

Title 5

BUSINESS LICENSES AND REGULATIONS

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Chapter 5.04

BUSINESS LICENSES IN GENERAL

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The provisions of this chapter apply to the issuance of every kind of license or permit authorized by the city. Whenever a

provision of a particular licensing ordinance shall be deemed in conflict with any phrase or section of this chapter, the provision of the particular licensing ordinance shall prevail. The city council shall establish reasonable fees and/or charges for all licenses and permits issued within the jurisdiction of the city by annual resolution after a public hearing. (Ord. 06-04 (part), 2006: prior code § 5.04.010)

5.04.020 Unlawful activities not licensed.

No provision contained in this title shall be construed so as to license any trade, business, occupation, vocation, pursuit, profession, or entertainment prohibited by any law of the state of Montana, or prohibited by the provisions of this code or other ordinance of the city. (Prior code § 5.04.020) (Ord. No. O11-02, 2-1-2011)

5.04.030 Valid license required.

No person shall conduct any activity for which a license is required by the city without first procuring a valid license therefor. (Prior code § 5.04.030)

5.04.040 Application requirements.

Every person desiring to conduct any business or other activity in the city for which a license is required must file with the city clerk-treasurer, on a form to be provided by the city clerk-treasurer, an application for license in writing. The fee for such license must accompany the application. The application shall be subscribed and sworn to by the applicant before an officer authorized to take oaths, and shall set forth:

- A. The name of the applicant;
- B. His place of permanent residence;
- C. His local business address, if any;
- D. Date of his arrival in the city;

E. City or county from which last license, if any, received;

F. Description of the activity to be licensed, and its location;

G. Whether the applicant shall act as principal or agent;

H. If acting as agent, the name and place of business of the principal or employer;

I. If the applicant is an agent, the principal's acknowledgment of such agency must accompany the application. (Ord. 97-2 § 4 (part), 1997; prior code § 5.04.040)

5.04.060 Examination of applicant.

A. Nothing contained in this title shall be construed to create any vested right in any person, to the assignment, renewal, reissuance or continuance of any license; the right thereto shall be always vested in the city council.

B. The city council may notify or cause to be notified, in writing, the applicant to appear before the council for the purpose of further inquiry into the facts and circumstances of the application and the fitness of the applicant to be licensed.

C. The council may direct the chief of police or other city officer to investigate the facts stated in each license application, the qualifications and character of the applicant and the officers and owners of the firm to be licensed. (Ord. 1041, 1992; Prior code § 5.04.060)

5.04.061 Fire inspection for businesses.

Licenses being applied for require a fire inspection. The fire inspector's report will be returned within ten days, and the license applied for may then be issued.

A fee for the fire inspection shall be collected at the time the business application is filed with the city. The amount of the fee shall be established by resolution of the city council, and may be increased from

time to time by further resolution as the council may deem appropriate. (Ord. 94-24, 1994; Ord. 1043, 1992)

5.04.070 Issuance and denial.

A. If the city clerk-treasurer shall determine that any applicant for a license or any person interested in the ownership of any business sought to be licensed are persons of such character that the business to be licensed may be operated in such manner as to be detrimental to the public health, peace, morals or general welfare of the city, such application shall be denied; otherwise the application shall be granted.

B. If the city clerk-treasurer shall find, after investigation, that the premises or buildings of the business to be operated under license are in unsafe condition, or are constructed or operated in such a way as to be detrimental to the public welfare, the city clerk-treasurer shall deny the application for license. (Ord. 97-2 § 4 (part), 1997; Ord. 1042, 1992; prior code § 5.04.070)

5.04.080 Term of licenses.

A. Unless council shall provide otherwise, either by ordinance or in an individual license, the term of every license issued under authority of this title shall be for one year, and shall commence July 1st and end June 30th.

B. Businesses which have been notified and have not paid their license fee by September 1st will pay, in addition to such fees, a minimum fine of fifty dollars. (Ord. 1020, 1992; prior code § 5.04.080)

5.04.090 License prorated when.

The full business license fee shall be charged and collected for all licenses issued after the beginning of the license year on July 1st, but prior to January 1st. Half of the license fee shall be charged and collected for all licenses issued after January

1st. (Ord. 1021, 1992; prior code § 5.04.090)

5.04.100 Clerk-treasurer to collect fees.

The city clerk-treasurer shall be charged with the collection of the fees for the licenses required by this title. (Ord. 97-2 § 4 (part), 1997; prior code § 5.04.100)

5.04.110 Fee to be returned upon denial.

If a license application shall be denied, the license fee that may have accompanied the application shall be returned to the applicant. (Prior code § 5.04.110)

5.04.120 Inspection—Refusal unlawful.

A. Any business licensed under this title shall at all times be subject to inspection by officials of the city. The licensee, and/or employees of such licensee, shall at all times permit any official of the city to enter the premises where such licensed business is conducted, for inspection of such premises and the activity under license.

B. It is unlawful for any person to restrict or obstruct any city official in the exercise of the right of entry to a licensed premises or the inspection of any licensed activity. (Prior code § 5.04.120)

5.04.130 Council authority.

No licensee shall assign any license granted by the city, unless authorized by the city clerk-treasurer in writing or by ordinance. All applications made and all licenses issued, shall bear on their face the following:

This application is made subject to the terms and conditions of the ordinance of the City of Laurel, Montana, which are hereby agreed to and this license is not transferable. (Ord. 97-2 § 4 (part), 1997; Ord. 1044, 1992; prior code § 5.04.130)

5.04.140 Renewal.

Application for renewal of a license shall be made in the same manner as application for the original license. (Prior code § 5.04.140)

**5.04.150 Licenses issued—
Clerk-treasurer to keep record.**

The city clerk-treasurer shall keep a record of all licenses granted by the city, showing for each license the date issued, to whom issued, the amount collected, the date of expiration, the premises described therein, change of location, or transfer, if any, and any other pertinent fact with reference thereto. (Ord. 97-2 § 4 (part), 1997; prior code § 5.04.150)

5.04.160 License required for each business.

Except as otherwise provided, no license issued by the council shall cover more than one classification of license or more than one trade, business, occupation, pursuit, vocation or entertainment. (Prior code § 5.04.160)

5.04.170 Suspension or revocation when.

A. Whenever the city council determines that any licensee is conducting the activity licensed in a manner which violates this code or any ordinance or regulation of the city, or operating the business licensed in any manner detrimental to the public health, morals or welfare, the council may order the suspension or revocation of the license.

B. The council may revoke or suspend any license for fraud or misrepresentation in its procurement, or for a violation of any state statute.

C. If, when revoked, any license has an unexpired period of six months or more,

fifty percent of the license fee collected thereunder shall be refunded to the licensee upon demand; provided, that the demand for refund be made within thirty days after such revocation. (Prior code § 5.04.170)
(Ord. No. O11-02, 2-1-2011)

**5.04.180 Suspension or revocation—
Procedure.**

Before considering the suspension or revocation of any license issued under this title, the council shall give the licensee an opportunity to appear before it and be heard in relation to any matter under investigation. The licensee shall be notified in writing of the time and place of the hearing or investigation. (Prior code § 5.04.180)

5.04.190 Misrepresentation prohibited.

No person shall wilfully misrepresent any material fact in any license application made by him. (Prior code § 5.04.190)

**5.04.200 Wrongful application—
Appeal.**

When an applicant for a license believes that he has been wrongfully classified as to the type of license to be taken out, by the city clerk-treasurer, such applicant shall appeal the city clerk-treasurer's decision to the council within thirty days of the city clerk-treasurer's decision and such appeal must be made before any suit is filed in any court in the state. No license shall be issued during the appeal. (Ord. 97-2 § 4 (part), 1997; prior code § 5.04.200)

Chapter 5.08**BUSINESS LICENSE FEES****Sections:**

- 5.08.010 General business license fees.**
- 5.08.020 Utility services license fees.**
- 5.08.030 Apartments, hotels, motels, boardinghouses—License fees.**
- 5.08.040 Contractor's license and insurance requirements.**

5.08.010 General business license fees.

The city council shall establish city license fees and/or charges for all businesses of whatever kind or nature within the jurisdiction of the city by annual resolution after a public hearing. (Ord. 06-04 (part), 2006: Ord. 94-23, 1994: prior code § 5.44.010)

5.08.020 Utility services license fees.

The city license fee for a business dealing in utility services, including, but not limited to, electric and light power, natural gas, and telephone service shall be established annually by city council resolution after a public hearing. (Ord. 06-04 (part), 2006: prior code § 5.44.020)

5.08.030 Apartments, hotels, motels, boardinghouses—License fees.

A. The city license fee for apartments and boardinghouses in which there are three or more rental units shall be established annually by city council resolution after a public hearing.

B. The city license fee for hotels and motels shall be established annually by city

council resolution after a public hearing. (Ord. 06-04 (part), 2006: prior code § 5.44.030)

5.08.040 Contractor's license.

A. No person shall do business as a contractor in the city without first obtaining a city business license. Prior to the city's issuance of the license, contractor shall complete a license application and pay the fee prescribed by council resolution.

B. A contractor is defined in this section as an individual, firm, partnership, corporation, association or any combination of these, who undertakes or offers to undertake or engages in the business of constructing, altering or repairing buildings or other structures or sidewalks or street pavements, including but not limited to the following:

1. General building contractors;
2. Cement or concrete contractors;
3. Masonry contractors;
4. Carpentry contractors;
5. Acoustical contractors;
6. Electrical contractors;
7. Drywall contractors;
8. Excavating contractors;
9. Fencing contractors;
10. Glazing contractors;
11. Heating, air conditioning and refrigeration contractors;
12. Lawn, chemical and fertilizer applicators;
13. Paint contractors;
14. Plastering contractors;
15. Plumbing contractors;
16. Roofing contractors;
17. Sewer and drain layers;
18. Sheet metal contractors;
19. Cleaning contractors;
20. Window contractors;
21. Wrecking and salvage contractors;
22. Black top sealer contractors;
23. Landscaping contractors;
24. Swimming pool contractors;

- 25. Insulation contractors;
- 26. Siding contractors;
- 27. Sign contractors.

C. 1. In the event that any of the above named contractors are licensed by any department of the State of Montana Professional and Occupational Licensing, that individual, or in the event of an entity, or an employee of that entity, must have a current license as issued by the agency regulating that profession or occupation.

2. In the event a state license is required as above, the city can require the state license number to be included on the application submitted to the city.

D. If any owner of property wishes to do any of the work performed by any of the contractors as stated above on his own property, he shall not be required to obtain a business license. However, this provision does not in any way affect the owner's requirement to obtain the necessary permits to perform any of the work.

E. This section does not affect the city's bond requirements for work impacting city property, including but not limited to, streets, alleys, sidewalks, parks, easements and other rights-of-way. (Ord. 97-2 § 4 (part), 1997; Ord. 94-6, 1994)
(Ord. No. O10-02, 6-8-10; Ord. No. O12-04, 9-18-12)

Chapter 5.12

ALCOHOLIC BEVERAGE LICENSES

Sections:

- 5.12.010 License required.**
- 5.12.020 Application and issuance.**
- 5.12.040 Beer retailer fee.**
- 5.12.050 Beer and wine retailers fee.**
- 5.12.060 All beverage retailer fee.**
- 5.12.070 Organization fee.**
- 5.12.080 Due date of license fees.**
- 5.12.090 Hours of sale regulated.**
- 5.12.100 Public consumption prohibited—Exceptions granted by permit.**
- 5.12.110 Inspection of licensed establishments.**
- 5.12.120 Fee disposition.**

5.12.010 License required.

No person to whom a license has been issued under the Montana Alcoholic Beverage Code shall engage in any activity for which he is so licensed without first having also obtained an alcoholic beverage license from the city. (Prior code § 5.36.010)

5.12.020 Application and issuance.

The city clerk-treasurer shall issue an alcoholic beverage license to any person to whom a license has been issued under the Montana Alcoholic Beverage Code when application is made upon a form to be provided by the clerk-treasurer and the required fee paid. (Ord. 97-2 § 4 (part), 1997; prior code § 5.36.020)

5.12.040 Beer retailer fee.

A. The license fee to the city for any unit of a nationally chartered veteran's organization doing business as a beer retailer shall be

established annually by city council resolution after a public hearing.

