

TITLE SIX - BUSINESS REGULATIONS

CHAPTER 1 - BUSINESS LICENSES

6-1-010. Definitions.

The following definitions shall be applicable to this title:

- A. **"Business"** means and includes all activities engaged with in 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.
- B. **"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.
- C. **"Place of business"** means each separate location maintained or operated by the licensee within this municipality from which business activity is conducted or transacted.
- D. **"Home Occupation with Impact"** a business that takes place within a residential zone, conducted by a resident(s) residing in a home that creates a material impact to the residential neighborhood by having non-resident employees on the premises or patrons visiting the premises. (ordinance #4-04-18)
- E. **"Home Occupation without Impact"** a business that takes place within a residential zone, conducted by a resident(s) residing in a home that creates no impact to the residential neighborhood since no non-resident employees work on the premises or no patrons visit the premises. (ordinance 4-04-18)
- F. **"Employee"** means the operator, owner or manager of a place of business and any persons employed by such person in the operation of said place of business in any capacity and also any salesman, agent or independent contractor engaged in the operation of the place of business in any capacity.
- G. The term **"wholesaler"** means 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.
- H. The term **"wholesale"** means 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.

- I. **"Each separate place of business"** shall mean 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, or where personal or professional services are rendered.
- J. **"Canvasser," "solicitor," "peddler," "Hawker," or "huckster"** means any individual whether or not a resident of the municipality, traveling either by foot, wagon, motor vehicle, or other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares and merchandise, personal property of any nature whatsoever, or carrying, conveying, or transporting meats, fish, vegetables, fruits, garden truck, farm products or provisions, whether or not payment and delivery are made simultaneously or whether payment is taken for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale, or whether he is collecting advance payments on such sales, provided that such definition shall include any person who, for himself, or for another person, firm or corporation, hires, leases, uses or occupies any building, structure, tent, railroad boxcar, hotel or motel room, lodging house, apartment, shop or any other place within the municipality for the sole purpose of exhibiting samples and taking orders for future delivery.
- K. **"Transient merchant," "itinerant merchant," or "itinerant vendor"** is defined as any person, firm or corporation, whether as owner, agent, consignee or employee, whether or not a resident of the municipality, who engages in a temporary business of selling and delivering goods, wares and merchandise within the municipality, and who, in furtherance of such purpose, does not conduct the activity substantially within a permanent building or structure but who does in furtherance of such purpose hire, lease, use or occupy a nonpermanent building or structure, motor vehicle, tent, railroad boxcar, public room in any hotel, motel, lodging house, apartment, shop or any street, alley or other place within the municipality, other than within a permanent building or structure, for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. The person, firm or corporation so engaged shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.
- L. **"Mobile Food Vendor"** means any business which sells edible goods from a non-stationary location within the City. The term shall include, but not be limited to:
 - Mobile food trucks: a self-contained motorized vehicle selling food items;
 - Concession carts: mobile vending units selling food items that must be

moved by non-motorized means;

Concession trailers: a vending unit selling food items which is pulled by a motorized unit and has no power to move on its own. (ordinance #4-18-18)

6-1-020. License Required.

It is a Class B Misdemeanor for any person to engage in or carry on any business, trade, profession, or calling within the city without first obtaining a license as required by this chapter.

6-1-030. Branch Establishments.

A separate license must be obtained for each separate place of business in the city. Each license shall authorize a licensee to engage in only 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 license under this part shall not be deemed to be a separate place of business or branch establishment.

6-1-040. License Assessor and Collector.

The city recorder/finance director is designated and appointed as ex-officio assessor of license fees for the city. On receipt of any application for a license, the city recorder/finance director shall assess the amount due thereon and shall collect all the license fees set by ordinance. He or she shall enforce all provisions of this title, shall cause violations to be processed and treated as any other criminal violation by report and referral to the appropriate prosecuting office.

6-1-050. Payment Dates.

- A. All licenses shall be payable before each calendar year, in advance, and shall commence from the first day of January of each year and shall expire on the 31st day of December of each year.
- B. All license fees shall be due the first day of each calendar year and shall become delinquent if not paid by February 1 of each year. The proceeds of all licenses shall be remitted by the city recorder/finance director to the city treasurer.
- C. If any license fee is not paid within thirty (30) days of the due date, a penalty of 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.

6-1-060. Applications.

- A. All applications for business licenses for businesses which shall be permanently located and conducted within Salem City on a long term basis shall specify:
 - 1. The name of the person desiring a license;
 - 2. The kind of license desired, stating the business, calling, trade or profession to be performed, practiced or carried on;

3. The place where such business, calling, trade or profession is to be carried on, giving the street number where the business, calling, trade or profession is to be carried on or in any building or enclosure having such number;
 4. The application shall state such other matter or things required by ordinance or statute.
- B. Applicants for licenses to conduct business as itinerant merchants shall provide the following information to the city recorder/finance director.
1. The name and address of the applicant, and if the applicant is an employee or agent of a corporation, the name and address of the corporation;
 2. A brief description of the nature of the business and the goods to be sold and from whom or where the applicant obtains the goods to be sold;
 3. If the applicant is employed by or is an agent of another person, the name and permanent address of such other person or persons;
 4. The length of time for which the applicant desires to engage in business within the municipality;
 5. The place or places within the municipality where the applicant proposes to carry on his or her business;
 6. A list of the other municipalities in which the applicant has engaged in business within the six-month period preceding the date of the application;
 7. If the applicant is employed by another person, firm or corporation, documents showing that the person, firm or corporation for which the applicant proposes to do business is authorized to do business within the State of Utah.
 8. A current and active sales tax number, having been issued by the State of Utah to the applicant to do business within the State of Utah, if applicable.
 9. Any person or entity selling foods or food items must comply in all respects with the rules and regulations of the Utah State Board of Health and/or the Utah County Health Department.

6-1-070. Certificate.

All certificates of license shall be signed by the mayor, attested by the recorder/finance director and shall contain the following information:

- A. The name of the person to whom such certificate has been issued;

- B. The amount paid;
- C. The type of license and the class of such license if licenses are divided into classes;
- D. The term of the license showing the date of its expiration;
- E. The place where such business, calling, trade, or profession is to be conducted.

6-1-080. Display.

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 the license cannot be displayed due to the transient or mobile nature of the business, then the licensee shall carry the license on his person to be shown on request to an officer or citizen during all such time or times while the licensee is engaged in or pursuing the business for which a license is granted.

6-1-090. Non Transferable.

No license granted or issued under this chapter shall be in any manner assignable or transferable. It shall not be deemed to authorize any person other than the person or entity named therein to do business or to authorize any other business, calling, trade, or profession than is therein named unless by permission of the city council.

6-1-100. Revocation.

Licenses issued under the provisions of this chapter may be revoked by action of the city council because of failure on the part of the licensee to comply with the conditions and requirements of said license or because of illegal activities thereunder.

6-1-110. Fee Schedule.

- A. Each business, location, trade, calling, profession, itinerant merchant, solicitor, or canvasser for each person or other entity engaged in business in Salem City shall pay an annual license fee of \$50.00. (Ordinance No. 7-07-10)
- B. Those businesses which sell tobacco products, and which have employees who have violated any provision of law with respect to the sale of tobacco products, shall have their business license fee increased during the next calendar year by the sum of \$100.00 for each such violation. (Ordinance No. 12-9-97-A)
- C. The business license fee for a home occupation with impact shall be based upon the administrative cost to the City to issue a home occupation business license. The initial fee shall be \$50.00 and shall be subject to change based on changing costs, as determined by the

City Council in the annual budget. (ordinance #4-04-18)

D. The business license fee for a Transient Merchant is \$25.00 per day, up to a maximum of \$300.00. Payment of a fee of \$300.00 validates the transient merchant license for the balance of the calendar year in which it is issued. The business license clerk shall stamp the expiration date on each transient merchant business license that is issued. No inspections are required for transient merchants. (ordinance #4-04-18)

E. In addition to the business license fee, all businesses shall receive an inspection when the initial license is issued, unless otherwise noted, at an additional cost of \$25.00. Businesses requiring inspection(s) after the initial inspection shall pay an inspection fee of \$25.00 each time an inspection is conducted. (ordinance #4-04-18)

6-1-120. Exemption.

No license fee shall be imposed under this chapter for any person engaged in business for solely religious, charitable, eleemosynary or other types of strictly non-profit purpose which is tax exempt in such activities under the laws of the United States and the state of Utah, nor shall any license fee 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 of Utah; nor shall any license fee be imposed upon any person not maintaining a place of business within this municipality who has paid a like or similar license tax or fee to some other taxing unit within the state of Utah and which taxing unit exempts from its license tax or fee, by reciprocal agreement or otherwise, businesses domiciled in this municipality and doing business in such taxing unit.

6-1-130. Multiple licenses.

Any person, business, corporation, or other entity carrying on business within the city which is required to have any other type of license by local, state, or federal law shall be required to obtain a business license in addition to the other required license(s), including beer or alcohol license, federal firearm license, or other similar licenses.

6-1-140. Site Improvements.

All businesses constructing new buildings in Salem City must comply with the construction and development standards of the City prior to receiving a business license.

All businesses remodeling a building shall be required to comply with Salem City Municipal Code Section 10-3-010(B) prior to receiving a business license.

Ordinance No. 3-17-99-B

CHAPTER 2 - ALCOHOLIC BEVERAGES

6-2-010. Definitions.

The words and phrases used in this chapter shall have the meanings specified in the Utah Alcoholic Beverage Control Act unless a different meaning is clearly evident. Said definitions are adopted and incorporated herein by reference. The provisions of the Alcoholic Beverage Control Act [Title 32A of the Utah Code] shall govern the selling and dispensing of alcoholic beverages within the city, except where otherwise allowed by said act and set forth herein.

6-2-020. Permit Required.

A. It shall be unlawful for any person to sell, offer to sell, or provide to the public any type of alcoholic beverages without first obtaining a permit to do so from the city. An applicant need not have a permit issued by the Department of Alcoholic Beverage Control, but shall be qualified in all respects to obtain a state license from the Department. All licensees shall comply with the Alcoholic Beverage Control Act, Utah Code Annotated §32-A-1-101 et.seq., as it may from time to time be amended, and the rules and regulations promulgated thereunder by the Department of Alcoholic Beverage Control. An alcoholic beverage permit shall be in addition to the business license required under Title 6 of the Salem City Ordinances. The permit granted hereunder shall expire on the 31st day of December of each year. A new permit is required each year. A new permit must be obtained within thirty (30) days of the expiration of any prior permit.

Applications shall be made available at the city offices and permits may be issued by the city recorder's office upon a showing of meeting all of the requirements set forth herein and in the Alcoholic Beverage Control Act.

B. The application for a license shall be referred to the Chief of Police for inspection and report. After investigation the Chief of Police shall make a recommendation to the council as to the granting or denial of the license. The city council shall act upon the recommendation as it deems just, fair, and proper.

C. A permittee holding a Class A Permit (as defined in the next section) for off-premise consumption shall require any and all employees involved in the transaction of retail beer sales to obtain a Beer handler's Permit from the Utah County Health Department, complying with all the ordinances, rules, and regulations promulgated by the Health Department for issuance of such permits. All employees of a permittee 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 permittee shall obtain a Beer handler's Permit within thirty (30) days of hire. During this thirty (30) day period, the employee may sell alcoholic beverages in accordance with the Utah Alcoholic Beverage Control Act, the regulations of the Alcoholic Beverage Control Commission, and the provisions of

this Chapter.

The permittee is required to inform the Utah County Health Department 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. Permittees shall permit law enforcement officers and Utah County Health Department employees to conduct random Beer handler's Permit compliance checks on permittee's premises.

An employee possessing a Beer Handler's Permit who is convicted of any law involving the sale of an alcoholic beverage is not only subject to the penalties in section 6-2-100 of this chapter, but shall also incur a suspension of the employee's Beer Handler's Permit in accordance with the ordinances, rules, and regulations adopted by the Utah County Health Department applicable to such permit. (Ord. No. 6-16-04)

6-2-030. Categories of Permits.

Permits shall be issued as follows:

- A. "Class A" permits shall entitle the holder thereof to sell beer, light beer, malt liquor, or malted beverages for consumption off the premises in accordance with the Alcoholic Beverage Control Act.
- B. "Class B" permits shall entitle the holder thereof to sell alcoholic beverages for on premise consumption, in conjunction with the operation of a restaurant, in accordance of the Alcoholic Beverage Control Act. (Ordinance 2-18-09)

All other sales of beer, light beer, malt liquor, malted beverage, or other alcoholic beverages are prohibited within Salem City.

6-2-040. Non-Transferable.

Permits issued pursuant to this chapter shall be non-transferable.

6-2-050. Fees.

Prior to the issuance of a Class A or B permit to sell alcohol, the applicant shall pay a fee in the amount of \$1,000.00 if obtained during the first six months of any calendar year, \$750.00 if obtained during the third quarter of any calendar year, or \$625.00 if obtained during the fourth quarter of any calendar year. (Ordinance No. 7-07-10)

Permits are good for a calendar year. Permits must be renewed annually. The renewal fee shall be \$500.00 per year. (Ordinance 2-18-09)

6-2-060. Revocation.

