be in writing, identifying the motel and specifying the violation, and stipulating the remedial action required.
- c) The service of notice of violation upon the owner shall be effectuated upon compliance of one of the following:
  - 1) By delivery to the owner or owner's agent personally or by leaving the notice at the usual place of abode of such owner or agent with a person of suitable age and discretion;
  - 2) By certified or registered mail addressed to such owner or agent at that person's last known address and at the mailing address of the motel, with postage prepaid; or
  - 3) By posting a copy of the notice in placard form in a conspicuous place on the premises.
- d) The owner of a motel found to be in violation of any of the provisions of this article, except any emergency overcrowding situation per § 5-14(j)(3), shall have thirty-six (36) days from the mailing of the notice to cure such violation.
- e) Whenever a violation of this article is deemed by the director of health or the town fire marshal to be dangerous or detrimental to life or health, such director of health or fire marshal may declare the motel to be a public nuisance. A declaration of public nuisance must be stated on the notice of violation, and such notice must clearly state that the nuisance must be abated within five (5) days of the receipt of notice. Should the nuisance not be timely abated, the director of health or fire marshal may remedy the situation through its officers, agents, employees or contractors. The expense of abating the nuisance shall be collected from the owner of the motel, including a service charge and penalty. Should voluntary payment not be tendered, then the cost of abating such nuisance shall be a lien on the property on which the motel is located.

(Ord. No. 8-99, § 10, 9-14-1999)

**Sec. 5-20. Penalties for violation of article.**

- a) Any person operating a motel in violation of any of the provisions of this article shall be guilty of a misdemeanor punishable by a fine as listed in the town fee schedule for each and every day that such violation shall continue.
- b) Any person found to have violated any provision of this article three (3) times shall forfeit his motel permit.

(Ord. No. 8-99, § 11, 9-14-1999)

**Sec. 5-21. Appeal.**

- a) Any person aggrieved by any order, requirement or decision made by an official under this article may take an appeal from such order or decision to the town manager within forty-eight (48) hours of the notice of violation by filing a written appeal with the town manager's office. The written appeal must be signed by the owner or the owner's agent and set forth why the finding of the violation was not proper.
- b) Upon the filing of a written appeal, the town manager shall schedule a hearing within fourteen (14) days. The decision of the town manager shall constitute the final decision of the town.

(Ord. No. 8-99, § 12, 9-14-1999)

**Secs. 5-22—5-29. Reserved.**

**Article 3. - Peddlers and Solicitors<sup>2</sup>**

**Sec. 5-30. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Chief of police* means the chief of police of the town or his designee.

*Peddler* means any person who travels from house to house selling or bartering any goods, wares, or merchandise whether on foot or from a motor vehicle.

*Person* means any individual, corporation, partnership, association or other entity, whether principal or agent, unless specifically exempted by statute from the provisions of this article.

*Solicitor* means any person traveling by foot or vehicle from house to house taking or attempting to take orders for the sale of goods, wares, or merchandise for future delivery, or for services to

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<sup>2</sup> **Editor's note**—Ord. No. 02-03, adopted March 25, 2003, enacted a new Art. 3 as set out herein. The former Art. V pertained to similar subject matter and was derived from Ord. No. 2-91, §§ 10-6, adopted May 9, 1991. Art. V was changed to Art. 3 with the new code.

**Cross reference**—Streets, sidewalks and other rights-of-way, state statute § 42-31 et seq.

**State law references**—Solicitation of charitable funds, state statute § 21a-175 et seq.; hawkers and peddlers, state statute § 21-36 et seq.; Home Solicitation Sales Act, state statute § 42-134a et seq.

be performed in the future whether or not such soliciting employs samples and whether or not deposits or advance payments are collected.

*Vendor* means any person who engages in temporary or transient business in the town either in one or more locations, selling goods, wares, merchandise or foodstuffs.

(Ord. No. 02-03, 3-25-2003)

**Cross reference**—Definitions generally, chapter I § 1-2 of this code book.

**Sec. 5-31. Hours of business.**

Persons are prohibited from traveling from house to house engaging in the business of peddler, vendor or solicitor within the corporate limits of the town except between the hours of 8:00 a.m. and 8:00 p.m. Persons engaged in the business of peddler, vendor or solicitor who do not travel from house to house are prohibited from engaging in such business within the corporate limits of the town except between the hours 5:00 a.m. and 8:00 p.m.

(Ord. No. 02-03, 3-25-2003)

**Sec. 5-32. License required; exemption; fee.**

Persons are prohibited from engaging in the business of peddler, vendor or solicitor within the corporate limits of the town without first obtaining a license as prescribed in this section. Charitable, philanthropic, ecclesiastical and civic organizations shall be exempt from the provisions of this section, provided that any such organization shall register with the chief of police on a form provided by the police department prior to engaging in any vendor, solicitor or peddler activity. The registration fee shall be as listed in the town fee schedule for any organization and may be waived for good cause. No fee shall be required from any veteran who qualifies under state statute § 21-37, nor from anyone when otherwise prohibited by law. A copy of such registration shall be provided to each registrant and shall be carried by any person while engaging in any vendor, solicitor or peddler activity on behalf of any such organization.

(Ord. No. 02-03, 3-25-2003)

**Sec. 5-33. Transaction of business on state highways and rights-of-way.**

Notwithstanding the provisions of § 5-32 vendors, peddlers and solicitors are prohibited from transacting business on state highways or state rights-of-way abutting thereto. Vendors transacting business on private property abutting a state highway shall provide ample parking for patrons, and no parking is permitted on the state highway or state right-of-way. A violation of such parking prohibition shall be a violation by the vendor and subject the vendor to sanctions in § 5-36.

(Ord. No. 02-03, 3-25-2003)

**Sec. 5-34. Sale of ice cream, candy, popcorn and similar foodstuffs prohibited; exception.**

Notwithstanding the provisions of § 5-31, selling or soliciting the sale of ice cream, candy, popcorn and similar foodstuffs by a vendor, peddler or solicitor within five hundred (500) feet in any direction of a public school on any day school is in session is prohibited from one-half hour prior to the time set by school authorities for the opening of school to one-half hour after the time set for the end of the school day. Selling or soliciting the sale of ice cream, candy, popcorn and similar foodstuffs in any park or playground in the town by a vendor, peddler or solicitor is

prohibited unless, in addition to meeting the other requirements of this article, prior written permission is obtained from the parks and recreation commission.  
(Ord. No. 02-03, 3-25-2003)

**Sec. 5-35. Application and licensing procedure.**

- a) *Application.* Applicants for a license under this article must file with the chief of police a sworn written application, in duplicate, on a form provided by the police department.
- b) *Investigation of applicant.* Upon the filing of an application, the chief of police shall investigate the fitness of the applicant to become licensed under this article. In doing so the chief of police may conduct a wanted persons check and a state police records check (SPBI) on the applicant(s). Should the applicant's fitness be found unsatisfactory, the chief of police shall deny the application and note on the application the reasons for the unsatisfactory finding. Should the applicant's fitness be found satisfactory, the chief shall note such satisfactory finding on the application. The issue of fitness is determined by whether issuance of the license is consistent with protecting the health and welfare of the town residents.
- c) *Health certificate.* No person making application under this article to sell or solicit the sale of foodstuffs shall be issued a license until providing to the chief of police a certificate executed by the director of health of the Central Connecticut Health District stating that the director of health of the Central Connecticut Health District has approved the methods and equipment used by the applicant as being in accordance with the state public health code and regulations promulgated under such code.
- d) *Zoning certificate.* No person making application under this article shall be issued a license until providing to the chief of police a certificate executed by the zoning enforcement officer of the town stating that the proposed method of sale in the application is consistent with the town zoning regulations.
- e) *Proof of sales and use tax permit.* No person making application under this article shall be issued a license until providing proof to the chief of police of having a valid state sales and use tax permit or an exemption permit from such tax.
- f) *Issuance; fees; period of validity.* The chief of police, upon a determination that the requirements of this section have been met and that a license can be issued, shall approve the application and issue a license to the applicant upon payment of license fees as listed in the town fee schedule. All licenses issued under this article are valid for one (1) year from the date of issuance and, upon expiration, require the submission of a new application and, if approved, payment of the license fee. Upon issuance of a license the chief of police shall note on the license whether the park and recreation commission has permitted the license holder to sell or solicit the items set forth in § 5-34.

