

TITLE 7

PUBLIC PEACE, SAFETY AND MORALS

Chapters:

- 7.04 State Criminal Statutes and Penalties
- 7.06 Public Reward System
- 7.08 Curfew
- 7.12 Loitering
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CHAPTER 7.04

STATE CRIMINAL STATUTES AND PENALTIES

Sections:

- 7.04.01 State criminal statutes adopted
- 7.04.02 State penalties adopted

7.04.01 State criminal statutes adopted All criminal statutes of the state relating to misdemeanors and violations and the laws of criminal procedure in connection therewith, three (3) copies of which are on file in the office of the Clerk/Treasurer and are hereby enacted by the City Council to form a part of the laws of the city and any person, firm or corporation being found guilty of the violation of any such laws shall be deemed guilty of the violation of the ordinances of the city and shall be fined or imprisoned or both in the manner set out under the state statutes. (Ord. No. 82-1, Sec. 1)

7.04.02 State penalties adopted. The same minimum and maximum penalties for the violation of misdemeanors and violations as are provided in the state statutes are hereby adopted as the minimum and maximum fines for the violation of the same offenses which are prohibited by the ordinances of this city. (Ord. No. 82-1, Sec. 2)

CHAPTER 7.06

PUBLIC REWARD SYSTEM

Sections:

7.06.01 Public reward system

7.06.01 Public reward system. The City Council of the city of Pottsville hereby enacts and makes available funds for rewards to those parties that provide information leading to the arrest and conviction of any person(s) who commit and are found guilty of theft, vandalism, or other acts of criminal mischief resulting in the loss of or damage to city property.

Any persons wishing to claim the reward of Fifty (\$50.00) Dollars shall provide that information available to the Pottsville City Police Department. The caller shall issue their name, address and telephone number for future use of mailing the reward to or making available the reward to that party so identified.

Any and all information provided based on the foregoing shall be considered confidential.

CHAPTER 7.08

CURFEW

Sections:

7.08.01	Juvenile Curfew Ordinance Authority
7.08.02	Regulations
7.08.03	Definitions
7.08.04	Unlawful Activity
7.08.05	Exceptions
7.08.06	Violations
7.08.07	Penalties

7.08.01 Juvenile Curfew Ordinance Authority This Ordinance is passed by the City Council of the City of Pottsville under the grant of authority given to it by the State of Arkansas. (Ord. No. 2020-6, Sec. 2)

7.08.02 Regulations The Mayor and City Council of the City of Pottsville, Arkansas, find that:

- (a) Special circumstances exist within the City that call for the special regulation of juveniles within the City in order to protect them from each other and from other persons on the street during the nocturnal hours and during normal school hours, whether public, private, or home schooling, to aid in crime prevention, to promote parental supervision and authority over juveniles and to decrease nocturnal crime rates and crime rates during school hours.
- (b) There has been a significant breakdown in the supervision normally provided by some parents and guidance for juveniles under 18 years of age, resulting in juveniles being involved in a wide range of unacceptable behavior including vandalism, noisy and unruly behavior, breaking and entering, public drinking and littering, harassment of residents, truancy or absenteeism from school and more serious violent crimes.
- (c) The offensive activities of juveniles are not easily controlled by existing laws and ordinances because the activities are concealed whenever police officers are present, and that the establishment of reasonable curfew regulations will enable the community to better control the free and unobstructed access to the streets and public places by the majority of residents and will enable the police to act reasonably and fairly to prevent the violation of laws and ordinances by juveniles.

- (d) Pottsville is basically a family community. Parental responsibility for the whereabouts of children is the accepted norm by a substantial majority of the community. Legal sanctions to enforce such responsibility have had demonstrated effectiveness in many communities over the years. As parental control increases, there is a likelihood that juvenile delinquency decreases and that there is a need for nocturnal curfew applicable to juveniles that will reinforce the primary authority and responsibility of parents and guardians over juveniles in their care and custody.
- (e) An emergency has been created by a substantial increase in the number and in the seriousness of crimes committed by minors against persons and property within the City, and this has created a menace to the preservation of public peace, safety, health, morals, and welfare.
- (f) The increase in juvenile delinquency has been caused in part by the large number of minors who are permitted to remain in public places and in certain establishments during night hours without adult supervision, and during daylight hours at times when, by law, they are required to attend school.
- (g) The problem of juvenile delinquency can be reduced by regulating the hours during which minors may remain in public places and in certain establishments without adult supervision, and by imposing certain duties and responsibilities upon the parents or other adult persons who have care and custody of minors. (Ord. No. 2020-6, Sec. 3)

7.08.03 **Definitions** For the purposes of the Juvenile Curfew Ordinance, the following terms, phrases, words, and their derivations shall have the following meanings ascribed to them by this Section:

- (a) *City* is the City of Pottsville, Arkansas.
- (b) *District Court* means the District Court of Pope County, Pottsville Division, which has jurisdiction only within the city limits of the City of Pottsville. The term District Court shall mean Pope County Circuit Court, Criminal Division, only if a conviction by the Pottsville Division of the District Court of Pope County has been rendered on a Defendant who subsequently has appealed his or her conviction to Pope County Circuit Court, Criminal Division.
- (c) *Emancipated Juvenile* means a juvenile who no longer has a parent-child relationship as a result of marriage, or as a result of being recognized as an adult by order of a court of competent jurisdiction.

(d) *Legitimate parentally approved errand* means a juvenile performing a necessary task at the direction of the juvenile's parent, and that the nonperformance of the errand, or delay of performance until after curfew hours have abated, would result in injury or undue hardship.

(e) *Juvenile* is any unemancipated or unmarried person under the age of eighteen (18) years of age.

(f) *Minor* is any unemancipated or unmarried person under the age of eighteen (18) years of age.

(g) *Parent* is any person having legal custody of a juvenile (i) as a natural parent, (ii) as an adoptive parent, (iii) as a legal guardian, (iv) as a person to whom legal custody has been given by order of the court, and (v) as a person who stands *in loco parentis*.

(h) *Public place* means a publicly or privately owned place to which the public or substantial numbers of people have access. A public place does not include the residence of a juvenile or, the residence of a juvenile's parent or a responsible adult.

(i) *Responsible adult* means a person at least twenty-one (21) years of age to whom a parent has expressly given permission to accompany a juvenile.

(j) *Remain* means to loiter, idle, wander, stroll or play in or upon.

(k) *Street* means a way or place, of whatever nature, open to the use of the public as a matter of right for purposes of vehicular travel or in the case of a sidewalk thereof for pedestrian travel. The term "street" includes the legal right-of-way, including but not limited to traffic lanes, the curb, the sidewalks whether paved or unpaved, and any grass plots or other grounds found within the legal right-of-way of a street. The term "street" applies irrespective of what is called or formerly named, whether alley, avenue, court, road, or otherwise. The term "street" shall also include shopping centers, parking lots, parks, playgrounds, public buildings, the common areas of public housing developments, and similar areas that are open to the use of the public.

(l) *Time of night* is based on the prevailing standard time, whether Central Standard Time or Central Daylight Savings Time, generally observed at that hour by the public in the City, *prima facie* the time then observed in the City police station.

(m) *Years of age* continues from a birth date, such as the 17th, to (but not including the day of) the next, such as the 18th birthday, making it clear that 17 or less years of age be treated as equivalent to the phrase "under 18 years of age." (Ord. No. 2020-6, Sec. 4)

7.08.04 Unlawful Activity

(a) It shall be unlawful for any juvenile to loiter, ramble, play upon, frequent or to be upon the streets, highways, alleys, sidewalks, parks, playgrounds, public places and vacant lots, or to ride in or upon, drive or otherwise operate or be a passenger of any automobile, bicycle, or other vehicle in, upon, over or through the streets, or other public places in the City between the hours of 11:00 p.m. and 6:00 a.m. on Sunday through Thursday, and from 12:00 a.m. and 6:00 a.m. on Friday and Saturday. If a police officer reasonably believes that a juvenile is on the streets in violation of this Section, the officer shall notify the juvenile that he is in violation of this Ordinance and shall provide his name, address and telephone number and how to contact his parent or guardian. In determining the age of the juvenile believed to be in violation of this Ordinance, and in the absence of convincing evidence, a police officer shall use his best judgment in determining age.

(b) It shall be unlawful for any parent to knowingly permit a juvenile to loiter, ramble, play upon, frequent or to be upon the streets, sidewalks, parks, playgrounds, public places and vacant lots, or to ride in or upon, drive or otherwise operate, a vehicle in, upon, over or through the streets, or other public places in the City between the hours of 11:00 p.m. and 6:00 a.m. on Sunday through Thursday, and from 12:00 a.m. to 6:00 a.m. on Friday and Saturday. The fact that a juvenile is in violation of the provisions of subsection (a) hereinabove, without a defense as set forth in Section 6, shall create a rebuttable presumption that a parent is in violation of this subsection.

(c) It shall be no defense to the Section that a parent was indifferent to the activities, conduct, or whereabouts of such juvenile.

(d) It shall be unlawful for any operator of an establishment or his agents or employees to knowingly permit any juvenile to remain upon the premises of said establishment in the City between the hours of 11:00 p.m. and 6:00 a.m. on Sunday through Thursday, and between 12:00 a.m. and 6:00 a.m. on Friday and Saturday. The fact that a juvenile is in violation of the provisions of subsection (a) hereinabove, without a defense as set forth in Section 6, shall create a rebuttable presumption that a parent is in violation of this subsection. (Ord. No. 2020-6, Sec. 5)

7.08.05 Exceptions

(a) Notwithstanding the provisions of Section 5, the Juvenile Curfew Ordinance does not apply:

(1) Anytime a juvenile is accompanied by a parent, or by a responsible adult authorized by a parent to take the parent's place to accompany the juvenile, for a designated period of time and purpose within a specified area.

(2) If the juvenile is employed, for a period of forty-five (45) minutes after work, provided that circumstances suggest the juvenile is returning from work to a place of residence.