Any permit issued hereunder may be revoked following notice and a hearing before the City Council. Grounds for revocation shall be for violation of this chapter, for violations of any of the provisions of the Alcoholic Beverage Control Act, or upon losing a state issued license or permit, or for any other factor identified in this Chapter. Notice shall be deemed received when mailed by United States Postal Service, first class mail, postage prepaid, to the address provided in the application for the beer license.

Except for cases involving sales of alcohol to underage persons by offsite beer retailers, the City Council, shall follow the following criteria when holding revocation hearings:

- A. The City license shall be revoked if the State license has been revoked.
- B. Upon a first violation of this chapter, the permit holder shall receive a warning.
- C. Upon any violation of this chapter which occurs within two years of a prior violation, the permit holder shall pay a civil penalty of \$250.00
- D. Upon any violation of this chapter which occurs within two years of two prior violations, the permit holder shall pay a civil penalty of \$500.00 and the permit holder shall have its license to sell beer suspended for a period of three consecutive days, on a Thursday through Saturday.
- E. Upon any violation of this chapter which occurs within two years of three prior violations, the permit holder shall pay a civil penalty of \$500.00 and the permit holder shall have its license to sell beer suspended for a period of 30 consecutive days. Additionally, the permit holder shall be placed on probation for a period of one year. Any violation of this chapter during the period of probation shall result in the revocation of the permit holder's permit to sell beer. The permit holder shall not be eligible to reapply for a new license for at least six months from the date of revocation.

In cases of sales of alcohol to underage persons by offsite beer retailers, the City Council shall follow the requirements set forth in Utah Code Ann. §32B-7-302(3).

Failure to pay any of the civil penalties assessed herein is grounds for revocation of the permit holder's permit to sell beer. (ordinance 11-07-12)

6-2-070. Duties.

Each person or entity granted a permit under this chapter shall abide by the following:

- A. A Class A permit holder:

1. Shall comply with all applicable provisions of the Alcoholic Beverage Control Act.
2. It shall not permit beer, light beer, malt liquor, or malted beverages to be sold during the hours of 12:00 midnight until 6:00 a.m., nor on Sundays. (Ord. No. 8-4-99)
3. Shall not permit beer, light beer, malt liqueur, or malted beverages to be sold from drive-up windows.
4. Shall not permit any person under the age of 21 years to sell or handle alcoholic beverages in or about the premises or facilities.
(Ord. No. 2-25-97-A – Section 6-2-070-A)

B. A Class B permit holder:

1. Shall comply with all applicable provisions of the Alcoholic Beverage Control Act;
2. Shall not permit beer, light beer, malt liquor, or malted beverages to be sold between the hours of 12 midnight and 10:00 a.m.(Ord. 2-18-09)
3. Shall not permit any person under the age of 21 years to sell or handle alcoholic beverages in or about the restaurant premises or facilities.

6-2-080. Possession in Public Facilities Prohibited.

It is a class B misdemeanor for any person to consume or possess any alcoholic beverage within any public park, recreation facility, building, or property under the ownership or control of the city.

6-2-090. Inspections.

All permittees under this chapter shall allow access, at reasonable hours, to the premises and business records to verify compliance with this chapter and/or with the Alcoholic Beverage Control Act. Such access shall be allowed to any police officer of the city. Failure to allow an inspection when requested shall result in revocation of the permit in addition to any sanctions authorized by the Alcoholic Beverage Control Act.

6-2-100. Violations.

Unless otherwise set forth in the Alcoholic Beverage Control Act, each violation of this chapter is a Class B Misdemeanor.

CHAPTER 3 - FRANCHISES AND SPECIAL PRIVILEGES

6-3-010. Requirement of Franchise.

It shall be unlawful to install, construct, or maintain any wires, cables, fibers, poles, pipes, or other equipment for the provision of public utility service or telecommunications in, on, under, or over any street, alley, sidewalk, parkway, or other public place within the municipal limits of Salem City without having first obtained a franchise for use of the public way from Salem City.

6-3-020. Application Copies.

Whenever application is made to the city council for a franchise or grant of special privilege, or for an extension or renewal of any existing franchise or grant of special privilege, the applicant shall furnish to the city manager for the use of the city council, ten copies of the proposed ordinance or ordinances and pay into the city treasury a fee as established from time to time by resolution of the city council.

6-3-030. Criteria for Grant of a Franchise.

1. No person, corporation, or other entity may receive a franchise to construct, maintain, or operate facilities to be used to provide any public utility, service, or telecommunications within the limits of the city unless the city council has determined that granting such franchise is in the public interest, as determined by:
 - A. The franchise is consistent with the safety and health and will promote the prosperity, comfort, and convenience of the city and its residents; and
 - B. It is consistent with the protection of property in the city.
2. No person, corporation, or other entity may receive a franchise to construct, maintain, or operate facilities used or to be used to provide any public utility, service, or telecommunications within the limits of the city to an area where such service is provided from the city, or an area where the city has incurred expenses in providing such service, until satisfactory provision has been made, on terms and conditions approved by the city council, for payment by the prospective franchisee to the city of the fair market value of those facilities dedicated to provide said service to the area being franchised. In the event the city and the prospective franchisee cannot agree upon the fair market value of said facilities, the franchise may not be granted until the agreement is reached.

6-3-040. Franchise Agreements.

1. Salem City may, by written agreement, grant one or more non-exclusive franchises for use of public streets, public easements, and public right-of-ways. Said agreements should take the form of both contract and uncodified municipal ordinance.
2. Unless the city council shall otherwise consent by resolution, each agreement and granting of franchise shall include, but not be limited to, provisions related to the following items:
 - A. The term of the franchise;

- B. The amount of any franchise fee or other fees to be paid for use of the public streets, easements, or right-of-ways;
 - C. The rights and limitations on the use by the franchisee of city-owned or controlled streets, easements, poles, or other publicly-owned property;
 - D. Public or governmental use, if any, of the franchised system;
 - E. A description of the area or customers who are to be served by the franchisee, including obligations to expand service.
3. No franchise contract shall take effect until it has been approved by the city council.
4. Any franchise granted pursuant to this section shall remain subject to the right of the city council to adopt ordinances or other laws regulating the same, including but not limited to, the following:
- A. The commencement, interruption, or discontinuation of customer service;
 - B. The quality of service received by customers;
 - C. Customer billing practices;
 - D. The handling of customer complaints.

6-3-050. Non-Assignable - Exception.

All franchises and grants of special privilege shall be deemed to be non-assignable, without the express permission of the city council, whether or not such limitation is set forth in the body of the franchise or grant.

Any attempt at assignment or transfer of a franchise or a special privilege not made in accordance with the provisions of this section shall operate as a forfeiture of all the rights and grants therein given.

6-3-060. Revocation of Grant.

The grant of any franchise may be revoked by the city upon the violation of any provision of this chapter or any condition of the franchise agreement or ordinance. Notice of any violation shall be given to the franchisee at least fifteen (15) days prior to any action being taken to revoke the franchise. If the violation is not corrected within the fifteen (15) days, the city council may schedule a hearing to take evidence concerning the violation. If a violation is found, the council may impose sanctions, including fines, probation, revocation of the grant of franchise, or such other remedy that satisfies the demands of justice.

(OrdinanceNo.10-10-95)

CHAPTER 4 - PAWN BROKERS

6-4-010. Pawnbroker Defined.

"Pawnbroker" means any person who loans money or deals in the purchase or exchange of personal property, on condition of selling the same back again to the pledgor or depositor; or who loans or advances money on personal property by taking a chattel mortgage or security thereon, and takes or receives such personal property or other indicia of title into his possession; or any person who sells unredeemed pledges with or without the contemporary sale of new merchandise to facilitate the sale of merchandise.

6-4-020. License Required.

- A. It is unlawful for any person to be in the business of a pawnbroker in the city, without having previously obtained a license to operate as a pawnbroker in accordance with the provisions of this title.
- B. The license fee for a pawnbroker shall be as set forth in §6-1-110, and each license shall expire on December 31st of each year. The license shall be displayed prominently in the place of business, and a copy of all ordinances pertaining to the conduct or transaction of pawnbroker business shall be posted in a conspicuous place in the place of business in such a way that it can be easily perused by all who do business with the pawnbroker.

6-4-030. Display of Merchandise.

All merchandise displayed by a pawnbroker to be held for sale by a pawnbroker shall be held and displayed within an enclosed structure.

6-4-040. Firearms.

Any pawnbroker accepting and reselling firearms must have a federal firearms permit. Any pawnbroker violating this provision shall have his license revoked. Any pawnbroker accepting or reselling firearms is required to produce the federal firearms permit upon request of any law enforcement officer of the city.

6-4-050. Resale of Pawned Property.

Any pawnbroker receiving the sum of twenty dollars or greater for the sale of any merchandise held by it for resale is required to obtain the name and address of the buyer, together with birth date and to verify the same by picture identification. The pawnbroker shall produce said information on request to any authorized agent of Salem City including any law enforcement officer. Any person violating this provision is guilty of a Class B Misdemeanor.

6-4-060. Bond Required.

Before any license shall be issued to a pawnbroker, under the provisions of this chapter, the applicant for the license shall execute and deliver to the city a bond in the principal amount of one thousand dollars executed by a corporate surety authorized to so business in the state, and conditioned upon the faithful performance of the licensee of all requirements under this chapter.

6-4-070. Disclosure Provisions.

- A. All pawnbrokers shall keep a complete ledger-type record containing an account of each and every transaction concerning the buying selling, pawning and redemption of articles, which record shall be written in the English language in legible printing at the time of the receipt, loan, purchase, sale or redemption, and shall set forth the following information:
1. The date and time;
 2. The name, date of birth, and full description of the pledgor or seller, with his street address, city and state of residence. The name, date of birth and description of the seller or pledgor shall be taken from an identification card containing his or her photograph. The type of identification card used for this purpose shall be noted on the form. If the property is jointly owned, both owners must be designated as above.
 3. An accurate description of the goods, articles or things pawned or purchased, including the serial number, model number, name of the manufacturer, and dimensional description (e.g. Zenith color TV, 23-inch, Model Number _____, Serial Number _____; or Colt pistol, 6-inch barrel, Model Number _____, Serial Number _____);
 4. The amount of money loaned or advanced thereon or paid therefor;
 5. The date and hour of the transaction, and in the case of items pawned, the period of time within which the pledge must be honored;
 6. The residence address of the pawnbroker;
 7. The number of the pawn ticket;
 8. Each ticket shall have the name of the business and shall be signed by the seller or pledgor and agent of the business.
- B. The pawnbroker shall make out, in connection with each article pawned, purchased or received pursuant to a transaction of any nature, a serially numbered pawn ticket.
- C. Each pawn ticket shall be issued in multiple copies so that one copy can be retained by the pawnbroker, one copy referred to the person delivering the article, one copy at the close of each business day mailed by the pawnbroker to the sheriff of the county, and the fourth copy delivered to the police department of the city at no greater interval than one week. It shall be a misdemeanor for the pawnbroker to issue any pawn ticket which is not serially numbered in sequence as shown in the ledger book in subsection A above, or to intentionally falsify any information on either the ledger or the four-part ticket. The copies delivered to the county sheriff

and to the city police department shall be clear, legible, and shall contain all signatures. It is unlawful for any pawnbroker, whether acting for himself or acting by and through any agent or employee, to transact any business with respect to a pawn, redemption, purchase, sale, consignment, or any other transaction or gift, other than in conformance with the requirements set forth in this chapter.

6-4-080. Right to Redeem Pawned Articles.

It is unlawful, in all cases in which an article pledged has been forfeited, for a sale or other disposition thereof to be made by the pawnbroker within a period of two months from the date of the pledge; provided, that if the pledgor makes payment to the pawnbroker equal to the interest for a particular month, the redemption period shall be extended an addition thirty (30) days.

6-4-090. Dealing with Proscribed Persons.

It is unlawful for any pawnbroker to receive any goods, articles or things in pawn, in pledge or to loan or allow to be redeemed any article by any person who at the time of the transaction is intoxicated or who is known to be a habitual drunkard, or any person who is known to be a thief, insane or incompetent, or to any person under the age of eighteen years.

6-4-100. Protection of Minors.

It is unlawful for any pawnbroker to sell or trade any gun, or knife with a blade in excess of four inches long to any person under the age of eighteen years, unless the person is accompanied by their legal guardian or parent.

6-4-110. Hours.

It is unlawful for any pawnbroker to receive any goods by way of pawn or pledge, or to keep his place of business open before the hour of seven a.m. or after seven p.m.; provided, however, that on Saturday of each week and on days preceding legal holidays, and the last fifteen days of December of each year, it is lawful for the pawnbroker to keep his place of business open until eleven p.m.

6-4-120. Ownership of Pawned Property.

- A. It is unlawful for any pawnbroker to accept goods or articles in pawn from other than the lawful owner thereof, except with written permission of the owner. Any articles pawned by other than the owner, taken by a pawnbroker, shall be surrendered to the owner thereof upon presentation of proof of ownership of the pawned article by the owner, and failure of a pawnbroker to surrender such materials forthwith upon demand by the true owner, and after exhibition of proof of ownership, shall be a Class B Misdemeanor.
- B. This provision shall apply to outright purchase and all other applicable transactions of any nature.

