

Chapter 22
BUSINESSES*

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***Cross references:** Advertising, ch. 6; amusements and entertainments, ch. 10; vehicles for hire, ch. 82.

ARTICLE I. IN GENERAL

Sec. 22-1. Purpose and intent of chapter.

In order to promote the health, safety and general welfare of its citizens, this chapter is enacted by the city to control the licensing and regulate the conduct of certain businesses and business practices.

(Code 1982, § 17-1)

Sec. 22-2. Definitions.

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

Adult amusement device means any machine which, upon the insertion of a coin or the payment of consideration, operates or may be operated to depict, display, or project, directly or indirectly, pictures, photography or other visual images of specified anatomical areas or specified sexual activities.

- (1) *Specified anatomical areas* are defined as:
 - a. Less than completely and opaquely covered:
 1. Human genitals, pubic region;
 2. Buttock;
 3. Female breast below a point immediately above the top of the areola; and
 - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (2) *Specified sexual activities* are defined as:
 - a. Human genitals in a state of sexual stimulation or arousal;
 - b. Acts of human masturbation, sexual intercourse, or sodomy;
 - c. Fondling of human genitals, pubic region, buttock or female breast.

Antiques means those items defined as antiques by the United States Tariff Act of 1930, as amended.

Billiard and pool halls means any place for the playing of any game of billiards, pool, bagatelle or similar game.

Blasting means the ignition, detonation or setting off of any charge or explosive or any solid, liquid or gaseous substance capable of any chemical reaction releasing energy or pressure in great force.

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Bowling alley means any building, structure, enclosure or other place for the playing of bowls, candlepins, duckpins, tenpins or similar games, other than coin-operated amusement devices.

Business means any vocation, occupation, profession, enterprise, establishment or other kind of activity or matters, together with all devices, machines, equipment, vehicles and appurtenances used in connection therewith, any of which are conducted for profit or benefit, whether directly or indirectly, on any premises or location in this city or within its jurisdiction.

Carnival means any traveling amusement show, excluding circuses, with or without midway, rides, concessions or other specific attractions. For licensing purposes, the term "carnival" shall also include rodeos, thrill shows and freak shows.

Charitable purpose means any activity conducted without profit and for a public, medical, scientific, educational, fraternal or religious purpose.

Circus means any show in which feats of horsemanship, tumbling, strength, etc., are exhibited, excluding carnivals and harness or running horse races; any show with an enclosed ring for the exhibition of animals.

Class A lounge means any business establishment which holds a class A lounge license issued by the state bureau of alcoholic beverages for the sale of spirituous, vinous and malt liquors.

Coin-operated amusement device means any machine or device which upon the insertion of a coin may be operated by the public generally for use as a game, entertainment or amusement, whether or not registering a score, and which is operated for amusement only and does not dispense any form of payoff, prize or reward except free replays. For the purpose of licensing, the owner of the establishment where the device is located shall be the party responsible for obtaining the license.

Doing business means the selling of any goods or services, the soliciting of business or offering of goods or services for sale or hire, the maintenance or providing of any equipment or device, or the acquiring or using of any vehicle or other conveyance or any premises in the city for business purposes.

Fill-in means any goods, wares and merchandise not mentioned in the original inventory for a sale filed with the application for an auction license.

Flammable liquid means a class 1 flammable liquid as defined in the rules and regulations issued by the state insurance commissioner.

Food service establishment means any person who prepares, sells, serves or packages food for consumption on premises within the corporate limits of the city, including but not limited to restaurants, luncheonettes, diners, snackbars, drive-ins and concession stands. The term "food service establishment," for the purpose of licensing, shall include any caterer doing business within the corporate limits of the city, any lessee or subtenant of any premises, business or dominant lessor (such as recreation or amusement areas, drive-in theaters, sports arenas or public exhibition halls) who prepares, serves, sells or packages food for consumption on the premises of any such business or dominant lessor, and any person, club or other establishment offering for sale malt, spirituous or vinous liquors for consumption on the premises.

FSE--Class A means a food service establishment which holds a license issued by the

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state bureau of alcoholic beverages for the sale of spirituous, vinous and malt liquors, except a class A lounge.

FSE--Class B means a food service establishment which holds a license issued by the state bureau of alcoholic beverages for the sale of malt and vinous liquors.

FSE--Class C means a food service establishment which holds a license issued by the state bureau of alcoholic beverages for the sale of malt liquor.

FSE--Class D means a food service establishment serving no malt, spirituous or vinous liquors.

FSE--Class E means a food service establishment which allows its patrons to bring their own spirituous, vinous or malt liquors for consumption on the premises.

FSE--Class F means a food service establishment operating for a period not to exceed 30 days.

FSE--Class G means a food service establishment operating for a period not to exceed three days.

Group care facility means a boarding care facility for more than eight individuals wherein children under 18 years of age or adults over 16 years of age and not legally related to the operator are provided personal care, supervision and social or rehabilitative services. Group care facilities within the meaning of this definition must be licensed by the State of Maine and may include, but are not limited to, group homes, half-way homes and congregate homes, but do not include foster family homes.

Innkeeper means anyone who operates a place where the public, for consideration, obtains sleeping accommodations and meals under one roof and which has a public dining room or rooms operated by the same management open and serving food during the morning, afternoon and evening, and a kitchen, apart from the public dining rooms, in which food is regularly prepared for the public on the same premises.

Jukebox means any machine or device which, upon the insertion of a coin, slug, token, plate or disc, may be operated by the public generally to play musical tapes or recordings or used as a musical entertainment or amusement device, and which does not dispense any payoff, prize or reward.

Junk means old iron, chains, brass, copper, tin, lead or other base metals, old rope, old bags, rags, wastepaper, paper clippings, scraps of woolens, clips, bagging, rubber and glass, and empty bottles of different kinds when less than one gross, and all articles discarded or no longer used, or a manufactured article composed of any one or more of the materials mentioned.

Junk collector means anyone dealing or trading in junk; anyone who engages in the collection, storage, transfer or sale of junk.

Licensee means any holder of a valid and current license or permit issued by the city.

Local means of or pertaining to this city.

Lodginghouse means a building or group of attached or detached buildings containing lodging and/or dwelling units for occupancy for daily or weekly periods by persons not within the second degree of kindred to the person conducting the lodginghouse with or without board, in which common kitchen or living facilities may or may not be provided. The term "lodginghouse"

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shall not be meant to include the dormitories of charitable, educational or philanthropic institutions or associations, or any house where lodgings are let to less than five lodgers. A boarding house shall be considered a type of lodging house.

Malt liquors means all kinds and types of liquors intended for human consumption produced by the fermentation of malt wholly or partially, or from any substitute therefor, which contain more than one-half of one percent of alcohol by volume.

Mobile home means a factory-fabricated structure meeting the standards of the U.S. Department of Housing and Urban Development which is built on a permanent chassis, is designed to be used as a dwelling unit and was constructed after June 15, 1976.

Mobile home park means a contiguous parcel of land with a minimum area of five acres designed and/or used to accommodate a minimum of three manufactured housing units on mobile home lots which are to be rented or leased, but not sold. The management and maintenance of a mobile home park shall be deemed to be the responsibility of a single owner or operator, with improved lots and/or services being available under a leasing arrangement.

Motion picture theater means any building or area, including drive-in parks, arenas, exhibition halls or public buildings, where commercial films, movies or motion pictures, including previews of motion pictures, closed circuit telecasts and videotape replays, are shown, or where any cinematograph or similar apparatus is kept, used or exhibited for any commercial use whatsoever.

Nursing home means a facility which is operated in connection with a hospital, or in which nursing care and medical services are prescribed by or performed under the general direction of persons licensed to practice medicine or surgery in the state, for the accommodation of convalescent or other persons who are not acutely ill and not in need of hospital care, but who do require skilled nursing care and related medical services.

Pawnbroker means any person engaged in the business of lending money on deposit or pledges of personal property or other valuable thing other than securities or printed evidence of indebtedness, or in the business of purchasing personal property, or choses in action, or other valuable thing, and selling or agreeing to sell the same back to the seller at a price other than the original price of purchase, or in the business of purchasing personal property such as articles containing gold, silver, platinum or other precious metals or jewels for the purpose of reducing or smelting them into a different form and reselling the product.

Peddler means any person traveling by foot, wagon, automotive vehicle or any other type of conveyance from place to place, from house to house, or from street to street carrying, conveying or transporting goods, wares and merchandise and offering or exposing the same or any service for sale; or who without traveling from place to place shall sell, expose or offer any goods, wares, merchandise or service for sale from any portable, mobile or temporary structure, or from a wagon, automotive vehicle or other vehicle or conveyance; or who without traveling from place to place shall sell, expose or offer for sale the same in the entrances to buildings or other premises or upon vacant lots or other tracts of land within the corporate limits of the city. The term "peddler" shall not be construed to include the following: vendors of food sold by wagon, automotive vehicle or any other type of conveyance, vendors of merchandise by sample, list or catalogue for future delivery, vendors of farm, dairy, orchard, fish and forest products of their own production, vendors of newspapers and religious literature, route salesmen while engaged in making deliveries to their regular customers, commercial travelers or selling agents

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who, in the usual and customary course of business, make sales to dealers, or persons duly authorized to conduct tag days, sell poppies or otherwise solicit.

Plumbing means the art of installing in buildings the pipes, fixtures and other apparatus for bringing in the water supply and removing liquid and water-carried wastes, and shall include the necessary water piping and water connections to all types of heating apparatus using water.

Premises means all lands, buildings, structures, places and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to, or is otherwise used in connection with, any such business conducted on such premises.

Racetrack means any fairgrounds, racetrack or field in the city which has on it any structure or grandstand with a capacity of over 100 persons and which is used by spectators at races.

Roving diner means any portable, mobile or temporary structure, and any vehicle, cart, wagon, conveyance or carrier of any kind, from which food is sold or caused to be sold, at retail, from house to house, store to store, building to building, or along or upon any sidewalk, street, park or other public property in the city; lunch wagons. The term "roving diner" shall not be construed to include caterers, vendors of dairy products, ice, bakery products, or similarly employed route salesmen while engaged in making deliveries to their regular customers or persons making deliveries on order from customers of retail stores in the city.

Secondhand dealer means any person who engages in the purchase, collection, transfer or storage for later resale, or who engages in the trading or selling, unless such sale is by auction of less than four days' duration, of any article, vehicle or material, or portion thereof, of which prior use has been made in any manner whatsoever. The term "secondhand dealer" shall not be construed to include pawnbrokers, junk collectors, used car dealers; nor shall it include any person primarily engaged in the retail sale of new and unused goods, who deals with used goods only incidentally, such as accepting such goods in trade as part of a transaction involving the sale of new goods, but only to the extent that such used goods are of the same type as the new goods sold by such person.

Shelter means a charitable facility operated by either a not-for-profit corporation or a religious organization providing free temporary overnight housing in a dormitory-style, barrack-style, or per-bed arrangement to homeless individuals.

Solicitor means any person using or upon any sidewalk, street park or other public place, or at any doorway or entranceway immediately abutting thereon, within the corporate limits of the city for the purpose of begging, collecting or soliciting alms for the poor or funds for any charitable, philanthropic, civic, musical, athletic, patriotic or related purposes.

Sound amplification means any private conveyance or carrier of any kind having, either mounted or unmounted, any electronic, mechanical or other appliance, apparatus, equipment or device used to broadcast or otherwise amplify any announcement, voice, advertisement, recording, tape or other sound for any purpose other than use during a public emergency, and traveling upon or using any street, sidewalk, park or other public place within the corporate limits of the city. The term "sound amplification" shall not be construed to include any private or public emergency vehicles used to perform a public service.

Special food handler means any person engaged in processing, storing, serving or selling

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food for consumption off premises.

Spirituos liquor means any alcoholic beverage produced by distillation or if produced by any other process, strengthened or fortified by the addition of distilled spirits of any kind, intended for human consumption, which contains more than one-half of one percent of alcohol by volume.

Taxicab means a motor vehicle used for the conveyance of passengers for hire from place to place on the streets of the city, and shall include, in addition to such motor vehicles as are commonly known as taxicabs, all motor vehicles of every kind, character and description which are used as taxicabs, cabs, for-hire cars, or livery cars and engaged as such in the conveyance of passengers for hire. The term "taxicab" shall not be construed to include motor vehicles owned by undertakers and used for funeral services, motor vehicles for hire while being used for services at funerals or weddings or motorbuses.

Vinous liquor means wine.

Wrestling exhibition means any prize fight or wrestling match or event, other than boxing, exhibited publicly or open to the public, with or without an admission charge.

(Code 1982, § 17-2; Ord. No. 01-4, 4-7-01; Ord. No. 01-21, 1-10-02; Ord. No. 01-22, 1-10-02; Ord. No. 03-13, 9-4-03; Ord. No. 03-14, 9-4-03; Ord. No. 04-20, 9-9-04; Ord. No. 10-01, 3-4-10; Ord. No. 10-16, 2-3-11)

Cross references: Definitions generally, § 1-2.

Secs. 22-3--22-25. Reserved.

ARTICLE II. LICENSES

Sec. 22-26. Complying with rules and regulations, paying fee, obtaining license prerequisite to doing business.

Except as otherwise provided, no person shall engage in any business or activity, nor maintain any equipment or device, for which a license or permit is required, without having first complied with all applicable rules and regulations and having paid the proper fee and obtained a license therefor.

(Code 1982, § 17-3)

Sec. 22-27. Violations; penalty.

Each day that any person engages in any business or activity after the license fee therefor becomes due and payable, without paying such fee and securing a license as required in this chapter, shall constitute a separate offense. Each day that a person continues to operate a business in violation of any of the provisions of this chapter shall constitute a separate offense. Violators may have their licenses immediately suspended or revoked.

(Code 1982, § 17-25)

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Sec. 22-28. License for each location required.

A license is required for each place or premises where a business regulated by this chapter, or any part thereof, including storage, is conducted. No licensee shall engage in such business in any manner at any place without first obtaining such license. The provisions of this section shall not apply to the following licenses, except that a separate license shall be required for each cart, vehicle, conveyance or other carrier employed by such licensees: peddler, solicitor, sound amplification and taxicab. (Code 1982, § 17-4; Ord. No. 01-22, 1-10-02)

Sec. 22-29. Procedure for application; payment of fees.

Except when otherwise provided by the ordinances of the city, every application for a license shall be made in writing to the city clerk upon a form to be provided by the clerk. Such application shall be signed by the applicant. The proper fee shall be paid to the clerk at the time of filing the application. (Code 1982, § 17-5)

Sec. 22-30. Business beginning after application date.

The license fee for any business shall be due and payable before such business is begun, provided, that when the licensee begins such business after the expiration of six months of the current license year, then such licensee shall be required to pay one-half the applicable yearly license fee prescribed, except as provisions otherwise require payment of the full license fee.

(Code 1982, § 17-6)

Sec. 22-31. Authority to waive fees.

The city clerk may waive fees which are prescribed by ordinance.

