

TITLE 3

BUSINESS LICENSES AND REGULATIONS

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CHAPTER 1

DEFINITIONS

Section

3.01.101: DEFINITIONS

3.01.101: DEFINITIONS:

As used in this title:

BUSINESS

Means and includes all activities engaged in within this municipality carried on for the purpose of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in the term "business", unless otherwise specifically provided.

**EACH SEPARATE
PLACE OF BUSINESS**

Each separate establishment or place of operation, whether or not operating under the same name, within the municipality, including a home or other place of lodging if the same is held out by advertisements, listings or otherwise as the establishment or place of operation of a person engaging in the business of selling tangible, personal property at either retail or wholesale, or both, in the municipality.

EMPLOYEE

The operator, owner or manager of a place of business and any persons employed by such person in the operation of such place of business in any capacity and also any salesperson, agent or independent contractor engaged in the operation of the place of business in any capacity.

**ENGAGING IN
BUSINESS**

Includes, but is not limited to, the sale of tangible personal property at retail or wholesale, the manufacturing of goods or property and the rendering of personal services for others for a consideration by persons engaged in any profession, trade, craft, business, occupation or other calling, except the rendering of

personal services by an employee to his employer under any contract of personal employment

PLACE OF BUSINESS

Each separate location maintained or operated by the licensee within this municipality from which business activity is conducted or transacted.

WHOLESALE

A sale of tangible personal property by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale, and does not include a sale by wholesalers or retailers to users or consumers not for resale, except as otherwise specified.

WHOLESALER

A person doing a regularly organized wholesale or jobbing business and selling to retail merchants, jobbers, dealers or other wholesalers, for the purpose of resale.

CHAPTER 2 BUSINESS LICENSES GENERALLY

Section

- 3.02.101: BUSINESS LICENSE REQUIRED
- 3.02.102: EXCEPTIONS TO LICENSE
- 3.02.103: RECIPROCAL RECOGNITION OF LICENSE
- 3.02.104: LICENSE ASSESSOR AND COLLECTOR
- 3.02.105: APPLICATIONS FOR LICENSE
- 3.02.106: ISSUANCE OF BUSINESS LICENSE
- 3.02.107: BRANCH ESTABLISHMENTS; SEPARATE LICENSE REQUIRED
- 3.02.108: JOINT LICENSE ALLOWED WHEN
- 3.02.109: DISPLAY
- 3.02.110: TRANSFER OF LICENSE PROHIBITED
- 3.02.111: REVOCATION OR DENIAL OF BUSINESS LICENSE
- 3.02.112: PAYMENT DATES
- 3.02.113: PENALTY FOR LATE PAYMENT
- 3.02.114: ANNUAL FEE LEVIED; SCHEDULE
- 3.02.115: FEE NOT TO CONSTITUTE UNDUE BURDEN ON INTERSTATE
COMMERCE

3.02.101: BUSINESS LICENSE REQUIRED:

It shall be a class B misdemeanor for any person to transact, engage in or carry on any business, trade, profession, calling or to operate a vending, pinball or coin operated machine without first receiving the class or type of license required by the municipality.

3.02.102: EXCEPTIONS TO LICENSE:

(1) No license requirement shall be imposed under section 3.02.101 of this chapter on any person engaged in business for a nonprofit purpose which is tax exempt under the laws of the United States and the state, nor shall any license requirement be imposed on any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the state; nor shall any license requirement be imposed upon any person not maintaining a place of business within this municipality.

(2) The license assessor and collector may, with approval of the governing body, enter into reciprocal agreements with the proper officials of other taxing units, as may be deemed equitable and proper in effecting the exemption provided for in subsection (1) of this section.

3.02.103: RECIPROCAL RECOGNITION OF LICENSES:

(1) No license shall be required for operation of any vehicle or equipment in this municipality when:

- (a) Such vehicle is merely passing through the municipality;
- (b) Such vehicle is used exclusively in intercity or interstate commerce.

(2) No license shall be required, by this chapter and chapter 4 of this title, of any person whose only business activity in this municipality is the mere delivery in the municipality of property sold by him at a regular place of business maintained by him outside the municipality where:

- (a) Such person's business is at the time of such delivery licensed by the Utah municipality or county in which such place of business is situated; and
- (b) The authority licensing such business, grants to licensees of this municipality making deliveries within its jurisdiction the same privileges, upon substantially the same terms, as are granted by this section; and
- (c) Neither the property delivered nor any of the facilities by which it was manufactured, produced or processed are subject to inspection by authority of this municipality for compliance with health or sanitary standards prescribed by this municipality; and
- (d) The truck or other conveyance by which such delivery is made prominently displays at all times a license plate or symbol issued by the licensing authority to evidence such business license. Such plate or symbol shall identify the licensing authority by which it is issued, shall indicate that it evidences a license issued thereby, and shall specify the year or term for which it is effective.

(3) The Town Clerk shall, at the request of any person, certify a copy of this section to any municipality or county of the state to which a copy has not previously been certified.

3.02.104: LICENSE ASSESSOR AND COLLECTOR:

The Town Clerk is designated and appointed as ex officio assessor of license fees for this municipality. On receipt of any application for a license, the Town Clerk shall assess the amount due thereon and shall collect all license fees based upon the rate established by ordinance. He shall enforce all provisions of this chapter, and shall cause to be filed complaints against all persons violating any of the provisions of this chapter.

3.02.105: APPLICATIONS FOR LICENSE:

(1) All applications for license shall include:

- (a) The name, social security number, date of birth, and home address of the person applying for the license;
- (b) The registered name of the business, if applicable;
- (c) The federal tax number of the corporation, if applicable;
- (d) The type of business to be engaged in;
- (e) The location of the place of business;
- (f) A state tax number, if applicable;
- (g) A state contractor's number, if applicable;
- (h) Proof that the business is state licensed or registered, if applicable;
- (i) A space for the applicant or applicant's authorized agent to sign under penalty of law that all the information contained therein is true; and
- (j) The information regarding any other business licenses held in any other jurisdiction.
- (k) Authorize the Town to conduct a background check on the applicant and other business principals

(2) In the event that the license application relates to a coin operated machine or device, the application shall identify the machine or device to which it applies and the location thereof.

3.02.106: ISSUANCE OF BUSINESS LICENSE:

(1) An applicant for a business license shall fill out the application in full and sign it as verification under penalty of law that all information contained therein is true.

(2) The application shall be completed and fees paid.

(3) Copies of the application shall be submitted to the appropriate Town staff for their review.

(4) After staff review and approval of the completed application, a business license certificate shall be prepared.

(5) The applicant shall ensure that the business location is within a zoning district that allows said land use

3.02.107: BRANCH ESTABLISHMENTS; SEPARATE LICENSE REQUIRED:

A separate license must be obtained for each separate place of business in the municipality and each license shall authorize the licensee to engage only in the business licensed thereby at the location or in the manner designated in such license; provided, that warehouses and distributing places used in connection with or incident to a business licensed under this part shall not be deemed to be separate places of business or branch establishments.

3.02.108: JOINT LICENSE ALLOWED WHEN:

Whenever any person is engaged in two (2) or more businesses at the same location within the municipality, such person shall not be required to obtain separate licenses for conducting each of such businesses, but shall be issued one license which shall specify on its face all such businesses. The license fee to be paid shall be computed at the highest license fee applicable to any of the businesses being conducted at such location. The sale

of beer or any other product or service requiring an additional license shall be subject to such additional licensing requirement. Where two (2) or more persons conduct separate businesses at the same location, each such person shall obtain a license for such business and pay the required license fee for such business.

3.02.109: DISPLAY:

(1) Every certificate of license issued under this title shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the place of business so that the same may be easily seen. When such certificate of license has expired, it shall be removed by the licensee from such place in which it has been posted, and no certificate of license which is not in force and effect shall be permitted to remain posted upon the wall or any part of any room within the place of business. If the licensee's business is such that a license cannot be displayed due to the transient or mobile nature of the business, then the licensee shall carry the license on his person ready to be shown on request by an authorized officer during all such time or times while the licensee is engaged in or pursuing the business for which a license is granted.

(2) In the event the license is for a coin operated machine or device, the certificate shall be attached or displayed in the immediate vicinity of the machine for which it has been issued.

3.02.110: TRANSFER OF LICENSE PROHIBITED:

No license granted or issued under any ordinance of this municipality shall be assigned or transferred to any other person. It shall not be deemed to authorize any person other than therein named to do business or to authorize any other business, calling, trade or profession than is therein named, unless by permission of the governing body.

3.02.111: REVOCATION OR DENIAL OF BUSINESS LICENSE:

(1) Any license issued pursuant to the provisions of this code or of any ordinance of this municipality may be revoked and any application denied by the planning commission because of:

(a) The failure of the licensee or applicant to comply with the conditions and requirement of this code or any ordinance of the municipality.

(b) Unlawful activities conducted or permitted on the premises where the business is conducted.

(c) The license was obtained by fraud or deceit.

(2) The Town shall notify the applicant of the denial or revocation of a license and the reason for such denial or revocation.

(3) A license denial or revocation may be appealed to the Town council by filing written notice of appeal with the Town recorder within ten (10) days of the notice of denial or revocation. The Town council shall hear the appeal within thirty (30) days of the notice of appeal.

3.02.112: PAYMENT DATES:

All business licenses are for a one year period and the fees therefor shall be due and payable as follows, except as may be otherwise provided in the applicable ordinance:

(1) Annual fees shall be payable before the expiration of the license in advance.

(2) Annual fees shall be due prior to the expiration of the license and shall become delinquent if not paid within (30) days of the license expiration date.

3.02.113: PENALTY FOR LATE PAYMENT:

If any license fee is not paid within thirty (30) days of the due date, a penalty of ten percent (10%) of the amount of such license fee shall be added to the original amount thereof. No license shall be issued until all penalties legally assessed have been paid in full.

3.02.114: ANNUAL FEES LEVIED; SCHEDULE:

There is imposed and levied a fee of fifty dollars (\$50.00) on the business, location, trade, calling or profession of every person engaged in a business within this municipality.

3.02.115: FEE NOT TO CONSTITUTE UNDUE BURDEN ON INTERSTATE COMMERCE:

None of the license fees provided for by section 3.02.114 of this chapter shall be applied as to occasion an undue burden on interstate commerce. In any case, where a license fee is believed by a licensee or applicant for license to place an undue burden upon such commerce, he may apply to the license assessor and collector for an adjustment of the fees so that it shall not be discriminatory, unreasonable or unfair as to such commerce. Such application may be made before, at or within six (6) months after payment of the prescribed license fees. The applicant shall, by affidavit and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the license assessor and collector may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The license assessor and collector shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of fact from which he shall determine whether the fees fixed by section 3.02.114 of this chapter is discriminatory, unreasonable or unfair as to applicant's business and shall recommend to the governing body a license fees for the applicant in an amount that is nondiscriminatory, reasonable and fair, and if the governing body is satisfied that such license fees is the amount that the applicant should pay, it shall fix the license fees in such amount. If the regular license fee has already been paid, the governing body shall order a refund of the amount over and above the fees fixed by the governing body. In fixing the fee to be charged, the license assessor and collector shall have the power to base the fee upon a percentage of gross sales, or employees, or may use any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature.

CHAPTER 3

HOME OCCUPATION BUSINESS LICENSES

Section:

- 3.03.101: HOME OCCUPATION BUSINESS LICENSE REQUIRED
- 3.03.102: PURPOSE AND INTENT OF CHAPTER
- 3.03.103: DEFINITIONS
- 3.03.104: APPROVAL REQUIRED
- 3.03.105: APPLICATION FOR HOME OCCUPATION BUSINESS LICENSE
- 3.03.106: PROCEDURE
- 3.03.107: CONDITIONS
- 3.03.108: FEES
- 3.03.109: COURTESY NOTICE TO NEIGHBORS
- 3.03.110: STATE SALES TAX LICENSE
- 3.03.111: RENEWAL
- 3.03.112: REVOCATION OF DENIAL OF HOME OCCUPATION LICENSE
- 3.03.113: APPEAL
- 3.03.114: CHANGE TO CHAPTER

3.03.101: HOME OCCUPATION BUSINESS LICENSE REQUIRED:

It shall be a class B misdemeanor for any person to utilize any portion of their residence as a place of business without first receiving a home occupation business license as required by the Town.

3.03.102: PURPOSE AND INTENT OF CHAPTER:

The purpose and intent of this chapter is to allow Town residents, who comply with the requirements of this chapter and are issued a license, to utilize a portion of their residential premises as a place of business. Such business shall only be operated by residents in the home, and shall not be of such nature or scope that the operation of the business disrupts neighbors or detracts from the residential character of the neighborhood in which it is located.

3.03.103: DEFINITIONS:

As used in this chapter:

IN-HOME OFFICE:

The use of a portion of the residential premises for office use only, including record storage, filing, invoicing, accounting, billing, order taking, making appointments and telephone contacts.

RESIDENCE:

The building on the residential premises that is the home or dwelling unit that has been designed for use as the living and sleeping place for its occupants as distinguished from a detached garage or other accessory building.

RESIDENTIAL PREMISES:

The parcel of land and structures on it that is located in an area of the Town, which is zoned a residential district as distinguished from a commercial or industrial district. Residential zoning includes, but is not limited to, residential estates, single-family residential and multiple-family residential districts.

3.03.104: APPROVAL REQUIRED:

To assure compliance with the provisions of this chapter and to protect the character of residential neighborhoods in the Town, a home occupation business license shall be approved by the Planning Commission before a structure on the residential premises may be used for business purposes. Application for the home occupation business license shall be obtained from the Town offices.

3.03.105: APPLICATION FOR HOME OCCUPATION BUSINESS LICENSE:

All applications for license shall include:

(1) The name, social security number, date of birth and home address of the person applying for the license;

- (2) The registered name of the business, if applicable;
- (3) The federal tax number of the corporation, if applicable;
- (4) The type of business to be engaged in;
- (5) The location of the place of business;
- (6) A state tax number, if applicable;
- (7) A state contractor's number, if applicable;
- (8) Proof that the business is state licensed or registered, if applicable;
- (9) A space for the applicant or applicant's authorized agent to sign under penalty of law that all the information contained therein is true; and
- (10) Other information that may be required on a case by case basis.

3.03.106: PROCEDURE:

(1) In-Home Offices:

- (a) Town staff may, upon application, issue a home occupation business license, which shall state the in-home office use permitted and any limitations imposed thereon.
- (b) The license shall not be issued until the applicant represents that the applied for use will not violate covenants, conditions and restrictions or other deed restrictions affecting the use of the property involved.
- (c) The license shall not be issued unless the Town staff is satisfied that the applicant will meet all of the conditions listed below, and that the applicant has agreed in writing to comply with all said conditions.

(2) Home Occupations Other Than In-Home Offices:

(a) The Town Planning Commission may, upon application, issue a home occupation business license, which shall state the home occupation business permitted, the conditions attached thereto, and any time limitations imposed thereon.

(b) The license shall not be issued until the applicant represents that the applied for use will not violate covenants, conditions and restrictions or other deed restrictions affecting the use of the property involved.

(c) The license shall not be issued unless the planning commission is satisfied that the applicant will meet all of the conditions listed in section 3.03.107 of this chapter, and that the applicant has agreed in writing to comply with all said conditions.

(d) If the proposed home occupation business involves children in any way, then prior to an application being put on the planning commission agenda for approval, a criminal background check shall be obtained on the applicant and all other persons who would be involved with the home occupation business or who would be at the home occupation business location when children are present during business hours.

**3.03.107: EACH AND EVERY ONE OF THE FOLLOWING
CONDITIONS MUST BE OBSERVED AT ALL TIMES BY THE
HOLDER OF A HOME OCCUPATION BUSINESS LICENSE:**

(1) The home occupation business shall not alter the residential character of the premises by reason of activity, color, design, materials, storage, construction, lighting, sounds, noises, vibrations, dust, odors, noxious fumes, etc., nor shall it unreasonably disturb the peace and quiet of an individual and/or the residential neighborhood, nor interfere with area radio or television reception.

(2) No persons other than residents in the home shall work at the residential premises of the home occupation business. No independent contractors shall come upon the residential premises to conduct the work of the home occupation business.

(3) Outside storage of equipment and/or materials associated with the home occupation business shall not be permitted.

(4) Only two (2) vehicles may be used in association with the home occupation business and they shall be capable of being parked in the garage. Any vehicles used for the home occupation business shall be limited to a maximum size of one ton gross vehicle weight.

(5) The number of square feet used for conducting the home occupation business, whether in the residence or other permitted structure, shall not exceed twenty five percent (25%) of the total area of the home, plus attached garage, not to exceed five hundred (500) square feet.

(6) The home occupation business may be conducted in a garage attached to the residence subject to the following:

(a) The garage may not be altered in any way that prevents the parking of vehicles within.

(b) Sufficient off street parking must be available for the vehicles displaced by using the garage to conduct the home occupation business.

(7) No business signs are to be displayed on the residential premises in connection with the home occupation business.

(8) The home occupation business shall not create noise in excess of that which is customary to the immediate neighborhood.

(9) The home occupation business shall not generate pedestrian or vehicular traffic in excess of that customarily associated with the residential neighborhood in which the use is located.

(10) There shall be complete conformity with fire, building, plumbing, electrical and health codes, and with all state and Town laws and ordinances. The residential premises shall be subject to inspection by the Town for compliance purposes.

(11) The home occupation business shall not cause a demand for municipal or utility services, or community facilities in excess of those usually and customarily provided for residential uses.

(12) There shall be complete conformity with any special condition established and made of record in the home occupation business license by the planning commission, as it deems necessary to carry out the intent of this chapter.

(13) Retail operations shall not be allowed as a home occupation.

3.03.110: FEES:

Fees will be charged in accordance with the Town consolidated fee schedule.

3.03.109: COURTESY NOTICE TO NEIGHBORS:

Along with the completed application, the applicant shall provide envelopes bearing first class postage that are addressed to all property owners, as shown on the county tax rolls on the date of application, within three hundred feet (300') from each of the exterior boundaries of the subject residential property. Town staff shall mail notification of the home occupation license application to the neighbors specified. The intent of the courtesy notice to neighbors is to inform neighbors of activity within their neighborhood and should not be construed as a legal notice.