6-4-130. Unlawful Acts.

- A. A pawnbroker shall be required to adhere to the requirements of Utah Code

Annotated §76-6-408 in addition to any requirement of this chapter.

- B. Every pawnbroker or person who has or operates a business dealing in or collecting used or personal property shall require the seller or person delivering the property to certify, in writing, that he has the legal rights to sell the property. The pawnbroker or person shall also require the seller or person delivering the property to obtain a legible print, preferably the right thumb, at the bottom of the certificate next to his signature, or any other positive form of identification.
- C. Every pawnbroker or person who has or operates a business dealing in or collecting used or personal property and every agent, employee or representative of the pawnbroker or person who buys merchandise or property shall retain that property for a period of thirty days before selling or otherwise disposing of the property or merchandise.

6-4-140. Separate Rooms.

It is unlawful for any pawnbroker to contain his pawnbroking business in the same room or in the same building with interconnecting rooms with any business dealing in alcoholic beverages.

6-4-150. Liability of Principal.

The holder of a pawnbrokers license is liable for any and all acts of his employees in violation of this chapter.

6-4-160. Violation.

Any person violating any of the provisions of this chapter is guilty of a Class B Misdemeanor.

CHAPTER 5 - SECONDHAND, JUNK, AND ANTIQUE DEALERS

6-5-010. Secondhand, Junk and Antique Dealers Defined.

- A. **Antique Dealer.** Any person who engages in the buying, selling, bartering and exchanging of old furniture, coins, currency or other materials bought or sold as having antique value in hereby declared to be an "antique dealer."
- B. **Junk Dealer.** Any person engaged in buying and selling, bartering and exchanging old metal, glass, rags, rubber, paper or other junk is hereby declared to be a "junk dealer."
- C. **Secondhand Dealer.** Any person who keeps a store, office or place of business or who travels through the community for the purpose of purchasing, bartering, exchanging or selling secondhand goods, (including, but not limited to, used clothing or garments of any kind, books, musical instruments, coins, wares or merchandise), or who engages in the business of dealing in secondhand goods is hereby declared to be a "secondhand dealer."
 - 1. An otherwise licensed business which sells new appliances or musical instruments or automobiles is exempted from the above when the used article is used as a trade-in for a new item of the same or similar description.

6-5-020. License Required - Fee.

- A. It is unlawful for any person to do business as a secondhand dealer, a junk dealer or an antique dealer in the city, without having previously obtained a license for that purpose in accordance with the provisions of this chapter and chapter one of this title.
- B. The license fee for a secondhand, junk or antique dealer shall be as set forth in §6-1-110. Each license shall expire on December 31st of each year. The license, after being issued, shall be displayed prominently in the place of business.

6-5-030. Display of Merchandise.

All merchandise displayed by a secondhand, junk, or antique dealer to be held for sale by such dealer shall be held and displayed within an enclosed structure.

6-5-040. Disclosure Provisions.

- A. All licensees under this chapter shall keep a complete written record containing an account of each and every transaction concerning any goods taken into the business either by purchase or by trade, which record shall be written in the English language in legible printing at the time of the purchase or trade, and shall set forth the following information:
 - 1. The date and time;
 - 2. The name, date of birth, and address of the customer. (If the property is

jointly owned, each owner's information must be given in full.) If the property sold or traded by other than the legal owner, both names must be included.

3. An accurate description of the goods, articles or things sold or traded, including the serial number of the article, the name of the manufacturer, if available, and a factual description of the item (e.g. Zenith color TV, 23-inch, Model Number _____, Serial Number _____);
 4. The amount of money paid for the item with each item listed separately with a value ascribed to each or in the event of an exchange, the value ascribed on the exchange;
 5. The day, time of day, month and year that the transaction occurred;
 6. The number of the sales ticket;
- B. The licensee shall make out, in connection with each article purchased or traded for, a serially numbered sales ticket.
- C. Each sales ticket shall be issued in multiple copies so that one copy can be retained by the licensee, one copy given to the customer and one copy at the close of each business week shall be mailed or delivered to the police department of the city. It is a Class B Misdemeanor for the licensee to take any property by either sale or trade into his business without issuing a sales ticket or to use a sales ticket which is not serially numbered in sequence as shown in the ledger book referred to in subsection A above, or to intentionally falsify any information on either the ledger or the ticket. It is unlawful for any licensee, whether acting for himself or acting by and through any agent or employee, to transact any business with respect to which a sales ticket is required in this chapter other than in conformance with the requirements set forth in this chapter.

6-5-050. Dealing with Proscribed Persons.

- A. It is unlawful for any licensee hereunder to receive any goods subject to this chapter from any person who, at the time of the transaction, is intoxicated or who is known to be a habitual drunkard, or who is known to be a thief, is insane or incompetent, or any person under the age of eighteen years.
- B. Any licensee hereunder who accepts property which he knows to have been stolen is guilty of a Class B Misdemeanor.

6-5-060. Ownership of Property.

It is unlawful for any licensee hereunder to accept materials, by either purchase or trade, from other than the lawful owner thereof except with the written permission of the owner. Any article accepted from other than the owner, taken by a

licensee hereunder, shall be surrendered to the real owner thereof upon presentation of proof of ownership of the article by the real owner. Failure of the licensee to surrender such materials forthwith upon demand by the true owner and after exhibition of proof of ownership shall be a misdemeanor.

6-5-070. Unlawful Acts.

- A. A licensee hereunder shall be required to adhere to the requirements of Utah Code Annotated §76-6-408 in addition to any requirements of this chapter.
- B. Every licensee hereunder and every agent, employee or representative of the licensee, who buys, receives or obtains property pursuant to a license issued under this chapter shall require the seller or person delivering the property to certify, in writing, that he has the legal right to sell the property. The licensee or his agent shall also require the seller or person delivering the property to affix a legible print, preferably the right thumb, at the bottom of the certificate next to his signature, or to provide another positive form of identification. Such alternative identification must be the type of identification having a photograph of the customers (i.e. a driver's license with photograph attached), and if used in lieu of the thumbprint, the licensee shall affix the proper numbers from the driver's license or other identification and adequately identify the identification.

6-5-080. Liability of Principal.

The holder of a license hereunder is liable for any and all acts of his employees in violation of this chapter.

6-5-090. Exemption.

Purchases of recyclable cans and bottles are exempt from this chapter.

6-5-100. Resale of Property.

Any secondhand, junk or antique dealer, receiving the sum of twenty dollars or greater for the sale of any merchandise held by it for resale is required to obtain the name and address of the buyer, together with birth date and to verify the same by picture identification. The secondhand, junk or antique dealer shall produce said information on request to any authorized agent of Salem City including any law enforcement officer. Any person violating this provision is guilty of a Class B Misdemeanor.

CHAPTER 6 – CABLE TELEVISION FRANCHISES

6-6-010. Legislative Intent.

The city finds that the continuation and development of cable television and communications system has great benefit and impact upon the residents of Salem City. Because of the complex and rapidly changing technology associated with cable television, the city further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the city or such persons as the city shall designate. It is the City's intent to insure that city residents receive a high quality cable television and communications service comparable to the best offered in any community in Utah County; that any inconvenience to residents in the development, operation, and maintenance of a cable system or systems be minimized; and that the city is properly compensated for the administration of cable television and communication franchises and the use of the public facilities permitted by this Chapter. It is the intent of this Chapter to provide for the means to attain the best possible public interest in these matters, and any franchise issued pursuant to this Chapter shall be deemed to include this finding as an integral part thereof.

6-6-020. Definitions.

- A. **"Basic Cable"** is the lowest priced tier of service that includes the retransmission of local broadcast television signals.
- B. **"Cable Act"** collectively means the Cable Communications Policy Act of 1984 (Public Law No. 98-549, 47 USC 5221 (Supp.)) as amended, and the Cable Television Consumer Protection and Competition Act of 1992, as amended.
- C. **"Cable Communications System", "System", or "Systems"**, also referred to as **"Cable Television System", "Cable System", "CATV System", or "Community Antenna TV System"**, shall have the meaning specified for "Cable Communication System" in the Cable Act. Unless otherwise specified it shall in this document refer to the cable communications system constructed and operated in the city under this ordinance.
- D. **"City"** means the City of Salem.
- E. **"FEE"** means Federal Communications Commission, or successor governmental entity thereto.
- F. **"Franchise"** means the non-exclusive, revocable right granted to the Grantee by which the city authorizes the Grantee to erect, construct, reconstruct, operate, dismantle, test, use and maintain a Cable Communications System in the city.
- G. **"Franchising Authority"** means the City of Salem, Utah.
- H. **"Grantee"** means any cable television or other telecommunications company licensed to transact business within the State of Utah, which has been authorized to

provide services within Salem City.

- I. **"Grantor"** means the City of Salem, Utah.
- J. **"Gross Revenues"** means all cash, credits, property of any kind or nature or other consideration received directly or indirectly by the Grantee, arising from or attributable to the operation of the Cable Television System in the city.
- K. **"Person"** means an individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee, joint stock company, trust, corporation, governmental entity, or personal representative thereof.
- L. **"Public Way"** or **"Street"** shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the System.
- M. **"Service Area"** means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.
- N. **"Subscriber"** means a person or user of the System who lawfully receives communications and other services therefrom with the Grantee's express permission.

6-6-030. Unlawful Activity.

- 1. It is unlawful to operate a Cable Communications System within the city without first obtaining from the city a Franchise to do so.
- 2. No Cable Communications System shall be allowed to occupy or use the streets of the city without a franchise.
- 3. In addition to the criminal and civil remedies provided by the Federal and State law, it is a class B misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically,

inductively, or otherwise, with any part of the System without the express consent of the Grantee. It is a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the System or any means of receiving services provided thereto, without the express consent of the Grantee.

6-6-040. Grant of Franchise.

1. Subject to the requirements of this ordinance, the city may grant to any Grantee a nonexclusive, revocable Franchise to construct, operate, maintain, and reconstruct a Cable Communications System within part or all of the city. The Franchise shall constitute both a right and an obligation to provide the services of a Cable Communications System as required by the provisions of this ordinance.
2. The term of any new or Renewal Franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall remain in effect for a period of fifteen years, unless terminated sooner as hereinafter provided.
3. The material provisions of any franchises granted pursuant to this ordinance shall be comparable, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. The Franchising Authority shall not authorize or permit a System to operate within the Franchise area on terms or conditions more favorable or less burdensome to any one operator.

6-6-050. Required Extensions of Service.

1. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the franchise agreement.
2. No Subscriber shall be refused service arbitrarily.

6-6-060. Two-Way Capability.

1. The Grantee shall design and construct the system in such a manner as to provide return response capability and so as to permit the introduction of return video and two way data signals as production technology allows and as the demand requires.
2. Should Grantee become a provider of, and should the City elect to purchase data or other telecommunication services other than traditional Cable services from the Grantee in the service area, the City shall pay no more than an amount based on the lowest competitor's price in the service area for like services. The Grantee may offer to provide such services to the City at the lowest competitor's price less a competitive differential.
3.
 - a. No provision contained herein shall require the Grantee to provide or prohibit the Grantee from providing telecommunication services to the City which will classify the Grantee as a common carrier or public utility, or otherwise subject it to regulatory authority outside of that for the traditional Cable services currently provided by the Grantee in the service area. To this end:
 - i. The Grantee may (i) refuse telecommunication service including but not limited to data, voice or other non-traditional Cable service to the

City, or (ii) control, monitor and/or maintain any portion of the system including but not limited to the optical path and the optical/electronic interface required to provide such services.

- ii. The City shall fully disclose the type(s) of services it will transmit and receive on the Grantee's system.
- b. All applications of the system by the City under this section are intended solely for their use, and are not for resale or commercial use.
- c. Should the Grantee become a provider of such services to the City, the Grantee's liability for any malfunction or failure of transmission under this section shall be limited to repair of the malfunctioning facility and restoration of transmission capability. Grantee shall have no liability for special or consequential damages of lost data or economic loss resulting for the City/County's inability to transmit signals over said facilities except to the extent the loss or damages are the consequence of Grantee's willful misconduct.

6-6-070. Procedure for Remedying Franchise Violations.

- 1. In the event that city believes that Grantee has violated any provision of the Franchise, city may make a written demand on Grantee that it remedy such violation. From delivery of such notice the Grantee shall (a) within 14 days, respond to the Franchising Authority, contesting the assertion of noncompliance, or (b) have thirty (30) days to cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the three (3) day period, initiate reasonably steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

If the Grantee fails to comply with §6-6-070 or the City believes the Grantee to still be not in compliance, and the alleged violation is of a significant material provision of the franchise, a meeting with the city mayor shall be held to review the alleged violation. If this meeting does not result in a satisfactory resolution, and/or Grantee requests a hearing, then a hearing shall be held, and Grantee shall be provided with an opportunity to be heard upon thirty (30) days written notice to Grantee of the time and the place of the hearing and the allegation of Franchise violations.