(Code 1982, § 17-7)

Sec. 22-32. Applicants required to furnish information.

Every applicant for a license shall furnish to the city clerk the following information:

- (1) Complete and exact name under which the business is proposed to be operated;
- (2) If the business is proposed to be operated by an individual under any assumed name, the name of such individual and his address;
- (3) If the business is a partnership, the name and address of each partner;
- (4) If the business is a corporation, the name and address of the officers of the corporation, and the location of the principal office;
- (5) Nature of the business for which a license is desired;
- (6) Proposed location;
- (7) In addition to the foregoing, the applicant shall furnish to the city clerk such other information as may be required by him in order to enable him to determine the proper classification of the applicant and the appropriate license fee.

(Code 1982, § 17-8)

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Sec. 22-33. Investigation of applicants.

Wherever his approval is required or upon the request of the city clerk, the police chief may cause an investigation of any applicant for a license to be conducted prior to approval of such application for a license or permit. (Code 1982, § 17-9)

Sec. 22-34. Inspection of applicant's premises, merchandise.

Whenever required by the statutes of the state, the ordinances of the city or the regulations of any city department, or upon the request of the city clerk, an inspection may be made of the applicant's premises and/or merchandise by the city assessors, police chief, fire chief, health officer, building inspector or other duly authorized city official prior to approval of any application for a license or permit. In addition, the premises and/or merchandise of every licensee shall be subject to such inspection at any time during the current license year; and the results of such inspections may be grounds for the suspension or revocation of any license issued by the city. (Code 1982, § 17-10)

Sec. 22-35. Compliance with rules and regulations required; approval, disapproval by city officials, council.

- (a) All licensees and applicants for licenses are required to comply with the state statutes, city ordinances and rules and regulations of city departments which pertain to the business or activity for which a license is desired. In any case where the city requires the approval of the building inspector, health officer, police chief, fire chief or any other city official prior to issuance of the license, it shall be the duty of the city clerk to notify in writing the officials whose approvals are required. The officials so notified, or their duly delegated representatives, shall approve or disapprove the application without delay and shall note their approval or disapproval thereon, stating the reasons for any disapproval. When required by the city council, a hearing will be held at which time the council shall decide whether to approve or disapprove any application for a license or permit. It shall be the duty of the city clerk to notify the applicant of the time and place of the hearing. Such notice shall be mailed by the city clerk, postage prepaid, to the applicant at his last known address at least 48 hours prior to the date set for such hearing. The decision and order of the council on such hearing shall be final and conclusive.
- (b) Except as set forth in subsection (c) below, a license under this chapter shall be denied if the council makes a finding that:
 - (1) The applicant is a corporation which is not licensed to do business in the state;
 - (2) The applicant is a corporation, of which, at any time during the previous five years, a principal officer, or a person having an actual or beneficial ownership interest or management authority therein has been convicted of (a) any Class A, Class B, or Class C crime, or (b) a crime committed under the laws of the United States of America or of any other state or territory thereof, which is punishable (whether or not such punishment was actually imposed) by a sentence at least as harsh as that which is authorized for the commission of a Class C crime under Maine law; provided that such conviction was for an offense which is rationally related to the regulation of the business sought to be licensed;
 - (3) The applicant has been convicted of (a) any Class A, Class B or Class C crime, or

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- (b) a crime committed under the laws of the United States of America or of any other state or territory thereof, which is punishable (whether or not such punishment was actually imposed) by a sentence at least as harsh as that which is authorized for the commission of a Class C crime under Maine law; provided that such conviction was for an offense which is rationally related to the regulation of the business sought to be licensed;
- (4) The applicant has had his or her business license revoked within the five years preceding the date of the application;
 - (5) The applicant is a corporation, person or other business entity which does or will employ a person (a) who will be substantially in the ownership or management of the business and the employee's business license has been revoked within the five years preceding the application; or (b) who was a principal of any corporation whose business license has been revoked within the five years preceding the application;
 - (6) The applicant is a corporation, person or other business entity of which any person is a principal who will be substantially involved in the ownership or management of the business and the principal's business license has been revoked within the five years preceding the application;
 - (7) The proposed licensed premises or its use fails to comply with zoning or other land use ordinances;
 - (8) The proposed licensed premises or its use fails to comply with any municipal ordinance or regulation;
 - (9) There exist on or about the premises proposed to be licensed conditions such as waste disposal violations, health or safety violations or other such conditions that unreasonably disturb, interfere with, or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use or enjoy their property in a reasonable manner;
 - (10) The applicant has knowingly furnished false or misleading information on his/her application.
- (c) In the event that the council, in an exercise of its sound discretion, determines that (a) there exist extenuating circumstances with respect to the grounds for denial of a license under subsection (b) above; or (b) that the circumstances giving rise to the denial under subsection (b) above can be ameliorated by the imposition of conditions or limitations to the grant of a license, the council may, notwithstanding the grounds set forth in subsection (b) above, grant a license to the applicant upon such conditions as the council in an exercise of its sound discretion deems to be just and appropriate.

(Code 1982, § 17-11; Ord. No. 96-5, 5-16-96)

Sec. 22-36. Licenses denied; appeal.

- (a) No license or permit shall be issued by the city clerk following a hearing at which the city council has disapproved any application for such license. The city clerk shall deny a license or permit to any person whose application was disapproved by any city official

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whose approval was required. No license or permit shall be issued to any person who is indebted to the city upon any claim, tax or account which is more than 60 days delinquent. The city treasurer shall be responsible for making available to the city clerk and any other license-issuing officers such information as is essential for compliance with this section. In case an application is disapproved, the city clerk shall then notify the applicant in writing of such denial and shall refund the fee paid in. The city clerk shall also notify the city council of such action at the next regularly scheduled meeting of the city council.

- (b) Except as otherwise provided, appeals shall be made to the council in writing, whereupon a hearing will be scheduled, at which time the applicant shall have the right to be heard. It shall be the duty of the city clerk to notify such applicants who have appealed, of the time and place of the hearing. Such notice shall be mailed by the city clerk, postage prepaid, to the applicant at the address furnished on the application form at least 48 hours prior to the date set for hearing. The city council may, at that time, approve any application previously denied by the affirmative vote of five or more members of the council.

(Code 1982, § 17-12)

Sec. 22-37. Issuance of licenses.

Except where the ordinances of the city require a license to be signed by some other official or where otherwise provided for by the city council, the city clerk shall issue all licenses for which an application has been submitted and approved.

(Code 1982, § 17-13)

Sec. 22-38. Display of licenses.

Every license shall be kept prominently displayed at the place of business of the licensee named in the license, or, in the case of equipment licenses, the license shall be affixed to such machines or equipment as required to allow such license to be inspected at any time by any proper city official.

(Code 1982, § 17-14)

Sec. 22-39. Change of location of licensed business.

No license issued in accordance with the provisions of this chapter for the conduct of any business at a fixed place designated in the license issued therefor shall be valid for the conduct of such business at any place other than that designated in such license.

(Code 1982, § 17-15)

Sec. 22-40. Nontransferability.

Every license issued by the city shall be a personal privilege and shall not be assignable or transferable.

(Code 1982, § 17-16)

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Sec. 22-41. Duration of licenses; expiration date.

All licenses, except when otherwise provided, shall be for 12 months' duration and shall expire according to the following schedule:

Adult amusement device.....	June
Billiard and pool rooms.....	November
Bowling alley.....	April
Class A lounge.....	One year from date of issuance
Coin-operated amusement devices.....	June
Flammable liquid.....	June
Food service establishment.....	April
Group care facility.....	February
Innkeepers.....	February
Junk collectors.....	November
Lodginghouse operator.....	February
Motion picture theater.....	April
Pawnbroker.....	September
Peddler.....	April
Roller skating rink.....	April
Roving diner.....	April
Secondhand dealer.....	September
Special food handlers.....	April
Taxicabs.....	February

(Code 1982, § 17-17; Ord. No. 98-11, 11-19-98; Ord. No. 01-21, 1-10-02; Ord. No. 03-13, 9-4-03)

Sec. 22-42. Licensees responsible for compliance with rules, regulations; duty to cooperate with city officials.

It shall be the responsibility of the licensee of establishments regulated by this chapter to make certain that all rules and regulations prescribed by this chapter and the statutes of the state are complied with, and each licensee shall cooperate fully with city officials to enforce such regulations.

(Code 1982, § 17-18)

Sec. 22-43. City officials to notify police of violators; prosecutions.

- (a) Any city official having knowledge of any person operating any business or activity regulated by this chapter without the required license, or violating any state or local

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regulations, shall furnish the chief of police the name of such person.

- (b) It shall be the duty of the chief of police to commence proceedings against the offenders under the provisions of this chapter.

(Code 1982, § 17-19)

Sec. 22-44. Suspensions and revocations; hearings.

- (a) Where provided, duly authorized city officials shall have the power to temporarily suspend licenses when continued operation of the licensed business or activity presents a danger to the health, safety or general welfare of the public. Any license issued by the city may be suspended or revoked by the city council and any license fees retained by the city, upon a finding by the council that the licensee has violated the ordinances of the city or the laws of the state, or has willfully or persistently failed to comply with any applicable rules and regulations. Any action to suspend or revoke a license may be commenced upon the initiative of the council, upon the recommendation of any city official charged with approving, inspecting or otherwise regulating the licensee's business or activity, or upon complaint from any resident of the city.
- (b) Prior to suspending or revoking a license, the city council shall hold a hearing at the regular meeting of the council or a special meeting thereof called for that purpose. At such a meeting, the licensee shall have the right to be heard. Notice of the hearing for suspension or revocation of a license shall be given in writing, setting forth specifically the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed by the city clerk, postage prepaid, to the licensee at his last known address at least 48 hours prior to the date set for hearing. The decision and order of the city council at such hearings shall be final and conclusive.

(Code 1982, § 17-20)

Sec. 22-45. Exemptions to licensing provisions generally.

- (a) Persons acting pursuant to an order or process of a court of competent jurisdiction and persons acting in accordance with their powers and duties as public officers, such as sheriffs and marshals, shall not be required to secure a local license.
- (b) Orphanages and public and private hospitals, as defined in the ordinances of the city and the laws of the state, shall not be required to secure a local license to operate a children's home or day care facility.
- (c) Needy and disabled honorably discharged veterans shall be exempt from the payment of the fee for a peddler's license upon presenting proof of at least 50 percent disability.
- (d) Persons selling, exclusively, farm, dairy, orchard or fish products of their own production shall not be required to obtain a local license.
- (e) No charge shall be made for the issuance of a solicitor's license, blasting permit or chimney cleaner permit.
- (f) Persons licensed in accordance with state statutes to maintain an automobile graveyard or junkyard shall not be required to obtain a local license to also operate as a junk collector.

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- (g) Food service establishments and special food handlers operating more than one such business under the same roof and under the same management need obtain only one license, provided that where such person is engaged as both a food service establishment and a special food handler, a special food handler's license shall be insufficient to include the food service establishment's operation and the license required shall be that required for a food service establishment.
- (h) Persons traveling by foot, wagon, automotive vehicle or any other type of conveyance, from place to place, from house to house or from street to street selling magazines or other merchandise by sample, list or catalogue for future delivery shall not be required to obtain a local peddler's license, but such persons shall be required to register with the police department.
- (i) Persons who use their own homes to provide foster care to children shall not be required to obtain a local license.
- (j) Public or private school cafeterias and nursing homes shall not be required to obtain a local food service establishment license.

(Code 1982, § 17-21; Ord. No. 98-11, 11-19-98)

Sec. 22-46. Schedule of fees.

The fees for business licenses shall be paid by the owner or his agent in accordance with the business fee schedule established by the city council.

(Code 1982, § 17-22; Ord. No. 98-11, 11-19-98; Ord. No. 01-4, 4-7-01; Ord. No. 01-21, 1-10-02; Ord. No. 01-22, 1-10-02; Ord. No. 02-14, 8-29-02)

Sec. 22-47. Regulation of business days and hours of class E food service establishments.

- (a) No liquor shall be consumed in a class E food service establishment except as provided in this section.
 - (1) Liquor may be consumed in any class E food service establishment between the hours of 6:00 a.m. and 1:15 a.m. except as provided in this section.
 - (2) No liquor shall be consumed in any class E food service establishment between the hours of 1:15 a.m. and 6:00 a.m. and between 1:15 a.m. and 12:00 noon on Sundays.
 - (3) Licensees of class E food service establishments may permit the consumption of liquor on their premises on January 1 of any year until 2:15 a.m.
 - (4) Liquor may be consumed in class E food service establishments on the day of holding a general election or statewide primary after the city polls have closed.
 - (5) No liquor shall be consumed in a class E food service establishment on Memorial Day prior to 12:00 noon.
- (b) As used in this section, the word "liquor" means and includes any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquors, intended for human consumption, which contains more than one-half of one percent alcohol by volume.

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- (c) Any licensee of a class E food service establishment, by himself, clerk, servant or agent, who permits the consumption of liquor on his premises in violation of this section shall be guilty of an offense.

(Code 1982, § 17-23)

Sec. 22-48. Group care facilities.

It shall be the responsibility of the licensee of a group care facility to ensure that such facility is in compliance with the following regulations:

- (1) The building must be kept in good repair and free of safety hazards.
- (2) The grounds and accessory building or structure must be kept in a safe, sanitary and presentable condition. Grounds shall be kept free from refuse and litter, as well as insect and rodent breeding areas.
- (3) Each licensed group care facility shall maintain staff sufficient to keep the building, accessory buildings or structures and grounds in compliance with this section.
- (4) Each facility shall have sufficient trained staff present at all times to properly supervise its operation.
- (5) The licensee is responsible for the prevention of activities constituting a nuisance or annoyance injurious to the health, safety or comfort of the citizens of the city.

(Code 1982, § 17-24)

Sec. 22-49. Adoption of State of Maine Rules.

For the purpose of protecting the public health the City hereby adopts and enacts the following State of Maine Rules:

- (1) State of Maine Food Code 2001 as adopted by the Maine Department of Human Services 10-144 CMR 200 and the Maine Department of Agriculture, Food and Rural Resources 01-001 CMR 331 May 1, 2001.
- (2) Rules Relating to Lodging Establishments, Department of Health and Human Services, Maine Centers for Disease Control and Prevention, Division of Environmental Health 10-144 CMR 206 January 1, 2003.
- (3) Rules Relating to the Administration and Enforcement of Establishments Licensed by the Health Inspection Program, Department of Health and Human Services, Maine Center for Disease Control and Prevention, Division of Environmental Health Inspection Program 10-144 CMR Chapter 201 October 7, 2012.

(Ord. No. 12-12, 11-16-12; Ord. No. 13-1, 2-21-13)

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Secs. 22-50--22-70. Reserved.

ARTICLE III. AUTOMOBILE GRAVEYARDS AND JUNKYARDS

Sec. 22-71. Purpose.

The purpose of this article is to provide adequate controls to ensure that the establishment, operation and maintenance of automobile graveyards and junkyards do not have a deleterious impact on the natural environment or the public health, safety and general welfare.