3.03.110: SALES TAX LICENSE:

If required by the state, a state license will be required with the Town listed as a business location.

3.03.111: RENEWAL:

All home occupation business licenses shall be valid for the period of time specified on the license application, and shall be renewed annually, provided there have been no reported violations or detrimental characteristics which may, in the opinion of the planning commission, require revocation of the home occupation business license and termination of said home occupation business.

3.03.112: REVOCATION OR DENIAL OF HOME OCCUPATION LICENSE:

(1) Any license issued pursuant to the provisions of this chapter may be revoked and any application denied by the planning commission because of:

- (a) The failure of the licensee or applicant to comply with the conditions and requirements of this chapter or any ordinance of the municipality or any conditions imposed by the Town;

(b) Unlawful activities conducted or permitted on the premises where the business is conducted; or

(c) The license was obtained by fraud or deceit.

(2) The Town shall notify the applicant of the denial or revocation of a license and the reason for such denial or revocation.

3.03.113: APPEAL:

A home occupation business license denial or revocation may be appealed to the Town council by filing written notice of appeal with the Town recorder within ten (10) days of the notice of denial or revocation. The Town council shall hear the appeal within thirty (30) days of the notice of appeal.

3.03.112: CHANGE TO CHAPTER:

Any change to this chapter must be submitted for comment to the Planning Commission.

CHAPTER 4 ALCOHOLIC BEVERAGES

Section

PART 1: GENERAL PROVISIONS

- 3.04.101: GOVERNING LAWS
- 3.04.102: DEFINITIONS
- 3.04.103: LICENSE REQUIRED
- 3.04.104: CLASSIFICATION OF LICENSES AND PERMITS
- 3.04.105: TAVERNS, PACKAGE AGENCIES AND STATE STORES
PROHIBITED IN TOWN
- 3.04.106: LICENSE DURATION; FEES
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- 3.04.108: RESTRICTIONS ON LOCATION, NUMBER OF LICENSES AND
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- 3.04.109: GENERAL APPLICATION REQUIREMENTS
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PART 5: LIMITED RESTAURANT LIQUOR LICENSE

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PART 8: SINGLE EVENT PERMIT

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PART 9: TEMPORARY SPECIAL EVENT PERMIT

3.04.901: TEMPORARY SPECIAL EVENT PERMIT

PART 1: GENERAL PROVISIONS

3.04.101: GOVERNING LAWS:

All sales of alcoholic beverages and alcohol products within the town shall be governed by the Utah Alcoholic Beverage Control Act ("the Act"), Utah Code Annotated title 32A, as amended. To the extent authorized by the Act, this chapter and applicable provisions of the town zoning ordinance shall also regulate the sale, distribution and consumption of alcoholic beverages and alcoholic products within the town.

3.04.102: DEFINITIONS:

The words and phrases used in this chapter shall have the meanings specified in the Act, unless a different meaning is clearly evident.

3.04.103: LICENSE REQUIRED:

(1) License Required: It shall be unlawful for any person to engage in the business of selling or serving beer or liquor without first having procured a license therefor from the town and having paid the required license fee.

(2) Sales after Revocation: It shall be unlawful for any person to sell or serve beer or liquor after the revocation of the license issued pursuant to this chapter.

(3) Separate License; Display: A separate license shall be required for each place of sale, and the license shall at all times be conspicuously displayed. All licensees shall comply with the Act and the regulations of the Utah Alcoholic Beverage Control Commission ("Commission").

(4) License Not Transferable: Licenses issued pursuant to this chapter shall not be transferable from the original licensee to any other person or entity, including partnerships, limited liability companies or corporations.

3.04.104: CLASSIFICATION OF LICENSES AND PERMITS:

(1) Off Premises Beer Retail License: An off premises beer retail license shall entitle the licensee to sell beer on the premises described therein in original containers not to exceed one quart capacity for consumption off the premises. Eighty percent (80%) of the gross sales receipts must come from the sale of items other than beer. Businesses that may be allowed to have an off premises beer retail license are general food stores and convenience stores.

(2) On Premises Beer Retail License: An on premises beer retail license shall entitle the licensee to sell beer for consumption on the licensed premises only in conjunction with a restaurant in which hot food sales constitute no less than seventy percent (70%) of the gross monetary receipts of the licensee's business.

(3) Public Liquor Licenses: Only the following public liquor licenses shall be allowed within the town:

(a) Restaurant Liquor License: A restaurant liquor license shall entitle the licensee to sell, serve and allow the consumption of liquor on its premises in conjunction with a restaurant liquor license issued by the commission.

(b) Limited Restaurant License: A limited restaurant license shall entitle the licensee to sell, serve and allow the consumption of only beer, heavy beer, and wine on its premises, but not spirituous liquor, in conjunction with a limited restaurant license issued by the commission.

(c) On Premises Banquet License: An on premises banquet license shall entitle the licensee to sell, serve and allow the consumption of alcoholic beverages in connection with the licensee's banquet and room service activities. This license shall be issued in connection with an on premises banquet license issued by the commission.

(d) Private Club Liquor License: A private club liquor license shall entitle the licensee to sell, serve and allow the consumption of alcoholic beverages in connection with the licensee's private club. This license shall be issued in connection with a private club liquor license issued by the commission.

(4) Single Event Permit: A single event permit shall entitle a qualified entity conducting a convention, civic or community enterprise to sell, serve and allow consumption of liquor for a period not to exceed one hundred twenty (120) consecutive hours.

(5) Temporary Special Event Beer Permit: A temporary special event beer permit shall entitle a person to sell beer for on premises consumption at a temporary special event that does not last longer than thirty (30) days.

3.04.105: TAVERNS, PACKAGE AGENCIES AND STATE STORES PROHIBITED IN TOWN:

The licensing and operation of a "tavern", "package agency" or "state store", as defined in the Act, is strictly prohibited within the town.

3.04.106: LICENSE DURATION; FEES:

(1) Duration: All licenses shall expire on one year from the date of issue, unless revoked prior thereto. All licensees shall immediately notify the town recorder if their state issued license is denied, suspended or revoked for any reason. All renewal applications must attach a copy of a valid state license.

(2) Fee: In addition to any other business license fee which may be required, there is hereby imposed on the business location a fee for the type of beer or liquor license or permit required. Fees shall be established by the town council from time to time by resolution. New and renewal applications provided for in this chapter shall be accompanied by the fees established. If the license application is denied, fifty percent (50%) of the license fee will be retained by the town to pay the costs of processing the application. If a license that has been granted is later revoked by the town, the license fee paid by the licensee shall be forfeited to the town.

3.04.107: LICENSEE QUALIFICATIONS:

(1) No alcoholic beverage control license may be granted under this chapter to any person who has been convicted of:

(a) A felony under any federal or state law;

(b) Any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, brewing, warehousing, adulteration or transportation of alcoholic beverages;

(c) Any crime involving moral turpitude; or

(d) On two (2) or more occasions within the five (5) years before the day on which the license is granted, driving while under the influence of alcohol, any drug, or the combined influence of alcohol and any drug.

(2) In the case of a partnership, corporation or limited liability company, the proscription under subsection (1) of this section applies if any of the following have been convicted of any of the offenses described in subsection (1) of this section:

(a) A partner;

(b) A managing agent;

(c) A manager;

(d) An officer;

(e) A director;

(f) A stockholder who holds at least twenty percent (20%) of the total issued and outstanding stock of the applicant corporation; or

(g) A member who owns at least twenty percent (20%) of the applicant limited liability company.

(3) The proscription under subsection (1) of this section applies if any person employed to act in a supervisory or managerial capacity for the applicant has been convicted of an offense described in subsection (1) of this section.

(4) The Town may immediately suspend or revoke an alcoholic beverage control license issued under this Chapter if, after the day on which the license is granted, a person described in subsection (1), (2) or (3) of this section:

(a) Is found to have been convicted of any offense described in subsection (1) of this section; or

(b) On or after the day on which the license is granted:

(i) Is convicted of an offense described in subsection (1)(a), (1)(b) or (1)(c) of this section; or

(ii) Is convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug, and was previously convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug, within five (5) years.

(5) The Town may immediately suspend an alcoholic beverage control license issued under this Chapter for the period during which the criminal matter is being adjudicated if a person described in subsection (1), (2) or (3) of this section:

(a) Is arrested on a charge for an offense described in subsection (1)(a), (1)(b) or (1)(c) of this section; or

(b) Is arrested on a charge of driving under the influence of alcohol, any drug or the combined influence of alcohol and any drug, and was previously convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five (5) years.

(6) No alcoholic beverage control license may be granted under this Chapter to any person who has had any type of license, agency or permit issued under this Chapter revoked within the last three (3) years. For an applicant that is a partnership, corporation or limited liability company, no alcoholic beverage control license may be granted under this Chapter if any partner, managing agent, manager, officer, director, stockholder who holds at least twenty percent (20%) of the total issued and outstanding stock of the applicant corporation, or member who owns at least twenty percent (20%) of the applicant limited liability company is or was:

(a) A partner or managing agent of any partnership that had any type of license, agency or permit issued under this Chapter revoked within the last three (3) years;

(b) A managing agent, officer, director or stockholder who holds or held at least twenty percent (20%) of the total issued and outstanding stock of any corporation that had any type of license, agency or permit issued under this chapter revoked within the last three (3) years; or

(c) A manager or member who owns or owned at least twenty percent (20%) of any limited liability company that had any type of license, agency or permit issued under this Chapter revoked within the last three (3) years.

(7) A minor may not be granted an alcoholic beverage control license under this Chapter; nor may an alcoholic beverage control license be granted to an applicant that is a partnership, corporation, or limited liability company if any of the following is a minor:

(a) A partner or managing agent of the applicant partnership;

(b) A managing agent, officer, director or stockholder who holds at least twenty percent (20%) of the total issued and outstanding stock of the applicant corporation; or

(c) A manager or member who owns at least twenty percent (20%) of the applicant limited liability company.

(8) If any person to whom a license has been issued under this Chapter no longer possesses the qualifications required by this chapter for obtaining that license, the town may suspend or revoke that license.

(9) For purposes of this title “drunk driving” or “driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug” shall include the offense of impaired driving.

3.04.108: RESTRICTIONS ON LOCATION, NUMBER OF LICENSES AND ESTABLISHMENTS:

(1) Location Restrictions: No alcoholic beverage control license shall be issued to any person where the premises would be located within six hundred feet (600') of a school, church, library, playground or park, as measured from the nearest entrance of the outlet by following the shortest route of either ordinary pedestrian traffic, or where applicable, vehicular travel along public thoroughfares, whichever is the closer, to the property boundary of a public or private school, church, library, playground or park. The premises of a licensee may not be established within two hundred feet (200') of any school, church, library, playground or park, measured in a straight line from the nearest entrance of the proposed outlet to the nearest property boundary of the school, church, library, playground or park. Nothing herein prevents the town council from considering the proximity of any educational, religious and recreational facility or any other relevant factor in reaching a decision on a proposed location.

(2) Exceptions To Location Restrictions: The restrictions contained in subsection (1) of this section govern the issuance of all alcoholic beverage control licenses under this

chapter, unless the town council determines that compliance with the distance requirements would result in peculiar and exceptional practical difficulties or exceptional and undue hardships to the applicant, that alternative locations for establishing the requested type of alcoholic beverage control license within the town are limited, and that establishing a license would not be detrimental to the public health, peace, safety and welfare of the town. In that event, the town council may, after giving full consideration to all attending circumstances and after compliance with public notice and public hearing requirements as specified in section 3.04.111 of this chapter, authorize a variance from the distance requirements to relieve the difficulties or hardships, if the variance may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter.

(3) Number of Licenses: The Town Council reserves the right at its sole discretion to restrict the number of new alcoholic beverage control licenses and the locations of establishments licensed under this chapter within the corporate limits of the town.

(4) Separate Licenses: Any license issued under this chapter shall be able to sell alcoholic beverages or otherwise conduct permitted activities only at the specific place and in the specific manner provided in such license. A separate license shall be obtained for each license classification and for each different location for which the applicant desires to carry on activities regulated by this Chapter.

3.04.109: GENERAL APPLICATION REQUIREMENTS:

(1) Contents: All applications for alcoholic beverage control licenses shall be made pursuant to this section regardless of whether the application is for a new license, renewal, or due to a change of ownership, a change of lessee of an existing licensed premises, or a change of location of an existing licensed premises. All applications authorized by this chapter shall be made on forms provided by the town and shall conform with this Chapter, other Town ordinances, the laws of the state, including the Act and regulations issued by the Commission. The application shall include, without limitation, the following:

- (a) Name, current address and telephone number of the applicant;
- (b) Applicant's age and date of birth;
- (c) Applicant's driver's license number and issuing state;

- (d) Applicant's social security number;
- (e) Applicant's federal tax identification number;
- (f) Applicant's state sales tax identification number;
- (g) Copy of applicant's current business license;
- (h) Citizenship of the applicant;
- (i) All addresses of the applicant for the previous five (5) years, including any temporary domiciles;
- (j) The type of alcoholic beverage control license desired;
- (k) Location of the premises or place of business to be licensed;
- (l) A statement verifying that the applicant meets all of the requirements of this chapter, town ordinances, the Act and regulations issued by the commission;
- (m) A statement verifying whether or not the applicant has ever forfeited bail or been convicted for drunk driving or any felony or a violation of any law or ordinance relating to alcoholic beverages, or any crime involving moral turpitude, or had any license or permit involving alcoholic beverages revoked within the last five (5) years;
- (n) A signed statement that the applicant has read, understands and will comply with all laws, ordinances, rules and regulations that are currently in force or that may be amended from time to time by the state, Wasatch County Health Department and the town relating to alcoholic beverages;
- (o) A signed consent authorizing any authorized representative of the town or law enforcement officer to investigate the applicant's criminal background;
- (p) A signed consent form granting any authorized representative of the town or law enforcement officer the unrestricted right to enter the licensed premises during business hours;
- (q) A sworn statement signed by the applicant that all the facts included in the application are true;

(r) Any other information, documents and evidence as the town may require to allow a complete evaluation of the application.

(2) False Statements: It shall be unlawful to make any false statement or misrepresentation on the alcoholic beverage control license application. Any false statement or misrepresentation shall be grounds for denial, suspension or revocation of the license.

(3) Business Entities: If the applicant is a partnership, limited liability company, association or corporation, the applicant shall provide the above information with respect to any shareholder owning more than twenty percent (20%) of the business entity and each partner, limited liability company member, association member, corporate officer or director, although the application need only be signed by a single partner, manager, member or officer. If the establishment for which the applicant seeks a license will be managed or operated by a person other than the applicant, the town shall also require that the agent, manager or operator submit an application for the purpose of a background investigation, and, if the manager or operator does not meet the requirements of this chapter, the town may deny the applicant's request for a license.

(4) Fingerprinting and Photographs: Each applicant shall, at the time of filing his license application, present himself to the police chief, or his designee, to be fingerprinted and photographed. Such fingerprints and photographs shall be clearly marked as having been taken in connection with the application.

(5) Vicinity Map: Each applicant shall provide a map showing the distance from the premises to the nearest school, church, library, playground or park.

(6) Site Plan and Building Floor Plan: Each applicant shall provide with his initial application a site plan and building floor plan, indicating all public places, security measures, plans for public entrances and exits, locations where the applicant proposes to keep, store and sell alcoholic beverages, and public and private ingress and egress to the premises.

3.04.110: APPLICATION REVIEW:

In addition to any other review of applications which may be requested by the town council or the town staff, each application for license to be issued under the provisions of this chapter shall be referred to the police chief, fire chief, building official and to the Wasatch County health department for inspection and report as follows:

(1) The applicable law enforcement entity shall make a report to the town council of the general reputation and character of the licensee, whether he is over the age of twenty one (21) years, whether he is a citizen of the United States, whether he has forfeited bail on a charge or has been convicted of a felony or crime involving driving under the influence of alcohol, moral turpitude, and whether he has violated any state or federal law or local ordinance regarding the sale, manufacture, distribution, adulteration or transportation of alcoholic beverages. If the applicant is a partnership, limited liability company, association or corporation, each partner, association member, agent, manager, corporate officer, director or shareholder owning more than twenty percent (20%) of the entity shall be subject to all the foregoing scrutiny and restrictions as if such individual were the applicant. In addition, the applicable law enforcement entity shall report as to: the general reputation and character of the persons who habitually frequent such place; the nature and kind of business conducted at such place by the applicant or by any other person or by the applicant at any other place; whether said place is or has been conducted in a lawful, quiet or orderly manner; the nature and kind of entertainment, if any, at such place; whether gambling is or has been permitted on the premises or by the applicant at any other place; and the proximity of such premises to any school, church, library, playground or park. The applicable law enforcement entity shall also add to such report his recommendation as to whether or not the application should be granted.

(2) The application shall also be referred and delivered to the applicable fire department for inspection and report to the town council. The report to the town council shall state whether the proposed licensed premises complies with all applicable laws, ordinances and regulations relating to public safety in the event of fire or panic, and whether the same is reasonably safe for its intended use.

(3) The application shall also be referred and delivered to the building official for inspection and report. The report shall state whether the proposed licensed premises complies with all applicable building laws, ordinances, codes and regulations relating to the construction of the building for its specified use.

(4) Upon receipt of an application for a license to be issued under the provisions of this chapter, the health official of the Wasatch County Health Department shall inspect, or shall cause to be inspected, all premises to be licensed to assure compliance with the sanitary and health laws and rules and regulations of the state, Wasatch County Health Department and the town in the preparation, storage, distribution and sale of alcoholic beverages. If the health official determines that the premises fulfill all health and sanitary requirements, the health official shall issue or cause to be issued an appropriate sanitary permit to the licensee. A copy of the permit shall be attached to the application for license.