(Ord. No. 02-03, 3-25-2003)

**Sec. 5-36. Penalty.**

Any person violating any provision of this article shall be guilty of a violation and shall be subject to a fine in the amount as listed in the town fee schedule. Every day that a person continues in violation of this article shall be deemed a separate violation. The police department of the town shall enforce this article through the issuance of a summons to any person violation the provisions thereof. Any license issued under this article may be revoked or suspended by the police department as provided in Sec. 5-37.



(Ord. No. 02-03, 3-25-2003) (Ord. No. 07-17, 9-19-2017)

**Sec. 5-37. Revocation or suspension; notice and hearing; appeals.**

Any license issued under this article may be revoked or suspended by the police department to protect the health and welfare of the town residents. Notice of the revocation or suspension shall be sent in writing to the license holder and shall set forth specifically the grounds for the revocation or suspension and the date by which the license holder must respond to appeal. Notice shall be mailed, postage prepaid, certified mail with return receipt requested and first-class mail, to the last known address of the license holder.

The license holder shall have the right to appeal the notice of revocation or suspension within fifteen (15) days of the date of the notice by submitting to the office of the police chief a written statement setting forth the grounds for the appeal. A hearing shall be set no later than thirty (30) days from the receipt of the license holder's written statement before an appeals officer who shall be a person designated by the town manager to hear such appeals. The appeals officer shall not be a member or employee of the police department. Notice of the time and place of the hearing shall be given to the license holder in the same manner as provided for the mailing of the notice of revocation or suspension.

The license holder shall appear at the hearing and present evidence on his/her/its behalf. If the license holder fails to appear, the appeals officer may affirm the decision of the police department to revoke or suspend the license upon a finding of proper notice.

A designated town official may present evidence on behalf of the town.

The appeals officer shall conduct the hearing in the order and form and with such methods of proof as he/she deems fair and appropriate. All testimony shall be given under oath or affirmation. The appeals officer shall announce his/her decision at the end of the hearing.

If the appeals officer affirms the decision of the police department to revoke or suspend the license, he/she may also submit a recommendation to the Town Council that the related fee paid by the license holder to the Town for the license in issue should be refunded in whole or in part to the license holder and the Town Council will consider and take action upon said recommendation.

The decision of the appeals officer shall be final and binding on all parties.

**Secs. 5-38—5-39. Reserved.**

**Article 4. - Sexually Oriented Business<sup>3\*</sup>**

**Part A. - Generally**

**Sec. 5-40. Declaration of article policy; findings; purpose and intent.**

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\* **Cross reference**—Zoning, Part Eight of this code book.

**State law reference**—Obscenity, state statutes § 53a-93 et seq.

The town council finds:

1. The operation of sexually oriented businesses in the town requires special regulation and supervision by the town to protect, preserve and promote the health, safety and welfare of the patrons of such businesses, as well as the health, safety and welfare of the town's residents. Further, protecting order and morality, preserving the character and preventing the deterioration of the town's neighborhoods, promoting retail trade, maintaining property values, and ensuring sanitary and safe public places are desirable objectives of the community and its leaders.
2. The town council has reviewed the following materials and information regarding sexually oriented business:
  - a. Virginia Adult Use Study dated March 1996, published by the Newport News Department of Planning and Development in the Newport News, Virginia;
  - b. A study called the "Adult Entertainment Businesses in Indianapolis" dated February 1984 which was conducted by the Department of Metropolitan Development, Division of Planning;
  - c. A study called the "Adult Entertainment Businesses in Oklahoma City: A study of Real Estate Appraisers" dated March 3, 1986 which was conducted by the City of Oklahoma City Community Development Department;
  - d. City of Renton v. Playtime Theatres, Inc. et.al., 475 US 41, 106 S.Ct.925 (1986);
  - e. Police records from the Orange Police Department relating to calls to the VIP store in Orange, Connecticut in 2003 and 2006;
  - f. Police records from the Berlin Police Department relating to calls to the Twin Spruce Motel located at 697 Berlin Turnpike;
  - g. Police records from the Hartford Police Department relating to calls to the VIP store in Hartford, Connecticut in 2003, 2004, 2005, 2006 and 2007;
  - h. Expert Opinion Testimony as set forth in the Expert Witness Disclosures in the case of Ten's Cabaret, Ltd. V. City of New York, et.al., Index No. 121197/02, Supreme Court of the State of New York, County of New York, dated March, 2008.
  - i. Survey of Texas Appraisers "Secondary Effects of Sexually Oriented Businesses on Market Values" by Connie B. Cooper, FAICP, Eric Damian Kelly, Ph.D., FAIC, and "Crime Related Secondary Effects-Secondary Effects of Off Site sexually Oriented Businesses" by Richard McCleary, Ph.D. dated June 2008;
  - j. "Men's Behavior Toward women After Viewing Sexually-Explicit Films: Degradation Makes a Difference," Mulac, Jansma and Linz; Communication Monographs, Vol. 69, No. 4, December 2002, pp.311-328;
  - k. "Crime Risk in the Vicinity of a Sexually Oriented Business: A Report to the Centralia City Attorney's Office" by Richard McCleary, Ph.D. dated February 28, 2004;
  - l. "Do Off Site Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence," McCleary and Weinstein, November 14, 2007;
  - m. "Men's Interaction with Woman After Viewing Sexually Explicit Films: Does Degradation Make a Difference?" Jansma, Linz, Mulac and Imrich, Communication Monographs, Volume 64, March 1997;
  - n. Selected Craigslist Postings in 2007 and 2008;

- o. City of Milford Adult Use Ordinance.
- 3. Statistics and studies performed by a substantial number of cities and towns in the United States indicate that:
  - a. Large numbers of persons, primarily male, frequent such sexually oriented businesses, especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called "adult" motion pictures, videotapes or live entertainment.
  - b. Such closed booths, cubicles, studios and rooms have been used by patrons, clients or customers of such sexually oriented businesses for the purpose of engaging in specified sexual activities.
  - c. Male and female prostitutes have been known to frequent such businesses in order to provide sex for hire to the patrons, clients or customers of such businesses within such booths, cubicles, studios and rooms.
  - d. Doors, curtains, blinds and other closures installed in or on the entrances and exits of such booths, cubicles, studios and rooms which are closed while such booths, cubicles, studios and rooms are in use encourage patrons using such booths, cubicles, studios and rooms to engage in specified sexual activities therein with prostitutes, other persons or by themselves, thereby promoting and encouraging prostitution and the commission of specified sexual activities which cause blood, semen, urine or other bodily secretion to be deposited on the floors and walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits.
  - e. Booths, cubicles, studios and rooms that are closed while they are in use often contain holes that have been cut or smashed out of the walls or other partitioning material. These holes permit the inhabitant of one booth, cubicle, studio or room to engage in specified sexual activities with the inhabitant of the adjoining booth, cubicle, studio or room. These holes promote and encourage specified sexual acts to occur between persons anonymously. Anonymous sexual contact poses a higher risk of spread of communicable diseases, including the AIDS virus, Hepatitis B and other sexually transmitted diseases. Further, the existence of such holes in booths, cubicles, studios and rooms at sexually oriented businesses provides an increased risk that blood, semen, urine or other bodily secretion will be deposited on the floors and walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits.
  - f. Specified sexual activities often occur at unregulated sexually oriented businesses that provide live adult entertainment. Specified sexual activities include sexual physical contact between employees and patrons of sexually oriented businesses and specifically include lap dancing or manual or oral touching or fondling of specified anatomical areas, whether clothed or unclothed. Such casual sexual physical contact between strangers may result in the transmission of communicable diseases, which would be detrimental to the health of the patrons and employees of such sexually oriented businesses.
  - g. The unregulated operation of sexually oriented businesses, including off-site adult businesses like adult bookstores, adult video stores and adult novelty stores, is associated with an increase in the incidence of sex-related crimes and other crimes and also has a disruptive effect on the surrounding neighborhood by causing