(3) When a juvenile is returning home from an activity that is supervised by adults and sponsored by the City, a civic organization, a public or private school, religious organization, other recreational; activity sponsored by adults or any entity that takes responsibility for the juvenile, provided that the activity has not concluded for more than forty-five (45) minutes.

(4) When the juvenile is on a trip in interstate commerce.

(5) When the juvenile is required to leave a residence because of an emergency.

(6) At any time, the juvenile is engaged in an activity that is protected by the First Amendment to the United States Constitution, or the freedom of speech, religion, or expression provisions in Article II of the Arkansas Constitution.

(b) If a juvenile being questioned about the possible violation of the Juvenile Curfew Ordinance provides a law enforcement officer with sufficient reason to believe that the juvenile is entitled to an exemption under subsection (a) above, the law enforcement officer shall take no more enforcement actions under this article, provided the officer may make a report of the juvenile's identity, the exemption claimed, and other necessary information to note the possible violation of this article. (Ord. No. 2020-6, Sec. 6)

7.08.07 Penalties Any parent, guardian or other person having legal care or custody of any person under the age of eighteen (18) years; any juvenile person under the age of eighteen (18) years; or any operator of an establishment or his agents or employees violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined up to one hundred dollars (\$100.00) plus court costs for the first offense. For a second conviction such juvenile person; parent, guardian, or legal custodian of such juvenile person; or operator of an establishment or his agents or employees shall be fined not more than two hundred and fifty dollars (\$250.00) plus court costs. For any three or more convictions such juvenile person; parent, guardian, or legal custodian of such juvenile person; or operator of an establishment or his agents or employees shall be fined not less than two hundred and fifty dollars (\$250.00) and not more than five hundred dollars (\$500.00) plus court costs. The District Court may substitute community service in lieu of the fines but not in lieu of the court costs.(Ord. No. 2020-6. Sec. 8)

Notice is presumed to be received by a parent if deposited in a depository for mailing United States Mail, properly addressed and with first-class postage paid. The mailing may be shown by records of the sending agency made in the regular course of business.(Ord. No. 2020-6, Sec. 9)

CHAPTER 7.12

LOITERING

Sections:

7.12.01	Illegal
7.12.02	Definitions
7.12.03	Penalty

7.12.01 Illegal It shall be unlawful for any person to loiter upon the sidewalks, streets, highways, alleys or other public places within the city.

7.12.02 Definitions

- A. A person commits the offense of loitering if he:
1. lingers, remains, or prowls in a public place or the premises of another without apparent reason and under circumstances that warrant alarm or concern for the safety of person or property in the vicinity, and upon inquiry by a law enforcement officer, refuses to identify himself and give a reasonably credible account of his presence and purpose; or
 2. lingers, remains, or prowls in or near a school building, not having any reason or relationship involving custody of or responsibility for a student, and not having written permission from anyone authorized to grant the same; or
 3. lingers or remains in a public place or on the premises of another for the purpose of begging; or
 4. lingers or remains in a public place for the purpose of unlawfully gambling; or
 5. lingers or remains in a public place for the purpose of engaging or soliciting another person to engage in prostitution or deviate sexual activity; or
 6. lingers or remains in a public place for the purpose of unlawfully buying, distributing, or using a controlled substance; or
 7. lingers or remains on or about the premises of another for the purpose of spying upon or invading the privacy of another.

- B. Among the circumstances that may be considered in determining whether a person is loitering are that the person:
1. takes flight upon the appearance of a law enforcement officer; or
 2. refuses to identify himself; or
 3. manifestly endeavors to conceal himself or any object.
- C. Unless flight by the actor or other circumstances make it impracticable, a law enforcement officer shall, prior to an arrest for an offense under subsection l(a) of this section, afford the actor an opportunity to dispel any alarm that would otherwise be warranted by requesting him to identify himself and explain his presence and conduct.
- D. It shall be a defense to a prosecution under subsection A (1) that the law enforcement officer did not afford the defendant an opportunity to identify himself and explain his presence and conduct, or if it appears at trial that an explanation given by the defendant to the officer was true, and if believed by the officer at that time, would have dispelled the alarm.

7.12.03 Penalty Loitering is a Class C misdemeanor punishable by a maximum fine of One Hundred (\$100.00) Dollars.

CHAPTER 7.16

PROHIBITED WEAPONS

Sections:

7.16.01 Unlawful to carry, exchange

7.16.01 Unlawful to carry, exchange It shall be unlawful for any person to carry any knife, the blade of which is over three (3) inches in length, or to carry any instrument commonly called a crabapple switch, dirk, dagger, pick or any other dangerous or deadly weapon within the city, and it shall further be unlawful for any firm or corporation to sell, barter, exchange or otherwise dispose of such knives, crabapple switches, dirks, daggers or picks, or instruments to be used for a weapon within the corporate limits of the city.

CHAPTER 7.20

CLAIMS AGAINST CITY

Sections:

- 7.20.01 Liability coverage
- 7.20.02 Settlement of claims

7.20.01 Liability coverage The city shall carry liability coverage on all its motor vehicles in the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act.

7.20.02 Settlement of claims All persons having claims against the city may file them with the Recorder/Treasurer. The Recorder/ Treasurer shall present them to the Council. The Council may grant a hearing for the claimant and may authorize a settlement.

CHAPTER 7.24**STORAGE AND HANDLING OF VOLATILE COMBUSTIBLES****Sections:**

- 7.24.01 Restriction on keeping
- 7.24.02 Volatiles never to be allowed to pass into drainage system
- 7.24.03 Penalty

7.24.01 Restriction on keeping Gasoline, naphtha, benzine, and other like volatile combustible or their compounds in excess of a total of five (5) gallons, exclusive of that in tanks of automobiles, in combustion engines, or in approved portable wheeled tanks in public garages each not exceeding sixty (60) gallons capacity, shall not be kept within any building. Such total of five (5) gallons or less shall be kept only in cans approved by the Chief of the Fire Department. Any quantity in excess of five (5) gallons shall be kept only in a tank or tanks placed not less than two (2) feet beneath the surface of the ground or in an outside tank or tanks above ground and approved by the Chief of the Fire Department located not less than fifty (50) feet from the line of any adjoining property which may be built upon. The tank or tanks shall be adequately and properly diked with a dike having capacity not less than equal in volume to that of the tank or tanks surrounded. No underground tanks shall be placed, constructed or maintained under a street, public sidewalk or in a sidewalk area.

7.24.02 Volatiles never to be allowed to pass into drainage system In no instance shall gasoline, naphtha, benzine and other like volatile combustibles or their compounds be allowed to run upon the floor or fall or pass into the drainage system of the premises. Self-closing metal cans shall be used for all oily waste or waste oils.

7.24.03 Penalty Any person who shall violate or fail to comply with any provision of this chapter, or who shall violate or fail to comply with any order or regulation, shall upon conviction, be punished by a fine not exceeding One Hundred (\$100.00) Dollars. The imposition of one (1) penalty for violation of this chapter shall not excuse the violator or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time; and each day that any prohibited condition is maintained shall constitute a separate offense. The application of said penalty shall not be held to prevent the enforced removal of any prohibited condition as provided by this chapter.

CHAPTER 7.28**OUTSIDE FIRE SERVICE****Sections:**

7.28.01	Authority to dispatch
7.28.02	Restrictions
7.28.03	Cost of aid without mutual aid agreement
7.28.04	Mutual aid agreement
7.28.05	Payment of money collected

7.28.01 Authority to dispatch Fire department apparatus shall be taken beyond the corporate limits of the city to assist at any fire or for any other purpose, by order of the Mayor or Fire Chief or such other person as they may designate, and subject to the restrictions and conditions hereinafter set forth.

7.28.02 Restrictions The Mayor or Fire Chief or such other person as they may designate are authorized, in their discretion, to aid in the extinguishing of fires in another city, (or town), public institutions, corporation, or other properties within a reasonable distance from the city or on property immediately adjacent to the city in which there is a possibility of fire spreading within the corporate limits, under the following conditions:

- A. A request from a city or incorporated town for assistance must come only from the Mayor, Fire Chief or such other person as may be designated by mutual agreement.
- B. Calls may be responded to only by such apparatus which in the judgment of the Mayor or Fire Chief or such other person as they may designate can be safely sent without unduly impairing the fire protection within the city, and when highways and weather conditions are favorable.
- C. The city, incorporated town, public institution, corporation, or individual requesting assistance must pay the charge for apparatus and service hereinafter provided unless there exists a mutual aid agreement.
- D. The city, incorporated town, public institution, corporation or individual must compensate the city for any loss or damage to such apparatus while answering such call, and be responsible to the members of the fire department of the city for any injuries suffered or incurred by them while responding to such calls and while working at such fire, unless otherwise covered by insurance.

7.28.03 Cost of aid without mutual aid agreement Unless there exists a mutual aid agreement, every municipality, institution, corporation or individual requesting and receiving service of the fire department of the city, shall pay for such service and the use of apparatus as follows:

Pumper - \$50.00, within 2 miles of station; \$5.00 additional for each mile or fraction thereof.

Each person, city, firm or corporation receiving service of the Fire Department, unless there exists a mutual aid agreement, shall pay to the city for each fire driver a sum representing Three Dollars (\$3.00) per hour or part thereof from the time the apparatus leaves the fire house until it returns thereto, and as to each fireman helping at the fire, a sum representing Three Dollars (\$3.00) per hour or part thereof, from the time he reports until the time his service ends. The payments herein stipulated shall be made to the City Treasurer within fifteen (15) days after demand.

7.28.04 Mutual aid agreement The Mayor and Chief of the Fire Department, are hereby authorized to enter into mutual aid agreements, with other municipalities, firms, corporations or individuals, for the rendering of fire service, subject to the following conditions:

- A. That the parties with whom such mutual aid agreements are entered into shall agree to indemnify the city against any or all loss, cost and damage which it may suffer or sustain by reason of damage to any apparatus arising from any cause whatsoever while such apparatus is going to or from the scene of the fire or while at the scene of the fire. The duty to indemnify shall be performed within fifteen (15) days after demand.
- B. As to each fire driver injured while driving to or from the fire, or while at the scene of the fire, and as to each fireman helping at the fire, injured between the time he reports to the foreman of his company and the time his service ends, the person entering into such mutual aid agreements shall pay within fifteen (15) days after demand to the city a sum sufficient to cover the medical and hospital expenses by such injured driver or fireman.