B. The license fee to the city for all other persons doing business as a beer retailer for the year July 1, 1985 to June 30, 1986, and for all subsequent years shall be established annually by city council resolution after a public hearing. (Ord. 06-04 (part), 2006: Ord. 882, 1986: prior code § 5.36.040)

5.12.050 Beer and wine retailers fee.

A. The license fee to the city for any unit of a nationally chartered veteran's organization doing business as a beer and wine retailer shall be established annually by city council resolution after a public hearing.

B. The license fee to the city for all other persons doing business as a beer and wine retailer for the year July 1, 1985 to June 30, 1986, and for all subsequent years shall be established annually by city council resolution after a public hearing. (Ord. 06-04 (part), 2006: Ord. 883, 1986: prior code § 5.36.050)

5.12.060 All beverage retailer fee.

A. The license fee to the city for any unit of a nationally chartered veteran's organization doing business as an all beverage retailer shall be established annually by city council resolution after a public hearing.

B. The license fee to the city for all other persons doing business as an all beverage retailer for the year July 1, 1985, to June 30, 1986, and for all subsequent years shall be established annually by city council resolution after a public hearing. (Ord. 06-04 (part), 2006: Ord. 884, 1986: prior code § 5.36.060)

5.12.070 Organization fee.

The license fee to the city for any fraternal club or organization entitled to an alcoholic beverage license under the Montana Alcoholic

Beverage Code shall be established annually by city council resolution after a public hearing. (Ord. 06-04 (part), 2006: prior code § 5.36.070)

5.12.080 Due date of license fees.

All license fees shall be due on the first day of July of each year and the license shall be for a period from the first day of July until the thirtieth day of June of each year. All applications must be filed with the city clerk-treasurer on or before the first day of June of each year or so that it may be acted upon by the council prior to the first day of July. (Ord. 97-2 § 4 (part), 1997; prior code § 5.36.080)

5.12.090 Hours of sale regulated.

A. All places where liquor and beer, or either liquor or beer, are sold, offered for sale or given away at retail for consumption on the premises shall be closed on any day from two a.m. to eight a.m.

B. During the hours above given, it is unlawful for any licensed establishment to sell, offer for sale or give away any beer, wines or liquor, and during such hours all persons except the licensee and his employees must be excluded from the licensed premises; provided, that where such licensed establishment is operated in conjunction with a hotel, restaurant, bus depot, railway terminal or other lawful business other than the sale of intoxicating liquor or beer, then such other lawful business need not be closed, but only the part thereof where such beer or liquor is sold. (Prior code § 5.36.090)

5.12.100 Public consumption prohibited—Exceptions granted by permit.

A. It is unlawful for any person to drink, consume, transport, carry or possess any alco-

holic liquor, except in the original package and with the seal unbroken, on any public street, sidewalk, parkway, public parking lot or semipublic parking lot. The term "semipublic parking lot" shall include any area wherein motor vehicles are parked by the public in conjunction with any business, enterprise, commercial establishment, office building or apartment building.

B. The city council may grant permits for the consumption of alcoholic liquor on public streets, sidewalks and public and semipublic parking lots. Applicants shall make a request for such permit to the city council, in writing, containing such information as the council may hereafter require. No fee shall be charged for the permit. Permits must be issued in advance of the event. Applicants must appear in person before the city council at the time the council considers the application. The permit shall be limited to the specific date, time and location set forth in the application, unless altered by the council in its discretion. Permits shall not be granted by the council unless it is satisfied that proper security will be provided by the applicant, including the prevention of persons under the age of twenty-one from attending the event. The council may, in its discretion, require the applicant to provide liability insurance covering the city, before the permit is granted, protecting the city from liability or cost in case of accident, injury or death to any persons, or injury to property.

C. Any person, firm, or corporation violating the provisions of this chapter shall be fined not less than twenty-five dollars or more than five hundred dollars for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. (Ord. 989, 1991: prior code § 5.36.115)

5.12.110 Inspection of licensed establishments.

The city police, or other inspector designated by the city shall at all times have free access to the premises or of any licensed brewer, wholesaler, retailer or club, for the purpose of inspection. (Prior code § 5.36.120)

5.12.120 Fee disposition.

All receipts from license fees collected under the provisions of this chapter shall be deposited to the credit of the city's general fund. (Prior code § 5.36.130)

Chapter 5.20**JUKEBOXES****Sections:**

- 5.20.010** **Definitions.**
- 5.20.020** **License required.**
- 5.20.030** **Application requirements.**
- 5.20.040** **Amusement license fees.**
- 5.20.050** **Display of license required.**
- 5.20.060** **Transfer of license.**

5.20.010 **Definitions.**

“Jukebox” means any music vending machine, contrivance or device which, upon insertion of a coin, slug, token, plate, disc, or key into any slot, crevice or other opening, or by payment of any price, operates or may be operated for the emission of songs, music or similar amusements. (Prior code § 5.24.010)

5.20.020 **License required.**

Any person displaying for public patronage or keeping for operation any jukebox or mechanical amusement device as defined in this chapter shall be required to obtain from the city a license therefor. (Prior code § 5.24.020)

5.20.030 **Application requirements.**

Application for the license required by the preceding section shall be made to the city clerk-treasurer upon a form supplied for that purpose. The application for such license shall contain the following information:

- A. Name and address of applicant;
- B. Place where machine or device is to be displayed or operated and the business conducted at that place;

C. Any other information of a like nature required by the city. (Ord. 97-2 § 4 (part), 1997; prior code § 5.24.030)

5.20.040 **Amusement license fees.**

The annual license fee for each business or establishment containing any amusement devices or games, including, but not limited to, pool tables, jukeboxes, electronic games, and pinball machines, excepting devices as are covered by M.C.A. Title 23, Chapter 5, Part 6, shall be established annually by city council resolution after a public hearing. (Ord. 06-04 (part), 2006; Ord. 02-19, 2002; Ord. 915, 1987; prior code § 5.24.040)

5.20.050 **Display of license required.**

Every person issued a license under authority of this chapter shall post the same permanently and conspicuously at the location of the machine on the premises where the device is operated or maintained for operation. (Prior code § 5.24.050)

5.20.060 **Transfer of license.**

A. If the licensee shall move his place of business to another location within the city, the license may be transferred to such new location upon application to the city clerk-treasurer, giving the street and number of the new location.

B. If the business of the licensee is sold or transferred, the license may be transferred to the purchaser or transferee; provided, however, that the city clerk-treasurer be notified of such transfer. (Ord. 97-2 § 4 (part), 1997; prior code § 5.24.060)

Chapter 5.24**JUNK DEALERS****Sections:**

- 5.24.010 License required.**
- 5.24.020 License fee.**
- 5.24.030 Exemption.**
- 5.24.040 License to state location.**
- 5.24.050 Change of location requires permission.**
- 5.24.060 Acting as pawnbroker prohibited.**

5.24.010 License required.

No person shall engage in the business of buying or selling or dealing in junk, rags, old rope, paper, bagging, old iron, iron bars, copper, brass, tin, empty bottles, rubber, lead, or any other articles that are ordinarily bought or dealt in by persons commonly called junk dealers, without being licensed for such purpose by the city. (Prior code § 5.12.010)

5.24.020 License fee.

The city license fee for engaging in the junk business shall be established annually by city council resolution after a public hearing. (Ord. 06-04 (part), 2006: prior code § 5.12.020)

5.24.030 Exemption.

The provisions of this chapter shall not apply to persons engaged only in buying or collecting rags or paper to be used exclusively in the manufacture of paper. (Prior code § 5.12.030)

5.24.040 License to state location.

Every license granted to any keeper of a junk shop shall designate the location where

the junk trade is to be carried out. (Prior code § 5.12.040)

5.24.050 Change of location requires permission.

No junk dealer shall change the location of his business without the written permission of the city. (Prior code § 5.12.050)

5.24.060 Acting as pawnbroker prohibited.

No keeper of a junk shop as such shall carry on, or hold a license to carry on the business of a pawnbroker. (Prior code § 5.12.060)

Chapter 5.28**PAWNBROKERS****Sections:**

- 5.28.010** **Definitions.**
5.28.020 **License required.**
5.28.030 **License fee.**
5.28.040 **Regulating pawnbroker registers.**
5.28.050 **Pawnbrokers daily report.**
5.28.060 **Purchaser to identify seller.**
5.28.070 **Holding period.**
5.28.080 **Order to hold property.**
5.28.090 **Persons from whom articles shall not be taken.**
5.28.100 **Regulating purchases from minors.**

5.28.010 **Definitions.**

Unless the context requires otherwise, in this chapter the following definitions apply:

“Pawnbroker” means any person whose business is to take or receive by way of pledge, pawn or exchange of any goods, wares or merchandise, or any kind of personal property whatsoever, as security for the repayment of money loaned.

“Precious” and “semiprecious metals or stones” means metals such as, but not limited to, gold, silver, platinum, pewter and stones such as, but not limited to, Alexandrites, diamonds, emeralds, garnets, opals, rubies, sapphires and topaz. For the purpose of this chapter, other minerals, stones or gems customarily regarded as precious or semiprecious, such as ivory, coral, pearls, jade, etc., are deemed to be precious or semiprecious stones.

“Purchase” means giving money to acquire any valuable article in full or part satisfaction

of a debt, or taking a valuable article for trade, or taking a valuable article for resale for the purpose of full or part satisfaction of debt.

“Purchaser” means any person, pawnbroker, secondhand dealer or valuable article dealer holding himself out to the public as being engaged in the business of buying valuable articles; or any person, pawnbroker, secondhand dealer or valuable article dealer who purchases five or more valuable articles during any thirty-day period. A person purchasing valuable articles from an estate or from a retail or wholesale merchant is not included.

“Seller” means any person offering a valuable article, secondhand good or used merchandise for money to any purchaser; offering a valuable article, secondhand good or used merchandise in full or part satisfaction of a debt; or offering a valuable article, secondhand good or used merchandise for resale for the purpose of full or part satisfaction of a debt.

“Valuable article” means any tangible personal property consisting, in whole or in part, of precious or semiprecious metals or stones, whether solid, plated or overlaid, including, but not limited to, household goods, jeweleries, United States Commemorative medals or tokens, and gold bullion, and including foreign currency when purchased for more than its face value or foreign currency exchange value.

“Valuable article dealer” means any person who engages in the business of buying and selling, trading or taking as pledge, pawn or security for money loaned, any valuable article. (Ord. 1055, 1993: prior code § 5.20.010)

5.28.020 **License required.**

No person shall engage in the business of pawnbroker within the city or own, operate or conduct a pawn shop unless he has obtained a

valid license issued by the city. (Prior code § 5.20.020)

5.28.030 License fee.

The fee for a city license to engage in the business of pawnbroker shall be established annually by city council resolution after a public hearing. (Ord. 06-04 (part), 2006: prior code § 5.20.030)

5.28.040 Regulating pawnbroker registers.

A. Any person that carries on the business of pawnbroker or valuable article dealer shall keep a register in a form prescribed by the city, in which shall be entered and legibly written in the English language in ink, at the time of each loan or receipt of personal property, the following information: The name, address and date of birth of the seller, and the seller's drivers license number or other identification number from any other allowed form or identification pursuant to Section 5.28.060; the date, time and place of the purchase; an accurate and detailed account and description of each article being purchased, including, but not limited to, any trademark, identification number, serial number, model number, brand name or other identifying marks on such article; and a description by weight and design of precious and semiprecious metals or stones. The purchaser shall also obtain a written declaration of the seller's ownership which shall state whether the article is totally owned by the seller, how long the seller has owned the article, whether the seller or someone else found the article, and if the article was found, the details of its finding. No entry made in such register shall be erased, obliterated or defaced.

B. The seller shall sign his or her name in the register and on the declaration of the seller's ownership.

C. Such register shall, at all reasonable times, be open to inspection by the city.

D. The purchaser shall keep each register for at least two years after the last date of purchase of an article described therein. (Ord. 1056, 1993: prior code § 5.20.040)

5.28.050 Pawnbrokers daily report.

A. Except as provided in subsection (B) of this section, any person carrying on the business of pawnbroker, or valuable article dealer in the city must, before the hour of twelve noon of each day, except days the business is closed all day, make a clear and true copy of the register entries required by Section 5.28.040 for the preceding twenty-four hours, and must deliver a copy of the same to the city.