- excessive noise, parking problems, the presence of discarded sexually oriented material on residential lawns, and the performance of sexual acts in public places, as well as causing a deleterious effect on surrounding businesses and decrease in the value of surrounding property.
- h. Sexually oriented businesses that operate in close proximity to each other further contribute to an increase in crime, lower property values, blight and the downgrading of the quality of life and value of property in the adjacent area, and sexually oriented businesses that operate within a short distance of schools, churches, parks, libraries and other public facilities negatively impact such places and have an adverse effect upon persons, particularly children, walking to and from such places.
  - i. The reasonable regulation and supervision of such sexually oriented businesses tends to discourage prostitution, other sex-related crimes, anonymous and high-risk sexual contact and unsanitary sexual activity, excessive noise and property devaluation, thereby decreasing the incidences of communicable diseases and sex-related crimes, all thereby promoting and protecting the health, safety and welfare of the employees and the members of the public who patronize such businesses and protecting the health, safety and property interests of a town and its residents.
  - j. Location and zoning regulations alone do not adequately protect the public health, safety and welfare and thus certain requirements with respect to the ownership, employees, facility, operation, advertising, hours of business and other aspects of the sexually oriented business are in the public interest.
4. The continued unregulated operation of such sexually oriented businesses is and would be detrimental to the health, safety and general welfare of the residents of the town.
  5. The constitution and laws of the state grant to the town powers, especially the police power, to enact reasonable legislation and measures to regulate and supervise sexually oriented businesses in order to protect the public health, safety and welfare.
  6. It is the purpose and intent of the town council, in enacting this article, to regulate sexually oriented businesses to promote the health, safety and general welfare of the residents of the town and to establish reasonable and uniform regulations of such businesses in order to reduce or eliminate the adverse secondary effects of such sexually oriented businesses, protect residents from increased crime, preserve the quality of life, preserve the property values and the character of surrounding neighborhoods and businesses, deter the spread of blight, and protect against the threat to public health from the spread of communicable and social diseases.
  7. It is not the intent of the town council, in enacting this article, to deny to any person rights to speech protected by the United States or state constitutions, nor is it the intent of the council to impose any additional limitations or restrictions on the content of any communicative materials including sexually oriented films, videotapes, books or other materials. Further, by enacting this article, the council does not intend to deny or restrict the constitutionally protected rights of any adult to obtain or view any sexually oriented materials under the United States or state constitutions, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of such sexually oriented materials may have to sell, distribute or exhibit such materials.
- (Ord. No. 5-00, § 1, 6-20-2000; Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

**Sec. 5-41. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Adult arcade* means any establishment where one (1) or more still or motion picture projectors, slide projectors or similar machines, or other image producing machines, for viewing by five (5) or fewer persons each, are regularly used to show films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities.

*Adult cabaret* means any nightclub, bar, restaurant or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

1. Persons who appear nude or seminude;
2. Live performances that are characterized by the exposure of specified anatomical areas; or
3. Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities.

*Adult books* means any books, magazines, periodicals, pamphlets, or other printed materials that depict, display or describe specified anatomical areas or specified sexual activities.

*Adult entertainment* means:

1. Any exhibition of any adult-oriented motion picture, live performance, display or dance of any type that has as a significant or substantial portion of such performance, any performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal services offered customers, when such adult entertainment is held, conducted, operated or maintained for profit, direct or indirect; and
2. Any amusement machine that is regularly used for presenting material that is characterized by the depiction or description of specified anatomical areas or specified sexual activities, for observation by patrons thereof.

*Adult minimotion picture theater* means any enclosed building with a capacity of fifty (50) or less persons regularly used for showing films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities, for observation by patrons therein.

*Adult motion picture theater* means any enclosed building with a capacity of more than fifty (50) persons regularly used for showing films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified anatomical areas or specified sexual activities, for observation by patrons therein.

*Adult novelties* means:

- a. instruments, devices, toys or paraphernalia that are designed for or marketed primarily for stimulating human genital organs, sexual arousal or sadomasochistic use;
- b. instruments, devices, gag gifts, toys or paraphernalia that depict, display or are shaped in the form of specified anatomical areas; and
- c. oils, lotions, gels or creams that are designed for or marketed primarily for use upon specified anatomical areas and intended for stimulating human genital organs, sexual arousal or as an aid to enhance or promote specified sexual activities.

*Adult oriented store* means any establishment having:

1. a substantial or significant portion of its stock in trade in Adult Books, Adult Videos or Adult Novelties or any combination thereof;
2. any portion of its stock in trade in Adult Books, Adult Videos or Adult Novelties and in conjunction therewith has rooms, designated areas or facilities for the presentation, observation or use by patrons of any item sold or rented in such establishment.

*Adult theater* means any theater, concert hall, auditorium or similar commercial establishment that regularly features persons who appear nude or seminude or who appear in live performances that are characterized by the depiction or description of specified anatomical areas or specified sexual activities, for observation by patrons therein.

*Adult videos* means films, motion pictures, videocassettes, DVDs, software, slides or other photographic reproductions that depict, display or describe specified anatomical areas or specified sexual activities.

*Church* means any church, synagogue, mosque, temple or building that is used primarily for religious worship and related religious activities.

*Employee* means any and all persons, including independent contractors, who work in or at or render any services directly related to the operation of a sexually oriented business.

*Entertainer* means any person who provides adult entertainment within a sexually oriented business, whether or not a fee is charged or accepted for such entertainment and whether or not such entertainment is provided as an employee or independent contractor.

*Escort* means any person who, for any form of consideration, agrees or offers to act as a social 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.

*Escort agency* means any person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

*Inspector* means the town manager, chief of police, fire marshal, chief building official, director of health, zoning enforcement officer, their agent or representative, or any town or state employee designated to make inspections for public safety, fire code, building code, public health, zoning purposes, violations of this article, or for violations of other laws and ordinances of the town or state.

*Licensed premises* means any premises that requires a sexually oriented business license pursuant to this article, including any buildings, parking areas and all other portions of the property of which the licensee has control.

*Licensee* means any person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on an application for a license.

*Live adult entertainment* means any live performance by a person who appears nude or seminude or any live performance that is characterized by the exposure of specified anatomical areas.