3.04.111: PUBLIC HEARING:

Upon receipt of the report of the applicable law enforcement entity, applicable fire department, building official and Wasatch County Health Department, the town council, upon recommendation from the planning commission, may consider the application for a license under this Chapter. No application will be considered by the planning commission or town council until a public hearing has been held by both the planning commission and town council. All property owners within six hundred feet (600') of the property line of the proposed licensed business shall have been notified in writing at least fourteen (14) days prior to the hearing. The applicant: 1) shall be responsible for the accuracy and completeness of the list of property owners; and 2) will provide the mailing labels with the names and addresses of property owners within six hundred feet (600'). Notice of the public hearing shall be published at least fourteen (14) days in advance of the public hearing in a newspaper of general circulation. As a minimum, the advertisement shall state the date, time, location and reason for the public hearing. For purposes of this section, notice shall be considered given on the date it is deposited in the U.S. mail.

3.04.112: ISSUANCE OF LICENSE:

After receiving a recommendation from the planning commission and holding a public hearing, the town council has the sole discretion to grant, deny or to grant with conditions an alcoholic beverage control license under this chapter. The town council may issue a license only after considering the following as a minimum: type of business operation, menu items offered and emphasized, hours of operation; location; square footage, parking availability, physical characteristics, building capacity, seating capacity and condition of the proposed licensed premises; the character, background, management experience and qualifications of the applicant; the nature and class of the proposed license; the proximity to and density of other state stores, package agencies and licensed outlets; the demographics and population served; the extent of and proximity to any school, church, library, playground or park; and public input with respect to issuance of the license; and after finding that the public convenience requires and the best interests of the community will be served by the issuance of the license.

3.04.113: LICENSE IS REVOCABLE PRIVILEGE AND CONFERS NO VESTED RIGHTS:

The issuance of a license pursuant to this chapter shall grant only a revocable privilege as provided hereunder and under the laws of the state and shall not confer any vested rights

of any kind or nature upon a licensee. If the license application is denied by the town council, no new application shall be made for the premises until after the expiration of one year following the denial of the initial application.

3.04.114: TERM OF LICENSE:

All alcoholic beverage control licenses, no matter when issued, shall expire one year from the date of issue.

3.04.115: LICENSE TRANSFER PROHIBITED:

No license issued under this chapter shall be assigned, transferred, leased, subleased, sold or otherwise transferred.

3.04.116: DUTY TO REPORT CHANGE OF OWNERSHIP:

If, during the term of the license year, after the license has been granted hereunder, there shall be a change in the officers, directors, managers or agents of any licensed partnership, limited liability company or corporation, the licensee shall forthwith report any such changes in personnel in writing to the Town license officer.

3.04.117: MONETARY VALUE OF LICENSE:

A person, having been granted an alcoholic beverage control license may not sell, exchange, barter, give, or attempt in any way to dispose of the license, whether for monetary gain or not. An alcoholic beverage control license has no monetary value for the purpose of any type of disposition.

3.04.118: DISPLAY OF LICENSE CERTIFICATES:

Every license certificate issued by the town or the department of alcoholic beverage control pursuant to the Act or this Chapter shall be posted by the licensee in a conspicuous place upon the wall of the building, room, or office of the place of business next to the business license certificate so that the same be easily seen. When the certificate of license has expired or been suspended or revoked, it shall be removed. No

license certificate or business license which is not in force and effect shall be permitted to remain posted within the place of business.

3.04.119: RENEWAL OF LICENSES:

Each year, licensees shall renew their alcoholic beverage control licenses by completing an application on forms provided by the town for a license renewal. The application shall be signed under penalty of law that all information contained therein is true and returning it along with proper fees to the town within the time frame set forth in section 3.04.120 of this chapter. Renewal applications shall be submitted to the police department, fire department and building department to ascertain whether the licensee still meets the necessary qualifications. Upon receipt of the application, fees and police department, fire department and building department approval, the town shall be authorized to prepare and issue a certificate of license as provided in this chapter.

3.04.120: LICENSE FEES, PAYMENT DATES AND PENALTIES:

Alcoholic beverage control application fees and license fees shall be adopted by resolution by the town council. New license fees shall be due and payable upon making application to the town. No alcoholic beverage control license application shall be processed until all required fees are paid. Alcoholic beverage control license fees for license renewals shall be due and payable on or before the expiration thereof. If the fee is not paid within (30) days thereof then the business shall be considered to be operating without a license in violation of section 3.04.103 of this chapter and subject to criminal prosecution for every day of operation after that day. Licenses who have not paid all fees and penalties and completed renewal prior to the expiration of the (30) day period, pursuant to this chapter, shall not be granted a new license for one year.

3.04.121: CURRENT STATUS OF OTHER CHARGES:

No license shall be issued to any applicant who is in arrears in the payment to the town for any business license, or who is otherwise indebted to the town. Failure to pay business license fees or other charges assessed by the town when due shall be a basis to deny, suspend or revoke any license application or license issued hereunder.

3.04.122: LICENSE REVERSION TO TOWN:

A license issued under this chapter which is not used by the licensee within a period in excess of ninety (90) consecutive days shall automatically revert to the town and shall no longer have any validity.

3.04.123: BOND TO GUARANTEE COMPLIANCE:

The town council reserves, for implementation at a future time, the right to require of establishments licensed under this chapter, additional bonding other than required by this chapter to guarantee compliance with all laws and ordinances and which may be forfeited to the town upon such conditions as the governing body may, at a future time, adopt and specify by ordinance.

3.04.124: CERTIFICATION OF EMPLOYEES:

The right to a license hereunder shall be conditioned at all times upon compliance with the following:

(1) Beer Handler's Permit: A licensee involved in the transaction of retail beer sales for off premises consumption shall require all employees involved in the transaction of retail beer sales to obtain a beer handler's permit from the public safety department. All employees of a licensee involved in the transaction of retail beer sales will be required to possess and wear a beer handler's permit while on duty. This permit shall be worn in a conspicuous place such that the permit shall be clearly visible to any person. New employees of a licensee shall obtain a beer handler's permit within thirty (30) days of hire.

(a) Applications for Beer Handler's Permit: To obtain a beer handler's permit, applicants must:

(i) Fill out and file a beer handler's permit application form and criminal background authorization with the public safety department;

(ii) Produce acceptable photo identification showing the identity of the applicant;

(iii) Attend a beer handler's permit training session administered by the public safety department; and

(iv) Pass the beer handler's permit test given by the public safety department with a score of at least eighty percent (80%) correct.

(b) Qualifications for Beer Handler's Permit: If all of the requirements of subsection (1)(a) of this section are satisfied, the public safety department shall issue the applicant a beer handler's permit photo identification card. A permit shall not be granted to any individual who has had a felony conviction within five (5) years, or a misdemeanor conviction involving alcohol or controlled substances within three (3) years.

(c) Compliance Checks: Licensees shall permit law enforcement officers to conduct random beer handler's permit compliance checks on the licensee's premises.

(d) Licensee Duty To Inform: The licensee is required to inform the public safety department within thirty (30) days of any employee possessing a beer handler's permit whose employment is terminated for conduct that would be punishable under the statutes or ordinances regulating alcoholic beverages, or when the licensee becomes aware of any other violation involving the sale of an alcoholic beverage.

(e) Penalties for Violations by Permit Holder: A violation of this section shall be a class B misdemeanor. Additionally, an employee possessing a beer handler's permit who is convicted of violating any law involving the sale of an alcoholic beverage is not only subject to prosecution, but shall incur a suspension of the employee's beer handler's permit as follows:

(i) First violation, automatic suspension of the employee's beer handler's permit for a period of ninety (90) days;

(ii) Second violation, automatic suspension of the employee's beer handler's permit for a period of six (6) months;

(iii) Any subsequent violation, automatic suspension of the employee's beer handler's permit for a period of two (2) years.

(2) State Training: All employees of a licensee and any licensee who will be authorized to sell, furnish or serve alcoholic beverages to the public shall be at least twenty one (21)

years of age and complete, within thirty (30) days after the issuance of a license or commencement of employment, an alcohol training and education seminar as set forth in Utah Code Annotated section 62A-15-401, as amended, and shall thereafter maintain a current certification under this section. Any licensee or employee who sells, furnishes or serves alcoholic beverages without obtaining certification required herein shall, in addition to any other penalty provided herein, be prohibited from obtaining certification for a period of one year from the date of violation.

(3) Certification Denial: No certificate shall be issued to an employee or licensee who has been convicted of a drug or alcohol related offense during a period of one year preceding the application for a certificate, unless this condition is expressly waived in writing by the public safety department after investigation of the circumstances. If charges are pending against an employee or licensee arising out of a drug or alcohol related offense, no certificate shall be issued until such charges are resolved and, if there is a conviction, none shall be issued for a period of one year thereafter.

(4) Drug or Alcohol Convictions: If any certified employee or certified licensee is convicted of any drug or alcohol related offense, including the crime of driving under the influence, their certificate shall be automatically revoked and such employee or licensee shall not be permitted to sell, furnish or serve alcoholic beverages for a period of one year and until a new certification is obtained.

(5) Appeal: The procedures for revoking, suspending or refusing to renew a beer handler's permit or certification under this section shall be the same as set forth in section 3.04.127 of this chapter.

3.04.125: UNLAWFUL ACTS; GROUNDS FOR REVOCATION, SUSPENSION OR REFUSAL TO RENEW LICENSE:

It shall be a class B misdemeanor, and the town council may revoke, suspend or refuse to renew an alcoholic beverage control license, if a licensee violates any operational restrictions of the license, any unlawful acts set forth in this chapter or the Act, or any of the following grounds for revocation, suspension or refusal to renew a license:

(1) Unlawful Acts:

(a) Intoxicated Person on Licensed Premises: It shall be unlawful for any person or for any of his agents or employees to allow intoxicated persons to remain in or about any licensed premises.

(b) Advertising Sale: It shall be unlawful to advertise the sale of alcoholic beverages on billboards or other media in violation of the Utah Alcoholic Beverage Control Act.

(c) Wholesaler and Retailer not to have Common Interests: It shall be unlawful for any dealer, brewer, warehouse or wholesaler to either directly or indirectly supply, give or pay for any furniture, furnishings or fixtures of a retailer, and it shall be unlawful for any dealer or brewer to advance funds, money or pay for any license of a retailer or to be financially interested either directly or indirectly in the conduct or operation of the business of any retailer.

(d) Violence and Disorderly Conduct on Premises: It shall be unlawful for any licensee to suffer or allow any violence or disorderly conduct to be committed, or suffer or allow any disorderly person to be or remain, upon any licensed premises.

(e) Minimum Light and Open View Required In Licensed Premises: It shall be unlawful for any person to own, operate or manage any premises licensed for the sale of beer without complying with the following lighting and view requirements:

(i) During business hours, a minimum of three (3) candlepower of light measured at a level five feet (5') above the floor shall be maintained; and

(ii) No enclosed booths, blinds or stalls shall be erected or maintained.

(f) Employees: It shall be unlawful for anyone to be employed by a licensee who has been convicted of a felony within five (5) years prior to employment or who has not secured an expungement of record of any felony conviction entered prior to such five (5) year period, or who has within three (3) years prior been convicted of any violation of any law or ordinance involving moral turpitude, controlled substances or relating to alcoholic beverages, driving charges involving alcohol or drugs, or keeping a gambling or disorderly house, or who has pleaded guilty to or has forfeited bail on any such charge.

(g) Employers: It shall be unlawful for a licensee not to inform the public safety department of any employees whose employment is terminated for conduct that would be punishable under the statutes or ordinances regulating alcoholic beverages, regardless of whether the conduct has been previously reported to the public safety department.

(h) Inspection of Premises and Duty to Furnish Samples: All premises licensed pursuant to this Chapter or the Act shall be subject to inspection by any law enforcement agency or by any designated agent of the town as well as by the Wasatch County Health Department or State board of health. It shall be unlawful for any licensee to refuse, at the request of the board of health, to furnish samples of beer which the licensee holds for sale.

(i) Premises Accessibility to Law Enforcement: It shall be unlawful for any door or other means of ingress or egress from any licensed premises to be locked or barred or barricaded in any way so as to interfere with the free entrance of the licensed premises by any law enforcement officer or any other peace officer at any time while the premises are occupied or open to the public. All doors or other means of entrance thereto during the time the premises is occupied or open to the public shall be left unlocked or unfastened so that any law enforcement may enter the same without any hindrance or delay; provided, however, that there may be maintained upon the premises a locked storeroom for the keeping of goods and supplies used in the business. Such storerooms shall at all times be subject to search and inspection by any law enforcement officer upon compliance with procedural requirements. It is unlawful for any licensee to deny any peace officer immediate access to the storeroom for search or inspection upon demand made for such access. It is unlawful for any licensee to suffer any person, except a bona fide employee of the licensee or peace officer, to enter or remain in the storeroom.

(j) Warning of Approach of Law Enforcement: It shall be unlawful for any person commonly known as a "lookout" to be stationed or maintained to give warning of the approach of any peace officer to the premises. It shall be unlawful to maintain or operate any electrical or other device which is used or capable of being used to give warning to persons within any such licensed premises of any peace officer.

(k) Solicitation for Immoral Purposes on Premises: It is unlawful for any person to solicit any other person upon any licensed premises for any sexual purpose, or to be upon such premises for the purpose of solicitation. It is unlawful for any licensee to suffer or allow any violation of the immediately preceding prohibition upon the licensed premises.

(2) Additional Grounds for Revocation, Suspension or Refusal to Renew License:

(a) False or Fraudulent Information: The licensee submits false or fraudulent information on any application or document filed with the town.

(b) Delinquent Fees: The licensed business is delinquent for more than ninety (90) days in the payment of any fee or charge due the town.

(c) License Transfer: The licensee attempts to, or does, assign, transfer or sell a license in violation of this chapter.

(d) Records and Documents: The licensee fails to keep, or make available to the town upon reasonable request, all records, invoices, records, bills or other papers and documents relating to the purchase, sale and delivery of alcoholic beverages.

(e) Convictions: The licensee is convicted of a felony or any violation of any law or ordinance relating to alcoholic beverages, driving under the influence of alcohol or alcohol related reckless driving, keeping a gambling house or disorderly house, or any law or ordinance involving moral turpitude.

(f) Violations of Law or Regulations: The licensee violates or fails to comply with this Chapter or the Act, or ceases to possess all of the qualifications required by this Chapter or the Act.

(g) Failure to Meet License Qualifications: The licensee no longer possesses the qualifications required for the alcoholic beverage control license.

3.04.126: BUSINESS OWNER RESPONSIBLE FOR CONCESSIONAIRE:

If otherwise permitted by law, business or premises owners who contract out the sale of alcoholic beverages on the business premises to an independent concessionaire, violation by said concessionaire of any provision of this chapter shall constitute grounds for suspension and/or revocation of the license of said business or premises owner.

3.04.127: PROCEDURES FOR REVOKING, SUSPENDING OR REFUSING TO RENEW LICENSE:

The Town should follow the following procedures in suspending, revoking or refusing to renew an alcoholic beverage control license:

(1) Investigation: The Public Safety Director shall receive all complaints of alleged violations of this chapter and is responsible for ordering through its department or other appropriate department the investigation of all allegations of a violation of, or noncompliance with, this chapter, the Act, or any condition imposed upon the licensee by

the Town in issuing the license. If, upon completion of the investigation, the Public Safety Director determines that there is good cause to believe that a violation has occurred, he/she shall cause a written notice of the violation to be delivered to the licensee, which may be delivered by U.S. mail, postage prepaid to the address shown on the application of a license under this chapter, which notice shall contain the following: a) the date and nature of the alleged violation; b) a statement that said violation may be grounds for suspension or revocation of the license; c) a statement that the licensee may request a hearing before a hearing officer by filing a written request therefor within ten (10) days after receipt of the notice of violation; and d) a statement that failure of the licensee to file a written request for hearing shall be deemed an admission of the truthfulness of the alleged violation. In the event that the licensee fails to file a written request for hearing, the hearing may immediately suspend or revoke the license. In the event that the licensee files a written request for hearing, the license officer shall then set a hearing before the hearing officer and shall send notice of the date, time and place of hearing to the licensee.

(2) Hearing: The hearing officer shall conduct a hearing and may accept any relevant and material evidence and testimony and apply any evidentiary rules set forth in the rules of the Utah department of alcoholic beverage control. The town shall prepare an official record of the hearing, including all testimony recorded mechanically or stenographically and all exhibits introduced. The town is not required to transcribe such record except pursuant to an appeal; however, the town may transcribe the record or allow for its transcription by the person requesting it. Hearings before the hearing officer are open to the public and are informal, with technical rules of evidence not applying to the proceedings. The licensee involved and any person requesting a hearing may be present and cross examine witnesses and give evidence at the hearing.

(3) Decision: If the hearing is conducted, the hearing officer shall issue a decision no later than ten (10) days following the hearing. Such decision may be in writing or entered on the record at the hearing. Such decision shall then be final for purposes of appeal.

(4) Emergency Suspension: Upon the arrest of any proprietor, officer, director, manager, managing agent or licensee holding any alcoholic beverage control license from the town, the town council may take emergency action by immediately suspending the operation of the licensee for the period during which the criminal matter is being adjudicated.

3.04.128: APPLICABILITY:

This Chapter shall be applicable to all persons holding valid licenses hereunder at the effective date hereof, or who may hold such in the future.

3.04.129: PENALTIES FOR VIOLATION:

(1) General Provisions: In addition to the denial, suspension, revocation or refusal to renew an alcoholic beverage control license, the licensee or any person who shall violate the provisions of this chapter shall be guilty of a class B misdemeanor, unless otherwise established by law. For purposes of this chapter, a violation can be found either as the result of a criminal conviction or as the result of an administrative hearing under the licensing provisions of this chapter or state law.

(2) Enhancement for Licensees: This subsection applies to any conviction of class B misdemeanors, or more serious classification of offenses, under this chapter or similar state laws. It is specifically provided, that in case of a licensee's second conviction, within a twenty four (24) month period, the minimum penalty prescribed shall be not less than five hundred dollars (\$500.00), and in case of a licensee's third or subsequent conviction under this chapter within a twenty four (24) month period, the minimum penalty shall be not less than one thousand dollars (\$1,000.00). For the purposes of this chapter, the forfeiture of bail on a charge is deemed a prior conviction. This does not preclude the enforcement of any civil or administrative penalties applicable to said violations.

(3) Civil Penalties for Licensees: Violations of this chapter by an alcoholic beverage control licensee, officer, manager, employee, agent or beer handler's permit shall result in the following administrative sanctions in addition to any criminal penalties assessed:

(a) First violation, fourteen (14) day suspension of an alcoholic beverage control license or beer handler's permit.