7.28.05 Payment of money collected Money collected under the terms of Section 1.28.03 of this chapter shall be paid to the respective fire drivers and firemen as to whom such collections were made, and in proportion to the amount of time applicable to them respectively.

CHAPTER 7.32**MAINTENANCE OF INMATES****Sections:**

7.32.01 Payment

7.32.01 Payment. That the city of Pottsville, Arkansas, authorizes and directs the payment upon demand of the sum of Twenty-Five Dollars (\$25.00) per day for the maintenance and upkeep of each inmate incarcerated in the Pope County Detention Center at the direction of the City Court of Pottsville, Arkansas. (Ord. No. 87-1, Sec. 1)

CHAPTER 7.36**OPEN ALCOHOLIC BEVERAGE CONTAINERS****Sections:**

7.36.01 Unlawful
7.36.02 Definitions
7.36.03 Penalty

7.36.01 Unlawful It shall be unlawful for any person to have in their possession or have within their immediate reach or control while in the public or on the public right-of-ways within the city limits of the city of Pottsville, Arkansas, any alcoholic beverage which shall be or have been opened. (Ord. No. 89-1, Sec. 1)

7.36.02 Definitions

Possession means to be held or placed or upon one's person and/or in one's grasp and/or within one's grasp of control.

Alcoholic beverage means any vinous, spirituous or malt liquors or beverage or beers which shall include but is not limited to: whiskey, brandy, cordial liquors, ale, beer or any other mixtures thereof containing alcohol.

Open container means any alcoholic beverage which has or has had its seal broken or its top opened. (Ord. No. 89-1 Sec. 2)

7.36.03 Penalties Any person found guilty of the preceding offense shall be fined a sum of money not less than Fifty Dollars (\$50.00) or more than One Hundred Fifty Dollars (\$150.00) and/or imprisoned not more than five (5) days for each offense. (Ord. No. 89-1, Sec. 3)

CHAPTER 7.40**FIREWORKS****Sections:**

7.40.01	Sale of fireworks
7.40.02	Discharge of fireworks
7.40.03	Definition
7.40.04	Prohibiting making of fireworks
7.40.05	Limitations
7.40.06	Storage
7.40.07	Penalty
7.40.08	Storage permits

7.40.01 Sale of fireworks Fireworks may be sold in commercially-zoned areas only. Fireworks sales shall be from June 28th to July 10th at midnight. All federal, state and local fire and safety codes, laws and regulations will be strictly complied with in relation to sales. In particular, only Class C fireworks are allowed to be sold within the city limits of Pottsville. It shall be a violation of this ordinance to sell fireworks during a city or county burn ban. (Ord. No. 2013-1, Sec. 1.)

7.40.02 Discharge of fireworks The discharge of fireworks shall be prohibited within the city limits of Pottsville during a country or city burn ban. The discharge of fireworks shall only be allowed during the following periods:

- 1) The 1st day of July to the 9th day of July. The starting times allowed for the discharge of fireworks shall be at 8:00 a.m. until 10:00 p.m. on all of these nights except for July 4th on which fireworks may be discharged from 8:00 a.m. to 12:00 midnight.
- 2) December 31st through January 1st of each year between the hours of 10:00 a.m. and midnight.
- 3) Fireworks for public display will be required to have on their premises a copy of the State Police Fireworks Display Form completed and signed by the Fire Chief and the Police Chief of the City of Pottsville.

The Mayor, Fire Chief, and Chief of Police shall determine when conditions are acceptable for the discharge of fireworks on these dates. In the event those persons determine conditions are such that discharge of fireworks would create a hazardous situation, the Mayor will take all reasonable efforts to notify the residents of the city that all discharge of fireworks shall be prohibited. (Ord. No. 2023-11, Sec. 1)

7.40.03 Definition For the purpose of this ordinance, the definition of fireworks is that which the Arkansas Code has defined under Class C fireworks. (Ord. No. 2013-1, Sec. 3.)

7.40.04 Prohibiting making of fireworks No person, firm or corporation shall make or store fireworks in the city limits of Pottsville, nor shall they make any fireworks, gunpowder or explosives in any home or on any property located within the city of Pottsville, subject to the storage permit provisions located later in this ordinance. (Ord. No. 2013-1, Sec. 4.)

7.40.05 Limitations It shall be unlawful for retailers to sell any fireworks to children under twelve (12) years of age or to any person known to be intoxicated or irresponsible. It shall also be unlawful to explode or ignite fireworks within six hundred (600) feet of any church, hospital, public school or within two hundred (200) feet of where fireworks are stored, sold or offered for sale. The discharging of fireworks on the property of another individual without that person's permission, or allowing a fireworks projectile, such as a bottle rocket, to travel on to the property of another without the owner's permission, or a public street, shall be a violation of this ordinance.

No person shall ignite or discharge any permissible articles of fireworks within or throw the fireworks from a motor vehicle while therein, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle or at or near any person or group of people. (Ord. No. 2013-1, Sec. 5.)

7.40.06 Storage For the purpose of this ordinance, storage shall be defined as the keeping of fireworks not in the regular course of business of selling fireworks during the allowable time frame in this ordinance. It is the intent of this ordinance to protect the welfare of the citizens of Pottsville and to not allow anyone to keep fireworks stored in anticipation of sale for time frame outside the time for sale located in this ordinance, subject to 7.40.08 of this ordinance. (Ord. No. 2013-1, Sec. 6.)

7.40.07 Penalty Any person violating this ordinance shall be fined not less than Fifty Dollars (\$50.00) for the first offense; 2nd offense will be One Hundred Fifty Dollars (\$150.00) and the confiscation of all fireworks. Fines can be no more than Five Hundred Dollars (\$500.00) for each offense and a separate offense shall be deemed committed on each date during or on which a violation occurs or continues. (Ord. No. 2013-1, Sec. 7.)

7.40.08 Storage permits Storage permits can be approved by the Fire Chief or Fire Marshal and the Mayor. The permit shall set out the specific storage fines and locations. An example of this storage permit is attached hereto and becomes a part of this ordinance upon its passage. (Ord. No. 2013-1, Sec. 9.)

CHAPTER 7.44

SIGNS

Sections:

7.44.01 Signs to conform

7.44.01 Signs to conform All signs, billboards or other advertising structures shall comply fully with the provisions of this ordinance and all other sign control regulations established by the city of Pottsville.

Signs and billboards to be erected and maintained in areas within 660 feet of the nearest edge of the right-of-way of the Interstate Highway system designated as Interstate-40 shall be located in a zoning area classified as Industrial or commercial by the city of Pottsville Zoning Ordinance. These signs shall have a maximum area on one facing of 1,200 square feet and a maximum length of 60 feet and a maximum height of 25 feet inclusive of any border and trim but excluding ornamental base or apron supports and other structural members. (Ord. No. 2001-6, Sec. 1.)

CHAPTER 7.48

PUBLIC CITY PLACES

Sections:

7.48.01 Public places

7.48.01 Public places The following five places are designated the most public places in the city:

1. Pottsville City Hall
2. Pottsville Police Department
3. Pottsville Fire Department
4. United States Post Office
5. Pottsville Shell/Texaco gas station
(Ord. No. 03-5, Sec. 1.)

CHAPTER 7.52

SEXUALLY ORIENTED BUSINESSES

Sections:

7.52.01 Rationale and findings
7.26.02 Definitions
7.52.03 Classifications
7.52.04 License required
7.52.05 Issuance of license
7.52.06 Fees
7.52.07 Inspection
7.52.08 Expiration of license
7.52.09 Suspension
7.52.10 Revocation
7.52.11 Hearing; license denial, suspension, revocation; appeal
7.52.12 Transfer of license
7.52.13 Hours of operation

- 7.52.14 Regulations pertaining to exhibition of sexually explicit films on premises
- 7.52.15 Loitering and exterior lighting and monitoring requirements
- 7.52.16 Penalties and enforcement
- 7.52.17 Applicability of ordinance to existing businesses
- 7.52.18 Prohibited activities
- 7.52.19 Scienter required to prove violation or business licensee liability
- 7.52.20 Failure of city of Atkins, Arkansas to meet time frame not to risk applicant/licensee rights
- 7.52.21 Location of sexually oriented businesses

7.52.01 Rationale and findings

- A. Purpose It is the purpose of this section to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the city of Pottsville, Arkansas, and to establish reasonable and uniform regulation to prevent the deleterious secondary effects of sexually oriented businesses within the city of Pottsville, Arkansas. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.
- B. Findings and rationale Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Pottsville City Council, and on findings, interpretation, and narrowing constructions incorporated in the cases of city of Littleton b. Z.J. Gifts D-4, L.L.C. 124 S.Ct. 2219 (June 7, 2004); city of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); Pap's A.M. v. city of Erie, 529 U.S. 277 (2000); city of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986) Young v. American Mini Theatres, 426 U.S. 50 (1976), Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); California v. LaRue, 409 U.S. 109 (1972); and World Wide Video of Washington, Inc. v. city of Spokane, 368 F. 3d 1186 (9th Cir. 2004); Ben's Bar, Inc. c. Village of Somerset, 316 F. 3d 702 (7th Cir. 2003);

And based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Houston, Texas – 1983, 1997; Phoenix, Arizona – 1979, 1995-98; Chattanooga Tennessee – 1999-

2003; Minneapolis, Minnesota – 1980; Los Angeles, California – 1997; Whittier, California – 1978; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Littleton, Colorado 2004; Oklahoma City, Oklahoma – 1986; Dallas, Texas – 1997; Greensboro, North Carolina – 2003; Amarillo, Texas – 1997; New York New York Times Square – 1994; and Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, state of Minnesota).

The Pottsville City Council finds:

- A. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and rug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- B. Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented business, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- C. Each of the foregoing negative secondary effects constitutes a harm which the city of Pottsville, Arkansas, has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city of Pottsville, Arkansas's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the city of Pottsville, Arkansas's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the city of Pottsville, Arkansas finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects. (Ord. No. 06-3, Sec. 1.)