- (a) Any hearing will be conducted by the City Council.
- (b) The costs incurred by the parties for attorney's fees, expert witness fees and other expenses shall be borne solely by the party incurring the costs.
- (c) All witnesses testifying at any hearing held pursuant to this section shall be sworn witnesses and shall be subject to direct and cross-examination. However, formal rules of evidence applicable to the trial of civil and criminal proceedings in the trial courts of the State of Utah shall not be applicable to the hearing. The provisions of the Administrative Procedures

Act, commencing at Utah Code Ann. Section 63-46b-1, et. seq. (1953 as amended) or any such hearing. The hearing may be continued from time to time.

The city council shall upon conclusion of the hearing prepare findings of fact and conclusions. The decision shall be made, filed and mailed to the Grantee not later than thirty (30) calendar days after the conclusion of the hearing.

2. If, after the hearing, the city council determines that a non-compliance occurred or still exists, then Grantor may impose a remedy including, without limitation:
 - (a) making the correction itself, and charging the cost to the Grantee;
 - (b) commencing an action at law for monetary damages, or seeking other equitable relief;
 - (c) requiring the filing of a financial performance instrument by the Grantee to insure future performance; or
 - (d) in the case of a substantial default of a material provision of the Franchise, declaring the Franchise terminated.
3. If the decision by the city council is that there are grounds for termination of the Franchise and that the Franchise shall be terminated, the city council shall adopt a resolution which terminates the Franchise and includes its findings and conclusions. A copy of the resolution shall be mailed to the Grantee.
4. The Grantee shall not be held in default or non-compliance with the provision of the Franchise, nor suffer any enforcement or penalty relating thereto, for such non-compliance or alleged defaults are caused by strikes, acts of God, power outages, or other event reasonably beyond its ability to control.

6-6-080. Alternative Remedies.

No provision of this ordinance shall be deemed to bar the right of the city to seek or obtain judicial relief from a violation of any provisions of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this ordinance nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity.

No provision of this ordinance shall be deemed to bar any rights the Grantee may have under law and the right to review of any decision by the city council by a court of competent jurisdiction.

6-6-090. Franchise Fee.

1. For the use of the streets and for the purposes of providing revenue with which to

defray the costs or regulation arising out of the granting of this Franchise under this ordinance, Grantee shall pay a Franchise Fee.

2. During the term of the Franchise, Grantee shall pay to the City an amount equal to five percent (5%) per year of the Grantee's annual Gross Revenue received.
3. The Franchise Fee shall be paid quarterly forty-five (45) days after the end of each quarter. Each payment shall be accompanied by a report from a representative of the Grantee showing the basis for the computation.
4. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the city may have for further or additional sums payable under the provisions of this Section.
5. Any Franchise Fees which remain unpaid after the dates specified in Section 6-6-090(3) shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid.

6-6-100. Application.

1. No initial license franchise shall be issued except upon written application to the City. Such forms shall contain such information as the City Council may prescribe as to the:
 - (a) Citizenship and character of the applicant.
 - (b) The financial, technical and other qualifications of the applicant to operate the system.
 - (c) Complete information as to its principals and ultimate beneficial owners, including in the case of corporations, all stockholders both nominal and beneficial owning 1% or more of the issued and outstanding stock, and in the case of incorporated associations, all members and ultimate beneficial owners however designated.
 - (d) Description in detail of the equipment or facilities proposed to be constructed, installed and maintained.
 - (e) A statement or schedule setting forth the number of channels and all of the television or radio stations proposed to be received, transmitted, conducted, relayed or otherwise conveyed over its system.
 - (f) Such other information as the city may deem appropriate or necessary. Such application shall be signed by the applicant or a duly authorized representative.
2. The city council, after the last date fixed for the receipt of the application, shall cause

- to be published in a newspaper of general circulation within the city, a notice of a public hearing, giving the time, date, place of such hearing, and listing the names of the applicants and inviting public examination of the applicants and qualification of said applicants.
3. A public hearing shall be conducted in accordance with the standards of due process fairness to applicants and the public and in accordance with the FCC rules and regulations and orders and policies pertinent to such hearing. Each applicant shall be notified of the time location of his/her application to be considered.
 4. At the option of the city and upon application of the Grantee, any franchise granted under this chapter may be renewable in the same manner as required herein for obtaining an original franchise except those provisions which are by their terms expressly inapplicable. The city council may, at its option, waive compliance with any or all of the requirements of this section. Any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provision of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of Federal or State law.

6-6-110. Application Fee.

Each initial application shall be accompanied by a non-refundable filing fee in the amount of one thousand dollars (\$1,000.00), which shall be payable to the City Recorder.

(Ordinance No. 4-11-05)

CHAPTER 7 – OFF PREMISE SIGNS

6-7-010. Definitions.

The following words or phrases shall have these meanings as used in this chapter:

- A. **“Back-to-Back Sign”**: an off premises sign consisting of two sign facings oriented in opposite directions.
- B. **“Billboard”** : a freestanding sign which is designed or intended to draw attention to a business, product, or service that is not sold, offered, manufactured, or existing on the property where the sign is located.
- C. **“Double-Faced Sign”**: an off premise sign with two adjacent faces oriented in the same direction, both of which are attached to the same support structure.
- D. **“Facing”**: that portion of an off premise sign to which advertising is affixed or painted and visible in one direction at one time.
- E. **“Off Premise Sign”**: a sign, including the supporting sign structure, which is visible from a street or highway and advertises good or services not usually located on the premises and/or property on which the sign is located. An off premise signs is also generically known as a billboard. The following shall not be considered off premise signs for purposes of this ordinance:
 - 1. Directional or official signs authorized by law;
 - 2. Real estate signs;
 - 3. On premise signs.
- F. **“On Premise Signs”**: a sign which advertises the primary goods or services sold or taking place upon the premises on which the sign is located.

6-7-020. General Provisions.

- A. No off premise sign shall be constructed that resembles any official sign or marker erected by a governmental entity, or which by reason of position, shape, or color would conflict with the proper function of any official traffic control device.
- B. Off premise signs shall be constructed in accordance with local and state building codes. A structural engineering plan shall accompany a sign permit application and should be subject to wind speed requirements as set forth in the latest addition of the Uniform Building code.

- C. Off premise signs shall be regularly maintained in a good and safe structural condition. Off premise signs shall further maintain their visual appearance. The City Building Official or Inspector is authorized, within his or her sole discretion, to determine the structural and visual conditions of each sign.
1. In the event that an off premise sign becomes structurally unsafe or which appearance becomes unsightly due to weathering, ripping or tearing, or any other cause, the City shall notify the owner of the sign to make the appropriate repairs with 30 days. If said repairs are not adequately completed, the City may dismantle the sign, and assess the cost thereof to the sign owner.
 2. Notwithstanding any civil remedies the City may have, the individual, partner, or corporate officer, responsible for the unsafe, or unsightly condition shall be guilty of an infraction. Each day of that continued violation shall be considered a separate offense.
- D. No off premise sign shall be located on property without the consent of the property owner. Signs are not allowed in the public right-of-way, with the exception that signs may be placed on bus bench backs at sanctioned Utah Transit Authority bus stops, if permitted by the City, either directly or through the local Chamber of Commerce. Signs are not allowed on public property, unless specifically authorized herein. (ordinance 1-17-18)
- E. The general area and vicinity of any free standing sign on undeveloped property shall be kept free and clear of all materials, weed, debris, trash, and/or refuse.

6-7-030. On Premise Signs.

On Premise signs shall be governed and regulated by Chapter 8 of this Title. (Ord. No. 01-19-00-A)

6-7-040. Permitted Zones.

- A. Off premise signs are limited to use in the following zones:
1. The C-1 Commercial Zone, with the exception of SR-198 from 600 North to 600 West, where no off premise signs are allowed.
 2. The Industrial Zones.
 3. Industrial zones along Interstate 15 (I-15) (ordinance 1-17-18)

6-7-050. Nonconforming Signs.

Off premise signs erected and in existence on the effective date of this ordinance which are legal signs as of the effective date of this ordinance, which do not meet the requirements of this ordinance may be maintained as a matter of right as a nonconforming sign, with the exception of being required to meet the maintenance requirements of section 6-7-020 and the permit requirements of section 6-7-090. In the

event that a nonconforming sign is destroyed or otherwise removed, it may not be rebuilt without coming into conformity with the requirements of this ordinance.

6-7-060. Size, Type, and Height of Off Premise Signs.

- A. The maximum size of an off premise sign along State Road 198 is limited to 72 square feet, excluding the support structure. The maximum size of a bus bench off premise sign is limited to 20 square feet, excluding the support structure. The maximum size of a billboard along I-15 is limited to 675 square feet, excluding the support structure.
- B. Back-to-Back off premise signs are allowed on the same support structure, each face of which may contain 72 square feet.
- C. Double faced off premise signs are not allowed.
- D. The minimum height of an off premise sign shall be 12 feet from the crown of the road to the bottom of the sign.
- E. The maximum height of an off premise sign shall be 25 feet from the crown of the road to the top of the sign. The maximum height of a bus bench off premise sign shall be five (5) feet from the ground to the top of the bus bench back. (ordinance 1-17-18)

6-7-070. Spacing and Set Back Requirements for Off Premise Signs.

- A. All off premise signs must be located a minimum of 500 feet from each other on the same side of a road or highway.
- B. Off premise signs may not be located within 100 feet of any residential zone, which is located on the same side of the road or highway, except that billboards along I-15 may not be located within 400 feet of any residential zone, which is located on the same side of the highway. (ordinance 1-17-18)
- C. All off premise signs must be set back from the street or road right-of-way a minimum distance of 10 feet to the edge of the sign.

6-7-080. Lighting of Off Premise Signs.

Lighting or illuminating of off premise signs is prohibited, except that billboards along I-15 may be lit, provided that there is no overflow lighting spilling onto the neighboring property and no digital signs are allowed within 1000 feet of a residential zone.

(ordinance 1-17-18)

6-7-090. Permits.

- A. No off premise sign shall be erected without securing a permit from Salem City and paying a fee therefore. The sign permit is good from January 1st to December 31st of each year and must be renewed on each subsequent year. A permit obtained during the course of the year, shall be valid until December 31st of that year. In addition, signs along State Road 198 or I-15 require a UDOT permit before they are installed,

which permit must be kept current based on UDOT requirements. (ordinance 1-17-18)

- B. Before any sign permit is issued, an inspection shall determine that any off premise sign complies with the provisions of this ordinance, including safety, maintenance, and appearance.
- C. The fee to be charged for the sign permit shall be an annual fee to be established from time to time by resolution of the City Council. Until such time as the Council adopts a resolution, the fee shall be the same as the minimum charge for a business license.
- D. In the event that an off premise sign permit is not renewed, the City may require the owner or proprietor of said sign to remove it at the owner or proprietor's expense. If the owner or proprietor fails to do so, the City may remove said sign and charge the owner or proprietor the cost thereof. Notwithstanding this civil remedy, the individual, partner or corporate officer responsible for the removal of the sign, who fails to remove said sign, shall be guilty of a class C misdemeanor. Each day of violation shall constitute a separate offense.

(Ordinance No. 1-28-97)

CHAPTER 8 – ON-PREMISE SIGNS

6-8-010. Title.

This Chapter is known as the Salem City On-Premise Sign Ordinance.

6-8-020. Definitions

As used in this Chapter, the following words and phrases have the following meanings, unless the context clearly indicates that a contrary meaning is intended.

- A. **"Alteration."** Changing or rearranging any structural part, sign face, enclosure, lighting, coloring, copy (except on reader signs), graphics, component, or location of a sign.
- B. **"Area."** The portion of a sign used for display purposes. Only one side of a double faced sign (covering the same subject) shall be used for purposes of computing the sign area when the signs are parallel (no greater than 2 feet apart) or diverge from a common edge by an angle not greater than 30 degrees. For signs which do not have defined display areas, sign area shall be the area of the smallest rectangle or square which will frame the display.
- C. **"Back Lighting."** Illumination caused by a lighting device positioned inside or behind a sign face, the source of which is not itself visible to the observer. This includes illumination from a lighting device positioned behind raised letters or awnings, or inside a sign cabinet.
- D. **"Berm."** A berm is a combination of a raised earth mound and closely spaced plantings which form a complete visual barrier that is up to five (5) feet above grade. A berm shall be at least six (six) feet wide and at least two (two) vertical feet of land form.
- E. **"Building Facade."** Any exterior wall of a building including windows, doors, and mansard, but not including a pitched roof.
- F. **"Clearance."** The height of the lower edge of the face of a freestanding sign from the finished grade.
- G. **"Clear Vision Zone."** The areas at intersecting streets and driveways in which unobstructed vision of motor vehicle operators is maintained. The clear vision zone shall be the triangular area formed by the street property lines connected by an imaginary diagonal line commencing at points 20 feet from the street property line of an intersecting street or driveways
- H. **"Construction."** The materials, architecture, assembly, and installation of a sign.
- I. **"Density."** The concentration of signs in a given area, frontage, district, or lot.