*Massage parlor* means any establishment having a fixed business where any person engages in or carries on, or permits to be engaged in or carried on, any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the body with the hands or with the aid of any mechanical or electric apparatus or appliance with or without any supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powders, creams, lotions, ointments, or other similar preparations commonly used in this practice. The definition of massage parlor shall not include the practice of massage:

1. In any state-licensed hospital, nursing home, clinic, medical office or rehabilitation facility;
2. By a state-licensed physician, surgeon, chiropractor, osteopath, physical therapist, or massage therapist;
3. By any registered nurse, licensed practical nurse or technician working under the supervision of a state-licensed physician, surgeon, chiropractor, osteopath, physical therapist, or certified massage therapist who shall be present on the licensed premises during the time the service is rendered;
4. By trainers for any amateur or professional athlete or athletic team or school athletic program; or
5. By any state-licensed barber or beautician with regard to the massaging of the neck, face, scalp and hair for cosmetic or beautifying purposes.

*Masseur* means any person who, for any form of consideration, performs massage activities as described in the previous definition of this section.

*Minor* means any person under the age of eighteen (18) years.

*Nude model studio* means any place where a person, for any form of consideration, regularly appears nude or seminude or displays specified anatomical areas to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. A nude model studio shall not include a modeling class operated by an accredited public or private school or college.

*Nudity* means:

1. The appearance of human bare buttocks, anus, genitals, pubic region or the areola or nipple of the female breast; or
2. A state of dress that fails to opaquely and fully cover human buttocks, anus, genitals, pubic region or areola or nipple of the female breast.

*Operator* means any person operating, owning, managing, conducting or maintaining a sexually oriented business.

*Public building* means any building owned, leased or otherwise held by the United States, the state, the town, any other town, any fire district, any school district, or any other agency or political subdivision of the United States or the state, which building is used for governmental purposes.

*Public park and recreation area* means public land that has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, golf course, basketball or tennis courts, pedestrian or bicycle paths, open space, wilderness areas, or similar public land within the town that is under the control, operation, or management of the town, any other town, or the state.

*School* means any public, private or parochial educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, middle schools, junior high schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, alternative schools, junior colleges, colleges and universities. School includes the school grounds, but does not include any facility used primarily for another purpose and only incidentally as a school.

*Seminude* means a state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual activities is not intended to include any medical publications or films or bona fide educational publication or films, nor does it include any art or photography publications that devote at least twenty-five percent (25%) of the lineage of each issue to articles and advertisements dealing with subjects of art or photography. Nor does this definition apply to any news periodical that reports or describes current events and which, from time to time, publishes photographs of nude or seminude persons in connection with the dissemination of the news. Nor does this definition apply to publications or films that describe and report different cultures and which, from time to time, publish or show photographs or depictions of nude or seminude persons when describing cultures in which nudity or seminudity is indigenous to the population.

*Sexual encounter establishment* means a business or commercial establishment that, for any form of consideration, offers a place where two (2) or more persons may congregate, associate or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas. A sexual encounter establishment shall not include an establishment where



a state-licensed medical practitioner, psychologist, psychiatrist, or similar professional person engages in medically approved and recognized sexual therapy.

*Sexually oriented business* means:

1. An adult arcade, adult oriented store, adult cabaret, adult minimotion picture theater, adult motion picture theatre, adult theatre, escort agency, massage parlor, nude model studio or sexual encounter establishment;
2. Any premises to which the public, patrons, or members are invited or admitted and wherein an entertainer provides adult entertainment, or which premises are so physically arranged as to provide booths, cubicles, studios, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or wherein an entertainer provides adult entertainment, when such adult entertainment is held, conducted, operated or maintained for profit, direct or indirect; or
3. Any adult entertainment studio or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

*Specified anatomical areas* means:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola; or
2. Human male genitals in a discernibly turgid state, even if completely opaquely covered.

*Specified sexual activities* means:

1. Showing of human genitals in a state of sexual stimulation or arousal;
2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus;
3. Fondling or touching of another person's genitals, pubic region, buttocks or female breasts;
4. Lap dancing; or
5. Excretory functions as part of or in connection with any of such activities.

(Ord. No. 5-00, § 2, 6-20-2000; Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

**Cross reference**—Definitions generally, chapter I § 1-2 of this code book.

#### **Sec. 5-42 Penalties for violation of article.**

- a. Any licensee, operator, employee or other person who violates any of the provisions of this article shall be subject to a fine as provided in the town fee schedule for each such violation.
- b. Each violation of this article shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation.
- c. In addition to any fines or penalties imposed in this section, this article may be enforced by injunctive procedure in the superior court. The town may further recover from any

violation any and all costs and fees, including reasonable attorney's fees, expended by the town in enforcing the provisions of this article.

- d. This article shall not preclude any additional enforcement action taken by any appropriate town, state or federal official conducted pursuant to any applicable ordinance, regulation or law of the town or state or the United States of America.
- e. All remedies and penalties provided for in this section shall be cumulative and independently available to the town, and the town shall be authorized to pursue any and all remedies set forth in this section to the fullest extent allowed by law.

(Ord. No. 5-00, § 14, 6-20-2000; Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

## **Part B. - License**

### **Sec. 5-43. Required.**

- a. Except as provided in § 5-50(c), from and after the effective date of the ordinance from which this article is derived it shall be unlawful for any person to engage in, conduct or carry on or permit to be engaged in, conducted or carried on, in or upon any premises in the town, the operation of a sexually oriented business without first obtaining a license to operate from the town.
- b. A license may be issued for only one (1) sexually oriented business located at a fixed and certain place. Any person who desires to operate more than one (1) sexually oriented business must have a license for each such business.
- c. It shall be a violation of this article for any owner, operator, entertainer or employee to knowingly work in or about, or to knowingly perform any service directly related to, the operation of any unlicensed sexually oriented business.
- d. Each license shall be specific to a licensee and to a location and may not be sold, assigned or transferred to any other person or location in any way, including, but not limited to:
  - 1. The sale, lease or sublease of the business;
  - 2. The transfer of shares, securities or interests that constitute a controlling interest in the business, whether by sale, exchange or similar means; or
  - 3. The establishment of a trust, gift or other similar legal devise that transfers ownership or control of the business, except for a transfer by bequest or other operation of law upon the death of the licensee or a person possessing the ownership or control of the licensee.

(Ord. No. 5-00, § 8, 6-20-2000; Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

### **Sec. 5-44. Application.**

- a. The operator of each sexually oriented business shall submit an application to the town clerk together with an application fee as listed in the town fee schedule prior to the commencement of business or within sixty (60) days of the effective date of the ordinance from which this article is derived for any establishment already open for business. The town clerk shall date stamp the application and shall promptly deliver the application to the town manager. The application shall be made upon a form prepared by the town manager and disseminated by the town clerk.