7.26.02 Definitions For the purposes of this ordinance, the words and phrases defined in the sections hereunder shall have the meanings herein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Adult bookstore or Adult video store means a commercial establishment which as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books magazines, periodicals or other printed matter, or photographs,

films, motion pictures, video cassettes, compact discs, digital video discs, slides or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities or specified anatomical areas."

Adult cabaret means a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

Adult motel means a motel, hotel, or similar commercial establishment which:

- A. offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
- B. offers a sleeping room for rent for a period of time that is less than 10 hours; or
- C. allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.

Adult motion picture theater means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five persons for any form of consideration.

Characterized by means describing the essential character or quality of an item. As applied in this ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-18 or R by the Motion Picture Association of America.

Employ, employee and employment describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time or part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Establish or establishment shall mean and include any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- C. The addition of any sexually oriented business to any other existing sexually oriented business.

Hearing body shall mean the City Council of the city of Pottsville, Arkansas.

Influential interest means any of the following

- A. the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business,
- B. ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or
- C. holding an office (e.g., president, vice-president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

Licensee shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

Municipality body means the City Council of the city of Pottsville, Arkansas.

Municipality type means city of Pottsville, Arkansas.

Nudity or a state of nudity means the showing of the human male or female genitals, public area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

Operate of cause to operate shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who causes that business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part-owner, or licensee of the business.

Person shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

Premises means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to 7.52.04 of this ordinance.

Principal purpose means that the commercial establishment:

- A. has a substantial portion of its displayed merchandise which consists of said items, or
- B. has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or
- C. has a substantial portion of the retail value of its displayed merchandise which consists of said items, or
- D. derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items; or
- E. maintains a substantial section of its interior business space for the sale or rental or said items; or
- F. maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

Regularly means and refers to the consistent and repeated doing of the act so described.

Semi-nude model studio means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

- A. By a college, junior college, or university supported entirely or partly by taxation;
- B. By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or
- C. In a structure:
 - 1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
 - 2. Where, in order to participate in a class a student must enroll at least three days in advance of the class.

Semi-nude or state of semi-nudity means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at the point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

Sexual device means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or service, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

Sexual encounter center shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

Sexually oriented business means an "adult bookstore or adult video store," and "adult cabaret," an "adult motel," an "adult motion picture theater," a "semi-nude model studio," "sexual device shop," or a "sexual encounter center."

Specified anatomical areas means and includes:

- A. Less than completely and opaquely covered; human genitals, public region, buttock; and 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.

Specified criminal activity means:

- A. any of the following specified crimes for which less than five years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
 - 1. Sex crimes
 - 2. Prostitution crimes
 - 3. Obscenity crimes.
 - 4. Drug crimes
 - 5. Racketeering
- B. any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- C. any offense in another jurisdiction that, had the predicate act(s) been committed in Arkansas, would have constituted any of the foregoing offenses.

Specified sexual activity means any of the following:

- A. intercourse, oral copulation, masturbation or sodomy; or

- B. excretory functions as a part of or in connection with any of the activities described in (A) above.

Substantial means at least thirty-five percent (35%) of the item(s) so modified.

Transfer of ownership or control of a sexually oriented business shall mean any of the following:

- A. the sale, lease, or sub-lease of the business;
- B. The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means, or
- C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Viewing room shall mean the room, booth, or area where a patrol of sexually oriented business would ordinarily be positioned while watching a film, video cassette, or other video reproduction. (Ord. No. 06-3, Sec. 2.)

7.52.03 Classification The classifications for sexually oriented businesses shall be as follows:

- A. Adult bookstores or adult video stores;
- B. Adult cabarets;
- C. Adult motel;
- D. Adult motion picture theater;
- E. Semi-nude model studio;
- F. Sexual device shop;
- G. Sexual encounter center.

(Ord. No. 06-3, Sec. 3.)

7.52.04 License required

- A. It shall be unlawful for any person to operate a sexually oriented business in the city of Pottsville without a valid sexually oriented business license.
- B. It shall be unlawful for any person to be an "employee" as defined in this ordinance, of a sexually oriented business in the city of Pottsville without a valid sexually oriented business employee license.

C. An applicant for a sexually oriented business license or sexually oriented business employee license shall be filed in person at the office of the city of Pottsville Police Chief. Application will be made on a form provided by the Chief of Police. The application shall be signed as required by subsection (3) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in section 1 through 7 below, accompanied by the appropriate fee identified in section 6.

1. The applicant's full true name and any other names used by the applicants in the preceding five (5) years.
2. Current business address or another mailing address of the applicant.
3. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
4. If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.
5. If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
6. A statement of whether an applicant has been convicted of or has pled guilty or *nolo contendere* to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
7. A statement of whether any sexually oriented business in which applicant has had an influential interest, has, in the previous five (5) years (and at the time during which the applicant had the influential interest):
 - a. been declared by a court of law to be a nuisance; or
 - b. been subject to a court order of closure or padlocking.

The information provided pursuant to section 1 through 7 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the

Pottsville Police Chief within ten (10) working days of change of circumstances which would render the information originally submitted false or incomplete.

- D. An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with section 14 and 18 of this ordinance shall submit a diagram indicating that the interior configuration meets the requirements of those sections.
- E. If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under section 5 and each applicant shall be considered a licensee if a license is granted.
- F. The information provided by an applicant in connection with an application for a license under this ordinance shall be maintained by the office of the Pottsville Police Chief on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by court order. (Ord. No. 06-3, Sec. 4.)

7.52.05 Issuance of license

- A. Upon the filing of a completed application under 7.52.04 (C) sexually oriented business license, the Pottsville Police Chief shall immediately issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the city of Pottsville, Arkansas, to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business license application, the Pottsville Chief of Police shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Pottsville Chief of Police shall issue a license unless:
 1. An applicant is less than eighteen (18) years of age.
 2. An applicant has failed to provide information as required by 7.52.04 for issuance of a license or has falsely answered a question or request for information on the application form.

3. The license application fee required by this ordinance has not been paid.
 4. The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this ordinance or is not in compliance with locational requirements of this ordinance or the locational requirements of any other part of the city of Pottsville Code.
 5. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - a. been declared by a court of law to be a nuisance; or
 - b. been subject to an order of closure or padlocking.
 6. An applicant has been convicted of or pled guilty or *nolo contendere* to a specified criminal activity, as defined in this ordinance.
- B. Upon the filing of a completed application under 7.52.04 (C) for a sexually oriented business employee license, the Pottsville Police Chief shall immediately issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the city of Pottsville, Arkansas, to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business employee license application, the Chief of Police shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Chief of Police shall approve the issuance of a license unless:
1. The applicant is less than eighteen (18) years of age.
 2. The applicant has failed to provide information as required by 7.52.04 for issuance of a license or has falsely answered a question or request for information of the application form.
 3. The license application fee required by this ordinance has not been paid.
 4. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - a. been declared by a court of law to be a nuisance; or
 - b. been subject to an order of closure or padlocking.
 5. The applicant has been convicted of or pled guilty or *nolo contendere* to a specified criminal activity, as defined in this ordinance.

- C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing. (Ord. No. 06-3, Sec. 5.)

7.52.06 Fees The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: Three Hundred Dollars (\$300.00) for the initial fee for a sexually oriented business license and Three Hundred Dollars (\$300.00) for annual renewal; Seventy-Five Dollars (\$75.00) for the initially sexually oriented business employee license and Seventy-Five Dollars (\$75.00) for the annual renewal. All fees to be paid on or before January 31st of each year. (Ord. No. 06-3, Sec. 6.)

7.52.07 Inspection

- A. Sexually oriented businesses and sexually oriented business employees shall permit the Chief of Police and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the city of Pottsville, Arkansas, to authorize reasonable inspections of the licensed premises pursuant to this ordinance, but not to authorize a harassing or excessive pattern of inspections.
- B. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation. (Ord. No. 06-3, Sec. 7.)

7.52.08 Expiration of license

- A. Each license shall remain valid for one calendar year unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in 7.52.04 and 7.52.06.
- B. Application for renewal should be made pursuant to the procedures set forth in 7.52.04 at least ninety (90) days before the expiration date, and when made less

than ninety (90) days before the expiration date, the expiration of the license will not be affected. (Ord. No. 06-3, Sec. 8.)

7.52.09 Suspension

- A. The city of Pottsville, Arkansas, shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business license has knowingly violated this ordinance or has knowingly allowed an employee to violate this ordinance.
- B. The city of Pottsville, Arkansas, shall issue a written letter of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this ordinance. (Ord. No. 06-3, Sec. 9.)

7.52.10 Revocation

- A. The city of Pottsville, Arkansas, shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violated this ordinance or has knowingly allowed an employee to violate this ordinance and the licensee's license has been suspended within the previous twelve-month (12) period.
- B. The city of Pottsville, Arkansas, shall issue written intent to revoke a sexually oriented business license or a sexually oriented business employee license as applicable, if:
 - 1. The licensee has knowingly given false information in the application for the sexually oriented business license.
 - 2. The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises.
 - 3. The licensee has knowingly or reckless engaged in or allowed prostitution on the premises.
 - 4. The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or
 - 5. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.

- C. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- D. When, after the notice and hearing procedure described in 7.52.11, the Pottsville City Council revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective. (Ord. No. 06-3, Sec. 10.)

7.52.11 Hearing: denial, revocation, and suspension; appeal.

- A. When the Chief of Police issues a written notice of intent to deny, suspend, or revoke a license, the Chief of Police shall immediately send such notice, which shall include the specific grounds under this ordinance for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Chief of Police for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty(20) days after the date the notice is issued on which the Pottsville City Council shall conduct a hearing on the Chief of Police's intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Chief of Police's witnesses. The Chief of Police shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Pottsville City Council shall issue a written decision, including specific reasons for the decision pursuant to this ordinance, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30th) day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Pottsville City Council's decision finds that no ground exist for denial, suspension, or revocation of the license, the Pottsville City Council shall, contemporaneously with the issuance of the decision, order the Chief of Police to immediately withdraw the intent to deny,

suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the Chief of Police shall contemporaneously therewith issue the license to the applicant.