- Density, as used in this chapter, will generally be defined in terms of numbers of signs per lot or frontage.
- J. **"Design."** The form, features, colors and overall appearance of a sign structure.
 - K. **"Frontage."** Any side of the property that runs parallel to any public street. Limited access highway frontage shall not be considered "frontage" for purposes of this chapter.
 - L. **"Height."** The vertical measurement from the top back of curb or crown of roadway where no curb exists (at the nearest point of the sign) to the highest point of the sign structure.
 - M. **"Illumination, External."** Lighting from a device which is mounted so as to illuminate a sign from a remote position from outside the sign structure. External illumination may not be directed in such a manner as to interfere with adjacent property owners or with automobile traffic.
 - N. **"Location."** The position of a property where a sign is to be placed. The location of any sign must comply with requirements of this chapter and with an approved site plan.
 - O. **"Low Maintenance."** Sign materials which do not require frequent replacement, painting, or refurbishing as a result of exposure to the elements.
 - P. **"Perimeter Building Pad."** A separate building location (usually along the street frontage) which is generally developed or designated in connection with a larger commercial site.
 - Q. **"Separation."** The horizontal distance between signs measured parallel to the street or curb.
 - R. **"Setback."** The shortest horizontal distance between a property line and the closest edge of the sign structure.
 - S. **"Sign."** Every advertising message, announcement, declaration, warning, statement, demonstration, illustration, insignia, surface, space, or object erected or maintained in view of the observer for the purpose of identifying, promoting, advertising, directing, or warning for the benefit of any person, product, company, entity, or service. "Sign" shall also include the sign structure, supports, lighting system, attachments, and other features of a sign. "Sign" does not mean flags, badges, or ensigns of any government or governmental agency used for purposes of identification.
 - A.A. **"A" Frame Sign."** A freestanding, temporary and/or movable sign device usually constructed of two separate wood or metal sign faces attached at the top.

- BB. **"Abandoned Sign."** A sign which remains on a property which has been vacated or which remains unused for a period of time exceeding four months.
- CC. **"Advertising Bench Sign."** A bench for public use which is painted or otherwise covered with advertisement, or to which any sign is attached.
- DD. **"Animated Sign."** A sign with parts or sections which revolve or move or which has flashing or intermittent lights, but not including "time and temperature" signs or signs otherwise described as "electronic message centers."
- EE. **"Awning Sign."** A sign constructed of a framework which is mounted to a building or canopy. The framework of such a sign is usually covered with a light fabric which may be translucent. The awning cover may contain advertising or identifying copy, graphics or design and may be illuminated by back lighting. Awnings used strictly as protective structures for windows and doors and having no sign copy or design are not signs and may display the building address only.
- FF. **"Business Sign."** A sign which identifies a business or use conducted or service performed upon the premises on which the business or use is located.
- GG. **"Changeable Copy Sign."** A sign on which the text or copy is changed manually or electrically, exclusive of "time and temperature" and "electronic message center" type signs.
- HH. **"Conforming Sign."** A sign which meets all provisions of this Chapter.
- II. **"Construction Sign."** A sign, on-premise or off-premise, which directs to, identifies, or describes the development or construction of a use, building or buildings which is or are planned or currently underway.
- JJ. **Electronic Message Sign."** A display consisting of an array of light sources, panels or disks which are electronically activated.
- KK. **"Freestanding Sign."** A sign which is self-supported by poles, pylons or other structural supports mounted in the ground.
- LL. **"Identification Sign."** A on-premise sign which indicates the identity of the owner or occupant of a parcel, structure or use.
- MM. **"Illuminated or Lighted Sign."** A sign equipped with artificial lighting devices for the purpose of improving the sign's visibility.
- NN. **"Inflated Sign."** Any advertising device which is supported by heated or forced air or lighter-than-air gases.

- OO. **"Monument Sign."** A freestanding business sign which is incorporated into the landscape and which is supported by a base having width greater than two feet which is mounted permanently in the ground.
- PP. **"Non-conforming Sign."** A sign or sign structure which lawfully existed at the time a sign ordinance became effective but which does not presently conform to all the requirements of these regulations.
- QQ. **"Off-Premises Sign."** A sign, advertising a business, development, building, product, commodity, or the availability of goods or services at a location other than the location of the sign.
- RR. **"On-Premise Sign."** A sign located on the property which it serves.
- SS. **"Pedestal Sign."** A moveable sign supported by a column or columns and a base.
- TT. **"Pole Sign."** A freestanding identification or business sign which is supported by a pole, poles or base not less than 8 feet in height and having a combined width of two feet or less which is mounted permanently in the ground.
- UU. **"Portable Reader Sign."** A reader sign which is mounted on a portable framework and intended for temporary use.
- VV. **"Poster Sign."** A flat building sign on which temporary signs made of paper, plastic or other material are mounted.
- WW. **"Projecting Sign."** A sign which is attached to and projects from a building, pole or other support.
- XX. **"Reader Sign."** A display on which the **copy** or text may be changed manually or electronically.
- YY. **"Roof Sign."** A sign which is supported wholly or in part by and which projects over a roof.
- ZZ. **"Sculpture Sign."** A free-form or three-dimensional sign which has depth greater than 2 feet.
- AAA. **"Temporary Sign."** Any identification, advertising, directional, or promotional device which is not permanently constructed or attached to the ground or any structure and which must be removed according to the provisions of this Chapter.
- BBB. **"Time or Temperature Sign."** An electronic message sign displaying only the current time and temperature.
- CCC. **"Wall Mounted Sign."** An identification or business sign which is mounted to

any vertical portion of a building which it identifies.

DDD. **"Promotional Signage."** Temporary devices such as banners, streamers, flags, balloons, pennants, trailer signs and inflated signs.

6-8-030. General Provisions

- A. **Minimum Setback.** Signs shall be set back at least five feet from any property line. This setback requirement shall be determined by measuring the distance from the edge of the sign closest to the nearest property line.
- B. **Maintenance.** Signs, sign structures, and the areas around sign bases shall be maintained in a safe and attractive condition. Sign maintenance may not be performed in such a way that the maintenance alters the sign from its approved form.
- C. **Repair of Building Facade.** Any building facade from which a sign is removed or on which a sign is repaired, changed, or replaced shall be repaired, if damaged, within 30 days of the date of damage.
- D. **Approved Construction.** All sign construction and uses shall comply with the Uniform Building Code and National Electrical Safety Code requirements. The sign must comply with all federal, state, city and utility company regulations on power line and other utility clearance.
- E. **Removal of Certain Signs.** In the event that a business ceases operation for a period of time in excess of sixty (60) days, the sign owner or lessee, or property owner, shall immediately remove any sign identifying or advertising said business.

6-8-040. On-Premises Sign Regulations

The following regulations apply to on-premises signs:

- A. Government entities are allowed one pole sign per site in order to provide information to the public. The size of such sign shall not exceed 40 square feet. The minimum height of such sign shall be 12 feet from the crown of the street to the bottom of the sign and the maximum height 25 feet from the crown of the road to the top of the sign. Public schools are exempt from the area requirements, but are subject to the height requirements set forth herein. The location of such sign, sign materials, and required landscaping shall be determined by the Development and Review Committee (DRC). Any entity dissatisfied with the DRC determination may appeal, within 7 days of the DRC decision, to the City Council. The Council may affirm or modify the decision of DRC, which decision shall be final and non-appealable. (Ord. No. 8-06-08-B)
- B. Free standing signs for individual businesses shall meet these guidelines:
 - 1. Monument signs are the only free standing signs allowed in the C-2 and I-1 zones. Monument signs shall be no more than four feet in height, but may be

placed on a two foot high landscaped berm. The maximum square footage shall be forty-eight square feet.

2. Pole or monument signs are allowed in the C-1 zone. Monument signs shall be no more than four feet in height, but may be placed on a two foot high landscaped berm. Pole signs may have a maximum height of twenty-five feet. Signage area for a free standing sign in the C-1 zone shall be eighty square feet.
 3. Pole or monument signs are allowed in the C-3 zone. Monument signs shall be no more than four feet in height, but may be placed on a two foot high landscaped berm. Pole signs may have a maximum height of sixty feet. Signage area for a free standing sign in the C-3 zone shall be one hundred sixty (160) square feet.
 4. All free standing pole signs are to be located in a landscaped planter of at least twenty-five square feet.
- C. Multi-tenant signs are allowed in planned commercial centers as follows:
1. For planned commercial centers up to five acres in size, one free standing pole sign with a maximum height based upon the zone and a maximum of one hundred sixty square feet of sign space.
 2. For planned commercial centers over five acres in size, one free standing pole sign with a maximum height based upon the zone and a maximum of two hundred square feet of sign space.
 3. For planned commercial centers with more than two street frontages, a sign with a height and size limit set forth in subparagraphs 1 and 2 are allowed on each street, provided that there is at least five hundred feet between signs, measured in a straight line from sign to sign.
- D. Wall signs may occupy twenty percent (20%) of the wall area where the main entrance is located. Wall signs may be located on two additional walls, not exceeding ten percent (10%) of each subsequent wall surface. (Ordinance 3-03-10 C)
- E. Wall mounted and awning signs shall be designed to be harmonious with other signs and the structures to which they are attached.
- F. Construction. Wall mounted signs shall be constructed of low maintenance materials using flush mounted cabinets, individual pan channel letters, or raised or flush mounted metal or plastic cut-out letters. Wall mounted signs shall be mounted parallel to, and shall not extend more than 24 inches from, the wall. There shall be no visible support structure. Awnings shall be constructed of low maintenance materials and flush mounted against the wall.

G. Illumination Requirements. For the protection of community appearance and to minimize light pollution and traffic hazards caused by glare, illuminated signs shall be subject to the following conditions:

1. Any external light source used for the illumination of a sign shall be shielded so that the beams or rays of light will not shine directly onto surrounding areas.
2. Neither the direct nor the reflected light from any light source shall create a traffic hazard, distraction to operators of motor vehicles on public thoroughfares, or create a nuisance to surrounding properties.
3. Signs illuminated from an external light source:
 - i. No un-frosted light source, fluorescent light source or light source in excess of twenty-five (25) watts shall be directly visible to any motor vehicle or pedestrian located in a public right-of-way or street or from any residential area within a distance of three hundred (300) feet measured from the light source;
 - ii. No portion of the sign, including any frame, bracing or support structure shall be constructed of a reflective surface.
4. Signs illuminated from an internal light source:
 - i. The light source shall not be visible from the exterior of the sign;
 - ii. The wattage shall not exceed the following requirements:
 - (A) Fluorescent lights not to exceed five (5) watts per square foot of sign area.
 - (B) Incandescent light not to exceed twenty-five (25) watts per square foot of sign area.
5. One (1) internally illuminated sign which is displayed in a window shall be permitted in all areas where internally illuminated signs are permitted. Such a sign shall not exceed four (4) square feet and it will not be counted towards the aggregate sign area for the use to which it is attached.

6-8-045. Shopping Center Signs.

Signs in planned shopping centers in the C-3 Shopping Center Zone are limited to one free standing pole sign for each street frontage. Separate signs must be separated from each other by at least 200 feet, following the street right of way from one sign to the other. Multi-tenant free standing signs may be up to one hundred sixty square feet and may be sixty feet in height. Free standing pole signs must be in a landscaped

planter and must be consistent with the architectural theme for the shopping center.

Individual businesses in the C-3 Shopping Center Zone may display a sign not to exceed in size more than one fifth of the area of the wall where it is to be displayed. Each sign shall be flush with the building, overhanging the building by no more than eighteen inches. (Ordinance No. 2-21-07-B)

6-8-050. Menu Boards for Drive-In Restaurants

The following requirements apply to menu boards used by drive-in restaurants:

- A. No more than two freestanding or wall mounted menu boards shall be allowed per business and shall be located not less than 45 feet from the street property line.
- B. Maximum sign area shall not exceed 16 square feet per sign
- C. Maximum sign height shall not exceed 6 feet.
- D. A landscaped area shall be provided at the base of the freestanding menu sign having an area of at least one square foot for every two square feet of sign area.

6-8-060. Price Signs for Service Stations

The following requirements apply to signs advertising prices for service stations.

- A. The number of price signs shall not exceed one sign per service station for each type of fuel offered for sale.
- B. The total area of all price signs shall not exceed 18 square feet per service station.
- C. Price signs shall be incorporated as part of the design of the monument sign.

6-8-065. Temporary Signs

- 1. Subdivision Advertising Signs.
 - a. One sign is permitted at each major entry to the project. In addition, four off-site directional signs per subdivision are allowed, subject to obtaining a permit.
 - b. Each sign shall have a maximum area of thirty-two (32) square feet and a maximum height of eight (8) feet.
 - c. No sign permit shall be issued until a final plat has been recorded.
 - d. Such signs may be maintained until all of the lots in the subdivision are sold.
 - e. Signs shall be kept in good repair. Signs which are ripped, are faded, have holes, or are similar stages of disrepair must be removed.
- 2. Business Signs for Special Events, Seasonal Sales, Grand Openings.
 - a. These displays may be used to advertise grand openings, a change of

business ownership, special sales, seasonal sales, new products or services, and other similar promotions. A permit is required from the City for each different event. No fee is required to obtain the permit.

b. These displays may include such displays as pennants, banners, flags, inflatable structures, character or product likenesses, and other similar attention attracting media and devices. Small, portable signs shall be brought inside the store daily, when the store closes for the day. Banner signs which get torn by wind, persons, or other causes shall be immediately removed. Signs which become faded must be removed and replaced. No search lights are allowed as part of advertising displays.

c. Such displays shall be allowed for a maximum of fourteen (14) consecutive days no more than twelve (12) times per year, unless otherwise specifically allowed.

d. Grand opening displays are allowed for thirty (30) consecutive days. The grand opening display requires a new business, change in business name, change of location, major remodeling, or new management.

e. Holiday periods. A business may advertise a special service, product or sale during the following holiday periods. In addition to other signage, one banner sign is allowed during these periods. The sign must be mounted on the building. The sign may be mounted seven days prior to the holiday, except for Christmas/New Years. The sign must be removed by the end of the first working day after the holiday period ends.