B. The copy of the register entries shall be personally delivered to the city no later than twenty-four hours from the time of the last entry in the register, or shall be sent to the city through the United States mail, postmarked no later than twenty-four hours from the time of the last entry in the register. It shall be presumed that the receipt of the same by the city occurred twenty-four hours from the time of mailing stamped on the postmark. (Ord. 1057, 1993)

5.28.060 Purchaser to identify seller.

A. No purchaser shall purchase, receive, pledge, pawn or exchange any valuable article, secondhand goods or used merchandise without first securing adequate identification from the seller. Adequate identification shall be limited to the following:

1. A valid Montana driver's license, or a valid Montana photo identification card; or

2. A valid driver's license containing a picture, by another state; or

3. A military identification card.

B. In addition to the above, the purchaser shall obtain from each seller, a clear print of the right thumb. Such print shall be attached to the register required above and surrendered to the city at the time the daily register is required. (Ord. 1058, 1993)

5.28.070 Holding period.

A. Except as provided in subsection (B) of this section, a purchaser shall hold all articles within the jurisdiction of this article for a period of ten days. The article shall be held on the licensed premises of the purchaser, or some other secured location within the city, and shall not be disposed of or altered from the form in which they were received. The ten-day holding period shall commence on the day the city receives a copy of the register. For the purpose of computing the holding period, Sundays and legal holidays are excluded. The purchaser shall permit any appropriate city official to inspect the article during the ten-day period.

B. Stamped and assayed gold and silver bullion and gold coins shall not be subject to the holding requirement imposed by subsection (A) of this section. In lieu of such requirement, the purchaser shall be required to record the identity of any person to whom the purchaser transfers any bullion or coin, and the date, time and place of such transfer. The record shall be kept on the purchaser's premises for a period of thirty days and shall be available for inspection by any appropriate city official during the thirty days. (Ord. 1059, 1993)

5.28.080 Order to hold property.

Whenever the city notifies any purchaser, in writing, not to sell any property received or purchased by the purchaser, such property shall not be sold, altered or removed from the licensed premises for a period of thirty days. The hold order shall cease to have effect at the end of the thirty-day period and shall not be renewable. All held property shall be made available to any appropriate city official to be inspected, fingerprinted and photographed during this holding period. (Ord. 1060, 1993)

5.28.090 Persons from whom articles shall not be taken.

It shall be unlawful for any pawnbroker or valuable article dealer to receive, purchase or trade any article from a person who is under the influence of alcohol, under the influence of drugs, or insane. (Ord. 1061, 1993)

5.28.100 Regulating purchases from minors.

A. No pawnbroker or person employed in a pawnbroker's establishment shall purchase any article from a person less than eighteen years of age, without first obtaining the written consent of the parent or legal guardian of such minor.

B. Any person who shall violate any of the provisions of this section shall, upon conviction, be punished in accordance with Section 1.36.010. (Ord. 1062, 1993)

Chapter 5.36

PUBLIC DANCEHALLS AND ENTERTAINMENT

Sections:

- 5.36.010** **Definitions.**
- 5.36.020** **License required.**
- 5.36.030** **License fee.**
- 5.36.040** **Applicant to meet safety requirements.**
- 5.36.050** **Platform required when.**
- 5.36.060** **Obscene entertainment prohibited.**
- 5.36.070** **Suspension of license—
Chief of police authority.**

5.36.010 **Definitions.**

The following words, when used in this chapter, shall have the following meanings and constructions:

“Dancehall” means any cabaret, beer parlor, restaurant, cafe, nightclub, or any other place which invites or permits the public generally to engage in public dancing and whose rules for admission are not based upon personal selection or personal invitation. The fact that no admission charge is made shall not affect the nature thereof.

“Entertainment” means instrumental music, singing or entertainment by live performers, whether such entertainment is carried on by paid or voluntary entertainers, patrons, or employees of the establishment, except entertainment shall not include radio or phonographically controlled entertainment. (Prior code § 5.28.010)

5.36.020 **License required.**

No entertainment or dancing shall be allowed in any establishment that sells beer or alcoholic liquor of any kind, unless such es-

tablishment shall first obtain an entertainment and dancehall license. (Prior code § 5.28.020)

5.36.030 **License fee.**

The license fee shall be established annually by city council resolution after a public hearing in addition to any other license fees paid under the code. The license shall not be transferable to a subsequent owner. (Ord. 06-04 (part), 2006: prior code § 5.28.030)

5.36.040 **Applicant to meet safety requirements.**

An applicant for a dancehall license shall be required to maintain an area in his establishment for dancing and it shall be free and clear of any tables or stools. (Prior code § 5.28.040)

5.36.050 **Platform required when.**

An applicant for an entertainment license shall be required to maintain a platform or other exclusive area provided for such purpose and no entertainer or performer shall be permitted to leave such platform or area while entertaining or performing. (Prior code § 5.28.050)

5.36.060 **Obscene entertainment prohibited.**

No owner, proprietor or holder of any license shall permit any obscene entertainment or entertainment that encourages immoral conduct. (Prior code § 5.28.060)

5.36.070 **Suspension of license— Chief of police authority.**

The chief of police is authorized and empowered, upon being informed or believing a dancehall and entertainment license is being used in such a way that the establishment is becoming a nuisance, or is being operated in

such a manner as to encourage obscene or immoral conduct among the entertainers or among the patrons of the establishment, the chief of police may pick up the license from the establishment and the same shall be suspended until the holder appears before the council, when the council shall decide whether the license shall be returned, suspended or revoked. (Prior code § 5.28.070)

Chapter 5.40**TAXICABS****Sections:**

- 5.40.010** **Definitions.**
- 5.40.020** **License required.**
- 5.40.030** **Annual license fee for taxicabs.**
- 5.40.040** **Application procedure.**
- 5.40.050** **Applicant to be investigated.**
- 5.40.060** **Liability insurance required.**
- 5.40.070** **Issuance and denial.**
- 5.40.080** **Display required.**
- 5.40.090** **License cancellation.**

5.40.010 **Definitions.**

The following words and phrases, when used in this chapter, shall have the meanings ascribed to them in this section.

“Owner” means a person who owns or operates a taxicab business having two or more taxis.

“Taxicab” means a motor vehicle regularly engaged in the business of carrying passengers for hire and not operating on a fixed route or fixed schedule. (Prior code § 5.32.010)

5.40.020 **License required.**

No person shall operate or permit a taxicab owned or controlled by him to be operated as a vehicle for hire upon the streets of the city without having first obtained a license from the city. (Prior code § 5.32.020)

5.40.030 **Annual license fee for taxicabs.**

A. The annual fee for an owner shall be established annually by city council resolution after a public hearing whether he or she drives

a taxicab or not. (Ord. 06-04 (part), 2006: Ord. 1032, 1992: prior code § 5.32.030)

5.40.040 **Application procedure.**

Application for a license to operate a taxicab business within the city shall be filed with the city clerk-treasurer upon forms provided by the clerk-treasurer. An owner shall set forth such information as may be necessary to show the number of taxicabs to be operated under the license and such other information as the council may require, and including names and valid drivers license numbers for all drivers. Proof of such compliance with all state laws and regulations governing taxicabs including Public Services Commission approval shall be supplied. (Ord. 02-20, 2002: Ord. 97-2 § 4 (part), 1997; Ord. 1033, 1992: Ord. 1027, 1992: prior code § 5.32.040)

5.40.050 **Applicant to be investigated.**

The chief of police shall investigate the applicant for a taxicab license and, if all the requirements of this chapter have been complied with, he shall recommend the granting of such license. (Ord. 1034, 1992: prior code § 5.32.050)

5.40.060 **Liability insurance required.**

A. Before the issuance of any license under this chapter, the applicant therefor shall furnish the city clerk-treasurer with evidence that any and all vehicles operated as taxicabs by or for the applicant are covered by liability insurance with an insurance company authorized to do business in the state in amounts not less than the following:

1. For injury or death of one person, one hundred thousand dollars;

2. For injury or death of more than one person in one accident, two hundred thousand dollars;

3. For damage to or destruction of property in any one accident, fifty thousand dollars.

B. Such insurance shall be kept in force and shall contain a clause obligating the company issuing the same to give written notice to the city clerk-treasurer at least ten days in advance of cancellation thereof. The license granted shall terminate immediately if the insurance lapses, expires or is terminated, but may be reinstated for the unexpired term when the insurance coverage has been reinstated. (Ord. 97-2 § 4 (part), 1997; prior code § 5.32.060)

city, he shall deliver his license to the city clerk-treasurer for cancellation. (Ord. 97-2 § 4 (part), 1997; Ord. 1035, 1992: prior code § 5.32.090)

5.40.070 Issuance and denial.

The application for a license to conduct a taxicab business or drive a taxicab within the city and the recommendations of the chief of police shall be referred to the city council for approval or rejection. No application shall be approved for a license except upon a proper application showing that the applicant has complied with the provisions of this chapter and with any rules and regulations that may be adopted by the council for the protection and safety of the public in the use and operation of taxicabs. (Prior code § 5.32.070)

5.40.080 Display required.

Every driver's license issued under the provisions of this chapter shall be displayed at all times in plain view of passengers in the taxicab. (Prior code § 5.32.080)

5.40.090 License cancellation.

When any person licensed under the provisions of this chapter desires to discontinue his right to operate a taxicab business within the

Chapter 5.44

TRANSIENT MERCHANTS

Sections:

- 5.44.010 Definition.**
- 5.44.020 License required.**
- 5.44.030 Exceptions to provisions.**
- 5.44.040 License fee.**
- 5.44.050 Application requirements.**
- 5.44.060 Issuance.**
- 5.44.070 Display of license required.**

5.44.010 Definition.

"Transient merchant," otherwise called itinerant vendor or peddler, means any person, whether acting as owner, agent, consignee or employee, whether a resident of the city or not, who engages in a temporary business of selling, delivering, or offering for sale, goods, wares and merchandise and subscriptions within the city and who, in furtherance of such purpose, uses or occupies the streets, alleys or sidewalks of the city or any structure, motor vehicle, or other place within the city for the exhibition and sale of such goods, wares and merchandise. (Prior code § 5.08.010)

5.44.020 License required.

It is unlawful for any person, firm or corporation to engage in the business, trade or calling of itinerant merchant within the corporate limits of the city, without first having obtained a license to do so. (Prior code § 5.08.020)

5.44.030 Exceptions to provisions.

The provisions of this chapter shall not apply to bona fide merchants having regularly established places of business within the city, or to any regularly licensed auctioneer or to any person distributing by sale or otherwise, produce, produced by him on

owned or leased premises; provided such premises are located within one hundred fifty miles of the city or to any vendors participating in a one- or two-day event, sponsored by a Laurel-based, non-profit organization which charges vendors as a fundraiser to profit said organization, and shall include the Laurel Downtown Farmers Market participants during the one-day-per-week event throughout the summer growing season. (Prior code § 5.08.030) (Ord. No. O11-05, 3-15-2011)

5.44.040 License fee.

The fee for a city license to engage in the business of transient merchant shall be established annually by city council resolution after a public hearing. The fee may only be prorated to one-half year. (Ord. 06-04 (part), 2006; Ord. 02-21, 2002; prior code § 5.08.040)

5.44.050 Application requirements.

A. Every transient merchant desiring to do business in the city must, before commencing such business, file with the city clerk-treasurer, an application in writing. The application shall contain the information required by Section 5.04.040, and in addition provide the following information:

1. Give a brief descriptive list of articles to be offered for sale, or services to be performed;

2. State whether payments or deposits of money are collected when orders are taken, or in advance of final delivery.

B. At the time of filing the application, such transient merchant must accompany the application with the sum specified in Section 5.44.040. (Ord. 97-2 § 4 (part), 1997; prior code § 5.08.050)

5.44.060 Issuance.

A. Upon filing of the application prescribed in Section 5.44.050, in proper form

and upon the payment to the city clerk-treasurer of the sum required by Section 5.44.040 of this chapter, the city clerk-treasurer shall issue and deliver to the applicant a license to carry on the business described in the application. The license shall be nontransferable and shall have printed on the face thereof in bold type the words "not transferable."