- B. If any court action challenging the Pottsville City Council's decision is initiated, the Pottsville City Council shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The Pottsville City Council shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is in operation as of the effective date of this ordinance. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city of Pottsville, Arkansas' enforcement of the denial, suspension or revocation, the city of Pottsville, Arkansas, shall immediately issue the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the city of Pottsville, Arkansas' enforcement. (Ord. No. 06-3, Sec. 11.)

7.52.12 Transfer of license A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application. (Ord. No. 06-3, Sec. 12.)

7.52.13 Hours of operation No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day. (Ord. No. 06-3, Sec. 13.)

7.52.14 Regulations pertaining to exhibition of sexually explicit films or videos

- A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.
1. Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all

portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior or the premises to an accuracy of plus or minus six (6) inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to paragraph 1 of this subsection.
3. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
4. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.
5. It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - a. That the occupancy of viewing rooms is limited to one person
 - b. That sexual activity on the premises is prohibited.
 - c. That the making of openings between viewing rooms is prohibited.
 - d. That violators will be required to leave the premises.
 - e. That violations of subparagraphs (a), (b) and (c) of this paragraph are unlawful

6. It shall be the duty of the operator to enforce the regulations articulated in (5) (a) through (e) above.
7. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's station. It is the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty. (Ord. No.06-3, Sec. 14.)

7.52.15 Loitering, exterior lighting, visibility, and monitoring requirements

- A. It shall be the duty of the operator of a sexually oriented business to:
 1. post conspicuous signs stating that no loitering is permitted on such property;
 2. designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and
 3. provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
- B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

- C. No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right-of-way. (Ord. No. 06-3, Sec. 15.)

7.52.16 Penalties and enforcement

- A. A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this ordinance shall be guilty of a Class A misdemeanor, and, upon conviction, shall be punishable by 0 days to 1 years in jail and/or 0 to \$1,000.00 fine. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.
- B. The city of Pottsville, Arkansas' legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the city of Pottsville, Arkansas, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this ordinance, or any of the laws or ordinances in force in the city of Pottsville, Arkansas, or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred. (Ord. No. 06-3, Sec. 16.)

7.52.17 Applicability of ordinance to existing businesses It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

- A. It shall be a violation of this ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.
- B. It shall be a violation of this ordinance for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.
- C. It shall be a violation of this ordinance for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

- D. It shall be a violation of this ordinance for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.
- E. A sign in a form to be prescribed by the Chief of Police, and summarizing the provisions of paragraphs (A), (B), (C) and (D) of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. (Ord. No. 06-3, Sec. 17.)

7.52.19 Scinter required to prove violation or business licensee liability This ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this ordinance. Notwithstanding anything to the contrary, for the purposes of this ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for the purposes of finding a violation of this ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act. (Ord. No. 06-3, Sec. 19.)

7.52.20 Failure of the city of Pottsville, Arkansas, to meet deadline not to risk applicant/licensee rights In the event that a city of Pottsville, Arkansas, official is required to take an act or do a thing pursuant to this ordinance within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the city of Pottsville, Arkansas, official under this ordinance, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the city of Pottsville, Arkansas, of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the city of Pottsville, Arkansas' action has passed. (Ord. No. 06-3, Sec. 20.)

7.52.21 Location of sexually oriented businesses

- A. Sexually oriented businesses shall not be required to obtain a conditional use permit. Sexually oriented businesses shall be permitted subject to the following limitations:
- B. It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the city of Pottsville, unless said sexually oriented business is at least:

1. Seven hundred fifty (750) feet from any parcel occupied by another sexually oriented business or by a business licensed by the state of Arkansas to sell alcohol at the premises; and
 2. Seven hundred fifty (750) feet from any parcel occupied by a house of worship, licensed day-care center, public or private elementary or secondary school, public bar, or any residence or public park.
- C. For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of any structure, including signs and roof overhangs, used in conjunction with the sexually oriented business to the closest point on a property boundary or right-of-way associated with any of the land use(s) identified in section A(1) – A(2) above.
- D. Exterior portions of sexually oriented businesses.
1. It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.
 2. It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this ordinance. The owner or employees of the business cannot circumvent these rules by parking or having located on the premises any vehicle that violates this portion of the ordinance or any other portion of this ordinance.
 3. It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color.
 4. Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.
- E. Signage
1. Notwithstanding any other city ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for

the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

2. Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:
 - a. not contain any flashing lights;
 - b. be a flat plane, rectangular in shape;
 - c. not exceed seventy-five (75) square feet in area; and
 - d. not exceed ten (10) feet in height or ten (10) feet in length.
3. Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.
4. Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
5. Secondary signs shall have only one (1) display surface. Such display surface shall:
 - a. be a flat plane, rectangular in shape;
 - b. not exceed twenty (20) square feet in area;
 - c. not exceed five (5) feet in height and four (4) feet in width; and
 - d. be affixed or attached to any wall or door of the enterprise.
6. The provisions of item (a) of subsection (2) and subsection (3) and (4) shall also apply to secondary signs. (Ord. No. 06-3, Sec. 21.)

7.56.04 Penalty Any person, firm and/or corporation violating any of the provisions of this ordinance shall, except as provided, be guilty of a misdemeanor and upon conviction shall be fined not less than \$150.00 for the first offense, not less than \$200.00 for the second offense, and not less than \$250.00 for the third and subsequent offenses. Each day that this conduct occurs is another separate violation of this ordinance. (Ord. No. 2023-8, Sec. 2)

CHAPTER 7.60

NOVELTY LIGHTERS

Sections:

7.60.01	Title and authority
7.60.02	Definition
7.60.03	Sale prohibited
7.60.04	Exclusions
7.60.05	Enforcement
7.60.06	Fine

7.60.01 Title and authority The title of this ordinance shall be "The Novelty Lighter Prohibition Ordinance. This ordinance is passed pursuant to the power granted to the city of Pottsville by Arkansas code Annotated. (Ord. No. 2008-4, Secs. 1-2.)

7.60.02 Definition

Novelty lighter means a lighter that has entertaining audio or visual effects, or that depicts (logs, decals, art work, etc.) or resembles in physical form or function articles commonly recognized as appealing to or intended for use by children ten years of age or younger. This includes, but is not limited to, lighters that depict or resemble cartoon characters, toys, guns, watches, musical instruments, vehicles, toy animals, food or beverages, or that play musical notes or have flashing lights or other entertaining features. A novelty lighter may operate on any fuel, including butane or liquid fuel. (Ord. No. 2008-4, Sec. 3.)

7.60.03 Sale prohibited The retail sale, offer of retail sale, gift or distribution of any novelty lighter within the territorial jurisdiction of the city of Pottsville, Arkansas, is prohibited. This prohibition is inapplicable to

- A. Novelty lighters which are only being actively transported through the city; or

- B. Novelty lighters located in a warehouse closed to the public for purposes of retail sales. (Ord. No. 2008-4, Sec. 4.)

7.60.04 Exclusions The term “novelty lighter” excludes

- A. Any lighter manufactured prior to 1980; and/or
- B. Any lighter which lacks fuel or a device necessary to produce combustion or a flame. (Ord. No. 2008-4, Sec. 5.)

7.60.05 Enforcement The provisions of this ordinance shall be enforced by the city of Pottsville’s Fire Chief or his designated agent, law enforcement officers, Code Enforcement Officers and/or any other city official authorized to enforce any provision of the city of Pottsville ordinances. (Ord. No. 2008-4, Sec. 6.)

7.60.06 Fine Any person or entity violating any provision of this ordinance is guilty of a misdemeanor and upon conviction therefore shall be subject to a fine or penalty of not less than Twenty-Five Dollars (\$25.00) nor more than Five Hundred Dollars (\$500.00) plus court costs. (Ord. No. 2008-4, Sec. 7.)

CHAPTER 7.64

OPEN BURNING

Sections:

7.64.01	Unlawful
7.64.02	Open burning
7.64.03	Exceptions
7.64.04	Violation
7.64.05	Additional rules
7.64.06	Fine

7.64.01 Unlawful It shall be unlawful to ignite or maintain any fire in violation of the specific rules and regulations set out in this ordinance. (Ord. No. 2013-3, Sec. 1.)

7.64.02 Open burning It shall be unlawful to openly burn any materials other than yard waste.

Yard waste means grass clippings, leaves, tree limbs, and shrubbery trimmings collected from residential property. (Ord. No. 2013-3, Sec. 2.)

7.64.03 Exceptions

- A. Fires used for non-commercial cooking of food for recreational purpose including barbecues and outdoor fire places in connection with any residence.
- B. Fire set or authorized by any public officer, board, council or commission for the purpose for providing instruction in methods of firefighting. (Must conduct asbestos survey per ADEQ).
- C. Open fire used at construction sites for the purpose of warming persons on the site during cold weather. Such fires shall be fueled only by untreated wood or wood products and must be contained within a container made of non-flammable material that does not exceed thirty (30) inches in width or length. (Ord. No. 2013-3, Sec. 3.)

7.64.04 Violation Any other outdoor open use of fire for any other purpose shall be in violation of this ordinance. (Ord. No. 2013-3, Sec. 4.)

7.64.05 Additional rules These rules are in addition to those set out in the State Fire Prevention Code and the Fire Department may require extinguishment of the fire if a complaint is received, such as smoke blowing into a person's house or other results of the fire causing a nuisance or potential danger to home or property owners. (Ord. No. 2013-3, Sec. 5.)

7.64.06 Fine Anyone found to be in violation of this ordinance shall be guilty of an unclassified misdemeanor. That person shall receive a fine and court costs of not less than Twenty-Five Dollars (\$25.00), nor more than Two Hundred Fifty Dollars (\$250.00). (Ord. No. 2013-3, Sec. 6.)