President's Day

Easter

Mother's Day

Memorial Day

July 4th

July 24th

Labor Day

Thanksgiving

Christmas / New Years December 1 to January 2

f. Salem City may install signs to give notice of special events and functions. Such signs may be displayed during holidays or civic functions (i.e. Salem Days, Pondtown Christmas, flag on Flag Day etc). Signs may be erected 30 days prior to the event or function. The City may attach banners to utility poles located in the public rights-of-way, so long as the location and height on the poles does not create any safety hazard. All signs must be removed at the conclusion of the event or function.

3. Construction and Development Signs

a. One (1) non-illuminated sign is allowed on a construction site with a maximum height area of thirty-two (32) square feet and a maximum height of eight (8) feet.

b. The sign may identify the name of the project, the names of developer, contractor, architect, subcontractor, and financier of the project, and the projected completion date.

c. The sign may only be installed after building permits have been issued for the project.

d. The sign shall be removed prior to the issuance of a Certificate of

Occupancy for the project.

4. Campaign Signs.

- a. Campaign signs are not allowed in the public rights-of-way, nor on municipally owned property.
- b. Permission must be obtained prior to placing campaign signs on private property.
- c. Campaign signs may be posted when the candidate filing periods starts and must be removed within forty-eight (48) hours after the election. Candidates losing in a primary election must remove their signs within forty-eight hours after the primary election.
- d. Campaign signs in residential zones shall be no larger than four (4) feet by four (4) feet. Campaign signs in commercial zones shall be no larger than eight (8) feet by four (4) feet. Campaign signs in industrial zones shall be no larger than twelve (12) feet by six (6) feet. (ordinance 10-20-10-A)

6-8-070. Prohibited

Signs not specifically authorized are prohibited, including, but not limited to the following:

- A. Signs in a public right-of-way or on public property or buildings. Political signs that pose a visibility hazard to pedestrians or motor vehicle traffic along streets, sidewalks, or street comers.
- B. Signs announcing the proposed development of property prior to preliminary site plan approval or after issuance of certificates of occupancy.
- C. Signs mounted, attached or painted on trailers, boats, or motor vehicles when used as advertising signs on or near the premises.
- D. Signs placed or painted on any rock or tree.
- E. Roof-mounted signs, or signs that project above the highest point of the roof line or parapet of the building.
- F. Off-premises signs except as specifically permitted in these regulations.
- G. Any sign with intermittent or flashing illumination, animated, or moving parts.
- H. Flag-mounted signs, or signs that project from the roof or wall of a building perpendicular to the wall surface.
- I. Signs that emit sound.
- J. Movable or portable signs and signs not permanently installed in the ground or on a pole or building such as "A-Frame," pedestal or similar sign devices, except as

otherwise permitted.

- K. Signs located on public property or attached to any structure or appurtenance on public property except public necessity signs. These signs may be removed by the City or other public agencies owning the public property.
- L. Signs which create a nuisance or hazard to the public safety.
- M. Obsolete or abandoned signs or messages which identify services no longer provided on the premises.
- N. Signs which are mounted on a telephone pole, power pole, or other utility pole.
- O. Inflated sign displays, balloons and other devices supported by the pressure of forced or heated air or of lighter-than-air gasses and attached to the ground or a structure except by permitted use.
- P. Temporary promotional business signage, including but not limited to banners, pennants, streamers, flags, beacons, searchlights and portable reader signs except by permitted use.
- Q. Strings of lights not permanently mounted to a rigid background.

6-8-80. Non-Conforming Signs

- A. As used in this section, a lawful nonconforming sign is any sign which does not comply with the requirements of this chapter but which was in compliance with the requirements of the sign ordinance in effect immediately prior to the adoption of this Chapter, or was characterized as a lawful non-conforming sign which does not comply with the requirements of the sign ordinance in effect immediately prior to the adoption of this Chapter, or was not characterized as a lawful non-conforming sign under such previous ordinance.
- B. A lawful non-conforming sign may be maintained and repaired, even though such repair will not bring the sign into compliance with this Chapter. If a lawful non-conforming sign is damaged or allowed to deteriorate in an amount in excess of 50% of its then replacement costs, the sign shall not be repaired except as to bring the sign in compliance with this Chapter. Repairs and/or restoration of a lawful nonconforming sign requires the obtaining of a sign permit and the payment of the requisite fee therefore; the permit shall not be denied nor shall special procedural requirements be invoked merely because of the non-conforming status of the sign. The foregoing provision shall not be deemed to restrict the changing of copy on lawful non-conforming signs which have changeable copy.
- C. Signs not lawfully existing upon the date the ordinance adopting this Chapter becomes effective are not thus rendered lawful by the adoption of the provisions of

this Chapter and the corresponding repeal of previous provisions, unless the express provision of this chapter such previously nonconforming sign is permitted under this Chapter.

6-8-090. Appeals

- A. Any person aggrieved by the decision of the City Building Official or his/her designee may appeal that decision by filing a written notice of appeal within 30 days with the Planning and Zoning Commission. The appeal shall be reviewed by the Planning and Zoning Commission and forward a recommendation to the City Council. The City Council shall make a final decision on the appeal.
- B. The written notice of appeal shall set forth all facts and circumstances which the aggrieved person feels justify the appeal and the relief request.
- C. The filing of the notices of appeal defined herein is effective upon delivering the original and two copies of the notice to the office of the City Recorder.

6-8-100. Enforcement

- A. The City Building Official or his/her designee shall be empowered to institute any appropriate action or proceeding in any case where any sign is erected, constructed, reconstructed, altered, repaired, converted, or maintained in violation of any City ordinance, to accomplish the following purpose:
 - 1. To prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use;
 - 2. To restrain, to correct or abate such violation;
 - 3. To abate and remove unsafe, dangerous, or other signs not in compliance with these regulations. If an unsafe or dangerous sign is not repaired or made safe within ten days after notice as provided in subsection (b) of this section, the City Building Official may at once cause the abatement and removal of said sign, and any person having charge, control or benefit of any such sign shall pay to the City all costs incurred in such removal within thirty calendar days after written notice of the costs is mailed to such person. If any other sign not in compliance with these regulation is not removed within 10 days after notice as provided in subsection (b) of this section, the City Building Official may at once cause the abatement and removal of said sign, and any person having charge, control or benefit of any such sign shall pay to the City all costs incurred in such removal within thirty calendar days after written notice of the costs is mailed to such person.
- B. Notice by the City shall mean written notice sent by certified mail to persons having charge or control or benefit of any sign found by the City Building Official to be unsafe. (Ordinance No. 01-19-00-A) (#100318)

**CHAPTER 9
TELECOMMUNICATIONS RIGHTS-OF-WAY**

**SECTION I -- DECLARATION OF FINDINGS AND INTENT;
SCOPE OF ORDINANCE**

6-9-110. Findings Regarding Rights-of-Way.

Salem City finds that the Rights-of-Way within the City:

- (a) are critical to the travel and transport of persons and property in the business and social life of the City;
- (b) are intended for public uses and must be managed and controlled consistent with that intent;
- (c) can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
- (d) are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Rights-of-Way.

6-9-120. Finding Regarding Compensation.

The City finds that the City should receive fair and reasonable compensation for use of the Rights-of-Way.

6-9-130. Finding Regarding Local Concern.

The City finds that while Telecommunications Systems are in part an extension of interstate commerce, their operations also involve Rights-of-Way, municipal franchising, and vital business and community service, which are of local concern.

6-9-140. Finding Regarding Promotion of Telecommunications Services.

The City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of Telecommunications Services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.

6-9-150. Findings Regarding Franchise Standards.

The City finds that it is in the interests of the public to Franchise and to establish standards for franchising Providers in a manner that:

- (a) fairly and reasonably compensates the City on a competitively neutral and non-discriminatory basis as provided herein;
- (b) encourages competition by establishing terms and conditions under which Providers may use the Rights-of-Way to serve the public;
- (c) fully protects the public interests and the City from any harm that may flow from such commercial use of Rights-of-Way;
- (d) protects the police powers and Rights-of-Way management authority of the City, in

- a manner consistent with federal and state law;
- (e) otherwise protects the public interests in the development and use of the City infrastructure;
- (f) protects the public's investment in improvements in the Rights-of-Way; and
- (g) ensures that no barriers to entry of Telecommunications Providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting Telecommunication Services, within the meaning of the Telecommunications Act of 1996 [P.L. No. 104-104].

6-9-160. Power to Manage Rights-of-Way.

The City adopts this Telecommunications Ordinance pursuant to its power to manage the Rights-of-Way, pursuant to common law, the Utah Constitution and statutory authority, and receive fair and reasonable, compensation for the use of Rights-of-Way by Providers as expressly set forth by Section 253 of the Act.

6-9-170. Scope of Ordinance.

This Ordinance shall provide the basic local scheme for Providers of Telecommunications Services and Systems that require the use of the Rights-of-Way, including Providers of both the System and Service, those Providers of the System only, and those Providers who do not build the System but who only provide Services. This Ordinance shall apply to all future Providers and to all Providers in the City prior to the effective date of this Ordinance, whether operating with or without a Franchise as set forth in Section 6-7-1220.

6-9-180. Excluded Activity.

- A. This Ordinance shall not apply to cable television operators otherwise regulated by Chapter 5.18 of the Salem City Municipal Code (the "Cable Television Ordinance").
- B. This Ordinance shall not apply to Personal Wireless Service Facilities.
- C. Providers excused by other law that prohibits the City from requiring a Franchise shall not be required to obtain a Franchise, but all of the requirements imposed by this Ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

SECTION 2 - DEFINED TERMS

6-9-210. Definitions.

For purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The word "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. **"Application"** means the process by which a Provider submits a request and indicates a desire to be granted a Franchise to utilize the Rights-of-Way of all, or a part, of the City. An Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a Provider to the City concerning: the construction of a Telecommunications System over, under, on or through the Rights-of-Way; the Telecommunications Services proposed to be
- B. **"City"** means Salem City, Utah.
- C. **"Completion Date"** means the date that a Provider begins providing Services to customers in the City.
- D. **"Construction Costs"** means all costs of constructing a System, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.
- E. **"Control" or "Controlling Interest"** means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the System or of a Provider. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than twenty-five percent (25%) of any Provider (which Person or group of Persons is hereinafter refer-red to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.
- F. **"FCC"** means the Federal Communications Commission, or any successor thereto.
- G. **"Franchise"** means the rights and obligation extended by the City to a Provider to own, lease, construct, maintain, use or operate a System in the Rights-of-Way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include:
 - (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;
 - (ii) any other pen-nit, agreement or authorization required in connection with

- operations on Rights-of-Way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.
- H. **"Franchise Agreement"** means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be exercised.
- I. **"Gross Revenue"** includes all revenues of a Provider that may be included as gross revenue within the meaning of Chapter 26, Title I I Utah Code annotated, 1953, as amended.
- J. **"Infrastructure Provider"** means a Person providing to another, for the purpose of providing Telecommunication Services to customers, all or part of the necessary System which uses the Rights-Of-Way.
- K. **"Open Video Service"** means any video programming services provided to any Person through the use of Rights-of-Way, by a Provider that is certified by the FCC to operate an Open Video System pursuant to sections 65 1, et seq., of the Telecommunications Act (to be codified at 47 U.S.C. Title VI, Part V), regardless of the System used.
- L. **"Open Video System"** means the system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing Open Video Services to or from subscribers or locations within the City.
- M. **"Operator"** means any Person who provides Service over a Telecommunications System and directly or through one or more Persons owns a Controlling Interest in such System, or who otherwise controls or is responsible for the operation of such a System.
- N. **"Ordinance" or "Telecommunications Ordinance"** means this Telecommunications Ordinance concerning the granting of Franchises in and by the City for the construction, ownership, operation, use or maintenance of a Telecommunications System.
- O. **"Person"** includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.
- P. **"Personal Wireless Services Facilities"** has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as cellular and PSC Services that do not install any System or portion of a

System in the Rights-of-Way.