(b) Second violation within twenty four (24) month period, six (6) month suspension of an alcoholic beverage control license or beer handler's permit.

(c) Third violation within forty eight (48) month period, one year suspension of an alcoholic beverage control license or beer handler's permit.

(d) Fourth violation within forty eight (48) month period, permanent revocation of alcoholic beverage control license or beer handler's permit.

(4) Time Calculation: Any time period, during which a permit is suspended, shall be excluded when calculating the time period in determining the applicable enhancing civil penalty.

PART 2: OFF PREMISES BEER RETAIL LICENSE; GENERAL FOOD STORES AND CONVENIENCE STORES

3.04.201: OFF PREMISES BEER RETAIL LICENSE:

(1) Permitted Sales: An off premises beer retail license shall entitle the licensee to sell beer on the premises described therein in original containers, not to exceed one quart, for consumption off the premises.

(2) Applicability: An off premises beer retail license may be issued by the town to a general food store or a convenience store.

(3) Beer Sales as Percent of Sales: Each off premises beer retail licensee shall maintain at least eighty percent (80%) of its total monetary gross receipts from the sale of products other than beer.

(4) Prohibited Actions: It shall be unlawful for any person to sell or provide beer for consumption off the premises without first having obtained an off premises beer retail license to do so from the Town. It shall also be unlawful for an off premises beer retail licensee to permit the consumption of beer or other alcoholic beverages on the licensed premises.

(5) Commercial Zones: Any license under this chapter may only be granted if the use is allowed within the applicable zoning district. Off premises beer retail licenses may not be granted in any other zoning district of the town.

(6) Employment of Minors: A licensee holding an off premises beer retail license may employ persons eighteen (18) years of age through twenty (20) years of age to transact the sale of or handle beer in its sealed original containers, provided they are under the supervision of a person at least twenty one (21) years of age and who is on the premises. Said licensee may also employ persons sixteen (16) years of age through seventeen (17) for the handling of beer, exclusive of transactions, in its sealed original containers, provided they are under the supervision of a person at least twenty one (21) years of age and who is on the premises. Said activity is limited to locating or transporting beer upon the premises.

(7) Record Requirements: Holders of off premises beer retail licenses shall maintain records which shall disclose the gross sale of beer during each and every year. Such records shall be available for inspection and audit by an authorized town employee at any

time following the end of each year and for eighteen (18) months thereafter. Failure of a licensee to properly maintain the required records or failure to submit such records for inspection and audit shall be cause for suspension or revocation of an off premises beer retail license.

(8) Advertising: No advertising shall take place in violation of the Utah Alcoholic Beverage Control Act or regulations issued by the Utah department of alcoholic beverage control.

(9) Shoplifting Controls: An off premises beer retail licensee shall make every reasonable effort to limit the potential for theft of alcoholic beverages from licensed premises. A clear, unobstructed view of all portions of the interior shall be available at all times from a point within the licensed premises at or near the main public entrance. An alcoholic beverage inventory shrinkage record shall be kept by the licensee and made available at any time upon request to the law enforcement agency or town staff for inspection or audit. Failure of a licensee to properly maintain the alcoholic beverage inventory shrinkage record or failure to submit such records for inspection and audit shall be a class B misdemeanor and shall be cause for suspension or revocation of the off premises beer retail license.

PART 3: ON PREMISES BEER RETAIL LICENSE

3.04.301: ON PREMISES BEER RETAIL LICENSE:

(1) Application and Renewal Requirements: It shall be unlawful for any person to sell, serve or allow the consumption of beer on its premises without first having obtained an on premises beer retail license to do so from both the town and the commission. In addition to the general application requirements of this chapter, a person seeking an on premises beer retail license shall provide to the town the same information required by Utah Code Annotated section 32A-10-202 of the Act, as amended.

(2) Operational Restrictions: Each on premises beer retail licensee shall abide by all of the operational restrictions set forth in Utah Code Annotated section 32A-10-206 of the Act, as amended, that are not in conflict with this part.

(3) Commercial Zones: An on premises beer retail license may only be granted if the licensee's premises is located in a zoning district wherein such use is allowed. On premises beer retail licenses may not be granted in any other zoning district of the town.

(4) Record Requirements: Holders of on premises beer retail licenses shall maintain records required by Utah Code Annotated section 32A-10-206 of the Act, as amended, and such records shall be available for inspection and audit by an authorized town employee at any time following the end of each year and for eighteen (18) months thereafter. Failure of a licensee to properly maintain the required records or failure to submit such records for inspection and audit shall be cause for suspension or revocation of an on premises beer retail license.

(5) Bonding Requirements: Each on premises beer retail licensee shall post a cash or corporate surety bond in the penal sum of ten thousand dollars (\$10,000.00), payable to the town, which the licensee has procured and must maintain for so long as the licensee continues to operate as an on premises beer retail licensee. The bond shall be in a form approved by the town attorney, conditioned upon the licensee's faithful compliance with this title and the ordinances and rules and regulations of the town and the commission. If the ten thousand dollar (\$10,000.00) corporate surety bond is canceled due to the licensee's negligence, a three hundred dollar (\$300.00) reinstatement fee may be assessed by the town. No part of any cash or corporate bond so posted may be withdrawn during the period the license is in effect, or while revocation proceedings are pending against the licensee. A bond filed by the licensee may be forfeited if the license is finally revoked.

PART 4: RESTAURANT LIQUOR LICENSE

3.04.401: RESTAURANT LIQUOR LICENSE:

(1) Application and Renewal Requirements: It shall be unlawful for any person to sell, serve, or allow the consumption of beer or liquor on its premises without first having obtained a restaurant liquor license to do so from both the town and the commission. In addition to the general application requirements of this Chapter, a person seeking a restaurant liquor license shall provide to the town the same information required by Utah Code Annotated section 32A-4-102 of the Act, as amended.

(2) Operational Restrictions: Each restaurant liquor licensee shall abide by all of the operational restrictions set forth in Utah Code Annotated section 32A-4-106 of the Act, as amended, that are not in conflict with this part.

(3) Commercial Zones: A restaurant liquor license may only be granted if the licensee's premises is located in a zoning district wherein such use is allowed. Restaurant liquor licenses may not be granted in any other zoning district of the town.

(4) Record Requirements: Holders of restaurant liquor licenses shall maintain records required by Utah Code Annotated section 32A-4-106 of the Act, as amended, and such records shall be available for inspection and audit by an authorized town employee at any time following the end of each year and for eighteen (18) months thereafter. Failure of a licensee to properly maintain the required records or failure to submit such records for inspection and audit shall be cause for suspension or revocation of a restaurant liquor license.

(5) Bonding Requirements: Each restaurant liquor licensee shall post a cash or corporate surety bond in the penal sum of one thousand dollars (\$1,000.00), payable to the town, which the licensee has procured and must maintain for so long as the licensee continues to operate as a restaurant liquor licensee. The bond shall be in a form approved by the town attorney, conditioned upon the licensee's faithful compliance with this title and the ordinances and rules and regulations of the town and the commission. If the one thousand dollar (\$1,000.00) corporate surety bond is canceled due to the licensee's negligence, a three hundred dollar (\$300.00) reinstatement fee may be assessed by the town. No part of any cash or corporate bond so posted may be withdrawn during the period the license is in effect, or while revocation proceedings are pending against the licensee. A bond filed by the licensee may be forfeited if the license is finally revoked.

PART 5: LIMITED RESTAURANT LIQUOR LICENSE

3.04.501: LIMITED RESTAURANT LIQUOR LICENSE:

(1) Definitions: For purposes of this part, the term "wine" shall be defined as set forth in Utah Code Annotated section 32A-4-301 of the Act, as amended.

(2) Application and Renewal Requirements: It shall be unlawful for any person to sell, serve, or allow the consumption of beer, heavy beer or wine on its premises without first having obtained a limited restaurant liquor license to do so from both the town and the commission. In addition to the general application requirements of this chapter, a person seeking a limited restaurant liquor license shall provide to the town the same information required by Utah Code Annotated section 32A-4-303 of the Act, as amended.

(3) Operational Restrictions: Each limited restaurant liquor licensee shall abide by all of the operational restrictions set forth in Utah Code Annotated section 32A-4-307 of the Act, as amended, that are not in conflict with this part.

(4) Commercial Zones: A limited restaurant liquor license may only be granted if the licensee's premises are located in a zoning district wherein such use is allowed. Limited restaurant liquor licenses may not be granted in any other zoning district of the town.

(5) Record Requirements: Holders of limited restaurant liquor licenses shall maintain records required by Utah Code Annotated section 32A-4-307 of the Act, as amended, and such records shall be available for inspection and audit by an authorized town employee at any time following the end of each year and for eighteen (18) months thereafter. Failure of a licensee to properly maintain the required records or failure to submit such records for inspection and audit shall be cause for suspension or revocation of a limited restaurant liquor license.

(6) Bonding Requirements: Each limited restaurant liquor licensee shall post a cash or corporate surety bond in the penal sum of one thousand dollars (\$1,000.00), payable to the town, which the licensee has procured and must maintain for so long as the licensee continues to operate as a limited restaurant liquor licensee. The bond shall be in a form approved by the town attorney, conditioned upon the licensee's faithful compliance with this title and the ordinances and rules and regulations of the town and the commission. If the one thousand dollar (\$1,000.00) corporate surety bond is canceled due to the licensee's negligence, a three hundred dollar (\$300.00) reinstatement fee may be assessed by the town. No part of any cash or corporate bond so posted may be withdrawn during the period the license is in effect, or while revocation proceedings are pending against the licensee. A bond filed by the licensee may be forfeited if the license is finally revoked.

PART 6: ON PREMISES BANQUET LICENSE

3.04.601: ON PREMISES BANQUET LICENSE:

(1) Definitions: For purposes of this part, the terms "banquet", "hotel", and "resort facility" and "room service" shall be defined as set forth in Utah Code Annotated section 32A-4-401 of the Act, as amended.

(2) Application and Renewal Requirements: It shall be unlawful for any person to sell, serve or allow consumption of beer or other alcoholic beverages in connection with that person's banquet and room service activities without first having obtained an on premises banquet license to do so from both the town and the commission. In addition to the general application requirements of this chapter, a person seeking an on premises banquet license shall provide to the town the same information required by Utah Code Annotated section 32A-4-402 of the Act, as amended.

(3) Operational Restrictions: Each on premises banquet licensee shall abide by all of the operational restrictions set forth in Utah Code Annotated section 32A-4-406 of the Act, as amended, that are not in conflict with this part.

(4) Commercial Zones: An on premises banquet license may only be granted if the licensee's premises is located in a zoning district wherein such use is allowed. On premises banquet licenses may not be granted in any other zoning district of the town.

(5) Record Requirements: Holders of on premises banquet licenses shall maintain records required by Utah Code Annotated section 32A-4-406 of the Act, as amended, and such records shall be available for inspection and audit by an authorized town employee at any time following the end of each year and for eighteen (18) months thereafter. Failure of a licensee to properly maintain the required records or failure to submit such records for inspection and audit shall be cause for suspension or revocation of an on premises banquet license.

(6) Bonding Requirements: Each on premises banquet licensee shall post a cash or corporate surety bond in the penal sum of one thousand dollars (\$1,000.00), payable to the town, which the licensee has procured and must maintain for so long as the licensee continues to operate as an on premises banquet licensee. The bond shall be in a form approved by the town attorney, conditioned upon the licensee's faithful compliance with this title and the ordinances and rules and regulations of the town and the commission. If the one thousand dollar (\$1,000.00) corporate surety bond is canceled due to the licensee's negligence, a three hundred dollar (\$300.00) reinstatement fee may be assessed by the town. No part of any cash or corporate bond so posted may be withdrawn during the period the license is in effect, or while revocation proceedings are pending against the licensee. A bond filed by the licensee may be forfeited if the license is finally revoked.

PART 7: PRIVATE CLUB LIQUOR LICENSE

3.04.701: PRIVATE CLUB LIQUOR LICENSE:

(1) Application and Renewal Requirements: It shall be unlawful for a private club to sell, serve, or allow the consumption of beer or other alcoholic beverages on its premises without first having obtained a private club liquor license to do so from both the Town and the Commission. In addition to the general application requirements of this chapter, a person seeking a private club liquor license shall provide to the town the same information required by Utah Code Annotated section 32A-5-102 of the Act, as amended.

(2) Operational Restrictions: Each private club liquor licensee shall abide by all of the operational restrictions set forth in Utah Code Annotated section 32A-5-107 of the Act, as amended, that are not in conflict with this part.

(3) Commercial Zones: A private club liquor license may only be granted if the licensee's premises is located in a zoning district wherein such use is allowed. Private club liquor licenses may not be granted in any other zoning district of the town.

(4) Record Requirements: Holders of private club liquor licenses shall maintain records required by Utah Code Annotated section 32A-5-107 of the Act, as amended, and such records shall be available for inspection and audit by an authorized town employee at any time following the end of each year and for eighteen (18) months thereafter. Failure of a licensee to properly maintain the required records or failure to submit such records for inspection and audit shall be cause for suspension or revocation of a private club liquor license.

(5) Bonding Requirements: Each private club liquor licensee shall post a cash or corporate surety bond in the penal sum of one thousand dollars (\$1,000.00) payable to the town, which the licensee has procured and must maintain for so long as the licensee continues to operate as a private club liquor licensee. The bond shall be in a form approved by the Town attorney, conditioned upon the licensee's faithful compliance with this title and the ordinances and rules and regulations of the town and the commission. If the one thousand dollar (\$1,000.00) corporate surety bond is canceled due to the licensee's negligence, a three hundred dollar (\$300.00) reinstatement fee may be assessed by the town. No part of any cash or corporate bond so posted may be withdrawn during the period the license is in effect, or while revocation proceedings are pending against the licensee. A bond filed by the licensee may be forfeited if the license is finally revoked.

PART 8: SINGLE EVENT PERMIT

3.04.801: SINGLE EVENT PERMIT:

(1) Application and Renewal Requirements: It shall be unlawful for a "qualified entity", as defined under Utah Code Annotated section 32A-7-101 of the Act, as amended, that is conducting a convention, civic or community enterprise, to sell, serve or allow the consumption of liquor without first having obtained a single event permit to do so from both the town and the commission. In addition to the general application requirements of this Chapter, a person seeking a single event permit shall provide to the town the same information required by Utah Code Annotated section 32A-7-102 of the Act, as amended. The Town shall not issue more than four (4) single event permits in any one calendar year to the same qualified entity.

(2) Operational Restrictions: Each single event permittee shall abide by all of the operational restrictions set forth in Utah Code Annotated section 32A-7-106 of the Act, as amended, that are not in conflict with this part.

(3) Commercial Zones: A single event permit may only be granted if the permittee's premises is located in a zoning district wherein such use is allowed. A single event permit may not be granted in any other zoning district of the town.

(4) Bonding Requirements: Each applicant for a single event permit shall post a cash or corporate surety bond in the penal sum of one thousand dollars (\$1,000.00), with the exception of a class D private club liquor license for which the bond shall be ten thousand dollars (\$10,000.00), payable to the town, which the licensee has procured and must maintain for so long as the permit is in effect. The bond shall be in a form approved by the Town attorney, conditioned upon the permittee's faithful compliance with this chapter, the Act, and the rules and regulations of the commission. No part of any cash or corporate bond so posted may be withdrawn during the period the permit is in effect. A bond filed by the permittee may be forfeited if the permit is revoked.

PART 9: TEMPORARY SPECIAL EVENT PERMIT

3.04.901: TEMPORARY SPECIAL EVENT PERMIT:

(1) Application and Renewal Requirements: It shall be unlawful for a person to sell beer for on premises consumption at a temporary special event without first having obtained a temporary special event permit to do so from both the town and the commission. In addition to the general application requirements of this chapter, a person seeking a temporary special event permit shall provide to the town the same information required by Utah Code Annotated section 32A-10-302 of the Act, as amended.

(2) Operational Restrictions: Each temporary special event permittee shall abide by all of the operational restrictions set forth in Utah Code Annotated section 32A-10-303 of the Act, as amended, that are not in conflict with this part.

(3) Commercial Zones: A temporary special event permit may only be granted if the permittee's premises is located in a zoning district wherein such use is allowed. A temporary special event permit may not be granted in any other zoning district of the town.

(4) Bonding Requirements: Each applicant for a temporary special event permit shall post a cash or corporate surety bond in the penal sum of five hundred dollars (\$500.00), payable to the town, which the licensee has procured and must maintain for so long as the permit is in effect. The bond shall be in a form approved by the town attorney, conditioned upon the permittee's faithful compliance with this chapter, the Act, and the rules and regulations of the commission. No part of any cash or corporate bond so posted may be withdrawn during the period the permit is in effect. A bond filed by the permittee may be forfeited if the permit is revoked.

(5) Duration of Permit: The duration of any temporary special event permit granted hereunder shall not exceed thirty (30) days. The sale of beer under a series of permits issued to the same person may not exceed a total of ninety (90) days in any one calendar year.

CHAPTER 5

CHARITABLE SOLICITATIONS

Section

- 3.05.101: DEFINITIONS:
- 3.05.102: USE OF PERSON'S NAME WITHOUT CONSENT FOR SOLICITING CONTRIBUTIONS PROHIBITED; EXCEPTION
- 3.05.103: USE OF NAME WITHOUT CONSENT ON STATIONERY OR AS ONE WHO CONTRIBUTED TO ORGANIZATION PROHIBITED
- 3.05.104: VIOLATION; PENALTY

3.05.101: DEFINITIONS:

As used in this chapter:

CHARITABLE ORGANIZATION: Any organization that is benevolent, philanthropic, patriotic or eleemosynary, or one purporting to be such.

CONTRIBUTION: The promise or grant of any money or property of any kind or value.

PERSON: Any individual, organization, group, association, partnership, corporation or any combination of them.

PROFESSIONAL FUNDRAISER: Any person who, for compensation or any other consideration, plans, conducts or manages the solicitation of contributions for or on behalf of any charitable organization or any other person, or who engages in the business of, or holds himself out to persons as independently engaged in the business of soliciting contributions for such purpose, but shall not include a bona fide officer or employee of a charitable organization.