B. The city clerk-treasurer shall endorse upon each application the date of issuance of the license and shall file the application with the city clerk-treasurer. (Ord. 97-2 § 4 (part), 1997; prior code § 5.08.060)

5.44.070 Display of license required.

Every transient merchant doing business under the provisions of this chapter must, upon demand of any official of the city exhibit his license and permit the same to be read by the official making such demand. (Prior code § 5.08.070)

Chapter 5.48**DAIRY PRODUCTS AND SERVICES****Sections:**

- 5.48.010 Dairy and creamery operating fee.**
- 5.48.020 Milk distributor fee.**
- 5.48.030 Dairies or creameries distributing fee.**

5.48.010 Dairy and creamery operating fee.

The city license fee required for operating a dairy or creamery shall be established annually by city council resolution after a public hearing. (Ord. 06-04 (part), 2006: prior code § 5.56.010)

5.48.020 Milk distributor fee.

The city license fee required for distributing milk or milk products on a regular route shall be established annually by city council resolution after a public hearing. (Ord. 06-04 (part), 2006: prior code § 5.56.020)

5.48.030 Dairies or creameries distributing fee.

The city license fee required for a dairy or creamery distributing milk or milk products on a regular route shall be established annually by city council resolution after a public hearing. (Ord. 06-04 (part), 2006: prior code § 5.56.030)

Chapter 5.52

CABLE TELEVISION SYSTEMS

Sections:

- 5.52.010** **General authority.**
- 5.52.020** **Definitions.**
- 5.52.030** **Grant or approval of franchise agreement.**
- 5.52.040** **Nonexclusive grant.**
- 5.52.050** **Uses permitted by grantee.**
- 5.52.060** **Franchise fee imposed.**
- 5.52.070** **Conditions of right-of-way and street occupancy.**
- 5.52.080** **Federal regulation.**

5.52.010 **General authority.**

It is unlawful to engage in or commence construction, operation or maintenance of a cable communications system without a city council approved franchise agreement negotiated and approved under this chapter. The council may, by resolution, approve a nonexclusive franchise agreement to construct, operate and maintain a cable communications system within all or any portion of the city to any person, whether operating under an existing franchise or not. Any franchise agreement for the construction, maintenance and operation of a cable television system using the public streets, utility easements, other public rights-of-way or places shall conform to the provision of this chapter. (Ord. 07-05 (part), 2007)

5.52.020 **Definitions.**

For the purposes of this chapter, the following terms shall have the meaning provided herein as follows:

“Cable communications system” means infrastructure composed, without limitations, antennae, cables, wires, optical fibers, lines, towers, wave guides, laser beams, microwave systems, satellite dishes, or any other conductors, converters, equipment or facilities designed, constructed or wired for the purpose of producing, receiving, amplifying or distributing, by coaxial or fiber cable, audio and/or visual radio, television, data, electronics or electrical signals to and from persons, subscribers and to current and future locations within the city of Laurel.

“City” means the city of Laurel, a municipal corporation in the state of Montana.

“City council” means the governing body of the city of Laurel.

“Federal Act” means the Communications Act of 1934 (47 U.S.C. 151 et seq.) as amended by the Communications Policy Act of 1984, the Television Consumer Competition Act of 1992 and the Telecommunications Act of 1996.

“Franchise agreement” means the nonexclusive authorization approved by the city council for the privilege to construct, operate and maintain a cable television operating system in the city of Laurel.

“Grantee” means a company, corporation, partnership or other entity who has obtained a city council approved franchise agreement.

“Gross revenues” means the grantee’s gross revenues from all sources as defined in 47 U.S.C. Section 542 or as otherwise defined in an approved franchise agreement.

“Property of grantee” means all property owned, installed or used by the grantee in the operation and maintenance of a cable television operating system in the city under the authority of a franchise agreement approved by the city council.

“Street” means the surface of and the space above and below any alley, court, drive, freeway, highway, lane, parkway, path, public utility easement, public street, right-of-way, road, or sidewalk currently existing, constructed, obtained or granted in the future.

“Subscriber” means any person, business or other entity receiving for any purpose the television or video programming or data of the grantee within the city of Laurel. (Ord. 07-05 (part), 2007)

5.52.030 Grant or approval of franchise agreement.

The city may by resolution of the city council grant a right and privilege to construct, erect, operate and maintain in, upon, along, across, above, over, and under the streets, rights-of-way and public places as now laid out or dedicated, and all extensions thereof, and additions thereto, in the city of Laurel, wires, fiber, cable, underground conduits, manholes, and other video services conductors and fixtures and to attach the same to the utility poles of the city as necessary for the maintenance and operation in the city of a cable communications system for the interception, sale and distribution of television and radio signals. The franchise agreement shall contain all necessary terms including but not limited to, length or duration, termination, insurance, bonding, etc. (Ord. 07-05 (part), 2007)

5.52.040 Nonexclusive grant.

The approval of a franchise agreement, in the same or other streets, rights-of-way and public places as permitted under the Federal Act and regulations thereunder, or any of the provisions contained herein, shall not be construed to prevent the city from granting an identical or similar franchise to any person,

business, partnership, corporation or other entity other than the franchisee, including the rights, privileges or authority, similar to or different from, the rights, privileges or authority set forth herein or as set forth in a franchise agreement approved under this chapter. (Ord. 07-05 (part), 2007)

5.52.050 Uses permitted by grantee.

The city may authorize a grantee through an approved franchise agreement to engage in the business of operating and providing a cable communications system in the city, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain and retain in, on, over, under, upon, across and along any public right-of-way and to attach the same to the utility poles of the city, such wires, fiber, cable and conductors, ducts, conduit, vaults, manholes, amplifiers, appliances, attachments and other property as may be necessary and appurtenant to the cable communications system. The grantee may use, operate and provide similar facilities or properties rented or leased from other persons, firms, corporations or other entities, including but not limited to any public utility or other grantee franchised or permitted to do business in the city. The authority in this section granted shall be subject to the advice, direction and consent of the mayor. (Ord. 07-05 (part), 2007)

5.52.060 Franchise fee imposed.

A franchise fee of five percent of the grantee’s gross revenues is hereby imposed upon the conduct of the grantee’s cable communications system within the city. The city reserves the right to increase the franchise fee within the limitations prescribed by the Federal Act and the FCC regulations issued under the Federal Act. Any change in the franchise

fee rate or the revenue on which such fee is based shall be accomplished by amendment to this chapter and through a modification of existing franchise agreements. The city shall have the right to inspect all the grantee's records regarding the gross receipts from which its franchise fee is computed and the right to audit and recalculate any and all amounts paid under this chapter. Acceptance of a payment by the city from the grantee shall not be construed as a release of or as an accord and satisfaction of any claim the city may have for further and/or additional sums payable under this chapter for the performance of any obligations hereunder. Should such audit and recalculation result in a refund due grantee, the refund shall not be paid directly to grantee, but instead shall be applied as a credit against future franchise fees due the city from grantee. (Ord. 07-05 (part), 2007)

5.52.070 Conditions of right-of-way and street occupancy.

Whenever a street, sidewalk, alley, public way, right-of-way or paved area is disturbed by the grantee in its endeavor to construct, reconstruct or maintain infrastructure related to the cable communications system within the city, the grantee shall, at its own expense and in a manner approved by the city, replace and restore such street, sidewalk, alley, public way, right-of-way or paved area in as good of condition as before the work involving such maintenance, construction or reconstruction took place. The city reserves the right to require bond, require minimum construction standards, inspect and approve all areas in which such work is being conducted or areas in which such work has been completed, as further provided in an approved franchise agreement. (Ord. 07-05 (part), 2007)

5.52.080 Federal regulation.

Grantee shall comply with all applicable federal laws, rules and regulations in effect as of the date of this chapter. Any modifications resulting from amendment of the Federal Act or the regulations thereunder shall be incorporated into this chapter and franchise agreement, if necessary, as of the date such modification or amendment becomes obligatory under FCC regulations, or in the event no obligatory date is established, within one year of adoption or at the time of franchise renewal, whichever occurs first. Notwithstanding any limitations herein, the city may exercise any further authority granted the city by any change in the federal statutes and/or regulations by amendment of this chapter. (Ord. 07-05 (part), 2007)

Chapter 5.60

SEXUALLY ORIENTED BUSINESSES

Sections:

- 5.60.010 Purpose and findings.**
- 5.60.020 Definitions.**
- 5.60.030 Classification.**
- 5.60.040 License required.**
- 5.60.050 Issuance of license.**
- 5.60.060 Fees.**
- 5.60.070 Inspection.**
- 5.60.080 Expiration of license—
Denial of renewal.**
- 5.60.090 Suspension.**
- 5.60.100 Revocation.**
- 5.60.110 Judicial review.**
- 5.60.120 No transfer of license.**
- 5.60.130 Location restrictions.**
- 5.60.140 Non-conforming uses—
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- 5.60.150 Additional regulations for
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- 5.60.160 Additional regulations for
escort agencies.**
- 5.60.170 Additional regulations for
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- 5.60.180 Additional regulations
concerning public nudity.**
- 5.60.190 Regulations pertaining to
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explicit films and videos.**
- 5.60.200 Exterior portions of
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- 5.60.210 Signage.**
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of alcoholic beverages
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- 5.60.230 Persons younger than
eighteen prohibited from
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- 5.60.240 Massages or baths
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- 5.60.250 Exemptions.**
- 5.60.260 Notices.**
- 5.60.270 Injunction.**
- 5.60.280 Separability.**
- 5.60.290 Conflicting ordinances
repealed.**
- 5.60.300 Effective date.**

5.60.010 Purpose and findings.

A. Purpose. It is the purpose of this chapter to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials.

B. Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the city council, and on findings incorporated in the cases of

City of Renton v. Playtime Theatres, Inc., 475 U. S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. City of Newport, Ky*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U. S. 367 (1968); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir.1997); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir.1986); *Hang On, Inc. v. City of Arlington*., 65 F.3d 1248 (5th Cir.1995); *South Florida Free Beaches, Inc. v. City of Miami*, 734 F.2d 608 (11th Cir.1984); and *N.W. Enterprises v. City of Houston*, 27 F.Supp. 2d 754 (S.D. Tex. 1998)), as well as studies conducted in other cities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group On the Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the city council finds that:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.

2. Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. See, e.g., Studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.

3. Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. See, e.g., *California v. LaRue*, 409 U.S. 109, 111 (1972); See also Final Report of the Attorney General's Commission on Pornography (1986) at 377.

4. Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

5. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within the premises of such sexually oriented businesses. See, e.g., *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698 (1986); see also Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

6. At least fifty communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections. See, e.g., Study of Fort Meyers, Florida.

7. As of December, 1996, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was five hundred eighty-one thousand four hundred twenty-nine. See, e.g., Statistics

of the U. S. Department of Health and Human Services, Centers for Disease Control and Prevention.

8. As of December 31, 1999, there have been ninety-two reported cases of AIDS in the State of Montana for the years 1997 through 1999.

9. The total number of cases of genital chlamydia trachomatis infections in the United States reported in 1997 was five hundred twenty-six thousand six hundred fifty-three, an eight percent increase over the year 1996. See, e.g., Statistics of the U. S. Department of Health and Human Services, Centers for Disease Control and Prevention.

10. The total number of cases of early (less than one year) syphilis in the United States reported during the twelve year period 1985-1997 was three hundred eighty-seven thousand two hundred thirty-three. See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

11. The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of one million nine hundred one thousand three hundred sixty-five cases reported during the period 1993-1997. See, e.g. Statistics of the U. S. Department of Health and Human Services, Centers for Disease Control and Prevention.

12. The Surgeon General of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.

13. According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See, e.g. Findings

of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

14. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.

15. Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.

16. Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity. See, e.g., *Barnes v. Glen Theatre*, 501 U.S. 560, 583 (1991).

17. Nude dancing in adult establishments increases the likelihood of drugdealing and drug use. See, e.g., *Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1056 (9th Cir.1986).

18. The findings noted in subsection 5.60.010 (B)(1)-(17) raise substantial governmental concerns.

19. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

20. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of sexually oriented businesses. Further, such licensing procedure will place a heretofore non-existent incentive on operators

to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the city. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

21. Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.

22. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.

23. It is desirable, in the prevention of crime and the spread of communicable diseases, to obtain a limited amount of information regarding certain employees who may engage in the conduct this ordinance is designed to prevent, or who are likely to be witnesses to such activity.

24. The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this chapter.

25. The barring of such individuals from operation or employment in sexually oriented businesses for a period of five years for a previous felony conviction serves as a deterrent to further criminal conduct, and prevents con-

duct which leads to the transmission of sexually transmitted diseases.

26. The general welfare, health, morals, and safety of the citizens of this city will be promoted by enactment of this chapter. (Ord. 00-4 (part), 2000)

5.60.020 Definitions.

“Adult arcade” means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, videos, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”

“Adult bookstore” or “Adult video store” means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

A. Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe “specified sexual activities” or “specified anatomical areas;” or

B. Instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities.”

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as “adult bookstore” or “adult video store”. Such other business purposes will not serve to exempt such commer-

cial establishments from being categorized as an "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

"Adult cabaret" means a nightclub, bar, restaurant, cafe, or similar commercial establishment that regularly, commonly, habitually, or consistently features:

A. Persons who appear in a state of nudity or semi-nudity;

B. Live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities";

C. Films, motion pictures, video cassettes, slides, photographic reproductions, or other image producing devices that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

D. Persons who engage in "exotic" or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

"Adult motel" means a hotel, motel or similar commercial establishment that:

A. Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right-of-way that ad-

vertises the availability of this adult type of photographic reproductions;

B. Offers a sleeping room for rent for a period of time that is less than twenty-four hours; or

C. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four hours.

"Adult motion picture theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

"Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

"Director" means the chief of police and such employee(s) of the police department as he may designate to perform the duties of the director under this chapter.

"Employee" means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the de-

livery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

"Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

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

"Establishment" means and includes any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- C. The additions of any sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of any sexually oriented business; or
- E. A sexually oriented business or premises on which the sexually oriented business is located.

"Licensed day-care center" means a facility licensed by the State of Montana, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than twelve children under fourteen years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

"Licensee" means a person in whose name a license has been issued, as well as the indi-

vidual listed as an applicant on the application for a license.

"Live theatrical performance" means a play, skit, opera, ballet, concert, comedy, or musical drama.

"Nude model studio" means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

"Nudity" or a "State of nudity" means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

"Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

"Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to Section 5.60.040 of this chapter;

"Semi-nude" or "semi-nudity" means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited

by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

“Sexual encounter center” means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

B. Activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

“Sexually oriented business” means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

“Specified anatomical area” means:

A. The human male genitals in a discernibly turgid state, even if fully and opaquely covered;

B. Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

“Specified criminal activity” means any of the following offenses:

A. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states, or other countries.

B. For which:

1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense;

3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period;

C. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

“Specified sexual activities” means and includes any of the following:

A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;

B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

C. Masturbation, actual or simulated; or

D. Excretory functions as part of or in connection with any of the activities set forth in subsections A through C above.

“Substantial enlargement” of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent, as the floor areas existed on August 1, 2000.

“Transfer of ownership or control” of a sexually oriented business means and includes any of the following:

A. The sale, lease, or sublease of the business;

B. The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or

C. The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (Ord. 00-4 (part), 2000)

5.60.030 Classification.

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;
- F. Adult theaters;
- G. Escort agencies;
- H. Nude model studios; and
- I. Sexual encounter centers.

(Ord. 00-4 (part), 2000)

5.60.040 License required.

A. It shall be unlawful:

1. For any person to operate a sexually oriented business without a valid sexually oriented business operator's license ("operator's license") issued by the director pursuant to this chapter;

2. For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license ("employee license") issued to such employee by the director pursuant to this chapter;

3. For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the director pursuant to this chapter;

4. It shall be a defense to subsections (A)(2) and (A)(3) of this section if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.

Violation of any provision within this subsection shall constitute a misdemeanor.

B. An application for a sexually oriented business operator's license must be made on a form provided by the city. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Prior to issuance of an operator's license, the premises must be inspected by the health department, building department, and zoning department. Prior inspection by the health department and building department shall be required only when the provisions set forth in Sections 5.60.190 and/or 5.60.180 are applicable.

C. An application for a sexually oriented business employee license must be made on a form provided by the city.

D. All applicants for a license must be qualified according to the provisions of this chapter. The application may request, and the applicant shall provide, such information reasonably necessary (including fingerprints) to enable the city to determine whether the applicant meets the qualifications established

under this chapter. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

E. If a person who wishes to own or operate a sexually oriented business is an individual, he must sign the application for an operator's license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent or greater interest in the business must sign the application for an operator's license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, all corporate officers and directors must sign the application for an operator's license as applicant.

F. Applications for an operator's license, whether original or renewal, must be made to the director by the intended operator of the enterprise. Applications must be submitted to the office of the director or the director's designee during regular working hours. Application forms shall be supplied by the director. The following information shall be provided on the application form:

1. The name, street address (and mailing address if different) of the applicant(s);
2. A recent photograph of the applicant(s);
3. The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;
4. The name under which the establishment is to be operated and a general description of the services to be provided;
 - a. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state

(1) the sexually oriented business's fictitious name and (2) submit the required registration documents;

5. Whether the applicant has been convicted or is awaiting trial on pending charges of a "specified criminal activity" as defined in Section 5.60.020, and if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;

6. Whether the applicant, has had a previous license under this ordinance or other similar sexually oriented business ordinance from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;

7. Whether the applicant holds any other licenses under this chapter or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses;

8. The single classification of license, as found in Section 5.60.030, for which the applicant is filing;

9. The telephone number of the establishment;

10. The address and legal description of the tract of land on which the establishment is to be located;

11. If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;

12. If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the expected startup date is to be more than ten days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same;

13. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section 5.60.190 hereunder.

G. Each application for an operator's license shall be accompanied by the following:

1. Payment of the application fee in full;
2. If the establishment is a State of Montana corporation, a certified copy of the articles of incorporation, together with all amendments thereto;
3. If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
4. If the establishment is a limited partnership formed under the laws of the State of

Montana, a certified copy of the certificate of limited partnership, together with all amendments thereto;

5. If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;

6. Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;

7. If the persons identified as the fee owner(s) of the tract of land in subsection 5.60.040(G)(6) is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually oriented business to have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business;

8. A current certificate and straight-line drawing prepared within thirty days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within one thousand feet of the property to be certified; and the property lines of any established religious institution/synagogue, school, public park or recreation area, within one thousand feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted;

9. Any of subsection 5.60.040 (G)(2)-(8) shall not be required for a renewal application if the applicant states that the documents previously furnished to the director with the

original application or previous renewals thereof remain correct and current.

H. Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the director by the person to whom the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the director. Applications must be submitted to the office of the director or the director's designee during regular working hours. Each applicant shall be required to give the following information on the application form:

1. The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;
2. Age, and date and place of birth;
3. Height, weight, hair color, and eye color;
4. Present business address and telephone number;
5. Date, issuing state, and number of photo driver's license, or other state issued identification card information;
6. Social Security Number; and
7. Proof that the individual is at least eighteen years old.

The personal information provided in this subsection shall be confidential, and shall not be disclosed to the public except to the extent required by state or federal law.

I. Attached to the application form for any license under this ordinance shall be the following:

1. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photo-

graphs and fingerprints shall be paid by the applicant.

2. A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state, or country, has ever had any license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

3. A statement whether the applicant has, within the past five years, been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in Section 5.60.020 and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each.

J. Every application for a license under this chapter shall contain a statement under oath that:

1. The applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is true and correct; and,

2. The applicant has read the provisions of this article.

K. A separate application and operator's license shall be required for each sexually oriented business classification as set forth in Section 5.60.030.

L. The fact that a person possesses other types of state or city permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business operator or employee license. (Ord. 00-4 (part), 2000)

5.60.050 Issuance of license.

A. Upon the filing of an application for a sexually oriented business employee license, the director shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty days from the date of the completed application. After the investigation, the director shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

2. The applicant is under the age of eighteen years;

3. The applicant has been convicted of a "specified criminal activity" as defined in Section 5.60.020 of this chapter;

4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule, or regulation, or prohibited by a particular provision of this chapter; or

5. The applicant has had a sexually oriented business employee license revoked by the city within two years of the date of the current application.

If the sexually oriented business employee license is denied, the temporary license previ-

ously issued is immediately rendered null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as forth in subsection I of this section.

B. A license issued pursuant to subsection A of this section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. While engaged in employment or performing services on the sexually oriented business premises, an employee shall, at all times, possess the license in such manner as to be available for immediate inspection upon lawful request.

C. A license issued pursuant to subsection A of this section shall be subject to annual renewal upon the written application of the applicant and a finding by the director that the applicant has not been convicted of any "specified criminal activity" as defined in this chapter, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 5.60.060. Non-renewal of a license shall be subject to appeal as set forth in subsection I of this section.

D. If application is made for a sexually oriented business operator's license, the director shall approve or deny issuance of the license within thirty days of receipt of the completed application. The director shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a ques-

tion or request for information on the application form;

2. An applicant is under the age of eighteen years;

3. An applicant has been denied a license by the city to operate a sexually oriented business within the preceding twelve months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve months;

4. An applicant is overdue in payment to the city for taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to the sexually oriented business for which license is sought, or the property on which the sexually oriented business is located or will be located;

5. An applicant has been convicted of a "specified criminal activity" as defined in Section 5.60.020;

6. The premises to be used for the sexually oriented business have not been approved by the health department, building department, and zoning department as being in compliance with applicable laws and ordinances, if such approval is required under other sections of this chapter;

7. The license fee required under this chapter has not been paid;

8. An applicant of the proposed establishment is in violation of or is not in compliance with one or more of the provisions of this chapter.

E. A license issued pursuant to subsection D of this section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the Section 5.60.030 classification for which the license is issued. 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 any time.

F. If so required under other sections of this ordinance, the health department, building department, and zoning department shall complete their certification that the premises are in compliance or not in compliance within twenty days of receipt of the completed application by the director. The certification shall be promptly presented to the director. Failure of an appropriate department to timely certify its inspection shall not be grounds for refusing to issue a license within the mandatory time period prescribed in subsection D of this section:

G. A sexually oriented business license shall issue for only one classification, as set forth in Section 5.60.030.

H. In the event that the director determines that an applicant is not eligible for a sexually oriented operator's license, the applicant shall be given notice in writing of the reasons for the denial within thirty days of the receipt of the completed application by the director, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten days in order to make modifications necessary to comply with this chapter.

I. An applicant may appeal the decision of the director regarding a denial to the city council by filing a written notice of appeal with the city clerk/treasurer within ten days after service of notice upon the applicant of the director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The director may, within fifteen days of service upon him of the applicant's memorandum, submit a responsive memorandum to the city council. After reviewing such memo-

randa, as well as the director's written decision, if any, and exhibits submitted to the director, the city council shall vote either to uphold or overrule the director's decision. Such vote shall be taken within twenty-one calendar days after the date on which the city clerk-treasurer receives the notice of appeal. The status quo immediately prior to denial of the license shall be maintained during the pendency of the appeal. Judicial review of a denial by the director and city council may be made pursuant to Section 5.60.110 of this chapter. The status quo shall continue to be maintained during the pendency of judicial review.

J. A license issued pursuant to subsection D of this section shall be subject to annual renewal upon the written application of the applicant and a finding by the director that the applicant has not been convicted of any "specified criminal activity" as defined in this chapter, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 5.60.060. (Ord. 00-4 (part), 2002)

5.60.060 Fees.

The annual fee for a sexually oriented business operator's license, whether new or renewal, shall be established annually by city council resolution after a public hearing. The annual fee for a sexually oriented business employee license, whether new or renewal, shall be established annually by city council resolution after a public hearing. These fees are to be used to pay for the cost of the administration and enforcement of this chapter. (Ord. 06-04 (part), 2006; Ord. 00-4 (part), 2000)

5.60.070 Inspection.

A. The city shall regularly inspect the premises of the sexually oriented business in order to ensure compliance with the provisions of this chapter. An applicant or licensee shall permit representatives of the police department and/or health department to inspect the premises at any time the establishment is open for business. Such inspection shall be limited to visual assessment of the activities conducted in areas to which patrons have access or are allowed access; to requests for inspection of the licenses required under this chapter; and to requests for identification of those individuals who reasonably appear to be under the age of eighteen.