(Code 1982, § 17-160)

Sec. 22-72. Applicability.

This article shall apply to any automobile graveyard or junkyard all or part of which is within the city, except those owned or operated by the city.

(Code 1982, § 17-161)

Sec. 22-73. Definitions.

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

Aquifer means a geological formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water, as mapped by the state geological survey.

Automobile graveyard means a yard, field or other area used as a place of storage, other than temporary storage, by an establishment or place of business which is engaged primarily in doing auto body repair work for the purpose of making repairs to render a motor vehicle serviceable, for three or more unserviceable, unregistered and/or uninspected, discarded, wornout or junked motor vehicles as defined in 29-A M.R.S.A. section 101, subsection 42, or parts thereof, referred to in this article as "vehicle" and includes an area used for automobile dismantling, salvage and recycling operations.

Classified waterway means surface water, inland or tidal, and direct or indirect tributaries thereof, which is described and designated by distinct category by the state department of environmental protection pursuant to 38 M.R.S.A. § 363-A or 38 M.R.S.A. § 364.

Floodplain means the low land and relatively flat areas adjoining inland and coastal waters, including floodprone areas of offshore islands, which are inundated by a flood that has a one percent or greater chance of recurring in any year or a flood of magnitude equaled or exceeded once in 100 years on the average as identified by the Federal Insurance Administration.

Junkyard means a yard, field or other area used as a place of storage for:

- (1) Discarded, wornout or junked plumbing, heating supplies, household, appliances and furniture;
- (2) Discarded, scrapped and junked lumber;

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- (3) Old or scrap copper, brass, rope, rags, batteries, paper trash, rubber debris, waste and all scrap iron, steel and other scrap ferrous or nonferrous material; and
- (4) Garbage dumps, waste dumps and sanitary fills;

all of which are referred to in this article as "junk."

(Code 1982, § 17-162; Ord. No. 04-24, 2-3-05) **Cross references:** Definitions generally, § 1-2.

Sec. 22-74. Permit required.

- (a) No person shall establish, operate or maintain, and the owner of property shall not permit the establishment, operation or maintenance of, any junkyard or automobile graveyard all or any part of which is within the city without first obtaining a permit therefor in accordance with the provisions of this chapter and 30-A M.R.S.A. § 3752 et seq.
- (b) All permits issued under this article shall be approved by the city council and issued by the city clerk.
- (c) All permits issued under this article shall be for a term not to exceed one calendar year, which expires on the first day of the year next following unless earlier suspended or revoked.
- (d) In addition to the application fee provided for in this article, the fee required for the issuance of any permit under this article shall be paid in advance in the amount provided for in 30-A M.R.S.A. § 3756.

(Code 1982, § 17-163)

Sec. 22-75. Administration.

- (a) *Conditions of approval.* The city council may impose conditions on the approval of any permit application under this article to ensure compliance with the provisions of this chapter. Such conditions may include, but are not limited to, the following:
 - (1) The applicant provide documentation to the city clerk of the receipt of any approvals required by any federal or state agency or department pursuant to federal or state law prior to the issuance of any permit under this article.
 - (2) The applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any permit under this article.
 - (3) Any screening requirements imposed pursuant to the provisions of this chapter be installed and completed prior to the issuance of any permit under this article.
- (b) *Contents of application.* All applications for permits under this article shall be filed with, and in a form satisfactory to, the city clerk. Such application shall include, but is not limited to, the following:
 - (1) Name, address and contact information including a phone number of the applicant and all other persons having a legal interest in the property.
 - (2) The location of the premises for which a permit is sought by identification of city tax map number and street address.

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- (3) The dimensions and acreage of the property.
 - (4) An original and three copies of a site plan, drawn to a scale of 100 feet or less to the inch, which contains the following information:
 - a. The boundary lines of the property for which a permit is sought.
 - b. The location of all existing and proposed buildings and structures.
 - c. The location of all existing and proposed areas within which all vehicles and junk will be located.
 - d. The location of any aquifer or classified waterway on the property or within 300 feet thereof.
 - e. The location of any water bodies on the property or within 300 feet thereof.
 - f. The location of any floodplain areas located on the property.
 - g. The location and characteristics of all existing and proposed vegetation which is proposed to be maintained for required screening.
 - h. The location and characteristics of all existing and proposed fencing proposed to be maintained for required screening.
 - i. The location of any residences, private wells or schools within 300 feet of the property.
 - j. The characteristics of the soils existing on the property as determined by the soil conservation service soils survey map.
 - k. The contours of the property as determined by the U.S. Geological Survey Contour Map.
 - l. The location and characteristics of all vehicular entrances and exits serving the property.
 - (5) A statement as to whether approval by any state agency or department is required pursuant to state law and, if so, a copy of the required license and/or approval.
 - (6) A nonrefundable application fee in accordance with the city's policy manual as approved by the city council.
- (c) *Compliance standards.* The following standards shall govern the issuance of permits under this article and the operation and maintenance of all permitted premises:
- (1) An effective visual screen at least six feet in height shall be located and maintained around all sides of the area where vehicles or junk are to be located such that these areas are entirely screened from ordinary view from all directly abutting properties and public ways at all times.
 - (2) All screening and location requirements of 30-A M.R.S.A. § 3754-A and § 3755-A shall be satisfied. There shall be no vehicles or junk stored outside the screened area.
 - (3) No vehicle or junk shall be stored within 300 feet of any water body, aquifer or

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classified waterway.

- (4) No vehicles or junk shall be stored within 300 feet of any residence, private well or school.
- (5) No vehicles or junk shall be stored within a floodplain.
- (6) Upon receiving a motor vehicle, the fuel tank and battery shall be removed and the fuel, engine lubricant, transmission fluid, brake fluid and engine coolant shall be drained into watertight, covered containers and shall be recycled or disposed of according to all applicable federal and state laws, rules and regulations regarding disposal of waste oil and hazardous materials. No discharge of any fluids from any motor vehicle or junk shall be permitted into or onto the ground.
- (7) No vehicles or junk shall be located closer than 100 feet from all lot lines of the property.
- (8) All dismantling of motor vehicles with power tools shall take place within a building.
- (9) All federal and state hazardous waste laws and regulations shall be satisfied.
- (10) All vehicular entrances and exits shall be located and constructed in a manner which does not create or aggravate a traffic safety hazard.
- (11) No noise, vibration, glare, fumes or odor shall be emitted which is detectable to the normal senses from any abutting property.

Upon recommendation of the director of planning and code enforcement, the city council may waive compliance with any of the above standards when both the director of planning and code enforcement and the city council determine that strict compliance therewith is not necessary to accomplish the purposes of this article.

- (d) *Nonconforming uses.* Any automobile graveyard or junkyard in existence and for which a valid permit was in effect on the effective date of the ordinance from which this article derives may remain in operation in its present location, pending the expiration of such permit, so long as such use complies with the provisions of 30 M.R.S.A. § 3751 et seq. Thereafter, such automobile graveyard or junkyard shall be required to comply with all the provisions of this article except those compliance standards contained in subsections (c)(3), (4), (5), (7), (8) and (10) of this section. Any expansion of such junkyard or automobile graveyard beyond the size which existed and for which a valid permit was in effect on the effective date of this article shall comply with all provisions of this article.

(Code 1982, § 17-164; Ord. No. 04-24, 2-3-05; Ord. No. 08-06d, 8-14-08)

Sec. 22-76. Penalty for violation of article.

Any person who violates any provision of this article or the terms of any permit issued under this article may be penalized in the following manner:

- (1) *Temporary suspension.* The city clerk is authorized, pursuant to section 22-44, to immediately and temporarily suspend any permit when continued operation of the permitted premises or activity presents a danger to the health, safety or the general

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welfare of the public.

- (2) *Suspension or revocation.* The city council may suspend or revoke a permit in accordance with the provisions of section 22-44 and 30-A M.R.S.A. § 3758-A and/or 30-A M.R.S.A. § 4452.
- (3) *Civil penalties.* The violator may be required to pay the penalties imposed by section 1-8 or 30-A M.R.S.A. § 3758 and 30-A M.R.S.A. § 4506, whichever are greater, as well as reasonable attorney fees, expert witness fees and costs pursuant to 30-A M.R.S.A. § 4506 and 30-A M.R.S.A. § 4452.

(Code 1982, § 17-165; Ord. No. 04-24, 2-3-05)

Secs. 22-77--22-95. Reserved.

ARTICLE IV. RESERVED*

***Editor's note:** Ord. No. 03-13, effective Sept. 4, 2003, repealed art. IV, § 22-96, in its entirety. Formerly, said article pertained to children's homes and child care facilities record book as enacted by Code 1982, § 17-6.

Secs. 22-96--22-120. Reserved.

ARTICLE V. FLEA MARKETS

Sec. 22-121. Purpose.

The purpose of this article is to regulate the issuance of permits for conducting so-called flea markets.

(Code 1982, § 17-41)

Sec. 22-122. Defined.

The term "flea market" means the selling or offering for sale, to the public, of any services, goods, wares and merchandise or personal property by three or more individuals, groups or organizations from or at one location.

(Code 1982, § 17-42)

Cross references: Definitions generally, § 1-2.

Sec. 22-123. Permit required; application.

No flea market shall be conducted without a permit, which shall be obtained as follows:

- (1) A permit shall be obtained by the owner or duly authorized agent of the premises where the flea market is to be located by submitting a completed application to the city clerk's office upon forms provided for such purpose.
- (2) The fee for a flea market permit shall be paid in accordance with the business fee schedule as established by the city council.

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(Code 1982, § 17-43; Ord. No. 92-7, 3-19-92; Ord. No. 04-15, 7-15-04)

Sec. 22-124. Provisions of section 22-2 not applicable.

Notwithstanding the provisions relating to peddlers under section 22-2, individual participants in a flea market need not secure a peddler's license.

(Code 1982, § 17-44)

Secs. 22-125--22-145. Reserved.

ARTICLE VI. FOOD SERVICE ESTABLISHMENTS*

***State law references:** Food and food handlers generally, 7 M.R.S.A. § 401 et seq., 22 M.R.S.A. §§ 2491--2501, 30-A M.R.S.A. § 3931, 32 M.R.S.A. §§ 1751--1854.

DIVISION 1. GENERALLY

Sec. 22-146. Definitions.

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

Food means and includes all liquid or solid substances intended for human consumption.

(Code 1982, § 12-1)

Cross references: Definitions generally, § 1-2.

Sec. 22-147. License required.

No person shall engage in, operate or conduct the business of the manufacture, preparation, sale or service of food in the city unless such person has first acquired a license in accordance with articles I and II of this chapter.

(Code 1982, § 12-2)

Sec. 22-148. Suspension of license; appeal.

- (a) A license granted pursuant to this article may be temporarily suspended at any time by the health officer of the city upon satisfactory evidence that food is being manufactured, prepared, sold or served in an unsanitary manner or in a manner not conducive to public health. The licensee shall have the right to appeal such suspension to the council, such appeal to be heard at the next regular meeting of the council.
- (b) The health officer shall have discretion to remove the suspension and reinstate the license under this article prior to the hearing of the appeal upon finding that the unsanitary conditions have been remedied.

(Code 1982, § 12-3)

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Sec. 22-149. Sanitary conditions required.

Every person owning, managing or operating an establishment or business where food is manufactured, prepared, sold or served to the public in the city shall at all times keep the premises and all fixtures, appliances and utensils in a clean and sanitary condition.

(Code 1982, § 12-4)

Sec. 22-150. Running water, toilet facilities required.

Every establishment or business where food is manufactured, prepared, sold or served to the public in the city shall be provided with an adequate supply of hot and cold running water under pressure from the public mains where such is available, and shall be equipped with proper lavatory and toilet facilities convenient, accessible and sufficient to ensure the comfort and cleanliness of its employees; and where both male and female help are employed, the health officer may require separate toilets, lavatories and dressing rooms to be installed for the use of either sex.

(Code 1982, § 12-5)

Sec. 22-151. Diseased and unhealthy employees.

No person afflicted with any eruptions, ulcerations or running sores, and no person afflicted with any communicable disease, shall be employed in any establishment where food is manufactured, prepared, sold or served to the public.

(Code 1982, § 12-6)

Sec. 22-152. Certificate of health required.

Every person employed in any establishment where food is manufactured, prepared, sold and served to the public shall, when required by the health officer, file with such health officer, as evidence of good health, a certificate of examination by a reputable and competent physician, attesting to the fact that such person is not afflicted with active tuberculosis, any venereal disease or other communicable disease.

(Code 1982, § 12-7)

Sec. 22-153. Physician's duty.

It shall be the duty of every physician attending a case of venereal disease, tuberculosis or any other communicable disease, in any person employed in or about any establishment where food is manufactured, prepared, sold or served to the public, to notify at once, in writing and over his signature, the health officer. Such notification in the case of a venereal disease shall not be made part of any record accessible to the general public, but may be used as evidence in any prosecutions initiated by the health officer for failure to comply with the provisions of this article.

(Code 1982, § 12-8)

Sec. 22-154. Exceptions to article.

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- (a) The requirements of section 22-150 may be waived if the health officer determines that such a waiver will not create a hazard to public health.
- (b) The provisions of this article shall not apply to any person who makes delivery of foodstuffs to customers on order from an established and regular place of business located in the city or to route salesmen while making deliveries of foodstuffs to their regular customers.

(Code 1982, § 12-23)

Secs. 22-155--22-165. Reserved.

DIVISION 2. SPECIAL FOOD HANDLERS AND ROVING DINERS

Sec. 22-166. Intent and purpose.

It is the intent and purpose of this division to establish minimum regulations for special food handlers and roving diners, where food is sold within the corporate limits of the city.

(Code 1982, § 12-19)

Sec. 22-167. Approval of health officer, license required.

No person shall operate a roving diner nor maintain, or otherwise engage in, any business as a special food handler or food service establishment without having first secured the approval of the health officer and obtained a license in accordance with the provisions of this article and those of articles I and II of this chapter.

(Code 1982, § 12-20)

Sec. 22-168. Display of license or permit.

Any person authorized to do business in accordance with this division as a roving diner shall have displayed in a conspicuous place on the lefthand side of each vehicle, cart, conveyance or carrier used in such business a plate showing that a license or permit has been obtained.

(Code 1982, § 12-21)

Sec. 22-169. Pushcarts, roving diners in streets and public places.

- (a) Pushcarts licensed as roving diners may be operated in the streets, ways and public places in accordance with the provisions of this section. For the purpose of this section, the term "public places" shall include public parks and grounds.
- (b) No pushcart shall be operated or stationed:
 - (1) In the roadway as defined in chapter 66 of this Code, except when specifically authorized to do so by the chief of police on a street which has been blocked to vehicular traffic for purposes of a public event.
 - (2) Within 100 feet, measured by the most direct line, of any part of a food service

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establishment having a fixed location.