PROFESSIONAL SOLICITOR: Any person who is employed or retained for compensation by a professional fundraiser to solicit contributions in this municipality for charitable purposes.

3.05.102: USE OF PERSON'S NAME WITHOUT CONSENT FOR SOLICITING CONTRIBUTIONS PROHIBITED; EXCEPTION:

No charitable organization, professional fundraiser or professional solicitor, seeking to raise funds for charitable purposes, shall use the name of any other person for the purpose of soliciting contributions without the written consent of the person; provided, that this section shall not apply to religious corporations or organizations, charities, agencies and organizations operated, supervised or controlled by or in connection with a religious corporation or organization.

3.05.103: USE OF NAME WITHOUT CONSENT ON STATIONERY OR AS ONE WHO CONTRIBUTED TO ORGANIZATION PROHIBITED:

It is deemed to be a violation of this chapter to use, without written consent, the name of a person for the purpose of soliciting contributions if the person's name is listed on any stationery, advertisement, brochure or correspondence, or a charitable organization, or his name is listed or referred to as one who has contributed to, sponsored or endorsed the charitable organization or its activities.

3.05.104: VIOLATION; PENALTY:

Any person who violates the provisions of this chapter is guilty of a class B misdemeanor.

CHAPTER 6 OFFENSIVE BUSINESSES AND FACILITIES

Section

- 3.06.101: OFFENSIVE BUSINESS; PERMIT REQUIRED
- 3.06.102: PERMITS; ISSUANCE
- 3.06.103: EXISTING OFFENSIVE BUSINESSES AND FACILITIES
- 3.06.104: CONTROL OF ANIMAL AND FOWL FACILITIES

3.06.101: OFFENSIVE BUSINESS; PERMIT REQUIRED:

(1) No person shall commence or change the location of an offensive business or establishment in or within one mile of the limits of this municipality without first filing an application for a permit to do so with the Town Recorder.

(2) "Offensive businesses", within the meaning of this chapter, shall include, but not be limited to, packing houses, dairies, tanneries, canneries, renderies, junk or salvage yards, bone factories, slaughterhouses, butcher shops, soap factories, foundries, breweries, distilleries, livery stables, blacksmith shops, or any other enterprise or establishment which ctes excessive odors, fumes, smoke, gases or noises.

(3) The application for a permit shall specify the location at which the business or establishment is to be operated and maintained or the new location to which it is to be moved. The application shall describe the type of activity which will be conducted and describe the manner in which the business or establishment shall eliminate, control or modify the emission by the business of the undesirable odors, fumes, noises and other noisome features and the manner in which it shall be screened from public view, if its appearance is offensive.

3.06.102: PERMITS; ISSUANCE:

(1) The town recorder shall cause a study to be made of the proposed business or relocation of any offensive business or establishment by the board of health and by personnel engaged in the inspection of buildings and other facilities. A report and recommendation shall be made to the governing body. The governing body, after review, may grant to the applicant an opportunity to be heard and present additional facts. Thereafter the governing body may:

(a) Deny the application;

(b) Recommend a modification thereof;

(c) Grant a limited permit to enter into the business or make the change of location subject to the requirement that the business or facility conform to standards established by the governing body with reference to controlling the offensive features of the business.

(2) In the event a permit is granted, it shall be subject to revocation either upon failure of the operator or owner to conduct his business in the manner specified by the governing body at the time of the granting of the permit, or because a change of circumstances makes the continued operation or maintenance of the business or facility a public nuisance.

(3) The governing body shall have power to revoke or modify the permission to operate and maintain the business in such a manner as it deems necessary for the public good.

3.06.103: EXISTING OFFENSIVE BUSINESSES AND FACILITIES:

(1) The governing body may require an investigation of any existing offensive business or facility to determine whether or not it should be permitted to remain in existence in or within one mile of the municipal limits. If the governing body determines that the continuation of the business or facility has become a nuisance to persons situated within the municipal limits, or that ample control is not being exercised to minimize the creation of excessive odors, fumes, smoke, gases and noise, it shall notify the owner or operator thereof that the governing body is considering revoking or modifying the operator's license.

(2) If the governing body decides to require a modification of the manner in which the business or facility is to be maintained, it shall specify the standards or specifications to which the enterprise must conform or otherwise lose its license to engage thereafter in the business or activity.

3.06.104: CONTROL OF ANIMAL AND FOWL FACILITIES:

(1) The governing body shall have the power to prohibit or control the location and management of any offensive, unwholesome business or establishment in or within one mile of the municipality and may compel the owner of any pigsty, privy, barn, corral,

fur-bearing animal farm, feed yard, poultry farm or other unwholesome or nauseous house or place to cleanse, abate or remove the same.

(2) The governing body may on its own initiative and shall, on complaint of a member of the public, examine the operation, control or location of any business or facility for the purpose of determining whether or not the operation of such business or facility should be improved so as to minimize the offensive and unwholesome characteristics or whether the business or activity should be moved or abated.

(3) In the event that the governing body decides that the business or facility should be abated, removed or controlled, it shall notify the owner or operator of the business or facility of such fact.

(4) After a hearing, the governing body may issue a limited license wherein it may prescribe the specifications and standards which must be followed by the business or facility in order to be permitted to continue in operation.

(5) Upon determination by the governing body that the business or facility is a nuisance, it shall have power to order the abatement or removal of the facility or establishment. If the owner fails to conform to such order, the governing body shall have the power to bring all necessary legal proceedings to force removal, abatement or adherence to standards.

CHAPTER 7 RESIDENTIAL SOLICITATION

Section

- 3.07.101: PURPOSE
- 3.07.102: NO OTHER TOWN LICENSE OR APPROVAL REQUIRED
- 3.07.003: DEFINITIONS
- 3.07.004: EXCEPTIONS FROM CHAPTER
- 3.07.005: UNREGISTERED SOLICITATION PROHIBITED
- 3.07.006: REGISTRATION OF SOLICITORS
- 3.07.007: APPLICATION FORM
- 3.07.008: WRITTEN DISCLOSURES
- 3.07.009: WHEN REGISTRATION BEGINS
- 3.07.010: ISSUANCE OF CERTIFICATES
- 3.07.011: FORM OF CERTIFICATE AND IDENTIFICATION BADGE
- 3.07.012: MAINTENANCE OF REGISTRY
- 3.07.013: NON-TRANSFERABILITY OF CERTIFICATES
- 3.07.014: DENIAL, SUSPENSION, OR REVOCATION OF A CERTIFICATE OF REGISTRATION
- 3.07.015: APPEAL
- 3.07.016: DECEPTIVE SOLICITING PRACTICES PROHIBITED
- 3.07.017: "NO SOLICITING" NOTICE
- 3.07.180: DUTIES OF SOLICITORS
- 3.07.019: TIME OF DAY RESTRICTIONS
- 3.07.020: BUYER'S RIGHT TO CANCEL
- 3.07.021: PENALTIES
- 3.07.022: PRIVATE ACTION

3.07.001: PURPOSE:

Residents of the Town have an inalienable interest in their personal safety, well-being, and privacy in their residences, as well as their ability to provide or receive information regarding matters of personal belief, political or charitable activities, and goods and services lawfully in commerce. The Town has a substantial interest in protecting the well-being, tranquility, personal safety, and privacy of its citizens, which includes the ability to protect citizens from unwanted intrusions upon residential property. The Town also has a substantial interest in protecting citizens from fraud or otherwise unfair consumer sales practices as well as criminal activity.

There must be a balance between these substantial interests of the Town and its citizens, and the effect of the regulations in this Chapter on those who are regulated. Based on the collective experiences of Town officials derived from regulating business activity, protecting persons and property from criminal conduct, responding to the inquiries of citizens regarding door-to-door solicitation, the experience of its law enforcement officers and those affected by door-to-door canvassing and solicitation, as well as judicial decisions regarding door-to-door solicitation, the Town adopts this Chapter to promote the Town's substantial interests in:

- (1) Respecting citizen's decisions regarding privacy in their residences;
- (2) Protecting persons from criminal conduct;
- (3) Providing equal opportunity to advocate for and against religious, political position, or charitable activities; and
- (4) Permitting truthful and non-misleading door-to-door solicitation regarding lawful goods or services in intrastate or interstate commerce.

The Town finds that the procedures, rules, and regulations set forth in this Chapter are narrowly tailored to preserve and protect the Town interests referred to herein while at the same time balancing the rights of those regulated.

3.07.002: NO OTHER TOWN LICENSE OR APPROVAL REQUIRED:

- (1) Registered solicitors and persons exempt from registration need not apply for, nor obtain, any other license, permit, or registration from the Town to engage in door-to-door solicitation.
- (2) Any business licensed by the Town under another Town ordinance that uses employees, independent contractors, or agents for door-to-door solicitation in an effort to provide any tangible or intangible benefit to the business, shall be required to have such solicitors obtain a certificate, unless otherwise exempt from registration.
- (3) Those responsible persons or entities associated with registered solicitors need not apply for, nor obtain, any other license, permit, or registration from the Town, provided they do not establish a temporary or fixed place of business in the Town.

(4) Nothing herein is intended to interfere with or supplant any other requirement of federal, state, or other local government law regarding any license, permit, or certificate that a registered solicitor is otherwise required to have or maintain.

3.07.003: DEFINITIONS:

For the purposes of this Chapter, the following definitions shall apply:

- (1) "Advocating" means speech or conduct intended to inform, promote, or support religious belief, political position, or charitable activities.
- (2) "Appeals Officer" means the Mayor or designee of the Town responsible for receiving the information from the Town and appellant regarding the denial, suspension, or revocation of a certificate and issuing a decision as required by this Chapter.
- (3) "Appellant" means the person or entity appealing the denial, suspension, or revocation of a certificate, either personally as an applicant or registered solicitor, or on behalf of the applicant or registered solicitor.
- (4) "Applicant" means an individual who is at least sixteen (16) years of age and not a corporation, partnership, limited liability company, or other lawful entity who applies for a certificate permitting door-to-door solicitation.
- (5) "Application form" means a standardized form provided by the Town to an applicant to be completed and submitted as part of registration.
- (6) "BCI" means Bureau of Criminal Identification.
- (7) "Business" means a commercial enterprise that is to be licensed by the Town as a person or entity under this Title, having a fixed or temporary physical location within the Town.
- (8) "Certificate" means an annual or renewal certificate permitting door-to-door solicitation in the Town applied for or issued pursuant to the terms of this Chapter.
- (9) "Charitable activities" means advocating by persons or entities that either are, or support, a charitable organization.

(10) "Charitable organization" is as defined in Section 13-22-2, Utah Code (as amended), or listed in Section 13-22-8(1) thereof.

(11) "Competent individual" means a person claiming or appearing to be at least eighteen (18) years of age and of sufficiently sound mind and body to be able to engage in rational thought, conversation, and conduct.

(12) "Completed application" means a fully completed application form, a BCI background check, two (2) copies of the original identification relied on by the applicant to establish proof of identity, and the tendering of fees.

(13) "Criminally convicted" means the final entry of a conviction, whether by a plea of no contest, guilty, entry of a judicial or jury finding of guilt, or entry of a no contest, or guilty plea, which has not been set aside on appeal or pursuant to a writ of habeas corpus. The criminal conviction is that offense to which the applicant or registered solicitor has pleaded guilty or no contest, without regard to the reduced status of the charge after completion of conditions of probation or parole, and without regard to charges dismissed under a plea in abeyance or diversion agreement.

(14) "Disqualifying status" means anything defined in this Chapter as requiring the denial or suspension of a certificate as set forth in this Chapter.

(15) "Door-to-door solicitation" means the practice of engaging in or attempting to engage in conversation with any person at a residence, whether or not that person is a competent individual, while making or seeking to make or facilitate a home solicitation sale, or attempting to further the sale of goods and or services.

(16) "Entity" includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association, or a natural person.

(17) "Fees" means the cost charged to the applicant or registered solicitor for the issuance of a certificate and/or identification badge.

(18) "Final civil judgment" means a civil judgment that would be recognized under state law as a judgment to which collateral estoppel would apply.

(19) "Goods" means one or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.

(20) "Home solicitation sale" means to make or attempt to make a sale of goods or services by a solicitor at a residence by means of door-to-door solicitation, regardless of:

(a) The means of payment or consideration used for the purchase;

(b) The time of delivery of the goods or services; or

(c) The previous or present classification of the solicitor as a solicitor, peddler, hawker, itinerant merchant, or similar designation.

(21) "Licensing officer" means the Town employee(s) or agent(s) responsible for receiving from an applicant or registered solicitor the completed application and either granting, suspending, or denying the applicant's certificate.

(22) "No solicitation sign" means a reasonably visible and legible sign that states "No Soliciting," "No Solicitors," "No Salespersons," "No Trespassing," or words of similar import.

(23) "Political position" means any actually held belief or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.

(24) "Registered solicitor" means any person who has been issued a current certificate by the Town.

(25) "Registration" means the process used by the Town licensing officer to accept a completed application and determine whether or not a certificate will be denied, granted, or suspended.

(26) "Religious belief" means any sincerely held belief, or information for, against, or in conjunction with, any theistic, agnostic, or atheistic assumption, presumption or position, or religious doctrine, dogma, or practice regardless of whether or not the belief or information is endorsed by any other person or public or private entity.

(27) "Residence" means any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of the Town, together with the lot or other real property on which the living unit is located. This does not include the sidewalk, public street, or public rights-of-way.

(28) "Responsible person or entity" means that person or entity responsible to provide the following to an applicant, registered solicitor, and the competent individual in a residence

to whom a sale of goods or services is made or attempted to be made by means of a home solicitation sale:

(a) Maintaining a state sales tax number, a special events sales tax number, computing the sales taxes owing from any sale of goods or services, paying the sales taxes, and filing any required returns or reports;

(b) Facilitating and responding to requests from consumers who desire to cancel the sale pursuant to applicable contractual rights or law; and

(c) Refunding any monies paid or reversing credit card charges to those persons who timely rescind any sale pursuant to applicable contractual rights or law.

(29) "Sale of goods or services" means the conduct and agreement of a solicitor and the competent individual in a residence regarding a particular good(s) or service(s) that entitles the consumer to rescind the same within three (3) days under any applicable federal, state, or local law.

(30) "Services" means those intangible goods or personal benefits offered, provided, or sold to a competent individual of a residence.

(31) "Soliciting" or "Solicit" or "Solicitation" means any of the following activities:

(a) Seeking to obtain sales or orders for the exchange of goods, wares, merchandise or perishables of any kind, for any kind of remuneration or consideration, regardless of whether advance payment is sought;

(b) Seeking to obtain prospective customers to apply for or to purchase insurance, subscriptions to publications, or publications;

(c) Seeking to obtain contributions of money or any other thing of value for the benefit of any person or entity;

(d) Seeking to obtain orders or prospective customers for goods or services;

(e) Seeking to engage an individual in conversation at a residence for the purpose of promoting or facilitating the receipt of information regarding religious belief, political position, charitable conduct, or a home solicitation sale; or

(f) Other activities falling within the commonly accepted definition of soliciting, such as hawking or peddling.

(32) "Solicitor" or "Solicitors" means a person(s) engaged in door-to-door solicitation.

(33) "Waiver" means the written form provided to applicant by the Town wherein applicant agrees that the Town may obtain a name/date of birth BCI background check on the applicant for licensing purposes under this Chapter, and which contains applicant's notarized signature.

3.07.004: EXEMPTIONS FROM CHAPTER:

The following are exempt from registration under this Chapter:

(1) Persons specifically invited to a residence by a competent individual prior to the time of the person's arrival at the residence;

(2) Persons whose license, permit, certificate, or registration with the state of Utah permits them to engage in door-to-door solicitation to offer goods or services to an occupant of the residence;

(3) Persons delivering goods to a residence pursuant to a previously made order, or persons providing services at a residence pursuant to a previously made request by a competent individual;

(4) Persons advocating or disseminating information for, against, or in conjunction with, any religious belief, or political position;

(5) Persons representing a charitable organization. The charitable exemption shall apply to students soliciting contributions to finance extracurricular social, athletic, artistic, scientific or cultural programs, provided that the solicitation has been approved in writing by the school administration, and that such student solicitors carry current picture student identification from the educational institution for which they are soliciting; and

(6) Persons involved in de minimus solicitation, involving the sale, exchange, or contribution of money, services, goods, or other consideration valued at less than Twenty Dollars (\$20.00).

Those Persons exempt from registration are not exempt from the duties and prohibitions outlined in Sections 3.07.017, 3.07.018, and 3.07.019 while advocating or soliciting.

3.07.005: UNREGISTERED SOLICITATION PROHIBITED:

Unless otherwise registered, authorized, permitted, or exempted pursuant to the terms and provisions of this Chapter, the practice of being in and upon private property or a private residence within the Town by solicitors, for the purpose of home solicitation sales or to provide goods or services, is prohibited and is punishable as set forth in this Chapter.

3.07.006: REGISTRATION OF SOLICITORS:

Unless otherwise exempt under this Chapter, all persons desiring to engage in door-to-door solicitation within the Town, prior to doing so, shall submit a completed application to the licensing officer and obtain a certificate.

3.07.007: APPLICATION FROM:

The licensing officer shall provide a standard application form for use for the registration of solicitors. Upon request to the licensing officer, or as otherwise provided, any person or entity may obtain in person, by mail, or facsimile, a copy of this application form. Each application form shall require disclosure and reporting by the applicant of the following information, documentation, and fee:

(1) Review of written disclosures. An affirmation that the applicant has received and reviewed the disclosure information required by this Chapter.

(2) Contact information.

(a) Applicant's true, correct and legal name, including any former names or aliases used during the last ten (10) years;

(b) Applicant's telephone number, home address, and mailing address, if different;

(c) If different from the applicant, the name, address, and telephone number of the responsible person or entity; and

(d) The address by which all notices to the applicant required under this Chapter are to be sent.

(3) Proof of identity. An in-person verification by the licensing officer of the applicant's true identity by use of any of the following which bear a photograph of said applicant:

- (a) A valid driver's license issued by any state of the United States;
- (b) A valid passport issued by the United States;
- (c) A valid identification card issued by any state of the United States; or
- (d) A valid identification issued by a branch of the United States military.