- b. The application shall be signed and filed by a person having direct control or management of the proposed sexually oriented business. In instances where the applicant is a partnership, limited liability company or corporation, the application shall be signed and filed by a duly authorized partner, member, manager, officer, director, or majority shareholder of such entity, as the case may be. The application shall be sworn to be true and correct by the applicant.
- c. The applicant for a license shall furnish the following information:
  - 1. Name and business and residence address of the applicant, owner, operator, manager and any other person having direct control or management of the sexually oriented business, including all fictitious names. If the applicant is a partnership, the names of all general partners. If the applicant is a limited liability company, the names of all members and managers of such company. If the applicant is a corporation, the names of all officers, directors and shareholders holding a ten percent (10%) or greater interest in the total number of shares of such corporation;
  - 2. Name and business and residence address of the spouse of each individual named in § (c)(1) of this section;
  - 3. Name and address of all employees and any other persons directly involved in the operation of the sexually oriented business, including all fictitious names;
  - 4. Written proof that the applicant is at least eighteen (18) years of age;
  - 5. A recent photograph of the applicant;
  - 6. The applicant's driver's license number and social security number or federal employer identification number;
  - 7. If the applicant is:
    - a. A partnership, the application shall be accompanied by the partnership agreement, if any;
    - b. A limited partnership, the application shall specify the name of the partnership, the date and state of the filing of its certificate of limited partnership, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of the partnership agreement, if any, and by evidence that such partnership is in good standing under the laws of the state;
    - c. A limited liability company, the application shall specify the name of the company, the date and state of the filing of its articles of organization, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of the operating agreement, if any, and by evidence that such company is in good standing under the laws of the state;
    - d. A corporation, the application shall specify the name of the corporation, the date and state of incorporation, and the name and address of its statutory agent for service of process, and shall be accompanied by a copy of its bylaws, if any, and by evidence that such corporation is in good standing under the laws of the state;
    - e. Operating under a fictitious name, the application shall be accompanied by a copy of the applicant's recorded trade name certificate.
  - 8. The applicant's sexually oriented business or adult entertainment license or permit history, which shall include, but not be limited to whether such person is currently licensed or has previously operated in this or another municipality or state under

- license; the names and locations of such businesses; whether the applicant has had such license suspended or revoked; the dates of and reasons for such suspension or revocation; and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation. Such history shall include any entity of which the applicant was a partner, member, officer, director or shareholder;
9. Any criminal convictions of the applicant, operator, employees and other persons directly involved in the management or control of the sexually oriented business, to any crime involving moral turpitude, prostitution, obscenity or other sex-related crimes in any jurisdiction within three (3) years of the date of filing of the application. Such crimes include, but are not limited to, obscenity, child pornography, prostitution, patronizing a prostitute, promoting or permitting prostitution and sexual assault, in the state, being state statutes §§ 53a-194, 53a-196, 53a-196a, and 53a-196b (obscenity); state statutes §§ 53a-196c and 53a-196d (child pornography); state statutes §§ 53a-82, 53a-83 and 53a-83a (prostitution, patronizing a prostitute, and patronizing a prostitute from a motor vehicle); state statutes §§ 53a-86, 53a-87, 53a-88 and 53a-89 (promoting or permitting prostitution); and state statutes §§ 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-72b and 53a-73a (sexual assault);
  10. The location of the sexually oriented business to be operated by the applicant, including the street address, legal description of the property, and telephone number, if any;
  11. The exact nature of the entertainment to be conducted at the sexually oriented business;
  12. A sketch or diagram showing the configuration of the premises drawn to a designated scale and with marked dimensions of the interior of the premises, including a statement of total floor space occupied by the business. Such sketch or diagram shall include, without limitation, all doors, windows, bars, stages, manager's stations, restrooms, dressing rooms, booths, cubicles, rooms, studios, compartments, stalls, overhead lighting fixtures and any areas where patrons are not permitted; and
  13. A statement by the applicant that he is familiar with the provisions of this article, is in compliance with them, and consents to the authority of the town in licensing and regulating the proposed sexually oriented business.
- d. The town manager shall have the right to request additional information and documentation of the applicant and the proposed business to support or clarify any information previously provided.
  - e. If a license to operate a sexually oriented business is granted, the information furnished in the application, including employee information, shall be updated within thirty (30) days of any material changes. Such update shall be filed at the office of the town clerk, who shall promptly forward such update to the town manager.  
(Ord. No. 5-00, § 9, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

**Sec. 5-45. Licensing procedure.**

- a. The town manager shall be responsible for investigating, granting, denying, renewing, suspending and revoking all sexually oriented business applications and licenses pursuant to this article. Upon receipt of a properly completed application with all required

attachments, the town manager shall immediately forward copies of such application to the following town officials for their investigation:

1. The chief of police shall investigate the criminal convictions, qualifications and suitability of the applicant to be licensed and shall inspect the premises for compliance with all laws and regulations.
  2. The fire marshal shall investigate the compliance of the proposed premises with all applicable fire codes and laws.
  3. The chief building official shall investigate the compliance of the proposed premises with all applicable building codes and laws.
  4. The director of health shall investigate the compliance of the proposed premises with all applicable public health codes and laws.
  5. The zoning enforcement officer shall investigate the compliance of the proposed premises with all applicable zoning regulations and laws and also compliance with all distance requirements set forth in § 5-49.
- b. Within thirty (30) days of the date the application was filed, all such investigations to be performed pursuant to § (a) of this section shall be completed. At the conclusion of each investigation, each town official shall indicate on the photocopy of the application his approval or disapproval of the application, state the reasons for any disapproval, date it, sign it, and return it immediately to the town manager. A town official shall disapprove an application if he finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, article, regulation or other law in effect in the town, including this article.
- c. Within forty-five (45) days of the date the application was filed, the town manager shall render a decision approving or denying such application and shall file such decision with the town clerk and mail such decision to the applicant by certified mail, return receipt requested. If the town manager denies the application, he shall state in writing the reasons for such denial. All copies of the investigations performed pursuant to § (b) of this section shall be attached to the town manager's decision.
- d. The town manager shall issue to the applicant a license to operate a sexually oriented business within forty-five (45) days of the date the application was filed if all requirements for a sexually oriented business described in this article are met, unless he finds that:
1. The applicant is under eighteen (18) years of age.
  2. The applicant or any other person who will be directly engaged in the management and operation of the business has been convicted in this or any other state of any of the crimes specified in § 5-44(c)(9), regardless of the pendency of any appeal, within three (3) years of the date the application was filed.
  3. Within five (5) years of the date the application was filed, the applicant or his spouse has been denied a license by the town to operate a sexually oriented business, has had a license revoked by the town, or has failed to correct any material violation of this article for more than thirty (30) days, of which the licensee has received written notice.
  4. Within three (3) years of the date the application was filed, the applicant or his spouse has had a license to operate a sexually oriented business denied or revoked by another municipality or state.

5. The applicant or his spouse is overdue on payment to the town of any taxes, fees, fines or other penalties relating to the sexually oriented business or the licensed premises.
6. The business as proposed by the applicant, if permitted, would not have complied with all applicable statutes, codes, ordinances, laws and regulations including, but not limited to, the fire, building, health, and zoning codes of the town, and this article. If the premises are not in compliance, the applicant shall be advised of the reasons in writing and what, if any measures the applicant can take to bring the premises into compliance for a license to issue.
7. The premises are not in compliance with all distance requirements set forth in § 5-49.
8. The applicant has failed to complete the license application as specified in § 5-44(c), has failed to provide any supporting or clarifying documentation when requested by the town manager, or has provided materially false or misleading information in the application.
9. The application fee has not been paid.
10. The granting of the application would violate a statute, ordinance or court order.
11. The applicant, if a limited partnership, limited liability company or corporation, is not in good standing under the laws of the state.
- e. Any failure of the license to issue within forty-five (45) days of the date the application was filed shall constitute a denial subject to appeal.
- f. If the sexually oriented business application is denied, the town shall retain one-half (½) of the permit fee for expenses incurred in the investigation of the application and shall return the remainder to the applicant.
- g. When an application is denied solely for reasons stated in § (d)(6) of this section and such violation is correctable, the applicant shall be given an additional thirty (30) days from the date of such notification of denial to bring the premises into compliance. Upon verification by inspection that the correction has been made, which shall be determined no later than forty-eight (48) hours after receipt by the town manager of written notice of such correction, a license shall be issued to the applicant so long as no new violations or other disqualifying factors have occurred within such thirty (30) days.
- h. As a condition of the license, the entire licensed premises shall be open to random physical inspections for compliance with this article by any inspector during all hours when the premises are open for business. Any refusal to allow such inspection shall constitute a violation of this article.
- i. The license, if granted, shall state on its face the name and residence address of the person to whom it is granted, the expiration date, the address of the sexually oriented business, and the department or public official and telephone number to report any violation of this article. The license shall also include a notice that the subject premises are subject to random inspections by inspectors of the town for compliance with this article.
- j. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at all times.