- (3) On the premises of a public school.
 - (4) In Kennedy Park, with the exception of licensed roving diners who serve as vendors as part of an approved farmer's market.
 - (5) In such a manner as to unreasonably obstruct the normal flow of pedestrian traffic or to expose any pedestrian to a risk of injury.
 - (6) On any city sidewalk where the remaining pedestrian travel path is less than six feet.
 - (7) In such a way that any part of the equipment overhangs over private property, unless the owner of the pushcart has authorization from the property owner in writing.
- (c) No pushcart shall be operated or stationed in, on or within 50 feet of any area subject to an exclusive franchise granted by the city. The city clerk shall maintain a list of such areas and shall advise operators of pushcarts of the location thereof.
 - (d) Operators of pushcarts shall provide waste paper receptacles for use by their customers and shall maintain the areas in which they operate free of litter generated by their business.
 - (e) A license to operate a pushcart in the streets, ways and public places pursuant to this division may be suspended by the city clerk upon three days' written notice and hearing, for a period of five days, for a violation of any provision of this section and may be revoked by the municipal officers upon five days' written notice and hearing, for repeated violations of the provisions of this section.

(Code 1982, § 12-22; Ord. No. 91-3, § 1, 4-5-91; Ord. No. 04-12, 6-3-04)

Secs. 22-170--22-190. Reserved.

ARTICLE VII. JUNK COLLECTORS, PAWNBROKERS AND SECONDHAND DEALERS

Sec. 22-191. License.

- (a) No person shall conduct business as a pawnbroker, junk collector or secondhand dealer without first obtaining a license pursuant to the following provisions:
 - (1) The city clerk shall issue a license to conduct business as a pawnbroker, junk collector or secondhand dealer to any person over the age of 21 who demonstrates that he:
 - a. Has no record of criminal convictions for crimes of moral turpitude, dishonesty or fraud; and
 - b. Possesses adequate financial resources.
 - (2) A license shall be obtained by the owner or duly authorized agent of the premises where the business is to be located ("licensed business location") by submitting a

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completed application to the city clerk's office upon forms provided for such purposes.

- (b) The fee for such licenses shall be set from time to time and a schedule of such fees shall be on file and available in the city clerk's office.
- (c) Before any pawnbroker, secondhand dealer or junk collector license shall be issued to any person that does not maintain a permanent business location in the City of Lewiston, the person shall file with the city clerk a surety company performance bond in the sum of five thousand dollars (\$5,000.00), the form of which bond shall be approved by the city clerk. It shall be a condition of such bond that the principal named therein shall observe and abide by all laws, regulations and City ordinances regulating pawnbrokers, secondhand dealers and junk collectors, and shall account for and retain any merchandise, article or property which comes into their possession through their business as such pawnbroker, secondhand dealer or junk collector in accordance with the requirements of this Article.
- (d) Any license issued pursuant to this provision shall be valid for one year only.
- (e) Any person denied a license to conduct a pawnbroking, junk collector or secondhand dealer business may appeal the denial to the city council by filing a notice of appeal with the office of the city clerk within 30 days of the date of any such denial.

(Code 1982, § 17-70; Ord. No. 11-06, 8-18-11)

Sec. 22-192. Account of business done and disclosure to consumer.

- (a) *Account kept.* Every pawnbroker shall maintain records in which the pawnbroker shall enter:
 - (1) The date, duration, amount, periodic rate of interest and annual percentage rate of every loan that is made;
 - (2) The finance charge, due dates for payment and the total payment needed to redeem or repurchase the pawned property;
 - (3) An accurate account and description of the property pawned;
 - (4) The terms of redemption or repurchase, including any reduction in the finance charge for early redemption or repurchase and the right of the consumer to at least one extension of 31 days at the same rate of interest upon request in writing or in person; and
 - (5) The name and address of the consumer.
- (b) *Inspection.* The pawnbroker shall allow the municipal officers to inspect these records at all reasonable times.
- (c) *Delivery to consumer.* At the time of the pawn transaction, the pawnbroker shall deliver to the consumer a signed, written disclosure complying with the truth-in-lending provisions of the Maine Consumer Credit Code, 9-A M.R.S.A. § 8-101 et seq. containing the items required by subsection 1 and the name and address of the pawnbroker.

(Code 1982, § 17-71)

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Sec. 22-193. List of transactions; seller to furnish proof of identification.

- (a) Every person licensed as a junk collector or secondhand dealer shall make out, and have available for periodic collection, a legible and correct list, upon a format furnished by the police chief, containing an accurate description of all articles taken in pawn, purchased, or taken in exchange, the name, residence and date of birth of the buyer or seller other than the licensee, together with the correct and exact time when such articles were pawned or purchased, and the amount the item was sold for. Before recording the information required by this section, a dealer shall require reasonable written proof of the seller's identification in the form of a motor vehicle operator's license, military identification card, adult liquor identification card or similar item which confirms the person's identification by date of birth and by physical description.
- (b) Alternative compliance mechanism for secondhand dealers. In lieu of the requirements set forth in subsection (a), a secondhand dealer is in compliance with this section with respect to certain secondhand goods if it establishes and maintains the following system for identifying and reporting the purchase of such goods:
- (i) *Application to low value goods.* This section shall apply only with respect to individual secondhand goods of a mass manufacture process with no specific individual identifying feature, valued at or below \$20, provided the total value of secondhand goods sold by a person to the dealer within a 30 day period does not exceed \$100. Any sale of a secondhand good in excess of the limits established in this paragraph must comply with the requirements set forth in subsection (a) of this section.
 - (ii) *Goods with serial number.* This section shall not apply to a second hand good displaying a readily identifiable serial number or similar registration number, or any other personalized identifying characteristic marking having been uniquely applied. Any sale of a secondhand good with an identifiable number, along with all other secondhand goods sold at such time by the same individual, must comply with the requirements set forth in subsection (a).
 - (iii) *Record retention.* With respect to any sale of secondhand goods under this subsection, the dealer shall maintain records of each secondhand good purchased by the dealer, the date of the purchase, and the name and address of the person selling the good to the dealer. Records may be retained in electronic form.
 - (iv) *Transmittal to police department.* No later than the 15th day of each calendar month, the dealer shall transmit to the chief of police, or the chief's designee, the purchase records collected by the dealer under subparagraph (iii) during the prior calendar month. Transmittal may be provided in electronic form.
 - (v) *Identification of seller.* At the time of purchase of a secondhand good by a dealer, the dealer shall verify the name, address, and date of birth of the person making the return using reasonable means of identification as described in subsection (a).
 - (vi) *Definitions.* For purposes of this section, the term "purchase" includes the

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provision by the secondhand dealer of any item or thing of value in exchange for the acquisition of a secondhand good.

(Code 1982, § 17-72; Ord. No. 10-01, 3-4-10; Ord. No. 12-08, 7-19-12)

Sec. 22-194. Receiving articles from minors, thieves.

No one licensed pursuant to this article shall purchase or receive any article from any person under the age of 18 years without the written consent of such person's parent or guardian, from any person known by the licensee to be a thief or a receiver of stolen property, or from any person whom the licensee has reason to believe to be a thief or receiver of stolen property.

(Code 1982, § 17-73; Ord. No. 12-08, 7-19-12)

Sec. 22-195. Retention of articles purchased.

- (a) Articles purchased by anyone licensed in accordance with the provisions of this article, excepting pawnbrokers, shall be retained by such licensee in the same condition in which they were obtained and in an accessible place at the licensed business location where such articles can be examined and inspected for at least 15 days before they are disposed of. This paragraph does not apply with respect to the sale of any secondhand good or goods which conforms to the requirements of section 22-193(b).
- (b) No pawnbroker shall sell, destroy or alter any property pawned until it has remained in his possession for the duration of time as required by this article, unless forfeited in writing by the customer.

(Code 1982, § 17-74; Ord. No. 10-01, 3-4-10; Ord. No. 11-06, 8-18-11; Ord. No. 12-08, 7-19-12)

Sec. 22-196. Periodic inspections of junkyards.

The police chief shall be responsible for inspection of all junkyards periodically and shall report immediately to the council any violation of the license conditions of this article.

(Code 1982, § 17-75)

Secs. 22-197--22-220. Reserved.

ARTICLE VIII. MOBILE HOME PARKS

Sec. 22-221. License required to operate.

- (a) It shall be unlawful for any person to operate and maintain any mobile home park within the city unless such person holds a valid license issued annually by the city council in the name of such person for the specific mobile home park. All applications for licenses shall be made at the city clerk's office, where the city clerk shall issue a license upon compliance by the applicant with the provisions of this section and regulations issued under this section and of the applicable legal requirements.
- (b) Every person holding a license to operate a mobile home park shall give notice in writing to the city council within 72 hours after having sold, transferred, given away or otherwise

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disposed of interest in or control of any mobile home park. Such notice shall include the name and address of the person succeeding to the ownership or control of such mobile home park. A license is a personal privilege and is not assignable or transferable.

(c) Application requirements:

(1) Application for original licenses shall be made only after the proposed mobile home park has been approved by the planning board and shall be in writing, signed by the applicant as to the truth of the application, and accompanied by the deposit of a fee according to the business fee schedule as established by the city council; and such application shall contain:

- a. The name and address of the applicant;
- b. The location and legal description of the mobile home park;
- c. A site plan of the mobile home park showing all mobile home lots, structures, roads, walkways and other facilities.

And in addition to the foregoing, the applicant shall furnish to the city clerk such other information as may be required by this article.

(2) Applications for renewals of licenses shall be made in writing by holders of the licenses, shall be accompanied by the deposit of a fee according to the business fee schedule as established by the city council; and shall contain any change in the information submitted since the original license was issued or the latest renewal granted.

(d) Any person whose application for a license to operate and maintain a mobile home park has been denied may request, and shall be granted, a hearing on the matter before the city council under the procedure provided by section 22-223 and from the city council to the superior court.

(e) Whenever, upon inspection of any mobile home park, the director of code enforcement or his designee finds that conditions or practices exist which are in violation of any provision of this article or regulations issued under this article or appendix A of this Code, he shall report such to the city council, which shall direct the director of code enforcement to communicate in writing in accordance with section 22-223 to the person to whom the license was issued that unless such conditions or practices are corrected within a reasonable period of time specified in the notice by the city council, the license shall be suspended. At the end of such period, the director of code enforcement or his designee shall reinspect such mobile home park and, if such conditions or practices have not been corrected, he shall report such to the city council, which will suspend the license and give notice in writing of such suspension to the person to whom the license is issued. Upon receipt of notice of such suspension, such person shall cease operation of such mobile home park except as provided in section 22-223.

(Code 1982, § 17-167; Ord. No. 04-15, 7-15-04)

Sec. 22-222. Inspections; access.

(a) It shall be the duty of the owners or occupants of mobile home parks and mobile homes contained therein, or of the person in charge thereof, to give the director of code

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enforcement or his designee free access to such premises at reasonable times for the purpose of inspection.

- (b) It shall be the duty of every occupant of a mobile home park to give the owner thereof or his agent or employee access to any part of such mobile home park or its premises at reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with this article and regulations issued under this article and appendix A of this Code, or with any lawful order issued pursuant to the provisions of this article.

(Code 1982, § 17-168)

Sec. 22-223. Notices, hearings and orders.

- (a) Whenever the city council determines that there are reasonable grounds to believe that there has been a violation of any provision of this article, or regulations issued under this article, the city council shall direct the director of code enforcement to give notice of such alleged violation to the person to whom the license was issued as provided in this section. Such notice shall:
 - (1) Be in writing;
 - (2) Include a statement of the reasons for its issuance;
 - (3) Allow a reasonable time for the performance of any act it requires;
 - (4) Be served upon the owner or his agent, as the case may require, provided, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to his last known address, or where he has been served with such notice by any method authorized or required by the laws of the state;
 - (5) Contain an outline of remedial action which, if taken, will effect compliance with the provisions of this article and regulations issued under this article.
- (b) Any person affected by any notice which has been issued in connection with the enforcement of any provision of this article, or regulations issued under this article, may request, and shall be granted, a hearing on the matter before the city council; provided, that such person shall file in the office of the city clerk a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten days after the day the notice was served. The filing of the request for a hearing shall operate as a stay of the notice and of the suspension except in the case of an order issued under subsection (e) of this section. Upon receipt of such petition, the city council shall set a time and a place for such hearing and shall give petitioner written notice thereof. At such hearing the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. The hearing shall be commenced not later than ten days after the day on which the petition was filed; provided, that, upon application of the petitioner, the city council may postpone the date of the hearing for a reasonable time beyond the ten-day period when in its judgment the petitioner has submitted good and sufficient reasons for such postponement.
- (c) After the hearing under this section, the city council shall make findings as to compliance with the provisions of this article and regulations issued under this article and appendix A

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of this Code and shall issue an order in writing, sustaining, modifying or withdrawing the notice which shall be served as provided in subsection (a)(4) of this section. Upon failure to comply with any order sustaining or modifying a notice, the licensee shall be in violation of this section and the license of the mobile home park affected by the order shall be suspended.

- (d) The proceedings at such a hearing, including the findings and decisions of the city council, and together with a copy of every notice and order related thereto, shall be entered as a matter of public record in the office of the city clerk, but the record of the proceedings need not be transcribed unless judicial review of the decision is sought to the superior court.
- (e) Whenever the city council shall find that an emergency exists which requires immediate action to protect the public health, it may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the council may deem necessary to meet the emergency, including the suspension of the permit or license. Notwithstanding any other provisions of this article, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, but, upon petition to the city council, shall be afforded a hearing as soon as possible. The provisions of subsections (c) and (d) of this section shall be applicable to such hearing and the order issued thereafter.

(Code 1982, § 17-169)

Secs. 22-224--22-245. Reserved.

ARTICLE IX. PEDDLERS

DIVISION 1. GENERALLY

Sec. 22-246. Use of streets.

No peddler shall have any exclusive right to any location in the public streets, nor shall any peddler be permitted a stationary location, nor shall he be permitted to operate in any congested area where his operations might impede or inconvenience the public. For the purpose of this article, the judgment of a police officer, exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced.

(Code 1982, § 17-89)

Secs. 22-247--22-255. Reserved.

DIVISION 2. LICENSE

Sec. 22-256. Application.

- (a) An applicant for a license under this article shall file with the city a sworn application in writing on a form to be furnished by the clerk, which shall give the following information:

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- (1) Name of the applicant;
 - (2) Permanent home address and full local address of the applicant;
 - (3) A brief description of the nature of the business and the goods to be sold;
 - (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
 - (5) If a vehicle is to be used, a description of such vehicle, together with a license number or other means of identification;
 - (6) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor, felony or violation of any municipal ordinance, the nature of the offense and the punishment or penalty assessed therefor.
- (b) The application for a license under this article shall be accompanied by a photograph, in duplicate, of the applicant, at least two inches square, taken within 30 days immediately prior to the date of the filing of the application.

(Code 1982, § 17-86)

Sec. 22-257. Contents.