CHAPTER 7.68

FALSE ALARMS

Sections:

- 7.68.01 Police and Fire Alarm Systems: Purpose and Findings
- 7.68.02 Definitions
- 7.68.03 Audible Alarm Standards
- 7.68.04 Automatic dialing Telephone Systems Prohibited
- 7.68.05 Alarm Users
- 7.68.06 Alarm System Monitoring Companies
- 7.68.07 Security Alarm Verification Process
- 7.68.08 Unlawful Activation or Report of Alarm
- 7.68.09 Penalty for False Alarm
- 7.68.10 Defective Systems Notices
- 7.68.11 Determination of False Alarm; Rebuttable Presumption
- 7.68.12 Inspection of Alarm Devices
- 7.68.13 Power to Issue Citations
- 7.68.14 Deposit of Fines
- 7.68.15 Penalties
- 7.68.16 Government Immunity

7.68.01 Police and Fire Alarm Systems: Purpose and Findings

A. The City Council of the City of Pottsville is enacting this Ordinance to encourage security alarm users and alarm system monitoring companies to maintain the operational reliability; to ensure proper use of security alarm systems in order to reduce unnecessary police and fire department responses to false alarms; to protect all citizens of Pottsville from the dangers of emergency personnel and equipment being inappropriately utilized because of answers to unwarranted alarms; and, further, the council finds that false alarms are not only a public nuisance but also a threat to public safety by diverting limited police and fire resources from legitimate requests for assistance and other law enforcement matters.

B. The City Council intends this Ordinance to provide for the health, safety, and welfare of the general public and not to protect particular individuals or to otherwise designate a particular group of persons who should be especially affected by the terms of the Ordinance. The Ordinance imposes or creates no duties on the part of the City or its Departments and employees, and the obligations of complying with the requirements of the Ordinance, and any liability for failure to do so is placed upon the parties responsible for owning, operating, monitoring or maintaining alarm systems.

C. The City Council is authorized to enact this Ordinance and its police powers. The Council does not intend this Ordinance to conflict with any State laws that may govern the licensing of alarm system monitoring companies and false alarms. (Ord. No. 2020-5, Sec. 2)

7.68.02 Definitions For the purpose of this Ordinance, certain words and phrases shall be construed as set forth in this section, unless it is apparent in the context that a different meaning is intended.

A. Act of God - means an act occasioned exclusively by violence of nature without the interference of any human agency (examples: lightning, thunder, tornadoes, or violent winds).

B. Alarm Agent - means any person who is employed by an alarm business, either directly or indirectly, whose duties include any of the following: selling, maintaining, leasing, servicing, repairing, monitoring, altering, replacing, moving or installing on or in any building, structure or facility, any alarm system.

The definition of Alarm Agent does not include a person who engages in the manufacture or sale of an alarm system from a fixed location and who neither visits the location where the alarm

system is to be installed, nor designs the scheme for physical location and installation of the alarm system in a specific location.

C. Alarm Business - means the business by any individual, a partnership, corporation or other form of association that engages in the business of: selling, leasing, maintaining, monitoring, servicing, repairing, altering, replacing, moving or installing any alarm system or causing to be sold, leased, maintained, serviced, repaired, altered, replaced, moved or installed any alarm system in or on any building, structure or facility.

D. Alarm System - means any mechanical, electrical or electronic device which is designed or used for the detection of an unauthorized entry into a building, structure or facility or for alerting others of the commission of an unlawful act within a building, structure or facility, or both, and/or detects the presence of fire or smoke and which emits a sound or transmits a signal or message when actuated is intended to summon a police or fire department response. Alarm systems include, but are not limited to, direct dial telephone devices, audible alarms, and proprietor alarms.

Devices which are not designed or used to register alarms that are audible, visible, or perceptible outside of the protected building, structure or facility are not included within this definition. Alarm systems do not include those affixed to automobiles or auxiliary devices installed by telephone companies to protect telephone equipment or systems which might be damaged or disrupted by the use of an alarm system. Alarms in separate structures or locations are to be counted as separate systems even though owned, leased, contracted for, or controlled by the same person or entity.

E. Alarm System Monitoring Company - means an individual, partnership, corporation, or other form of association that engages in the business of monitoring security alarm systems and reporting any activation of such alarm systems to the police and/or fire departments.

F. Alarm User - means any individual, partnership, corporation or other form of association that owns or leases a security alarm system or on whose premises a security alarm system is maintained for the protection of the premises and/or detection of fire or smoke upon the premises.

G. Automatic Dialing Telephone Alarm - means a security alarm system with a device that automatically dials the Police Department or Pottsville Fire Department emergency assistance telephone lines without human activation of the device by the alarm user.

H. Civil Penalty - If the offense is determined to be civil in nature and after five (5) warnings have been issued within a calendar year, the police officer may issue a citation for a civil penalty as set out in Section 10.

I. Criminal Penalty - If the offence is determined to be criminal in nature, there shall be no warning issued and the police officer may issue a citation for a criminal violation as set out in Section 10.

J. False Alarm - means an alarm signal eliciting notification to and response by the police when there is no evidence of a crime or other activity that warrants a call for immediate police assistance and no person who was on or near the property or has viewed a video communication for the property called for the police dispatch or confirmed the need for police assistance. It also means an alarm signal eliciting notification to and response by the fire department when there is no evidence of smoke or fire.

"False Alarm" does include any negligently or accidentally activated signals, as well as any signal that is the result of faulty, malfunctioning, or improperly installed or maintained equipment or any signal or call of any type that is properly activated to summon a law enforcement agency and/or fire department in a non-emergency situation.

Alarms resulting from the following conditions are not considered false alarms:

- (1) Criminal activity or unauthorized entry;
- (2) Fire;
- (3) Telephone or cable line cut or malfunction;
- (4) Electrical service interruption;
- (5) Communication to the police department or fire department before a unit arrives to investigate clearly indicating that the alarm resulted from authorized entry, authorized system test or other noncriminal cause;
- (6) An alarm caused on the reasonable but mistaken belief that a burglary, robbery or other criminal offense is in progress;
- (7) Alarm signal caused by violent conditions of nature or other extraordinary circumstances beyond the control of the alarm user.

K. Fire Chief - means the Fire Chief of the Pottsville Fire Department, Pottsville, Arkansas, or his representative or designee.

L. Hold-up Alarm - means any alarm system designed to be actuated by a criminal act or other emergency at a specific location or by a victim of a hold-up, robbery, or other emergency or criminal act at a specific location.

M. Intrusion - means any entry into any area or building equipped with one or more alarm systems by any person or object whose entry actuates an alarm system.

N. Malfunction - means that the alarm system, which activated, was not due to a fault or negligence on the part of the owner of the alarm system or systems.

O. Police Chief - means the Police Chief of the Pottsville Police Department, Pottsville, Arkansas, or his representative or designee.

P. Warning - There shall be five (5) warnings per calendar year issued if the offense is determined to be civil in nature prior to any civil penalty applied under Section 10.

(Ord. No. 2020-5, Sec. 3)

7.68.03 Audible Alarm Standards An alarm system that emits an audible signal that may be heard outside of the protected premises shall conform to the following requirements:

- A. Audible alarms shall automatically discontinue emitting an audible sound within fifteen (15) minutes after activation of the alarm; and
- B. With respect to security alarm systems in existence prior to the enactment of this Ordinance that do not comply with subsection (A) above, the alarm user shall have sixty (60) days from the enactment of the Ordinance in which to make the necessary modification to the alarm system in order to comply with the requirement; and
- C. Every person maintaining an audible alarm system shall furnish to the Police Chief and Fire Chief the name and telephone number of the primary person responsible for the alarm system and an alternate name and telephone number of a person who can activate the alarm system or systems. The lessee or owner of any audible alarm system will be responsible for deactivating the alarm system within the time frame stated in subsection (A) following notification by the Police Department; and
- D. It is a defense to a violation of this Section that the continuous sounding of the alarm:
 - (1) assisted in saving a life or avoiding injury; or
 - (2) was activated by an unauthorized entry or criminal activity.

(Ord. No. 2020-5, Sec. 4)

7.68.04 Automatic dialing Telephone Systems Prohibited Beginning thirty (30) days after the effective date of this Ordinance, it shall be unlawful for any individual, partnership, corporation or other form of association to sell, offer for sale, install, maintain, operate or assist in the operation of any alarm system with an automatic or digital alarm communicator feature that automatically calls the police and/or fire departments in the event of an alarm.(Ord. No. 2020-5, Sec. 5)

7.68.05 Alarm Users

A. An alarm user shall:

- (1) Maintain the premises and security alarm system in a manner that will minimize or eliminate false alarms;
- (2) Review all alarm system operating instructions, including those for verification of an alarm;
- (3) Notify the alarm system monitoring company of a false alarm activation as soon as the user is aware of the false alarm;
- (4) Not manually activate an alarm except when needing an immediate police response to an emergency;
- (5) Respond to the scene of an activated alarm within one-half hour after the alarm was first activated if the alarm user has not contracted with an alarm agent unless good cause is shown; and
- (6) In addition to other relevant information, provide Pope County 911 with the following if an alarm user requests an emergency response to an alarm activation: the identity of the caller, the name of the system owner, and the address of the system owner.

B. The information required in this Section is not a prerequisite for emergency services. Any caller unable to provide the required information due to exigent circumstances shall receive prompt response as though the information had been provided.