(Ord. No. 5-00, § 10, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

#### **Sec. 5-46. Expiration and renewal.**

- a. Each license issued to a licensee shall expire one (1) year from the date it is issued, unless it is renewed upon application of the licensee accompanied by payment of a renewal fee as listed in the town fee schedule. Such application and application fee shall be submitted by the licensee to the town clerk at least thirty (30) days before the expiration date of the license, but not more than ninety (90) days before. Provided the application is filed within such time and the renewal fee paid, the town manager shall, prior to the expiration of the previous license, renew the license for the same licensee at the same location for an additional one (1) year, unless the random inspection reports in the licensee's file reveal uncorrected violations of this article or uncorrected violations of any fire, building, health or zoning codes or regulations, of which the licensee has received written notice, or any condition under § 5-45(d) that could have been grounds for denial of the original application has since become true. If renewed, the town manager shall mail the renewed license to the licensee prior to the expiration date of the previous license. If not renewed, the town manager shall mail a notice of nonrenewal to the licensee by certified mail, return receipt requested, prior to the expiration date of the previous license, stating the reasons for such nonrenewal. No sexually oriented business shall continue operations without a renewed license.
- b. If there are uncorrected violations of this article or uncorrected violations of any fire, building, health or zoning codes or regulations, of which the licensee has received written notice, the license renewal shall be delayed for a maximum of thirty (30) days beyond the original expiration date in order for all corrections to be completed and inspections done to determine compliance. If the licensee does not make such corrections of violations within such thirty (30) days, no license renewal shall be issued. The town manager shall mail a notice of nonrenewal to the licensee by certified mail, return receipt requested, within five (5) days after the extended thirty (30)-day period, stating the reasons for such nonrenewal.
- c. Notwithstanding the provisions in § (b) of this section, in no instance shall a renewal be issued to a licensee who, within the one (1)-year period of the previous license has had two (2) or more material violations of this article, to which the licensee has received written notice, or has had one (1) or more uncorrected material violations of this article pending for over thirty (30) days.
- d. Should a license not be renewed for any violation of this article, no license shall issue for the same licensee for five (5) years from the expiration of the previous license.

(Ord. No. 5-00, § 11, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

**Sec. 5-47. Suspension and revocation.**

- a. The town manager may suspend a sexually oriented business license for a period not to exceed thirty (30) days upon his determination that a licensee, operator or employee has materially violated any part of this article. The town manager shall issue such suspension in writing stating the reasons therefor and shall notify the licensee by certified mail, return receipt requested, addressed to the licensee at his business or residence address, or by service by any process server at the usual place of abode of the licensee or at the licensed premises. If a suspension is issued for a correctable violation, the town manager, within forty-eight (48) hours of his receipt of written notice that the correction

has been made, shall terminate such suspension upon verification by inspection. No sexually oriented business shall continue operations while under suspension.

- b. The town manager shall revoke any license where any of the following occur:
  - 1. It is discovered that materially false or misleading information or data was given on, or material facts were omitted from, any application for sexually oriented business license.
  - 2. Any taxes, fees, fines or other penalties relating to the licensed premises or required to be paid by this article become more than thirty (30) days delinquent.
  - 3. A licensee, operator, employee or other person directly involved in the management or control of the sexually oriented business has been convicted of any crime specified in § 5-44(c)(9).
  - 4. A licensee has had within a one (1)-year period two (2) or more material violations of this article, to which the licensee has received written notice.
  - 5. A licensee has one (1) or more uncorrected material violations of this article pending for over thirty (30) days, to which the licensee has received written notice.
  - 6. A licensee has failed to correct within thirty (30) days any violation for which his licensee was suspended pursuant to § (a) of this section.
  - 7. The license or any interest therein is transferred in any way.
  - 8. A licensee, operator or employee has knowingly allowed any live performance or conduct featuring any specified sexual activities to occur on the licensed premises.
  - 9. A licensee, operator or employee has knowingly allowed any illegal activity to occur on the licensed premises including, but not limited to, prostitution, gambling, or the possession, use or sale of controlled substances.
  - 10. A licensee, operator or employee has knowingly operated the sexually oriented business while the business's license was under suspension.
- c. At least ten (10) days prior to the revocation of any license, the town manager shall issue such revocation in writing stating the reasons therefor and shall notify the licensee by certified mail, return receipt requested, addressed to the licensee at his business or residence address, or by service by any process server at the usual place of abode of the licensee or at the licensed premises.
- d. Subject to § 5-48(f), no sexually oriented business shall continue operations after its license has been revoked, and no new license shall be issued for the same licensee for five (5) years from the date of revocation.

(Ord. No. 5-00, § 12, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

**Sec. 5-48. Appeal.**

- a. Within five (5) days of receipt of notification of a denial, nonrenewal, suspension or revocation of a license, the licensee may contest such decision by submitting a written application to the town clerk requesting a public hearing before the town council.
- b. The public hearing shall be scheduled to take place no later than twenty (20) days from the date of the application for such hearing. Not less than ten (10) days before the date of such hearing, a notice of hearing shall be sent to the licensee by certified mail, return receipt requested, and posted in a conspicuous place on the proposed or licensed premises.



- c. In such application the licensee may request that the town manager or any other town official who investigated the application or inspected the premises shall be present at the public hearing. At such hearing, the licensee shall have the opportunity to present evidence on his behalf and shall have the right to cross examine all town officials and witnesses. The town council shall conduct the hearing in order and form and with such methods of proof as it deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation.
  - d. Immediately following such hearing, the town council shall enter its vote to either sustain or overrule the denial, nonrenewal, suspension or revocation. Within five (5) days after such hearing, the town council shall issue written notice of its final decision, stating the reasons therefor, and shall forward such decision to the licensee by certified mail, return receipt requested. If the denial, nonrenewal, suspension or revocation is overruled, the town manager shall immediately issue such license or renewal of license, or revoke the suspension or revocation, as the case may be.
  - e. The decision of the town council may be appealed to the superior court within twenty (20) days of such written notice of such decision.
  - f. During the pendency of any appeal of a nonrenewal, suspension or revocation, the operations of the sexually oriented business may be maintained by the licensee, unless otherwise ordered by the superior court.
- (Ord. No. 5-00, § 13, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

## **Part C. - Regulations**

### **Sec. 5-49. Location.**

- a. No sexually oriented business shall be permitted on a site that is less than one thousand and five hundred (1,500) feet from any other site containing a sexually oriented business.
- b. No sexually oriented business shall be permitted on a site that is less than one thousand (1,000) feet from any site containing a church, school, public building, public park or recreation area.
- c. No sexually oriented business shall be permitted on a site that is less than two hundred and fifty (250) feet from any residentially zoned land as defined in the town zoning regulations.
- d. No sexually oriented business shall be permitted within the same building, structure or portion thereof that is used for residential purposes or that contains another sexually oriented business.
- e. All distances contained in this section shall be measured by taking the nearest straight line between the respective lot boundaries of each site.
- f. Section X1, chapter Y, of the town zoning regulations, as may be amended from time to time, are hereby incorporated by reference as a part of this article, and any violation of such regulations shall be deemed a violation of this article.