A license issued pursuant to this article shall contain the signature and seal of the issuing officer and shall show the name, address and photograph of the licensee, the date of issuance and the length of time such license shall be operative, as well as the license number and other identifying description of any vehicle used.

(Code 1982, § 17-87)

Sec. 22-258. Exhibition of license.

Every licensee at all times while engaged in peddling shall have in his immediate possession the license issued to him and when so peddling shall display such license upon demand of any police officer of the city and upon demand of any person to whom he is peddling.

(Code 1982, § 17-88)

Sec. 22-259. Suspension and revocation.

Upon complaint being filed with the police department that any person to whom a local peddler's license has been issued has violated any law or ordinance which has a reasonable relationship to the conduct of the licensed business, and, if upon investigation, it is found that such complaint is valid, the police official charged with the duty of investigating such complaint may suspend such license for no more than three days. It shall be the duty of the police official who effects such a suspension to notify the city clerk and the city council on the next regular working day following such suspension. The grounds of such suspension shall also be sufficient basis for revocation of that same license.

(Code 1982, § 17-90)

Sec. 22-260. Special event license.

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A special event peddlers license can be issued to eligible applicants for a maximum of seven consecutive days, and will limit their sale area to be inside the designated festival zone area, as per requirements of the festival event organizers. Only one special event peddlers license shall be needed for booths or sales tables operated by the same vendor, and individuals working for the primary vendor at the booth shall not require a separate license. The primary vendor shall be subject to a criminal background investigation regarding their peddler application for this section.

The license shall be displayed the entire time the vendor is operating the booths or sales tables.

(Ord. No. 04-11, 5-20-04)

Secs. 22-261--22-280. Reserved.

ARTICLE X. SALE OF PERSONAL PROPERTY FROM RESIDENTIAL PREMISES

Sec. 22-281. Definitions.

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

Donated personal property means the personal property of persons other than those residing on the residential premises where such sale is to take place, such personal property being donated to, or the sale being conducted by, a tax-exempt religious or charitable organization, and the entire proceeds from such sale being donated to, or retained by, the sponsoring tax-exempt religious or charitable organization.

Residential premises means a building or structure having at least one dwelling unit, boarding or lodging room, and the lot of land associated therewith, and any accessory structures; and any lot of land within a residential zone.

(Code 1982, § 17-116)

Cross references: Definitions generally, § 1-2.

Sec. 22-282. Permit required; conditions.

No person shall sell or offer for sale personal property from any residential premises except as permitted by this article. Only the sale of donated personal property and the sale of personal property owned, used and maintained for personal use only by the seller, and not for resale to the public, shall be permitted to be sold from residential premises, and only after issuance to the seller of a permit for such purposes, as follows:

- (1) A permit may be obtained from the city clerk's office. The fee for a permit shall be paid in accordance with the business fee schedule as established by the city council.
- (2) No permit shall be issued for sales of personal property upon residential premises for a period of more than three consecutive days, and no more than three permits shall be issued for such sales upon a residential premises in any one calendar year.

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Permits required under this article shall be on forms furnished by the city clerk.

(Code 1982, § 17-117; Ord. No. 04-15, 7-15-04; Ord. No. 14-4, 4-3-14)

Sec. 22-283. Signs.

Notwithstanding the provisions relating to signs under appendix A of this Code, one single-faced sign, containing not more than four square feet in total area, may be placed upon residential premises where the sale of personal property has been permitted for the duration of the sale only.

(Code 1982, § 17-118)

Sec. 22-284. Exemption.

The provisions of this article shall not apply to sales of personal property made under court order or process.

(Code 1982, § 17-119)

Secs. 22-285--22-305. Reserved.

ARTICLE XI. SOLICITATIONS

DIVISION 1. GENERALLY

Secs. 22-306--22-315. Reserved.

DIVISION 2. LICENSE

Sec. 22-316. Required.

It shall be unlawful for any person to solicit on any public street or sidewalk, park or other public place or at any doorway or entranceway immediately abutting thereon, within the corporate limits of the city, the sale of any subscription of any magazine, periodical or other publication, newspapers excepted, or the sale of any tangible personal property, for delivery at a subsequent time without a license.

(Code 1982, § 17-101)

Sec. 22-317. Application.

Applicants for licenses under this article shall file with the city clerk a sworn application in writing on a form to be furnished by the clerk, which shall give the following information:

- (1) Name of the applicant and name of the agent making the application and remuneration to be received by the agent for services rendered;
- (2) Permanent home address and full local address of the applicant and of the agent making application;

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- (3) A brief description of the nature of the applicant's activities;
- (4) A brief description of the intended disposition of the funds to be solicited by the applicant;
- (5) If the application is for a so-called "tag day" or "poppy day," then it shall indicate the exact date the solicitation is to be made on.

(Code 1982, § 17-102)

Sec. 22-318. Issuance and duration.

After an investigation of the representations made in an application required by this article, the city clerk shall issue the license. If the application is for a "tag day" or "poppy day," then the license shall be issued for a date certain on a first come, first served basis only, and no more than one such license shall be made available to any person and used by him in any one calendar year. If the application is for other than a "tag day" or "poppy day," then the license may be issued for any period of time not in excess of one year.

(Code 1982, § 17-103)

Secs. 22-319--22-340. Reserved.

ARTICLE XII. TATTOOING

DIVISION 1. GENERALLY

Sec. 22-341. Definitions.

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

Operator means the individual who performs or practices the art of tattooing on the person of another.

Tattoo means to insert pigment under the skin of a human being by pricking with a needle or otherwise, so as to produce an indelible mark or figure visible through the skin.

(Code 1982, § 17-153)

Cross references: Definitions generally, § 1-2.

Sec. 22-342. Prerequisites to tattooing.

No tattoo shall be administered except by conforming to all of the following:

- (1) *Age.* No tattoo shall be administered to any person less than 18 years old, as verified by a driver's license, liquor identification card, military identification card or other adequate record.
- (2) *Notice of permanency.* Before administering a tattoo, the patron shall be advised that the tattoo should be considered permanent; that it can be removed only with a

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surgical procedure; and that any effective removal will leave permanent scarring and disfigurement. The written cautionary notice contained in subsection (7) shall be furnished to and signed by the patron.

- (3) *Skin condition.* The skin to be tattooed shall be free from rash, pimples, infection or recent (less than two years) scar tissue. The patron must be in apparent good health, and the skin to be tattooed generally in a healthy condition to all appearances.
- (4) *Sobriety of patron.* Tattoos shall not be administered to any person under the influence of drugs or alcohol, and the operator is charged with the responsibility of making reasonable observation and inquiry to assure himself that the patron is not under the influence of drugs or alcohol.
- (5) *Food, drink, smoking, and alcoholic beverages prohibited.* The consumption of food or drink and smoking is prohibited in the tattooing area. The consumption of alcoholic beverages on the tattooing premises is prohibited.
- (6) *Prior jaundice or hepatitis.* The patron shall be asked, before the operation, whether he has had jaundice or hepatitis. If the answer is in the affirmative, the tattoo operation shall not be performed.
- (7) *Record; form.* The tattoo establishment shall keep a permanent record of all patrons tattooed, stating name, age, address, date of tattoo, operator's name, place where tattooed, and a description of the design of the tattoo. Such records shall be made available to any city official upon request, and shall be in the following form, which shall be signed by the patron and the tattoo operator:

Date _____

I, the undersigned, realize that a tattoo is permanent; that it can be removed only with a surgical procedure; and that any effective removal will leave permanent scarring and disfigurement.

Name _____

Address _____

Date of birth _____

Social security no. _____

Serial number if a member of armed forces

Have you had jaundice or hepatitis within the last two years?

Yes _____ No _____

Patron

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Description of tattoo _____

Area of body _____

Tattoo operator

(Code 1982, § 17-154)

Sec. 22-343. Tattooing procedure.

The minimum required procedure for administering a tattoo shall be as follows:

- (1) No tattooing shall be done on the head, neck, hands, feet or the genitalia of any person.
- (2) The operator shall wash his hands thoroughly with soap and water before starting to tattoo; the hands shall be dried with individual single-use towels.
- (3) No skin area shall be penetrated, abraded or treated with chemicals for the purpose of removing, camouflaging or altering any blemish, birthmark or scar.
- (4) Safety razor with a new single-service blade for each patron or a straight-edge razor may be used and shall be thoroughly cleaned and sterilized as required by the state before use on each patron.
- (5) The area to be tattooed shall first be thoroughly washed, i.e., for a period of two minutes with warm water to which has been added an antiseptic soap. A sterile single-use sponge shall be used to wash the area. After shaving and before tattooing is begun, a solution of 70 percent alcohol shall be applied to the area with a single-use sponge used and applied with a sterile instrument.
- (6) Only petroleum jelly in collapsible metal or plastic tubes, or its equivalent as approved by the state, shall be used on the area to be tattooed and it shall be applied with a sterile gauze.
- (7) The use of styptic pencils, alum blocks, or other solid or liquid styptics to check the flow of blood is prohibited.
- (8) A patch test for sensitivity for each of the dyes used shall be made on the patron before any tattooing design is applied.
- (9) Single service or individual containers of dye or ink shall be used for each patron and the container therefor shall be discarded immediately after completing work on a patron and any dye in which the needles were dipped shall not be used on any person.
- (10) Excess dye or ink shall be removed from the skin with an individual sterile sponge which shall be used only on one person and then immediately discarded.
- (11) After completing work on any person, the tattooed area shall be washed with sterile gauze saturated with an antiseptic soap solution approved by the state, or a 70 percent alcohol solution. The tattooed area shall be allowed to dry and petroleum jelly from a collapsible or plastic tube shall be applied, using sterile

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gauze. A sterile gauze dressing shall then be fastened to the tattooed area with adhesive.

(Code 1982, § 17-155)

Sec. 22-344. Care of instruments.

- (a) *Storing of instruments.* All clean and ready-to-use needles and instruments shall be kept in a closed glass or metal case or storage cabinet while not in use. Such cabinet shall be maintained in a sanitary manner at all times.
- (b) *Sterilizing of instruments.* A steam sterilizer (autoclave) shall be provided for sterilizing all needles and similar instruments before use on any customer, person or patron. Alternate sterilizing procedures may only be used when specifically approved by the authorized city inspector. Sterilization of equipment will be accomplished by exposure to live steam for at least 30 minutes at a minimum pressure 15 pounds per square inch, temperature of 240 degrees Fahrenheit or 116 degrees Celsius.
- (c) *Use of instruments.* The needles and instruments required to be sterilized shall be so used, handled and temporarily placed during tattooing so that they will not be contaminated.

(Code 1982, § 17-156)

Sec. 22-345. Inspection of tattooing establishment.

City inspectors may conduct periodic inspections of any tattooing establishment for the purpose of determining whether or not such establishment and the persons performing the art of tattooing therein are in compliance with all applicable health provisions contained within this article and other pertinent ordinances. It shall be unlawful for any person or operator of a tattooing establishment willfully to prevent or restrain the inspection officer from entering any licensed establishment where tattooing is being performed for the purpose of inspecting such premises, after proper identification is presented to the operator.

(Code 1982, § 17-157)

Sec. 22-346. Licensed practitioners.

The provisions of this article shall not apply to any establishment under the control or direction of a duly licensed practitioner of the healing arts, nor do they apply to licensed medical hospitals, and similarly licensed medical institutions.

(Code 1982, § 17-158)

Sec. 22-347. Penalty for violation of article.

In addition to the revocation and suspension of any license, any person violating any provision of this article shall be subject to the penalty set forth in section 1-8 of this Code.

(Code 1982, § 17-159)

Secs. 22-348--22-360. Reserved.

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DIVISION 2. LICENSE

Sec. 22-361. Required.

No individual shall tattoo another, or operate or conduct a tattooing establishment of any kind within the city without first obtaining a license therefor in accordance with the provisions of this article.

(Code 1982, § 17-150)

Sec. 22-362. Application fee.

An application for a license under this article shall be accompanied by a fee in accordance with the city's policy manual as approved by the city council. No application fee shall be required for the renewal of an existing license.

(Code 1982, § 17-151; Ord. No. 08-06d, 8-14-08)

Sec. 22-363. License fee; expiration.

Each applicant, before being granted a license under this article, shall pay an annual fee according to the business fee schedule as established by the city council. Each license shall expire one year from date of issuance.

(Code 1982, § 17-152; Ord. No. 04-15, 7-15-04)

Sec. 22-364. Right to appeal from suspension or denial; procedure.

Any licensee under this article aggrieved by an order of suspension or denial shall have the right to appeal, provided such licensee shall file in writing with the city clerk a request for a hearing. A hearing shall be held within 15 days from the date of request and shall be conducted by an appeals committee comprised of the deputy city administrator and two city councilors, and notice of such hearing shall be posted in the city clerk's office at least 48 hours prior to the date of the meeting. The appeals committee shall have the power to temporarily suspend, revoke or deny a tattooing license when operation by the applicant or license holder presents a danger to the health, safety or general welfare of the public. After such hearing, the appeals committee may affirm, modify or vacate the order of suspension or denial appealed from. (Ord. No. 13-14, 2-6-14)

Secs. 22-365--22-380. Reserved.

ARTICLE XIII. MASSAGE ESTABLISHMENTS AND MASSAGE THERAPISTS

DIVISION 1. GENERALLY

Sec. 22-381. Title.

This article shall be known as the "City of Lewiston Massage Establishment and Massage Therapist Regulatory Ordinance" and may be referred to by short title as the "massage ordinance". (Ord. No. 96-10, 9-12-96)

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Sec. 22-382. Purpose.

The city recognizes that the practice of legitimate massage therapy by trained and experienced therapists is a valuable component of our health care system. The city also recognizes that persons without legitimate massage training or experience may masquerade as massage therapists as a facade for unlawful purposes such as prostitution. It is the purpose of this article to clearly distinguish between these persons and to promote the public health, safety and general welfare by simultaneously acknowledging and permitting legitimate massage therapy and prohibiting the commission of sexual intercourse, sexual contacts or sexual acts for money.

(Ord. No. 96-10, 9-12-96)

Sec. 22-383. Definitions.

For purposes of this article, the following definitions shall apply unless the context clearly implies otherwise:

Client means any person who receives a therapeutic massage.

Massage or therapeutic massage are used interchangeably to mean any method of rubbing, kneading, tapping, vibration, compression, percussion, application of friction or manipulation of the external parts of the human body other than parts of the body above the neck, with the hands or other parts of the body or with the aid of any instrument or device.

Massage establishment or therapeutic massage establishment are used interchangeably to mean any business including, but not limited to, a sole proprietorship in which the business operations consist of providing or making available massage in the city for consideration or with the expectation of receiving consideration or any gratuity, whether or not the business has a fixed place of business within the city limits.

Massage therapist means any person who performs therapeutic massage for consideration or gratuity or with the expectation of receiving consideration or any gratuity.

Person means an individual, partnership, corporation or other entity.