C. The failure of the alarm user, or his agent, to respond to the scene of an alarm activation after request to do so, or failure to respond within the time required by this Ordinance, shall be a violation of this Ordinance and shall be subject to penalties set forth in Section 10. (Ord. No. 2020-5, Sec. 6)

7.68.06 Alarm System Monitoring Companies An alarm system monitoring company engaging in business activities in the City shall:

A. Obtain all necessary business licenses as required by the City and the State of Arkansas;

B. Maintain a current record, accessible to the Police Chief and Fire Chief, that includes: the names of the alarm users serviced by the company; the addresses of the protected properties; the type of alarm system; original installation date and subsequent modifications, if any, for each protected property; and a record of false alarms at each property;

C. Provide the Police Chief and Fire Chief such information as the Chiefs request regarding: the nature of the company's security alarms; the company's method of monitoring the alarms; the company's program for preventing false alarms; including educational programs for alarm users; and the company's methods for disconnecting audible alarms; the name, address, and telephone number of each monitoring station; and, the type of business organization that it is (individual, partnership, or corporation);

D. Provide each of its alarm system users with: operating instructions for the alarm system, including an explanation of the alarm company's alarm verification process; a telephone number to call for assistance in operating the system; and a summary of the provisions of this Ordinance relating to penalties for false alarms and the possibility of no police response to alarm systems experiencing excessive false alarms;

E. Maintain a verification process, as specified in Section 8, for all monitored alarm systems in order to prevent unnecessary police dispatches resulting from false alarms;

F. Communicate requests for police responses to the Police Department in a manner specified by the Police Chief;

G. Communicate requests for cancellations of police responses in a manner specified by the Police Chief;

H. Communicate requests for fire responses to the Fire Department in a manner specified by the Fire Chief;

I. Communicate requests for cancellations of fire responses in a manner specified by the Fire Chief;

J. Maintain a record of all requests for police and fire responses to an alarm, including: the date and time of the alarm and request for police and fire response; the alarm system user's name and address; evidence of the company's attempt to verify the alarm; and, to the best of its knowledge, an explanation of the cause of any false alarm;

K. Work cooperatively with the alarm system user and the Police Chief and Fire Chief in order to determine the cause of any false alarm and to prevent recurrences; and

L. Notify its subscribers that protection is no longer being provided when an alarm agent or alarm system monitoring company's service to its subscribers is disrupted for any reason by the alarm agent or monitoring station, or alarm agent or monitoring station becomes aware of such disruption unless written instructions from the subscriber request such notification not be made during certain hours. (Ord. No. 2020-5, Sec. 7)

7.68.07 Security Alarm Verification Process

A verification process is an independent method of an alarm system monitoring company for determining that a signal from a security alarm system requires immediate police and/or fire response. The verification process shall not take more than five (5) minutes, calculated from the time that the alarm company receives the alarm signal until the alarm company determines whether to request a police and/or fire department dispatch. The means of verification shall include at least one (1) of the following:

A. The establishment of voice communications with the alarm user or a person authorized by the user at or near the premises with the alarm who may indicate whether there is an immediate need for police and/or fire response;

B. A feature that permits the alarm user or a person authorized by the user to send a special signal to the alarm company that will cancel the alarm immediately after the signal has been sent and prevent the alarm company from calling the police and/or fire department.

C. The installation of a video system that provides the alarm company when the alarm signal is received with the ability to ascertain whether activity is occurring what warrants immediate police and/or fire department response;

D. A confirmation that an alarm signal reflects a need for immediate police and/or fire department response from either the alarm user or a person authorized by the user or an alternate response agency made before dispatching the police and/or fire department; or

E. An alternative system that the Police Chief and Fire Chief determines has or is likely to have a high degree of reliability. (Ord. No. 2020-5, Sec. 8)

7.68.08 Unlawful Activation or Report of Alarm

A. No person shall knowingly or intentionally activate a security alarm system for the purpose of summoning the police and/or fire department when no emergency exists except in the event of an unauthorized entry, robbery, burglary, hold-up, or other crime being committed or

attempted on the premises; or if the person needs immediate assistance in order to avoid injury or serious bodily harm; or if the person needs immediate assistance because life or property is in danger due to the presence of fire or smoke upon the premises.

B. Any person who shall notify the police and/or fire department of an activation and have knowledge that such activation was apparently caused by an electrical or other malfunction shall at the same time notify the police and fire departments of the apparent malfunction.

C. Any person who violates this Section shall be subject to the penalties as provided in Section 10 of this Ordinance and shall be subject to prosecution under the Arkansas State Law for falsely reporting an incident. (Ord. No. 2020-5, Sec. 9)

7.68.09 Penalty for False Alarm A false alarm shall be subject to civil or criminal penalty, or both as set out below.

A. Criminal violation and penalty.

- (1) Any person found in violation of any of the provisions of the Ordinance may be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not more than five hundred dollars (\$500.00). Prosecution of criminal violations shall be heard in the Pottsville Division of Pope County District Court.

B. Civil Violations and Penalties.

- (1) If the offense is found to be civil in nature and, after five (5) warnings have been issued within the calendar year, any person found in violation of any of the provisions of this ordinance may result in a civil penalty as follows:
 - (a) For the sixth (6th) finding within a calendar year that this Ordinance has been violated, a civil penalty of \$25.00.
 - (b) For the seventh (7th) or any subsequent finding within a calendar year that this Ordinance has been violated, a civil penalty of \$50.00.
 - (c) Failure to pay alarm violation notice within thirty (30) days of receipt will result in further legal action, including but not exclusive to the following, the City filing for civil remedy for recovery of fines.
- (2) Any civil penalties imposed under this Section shall be heard in the Pottsville Division of Pope County District Court. (Ord. No. 2020-5, Sec. 10)

7.68.10 Defective Systems Notices

A. No person shall permit a defective alarm system to be in operation on property that they own or control.

B. An alarm system is presumed to be defective if more than five (5) false alarms occur within a calendar year.

C. A lack of physical evidence of an attempt to break into a residence or business, or lack of physical evidence of a fire or smoke, or other emergency, shall create a rebuttable presumption that an alarm system is defective.

D. Any person convicted of violating the provisions of this Section shall be subject to punishment in accordance with Section 10 of this Code.

E. It shall be an affirmative defense to prosecution under this Section that an alarm user contracted with an alarm agent or other agency to maintain, repair, modify, or replace a defective alarm system and that the alarm agent or other agency failed or refused to promptly make such maintenance, repair, modification, or replacement, resulting in the false alarm. (Ord. No. 2020-5, Sec. 11)

7.68.11 Determination of False Alarm; Rebuttable Presumption For the purposes of this Ordinance, there is a rebuttable presumption that the following determinations made by the Fire Chief, Chief of Police or by a police officer or fire fighter, as the case may be, dispatched to the premises reporting an alarm signal are correct:

A. There is no evidence of a crime or other activity that would warrant a call for immediate police assistance at the premises;

B. No individual who was on or near the premises or who has viewed a video communication from the premises called for a police or fire dispatch or verified a need for an immediate police or fire department response; and

C. There is no evidence that violent conditions of nature or other extraordinary circumstances beyond the control of the alarm user caused the activation of the alarm. (Ord. No. 2020-5, Sec. 12)

7.68.12 Inspection of Alarm Devices

A. The Police Chief, Fire Chief, or their designees shall have the right to inspect any alarm system on the premises to which a response has been made, and he may cause an inspection of such system to be made at any reasonable time thereafter.

B. If any inspection reveals any problems with an alarm system, the owner or lessee shall have a period of thirty (30) days after receiving written notice to make required corrections or repairs. If the correction or repairs are not made in the specified amount of time, the owner or lessee shall be subject to the fines as set forth in Section 10. There will be no testing or demonstrating of a direct alarm system without first obtaining permission from the Police Department and Fire Department. (Ord. No. 2020-5, Sec. 13)

7.68.13 Power to Issue Citations

A. The Police Department shall have the power to issue citations for the violation of any provision set forth in this article.

B. Whenever an alarm is activated and an emergency response to the location is made by police or fire personnel, the police on the scene of the activated alarm system shall inspect the area protected by the system and shall determine whether the alarm signal was a false alarm. If the Police Department personnel at the scene of the activated alarm system determine the alarm to be false, such personnel shall make a report of the false alarm and shall issue a citation or warning depending on the history of previous activated alarm systems at the scene within the calendar year.

C. If the Police Department after an investigation determines that the alarm the police or fire department responded to was false, the Police Department shall file the false alarm report with the City Attorney's Office for that Office to prosecute on the City's behalf. This paragraph shall only apply if the Police Department did not issue a citation to the alarm user at or just after the time the false alarm was activated. (Ord. No. 2020-5. Sec. 14)

7.68.14 Deposit of Fines All fines less the court costs, whether criminal or civil in nature, collected by the Pottsville Police Department under the provisions of this Ordinance shall be paid into the Personnel/Vehicle Account or the Fire Department Account which shall be maintained by the Pottsville District Court Clerk. Specifically, all fines less court costs collected for fire alarm calls shall be deposited in the Fire Department Account, and all fines less court costs collected for all other alarm calls shall be deposited in the Police Department Personnel/Vehicle Account. (Ord. No. 2020-5, Sec. 15)

7.68.15 Penalties Unless specially enumerated herein, any person convicted of a violation of any of the provisions of this Ordinance shall be punished as provided in Section 10. (Ord. No. 2020-5, Sec. 16)

7.68.16 Government Immunity Nothing in this Section is intended to, nor will it, create a contract, duty, or obligation, neither expressed or implied, of response to an alarm by the Pottsville Police Department or Pottsville Fire Department. Any and all liability and consequential damage resulting from the failure to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. An Alarm User is put on notice that the Pottsville Police Department and Pottsville Fire Department's responses may be influenced by factors such as: the availability of officers and/or firefighters, priority of calls, weather conditions, traffic conditions, emergency conditions, staffing levels, and prior response history. (Ord. No. 2020-5, Sec. 17)

CHAPTER 7.72

DATA CENTER NOISE

Sections:

7.72.01	Purpose and Applicability
7.72.02	Definitions
7.72.03	Noise Attenuation Requirements
7.72.04	Procedure for Measurement
7.72.05	Noise Limitations
7.72.06	Violations
7.72.07	Penalties

7.72.01 Purpose and Applicability All Data Centers constructed within this jurisdiction shall be designed and built to incorporate external noise attenuation measures in order to minimize the impact of noise disturbance on the residents of Pottsville, Arkansas.

This ordinance shall apply to limit the noise disturbance originating within the municipal limits of Pottsville, Arkansas. (Ord. No. 2023-10, Sec. 1)

7.72.02 Definitions For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

1. *Ambient Noise:* The all-encompassing noise level associated with a given environment, being a composite of sounds from all sources, excusing the alleged offensive noise, at the locations and approximate time at which comparison with the alleged offensive noise is to be made.