(Ord. No. 5-00, § 3, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

### **Sec. 5-50. Existing businesses.**

- a. Any sexually oriented business lawfully operating on the effective date of the ordinance from which the article is derived but in violation of § 5-49 shall be deemed a nonconforming use. No nonconforming use shall be increased, enlarged, extended or altered except to make it a conforming use.
- b. Any sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of any church, school, public building, public park or recreation area within one thousand (1,000) feet of such business, or of any residentially zoned land within two hundred and fifty (250) feet of such business. However, this subsection applies only to the renewal of a valid license and does not apply to a license application submitted after a license has expired or has been revoked.
- c. Any existing sexually oriented business on the effective date of the ordinance from which this article is derived shall submit an application for a license pursuant to § 5-43 and shall comply with all regulations herein within sixty (60) days of the effective date of the ordinance from which this article is derived. Otherwise, such existing sexually oriented business shall cease operations.

(Ord. No. 5-00, § 7, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

#### **Sec. 5-51. Operating requirements.**

The following requirements shall apply to all sexually oriented businesses within the town:

(1) Generally.

- a. No licensee, operator or employee of a sexually oriented business shall perform or permit to be performed, offer to perform, or allow patrons to perform any live performance or conduct featuring any specified sexual activities on the licensed premises.
- b. Every sexually oriented business shall comply with all applicable statutes, codes, ordinances, laws and regulations including, but not limited to, the fire, building, health, and zoning codes of the town and state.
- c. Every sexually oriented business shall be physically arranged in such a manner that the entire interior portion of any room or other area used for the purpose of viewing Adult Books, Adult Videos or Adult Novelties or other types of adult entertainment shall be clearly visible from the common areas of the premises. Visibility into such areas shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever. Such areas shall be readily accessible at all times to employees and shall be continuously open to view in their entirety. It shall be a violation of this article to install enclosed booths, cubicles, rooms or stalls within sexually oriented businesses, for whatever purpose, but especially for the purpose of providing for the secluded viewing of adult-oriented motion pictures or other types of adult entertainment.
- d. Every sexually oriented business, including common areas, entryways, parking areas, restrooms, and any room or other area used for the purpose of viewing adult-oriented motion pictures or other types of adult entertainment, shall be well-lighted. The entire premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted to access at an illumination of not less than one (1) footcandle as measured at the floor or ground

- level. It shall be the duty of the operator and his agents to ensure that such illumination is maintained at all times that any patron is present on the premises.
- e. No booths, cubicles, rooms or stalls used for the purpose of viewing adult-oriented motion pictures or other types of adult entertainment shall be occupied by more than one person at any one time. No holes shall be allowed in the walls or partitions that separate each such room from any adjoining room.
  - f. No sexually oriented business shall be conducted in such a manner that permits the observation of any material depicting specified anatomical areas or specified sexual activities from outside of the building that houses the sexually oriented business.
  - g. No sexually oriented business shall advertise the availability at such business of any activity that would be in violation of this article or any state or federal law. Nor shall any exterior sign, display, decoration, show window or other advertising of such business contain any material depicting, describing or relating to specified anatomical areas or specified sexual activities.
  - h. No alcoholic beverage or other intoxicant shall be displayed, served, ingested or sold on the premises of any sexually oriented business unless permitted by the state. No licensee, operator or employee shall be under the influence of any alcoholic beverage or other intoxicant while working at a sexually oriented business. No patron who is under the influence of any alcoholic beverage or other intoxicant shall be allowed to enter any sexually oriented business.
  - i. No gambling shall be permitted by any person in any sexually oriented business.
- (2) Employees.
- a. The licensee and operator shall be responsible for the conduct of all employees while on the licensed premises. Any act or omission of any employee constituting a violation of the provisions of this article shall be deemed the act or omission of the licensee and operator, when such licensee or operator knew or should have known of such act or omission, for purposes of determining whether the operating license shall be renewed, suspended or revoked and whether the licensee and operator shall be subject to the penalties imposed by this article.
  - b. No licensee or operator shall knowingly employ in any sexually oriented business any person who, within three (3) years of the commencement of such employment, has been convicted in this or any other state of any of the crimes specified in § 5-44(c)(9), regardless of the pendency of any appeal.
- (3) Minors.
- a. No licensee, operator or employee of a sexually oriented business shall allow or permit any minor to enter into or in any way loiter in or on any part of the licensed premises, purchase goods or services at the licensed premises, or work at the licensed premises as an employee.
  - b. Every sexually oriented business shall display a sign outside each entrance of such business bearing the words "Sexually Oriented Business. Persons Under 18 Not Admitted" in legible letters between two (2) and six (6) inches tall.
- (4) Hours of business. No sexually oriented business shall open to do business before 10:00 a.m., Monday through Saturday, nor shall it remain open after 1:00 a.m. Tuesday through Friday, nor after 2:00 a.m. Saturday, Sunday or any legal holiday as designated in state statute § 1-4.

(Ord. No. 5-00, § 4, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

**Sec. 5-52. Live adult entertainment.**

In addition to the requirements contained in § 5-51, the following requirements shall apply to all sexually oriented businesses within the town containing live adult entertainment:

1. No person shall perform live adult entertainment for patrons of a sexually oriented business except upon a stage at least eighteen (18) inches above floor level and separated from any and all such patrons by a minimum distance of four (4) feet or as approved by the liquor division of the state department of consumer protection.
2. Separate dressing room facilities for male and female entertainers shall be provided that shall not be occupied or used in any way by any one other than such entertainers.
3. No entertainer shall expose any specified anatomical areas to any patron of a sexually oriented business either before or after a performance including, but not limited to, when such entertainer is entering or exiting the stage.
4. No entertainer, either before, during or after a performance, shall have physical contact with any patron of a sexually oriented business while on the licensed premises.
5. No employee of any sexually oriented business shall engage in any live adult entertainment while acting as a waiter, host or bartender for such business.

(Ord. No. 5-00, § 5, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

**Sec. 5-53. Massage parlors.**

In addition to the requirements contained in § 5-51, the following requirements shall apply to all massage parlors within the town:

1. Facility requirements.
  - a. Construction of rooms used for toilets, tubs, steam baths and showers shall be waterproofed with approved waterproof materials.
  - b. Toilet facilities shall be provided in convenient locations. When five (5) or more persons of different sexes are on the premises at the same time, separate toilet facilities shall be provided. Toilets shall be designed as to the sex accommodated therein.
  - c. Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.
2. Operating requirements.
  - a. Every portion of the massage parlor, including appliances and apparatus, shall be kept clean and operated in a sanitary condition. Adequate lighting shall be provided, and each room or enclosure where a massage is administered shall have an illumination of not less than one (1) footcandle as measured at the floor level while such room or enclosure is occupied.
  - b. All employees of the massage parlor shall be clean and wear clean outer garments, which use is restricted to the massage parlor. Provisions for a separate dressing room for each sex must be available on the licensed premises with individual lockers for each employee. Doors to such dressing rooms shall open inward and shall be self-closing.