Recognized school means any post secondary, academic institution for massage, bodywork, and/or somatic therapy which offers a course of training in the theory, method, profession and work of massage therapy consisting of 500 hours or more, such institution being approved by the Maine Higher Education Department or an equivalent agency in another state. The 500 hours shall include at least 100 hours of anatomy/physiology; at least 100 hours devoted to professional aspects of the practice of massage including but not limited to ethics, draping, contraindications, first aid, CPR, and business management; and at least 200 hours of theory, practice and techniques of massage therapy.

(Ord. No. 96-10, 9-12-96; Ord. No. 96-14, 11-14-96; Ord. No. 99-1, 2-18-99)

Sec. 22-384. Exemptions.

The following persons shall be exempt from this article while licensed and practicing in accordance with the laws of this state: physicians, physician's assistants, surgeons, osteopaths, nurses, chiropractors, physical therapists, and persons holding a license issued by the State of Maine Department of Professional and Financial Regulations, Division of Licensing and Enforcement. Students enrolled in a recognized school who are required to give massages as part

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of their training shall be exempt from this article.

(Ord. No. 96-10, 9-12-96; Ord. No. 96-14, 11-14-96; Ord. No. 99-1, 2-18-99)

Sec. 22-385. General provisions to apply.

Except to the extent that this article contains a contrary provision, all provisions of chapter 22 shall apply to this article.

(Ord. No. 96-10, 9-12-96)

DIVISION 2. LICENSES

Sec. 22-386. Required.

- (a) *Therapeutic massage establishment license.* No person shall operate a therapeutic massage establishment without a valid therapeutic massage establishment license issued by the city. A separate license shall be required for each such establishment.
- (b) *Massage therapist license.* No person shall work as a massage therapist without a valid massage therapist license or a combined massage establishment/therapist license issued by the city.
- (c) *Combined massage establishment/massage therapist license.* A sole practitioner who employs no massage therapist other than himself may apply for a combined massage establishment/massage therapist license in lieu of both a therapeutic massage establishment license and a massage therapist license.

(Ord. No. 96-10, 9-12-96)

Sec. 22-387. Compliance of existing therapists and massage establishments.

Any person presently operating as a massage therapist and/or operating a massage establishment in the city as defined herein on the effective date of this article shall comply with the terms of this article by obtaining a license hereunder within three months of the effective date of this article.

(Ord. No. 96-10, 9-12-96)

Sec. 22-388. License fee; expiration.

Each applicant, within 30 days of approval of the application and before issuance of the license, shall pay an annual fee according to the business fee schedule as established by the city council. If the fee is not paid within said 30 days, the approval of the application shall expire. Any license issued pursuant to this chapter shall expire one year from date of issuance, unless otherwise suspended or revoked.

(Ord. No. 96-10, 9-12-96; Ord. No. 04-15, 7-15-04)

Sec. 22-389. Application and information.

Each applicant for a license shall:

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- (1) Complete all information upon and file an application on a form prescribed by the city clerk;
- (2) Pay a nonrefundable application fee in accordance with the city's policy manual as approved by the city council in advance to the city clerk;
- (3) Submit the completed application to the city clerk, together with attested copies of the articles of incorporation and bylaws, if the applicant is a corporation, evidence of partnership, if a partnership, or articles of association and bylaws, if the applicant is an association, as well as a list of all officers and directors;
- (4) File an affidavit which will identify all owners, officers, managers or partners of the applicant and their places of residence at the time of the application and for the immediately preceding five years;
- (5) For a combined massage establishment/massage therapist license or a massage therapist license, submit two front face photographs of the applicant taken within 30 days of application, of such size as the clerk may specify;
- (6) File the release authorized by 16 M.R.S.A. § 620(6), Criminal History Record Information Act, with the application for each applicant and for each officer, owner, manager or partner of an applicant seeking a therapeutic massage establishment or combined massage establishment/massage therapist license; and
- (7) File any information not set forth above which is required by section 22-32.

(Ord. No. 96-10, 9-12-96; Ord. No. 08-06d, 8-14-08)

Sec. 22-390. Qualifications of applicant, officers.

Within the five years immediately preceding the date of application, no applicant nor, for a massage establishment or combined massage establishment/massage therapist license, any owner, officer, manager or partner of an applicant shall have been convicted of a crime now classified under Maine Statute as a Class A, B, or C crime, a crime involving moral turpitude, the crimes of engaging in prostitution or promotion of prostitution, nor of violating any of the gambling, drug or prohibitive liquor laws under the laws of the United States or the State of Maine or any other state. Hereinafter any one of the foregoing convictions or violations may be referred to as a "disqualifying criminal conviction".

(Ord. No. 96-10, 9-12-96)

Sec. 22-391. Investigation of applicant, officers.

Upon receipt of an application or notice of a change of the owners, officers, managers or partners of the applicant:

- (1) The building inspector shall verify that the premises at which the establishment will be located complies with all applicable ordinances of the city including, but not limited to, the building code, electrical code, plumbing code and zoning ordinance and shall report his findings in writing to the city clerk;
- (2) The city clerk shall review the application and other documents and determine whether such documents comply with all of the requirements of this article;

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- (3) The health officer shall inspect the location or proposed location to determine whether the applicable ordinances relating to health and safety have been satisfied and shall report his findings in writing to the city clerk;
- (4) The fire chief or his agent shall inspect the location or proposed location to determine if all city ordinances concerning fire and safety have been satisfied and shall submit his report in writing to the city clerk; and
- (5) The police chief or his agent shall investigate the application, including the criminal history record information authorized under subsection 22-389(6) and required under section 22-390 and shall report his findings in writing to the city clerk.

All reports under this section shall be filed with the city clerk.

(Ord. No. 96-10, 9-12-96)

Sec. 22-392. Basic proficiency.

Each applicant for a massage therapist license or combined massage establishment/therapist license shall show proof of basic proficiency in the field of massage therapy which may be satisfied by:

- (1) Evidence of the satisfactory completion of all formal course work and training in massage therapy required for graduation from a recognized school, which shall be in the form of a diploma or certificate of graduation or equivalent documentation; or
- (2) A written statement from a physician, nurse, osteopath, chiropractor, physical therapist, or member of the AMTA stating that that person refers clients to the applicant for therapeutic massage.

(Ord. No. 96-10, 9-12-96)

Sec. 22-393. Obtaining license by fraud.

No person shall make any false, untruthful or fraudulent statement, either written or oral, or in any way conceal any material fact, or give or use any fictitious name in order to secure or aid in securing a license required by this chapter. All names, including, but not limited to maiden name, ever used by the applicant must be noted on the application.

Any license so secured shall be void.

(Ord. No. 96-10, 9-12-96)

Sec. 22-394. Use of license.

No person shall make use of, in any manner, to his own or another's benefit, any license which has not been duly issued to him in accordance with this chapter.

(Ord. No. 96-10, 9-12-96)

Sec. 22-395. Standards for denial.

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A license under this division shall be denied to the following persons:

- (1) *Therapeutic massage establishment license:*
 - a. To a corporation not registered to do business in this state; or
 - b. To a corporation if any principal officer thereof or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction (as defined in section 22-390) within the immediately preceding five years; or
 - c. To an applicant, other than a corporation, if such applicant or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction within the immediately preceding five years.
- (2) *Massage therapist license, or combined massage establishment/massage therapist license:*
 - a. To an applicant who has a disqualifying criminal conviction at any time during the five years immediately preceding application; or
 - b. To an applicant who is not at least 18 years of age.
- (3) *All licenses:*
 - a. To an applicant who has submitted an incomplete application, knowingly made an incorrect statement of a material nature, or failed to supply additional information required by the city clerk or reasonably necessary to determine whether the license is issuable; or
 - b. To an applicant, if such applicant or any person having an actual ownership interest or management authority therein has been denied a license for knowingly making an incorrect statement of a material nature within the immediately preceding five years; or
 - c. To an applicant, if such applicant or any person having an actual ownership interest or management authority therein has had a license granted pursuant to this article revoked for any reason within the immediately preceding five years.

(Ord. No. 96-10, 9-12-96)

Sec. 22-396. Grounds for suspension or revocation.

- (a) *All licenses.* In addition to the grounds of denial set forth in section 22-395, any license may be suspended or revoked upon a determination that the licensee:
 - (1) Failed to notify the clerk of any change in material fact set forth in the application for such license; or
 - (2) Violated any provision of this article.
- (b) *Therapeutic massage establishment or combined establishment/therapist license.* In addition to the provisions of subsection (a) hereof, either a massage establishment license

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or combined establishment/therapist license may be suspended or revoked upon a determination that the licensee:

- (1) Permitted any person to perform therapeutic massage without a valid license to do so;
- (2) Permitted or allowed an employee, massage therapist or conditional massage therapist, to violate any provision of this chapter on the premises of the establishment or in the course of conduct of the business of the establishment; or
- (3) Knowingly permitted any violation of 17-A M.R.S.A. §§ 851 through 855. Such knowledge shall be presumed if there has been a conviction of any such offense within the immediately preceding five years. The applicant or licensee may rebut said presumption by showing that: (i) due diligence was exercised to prevent the recurrence of any such offense; and (ii) despite such diligence, he or she did not know and could not reasonably have known of any subsequent offense.

(Ord. No. 96-10, 9-12-96)

DIVISION 3. OPERATING REQUIREMENTS

Sec. 22-397. Licenses displayed.

A valid therapeutic massage establishment license shall be displayed at all times in an open and conspicuous place in the massage establishment for which it was issued. A valid massage therapist license or combined massage establishment/massage therapist license must be readily available to be produced immediately if demanded of the licensee.

(Ord. No. 96-10, 9-12-96)

Sec. 22-398. Age restrictions.

No massage or therapeutic massage shall be practiced on a minor without the written consent of a parent or guardian.

(Ord. No. 96-10, 9-12-96)

Sec. 22-399. Massage tables.

All therapeutic massage shall be administered on a massage table, treatment table, treatment mat, or treatment chair.

(Ord. No. 96-10, 9-12-96)

Sec. 22-400. Maintenance and cleaning.

Every person who conducts or operates a therapeutic massage establishment shall keep the same at all times in a clean and sanitary condition. All instruments, supplies and devices of any kind, or parts thereof, that come into contact with the human body shall be kept clean by a modern and approved method of cleaning.

(Ord. No. 96-10, 9-12-96)

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Sec. 22-401. Prohibited activities.

- (a) No massage therapist shall administer a massage to a client whose genitals are exposed.
- (b) No massage therapist shall administer or agree to administer a massage to the genitals or anus of a client.
- (c) No massage therapist shall administer a massage unless he or she is fully clothed with nontransparent clothing of the type customarily worn by massage therapists while administering a massage.
- (d) No massage therapist shall perform sexual intercourse, commit a sexual act or make sexual contact as defined in 17-A M.R.S.A. § 251, for pecuniary benefit to himself or a third party.

(Ord. No. 96-10, 9-12-96)

Sec. 22-402. Closing hours.

At all times when open for business, a therapeutic massage establishment shall have upon the premises a licensed massage therapist or person who possesses a combination massage establishment/massage therapist license who shall be available to supervise the operation of the establishment and assure that no violations of this article occur.

(Ord. No. 96-10, 9-12-96)

Sec. 22-403. List of employees.

The therapeutic massage establishment shall keep a written list of the names and current addresses of all employees, both on duty and off duty. Such list shall be shown to the chief of police, his authorized deputy, the city clerk or his representative, upon request.

(Ord. No. 96-10, 9-12-96)

DIVISION 4. PENALTIES

Sec. 22-404. Penalties.

The violation of any provision of this article shall be punished by a fine in accordance with the city's policy manual as approved by the city council. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may enjoin or abate any violation of this article by appropriate action, including, but not limited to revocation of the license.

(Ord. No. 96-10, 9-12-96; Ord. No. 08-06d, 8-14-08)

Secs. 22-405--22-409. Reserved.

ARTICLE XIV. OUTPATIENT ADDICTION TREATMENT CLINICS

Sec. 22-410. Purpose.

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The city council recognizes that an outpatient addiction treatment clinic can be a valuable component of our health care system. The city council also recognizes that the appropriate siting of such clinics, including restricting their proximity to schools, churches, family day care homes, small day care facilities, day care centers, and public parks and play grounds as well as other locations where children and other young adults may frequent is important in order to protect the public. In addition, the city has devoted substantial resources and made significant efforts to attract retail and commercial development in the Southern Gateway Development District, South Lewiston Retail Growth District, and Western Gateway Development District. The city council finds that it is in the best interests of the city to protect areas where efforts are currently being made to stimulate new business investment, and encourage focused and planned economic growth, which includes the districts identified above. Siting of outpatient addiction treatment clinics in these areas could detract from these efforts. Proper siting will also work to minimize potential adverse law enforcement impacts and overburdening of police and rescue resources. The city council finds that with the reasonable and necessary siting restrictions listed herein, there remain sufficient suitable areas within the city to site outpatient addiction treatment clinics. Licensing of these facilities will enhance community relations with the providers of such clinics and will establish lines of communications with the clinics. Licensing of these facilities is appropriate and consistent with the city's policies and practices to review and license business activities that impact its citizens. The licensing is not meant to duplicate the licensing done at the state level pursuant to 14-118 CMR Ch. 4 *Regulations for Licensing/Certifying Substance Abuse Treatment Programs in the State of Maine*, but to provide separate and additional requirements as necessitated by the above findings.

(Ord. No. 06-06, 5-4-06)

Sec. 22-411. Applicability.

This article shall apply to any outpatient addiction treatment clinic which is located within the city.

(Ord. No. 06-06, 5-4-06)

Sec. 22-412. Definitions.

For purposes of this article, the following definitions shall apply unless the content clearly implies otherwise:

Church means a building, together with its contiguous accessory buildings and uses, where persons regularly assemble for religious worship, and which building, together with its accessory buildings and uses, is maintained and controlled by a religious body organized to sustain public worship.

Day care center means a building, structure or other place in which a person, or combination of persons, maintains or otherwise carries out a regular program, for consideration, for any part of the day providing protection and child care for more than 12 children under 13 years of age, who are unattended by parents or guardians for any part of the day, and which holds all necessary licenses and permits from the State of Maine and/or the City of Lewiston.

Family day care home means child care for three to 12 children under 13 years of age (not related by blood or marriage to, or legal wards of the operator, or foster children

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living in the private family residence (i.e. dwelling unit) serving as the day care home) who are unattended by parents or guardians for any part of the day. A family day care home shall be operated by a person who is domiciled and a resident within the private family residence, and who is the holder of all necessary licenses and permits from the State of Maine and/or the City of Lewiston.

Outpatient addiction treatment clinic means a program or facility operated for the purpose of and specializing in the care, treatment and/or rehabilitation of persons suffering with addictions, including, but not limited to gambling addiction, alcohol or controlled substance addictions. This includes, but is not limited to, substance abuse treatment programs licensed by the State of Maine Department of Behavioral and Developmental Services Office of Substance Abuse. An outpatient addiction treatment clinic does not include an inpatient or residential addiction treatment program, or a program consisting solely of support group activities without treatment by licensed health practitioners, such as Alcoholics Anonymous, Narcotics Anonymous, and similar programs.