(4) Proof of registration with Department of Commerce. The applicant shall provide proof that either the applicant, or the responsible person or entity, has registered with the Utah State Department of Commerce.

(5) Special events sales tax number. The applicant shall provide a special events sales tax number for either the applicant, or for the responsible person or entity for which the applicant will be soliciting.

(6) Marketing information.

- (a) The goods or services offered by the applicant, including any commonly known, registered or trademarked names; and
- (b) Whether the applicant holds any other licenses, permits, registrations, or other qualifications required by federal or state law to promote, provide, or render advice regarding the offered goods or services.

(7) BCI background check. The applicant shall provide:

- (a) An original or a certified copy of a BCI background check dated within the last one hundred eighty (180) days as defined in 3.07.003; and
- (b) A signed copy of a waiver whereby applicant agrees to allow the Town to obtain a name and date of birth in order to perform a background check on applicant for purposes of enforcement of this Chapter. (See Section 53-10-108(1)(b) Utah Code (as amended)).

(8) Responses to questions regarding "disqualifying status." The applicant shall be required to affirm or deny each of the following statements on the application form:

(a) Whether the applicant has been criminally convicted of:

- (i) felony homicide,
- (ii) physically abusing, sexually abusing, or exploiting an adult or minor,
- (iii) the sale or distribution of controlled substances, or
- (iv) a sexual offense of any kind;

(b) Whether there are any criminal charges currently pending against the applicant for:

- (i) felony homicide,
- (ii) physically abusing, sexually abusing, or exploiting an adult or minor,
- (iii) the sale or distribution of controlled substances, or (iv) a sexual offense of any kind.

(c) Whether the applicant has been criminally convicted of a felony within the last ten (10) years;

(d) Whether the applicant has been incarcerated in a federal or state prison within the past five (5) years;

(e) Whether the applicant has been criminally convicted of a misdemeanor within the past five (5) years involving a crime of: (i) moral turpitude, or (ii) violent or aggravated conduct involving persons or property;

(f) Whether a final civil judgment has been entered against the applicant within the last five (5) years indicating that:

- (i) the applicant had either engaged in fraud, deceit, false statements, dishonesty, or misrepresentation, or
- (ii) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. 523(a)(2), (a)(4), (a)(6), or (a)(19);

(g) Whether the applicant, within the last five (5) years, has been enjoined by any court, or is the subject of an administrative order issued in any state, if the

injunction or order includes a finding or admission of fraud, material misrepresentation, or if the injunction or order was based on a finding of lack of integrity or honesty;

(h) Whether the applicant is currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;

(i) Whether the applicant has an outstanding arrest warrant from any jurisdiction;

(j) Whether the applicant is currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction; or

(k) Whether the applicant has two (2) or more convictions of or any combination of the following: Trespass, trespassery voyeurism, any property crimes, and any violation of this Chapter.

(9) Fee. The applicant shall pay such fees as set forth in the Town's Consolidated Fee Schedule.

(10) Execution of application. The applicant shall execute the application form, stating upon oath or affirmation, under penalty of perjury, that based on the present knowledge and belief of the applicant, the information provided is complete, truthful, and accurate.

(11) Two (2) recent photographs of the applicant, one for the identification badge and one to be kept with the application. The photographs shall reflect the current appearance of the applicant, shall be primarily of the face and shall be approximately 1 ½" x 1 ½" in size.

3.07.008: WRITTEN DISCLOSURES:

The application form shall be accompanied by written disclosures notifying the applicant of the following:

(1) The applicant's submission of the application authorizes the Town to verify information submitted with the completed application including:

(a) The applicant's address;

- (b) The applicant's and/or responsible person or entity's state tax identification and special use tax numbers, if any; and
 - (c) The validity of the applicant's proof of identity;
- (2) The Town may consult any publicly available sources for information on the applicant, including but not limited to, databases for any outstanding warrants, protective orders, or civil judgments.
 - (3) Establishing proof of identity is required before registration is allowed;
 - (4) Identification of the fee amount that must be submitted by applicant with a completed application;
 - (5) The applicant must submit a BCI background check with a completed application;
 - (6) To the extent permitted by state and/or federal law, the applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection;
 - (7) The Town will maintain copies of the applicant's application form, proof of identity, and identification badge. These copies will become public records available for inspection on demand at the Town offices whether or not a certificate is denied, granted, or renewed;
 - (8) The criteria for disqualifying status, denial, suspension, or revocation of a certificate under the provisions of this Chapter; and
 - (9) That a request for a certificate will be granted or denied within three (3) business days from when a completed application is submitted.

3.07.009: WHEN REGISTRATION BEGINS:

The licensing officer shall not begin the registration process unless the applicant has submitted a completed application. The original identification submitted to establish proof of identity shall be returned after the licensing officer verifies the applicant's identity. A copy of the identification may be retained by the licensing officer. If an original BCI background check is submitted by the applicant, the licensing officer shall make a copy of the BCI and return the original to the applicant.

3.07.010: ISSUANCE OF CERTIFICATES:

The licensing officer shall review the completed application submitted by the applicant and issue a certificate in accordance with the following:

(1) Certificate.

(a) A certificate shall be issued or denied within three (3) business days of submittal of a completed application. Said certificate allows the applicant to begin door-to-door solicitation upon the following conditions:

(i) Applicant's submission of a completed application;

(ii) Applicant's submission of the required fee; and

(iii) Applicant establishes proof of identity;

(b) The issuance or denial will be based on a review of whether:

(i) The application shows a disqualifying status;

(ii) The background check shows a disqualifying status; and

(iii) The applicant has not previously been denied a certificate by the Town, or had a certificate revoked for grounds that still constitute a disqualifying status under this Chapter.

(2) Renewal certificate. A certificate shall be valid for one (1) year from the date of issuance and shall expire at midnight on the anniversary date of issuance. Any annual certificate that is not suspended, revoked, or expired may be renewed upon the request of the registered solicitor and the submission of a new completed application and payment of the fee, unless any of the conditions for the denial, suspension, or revocation of a certificate are present as set forth in Section 3.07.014, or a disqualifying status is present. Said renewal application shall be submitted between thirty (30) and fifteen (15) days prior to the expiration of the current certificate.

3.07.011: FORM OF CERTIFICATE AND IDENTIFICATION BADGE:

(1) Certificate form. Should the licensing officer determine that the applicant is entitled to a certificate, the licensing officer shall issue a certificate to the applicant. The certificate shall list the name of the registered solicitor and the responsible person or entity, if any, and the date on which the certificate expires. The certificate shall be dated and signed by the license officer. The certificate shall be carried by the registered solicitor at all times while soliciting in the Town.

(2) Identification badge. With the certificate, the Town shall issue each registered solicitor an identification badge that shall be worn prominently on his or her person while soliciting in the Town. The identification badge shall bear the name of the Town and shall contain:

- (a) the name of the registered solicitor;
- (b) address and phone number of the registered solicitor, or the name, address, and phone number of the responsible person or entity is provided;
- (c) a recent photograph of the registered solicitor; and
- (d) the date on which the certificate expires.

3.07.012: MAINTENANCE OF REGISTRY:

The licensing officer shall maintain and make available for public inspection a copy or record of every completed application received and the certificate or written denial issued by the Town. The applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection. The licensing officer may furnish to the Chief of Police a listing of all applicants, those denied, and those issued a certificate.

3.07.013: NON-TRANSFERABILITY OF CERTIFICATES:

Certificates shall be issued only in the name of the applicant and shall list the responsible party or entity, if any. The certificate shall be non-transferable. A registered solicitor desiring to facilitate or attempt to facilitate home solicitation sales with different:

(a) goods or services; or

(b) responsible person or entity, from those designated in the originally submitted completed application, shall submit a written change request to the licensing officer. If the proposed changes comport with the Town's Code, a new certificate based on the amended information shall be issued for the balance of time remaining on the solicitor's previous certificate before the amendment was filed. Before the new certificate is given to the registered solicitor, the registered solicitor shall obtain a revised identification badge from the Town, after payment of the fee for the identification badge.

3.07.014: DENIAL, SUSPENSION, OR REVOCATION OF A CERTIFICATE OF REGISTRATION:

(1) Denial. Upon review, the licensing officer shall refuse to issue a certificate to an applicant for any of the following reasons:

(a) The application form is not complete;

(b) The applicant failed to establish proof of identity, provide a BCI background check, or pay the fees;

(c) The completed application or BCI indicates that the applicant has a disqualifying status;

(d) The applicant has previously been denied a certificate by the Town, or has had a certificate revoked for grounds that still constitute a disqualifying status under this Chapter; or

(e) The applicant has provided information on the application that is false, incomplete, or incorrect.

(f) The information submitted by the applicant is found to be incomplete or incorrect;

(g) Since the submission of the completed application, the applicant is subject to a previously undisclosed or unknown disqualifying status;

(h) The Town has received a substantiated report regarding the past or present conduct of the applicant;

(i) The Town or other governmental entity has either criminally convicted or obtained a civil injunction against the applicant for violating this Chapter or similar federal, state, or municipal laws in a manner rising to the level of a disqualifying status; or

(j) A final civil judgment has been entered against the applicant indicating that:

(1) the applicant had either engaged in fraud, deceit, false statements, dishonesty, or misrepresentation, or

(2) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. 523(a)(2), (a)(4), (a)(6), or (a)(19).

(2) Denial of renewal certificate may be based on:

(a) The information submitted by the applicant when seeking renewal of a certificate is found to be incomplete or incorrect;

(b) Since the submission of the renewal application, the applicant is subject to a previously undisclosed or unknown disqualifying status;

(c) Failure to complete payment of the fees;

(d) Since the submission of the application or granting of a certificate, the Town has received a substantiated report regarding the past or present conduct of the solicitor;

(e) The Town or other governmental entity has either criminally convicted or obtained a civil injunction against the applicant for violating this Chapter or similar federal, state, or municipal laws in a manner rising to the level of a disqualifying status; or

(f) Since the submission of the application, a final civil judgment has been entered against the applicant indicating that:

(1) the applicant had either engaged in fraud, deceit, false statements, dishonesty, or misrepresentation, or

(2) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. 523(a)(2), (a)(4), (a)(6), or (a)(19).

(3) Suspension or revocation. The Town shall either suspend or revoke a certificate when any of the reasons warranting the denial of a certificate occurs.

(4) Notice of denial, suspension, or revocation. Upon determination of the licensing officer to deny an applicant's application or to suspend or revoke a registered solicitor's certificate, the Town shall cause written notice to be sent to the applicant or registered solicitor to the address shown in the completed application. Said mailing constitutes proper notice. The notice shall specify the grounds for the denial, suspension, or revocation, the documentation or information the Town relied on to make the decision, the availability of the documentation for review by applicant upon three (3) business days notice to the Town, and the date upon which the denial, suspension, or revocation of the certificate shall take effect. It shall further state that the applicant or registered solicitor shall have ten (10) business days from the receipt of the notice of denial, suspension, or revocation to appeal the same. The denial, suspension, or revocation of the certificate shall be effective no sooner than two (2) calendar days from the date the notice is sent, unless that suspension or revocation is based on exigent circumstances, in which case, the suspension is effective immediately. The denial, suspension, or revocation shall remain effective unless and until the order is rescinded, overturned on appeal, or determined by a court to be contrary to equity or law. Failure to appeal the suspension of a certificate automatically results in its revocation.

3.07.015: APPEAL:

An applicant or registered solicitor whose certificate has been denied, suspended, or revoked shall have the right to appeal to the Mayor or its designee. Any appeal must be submitted by either the applicant, the responsible person or entity, or legal counsel for either who: (a) documents the relationship with the applicant or responsible person or entity; or (b) is licensed or authorized by the state of Utah to do so, and makes the assertion of an agency relationship. The following procedures and requirements shall apply:

(1) Any appeal must be submitted in writing to the Town Clerk with a copy to the license officer within ten (10) business days of the decision from which the appeal is taken. Such appeal shall describe in detail the nature of the appeal, the action complained of and the grounds for appeal.

(2) Upon request of the applicant or registered solicitor, within three (3) business days, the Town will make available any information upon which it relied in making the determination to either deny or suspend the certificate.

(3) The appeals officer shall review, de novo, all written information submitted by the applicant or registered solicitor to the licensing officer, any additional information relied upon by the licensing officer as the basis for denial, suspension, or revocation, and any additional information supplied by the Town, applicant or registered solicitor. Any additional information submitted by any party to the appeals officer shall be simultaneously submitted to the opposing party. If desired, any party shall have three (3) business days to submit rebuttal documentation to the appeals officer regarding the additional information submitted by the opposing party.

(4) The appeals officer will render a decision no later than fifteen (15) calendar days from the date the appeal was taken, unless an extension of time is agreed upon by the parties. In the event that any party to the appeal submits rebuttal information as allowed in Section 3.07.015(3), the fifteen (15) calendar days shall be extended to include the additional three (3) days for rebuttal.

(a) The denial, suspension, or revocation of the certificate shall be reversed by the appeals officer if, upon review of the written appeal and information submitted, the appeals officer finds that the licensing officer made a material mistake of law or fact in denying or suspending the applicant or registered solicitor's certificate.

(b) If the written appeal and information submitted indicates that the licensing officer properly denied, suspended, or revoked the certificate of the applicant or registered solicitor, the denial, suspension, or revocation of the certificate shall be affirmed and constitute a determination that the suspended certificate is revoked.

(c) The decision of the appeals officer shall be delivered to the applicant or registered solicitor by mailing it to the address shown in the completed application, or as otherwise agreed upon when the appeal was filed.

(5) After the ruling of the appeals officer, the applicant or solicitor is deemed to have exhausted all administrative remedies with the Town.

(6) Nothing herein shall impede or interfere with the applicant's, solicitor's, or Town's right to seek relief in a court of competent jurisdiction.

3.07.016: DECEPTIVE SOLICITING PRACTICES PROHIBITED:

(1) No solicitor shall intentionally make any materially false or fraudulent statement in the course of soliciting.

(2) A solicitor shall immediately disclose to the consumer during face-to-face solicitation:

(a) the name of the solicitor;

(b) the name and address of the entity with whom the solicitor is associated; and

(c) the purpose of the solicitor's contact with the person and/or competent individual. This requirement may be satisfied through the use of the badge and an informational flyer.

(3) No solicitor shall use a fictitious name, an alias, or any name other than his or her true and correct name.

(4) No solicitor shall represent directly or by implication that the granting of a certificate of registration implies any endorsement by the Town of the solicitor's goods or services or of the individual solicitor.

3.07.017: "NO SOLICITING" NOTICE:

(1) Any occupant of a residence may give notice of a desire to refuse solicitors by displaying a "No Solicitation" or similar sign which may be posted on or near the main entrance door or on or near the property line adjacent to the sidewalk leading to the residence, or otherwise located so as to give reasonable notice thereof.

(2) The display of such sign or placard shall be deemed to constitute notice to any solicitor that the inhabitant of the residence does not desire to receive and/or does not invite solicitors.

(3) It shall be the responsibility of the solicitor to check each residence for the presence of any such notice.

(4) The provisions of this Section shall apply also to solicitors who are exempt from registration pursuant to the provisions of this Chapter.

3.07.018: DUTIES OF SOLICITORS:

(1) Every person soliciting or advocating has an affirmative legal obligation to check each residence for any "No Soliciting" sign or placard or any other notice or sign notifying a solicitor not to solicit on the premises, such as, but not limited to, "No Solicitation" signs. If such sign or placard is posted such solicitor shall desist from any efforts to solicit at the residence or dwelling and shall immediately depart from such property. Possession of a certificate of registration does not in any way relieve any solicitor of this duty.

(2) It is a violation of this Chapter for any person soliciting or advocating to knock on the door, ring the doorbell, or in any other manner attempt to attract the attention of an occupant of a residence that bears a "No Solicitation" sign or similar sign or placard for the purpose of engaging in or attempting to engage in advocating, a home solicitation sale, door-to-door soliciting, or soliciting. Said conduct may also be prosecuted as a violation of laws regarding trespass.

(3) It is a violation of this Chapter for any solicitor through ruse, deception, or fraudulent concealment of a purpose to solicit, to take action calculated to secure an audience with an occupant at a residence.

(4) Any solicitor who is at any time asked by an occupant of a residence or dwelling to leave shall immediately and peacefully depart.

(5) The solicitor shall not intentionally or recklessly make any physical contact with, or touch another person without the person's consent.

(6) The solicitor shall not follow a person into a residence without their explicit consent.

(7) The solicitor shall not continue repeated soliciting after a person and/or competent individual has communicated clearly and unequivocally their lack of interest in the subject, goods or services of the solicitor.

(8) The solicitor shall not use obscene language or gestures.

3.07.019: TIME OF DAY RESTRICTIONS:

It shall be unlawful for any person, whether licensed or not, to solicit at a residence before 9:00 a.m. or after 9:00 p.m. Mountain Time, unless the solicitor has express prior permission from the resident to do so.

3.07.020: BUYER'S RIGHT TO CANCEL:

In any home solicitation sale, unless the buyer requests the solicitor to provide goods or services without delay in an emergency, the seller or solicitor shall present to the buyer and obtain buyer's signature to a written statement which informs the buyer of the right to cancel on or before the third business day after signing an agreement to purchase. Such notice of "buyer's right to cancel" shall be in the form required by Section 70C-5-103, Utah Code (as amended), or a current version thereof or any state or federal law modifying or amending such provision.

3.07.021: PENALTIES:

Unless categorized otherwise by any other law, any person who violates any term or provision of this Chapter shall be guilty of a class "B" Misdemeanor and shall be punished in accordance therewith.

3.07.022: PRIVATE ACTION:

It is not the intent of this Chapter to preclude any individual from pursuing a cause of action against any solicitor for damages or injuries.