- c. All employees and masseurs shall be modestly attired. Diaphanous, flimsy, transparent, form-fitting, or tight clothing is prohibited. Clothing must cover the employee's or masseur's chest at all times. Hemlines of skirts, dresses or other attire may be no higher than three (3) inches above the top of the knee.
- d. All specified anatomical areas of patrons must be covered by towels, cloth or undergarments when in the presence of any employee or masseur. It shall be unlawful for any person in a massage parlor to expose his specified anatomical areas to any other person or for any person to expose the specified anatomical areas of another person.
- e. It shall be unlawful for any person in a massage parlor to engage in any specified sexual activities or to place his hand upon, to touch with any part of his body, to fondle in any manner, or to massage any specified anatomical areas of any other person.
- f. All massage parlors shall be provided with clean, laundered sheets and towels in sufficient quantity and shall be laundered after each use thereof and stored in an approved sanitary manner.
- g. Wet and dry heat rooms, shower compartments and toilet rooms shall be thoroughly cleaned each day business is in operation. Bathtubs shall be thoroughly cleaned after each use.
- h. No massage parlor shall place, publish, or distribute or cause to be placed, published, or distributed any advertising material that depicts any portion of the human body or contains any written text that would reasonably suggest to prospective patrons that any services are available other than those services described in § 5-41, or that employees or masseurs are dressed in any manner other than described in § (2)c of this section.
- i. All services enumerated in § 5-41 shall be performed in a cubicle, room, booth or area within the massage parlor, which cubicle, room, booth or area shall have transparent doors or walls that all activity therein shall be visible from outside the same.
- j. No massage parlor shall carry on, engage in, or conduct business on Sunday nor on any other day before 8:00 a.m. or after 9:00 p.m.
- k. A full schedule of service rates shall be posted in a prominent place within the massage parlor in such a manner as to come to the attention of all patrons. No charges other than the specified rates for specified services shall be allowed and all patrons shall be notified of the full cost of services prior to the rendering of any service.

(Ord. No. 5-00, § 6, 6-20-2000, Ord. of 9-6-2005; Ord. of 10-5-2006; ordinance rescinded 02-03-2009; Ord. No. 01-09, 02-03-2009)

**Secs. 5-54—5-69. Reserved.**

**Article 5. - Disqualification of Certain Contractors from Municipal Work**

**Sec. 5-70. Disqualification of contractors.**

(a) As used in this article, the term "contractor" means any person, firm, partnership or corporation which has contracted or seeks to contract with a municipality, or to participate in such a contract, directly or indirectly, in connection with any public works of the municipality, including professional consultants.

(b) The town manager shall have the authority to disqualify any contractor, for a period up to two (2) years, from bidding on, applying for, or participating as a subcontractor under, contracts with the municipality for one (1) or more of the causes set forth in § (c) of this article. The town manager shall notify such contractor of the disqualification by certified mail indicating the reasons for such disqualification and the length of such disqualification. The contractor shall have ten (10) days from receipt of such notice to request a hearing to contest the disqualification. If a hearing is requested then the town manager shall appoint a hearing officer to conduct a hearing. At the hearing the town and the contractor subject to the disqualification shall be provided the opportunity to present evidence or testimony as to whether or not the disqualification shall be upheld. The hearing officer shall issue a written decision within ninety (90) days of the last date of such hearing and state in the decision the reasons for the action taken, and, if the contractor is disqualified, the period of such disqualification. The existence of one (1) or more of the causes for disqualification set forth in § (c) shall not be the sole factor in determining whether the contractor shall be disqualified. The hearing officer shall consider the seriousness of the contractor's acts or omissions and any mitigating factors. The hearing officer shall send a copy of the written decision to the town manager and the contractor by certified mail, return receipt requested.

(c) The reasons for disqualification of a contractor from participating in municipal work are as follows:

- (1) Conviction or entry of a plea of guilty or nolo contendere for or admission to commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
  - (2) Conviction or entry of a plea of guilty or nolo contendere or admission to the violation of any state or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty which affects responsibility as a municipal contractor;
  - (3) Conviction or entry of a plea of guilty or nolo contendere or admission to the violation of any state or federal antitrust, collusion or conspiracy law arising out of the submission of bids or proposals on a public or private contract or subcontract;
  - (4) A willful failure to perform in accordance with the terms of one (1) or more public contracts, agreements or transactions;
  - (5) A history of failure to perform or of unsatisfactory performance of one (1) or more public contracts, agreements or transactions; or
  - (6) A willful violation of a statutory or regulatory provision or requirement applicable to a public contract, agreement or transaction.
- (d) For purposes of a disqualification, conduct may be imputed as follows:
- (1) The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor and the contractor knew of or had reason to know of such conduct. The term "other seriously improper conduct" does not include advice from an attorney, accountant or other paid consultant if it was reasonable for the contractor to rely on such advice.

- (2) The fraudulent, criminal or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the contractor who participated in, knew of or had reason to know of the contractor's conduct.
  - (3) The fraudulent, criminal or other seriously improper conduct of one (1) contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement and these contractors knew of or had reason to know of such conduct.
- (e) The town manager may reduce the period or extent of disqualification, upon the contractor's request, supported by documentation, for one (1) or more of the following reasons:
- (1) Newly discovered material evidence;
  - (2) Reversal of the conviction upon which the disqualification was based;
  - (3) Bona fide change in ownership or management;
  - (4) Elimination of other causes for which the disqualification was imposed; or
  - (5) Other reasons the municipality deems appropriate.
- (f) The town council may grant an exception permitting a disqualified contractor to participate in a particular contract or subcontract upon a written recommendation by the head of the contract awarding agency that there is good cause, in the best interest of the town, for such action.
- (Ord. No. 03-09, 05-19-2009)

**Secs. 5-71—5-79. Reserved.**

## **Article 6. Preferential Bidding Procedures**

**Sec. 5 – 80. Definition.** For the purpose of this section "town-based business" means a business with a principle place of business located within the town. A business shall not be considered a town-based business unless satisfactory evidence has been produced to the town manager whereby the business establishes that it owns real property which has its principle place of business and pays taxes on real and personal property to the town.

Such evidence may include proof of ownership of real estate by copy of deed and copies of paid tax bills for real and personal property. The personal property shall be used by the business in the performance of the bid.

**Sec. 5-81. Low Bidder.** On any project, which shall be defined as all contracts to be made or let for work to be done or for supplies to be purchased for the town which is ten thousand dollars (\$10,000) or more, the lowest bidder shall be determined in the following manner:

- a. Any town-based bidder which has submitted a bid of no more than five percent (5 %) higher than the low bid, when such bid is between ten thousand dollars (\$10,000) and five hundred thousand dollars (\$500,000), provided such town-based bidder agrees to accept the award of the bid in the amount of the low bid. If more than one (1) town-based bidder has submitted a bid no more than five percent (5%) higher than the low bid and has agreed to accept

the award at the amount of the low bid, the lowest responsible bidder shall be that one (1) of such town-based bidder which has submitted the lowest bid.

b. Any town-based bidder which has submitted a bid of no more than three and one-half percent (3.5%) higher than the low bid, when such bid is between five hundred thousand and one dollars (\$500,001) and one million dollars (\$1,000,000), provided such town-based bidder agrees to accept the award of the bid in the amount of the low bid. If more than one town-based bidder has submitted a bid no more than three and one-half percent (3.5%) higher than the low bid and has agreed to accept the award at the amount of the low bid, the lowest responsible bidder shall be that one of such town-based bidder which has submitted the lowest bid.

c. Any town-based bidder which has submitted a bid of no more than two percent (2%) higher than the low bid, when such bid is one million and one dollars (\$1,000,001) or higher, provided such town-based bidder agrees to accept the award of the bid in the amount of the low bid. If more than one (1) town-based bidder has submitted a bid no more than two percent (2%) higher than the low bid and has agreed to accept the award at the amount of the low bid, the lowest responsible bidder shall be that one (1) of such town-based bidder which has submitted the lowest bid.

d. The low bidder.  
(Ord. No. 04-09, 05-19-2009)

**Sec. 5-82. State and federally funded projects.** The provisions of this section shall not apply to any projects which prohibit preferential bidding procedures which may include but may not be limited to state and federally funded projects.

(Ord. No. 04-09, 05-19-2009)