School means a building together with its contiguous accessory buildings and uses for the education and learning of children. Uses within the meaning of this definition shall include private and public preschool, elementary, middle and high school.

South Lewiston Retail Growth District. The area identified as a special retail growth area by the Lewiston City Council, which includes the contiguous land area defined in a map entitled (South Lewiston Retail Growth District), dated February, 2006 and kept on file with the Lewiston City Clerk.

Southern Gateway Development District. The land area identified as per appendix A, article XVI, section 2 of this Code.

Small day care facility means child care for three to 12 children under 13 years of age who, are unattended by parents or guardians for any part of the day, in a nonhome setting. Small day care facilities shall not be operated within a private family residence (i. e. dwelling unit).

Western Gateway Development District. The land area identified as per appendix A, article XVI, section 3 of this Code.

(Ord. No. 06-06, 5-4-06)

Sec. 22-413. Application requirements.

All applications for licenses under this article shall be filed with, and in a form satisfactory to, the city clerk. Such application shall include, but is not limited to the following:

- (1) Name, address and contact information including a phone number of the applicant and all other persons having a legal interest in the clinic and property and the individual(s) hired by the applicant to manage operation of the facility, if any.
- (2) The location of the premises for which a license is sought by identification of city tax map number and street address.

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- (3) The dimensions and acreage of the property.
- (4) A copy of a site plan, drawn to a scale of 50 feet or less to the inch, which contains the following information:
- (5) The boundary lines of the property for which a license is sought.
- (6) The location of all existing and proposed buildings and structures.
- (7) The location of all existing and proposed parking areas and walkways and any other site improvements.
- (8) The location and characteristics of all existing and proposed vegetation which is proposed to be maintained for required screening.
- (9) The location and characteristics of all existing and proposed fencing proposed to be maintained for required screening.
- (10) A site location map at a scale of not greater on 1" to 100' showing all adjoining residential uses and any schools, churches, family day care homes, small day care facilities, day care centers and public parks and play grounds.
- (11) The location and characteristics of all vehicular entrances and exits serving the property.
- (12) A detailed description of the proposed outpatient addiction treatment clinic to include the following: population to be served, client services, methods of treatment, identification of controlled substances to be kept on site, staffing requirements, security provisions, hours of operation, anticipated parking demand, peak hour traffic, identification of other required licenses, etc.
- (13) Identification of any other approvals required the City of Lewiston, by any state agency or department or of any federal agencies.
- (14) A nonrefundable application fee in accordance with the city's policy manual as approved by the city council and an original and 15 copies of the license application and all supporting documentation.

(Ord. No. 06-06, 5-4-06; Ord. No. 08-06d, 8-14-08)

Sec. 22-414. Administration.

- (a) *City council review.* License applications for outpatient addiction treatment clinics shall be filed with the city clerk and the clerk will order a background check from the police department for the applicant, individuals with a legal interest in the facility and any individual(s) hired to manage operation of the facility. The license application with the background check will then be reviewed by the city clerk to determine if the application is complete. If the application is not deemed complete, the license shall be denied. If the application is deemed to be complete, the application will be forwarded to the planning board for a recommendation regarding the location requirements contained in this article. In the event that development review approval is required pursuant to appendix A, article XIII of this Code, the planning board shall not provide a recommendation to the city council until it conducts a site plan review hearing on the proposed clinic.

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- (b) *Planning board recommendation.* Once the city clerk receives the recommendation from the planning board, the clerk shall schedule public hearings for the city council to consider the request to establish the proposed outpatient addiction treatment clinic. The city council shall conduct two public hearings on the application for a license to allow adequate time for public comment and review.
- (c) *Conditions of license approval.* The city council may impose conditions on the approval of any license application under this article to ensure compliance with the provisions of this article or any other provision of law. Such conditions may include, but are not limited to, the following:
 - (1) That the applicant provide documentation to the city clerk of the receipt of all approvals required by any federal or state agency or department pursuant to federal or state law prior to clinic operations.
 - (2) That the applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any license under this article.
 - (3) That any screening and or other requirements imposed by the city council pursuant to the provisions of this article or by the planning board upon development review, shall be installed, completed and approved by staff prior to the issuance of any license under this article.

(Ord. No. 06-06, 5-4-06)

Sec. 22-415. Location criteria.

Applicants for licenses must demonstrate to the satisfaction of the city council that all of the standards contained in this section are met in order to approve a license to operate an outpatient addiction treatment clinic.

- (1) *Location criteria.*
 - a. No clinic may be located within 1,000 feet of any church, school, family day care home, small day care facility, day care center, or public park or playground.
 - b. No clinic may be located within the bounds of the following revitalization and/or growth areas: South Lewiston Retail Growth Area, Southern Gateway, and the Western Gateway.
- (2) *Neighborhood compatibility standards.* No license shall be approved if the city council finds that the granting of the license would violate one or more of the following neighborhood compatibility standards:
 - a. Neither the proposed use nor the proposed site upon which the use will be located is of such a character that the use will have significant adverse impact upon the value or quiet possession of surrounding properties. The city council may not find that this standard is satisfied unless it finds that:
 - 1. The size of the proposed use is comparable to the size of surrounding uses;

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2. The amount and type of traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces are comparable to surrounding uses;
 3. The generation of noise, dust, odor, vibration, glare, smoke, litter and other nuisances is comparable to that generated surrounding uses;
 4. The impact of the use on the quality and quantity of groundwater available to abutting properties is comparable to that for surrounding uses;
 5. Unusual physical characteristics of the site, including size of the lot, shape of the lot, topography, and soils, do not aggravate adverse impacts upon surrounding properties.
- (3) Vehicular and pedestrian access and circulation to, from, into and within the site will be safe and no public way will be overburdened or made hazardous as a result of the new use of and/or development of the property. The city council may not find that this standard has been satisfied unless it first finds that:
- a. Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development. Adequate capacity means that: Intersections on major access routes to the site within a one-half mile radius of any entrance road will function after development at a minimum at Level of Service C, as defined in Maine Department of Transportation regulations, 17-229 C.M.R. Ch. 305, *Rules and Regulations Pertaining to Traffic Movement Permits* (2000); or
 - b. If any such intersection is functioning at a Level of Service D (as defined in MDOT regulations Chapter 305, cited above) or lower prior to the development, the project will not reduce the current level of service. The city council may approve a license for an application not meeting this requirement if the applicant demonstrates that: A public agency has committed funds to construct the improvements necessary to bring the level of access to said standard, or the applicant will assume financial responsibility for the improvements necessary to bring the level of service to said standard and will guarantee the completion of the improvements within one year of approval of the license.
- (4) The topography of the site shall permit the construction of all driveways, entrances or proposed streets to meet the standards set forth in appendix A, article XIII, subsection 4(c) of this Code.
- (5) Adequate facilities are present to assure the safety of pedestrians passing by or through the site.
- (6) Municipal or other facilities serving the proposed use will not be overburdened or made hazardous. The city council may not find that this standard is satisfied unless it finds that: The capacity of sewerage and water supply systems is adequate to accommodate the proposed use; the capacity of the storm drainage system is adequate to accommodate the proposed use; and the ability of the fire

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department to provide necessary protection services to the site and development is adequate.

- (7) The soils on the proposed site shall have adequate capacity and stability to support all loadings, including fill, developed by the proposed use and the use will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water to the extent that a dangerous or unhealthy condition may result on the site or upon the land of abutters. In considering whether this standard is satisfied, the city council shall take into account the elevation above sea level of the site and surrounding properties, its relation to floodplains, the slope and vegetation of the land and their effects on drainage.
- (8) The scale and design of the proposed structures with respect to materials, scale and massing shall be compatible with existing structures within 500 feet of the site in areas where the existing structures are of a similar scale and architectural treatment.

(Ord. No. 06-06, 5-4-06)

Sec. 22-416. Screening requirements.

All clinics shall be required to erect and maintain opaque fencing to provide an effective visual screen at least six feet in height to be located along side and rear property lines that abut properties in residential use. Said fencing is to screen the clinic entrance and parking lot from ordinary view from all directly adjoining properties.

(Ord. No. 06-06, 5-4-06)

Sec. 22-417. Meetings with the chief of police.

Meetings will be conducted at the clinic, held at the discretion of the chief of police, to allow the applicant and city staff the opportunity to discuss issues with the chief of police and or his designee. The purpose of said meetings is to establish a good working relationship between the police department and the owner and operators of clinics.

(Ord. No. 06-06, 5-4-06; Ord. No. 15-12, 11-19-15)

Sec. 22-418. Nonconforming uses.

Any outpatient addiction treatment clinic in lawful existence on the effective date of this article may remain in operation in its present location for 12 months following the effective date of this article. Thereafter, such clinics shall be required to comply with all the provisions of this article except the location and screening requirements set forth in sections 22-415 and 22-416 *supra*.

(Ord. No. 06-06, 5-4-06)

Sec. 22-419. Penalty for violation of article.

Any person who violates any provision of this article or the terms of any license issued under this article may be penalized in the following manner:

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- (1) *Temporary suspension.* The city clerk is authorized, pursuant to section 22-44, to immediately and temporarily suspend any license when continued operation of the licensed premises or activity presents a danger to the health, safety or the general welfare of the public.
- (2) *Suspension or revocation.* The city council may suspend or revoke a license in accordance with the provisions of section 22-44 of this chapter.
- (3) *Civil penalties.* A violator may be required to pay the penalties imposed by section 1-8 of this Code or 30-A M.R.S.A. (4452 et seq. as amended). A judgment from such a lawsuit in the city's favor can result in a court order that the owner and/or operator of said clinic abate any violations, pay a penalty in accordance with the city's policy manual as approved by the city council, and pay the court costs and legal and expert witness fees incurred by the city.

(Ord. No. 06-06, 5-4-06; Ord. No. 08-06d, 8-14-08)

ARTICLE XV. MEDICAL MARIJUANA – DISTRIBUTION AND CULTIVATION

Sec. 22-420. Purpose.

The purpose of this chapter is to implement the Maine Medical Use of Marijuana Act (“Act”) and to protect the public health, safety, and welfare of the residents and patients of the City of Lewiston by prescribing the manner in which the cultivation and distribution of medical marijuana can be conducted in the City. Further, the purpose of this chapter is to:

Provide for the safe sale and distribution of marijuana to patients who qualify to obtain, possess and use marijuana for medical purposes under the Maine Medical Marijuana Act.

Protect public health and safety through reasonable controls on marijuana cultivation and distribution operations as they relate to noise, air and water quality, food safety, neighborhood and patient safety, security for the operation and its personnel, and other health and safety concerns.

Impose fees to cover the cost to the City of licensing the cultivation and distribution of medical marijuana in an amount sufficient for the City to recover its costs of the licensing program.

Adopt a mechanism for the monitoring compliance with the provisions of this chapter.

Sec. 22-421. Applicability.

This article shall apply to any registered dispensary and any registered primary caregiver located and doing business in the City of Lewiston, and to any registered patient residing within the city.

Sec. 22-422. Definitions.

For purposes of this article, the following definitions shall apply unless the content clearly

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implies otherwise:

Cardholder means a registered patient, a registered primary caregiver or a principal officer, board member, or employee of a registered dispensary who has been issued and possesses a valid registry identification card from the State of Maine.

Department means the State Department of Health and Human Services or any successor agency.

City Department means any or all of the chief of police, the fire chief, the director of planning and code enforcement and their designees who administer the provisions of this chapter.

Disqualifying drug offense means a conviction for a violation of a state or federal controlled substance law that is a crime punishable by imprisonment for one year or more. It does not include an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten (10) or more years earlier; or an offense that consisted of conduct that would have been permitted under this chapter.

Enclosed, locked facility means a closet, room, or other enclosed area within a building, or an enclosed locked facility within a greenhouse, that is equipped with locks or other security devices that permit access only by a cardholder.

Marijuana means the leaves, stems, flowers and seeds of all species of the plant genus cannabis, whether growing or not. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake or sterilized seed of the plant which is incapable of germination.

Marijuana plant means a harvestable female marijuana plant that is flowering and is greater than twelve inches in height and twelve inches in diameter.

Medical use means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered patient's debilitating medical condition or symptoms associated with the registered patient's debilitating medical condition.

Multifamily dwelling means a building containing three (3) or more dwelling units, such buildings being designed for residential use and occupancy by three (3) or more families living independently of one another, with the number of families not exceeding the number of dwelling units, and which is not a single-family attached dwelling.

Patient means a person whose physician has provided a written certification to the Department for the patient's medical use of marijuana.

Physician means a person licensed as an osteopathic physician by the Board of Osteopathic Licensure pursuant to 32 M.R.S.A. Chapter 36 or a person licensed as a physician or surgeon by the Board of Licensure in Medicine pursuant 32 M.R.S.A. Chapter 48 who is in good standing and who holds a valid federal Drug Enforcement Administration license to prescribe drugs.

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Physician's written certification means a document signed by a physician stating that in the physician's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

Prepared marijuana means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments, and other preparations. It does not include the seeds, stalks and roots of the marijuana plant or other ingredients in goods prepared for human consumption or use.

Registered dispensary or dispensary means a not-for-profit entity registered pursuant to State Law that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to registered patients who have designated the dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients.

Registered patient means a patient who has a registry identification card issued by the State of Maine.

Registered primary caregiver or primary caregiver means a person, a hospice provider licensed under Title 22 M.R.S.A. chapter 1681 or a nursing facility licensed under Title 22 M.R.S.A. chapter 405 that provides care for a registered patient and that has been named by the registered patient as a primary caregiver to assist with a registered patient's medical use of marijuana. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

Registered primary caregiver operation means a registered primary caregiver that cultivates marijuana for 2 or more registered patients pursuant to State law.

Registry identification card means a document issued by the department that identifies a person as a registered patient, registered primary caregiver, or a principal officer, board member, or employee of a registered dispensary.

School means a building together with its contiguous accessory buildings and uses for the education and learning of children. Uses within the meaning of this definition shall include private and public preschool, elementary, middle and high school.

State Law means the Act and any rules and regulations issued by the Department under the Act.

Sec. 22-423. Medical marijuana license required.

No person shall engage, operate or conduct the business of a registered dispensary or a registered primary caregiver operation in the city unless such person has first acquired a license in accordance with this Article.

Sec. 22-424. Food establishment license.

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A registered dispensary and a registered primary caregiver must obtain a food establishment license, pursuant to 22 Maine Revised Statutes section 2167, prior to preparing goods containing marijuana for medical use for a registered patient.

Sec. 22-425. Application requirements for registered dispensary.