- Q. **"Provider"** means an Operator, Infrastructure Provider, Resaler, or System Lessee.
- R. **"PSC"** means the Public Service Commission, or any successor thereto.
- S. **"Resaler"** refers to any Person that provides local exchange service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission.
- T. **"Rights-of-Way"** means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the City.
- U. **"Signal"** means any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.
- V. **"System Lessee"** refers to any Person that leases a System or a specific portion of a System to provide Services.
- W. **"Telecommunications"** means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video, and voice), without change in the form or content of the information sent and received.
- X. **"Telecommunications System" or "System"** means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased, or used by a Provider, located in the Rights-of-Way and utilized in the provision of Services, including fully digital or analog, voice, data and video imaging and other enhanced Telecommunications Services. Telecommunications System or Systems also includes an Open Video System.
- Y. **"Telecommunications Service(s)" or "Services"** means any telecommunications services provided by a Provider within the City that the Provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the Services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. §521, et seq.), and the Telecommunications Act of 1996. Telecommunications System or Systems also includes an Open Video System.
- Z. **"Wire"** means fiber optic Telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

SECTION 3 - FRANCHISE REQUIRED

6-9-310. Non-Exclusive Franchise.

The City is empowered and authorized to issue non-exclusive Franchises governing the installation, construction, and maintenance of Systems in the City's Rights-of-Way, in accordance with the provisions of this Ordinance. The Franchise is granted through a Franchise Agreement entered into between the City and Provider.

6-9-320. Every Provider Must Obtain.

Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every Provider must obtain a Franchise prior to constructing a Telecommunications System or providing Telecommunications Services using the Rights-of-Way, and every Provider must obtain a Franchise before constructing an Open Video System or providing Open Video Services via an Open Video System. Any Open Video System or Service shall be subject to the customer service and consumer protection provisions applicable to the Cable TV companies to the extent the City is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular Telecommunications Systems may be used for multiple purposes does not obviate the need to obtain a Franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide Telecommunications Services over the same System, must also obtain a Telecommunications Franchise.

6-9-330. Nature of Grant.

A Franchise shall not convey title, equitable or legal, in the Rights-of-Way. A Franchise is only the right to occupy Rights-of-Way on a non-exclusive basis for the limited purposes and for the limited period stated in the Franchise; the right may not be subdivided, assigned, or subleased. A Franchise does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its System on the property of others, including the City's property.

This section shall not be construed to prohibit a Provider from leasing conduit to another Provider, so long as the Lessee has obtained a Franchise.

6-9-340. Current Providers.

Except to the extent exempted by federal or state law, any Provider acting without a Franchise on the effective date of this Ordinance shall request issuance of a Franchise from the City within 90 days of the effective date of this Ordinance. If such request is made, the Provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a Franchise is not granted, the Provider shall comply with the provisions of Section 6-9-940.

6-9-350. Nature of Franchise.

The Franchise granted by the City under the provisions of this Ordinance shall be a nonexclusive Franchise providing the right and consent to install, repair, maintain, remove and replace its System on, over and under the Rights-of-Way in order to provide Services.

6-9-360. Regulatory Approval Needed.

Before offering or providing any Services pursuant to the Franchise, a Provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such Services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

6-9-370. Term.

No Franchise issued pursuant to this Ordinance shall have a term of less than five (5) years or greater than fifteen (15) years. Each Franchise shall be granted in a nondiscriminatory manner.

SECTION 4 - COMPENSATION AND OTHER PAYMENTS

6-9-410. Compensation.

As fair and reasonable compensation for any Franchise granted pursuant to this Ordinance, a Provider shall have the following obligations:

- A. Application Fee. In order to offset the cost to the City to review an Application for a Franchise and in addition to all other fees, permits or charges, a Provider shall pay to the City, at the time of Application, \$500 as a non-refundable Application fee.
- B. Franchise Fees. The Franchise fee, if any, shall be set forth in the Franchise Agreement. The obligation to pay a Franchise fee shall commence on the Completion Date. The Franchise fee is offset by any business license fee or business license tax enacted by the City.
- C. Excavation Permits. The Provider shall also pay the required fees for an excavation permit as provided for by the ordinances, resolutions, policies, or standards of the City.

6-9-420. Timing.

Unless otherwise agreed to in the Franchise Agreement, all Franchise Fees shall be paid on a monthly basis within forty-five (45) days of the close of each calendar month.

6-9-430. Fee Statement and Certification.

Unless a Franchise Agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

6-9-440. Future Costs.

A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any renewal or Provider-initiated renegotiation, or amendment of this Ordinance or a Franchise, provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. Any costs associated with any work to be done by the Power and Public Works Department to provide space on City owned poles shall be borne by the Provider.

6-9-450. Taxes and Assessments.

To the extent taxes or other assessments are imposed by taxing authorities, other than the City on the use of the City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority.

Such payments shall be in addition to any other fees payable pursuant to this Ordinance.

6-9-460. Interest on Late Payments.

In the event that any payment is not actually received by the City on or before the applicable date fixed in the Franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.

6-9-470. No Accord and Satisfaction.

No acceptance by the Salem City any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.

6-9-480. Not in Lieu of Other Taxes or Fees.

The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the City owned poles are not waived and remain applicable.

6-9-490. Continuing Obligation and Holdover.

In the event a Provider continues to operate all or any part of the System after the Term of the Franchise, such operator shall continue to comply with all applicable provisions of this Ordinance and the Franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

6-9-495. Costs of Publication.

A Provider shall assume any publication costs associated with its Franchise that may be required by law.

SECTION 5 -- FRANCHISE APPLICATIONS

6-9-510. Franchise Application.

To obtain a Franchise to construct, own, maintain or provide Services through any System within the City, to obtain a renewal of a Franchise granted pursuant to this Ordinance, or to obtain the City approval of a transfer of a Franchise, as provided in subsection 6-7-71 0 (B), granted pursuant to this Ordinance, an Application must be filed with City on the form attached to this Ordinance as Exhibit A, which is hereby incorporated by reference. The Application form may be changed by the Mayor so long as such changes request information that is consistent with this Ordinance. Such Application form, as amended, is incorporated by reference.

6-9-520. Application Criteria.

In making a determination as to an Application filed pursuant to this Ordinance, the City may, but shall not be limited to, request the following from the Provider:

- A. A copy of the order from the PSC granting a Certificate of Convenience and Necessity.
- B. Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance and use of the Rights-of-Way during the Franchise term proposed by the Provider;
- C. Provider's agreement to comply with the requirements of Section 6 of this Ordinance.
- D. Prior to making any attachments to poles, the willingness to enter into a pole attachment agreement with the City.

6-9-530. Franchise Determination.

The City, in its discretion, shall determine the award of any Franchise on the basis of these and other considerations relevant to the use of the Rights-of-Way, without competitive bidding.

SECTION 6 -- CONSTRUCTION AND TECHNICAL REQUIREMENTS

6-9-610. General Requirement.

No Provider shall receive a Franchise unless it agrees to comply with each of the terms set forth in this Section governing construction and technical requirements for its System, in addition to any other reasonable requirements or procedures specified by the City or the Franchise, including requirements regarding locating and sharing in the cost of locating portions of the System with other Systems or with City utilities. A Provider shall obtain an excavation permit, pursuant to the excavation ordinance, before commencing any work in the Rights-of-Way.

6-9-620. Quality.

All work involved in the construction, maintenance, repair, upgrade and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the public health, safety or welfare, or quality of service or reliability, then a Provider shall, at its own cost and expense, promptly correct all such conditions.

6-9-630. Licenses and Permits.

A Provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the System, including but not limited to any necessary approvals from Persons and/or the City to use private property, easements, poles and conduits. A Provider shall obtain any required pen-nit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

6-9-640. Relocation of the System.

The system may only be relocated if the following criteria are met:

- A. New Grades or Lines. If the grades or lines of any Rights-of-Way are changed at any time in a manner affecting the System, then a Provider shall comply with the requirements of the excavation requirements.
- B. The City Authority to Move System in case of an Emergency. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Rights-of-Way of the City, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this Section. Notice shall be given as

provided in Section 6-7-1140.

- C. A Provider Required to Temporarily Move System for Third Party. A Provider shall, upon prior reasonable written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its System to permit the moving of said structure. A Provider may impose a reasonable charge on any Person other than the City for any such movement of its Systems.
- D. Rights-of-Way Change - Obligation to Move System. When the City is changing a Rights-of-Way and makes a written request, a Provider is required to move or remove its System from the Rights-of-Way, without cost to the City, to the extent provided in the excavation requirements. This obligation does not apply to Systems originally located on private property pursuant to a private easement, which property was later incorporated into the Rights-of-Way, if that private easement grants a superior vested right. This obligation exists whether or not the Provider has obtained an excavation permit.

6-9-650. Protect Structures.

In connection with the construction, maintenance, repair, upgrade or removal of the System, a Provider shall, at its own cost and expense, protect any and all existing structures belonging to the City. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the Rights-of-Way of the City required because of the presence of the System. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Rights-of-Way of the City involved in the construction, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider pursuant to the Franchise.

6-9-660. No Obstruction.

In connection with the construction, maintenance, upgrade, repair or removal of the System, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the City without the prior consent of the appropriate authorities.

6-9-670. Safety Precautions.

A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

6-9-680. Repair.

After written reasonable notice to the Provider, unless, in the sole determination of the City, an eminent danger exists, any Rights-of-Way within the City which are disturbed or damaged during the construction, maintenance or reconstruction by a Provider of its System may be repaired by the City at the Provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a Provider an itemized statement of the cost for repairing and restoring the Rights-of-Ways intruded upon. The Provider shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof.

6-9-690. System Maintenance.

A Provider shall:

- A. Install and maintain all parts of its System in a non-dangerous condition throughout the entire period of its Franchise.
- B. Install and maintain its System in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.
- C.. At all reasonable times, permit examination by any duly authorized representative of the Salem City the System and its effect on the Rights-of-Way.

6-9-695. Trimming of Trees.

A Provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Rights-of-Way so as to prevent the branches of such trees from coming in contact with its System.

SECTION 7 -- FRANCHISE AND LICENSE NON-TRANSFERRABLE

6-9-710. Notification of Sale.

- A. Notification and Election. When a Provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the Provider or its successor entity shall promptly notify Salem City of the nature of the transaction. The notification shall include either:
1. The successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original Provider's Franchise Agreement, or
 2. The successor entity's Application in compliance with Sections 6-7-5105 and 520 of this Ordinance.
- B. Transfer of Franchise. Upon receipt of a notification and certification in accordance with subsection (A)(1), the City designee, as provided in section 6-7-9 1 O(A), shall send notice affirming the transfer of the Franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application for the transfer. The Application shall comply with Sections 6-7-510 and 520
- C. If PSC Approval No Longer Required. If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in subsection (A), and the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application. The Application shall comply with Sections 6-7-510 and 520.

6-9-720. Events of Sale.

The following events shall be deemed to be a sale, assignment or other transfer of the Franchise requiring compliance with Section 6-7-710 the sale, assignment or other transfer of all or a majority of a Provider's assets to another Person; (ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in a Provider; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by a Provider so as to create a new Controlling Interest in such a Provider; or (iv) the entry by a Provider into an agreement with respect to the management or operation of such Provider or its System.

SECTION 8 -- OVERSIGHT AND REGULATION

6-9-810. Insurance, Indemnity, and Security.

Prior to the execution of a Franchise, a Provider will deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the Franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise. A Provider shall also indemnify the City as set forth in the Franchise.

6-9-820. Oversight.

The City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the System, and any part thereof, in accordance with the provisions of the Franchise and applicable law. A Provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a Provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that a Provider is in compliance with the Franchise. A Provider shall retain such records for not less than the applicable statute of limitations.

6-9-830. Maintain Records.

A Provider shall at all times maintain:

- A. On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and Systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all Rights-of-Ways where work will be undertaken. As used herein, "as-built" maps includes "file construction prints". Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As-built" maps are not required of the Provider who is the incumbent local exchange carrier for the existing System to the extent they do not exist.
- B. Throughout the term of the Franchise, a Provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a Provider with respect to the System in a manner that allows the City at all times to determine whether a Provider is in compliance with the Franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a Provider shall alter the manner in which the books and/or records are maintained so that a Provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this Section.

6-9-840. Confidentiality.

If the information required to be submitted is proprietary in nature or must be

kept confidential by federal, state or local law, upon proper request by a Provider, such information shall be classified as a Protected Record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), making it available only to those who must have access to perform their duties on behalf of the City, provided that a Provider notifies Salem City, and clearly labels the information which a Provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Provider.

6-9-850. Provider's Expense.

All reports and records required under this Ordinance shall be furnished at the sole expense of a Provider, except as otherwise provided in this Ordinance or a Franchise.

6-9-860. Right of Inspection.

For the purpose of verifying the correct amount of the franchise fee, the books and records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the City shall not audit the books and records of the Provider more often than annually. The Provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Provider has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the Provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

SECTION 9 -- RIGHTS OF CITY

6-9-910. Enforcement and Remedies.

- A. Enforcement - City Designee. The City is responsible for enforcing and administering this Ordinance, and the City or its designee, as appointed by the Mayor, is authorized to give any notice required by law or under any Franchise Agreement.
- B. Enforcement Provision. Any Franchise granted pursuant to this Ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this Ordinance, including, but not limited to, defining events of default, procedures for accessing the Bond/Security Fund, and rights of termination or revocation.

6-9-920. Force Majeure.