CHAPTER 8 SEXUALLY ORIENTED BUSINESSES

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PART 6. GENERAL APPLICABILITY, ACTIONS FOR VIOLATIONS, DEFENSES

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PART 1. GENERAL PROVISIONS

3.08.101: PURPOSE:

It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the town. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the first amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

3.08.102: FINDINGS:

Based on evidence of the adverse secondary effects of adult uses presented in case law and in reports made available to the town council, and on the findings incorporated in the cases of *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); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *Dodger's Bar & Grill, Inc. v. Johnson County*, 98 F.3d 1262 (10th Cir. 1996); *Sundance Assocs. v. Reno*, 139 F.3d 804 (10th Cir. 1998); *Dodger's Bar & Grill, Inc. v. Johnson County*, 32 F.3d 1436 (10th Cir. 1994); *American Bush v. City of South Salt Lake*, 2006 P.3d (2006 UT 40); and other cases; and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1979; Tucson, Arizona - 1990; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Adams County, Colorado - 1998; Denver, Colorado - 1998; Environmental Research Group to the American Center for Law & Justice - 1996; Manatee County, Florida - 1987; Indianapolis, Indiana - 1984; Kansas City, Kansas - 1998; Minneapolis, Minnesota - 1980; Saint Paul, Minnesota - 1988; Las Vegas, Nevada - 1978; Ellicottville, New York - 1998; Islip, New York - 1980; New York City, New York - 1994; Times Square, New

York - 1994; New Hanover, North Carolina - 1989; Oklahoma City, Oklahoma - 1986; Amarillo, Texas - 1977; Austin, Texas - 1986; Beaumont, Texas - 1982; Cleburne, Texas - 1997; Dallas, Texas - 1997; El Paso, Texas - 1986; Fort Worth, Texas - 1986; Houston, Texas - 1983 and 1997; Newport News, Virginia - 1996; Bellevue, Washington - 1998; Des Moines, Washington - 1984; Seattle, Washington - 1989; Saint Croix County, Wisconsin - 1993; and also on findings from the paper entitled "Strip Clubs According To Strippers: Exposing Workplace Sexual Violence", by Kelly Holsopple, program director, freedom and justice center for prostitution resources, Minneapolis, Minnesota; Proponent Testimony - Sexually Oriented Businesses: An Insider's View, by David Sherman, presented to the Michigan house committee on ethics and constitutional law, January 12, 2000, Proponent Testimony - Sexually Oriented Businesses: An Insider's View, by David Sherman, presented to the Ohio senate judiciary committee on civil justice, December 3, 2002; Proponent Testimony - Sexually Oriented Businesses: An Insider's View, presented to the Ohio house civil and commercial law committee, April 28, 2004; and Proponent Testimony - Sexually Oriented Businesses: An Insider's View, by Carolyn McKenzie, presented to the Ohio house civil and commercial law committee, April 28, 2004, the city council finds:

- (1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by unlicensed operators of the establishments. Further, there is presently no effective mechanism in this town to make the owners and operators of these establishments responsible for the activities that occur on their premises.
- (2) Certain employees of unregulated "sexually oriented businesses" defined in this chapter as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semiprivate booths or cubicles for viewing films, videos or live sex shows.
- (4) Offering and providing such unregulated space encourages such activities, which creates unhealthy conditions.
- (5) Persons frequent certain adult theaters, adult arcades and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses (or for the purpose of purchasing or selling illicit drugs).
- (6) Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human

immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis, salmonella, campylobacter and shigella infections, chlamydia, mycoplasmal and ureoplasmal infections, trichomoniasis and chancroid.

(7) According to research from the Kaiser family foundation, an estimated six hundred fifty thousand (650,000) to nine hundred thousand (900,000) Americans are infected with HIV. The number of new HIV infections occurring each year is now about forty one thousand (41,000). Men and women of all races are most likely to be infected by sexual contact.

(8) Relevant statistics revealed that one thousand six hundred seventy two (1,672) AIDS cases had been reported in Utah as of January 1, 1999. Utah has required HIV case reporting since 1989, and shows one thousand five hundred fifty (1,550) people living with HIV (762) or AIDS (788) in the state.

(9) The Center for Disease Control and Prevention estimates that as many as one in three (3) people with HIV do not know they are infected.

(10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with thirty three thousand six hundred thirteen (33,613) cases reported in 1982 and forty five thousand two hundred (45,200) through November of 1990.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over five hundred thousand (500,000) cases being reported in 1990.

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

(13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See, e.g., findings of U.S. department of health and human services.

(14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(15) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

(16) The findings noted herein raise substantial governmental concerns.

(17) Sexually oriented businesses have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.

(18) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(19) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in sexually oriented businesses.

(20) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(21) The disclosure of certain information by those persons ultimately responsible for the day to day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and will prevent the further secondary effects of dissemination of illegal obscenity, child pornography, and to minors, materials harmful to them.

(22) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this chapter is designed to prevent or who are likely to be witnesses to such activity.

(23) The fact that an applicant for an adult use has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this chapter.

(24) The barring of such individuals from employment in sexually oriented businesses for a specified period of years serves to prevent distribution of illegal material, to prevent conduct which leads to the transmission of sexually transmitted diseases, and to preclude the establishment of criminal enterprises within the town.

(25) The general welfare, health, morals and safety of the citizens of the town will be promoted by the enactment of this chapter.

3.08.103: DEFINITIONS:

For purposes of this chapter, the words and phrases defined in this section shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context:

ADULT ARCADE:

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 (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing "specified sexual activities" or "specified anatomical areas".

ADULT BOOKSTORE, ADULT NOVELTY STORE, ADULT VIDEO STORE:

A commercial establishment which has a significant or substantial portion of its stock in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale or rental, for any form of consideration, of any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas";
- (2) Instruments, devices or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

ADULT CABARET:

A nightclub, bar, juice bar, restaurant bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

- (1) Persons who appear seminude;
- (2) Live performances which are characterized by the exposure of "specified sexual activities" or "specified anatomical areas"; or
- (3) Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas".

ADULT MOTEL:

A motel, hotel or similar commercial establishment which:

- (1) Offers public accommodations, for any form of consideration, and which regularly provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified

sexual activities" or "specified anatomical areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right of way, or by means of any off premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; and

(2) Offers a sleeping room for rent for a period of time less than ten (10) hours; or
(3) Allows a tenant or occupant to subrent the sleeping room for a time period of less than ten (10) hours.

**ADULT MOTION PICTURE
THEATER:**

A commercial establishment where films, motion pictures, videocassettes, slides or similar photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

ADULT THEATER:

A theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, regularly features persons who appear live in a state of seminudity or live performances which are characterized by their emphasis upon the exhibition of "specified sexual activities" or "specified anatomical areas".

BUSINESS LICENSE OFFICIAL:

The town business license officer or his designee.

CONTROLLING INTEREST:

The power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The

ownership, control or power to vote twenty percent (20%) or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.

DISTINGUISHED OR
CHARACTERIZED BY AN EMPHASIS
ON:

The dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films which are "distinguished or characterized by an emphasis on" the exhibition or description of "specified sexual activities" or "specified anatomical areas". The films so described are those whose dominant or principal character and theme are the exhibition or description of "specified sexual activities" or "specified anatomical areas".

EMPLOY, EMPLOYEE AND
EMPLOYMENT:

Describes and pertains to any person who performs any service on the premises of a sexually oriented business, on a full time, part time or contract basis, whether or not the person is designated 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:

Includes any of the following:
(1) The opening or commencement of any sexually oriented business as a new business;
(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) The addition of any sexually oriented business to any other existing sexually oriented business; or

(4) The relocation of any sexually oriented business.

HEARING OFFICER:

The mayor of Town of Hideout or a designee of the mayor.

LICENSEE:

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 employee license has been issued.

OPERATE OR CAUSE TO OPERATE:

To cause to function or to put or keep in a state of doing business.

OPERATOR: Any person on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business or who causes to function or who puts or keeps in operation the business. 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.

PARK:

Public land which has been designated for park or recreational activities, including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the town which is under the control, operation or management of the

town park and recreation authorities, including, but not limited to, existing parks and facilities: such as, but not limited to, trails, parking lots, playgrounds and ball fields.

PECUNIARY COMPENSATION:

Any commission, fee salary, tip, gratuity, profit, reward, or any other form of consideration.

PERSON:

An individual, proprietorship, partnership, corporation, association or other legal entity.

PLACE OPEN TO PUBLIC VIEW:

An area capable of observance by persons from the general community, where an expectation for privacy is not reasonably justified, and includes a dedicated roadway, sidewalk, a parking lot, any public way, a theater, a restaurant, a movie theater, any room in a hotel or motel other than a guestroom, or any other place where an expectation for privacy is not reasonably justified.

PROTECTED USES:

Churches, public libraries, public parks or parkways, public recreation centers, public and private schools, and any residence or residential district.

REGULARLY FEATURES OR
REGULARLY SHOWN:

A consistent or substantial course of conduct such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

SEMINUDE:

A state of dress in which any opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area,

vulva, and the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUALLY ORIENTED BUSINESS: An adult arcade, adult bookstore, adult motion picture theater, adult novelty store, adult theater, adult video store, adult cabaret, and adult motel.

SPECIFIED ANATOMICAL AREAS: Includes:
(1) Human male genitals in a state of sexual arousal; or
(2) Less than completely and opaquely covered anus, anal cleft or cleavage, male or female genitals, or a female breast.

SPECIFIED CRIMINAL ACTIVITY: Includes any of the following offenses as they are defined by applicable Utah state statute:
(1) Prostitution or promotion of prostitution; dissemination of obscenity or illegal pornographic materials; sale, distribution or display of harmful material to a minor; sexual abuse; sexual abuse of a child; sexual exploitation of children; sexual performance by a child; possession or distribution of child pornography; sexual battery; rape; indecent exposure; indecency with a child; the crimes of criminal pandering, tax violations, embezzlement or racketeering, if such crimes are directly related to the operation of a sexually oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving the same elements from any jurisdiction if the offenses were committed in the state

of Utah, regardless of the exact title of the offense; for which:

(a) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(b) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(c) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty four (24) month period.

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

SPECIFIED SEXUAL ACTIVITY:

Acts of, or simulating, masturbation, sexual intercourse, sexual copulation with a person or a beast, fellatio, cunnilingus, bestiality, pederasty, buggery, sodomy, and/or excretory functions as part of or in connection with any of the foregoing.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS:

Any of the following:

(1) The sale, lease or sublease of the business;

(2) The transfer of securities which constitutes a controlling interest in the business, whether by sale, exchange or similar means; or

(3) The establishment of a trust, gift or other similar legal 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:

The room, booth or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette or other video reproduction.

PART 2. LOCATION REGULATIONS

3.08.201: ZONING:

It is unlawful for any sexually oriented business to do business at any location within the town not zoned for such business. Businesses regulated by this chapter shall not be located closer than six hundred feet (600') to each other and not closer than six hundred feet (600') to protected uses.

3.08.202: SEXUALLY ORIENTED BUSINESS; ADDITIONAL LOCATION REQUIREMENTS:

It is unlawful for any business licensed as a sexually oriented business to be located within six hundred feet (600') of a business licensed for the consumption of alcohol or liquor.

3.08.203: METHOD OF MEASUREMENT:

The six hundred foot (600') limitation is measured from the nearest property line of the business regulated by this chapter to the nearest property line of the other sexually

oriented business or business licensed for the sale or consumption of alcohol, or area of protected use.

3.08.204: SINGLE LOCATION AND NAME:

It is unlawful:

(1) To conduct business under a license issued pursuant to this chapter at any location other than the licensed premises; or

(2) For any sexually oriented business to do business in the town under any name other than the business name specified in the application.

3.08.205: MOVING OF BUSINESS LOCATION:

It is unlawful for any sexually oriented business, as regulated herein, to relocate or otherwise move its location or area of operation. A sexually oriented business wishing to relocate must submit the appropriate application for a license as required under this chapter. Such application shall be reviewed under the terms and conditions of this chapter and applicable town ordinances.

PART 3. LICENSING PROVISIONS

3.08.301: BUSINESS CATEGORIES:

The categories of sexually oriented businesses are adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, and adult theater.

3.08.302: HOURS OF OPERATION:

All premises licensed to operate a sexually oriented business shall only operate between the hours of ten o'clock (10:00) A.M. and two o'clock (2:00) A.M. of the following day.

3.08.303: BUSINESS LICENSE REQUIRED:

It is unlawful:

- (1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the town pursuant to this chapter;
- (2) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the town pursuant to this chapter;
- (3) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business work permit pursuant to this chapter; or
- (4) Sexually oriented business licenses will be limited to one for each six thousand (6,000) residents of the town. Any available license will be issued on a first come, first serve basis.

3.08.304: BUSINESS LICENSE APPLICATION; DISCLOSURE:

- (1) 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, the application shall include the full legal name, address and state of incorporation of the business. Each officer, director, general partner, or other person who owns a controlling interest in the business, or who will participate directly in decisions relating to management and control of the business, shall sign the license application as an applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.
- (2) Upon filing a completed application for a sexually oriented business license or sexually oriented business work permit, the business license official shall issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the town to deny or grant the license.
- (3) An application shall not be considered complete unless it contains the following information:
 - (a) The full legal name and any other names or aliases used by the applicant;

(b) The applicant's date and place of birth;

(c) Present business address and telephone number;

(d) Identification issued by a federal or state governmental agency with the individual's colored photograph, signature and physical description;

(e) Fingerprints on a form provided by a public safety department;

(f) The identity of each individual authorized by the corporation partnership or noncorporate entity to receive service of process. If the application is for a sexually oriented business license, the application shall be accompanied by a sketch or diagram showing the interior 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 inches (6").

(4) Each applicant must provide a statement of whether the applicant has been convicted of, or has pled guilty or nolo contendere to, a "specified criminal activity", as defined in this chapter, and if so, the specified criminal activity involved; the date, place, and jurisdiction of each.

(5) In the event the applicant is not the owner of record of the real property upon which the business or proposed business is or is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of business for which the applicant seeks a license to operate a sexually oriented business on the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well as the copy of the lease or rental agreement pertaining to the premises on which the business is or will be located.

3.08.305: LICENSE AND WORK PERMIT FEES:

(1) Each applicant for a sexually oriented business license shall be required to pay a regulatory license fee as set forth in the consolidated fee schedule as adopted from time to time by the town council.

(2) This fee shall be in addition to the other licenses and fees required to do business in the town.

3.08.306: BUSINESS LICENSE TERM:

A license shall be issued for a period not to exceed twelve (12) months. All sexually oriented business licenses shall expire on December 31 of each year regardless of when issued. The license fees required shall not be prorated for any portion of the year.

3.08.307: LICENSE DISPLAY:

Any sexually oriented business located within the boundaries of the town must display the license granted pursuant to this chapter in a prominent public location within the business premises.

3.08.308: ISSUANCE OF BUSINESS LICENSE FOR SEXUALLY ORIENTED BUSINESS:

(1) Under no circumstances shall the total time for the town to issue a license or issue a written intent to deny an application for a license exceed thirty (30) days from the receipt of a completed application. The business license official shall issue a license to the applicant unless the official finds one or more of the following to be true by a preponderance of the evidence:

- (a) The applicant is under eighteen (18) years of age, or any higher age, if the license sought required a higher age.
- (b) The applicant is overdue in payment to the town of taxes, fees, fines or penalties assessed against the applicant or imposed on the applicant in relation to a sexually oriented business.
- (c) The applicant has falsely answered a material question or request for information specifically authorized by this chapter.
- (d) The license fees required by this chapter have not been paid.

(e) All applicable sales and use taxes have not been paid.

(f) Each applicant must provide a statement of whether the applicant has been convicted of, or has pled guilty or nolo contendere to, a "specified criminal activity", as defined in this chapter, and if so, the specified criminal activity involved, the date, place and jurisdiction of each. The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section.

(2) The license, if granted, shall state on its face the name of the person to whom it is granted, the number of the license issued to the licensee, the expiration date, and, if the license is for a 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 easily read at any time.

3.08.309: TRANSFER OF OWNERSHIP OF BUSINESS LICENSE PROHIBITED:

Sexually oriented business licenses granted under this chapter shall not be transferable.

3.08.310: CHANGE IN INFORMATION:

The licensee shall submit, in writing, any change in the information required to be submitted under this chapter for either a sexually oriented business license or sexually oriented business work permit to the business license official within fourteen (14) days after such change.

PART 4. ADDITIONAL BUILDING REGULATIONS

3.08.401: REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS:

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, films, videocassettes, or other video reproductions characterized by an emphasis on the display of specified sexual activities or specified anatomical areas, shall comply with the following requirements. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all manager 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 of the premises to an accuracy of plus or minus six inches (6"). The business license official 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) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station or viewing room may be made without the prior approval of the business license official.

(4) 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 subsection (1) of this section.

(5) 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 one foot-candle, 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.

(6) 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.

(7) It shall be the duty of the operator, and of any employees present on the premises, to ensure that not more than one person is present in a viewing room at any time. No person shall enter a viewing room that is occupied by another person.

(8) It shall be the duty of the operator, or of any employee who discovers two (2) or more patrons in a viewing room or discovers any person making or attempting to make an opening of any kind between viewing rooms, to immediately escort such persons from the premises.

(9) It shall be the duty of the operator, or of any employee who discovers an opening of any kind between viewing rooms, to immediately secure such rooms and prevent entry into them by any patron until such time as the wall between the rooms has been repaired, to remove the opening. Removal and repairing of openings between viewing rooms shall be in a manner that is as structurally substantial as the original wall construction.

(10) It shall be the duty of the operator, at least once each business day, to inspect the walls between viewing rooms for openings of any kind.

(11) 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) No loitering is permitted in viewing rooms;
- (b) The occupancy of viewing rooms is limited to one person;
- (c) Sexual activity on the premises is prohibited;
- (d) The making of openings between viewing rooms is prohibited;
- (e) Violators will be required to leave the premises; and

(f) Violations of subsections (11)(b), (11)(c) and/or (11)(d) of this section are unlawful.

(12) It shall be the duty of the operator to ensure that floor coverings in viewing rooms are nonporous, easily cleanable surfaces, with no rugs or carpeting.

(13) It shall be the duty of the operator to ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of, or permanently covered by, nonporous, easily cleanable material.

(14) It shall be the duty of the operator to ensure that the premises are clean and sanitary. Such duty shall be fulfilled if the operator complies with the following cleaning procedures:

(a) The operator shall maintain a regular cleaning schedule of at least two (2) cleanings per day, documented by appropriate logs.