B. A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he/she refuses to promptly permit such lawful inspection of the premises. (Ord. 00-4 (part), 2000)

5.60.080 Expiration of license— Denial of renewal.

A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 5.60.040. Application for renewal should be made at least thirty days before the expiration date. When application is made less than thirty days before the expiration date, the expiration of the license will not be affected.

B. When the director denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. Notwithstanding the provisions of this section, in the event a licensee appeals the non-renewal of a license, the status quo immediately prior to non-renewal shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits as

set forth in Section 5.60.110. (Ord. 00-4 (part), 2000)

5.60.090 Suspension.

The director shall suspend a license for a period not to exceed thirty days if he determines that licensee or an employee of licensee has:

A. Violated or is not in compliance with any section of this chapter;

B. Operated or performed services in a sexually oriented business while intoxicated by the use of alcoholic beverages or controlled substances;

C. Refused to allow prompt inspection of the sexually oriented business premises as authorized by this chapter;

D. With knowledge, permitted gambling by any person on the sexually oriented business premises. Notwithstanding the provisions of this section, in the event a licensee appeals the suspension of a license, the status quo immediately prior to suspension shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits as set forth in Section 5.60.110. (Ord. 00-4 (part), 2000)

5.60.100 Revocation.

A. The director shall revoke a license if a cause of suspension in Section 5.60.090 occurs and the license has been suspended within the proceeding twelve months.

B. The director shall revoke a license if he determines that:

1. A licensee gave materially false or misleading information in the material submitted during the application process;

2. A licensee, was convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;

3. A licensee has, with knowledge, permitted the possession, use, or sale of controlled substances on the premises;

4. A licensee has, with knowledge, permitted the sale, use, or consumption of alcoholic beverages on the premises;

5. A licensee has, with knowledge, permitted prostitution on the premises;

6. A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;

7. A licensee has, with knowledge, permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises;

8. A licensee is delinquent in payment to the city or state for any taxes, fees, fines, or penalties relating to the sexually oriented business or the premises thereon;

9. A licensee has, with knowledge, permitted a person under eighteen years of age to enter or remain in the establishment; or

10. A licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee of the establishment;

11. A licensee has, with knowledge, permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business.

C. When the director revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a license for one year from the date revocation became effective. Notwithstanding the provisions of this section, in the event the licensee appeals the revocation of a license, the status quo immediately prior to revocation shall be maintained throughout the pendency of the appeal, up to

5.60.100

and including judicial review on the merits as set forth in Section 5.60.110. (Ord. 00-4 (part), 2000)

5.60.110 Judicial review.

Within fourteen days of a denial of an initial or renewal application by the director and city council, or suspension or revocation of a license by the director, the applicant or licensee may seek prompt judicial review of such action in the District Court of the 13th Judicial District, in and for the County of Yellowstone. (Ord. 00-4 (part), 2000)

5.60.120 No transfer of license.

A. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application and set forth in the operator's license.

B. An operator's license shall not be transferable from one location to another. (Ord. 00-4 (part), 2000)

5.60.130 Location restrictions.

Sexually oriented businesses shall be permitted in any commercial district provided that:

A. The sexually oriented business may not be operated within:

1. One thousand feet of a church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

2. One thousand feet of a public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, con-

tinuation schools, special education school, junior colleges, and universities; school includes the school ground, but does not include the facilities used primarily for another purpose and only incidentally as a school;

3. One thousand feet of a public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, skating rink, pedestrian/bicycle paths, wilderness areas, or other similar public land within the village which is under the control, operation, or management of the village park and recreation authorities;

4. One thousand feet of the property line of a lot zoned for residential use and devoted to a residential use as defined in the zoning code; or

5. One thousand feet of another sexually oriented business.

B. A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business that is classified in accordance with Section 5.60.030.

C. For the purpose of this chapter, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot, or licensed day care center.

D. For purposes of subsection C of this section, the distance between any two sexually oriented business uses shall be measured in a straight line, without regard to intervening

structures or objects, from the closest exterior wall of the structure in which each business is located. (Ord. 00-4 (part), 2000)

**5.60.140 Non-conforming uses—
Amortization.**

A. Any business lawfully operating on the effective date of this chapter that is in violation of the locational or structural configuration requirements of this chapter shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within one thousand feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operated at a particular location is the conforming use and the later-established business(es) is non-conforming.

B. A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park, residential district, within one thousand feet of the sexually oriented business. This provision applies only to the renewal of a valid business license, and does not apply when an application for a business license is submitted after an operator's license has expired or has been revoked. (Ord. 00-4 (part), 2000)

**5.60.150 Additional regulations for
adult motels.**

A. Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this chapter.

B. It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or subrents a sleeping room to a person and, within ten hours from the time the room is rented, he rents or subrents the same sleeping room again.

C. For purposes of subsection B of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

D. Violation of subsection B of this section shall constitute a misdemeanor. (Ord. 00-4 (part), 2000)

**5.60.160 Additional regulations for
escort agencies.**

A. An escort agency shall not employ any person under the age of eighteen years.

B. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen years.

C. Violation of this section shall constitute a misdemeanor. (Ord. 00-4 (part), 2000)

**5.60.170 Additional regulations for
nude model studios.**

A. A nude model studio shall not employ any person under the age of eighteen years.

B. A person under the age of eighteen years commits a misdemeanor if the person

appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen years was in a restroom not open to the public view or visible by any other person.

C. A person commits a misdemeanor if the person appears in a state of nudity, or with knowledge, allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

D. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public. (Ord. 00-4 (part), 2000)

5.60.180 Additional regulations concerning public nudity.

A. It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a nude or semi-nude condition in a sexually oriented business, unless the person is an employee who, while nude or semi-nude, is at least ten feet from any patron or customer and on a stage at least two feet from the floor.

B. It shall be a misdemeanor for an employee, while nude or semi-nude, to solicit any pay or gratuity from any patron or customer on the sexually oriented business premises, or for any patron or customer to pay or give any gratuity to any employee, while said employee is nude or semi-nude on the sexually oriented business premises.

C. It shall be a misdemeanor for an employee, while nude or semi-nude, to touch a patron or the clothing of a patron, or for a patron to touch a nude or semi-nude employee or the clothing of a nude or semi-nude employee, while the employee is on the sexually

oriented business premises. (Ord. 00-4 (part), 2000)

5.60.190 Regulations pertaining to exhibition of sexually explicit films and videos.

A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty square feet of floor space, a film, video cassette, or other video reproduction, that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since said diagram was prepared.

2. The application shall be sworn to be true and correct by the applicant.

3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the director or his designee.

4. It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose; excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

6. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection 5 of this section remains unobstructed at all times. No doors, walls, partitions, curtains, merchandise, display racks, or other object(s) shall obstruct from view of the manager's station any portion of the premises to which patrons have access. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as

designated in the application filed pursuant to subsection 1 of this section.

7. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot-candle as measured at the floor level.

8. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

9. No viewing room or booth may be occupied by more than one person at any time.

10. No opening of any kind shall exist between viewing rooms or booths.

11. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no more than one person at a time occupies a viewing booth or room, and to ensure that no person attempts to make an opening of any kind between the viewing booths or rooms.

12. The operator of the sexually oriented business shall, each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.

13. The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

14. The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight inches of the floor.

B. A person having a duty under subsections (1) through (14) of this section commits a misdemeanor if he/she, with knowledge, fails to fulfill that duty. (Ord. 00-4 (part), 2000)

5.60.200 Exterior portions of sexually oriented businesses.

A. It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

B. It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this chapter.

C. It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

1. The establishment is a part of a commercial multi-unit center; and
2. The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

D. Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

E. A violation of any provision of this section shall constitute a misdemeanor. (Ord. 00-4 (part), 2000)

5.60.210 Signage.

A. Notwithstanding any other city ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one primary sign and one secondary sign, as provided herein.

B. Primary signs shall have no more than two display surfaces. Each such display surface shall:

1. Not contain any flashing lights;
2. Be a flat plane, rectangular in shape;
3. Not exceed seventy-five square feet in area; and
4. Not exceed ten feet in height or ten feet in length.

C. Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

D. Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

E. Secondary signs shall have only one display surface. Such display surface shall:

1. Be a flat plane, rectangular in shape;
2. Not exceed twenty square feet in area;
3. Not exceed five feet in height and four feet in width; and
4. Be affixed or attached to any wall or door of the enterprise.

F. The provisions of item 1 of subsection B and subsection C and D of this section shall also apply to secondary signs.

G. Violation of any provision of this section shall constitute a misdemeanor. (Ord. 00-4 (part), 2000)

5.60.220 Sale, use, or consumption of alcoholic beverages prohibited.

A. The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

B. Any violation of this section shall constitute a misdemeanor. (Ord. 00-4 (part), 2000)

5.60.230 Persons younger than eighteen prohibited from entry—Attendant required.

A. It shall be unlawful to allow a person who is younger than eighteen years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.

B. It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business's regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen unless such attendant asked for and was furnished:

1. A valid operator's, commercial operator's, or chauffeur's driver's license; or

2. A valid personal identification certificate issued by the state of Montana reflecting that such person is eighteen years of age or older.

C. Violation of this section shall constitute a misdemeanor. (Ord. 00-4 (part), 2000)

5.60.240 Massages or baths administered by person of opposite sex.

It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. Violation of this section shall constitute a misdemeanor. (Ord. 00-4 (part), 2000)

5.60.250 Exemptions.

A. It is a defense to prosecution under this chapter that a person appearing in a state of nudity did so in a modeling class operated:

1. By a proprietary school, licensed by the State of Montana, a college, junior college, or university supported entirely or partly by taxation;

2. By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

B. Notwithstanding any other provision in this chapter, movies rated G, PG, PG13, or R, by the Motion Picture Association of America (MPAA), or live theatrical performances with serious artistic, social, or political value, that depict or describe specified anatomical areas or specified sexual activities, are expressly exempted from regulation under this chapter. (Ord. 00-4 (part), 2000)

5.60.260 Notices.

A. Any notice required or permitted to be given by the director or any other city office, division, department or other agency under this ordinance to any applicant, operator or owner of a sexually oriented business may be

given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the director or his designee shall cause it to be posted at the principal entrance to the establishment.

B. Any notice required or permitted to be given to the director by any person under this ordinance shall not be deemed given until and unless it is received in the office of the director.

C. It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the director in writing of any change of residence or mailing address. (Ord. 00-4 (part), 2000)

5.60.270 Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid operator's license, or in violation of Section 5.60.130 of this chapter, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation. (Ord. 00-4 (part), 2000)

5.60.280 Separability.

If any section, subsection, or clause of this chapter shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby. (Ord. 00-4 (part), 2000)

5.60.290 Conflicting ordinances repealed.

All ordinances or parts of ordinances in conflict with the provisions of this chapter are hereby repealed. (Ord. 00-4 (part), 2000)

5.60.300 Effective date.

This chapter shall become effective thirty days after final passage by the city council and approved by the mayor. (Ord. 00-4 (part), 2000)

Chapter 5.70**MEDICAL MARIJUANA****Sections:**

- 5.70.010 Purpose.**
- 5.70.020 Definitions.**
- 5.70.030 License required; exemption.**
- 5.70.040 Requirements of application for license; payment of application fee; denial of license.**
- 5.70.050 Location criteria.**
- 5.70.060 Persons prohibited as licensees.**
- 5.70.070 Issuance of license; duration; renewal.**
- 5.70.080 Annual license fee.**
- 5.70.090 Use and display of license.**
- 5.70.100 Management of licensed premises.**
- 5.70.110 Change in manager; change in financial interest.**
- 5.70.120 Hours of operation.**
- 5.70.130 Signage and advertising.**
- 5.70.140 Security requirements.**
- 5.70.150 Required notices.**
- 5.70.160 Cultivation, growing and processing by licensees.**
- 5.70.170 Sale of edible products.**
- 5.70.180 Labeling.**
- 5.70.190 On-site consumption of medical marijuana.**
- 5.70.200 Prohibited acts.**
- 5.70.210 Visibility of activities; control of emissions.**
- 5.70.220 Disposal of marijuana byproducts.**
- 5.70.230 Required books and records.**

- 5.70.240 Inspection of licensed premises.**
- 5.70.250 Nonrenewal, suspension or revocation of license.**
- 5.70.260 Violations and penalties.**
- 5.70.270 No city liability; indemnification.**
- 5.70.280 Other laws remain applicable.**
- 5.70.290 Severability.**

5.70.010 Purpose.

A. The provisions of this chapter are intended to acknowledge and protect the rights of patients and their caregivers under the provisions of Montana's Medical Marijuana Act, codified at MCA § 50-46-101 et. seq., while also protecting the health, safety, and welfare of the public; and curtailing, to the extent reasonably possible, the possession, use, distribution, or transportation of marijuana for unlawful purposes by:

1. Requiring that medical marijuana businesses be operated in a manner that minimizes potential health and safety risks and mitigates the negative impacts that a medical marijuana dispensary might have on surrounding properties and persons;
2. Regulating the conduct of persons owning, operating and using medical marijuana dispensaries and cultivation facilities in order to protect the public health, safety and welfare; and
3. Regulating the location and operation of medical marijuana dispensaries and cultivation facilities.