This section governs the license application requirements for a registered dispensary. All applications for licenses under this article shall be filed with, and in a form satisfactory, to the city clerk. Such application shall include, but is not limited to the following:

- (1) Name, address, date of birth and contact information, including a phone number of the applicant and all other persons having a legal interest in the registered dispensary and the individual(s) hired by the applicant to manage these operations, if any. A photograph and a copy of a valid registry identification card issued by the State of Maine are required for each principal officer, board member, agent and employee of a registered dispensary.
- (2) The location of the premises for which a license is sought identified by city tax map number and street address and a copy of the property deed and demonstration of right, title or interest for use of the property as a registered dispensary.
- (3) The dimensions and acreage of the property.
- (4) A copy of a site plan, drawn to a scale of 50 feet or less to the inch, which contains the following information:
 - (a) The boundary lines of the property for which a license is sought.
 - (b) The location of all existing and proposed buildings and structures.
 - (c) The location of all existing and proposed parking areas and walkways and any other site improvements.
 - (d) The location and characteristics of all existing and proposed vegetation to be maintained for required screening.
 - (e) The location and characteristics of all existing and proposed fencing to be maintained for required screening.
 - (f) The location and characteristics of all vehicular entrances and exits serving the property.
- (5) A site location map at a scale of not greater than 1" to 100' showing any public or private school located within 500 feet of the proposed registered dispensary.
- (6) A detailed description of the proposed cultivation and/or distribution of medical marijuana to include the following: number of qualified registered patients to be served, registered patient services, staffing requirements, security provisions, hours of operation, anticipated parking demand, peak hour traffic, identification of other required licenses, floor plans, etc.
- (7) Identification of any other approvals required by the City of Lewiston, any state agency or department, or any federal agencies.
- (8) A nonrefundable application fee in accordance with the city's policy manual as prescribed by the city council and an original and 15 copies of the license application and all supporting documentation.
- (9) Evidence of registered dispensary incorporation under Title 13B and evidence that the corporation is in good standing with the Secretary of State;

Sec. 22-426. Background checks.

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The city clerk shall order background checks of each principal officer, board member and employee of a registered dispensary and a registered primary caregiver engaged in the cultivation of marijuana for two or more registered patients. Updated background checks shall be conducted annually at the time of license renewal. Background checks shall be conducted in each state where such individuals have resided since the age of 18.

Sec. 22-427. Limitation on number of dispensaries.

Not more than one registered dispensary shall be licensed to operate within the City of Lewiston. The registered dispensary must cultivate and distribute medical marijuana from one location.

Sec. 22-428. Requirements for registered dispensary.

A registered dispensary shall conform to the following provisions:

- (1) It shall comply at all time and in all circumstances with State Law.
- (2) It shall not be located within 500 feet of the property line of a preexisting public or private school;
- (3) It shall keep marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered dispensary;
- (4) Access to the enclosed, locked facility shall be limited to a cardholder who is a principal officer, board member, or employee of a registered dispensary when acting in his or her official capacity
- (5) It shall implement appropriate security and safety measures provisions in accordance with Sec. 22-431 and any city department rules regarding security and safety to the satisfaction of the city department to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered dispensary;
- (6) It shall obtain all necessary building, electrical, plumbing and mechanical permits for any portion of the structure that contains electrical wiring, lighting and/or watering devices that support the cultivation of marijuana;

Sec. 22-429. Application requirements for registered primary caregiver operation.

This section governs the license application requirements for a registered primary caregiver operation. All applications for licenses under this article shall be filed with, and, in a form satisfactory, to the city clerk. Such application shall include, but is not limited to the following:

- (1) Name, address, date of birth and contact information, including a phone number of the registered primary caregiver. A photograph and a copy of a valid registry primary caregiver identification card issued by the State of Maine are required.
- (2) The location of the premises for which a permit is sought identified by city tax map number and street address and a copy of the property deed and demonstration of right, title or interest for use of the property as a registered primary caregiver operation.
- (3) The dimensions and acreage of the property.
- (4) A copy of a site plan, drawn to a scale of 50 feet or less to the inch, which contains the following information:

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- (a) The boundary lines of the property for which a permit is sought.
 - (b) The location of all existing and proposed buildings and structures.
 - (c) The location of all existing and proposed parking areas and walkways and any other site improvements.
 - (d) The location and characteristics of all vehicular entrances and exits serving the property.
- (5) A site location map at a scale of not greater than 1" to 100' showing any public or private school located within 500 feet of the proposed registered caregiver operation.
 - (6) A detailed description of the proposed cultivation and/or distribution of medical marijuana to include the following: number of qualified registered patients to be served, security provisions, hours of operation, identification of other required licenses, floor plans, etc.
 - (7) Identification of any other approvals required by the City of Lewiston, any state agency or department, or any federal agencies.
 - (8) A nonrefundable application fee in accordance with the city's policy manual as prescribed by the city council and an original and 3 copies of the license application and all supporting documentation.

Sec. 22-430. Requirements for registered primary caregiver operation.

Registered primary caregiver operations shall conform to the following provisions:

- (1) They shall comply at all times and in all circumstances with the provisions of State Law;
- (2) They shall not cultivate marijuana within or on the property of a multifamily dwelling;
- (3) They shall not cultivate marijuana within 500 feet of the property line of a preexisting public or private school;
- (4) They shall keep marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the registered primary caregiver operation, unless the plants are being transported because the primary caregiver is moving;
- (5) They shall comply with security and safety related provisions contained in Sec, 22-431 and any city department rules regarding security and safety;
- (6) They shall obtain all necessary building, electrical, plumbing and mechanical permits for any portion of the structure that contains electrical wiring, lighting and/or watering devices that support the cultivation of marijuana.

Sec. 22-431. Dispensary and primary caregiver operation security and safety - protections of premises and persons.

A registered dispensary and registered primary caregiver operation shall implement appropriate security and safety measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana. Security measures to protect the premises, registered patients, registered primary caregivers, and principal officers, board members and employees of the registered dispensary shall include but are not limited to the following:

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- (1) On-site parking in accordance with Appendix A, Article XII, Sec. 17(d) of the Code of Ordinances of the City of Lewiston (hereinafter referred to as the Code) shall be provided.
- (2) Exterior lighting shall be provided in accordance with Appendix A, Article XIII, Sec.4 (n) of the Code to deter nuisance activity and facilitate surveillance;
- (3) Devices or a series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device shall be installed to detect an unauthorized intrusion.
- (4) The interior shall be equipped with electronic monitoring, video cameras, and panic buttons.
- (5) Satisfy all applicable State of Maine and city code requirements such as but not limited to electrical, plumbing, building, ventilation, energy conservation, life safety, mechanical and the environmental performance standards with respect to odors and other environmental considerations as per Appendix A, Article XII, Section 19 of the Code.

Sec. 22-432. Inspection of Registered Dispensary.

A registered dispensary is subject to inspection as follows:

- (1) A registered dispensary shall allow the City Department entry without notice to carry out an inspection in accordance with this chapter.
- (2) Submission of a license application for a registered dispensary shall constitute permission for entry and inspection.
- (3) During an inspection the City Department may identify violations of this chapter, provisions of the Code and State Law. The registered dispensary may receive written notice of the nature of the violations. The registered dispensary shall notify in writing the representative of the City Department identified in such notice with a postmark date within five (5) business days of the date of the notice of violations identifying the corrective actions taken and the date of the correction.
- (4) Failure to cooperate with required inspections and to respond to notice of violations as specified shall be grounds for the city clerk or the City Department to temporarily suspend the license of the registered dispensary subject to revocation by the City Council.

Sec. 22-433. Inspection of registered primary caregiver operation.

A registered primary caregiver operation is subject to inspection as follows:

- (1) A registered primary caregiver operation shall allow the City Department entry upon 24 hours notice to carry out an inspection in accordance with this chapter.
- (2) Submission of a license application for a registered primary caregiver operation shall constitute permission for entry and inspection.
- (3) During an inspection the City Department may identify violations of this chapter, provisions of the Code and State Law. The registered primary caregiver operation may receive written notice of the nature of the violations. The registered primary caregiver operation shall notify in writing representative of the City Department identified in such notice with a postmark date within five (5) business days of the date of the notice of violations identifying the corrective actions taken and the date of the correction.
- (4) Failure to cooperate with required inspections and to respond to notice of violations as

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specified shall be grounds for the city clerk or the City Department to temporarily suspend the license of the registered primary caregiver operation subject to revocation by the city administrator.

Sec. 22-434. Denial of application.

The city clerk may deny an application for a license based on the following:

- (1) The applicant's failure to comply with the application requirements set out in these rules, including the applicant's failure to provide the required information; and,
- (2) The determination that the information provided was materially inaccurate or incomplete.

Sec. 22-435. Disqualifying drug conviction.

The City shall not approve a license to a registered dispensary or to a registered primary caregiver operation if any principal officer, board member, agent or employee of a dispensary, or the registered primary caregiver, has been convicted of a disqualifying drug offense in Maine or another jurisdiction.

Sec. 22-436. Revocation of license.

The city clerk or the City Department shall temporarily suspend the license for a registered dispensary or a registered primary caregiver operation that sells, furnishes or gives marijuana to a person who is not allowed to possess marijuana for medical purposes under State Law and for any violations of the provisions contained within this chapter. Grounds for revocation of a license by the city council of a registered dispensary or revocation of a license by the city administrator of a registered primary caregiver operation include the following:

- (1) The dispensary or caregiver is convicted of selling, furnishing, or giving marijuana to a person who is not allowed to possess marijuana for medical purposes in accordance with these rules.
- (2) A registered caregiver or a registered dispensary cardholder is convicted of a disqualifying drug offense.
- (3) A registered dispensary or registered primary caregiver cardholder is convicted of dispensing, delivering, or otherwise transferring marijuana to a person other than a registered patient who has designated the dispensary or registered primary caregiver to cultivate marijuana; or a registered dispensary cardholder is convicted of dispensing, delivering, or otherwise transferring marijuana to a person other than a patient's registered primary caregiver.
- (4) Failure to cooperate with required inspections.
- (5) Violations of any laws, rules or ordinances that govern the operation of a registered dispensary or registered primary caregiver operation.
- (6) Committing, permitting, aiding or abetting any illegal practices in the operation of a dispensary or primary caregiver operation.
- (7) Conduct or practices that are detrimental to the safety and welfare of registered patients or registered primary caregivers; and,
- (8) Providing information that is materially inaccurate or incomplete.

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Sec. 22-437. License administration for registered dispensary.

- (1) City council review. License applications for a registered dispensary shall be filed with the city clerk and the clerk will order a background check from the chief of police for the applicant, individuals with a legal interest in the facility and any individual(s) hired to manage operation of the facility. The license application with the background check will then be reviewed by the city clerk to determine if the application is complete. If the application is not deemed complete, the license shall be denied by the city clerk.
- (2) If the application for a registered dispensary is deemed to be complete, the city clerk will notify the applicant that the registered dispensary must first obtain a conditional use permit from the planning board along with development review approval if required pursuant to Appendix A, Article XIII Sec. 2 of this Code. The conditional use permit must be obtained prior to scheduling a public hearing for the city council to consider the license to establish the proposed registered dispensary. In addition, the department shall provide a recommendation to the city council prior to said public hearing.
- (3) Conditions of license approval. The city council may impose conditions on the approval of any license application for a registered dispensary under this article to ensure compliance with the provisions of this article or any other provision of law. Such conditions may include, but are not limited to, the following:
 - (a) That the applicant provides documentation to the city clerk of the receipt of all approvals required by any federal or state agency or department pursuant to federal or state law prior to operations.
 - (b) That the applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of any license under this article.
 - (c) That any screening and or other requirements imposed by the city council pursuant to the provisions of this article or by the planning board or by the director of planning, shall be installed and completed to the satisfaction of the city clerk prior to the issuance of any license under this article.

Sec. 22-438. License administration for registered primary caregiver operation.

- (1) City clerk review. License applications for a registered primary caregiver operation shall be filed with the city clerk and the clerk will order a background check from the chief of police for the applicant. The license application with the background check will then be reviewed by the city clerk to determine if the application is complete and if the license should be granted. If the application is not deemed complete, the license shall be denied by the city clerk.
- (2) Conditions of license approval. The city clerk and the City Department may impose conditions on the approval of any license application for a registered dispensary under this article to ensure compliance with the provisions of this article or any other provision of law. Such conditions may include, but are not limited to, the following:
 - (a) That the applicant provides documentation to the city clerk of the receipt of all approvals required by any federal or state agency or department pursuant to federal or state law prior to operations.
 - (b) That the applicant provide documentation to the city clerk of the receipt of any approvals required by any city board pursuant to this Code prior to the issuance of

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any license under this article.

Sec. 22-439. Screening requirements.

A registered dispensary shall be required to erect and maintain opaque fencing to provide an effective visual screen at least six feet in height to be located along side and rear property lines that abut properties in residential use. Notwithstanding this requirement, plantings or other means may be used to satisfy the requirement for a visual screen of six feet in height.

Sec. 22-440. Semi-annual meetings with the City Department.

A minimum of two meetings per calendar year will be conducted at the registered dispensary to allow the applicant and the City Department the opportunity to discuss issues and to establish a good working relationship between the City Department and the dispensary.

Sec. 22-441. Requirements for registered patients and registered caregivers that do not cultivate marijuana for more than one registered patient.

A registered patient and a registered primary caregiver that does not cultivate marijuana for more than one registered patient shall conform to the following provisions:

- (1) A registered patient and a registered primary caregiver that does not cultivate marijuana for more than one registered patient shall comply at all time and in all circumstances with the provisions of State Law;
- (2) A registered patient or a registered primary caregiver that cultivates marijuana shall keep the marijuana plants in an enclosed, locked facility not visible from outside of the premises where the plants are grown to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana unless the plants are being transported because the patient is moving or taking the plants to another patient's home.

Sec. 22-442. Penalty for violation of article.

Any person who violates any provision of this article or the terms of any license issued under this article may be penalized in the following manner:

- (1) Temporary suspension. The city clerk and the City Department is authorized, pursuant to section 22-44, to immediately and temporarily suspend any license when continued operation of the licensed premises or activity presents a danger to the health, safety or the general welfare of the public.
- (2) Suspension or revocation. The city council may suspend or revoke a license for a registered dispensary in accordance with the provisions of section 22-44 of this chapter. The city administrator may suspend or revoke a license for a primary caregiver operation in accordance with the provisions of section 22-436 of this article.
- (3) Civil penalties. A violator may be required to pay the penalties imposed by section 1-8 of this Code or 30-A M.R.S.A. (4452 et seq. as amended). A judgment from such a lawsuit in the city's favor can result in a court order that the owner and/or operator of said clinic abate any violations, pay a penalty in accordance with the city's policy manual as approved by the city council, and pay the court costs and legal and expert witness fees

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incurred by the city. Notwithstanding the above the chief of police may initiate criminal proceedings relative to individuals engaged in the unlawful distribution, use and cultivation of medical marijuana.

Sec. 22-443. Confidentiality.

All applications and supporting information submitted by primary caregivers under this ordinance, and the identity of registered primary caregivers and registered patients, shall be confidential pursuant to the Act, 22 M.R.S.A. §2425(8), and the Maine Freedom of Access law, 1 M.R.S.A. §402(3)(F).

(Ord. No. 10-15, 1-6-11)