(b) The operator shall provide an employee to check all areas for garbage, trash, body fluids and excrement and to remove and clean all areas with a disinfectant. All solid waste generated by the business shall be collected from the premises for disposal at a lawful solid waste disposal facility at least once each week. Prior to disposal, solid waste shall be stored in a manner that prevents access by animals or members of the public and which will not facilitate the creation of a health nuisance.

(c) Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video cameras, and windows and other surfaces.

(15) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises in which patrons are permitted, including the interior of each viewing room, but excluding restrooms, to which any patron is permitted access for any purpose. A manager's station shall not exceed forty (40) square feet of floor area. If the premises has two (2) or more manager 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 manager stations. The view required in this subsection must be by direct line of sight from the manager's station. It is the duty of the operator to ensure that a least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. It shall be 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 subsection remains unobstructed by the doors, curtains, walls, merchandise, display racks or other materials or enclosure at all times that any patron is present on the premises.

3.08.402: STAGE REQUIREMENTS:

It shall be a violation of this chapter for an employee to knowingly or intentionally, in a sexually oriented business, appear in a state of semi-nudity, unless the employee is at least six feet (6') from patrons and customers and on a stage at least two feet (2') from the floor.

PART 5. EMPLOYEE REGULATIONS

3.08.501: EMPLOYEE WORK PERMIT REQUIRED:

It is unlawful for any person to act as a sexually oriented business employee, without first obtaining a sexually oriented business work permit, as specified in this part.

3.08.502: SEXUALLY ORIENTED BUSINESS EMPLOYEE WORK PERMITS:

It is unlawful for any sexually oriented business to employ, or for any individual to be employed as, a sexually oriented business employee unless that employee first obtains a sexually oriented business employee work permit.

3.08.503: SEXUALLY ORIENTED BUSINESS EMPLOYEE WORK PERMIT APPLICATION; DISCLOSURE:

(1) Upon the filing of a completed application for a sexually oriented business employee work permit, the business license official shall issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the town to deny or grant the work permit. An application shall be considered complete when it contains the following information:

- (a) The correct legal name of each applicant;
- (b) Present business address and telephone number;
- (c) Identification issued by a federal or state governmental agency with the individual's date of birth, colored photograph, signature and physical description;
- (d) The individual's fingerprints on a form provided by the public safety department; and
- (e) A statement for each applicant whether the applicant has been convicted of, or has pled guilty or nolo contendere to, a "specified criminal activity", as defined herein, and if so, the specified criminal activity involved, the date, place and jurisdiction of each. The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section.

(2) A license or permit required by this chapter is in addition to any other licenses or permits required by the town, county or state to engage in the business or occupation. Persons engaged in the operation of an adult oriented business or in employment in an adult oriented business shall comply with all other applicable local, state and federal laws, ordinances and statutes, including zoning ordinances, as may be required.

(3) The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the town on a confidential basis, except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order. The information provided by a sexually oriented business license applicant in connection with the application for a license under this chapter shall be maintained by the business license official.

3.08.504: STATE LICENSING EXEMPTION:

The provisions of this chapter shall not apply to any sex therapist or similar individual licensed by the state to provide bona fide sexual therapy or counseling, a licensed medical practitioner, licensed nurse, psychiatrist or psychologist while providing professional services for which they are licensed, nor shall it apply to any educator licensed by the state for activities in the classroom.

3.08.505: SEXUALLY ORIENTED BUSINESS EMPLOYEE WORK PERMIT; ISSUANCE AND TERM:

(1) Within thirty (30) days of the initial filing date of the receipt of a completed application, the business license official shall either issue a license or issue a written notice of intent to deny a license to the applicant. The business license official shall approve the issuance of a license unless one or more of the following is found by a preponderance of evidence to be true:

- (a) The applicant is less than eighteen (18) years of age;
- (b) The applicant has failed to provide information required for issuance of a license or has falsely answered a question or request for information on the application form;
- (c) The required license application fee has not been paid; or
- (d) The applicant has been convicted of a "specified criminal activity", as defined herein, or has been shown to have committed two (2) or more violations of section 3.08.509 of this chapter within the previous year.

(2) Sexually oriented business employee work permits may be obtained at any time throughout the year. All employee work permits shall expire on the last day of the twelfth month following issuance.

(3) Sexually oriented business licenses and sexually oriented business employee work permits may be renewed only by making application and payment of a fee as provided for in this chapter. Application for renewal should be made at least ninety (90) days before the expiration date of said licenses and work permits, and when made less than ninety (90) days before the expiration date, the expiration of the license or work permit will not be affected.

3.08.506: CHANGE IN EMPLOYEE INFORMATION:

Any change in the information required to be submitted under this chapter for a sexually oriented business work permit will be given, in writing, to the business license official within fourteen (14) days after such change.

3.08.507: LICENSE FEES:

Each applicant for a sexually oriented business employee work permit shall be required to pay yearly regulatory license fees pursuant to the consolidated fee schedule as adopted by the town council.

3.08.508: LICENSE DISPLAY:

A sexually oriented business employee shall keep the employee's work permit on his or her person or on the premises where the licensee is then working and shall, while working on the sexually oriented business premises, produce such work permit for inspection upon request by a law enforcement officer or other town official performing functions connected with the enforcement of this chapter.

3.08.509: SEXUALLY ORIENTED BUSINESS EMPLOYEE CONDUCT:

It is unlawful for any sexually oriented business licensee or sexually oriented business employee to knowingly or intentionally:

- (1) Allow persons under the age of eighteen (18) years, or the age of twenty one (21) years if required by any applicable alcohol ordinance, on the business premises;
- (2) Allow, offer or agree to gambling on the business premises;
- (3) Allow, offer or agree to the illegal possession, use, sale or distribution of controlled substances on the licensed premises;
- (4) Permit, commit, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor or commit activities harmful to the minor to occur on the licensed premises;
- (5) Permit, commit, offer or agree to permit any live specified sexual activity as defined by town ordinances or state statutes in the presence of any customer or patron;
- (6) Permit, offer or agree to, a patron or customer to masturbate within or upon the premises of a sexually oriented business;

(7) Appear in a state of nudity before a patron on the premises of a sexually oriented business; or

(8) Refuse to permit town officers or agents who are performing functions connected with the enforcement of this chapter to inspect the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with this chapter, at any time the sexually oriented business is occupied by patrons or open for business. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this section. The provisions of this subsection 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.

3.08.510: ACTIVITIES OF PATRONS:

It is unlawful for any patron to knowingly or intentionally:

(1) Touch in any manner a sexually oriented business employee while the sexually oriented business employee is seminude;

(2) Place any money or object on or within the costume or person of any sexually oriented business employee while the sexually oriented business employee is seminude;
or

(3) Appear in a state of nudity before another person on the premises of a sexually oriented business.

PART 6. GENERAL APPLICABILITY, ACTIONS FOR VIOLATIONS, DEFENSES

3.08.601: APPLICABILITY OF REGULATIONS TO EXISTING BUSINESSES:

(1) The provisions of this chapter shall be applicable to all persons and businesses described in this chapter, whether the described activities were established before or after the effective date hereof, and regardless of whether such persons and businesses are currently licensed to do business in the town.

(2) Upon adoption, the provisions of this chapter shall apply to the activities of all sexually oriented businesses and sexually oriented business employees described herein, whether such businesses or activities were established or commenced before, on, or after the effective date hereof. All existing sexually oriented businesses and sexually oriented business employees are hereby granted a de facto temporary license to continue operation or employment for a period of ninety (90) days following the effective date hereof. Within said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must make application for a license pursuant to this chapter. Within said ninety (90) days, sexually oriented businesses must make any necessary changes to the interior configurations of the regulated business premises to conform to this chapter.

3.08.602: INJUNCTIONS:

An entity or individual who, without a valid license, operates or causes to be operated a sexually oriented business or who employs or is employed as an employee of a sexually oriented business, or who operates such a business or functions as such an employee in violation of the provisions of this chapter, is subject to a suit for injunction in addition to the civil and criminal violations provided in this chapter, and any other remedy available at law or in equity.

3.08.603: SUSPENSION:

The town shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if it is determined that the sexually oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this chapter. The town shall issue a written letter of intent to suspend a sexually oriented business employee work permit if it is determined that the employee has knowingly violated this chapter.

3.08.604: REVOCATION:

(1) The business license official shall issue a written intent to revoke a sexually oriented business license or a sexually oriented business employee work permit if a cause of

suspension as provided in section 3.08.605 of this chapter occurs and the license has been suspended within the preceding twelve (12) months.

(2) The business license official shall issue a written intent to revoke a sexually oriented business license or a sexually oriented business employee work permit if the official determines that a licensee or an employee, with the knowledge of the licensee:

(a) Knowingly gave false or misleading information in the application or in any document or diagram related to the operation of the sexually oriented business;

(b) Knowingly allowed possession, use or sale of controlled substances on the premises;

(c) Knowingly allowed prostitution on the premises;

(d) Knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(e) A licensee has been convicted, pled guilty, or pled nolo contendere to a "specific criminal activity", as defined in this chapter;

(f) A licensee or an employee has knowingly allowed any specified sexual activity to occur in or on the licensed premises; or

(g) A licensee is delinquent in payment to the town of taxes or fees related to the sexually oriented business.

(3) The fact that any conviction is being appealed shall have no effect on the revocation of the license.

(4) For the purposes of this chapter, an act by a sexually oriented business employee that constitutes grounds for revocation of that employee's work permit shall be imputed to the sexually oriented business for purposes of denial, suspension or revocation proceedings only if the hearing officer determines by a preponderance of evidence that an officer, director or general partner, or an employee who managed, supervised or controlled the operation of the business, knowingly allowed such act to occur on the sexually oriented business premises.

(5) When, after the notice and hearing procedure described in this chapter, the business license official revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date

the revocation becomes effective; provided, that, if the conditions of section 3.08.605 of this chapter are met, a provisional license will be granted pursuant to that section. If, subsequent to revocation, the enforcement officer finds that the basis for the revocation found in subsections (2)(a), (2)(d) and (2)(g) of this section has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under subsection (2)(b), (2)(c), (2)(e) or (2)(f) of this section, an applicant may not be granted another license until the appropriate number of years required under this chapter has elapsed.

3.08.605: HEARING, REVOCATION, LICENSE DENIAL, SUSPENSION; APPEAL:

(1) If the business license official determines that facts exist for denial, suspension or revocation of a license under this chapter, the town shall notify the applicant or licensee (respondent) in writing of the town's intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail.

(a) The notification shall be directed to the most current business address or other mailing address on file with the business license official for the respondent. Within ten (10) working days of receipt of such notice, the respondent may provide to the business license official a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended or revoked.

(b) Within five (5) days of the receipt of respondent's written response, the business license official shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding. Within ten (10) working days of the receipt of respondent's written response, the hearing officer shall conduct a hearing, at which 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 town's witnesses. The hearing shall take no longer than two (2) days, unless extended to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a written opinion within five (5) days after the hearing. If a court action challenging the town's decision is initiated, the town shall prepare and transmit to the court a transcript of the hearing within ten (10) days after the issuance of the hearing officer's written opinion.

(c) If a written response from respondent is not received by the business license official within the time stated in subsection (1)(a) of this section or if, after a hearing, the hearing officer concludes that grounds as specified in this chapter exist for denial, suspension or revocation of the license, then such denial, suspension or revocation shall become final five (5) days after the hearing officer sends, by certified mail, written notice to the respondent that the license has been denied, suspended or revoked. Such notice shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the hearing officer finds that no grounds exist for denial, suspension or revocation of a license, then within five (5) days after the hearing, the hearing officer shall immediately withdraw the intent to deny, suspend or revoke the license and shall notify the respondent in writing by certified mail of such action. The hearing officer shall contemporaneously therewith issue the license to the applicant.

(2) An applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain or otherwise enjoin the town's enforcement of the denial, suspension or revocation, the town shall immediately issue the aggrieved party a provisional license. The provisional license shall allow the aggrieved party 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 aggrieved party's appeal or other action to restrain or otherwise enjoin the town's enforcement.

(3) Sexually oriented businesses or sexually oriented business employees operating or working under temporary licenses or de facto temporary licenses shall be subject to the applicable provisions of this chapter.

3.08.606: VIOLATION; PENALTY:

In addition to revocation or suspension of a license as provided in this chapter, the violation of any provision of this chapter shall be a class B misdemeanor. Each day of a violation shall be considered a separate offense. The prosecuting agency shall have the discretion to charge any offense under this chapter as an infraction.

CHAPTER 9
RESERVED

CHAPTER 10

SPECIAL EVENT PERMITS

Section

- 3.10.101: SPECIAL EVENT PERMIT REQUIRED:
- 3.10.102: APPLICATION FOR PERMIT:
- 3.10.103: APPLICATION FEE:
- 3.10.104: FEE WAIVER:
- 3.10.105: PROCESS AND STANDARDS FOR PERMIT APPROVAL:
- 3.10.106: INSURANCE REQUIREMENTS:
- 3.10.107: CASH OR SECURITY DEPOSIT:
- 3.10.108: ENFORCEMENT OF CHAPTER:
- 3.10.109: APPEALS:
- 3.10.110: SEVERABILITY OF CHAPTER:

3.10.101: SPECIAL EVENT PERMIT REQUIRED:

Any special event that creates a need for municipal coordination of parking, traffic flow, fire, police/security service and/or otherwise impacts the public health, safety and welfare or general peace and tranquility of the community beyond that which would be reasonably necessary and ordinarily anticipated relative to personal and individual use of public or private property, and in all cases where an admission fee is required, shall be required to apply for and be granted a special event permit for the specific event and its venue. Events, which occur in a series such as live performances, may apply for the entire series of special events under one special event permit.

3.10.102: APPLICATION FOR PERMIT:

Applications for special events shall be made in writing to the Town Clerk on forms available from the recorder's office. Applications must be completed and submitted to the Town recorder not less than sixty (60) days prior to the scheduled event. The application shall be signed by the person or group of people who is or are the organizers and with whom the responsibility for conduct of the event lays. The applicant must be a natural person or persons and not a corporation, corporate sponsor or business, or any other entity that is not a natural person. The application shall include:

- (1) Name and description of the event;

- (2) Name of the applicant;
- (3) Social security number of the applicant;
- (4) Geographical location of the event;
- (5) Proposed time and duration of the event;
- (6) Anticipated attendance at the event;
- (7) Anticipated traffic and parking impacts;
- (8) Anticipated necessity for public personnel, equipment and other public services at the event;
- (9) Proposed admission fee;
- (10) A photocopy of a temporary sales tax license from the state tax commission shall be attached to the application for the applicant and each entity offering goods for sale at the special event.

3.10.103: APPLICATION FEE:

Applications for a special event permit shall be assessed a fee of one hundred dollars (\$100.00). Applications shall be considered incomplete unless and until the application fee is paid in full.

3.10.104: FEE WAIVER:

The Town manager may waive all or a portion of the special event permit application fee upon a finding of eligibility pursuant to the following criteria:

- (1) Nonprofit status of the applicant;
- (2) No fee charged for the event;
- (3) Demonstration of hardship by the applicant.

3.10.105: PROCESS AND STANDARDS FOR PERMIT APPROVAL:

(1) The Town Clerk shall submit the completed special event permit application to the public safety director and the public works director for department approval. The public safety director shall review and approve the special event permit to determine if the applicant adequately addresses crowd control, adequate parking, traffic control and all other public safety requirements. The public works director shall review and approve the special event permit to determine if the applicant adequately addresses sanitation and other public service needs.

(2) The applicant shall meet the following standards:

(a) The safety, health, sanitation equipment and services or facilities are available to ensure that the event will be conducted without creating unreasonably negative impacts to the area and with due regard for safety and the environment.

(b) Adequate off-site parking will minimize substantial adverse impacts on general parking and traffic circulation in the vicinity of the event.

(c) Any other services or facilities necessary are available to ensure compliance with Town noise, sign and other applicable ordinances.

(d) The event shall not create the imminent possibility of violent disorderly conduct likely to endanger public safety or cause significant property damage.

(e) The applicant demonstrates an ability and willingness to conduct the event pursuant to the terms and conditions of this chapter.

(3) After review and approval of the application by the public safety director and the public works director, the Town Clerk shall submit the application to the Mayor for approval. The Mayor shall review the application for compliance with this chapter and shall request any additional information and/or review by staff before approving and signing the application.

(4) The Mayor shall review and approve or deny the application within thirty (30) days of the receipt by the Town Clerk of a complete special event permit application, including all required submittals and fees.

3.10.106: INSURANCE REQUIREMENTS:

Applicants shall provide proof of liability insurance in the amount required by the Town, and shall further name the Town as additional insured. The Town shall determine the amount of insurance required based upon the size and type of special event. All applicants shall further indemnify the Town from liability occurring at the event.

3.10.107: CASH OR SECURITY DEPOSIT:

The Mayor is authorized to require an applicant to post a cash deposit or other security accepted by the Town attorney for all estimated contingent costs prior to the issuance of the special event permit, as a guarantee against fees, damages, cleanup or loss of public property.

3.10.108: ENFORCEMENT OF CHAPTER:

(1) It is unlawful for the authorized special event representative to fail to take reasonable steps to promptly cure any notice of violation of this chapter. If the public safety director determines that a failure to cure a violation of this chapter creates a clear and present danger of immediate significant harm to life, public safety or property which cannot be reasonably mitigated, the applicant shall be promptly notified that the special event permit is revoked and that the special event must immediately cease and desist.

(2) Any person who willfully violates any provision of this chapter shall be guilty of a class B misdemeanor. Persons conducting special events without having first obtained a special event permit are subject to arrest and the event is subject to closure.

3.10.109: APPEALS:

The applicant or any person aggrieved by a final decision, determination or requirement of the Mayor regarding a special event permit may appeal to the Town council. An appeal must be submitted in writing to the Town recorder within thirty (30) days of the Town manager's final decision on the special event permit application.

3.10.110: SEVERABILITY OF CHAPTER:

If any provision or clause of this chapter or application thereof to any person or entity or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses or applications hereof which can be implemented without the invalid provision, clause or application hereof, and to this end the provisions and clauses of this chapter are declared to be severable.