B. By adoption of this Chapter, the City Council does not intend to authorize or make legal any act that is not permitted under Montana law.

(Ord. No. O11-02, 2-1-2011)

5.70.020 Definitions.

A. The following words, terms and phrases, when used throughout this Chapter, shall have the meanings ascribed to them in this Section:

"Alcohol beverage" shall have the meaning ascribed to such term in the Montana Code Annotated.

"Applicant" shall mean any person or entity who has submitted an application for a license or renewal of a license issued pursuant to this chapter. If the applicant is an entity and not a natural person, applicant shall include all persons who are the members, managers, officers and directors of such entity.

"Building official" shall mean the building code official for the city of Laurel as defined by city ordinance.

"Cultivation" shall mean the process by which a marijuana plant is grown.

"Dwelling unit" shall mean one or more rooms and a single kitchen and at least one bathroom, designed, occupied or intended for occupancy as separate quarters for the exclusive use of a single family for living, cooking and sanitary purposes, located in a single-family, two-family or multi-family dwelling or mixed-use building.

"Financial interest" shall mean any ownership interest, including, without limitation, a membership, directorship or officer-ship; or any creditor interest, whether or not such interest is evidenced by any written document.

"Good cause," for the purpose of denying, refusing to renew, suspending or revoking a license under this Chapter, shall mean:

(a) The applicant has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this title or with any applicable state or local law or regulation;

(b) The applicant has failed to comply with any special terms or conditions of a

license, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of disciplinary proceedings held subsequent to the date of issuance of the license; or

(c) The medical marijuana dispensary or cultivation facility has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the dispensary or cultivation facility is located. Evidence to support such a finding can include, without limitation, a continuing pattern of disorderly conduct, a continuing pattern of drug-related criminal conduct within the premises of the medical marijuana dispensary or cultivation facility or in the immediate area surrounding such facility, a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana dispensary or cultivation facility, or an ongoing nuisance condition emanating from or caused by the medical marijuana dispensary or cultivation facility.

"License" shall mean a document issued by the city officially authorizing an applicant to operate a medical marijuana business pursuant to this article [chapter].

"Licensee" shall mean the person to whom a license has been issued pursuant to this article [chapter].

"Licensed premises" shall mean that portion of a property, building or other structure used for the purpose of cultivating, storing, processing, displaying for sale, selling or otherwise distributing medical marijuana or other allowable products by a licensee.

"Medical marijuana" shall mean marijuana or cannabis approved under state law to treat persons suffering from debilitating medical conditions as defined by Montana law.

"Medical marijuana business" shall mean any person acting alone or in concert with another person, whether for profit or not for profit, who cultivates, grows, harvests, processes, packages, transports, displays, sells, dispenses or otherwise distributes the stalks, stems, roots, seeds, leaves, buds or flowers of the plant (genus) cannabis, or any mixture or preparation thereof, for medical use as authorized by Montana law.

"Medical marijuana cultivation facility" or "cultivation facility" shall mean a building, structure or premises used for the cultivation or storage of medical marijuana that is physically separate and off site from any medical marijuana dispensary and that is designated as part of the premises of a medical marijuana dispensary licensed pursuant to this chapter.

"Medical marijuana dispensary" or "dispensary" shall mean a property or structure used to sell, distribute, transmit, give, dispense or otherwise provide marijuana in any manner to patients or primary caregivers pursuant to Montana law and the implementing state regulations.

"Medical marijuana paraphernalia" or "paraphernalia" shall mean devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming medical marijuana, including, but not limited to, rolling papers, related tools, water pipes and vaporizers.

"Minor patient" shall mean a patient less than eighteen years of age.

"Patient" shall mean a person who has a debilitating medical condition as defined by Montana law.

"Person" shall mean a natural person or business entity such as, without limitation, a corporation, association, firm, joint venture, estate, trust, business trust, syndicate, fiduciary, partnership or any group or combination thereof.

"Place of worship or religious assembly" shall mean a building containing a hall, auditorium or other suitable room used for the purpose of conducting religious services or meetings of the occupants of such structure.

"Premises" shall mean the entire parcel of property upon which a medical marijuana dispensary or cultivation facility is located.

"Primary caregiver" shall mean a person, other than the patient and the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.

"Registry identification card" shall mean that document, issued by the Montana Department of Public Health and Human Services, that identifies a patient authorized to engage in the medical use of marijuana and such patient's primary caregiver, if one is designated.

B. In addition to the definitions provided in subsection A of this chapter [section], other terms used in this chapter shall have the meaning ascribed to them by Montana law and such definitions are hereby incorporated into this chapter by this reference.

(Ord. No. O11-02, 2-1-2011)

5.70.030 License required; exemption.

A. Except as provided in subsection B of this section, it shall be unlawful for any person to establish or operate a medical marijuana business in the city without first having obtained a city license for such business. Such license shall be kept current at all times, and the failure to maintain a current license shall constitute a violation of this section.

B. Primary caregivers who cultivate, possess or dispense medical marijuana to a single patient, and patients who cultivate or

possess medical marijuana for their own medical use, are exempt from the licensing requirements of this section, but shall be subject to the following limitations:

1. All such cultivation shall be conducted entirely within a building or other fully enclosed structure.

2. In no event shall a patient or primary caregiver keep, cultivate, grow or process more medical marijuana than such person is entitled to possess pursuant to Montana law.

3. This section does not affect the requirement that all primary caregivers and patients must comply with Montana law, as amended, and any current and future regulations promulgated and adopted by the state of Montana.

(Ord. No. O11-02, 2-1-2011)

5.70.040 Requirements of application for license; payment of application fee; denial of license.

A. A person seeking a license or renewal of a license issued pursuant to this chapter shall submit an application to the public works secretary on forms provided by the city. At the time of application, each applicant shall pay a nonrefundable application fee to defray the costs incurred by the city for inspection of the proposed premises, as well as any other costs associated with the processing of the application. In addition, the applicant shall present for recording two of the following forms of identification:

1. A registration card issued pursuant to Montana law; and
2. A valid state of Montana driver's license; or
3. A valid driver's license containing a picture issued by another state; or
4. A military identification card; or
5. A valid passport; or

6. Any validly issued identification card issued by a federal, state or local governmental agency of the United States.

B. The applicant shall also provide the following information on a form approved by, or acceptable to the city, which information shall be required for the applicant, the proposed manager of the medical marijuana business, and all persons having a ten-percent or more financial interest in the medical marijuana business that is the subject of the application or, if the applicant is an entity, having a ten-percent or more financial interest in the entity:

1. Name, address, date of birth;
2. If the applicant is a business entity, information regarding the entity, including, without limitation, the name and address of the entity, its legal status, and proof of registration with, or a certificate of good standing from, Montana's Secretary of State, as applicable;
3. The name and complete address of the proposed medical marijuana business and statement that the business is to be located within the territorial limits or zoning jurisdiction of the city;
4. If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a medical marijuana dispensary or cultivation facility;
5. A copy of any deed reflecting the ownership of, or lease reflecting the right to possess, the proposed licensed premises;
6. If the medical marijuana dispensary will be providing medical marijuana in edible form, evidence of any food establishment license or permit that may be required by the State or county health inspector;
7. A "to scale" diagram of the premises, showing, without limitation, a site plan, building layout, all entry ways and exits to the dispensary and cultivation facility, load-

ing zones and all areas in which medical marijuana will be stored, grown or dispensed;

8. A comprehensive business plan for the medical marijuana business which shall contain, without limitation, the following:

(a) A security plan meeting the requirements of 5.70.140 herein;

(b) A description of all products to be sold;

(c) A signage plan that is in compliance with all applicable requirements of the city's sign code and the zoning code;

(d) A plan for the disposal of medical marijuana and related byproducts to ensure that such disposal is in compliance with all applicable federal, state and local laws, rules or regulations; and

9. Any additional information that city staff reasonably determines to be necessary in connection with the investigation and review of the application.

C. A license issued pursuant to this chapter does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the medical marijuana dispensary and cultivation facility, including, without limitation, any development approvals or building permits required by the city ordinance.

D. Upon receipt of a completed application, city staff shall circulate the application to all affected service areas and departments of the city to determine whether the application is in full compliance with all applicable city and state laws, rules and regulations.

E. The building official shall, prior to issuance of the license, perform an inspection of the proposed licensed premises, including, without limitation, the proposed cultivation facility, to determine compliance with any applicable requirements of this chapter, or other provisions of the LMC, including, but not limited to, the city's sign

code, zoning code and miscellaneous codes contained in Title 14. In addition, the building official shall determine if the proposed licensed premises complies with Montana law.

F. The mayor or his/her designee shall deny any application that does not meet the requirements of this chapter. The mayor or his/her designee shall also deny any application that contains any false, misleading or incomplete information. Denial of an application is subject to review by a court of competent jurisdiction.

(Ord. No. O11-02, 2-1-2011)

5.70.050 Location criteria.

A. A medical marijuana dispensary shall, at the time it is established and first licensed by the city, be located in compliance with the city's zoning ordinance.

B. Consistent with the city's zoning ordinance, no medical marijuana dispensary shall be allowed except as follows:

1. No medical marijuana dispensary may be located:

(a) Within one thousand feet of any private or public preschool, elementary, secondary, vocational or trade school, any child care center, place of worship or religious assembly, any public or private park, pool, playground or recreational facility, any juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation or treatment center;

(b) Within the boundary of any residential zone district.

(c) Upon any city property, easement or right-of-way;

(d) In a residential unit; or

(e) As a transient or outdoor vendor.

(f) The distances described above shall be computed by direct measurement in a straight line from the nearest property line of the land used for the purposes stated in subsection (a) to the nearest portion of the

building or unit in which the medical marijuana dispensary or cultivation facility is located.

(Ord. No. O11-02, 2-1-2011)

5.70.060 Persons prohibited as licensees.

A. No license shall be issued to, held by, or renewed by any of the following:

1. Any person who is not a qualifying patient or caregiver, as evidenced by a registry identification card and, in the case of a caregiver, his or her patient's written designation of the applicant as the patient's caregiver, as submitted to the Montana Department of Public Health and Human Services;

2. Any person who has been previously convicted of a felony drug offense in any state;

3. Any entity whose directors, shareholders, partners, or other persons having a financial interest in said entity have been previously convicted of a felony drug offense in any state;

4. Any person under the age of eighteen years;

5. Any person who has made a false, misleading or fraudulent statement on his or her application for a license;

6. Any person who has not paid all applicable fees;

7. Any person whose license for a medical marijuana business in another city, town, county or state has been previously revoked;

8. Any member of the city police department as defined in LMC Title 2 Chapter 2.60, or family member of a city police officer; or

9. Any applicant who already holds two medical marijuana business licenses in the city.

(Ord. No. O11-02, 2-1-2011)

5.70.070 Issuance of license; duration; renewal.

A. Upon issuance of a license, the city shall provide the licensee with one original of such license for each dispensary or cultivation site to be operated by the licensee in the city. Each license shall show the name and address of the licensee, the type of facility or business for which it is issued, and the address of the facility at which it is to be displayed as required by Section 5.70.090.