2. *Data Center*: A facility constructed and operated that is engaged in storage, management, processing, and transmission of digital data, including facilities used for cryptocurrency mining, which houses networked computer systems along with supporting equipment such as batteries, back-up power generators, HVAC and cooling systems.
3. *Decibel (dB)*: A unit for measuring the volume of a sound, equal to twenty (20) times to the base 10 (10) of the ratio of the pressure of the sound measured to the referenced pressure, which is twenty (20) micro pascals (twenty (20) micronewtons per square meter.)
4. *Mechanical Equipment*: The networked computer systems along with supporting equipment such as batteries, backup generators, and cooling systems housed on the Data Center's property.
5. *Noise Attenuation*: The reduction of noise levels through the use of sound-absorbing material, architectural design techniques, and/or any other suitable means.
6. *Noise Disturbance*: is any sound which:
 - a. Endangers or injures the safety or health of humans or animals; or
 - b. Annoys or disturbs a reasonable person of normal sensitivities; or
 - c. Endangers or injures person or real property.
7. *Person*: An individual, association, partnership, or corporation, including any officer, employee, department, or agency.
8. *Property Line*: An imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person, but not including intra-building real property divisions.
9. *Sound*: An oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.
10. *Sound Level*: The weighted sound pressure level obtained by the use of a sound level meter and frequency weighting network, such as A, B, or C as specified in American National Standards Institute specifications for sound level meters (ANSI SI. 4-1971, or the latest approved revision thereof). If the frequency weighting employed is not indicated, the A-weighting shall apply.
11. *Sound Level Meter*: An instrument which includes a microphone, an amplifier, RMS detector, integrator or time averager, output meter, and weighting networks used to measure sound pressure levels. (Ord. No. 2023-10, Sec. 2)

7.72.03 Noise Attenuation Requirements Before a Data Center has commenced construction or operating within this jurisdiction, the property owner and operator proposing to build a Data Center shall comply with the following:

1. *Notice Requirements*

- a. The property owner and operator must notify all residents within a half-mile radius of the parcel, including any affiliated homeowners' association operating within the half-mile radius, that the property owner and operator intends to build and operate a Data Center on the property. The notice required in this section must be mailed to all postal addresses and homeowners' association addresses contained within a half-mile radius extending from the property line where the proposed Data Center will be built. Proof of notification shall be filed with the city clerk's office within 30 days of providing notice. The property owner and operator must notify the mayor that the property owner and operator intends to build and operate a Data Center. The notification must include the location for the proposed data center.

2. *Noise Study Requirements*

- a. The property owner of the lands upon which the Data Center is to be located shall conduct a sound study performed by a third-party acoustic engineer to document baseline sound levels in the area of the proposed Data Center, including noise levels measured at the property line in eight locations (north, south, east, west, northeast, northwest, southeast, southwest.) The report of the study must include sound mitigation recommendations based on the results of the sound study. The property owner must provide a copy of the report of the study to the mayor and file with the city clerk within 30 days of completion of the report.

3. *Noise Attenuation Plan Requirements*

- a. The property owner must consult with a third-party architectural or design firm to develop a building plan that includes necessary noise attenuation measures in order to prevent the external sound level emanating from the Data Center from exceeding the sound level limitations below which will be considered a noise disturbance. The building plan is not required to adopt any or all of the noise attenuation recommendations so long as the plan includes noise attenuation measures that the architectural or design firm deems adequate to be in compliance with this Ordinance. Noise attenuation measures may include but not limited to:
 - i. Soundproofing walls, screens, panels, fences, or enclosures
 - ii. Buffer yards

- iii. Other noise attenuation measures recommended by the third-party acoustic engineer
- b. Mechanical equipment must be shown on any proposed plan and must be fully screened on all sides. Mechanical equipment not screened by a façade of the building must be screened by a visually solid fence, screen wall or panel, or parapet wall and constructed with a design, materials, details, and treatment compatible with those used on the nearest façade of the building.
- c. The property owner must provide a copy of the building plan to the mayor and file with the city clerk within 30 days of completion of the plan prior to construction.
- d. Any additions, changes, or expansions of the Data Center must comply with the noise attenuation requirements of this Ordinance and must be designed and submitted to the mayor and filed with the city clerk within 30 days of completion of the report.

4. *Post Completion Noise Study Requirements*

- a. Upon the Data Center's completion, the Data Center operator must conduct a post-construction noise study performed by a third-party acoustic engineer to document noise levels emanating from the Data Center when mechanical equipment is running at full capacity, including all HVAC units and generators necessary for peak operation. Noise levels are to be measured at the property line in the original eight locations used during the baseline study. The Data Center operator must provide a copy of the report to the mayor and file with the city clerk within 30 days of completion of the study.
- b. The Data Center shall not begin operations until the completion of the post-construction noise study and submission to the mayor and city clerk as required above. In order for the Data Center to be in compliance, the noise study results must show that its operation is in compliance with this Ordinance. If the results show that the Data Center is not in compliance with this Ordinance, the Data Center will be unable to commence operation until the required noise attenuation measures and noise limitations are met.
- c. Furthermore, the Data Center operator must conduct annual noise studies under the baseline and post-construction studies specifications in accordance with subsections (a) and (b) above. The Data Center operator must provide the results to the mayor and file with the city clerk within 30 days after the anniversary date of the first sound study report. (Ord. No. 2023-10, Sec. 3)

7.72.04 Procedure for Measurement All tests shall be conducted according to the following procedures:

1. *Complaint Driven:* When the measurement is the result of a complaint, measurements will be taken at the property line of the receiving property.
2. *Normal Monitoring:* When the measurement procedure is in the normal course of monitoring sound, the measurements will be taken at the real property line of the source of the sound.
3. *Outdoor Conditions:* No outdoor measurements must be taken while winds exceed (including gusts) 15 miles per hour; under conditions that will allow the sound level meter to become wet; or when the ambient temperature is out of range of tolerance on the sound meter.
4. *Calibration:* The sound level meter must be verified and calibrated according to the manufacturer's specifications immediately prior to taking the measurements.
5. *Meter Placement:* The sound level meter must be placed a minimum of four feet above the ground or from any reflective surface. The microphone must be pointed at the sound source.
6. *Measurements:* Measurements must include "high", "average", and "low" readings. If the sound level meter does not provide these multiple readings, a minimum of three separate measurements must be taken at a single location at varying time intervals. The average sound level reading shall be used to determine whether there has been a violation of this Ordinance.
7. *Monitoring Report:* The report for each measurement session must include:
 - a. The day, date and time of the measurements,
 - b. Date and time of recent calibration,
 - c. Temperature and wind speed the time of measurement,
 - d. Identification of the monitoring equipment,
 - e. Location, land use, and description of the source,
 - f. Location and land use of the listener, and
 - g. Sound level measurements.
8. *Extraneous Sounds:* If there are extraneous sound sources that are unrelated to the measurements and increase the monitored sound level, the measurement shall be postponed until these noises subside. (Ord. No. 2023-10, Sec. 4)

7.72.05 Noise Limitations It shall be unlawful for any Data Center to make, or continue to cause or permit to be made or continued, noise levels constituting a noise disturbance. For the purposes of this section, the external noise level emanating from Data Centers shall be deemed disturbing to a person, reasonably calculated to disturb the peace and unreasonably offensive and injurious to the public, or their property, if the sound level is:

1. 65 dBa or higher during the hours of 8 A.M. to 10 P.M. or 55 dBa or higher during the hours of 10 P.M. to 8 A.M. (as determined by a third-party acoustic engineer) measured at the property line of the receiving property.
2. The standard which may be considered in determining whether a violation of this Ordinance exists includes but is not limited to the following:
 - a. The level or volume of the noise
 - b. The time of day or night the noise occurs
 - c. The duration of the noise
 - d. Whether the noise is recurrent, intermittent or constant
 - e. Whether proper and reasonable noise attenuation methods were followed and maintained (Ord. No. 2023-10, Sec. 5)

7.72.06 Violations

1. Any or all of the following persons may be held responsible for noise violations:
 - a. The person operating the equipment or creating the noise;
 - b. The person who employs the person operating the equipment or creating the noise at the time of the violation;
 - c. The person who owns or rents the property where the violation occurs.
2. The following acts, and the causing thereof, are declared to be in violation of this Ordinance:
 - a. The sound level emanating from the Data Center exceeds 65 dBa or higher during the hours of 8 A.M. to 10 P.M. or 55 dBa or higher during the hours of 10 P.M. to 8 A.M. measured at the property line of the receiving property.
 - b. The noise attenuation measures provided in the design plan to the mayor are not incorporated in the construction of the Data Center.
 - c. Any of the required sound study results are not filed with the mayor and the city clerk within 30 days of completion of the report.
 - d. The building plan is not filed with the mayor and the city clerk within 30 days of completion of the plan prior to construction.
 - e. Failure to act in accordance with any other provision of this Ordinance.
3. All data centers shall be in compliance with the requirements of this Ordinance before commencing operation; failure to do so will be deemed in violation of this Ordinance and result in an injunction and/or a stay in commencing operation. (Ord. No. 2023-10, Sec. 6)

7.72.07 Penalties

1. Any person(s), firm, corporation, partnership, association, owner, occupant, agent or anyone having ownership in the subject property or supervision or control over the Data Center that violates or fails to comply with any provision of this Ordinance, shall be guilty of a misdemeanor.
2. Upon conviction of such violation, any offending party shall be punished by fine of \$1,000 for any one specified offense or violation, or double that sum for repetition of the offense or violation. If the act prohibited is continuous in time, the fine or penalty for allowing the continuance thereof, in violation of this Ordinance, shall be \$500 for each day that it may unlawfully continue. If the prohibited act continues after conviction of violation, an injunction in court of proper jurisdiction to abate the nuisance and violation of the Ordinance may be sought and awarded.
3. The city or any citizen shall be entitled to pursue all legal and equitable remedies available under the law in order to abate the nuisance and compel compliance with this Ordinance, including injunctive relief and any civil damages the court deems appropriate.
4. Until the Data Center is in compliance with this Ordinance and required noise attenuation measures are implemented and noise limitations met, the data center shall cease operations. (Ord. No. 2023-10, Sec. 7)