B. Each license issued pursuant to this chapter shall be valid for one year from the date of issuance and may be renewed only as provided in this chapter. All renewals of a license shall be for no more than one year. An application for the renewal of an existing license shall be made to the public works department for the mayor or his/her designee's consideration not more than sixty days and not less than thirty days prior to the date of expiration of the license. No application for renewal shall be accepted for processing prior to or after such date. The timely filing of a renewal application shall extend the current license until a decision is made on the renewal.

(Ord. No. O11-02, 2-1-2011)

5.70.080 Annual license fee.

Upon issuance of a license or any renewal of a license, the licensee shall pay to the city a fee in an amount set by resolution of the city council after a public hearing. The initial fee established by the city council is seven hundred fifty dollars per application. The city council shall adjust the future fee sufficiently to cover the annual cost of inspections conducted pursuant to [Section] 5.70.040 of this chapter by departments or agents of the city as may be designated by the mayor, for the purpose of de-

termining compliance with the provisions of this chapter and any other applicable state or local laws or regulations.
(Ord. No. O11-02, 2-1-2011)

5.70.090 Use and display of license.

A. A license shall not be transferable to another person.

B. Each license shall be limited to use at the premises specified in the application for such license. Any change in location shall require the filing of an application for payment of license fee and issuance of a new license under the provisions of [Section] 5.70.040 above.

C. Each license shall be continuously posted in a conspicuous location at the medical marijuana dispensary and/or at the cultivation facility.

D. The city license does not provide authority for a person or entity to operate a commercial delivery service for medical marijuana. This subsection is not intended to interfere with the relationship between an individual caregiver and his/her individual patient.
(Ord. No. O11-02, 2-1-2011)

5.70.100 Management of licensed premises.

Licensees who are natural persons shall either manage the licensed premises themselves or employ a separate and distinct manager on the premises and report the name of the manager to the city. Licensees that are entities shall employ a manager on the premises and report the name of the manager to the city. All managers must be natural persons who are patients or caregivers at least eighteen years of age. No manager shall be a person having a criminal history as described in Section 5.70.060.
(Ord. No. O11-02, 2-1-2011)

5.70.110 Change in manager; change in financial interest.

Each licensee shall report any change in managers to the city clerk within thirty days after the change. Such report shall include all information required for managers under [Section] 5.70.040 of this chapter.
(Ord. No. O11-02, 2-1-2011)

5.70.120 Hours of operation.

Medical marijuana dispensaries may be open for business only between the hours of 8:00 a.m. and 9:00 p.m.
(Ord. No. O11-02, 2-1-2011)

5.70.130 Signage and advertising.

All signage and advertising for a medical marijuana dispensary shall comply with all applicable provisions of city's sign code and zoning. In addition, no signage or advertising shall use the word "marijuana" or "cannabis," or any other word, phrase or symbol commonly understood to refer to marijuana unless such word, phrase or symbol is immediately preceded by the word "medical" in type and font that is at least as readily discernible as all other words, phrases or symbols. Such signage and advertising must clearly indicate that the products and services are offered only for medical marijuana patients and caregivers.
(Ord. No. O11-02, 2-1-2011)

5.70.140 Security requirements.

A. Based on the health, safety and welfare of all inhabitants of the city, security measures at dispensaries and cultivation facilities shall include at a minimum the following:

1. Security surveillance cameras installed to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;

2. Robbery and burglary alarm systems that are professionally monitored and maintained in good working condition;

3. A locking safe sufficiently affixed to the premises that is suitable for storage of all medical marijuana and/or cash stored overnight on the licensed premises;

4. Exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of this title, the city's zoning ordinance and sign code; and

5. Deadbolt locks on all exterior doors.

B. All security recordings shall be preserved for at least seventy-two hours by the licensee and be made available to law enforcement upon request for inspection.

(Ord. No. O11-02, 2-1-2011)

5.70.150 Required notices.

A. There shall be posted in a conspicuous location in each medical marijuana dispensary a legible sign containing warnings that:

1. The possession, use or distribution of marijuana is a violation of federal law;

2. The possession, use or distribution of marijuana for non-medical purposes is a violation of state law;

3. It is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of, or impaired by, marijuana; and

4. No person under the age of eighteen years is permitted on the premises except minor patients accompanied by a parent or legal guardian in possession of a state registry card for such minor patient.

(Ord. No. O11-02, 2-1-2011)

5.70.160 Cultivation, growing and processing by licensees.

The cultivation, growing, processing, display or storage of marijuana plants within a medical marijuana dispensary shall be

limited to non-flowering plants that are kept by the licensee solely for the purpose of cloning. The cultivation, growing and processing of marijuana plants other than for cloning shall be conducted by the licensee only at a licensed cultivation facility.

(Ord. No. O11-02, 2-1-2011)

5.70.170 Sale of edible products.

A. Medical marijuana dispensaries may not be co-located with facilities used to prepare, produce or assemble food, whether for medical or non-medical purposes.

B. Any food products sold by a medical marijuana dispensary shall either be inspected by an agency of a county or state health department.

(Ord. No. O11-02, 2-1-2011)

5.70.180 Labeling.

All marijuana sold or otherwise distributed by the licensee shall be packaged and labeled in a manner that advises the purchaser that the marijuana is intended for use solely by the patient to whom it is sold and that any resale or redistribution of the marijuana to any person other than a patient or primary caregiver constitutes a criminal violation.

(Ord. No. O11-02, 2-1-2011)

5.70.190 On-site consumption of medical marijuana.

The consumption, ingestion or inhalation of medical marijuana on or within the premises of a medical marijuana dispensary or cultivation facility is prohibited.

(Ord. No. O11-02, 2-1-2011)

5.70.200 Prohibited acts.

A. It shall be unlawful for any licensee to:

1. Employ any person to manage a medical marijuana dispensary or cultivation facility or to dispense medical mari-

juana who is not a patient or primary caregiver at least eighteen (18) years of age or who has a criminal history as described in Section 5.70.060;

2. Sell, give, dispense or otherwise distribute medical marijuana to anyone other than a qualified patient or caregiver;

3. Sell, give, dispense or otherwise distribute to any qualified patient or caregiver an amount of any usable form of medical marijuana that exceeds the limitations imposed by Montana law;

4. Purchase or otherwise obtain from any source an amount of any usable form of medical marijuana that exceeds the limitations imposed by Montana law;

5. Permit on the licensed premises any person other than:

(a) The licensee, the licensee's manager, employees and financial interest holders;

(b) A patient in possession of a registry identification card pursuant to Montana law;

(c) A minor patient accompanied by a parent or lawful guardian in possession of the minor patient's registry identification card;

(d) A caregiver in possession of his or her qualified patient's registry identification card pursuant to Montana law and the qualified patient's written designation of said person as the patient's caregiver, as submitted to Montana's Department of Public Health and Human Services;

(e) A person whose physical presence and assistance are necessary to assist a patient;

(f) A person who is actively engaged in the maintenance, repair or improvement of the licensed premises or in the provision of accounting or other professional services directly related to the conduct of the licensee's medical marijuana business; or

(g) law enforcement officers, inspectors and other officials or employees of any federal, state or local government or agency engaged in the lawful performance of their official duties.

6. Dispense medical marijuana in or upon its cultivation facility unless otherwise licensed as both a dispensary and cultivation facility;

7. Permit the sale or consumption of alcohol beverages on the licensed premises. (Ord. No. O11-02, 2-1-2011)

5.70.210 Visibility of activities; control of emissions.

A. All activities of medical marijuana dispensaries and cultivation facilities, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors.

B. No medical marijuana or paraphernalia shall be displayed or kept in a dispensary or cultivation facility so as to be visible from outside the licensed premises.

C. Sufficient measures and means of preventing smoke, odors, debris, dust, fluids and other substances from exiting a dispensary or cultivation facility must be provided at all times. In the event that any odors, debris, dust, fluids or other substances exit a medical marijuana dispensary or cultivation facility, the owner of the subject premises and the licensee shall be jointly and severally liable for such conditions and shall be responsible for immediate, full cleanup and correction of such condition. The licensee shall properly dispose of all such materials, items and other substances in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations.

(Ord. No. O11-02, 2-1-2011)

5.70.220 Disposal of marijuana byproducts.

Licensee may not dispose of any medical marijuana, byproducts and paraphernalia in the city's sewer or wastewater systems. Disposal must be pursuant to plans and procedures approved in advance by the city's public works department.

(Ord. No. O11-02, 2-1-2011)

5.70.230 Required books and records.

A. Every licensee shall maintain an accurate and complete record of all medical marijuana purchased, sold or dispensed by the medical marijuana business in any usable form. Such record shall include the following:

1. The total number of qualifying patients and caregivers serviced at the licensed premises; and

2. The total quantity of usable marijuana on premises not to exceed the limits imposed by Montana law.

(Ord. No. O11-02, 2-1-2011)

5.70.240 Inspection of licensed premises.

During all business hours and other times of apparent activity, all licensed premises shall be subject to inspection by the Laurel Police, Fire or other department or authorized agent of the city for the purpose of investigating and determining compliance with the provisions of this chapter and any other applicable local and/or state law or regulation. The inspection may include, but need not be limited to, the inspection of books, records and inventory. Where any part of the licensed premises consists of a locked area, such area shall be made available for inspection, without delay, upon request.

(Ord. No. O11-02, 2-1-2011)

5.70.250 Nonrenewal, suspension or revocation of license.

The mayor or his/her designee may, after notice and opportunity for a hearing,

suspend, revoke or refuse to renew a license for good cause. The mayor or his/her designee is authorized to adopt rules and procedures governing the conduct of such hearings. Licensees requesting a hearing shall, at the time of filing the request, pay the city a fee in the amount of one hundred dollars to defray the cost of the hearing.

(Ord. No. O11-02, 2-1-2011)

5.70.260 Violations and penalties.

In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this charter [chapter], any person, including, but not limited to, any licensee, manager or employee of a medical marijuana business, or any customer of such business, who violates any of the provisions of this chapter, shall be guilty of a misdemeanor punishable in accordance with LMC, Chapter 1.36.010.

(Ord. No. O11-02, 2-1-2011)

5.70.270 No city liability; indemnification.

A. By accepting a license issued pursuant to this chapter, the licensee waives and releases the city, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest or prosecution of dispensary owners, operators, employees, clients or customers for a violation of city or state laws, rules or regulations.

B. By accepting a license issued pursuant to this chapter, all licensees, jointly and severally if more than one, agree to indemnify, defend and hold harmless the city, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of any injury, loss, or damage, including, without limitation, claims arising

from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever arising out of or are in any manner connected with the operation of the medical marijuana business that is the subject of the license.

(Ord. No. O11-02, 2-1-2011)

5.70.280 Other laws remain applicable.

A. To the extent the state of Montana has adopted or adopts in the future any additional or stricter law or regulation governing the sale or distribution of medical marijuana, the additional or stricter regulation shall control the establishment or operation of any medical marijuana business in the city. Compliance with any applicable state law or regulation shall be deemed an additional requirement for issuance or denial of any license under this chapter, and noncompliance with any applicable state law or regulation shall be grounds for revocation or suspension of any license issued hereunder.

B. Any licensee may be required to demonstrate, upon demand by the mayor, his/her designee or by law enforcement officers that the source and quantity of any marijuana found upon the licensed premises are in full compliance with any applicable state law or regulation.

C. If the state subsequently prohibits the sale or other distribution of marijuana through medical marijuana dispensaries, any license issued hereunder shall be deemed immediately revoked by operation of law, with no ground for appeal or other redress on behalf of the licensee.

D. The issuance of any license pursuant to this chapter shall not be deemed to create an exception, defense or immunity to any person in regard to any potential criminal liability the person may have for the

cultivation, possession, sale, distribution or use of marijuana contrary to Montana law. (Ord. No. O11-02, 2-1-2011)

5.70.290 Severability.

A. If any section, sentence, clause, phrase, word or other provision of this chapter is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this chapter or the validity of this chapter as an entirety, it being the legislative intent that this chapter shall stand, notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

(Ord. No. O11-02, 2-1-2011)