In the event a Provider's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise is prevented by a cause or event not within a Provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

6-9-930. Extended Operation and Continuity of Services.

- A. Continuation After Expiration. Upon either expiration or revocation of a Franchise granted pursuant to this Ordinance, the City shall have discretion to permit a Provider to continue to operate its System or provide Services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A Provider shall continue to operate its System under the terms and conditions of this Ordinance and the Franchise granted pursuant to this Ordinance.
- B. Continuation by Incumbent Local Exchange Carrier. If the Provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its System and provide Services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

6-9-940. Removal or Abandonment of Franchise Property.

- A. Abandoned System. In the event that (1) the use of any portion of the System is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of Provider; (2) any System has been installed in the Rights-of-Way without complying with the requirements of this Ordinance or Franchise; or (3) the provisions of Section 6-7-350 are applicable and no Franchise is granted, a Provider, except the

Provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such System.

- B. **Removal of Abandoned System.** The City, upon such terms as it may impose, may give a Provider written permission to abandon, without removing, any System, or portion thereof, directly constructed, operated or maintained under a Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, a Provider shall remove within a reasonable time the abandoned System and shall restore, using prudent construction standards, any affected Rights-of-Way to their former state at the time such System was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided in a Franchise shall continue in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this Section.

6-9-950. Transfer of Abandoned System to City.

Upon abandonment of any System in place, a Provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned System.

6-9-960. Removal of Above-Ground System.

At the expiration of the term for which a Franchise is granted, or upon its revocation or earlier expiration, as provided for by this Ordinance, in any such case without renewal, extension or transfer, the City shall have the right to require a Provider to remove, at its expense, all above-ground portions of a System from the Rights-of-Way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the Provider is the incumbent local exchange carrier, it shall not be required to remove its System, but shall negotiate a renewal in good faith.

6-9-970. Leaving Underground System.

Notwithstanding anything to the contrary set forth in this Ordinance, a Provider may abandon any underground System in place so long as it does not materially interfere with the use of the Rights-of-Way or with the use thereof by any public utility, cable operator or other Person.

SECTION 10 -- OBLIGATION TO NOTIFY

6-9-1010. Publicizing Work.

Before entering onto any private property, a Provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed.

SECTION 11 -- GENERAL PROVISIONS

6-9-1110. Conflicts.

In the event of a conflict between any provision of this Ordinance and a Franchise entered pursuant to it, the provisions of this Ordinance in effect at the time the Franchise is entered into shall control.

6-9-1120. Severability.

If any provision of this Ordinance is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the Ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on the City and the Provider, provided that the City shall give the Provider thirty (30) days, or a longer period of time as may be reasonably required for a Provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

6-9-1130. New Developments.

It shall be the policy of the City to liberally amend this Ordinance, upon Application of a Provider, when necessary to enable the Provider to take advantage of any developments in the field of Telecommunications which will afford the Provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

6-9-1140. Notices.

All notices from a Provider to the City required under this Ordinance or pursuant to a Franchise granted pursuant to this Ordinance shall be directed to the officer as designated by the Mayor. A Provider shall provide in any Application for a Franchise the identity, address and phone number to receive notices from the City. A Provider shall immediately notify Salem City, of any change in its name, address, or telephone number,

6-9-1150. Exercise of Police Power.

To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

SECTION 12 -- FEDERAL, STATE AND CITY JURISDICTION

6-9-1210. Construction.

This Ordinance shall be construed in a manner consistent with all applicable federal and state statutes.

6-9-1220. Ordinance Applicability.

This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing Franchises granted prior to the effective date of this Ordinance and to a Provider providing Services, without a Franchise, prior to the effective date of this Ordinance.

6-9-1230. Other Applicable Ordinances.

A Provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A Provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all Providers shall comply with the City zoning and other land use requirements.

6-9-1240. City Failure to Enforce.

A Provider shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

6-9-1250. Construed According to Utah Law.

This Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.

EXHIBIT A
TELECOMMUNICATIONS FRANCHISE APPLICATION

CITY OF SALEM

TELECOMMUNICATIONS FRANCHISE APPLICATION

(Capitalized terms are defined in the Telecommunications Rights-of-Way Ordinance)

_____ (herein "Provider") a _____
(Name of Applicant) (Corporation, LLC, Partnership,
Individual)

organized under the laws of _____ with its principal headquarters located in _____
State State

does hereby request a Franchise to utilize the Rights-of-Ways of all, or a part of the City of Salem
(Name of City)

(herein the "City"), pursuant to the City's Telecommunications Rights-of-Ways Ordinance (herein ROW Ordinance).

A. Please list all names (d/b/a/s) the Provider will be doing business under in the City:

Name of Contact Person: _____ Telephone Number: _____

Address: _____ City, State, Zip Code

B. This Application is a:

- ? New Application
- ? Renewal Application
- ? Transfer of Franchise

C. At the time of this Application, Provider is planning to do the following (mark all that apply):

- ? Construct a System using the Rights-of-way
 - ? Directly provide Telecommunications Services to the public
 - ? Local dial tone services
 - ? Interstate long distance services
 - ? Intrastate long distance services
 - ? High speed data transmission services
 - ? High speed Internet services
 - ? Provide the private Telecommunication needs of the Provider
- Lease TO or otherwise allow all or a portion of its System to be used by another Provider. List name(s) of other Provider(s) if known:

? Lease FROM or otherwise use another Provider's System. List name(s) of other Provider(s), if known:

- ? Construct an Open Video System
- ? Provide an Open Video System

- D. The application fee required in the ROW Ordinance accompanies this Application. The Provider understands that this Application will not be considered until the application fee is paid.
- E. As provided in Section 2, 6-7-210.A of the ROW Ordinance, this application includes all written documentation, verbal statements and representations, in whatever form, made by the Provider to the City concerning: the construction of a Telecommunications System over, under, on, or through the Rights-of-Way; the Telecommunications Services proposed to the City by the Provider, and any other matter pertaining to a proposed System or Service.
- F. Except to the extent any Ordinance provision referenced herein is invalidated, the Provider hereby certifies and agrees as follows:
 - 1. All information contained in this Application and all other information presented to the City is true and correct;
 - 2. The provider is familiar with the ROW Ordinance and will comply with it in all respects if the Franchise is granted;
 - 3. The Provider has received a Certificate of Convenience and Necessity from the Utah Public Service Commission, if required;
 - 4. The provider has the financial ability to compensate the City during the Franchise term by paying the franchise fee as required in the ROW Ordinance and the Franchise Agreement;
 - 5. The Provider will comply with the requirements of Section 6 of the ROW Ordinance which governs construction and technical requirements;
 - 6. The Provider will obtain excavation permits as required in the ROW Ordinance and the Excavation Ordinance and promptly pay the permit fees;
 - 7. The Provider will pay the up-front franchise fee required in the Franchise Agreement when it is granted;
 - 8. The signers of this Application have the authority to make these certifications and agreements on behalf of the Provider;
 - 9. [OPTIONAL FOR POWER CITIES] Prior to making any attachments to poles owned by the city, the Provider is willing to enter into a pole attachment agreement with the City.

PROVIDER

By: _____

Title: _____

STATE OF UTAH)

)

COUNTY OF _____)

On this _____ day of _____, 20_____, personally appeared before me _____
_____ who being by me duly sworn did say that he/she is the _____
_____ of _____ and that
the foregoing instrument was signed in behalf of said entity by authority of its _____
or its by-laws, and he/she acknowledged to me that said entity executed the same.

NOTARY PUBLIC

REV. 5/99

(Ordinance No. 11-25-97 & Ordinance No. 3-1-00-A)

CHAPTER 10 – SEXUALLY ORIENTED BUSINESS AND EMPLOYEE LICENSING ACT

6-10-010. Title for Citations.

The ordinance codified in this article shall be known, and may be referred to, as the "Sexually Oriented Businesses and Employee Licensing Ordinance."

6-10-020. Purpose.

The purpose and object of this Chapter is to establish reasonable and uniform regulations governing the time, place and manner of the operation of sexually oriented businesses and their employees in the city. This Chapter, by its terms, is designed to prevent crime, protect the city's retail trade, maintain property values, and generally protect and preserve the quality of the City's neighborhoods, commercial districts, and the quality of urban life. The provisions of this Chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative material or speech protected by the First Amendment. This Chapter shall be construed to protect the governmental interest recognized by this Chapter in a manner consistent with constitutional provisions provided by the United States and Utah Constitutions

6-10-030. Application.

This chapter imposes regulatory standards and license requirements on certain business activities, which are characterized as "sexually oriented businesses," and certain employees of those businesses characterized as "sexually oriented business employees". Except when the context or specific provisions require, this chapter does not supersede or nullify any other related ordinances.

6-10-040. Definitions.

For purposes of this chapter, the following words shall have the following meanings:

- A. **Adult bookstore or Adult video store** means a commercial establishment:
1. Which excludes minors from more than fifteen percent (15%) of the retail floor or shelf space of the premises; or
 2. Which, as one of its principal purposes, offers for sale or rental, for any form of consideration, any one or more of the following: Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations, the central theme of which depicts or describes "specified sexual activities," except for legitimate medically recognized contraceptives.
- B. **Adult Business** means an adult motion picture theater, adult bookstore or adult video store.
- C. **Adult motion picture theater** means a commercial establishment which regularly

shows, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions which are primarily characterized by the depiction or description of specified sexual activities" or "specified anatomical areas."

- D. **Adult theater** means a theater, concert hall, auditorium, or similar commercial establishment which regularly features person who appear in a state of a "semi-nudity."
- E. **Business license authority** means the City's business license supervisor or designee.
- F. **Customer** means any person who patronizes of any business licensed pursuant to this chapter.
- G. **Employ** means hiring an individual to work for pecuniary or any other form of compensation, whether such person is hired on the payroll of the employer, as an independent contractor, as an agent, or in any other form of employment relationship.
- H. **Escort** means a person who, for pecuniary compensation, dates, socializes, visits, consorts with or accompanies, or offers to date, consort, socialize, visit or accompany another or others to or about social affairs, entertainment or places of amusement, or within any place of public or private resort or any business or commercial establishment or any private quarters or who agrees or offers to privately model lingerie or to privately perform a striptease for another person. Escort shall not be construed to include persons who provide business or personal services such as licensed private nurses, aids for the elderly or handicapped, social secretaries or similar service personnel whose relationship with their patron is characterized by a bonafide contractual relationship having a duration of more than twenty-four (24) hours and who provide a service not principally characterized as dating or socializing. Escort shall also not be construed to include persons providing services such as singing telegrams, birthday greetings or similar activities characterized by appearances in a public place, contracted for by a party other than the person for whom the service is being performed and of a duration not longer than one (1) hour.
- I. **Escort service** means an individual or entity who, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce customers to escorts.
- J. **Escort service runner** means any third person, not an escort, who, for pecuniary compensation, acts in the capacity of an agent or broker for an escort service, escort or customer by contacting or meeting with escort services, escorts or customers at any location within the City, whether or not such third person is employed by such escort service, escort, customer, or by another business, or is an independent

contractor or self-employed.

- K. **Nudity or state of nudity** means the appearance of a human bare buttock, cleft of buttocks, anus, pubic region, male genitals, female genitals, or full female breast.
- L. **Outcall services** means services of a type performed by a sexually oriented business employee outside of the premises of the licensed sexually oriented business, including but not limited to escorts, models, dancers and other similar employees.
- M. **Pecuniary compensation** means any commission, fee, salary, tip, gratuity, hire, profit, reward, or any other form of consideration.
- N. **Person** means any person, unincorporated association, corporation, partnership or other legal entity.
- O. **Semi-nude** means a state of dress in which opaque clothing covers no more than the genitals, pubic region, anus, cleft of the buttocks, the areola and nipple of the female breast as well as portions of the body covered by supporting straps or devices.
- P. **Semi-nude dancing agency** means any person, agency, firm, corporation, partnership, or any other entity or individual which furnishes, books or otherwise engages or offers to furnish, book or otherwise engage the services of a professional dancer, model, or performer licensed pursuant to this chapter for performance or appearance at a business licensed for semi-nude entertainment, or adult theaters.
- O. **Semi-nude dancing bars** means any business which sells or has a license which allows the consumption of any alcoholic beverage on its premises and that permits dancing, modeling, or other performance or appearance however characterized, in a state of semi-nudity.
- R. **Semi-nude entertainment business** means a business, including adult theater, where employees dance, model, perform or appear in the presence of customers of the business in a state of semi-nudity. A business shall also be presumed to be a semi-nude entertainment business if the business holds itself out as such a business.
- S. **Sexually oriented businesses** means semi-nude entertainment businesses, sexually oriented out-call services, adult businesses, semi-nude dancing bars and semi-nude dancing agencies, as defined by this chapter.
- T. **Sexually oriented business employees** means those employees who work on the premises of the sexually oriented business in activities related to the sexually oriented portion of the business. This includes all managing employees, dancers, escorts, models, and other similar employees whether or not hired as employees, agents or independent contractors. Employees shall not include individuals whose work is unrelated to the sexually oriented portion of the business, such as janitors, bookkeepers, cooks, serving persons, bartenders and similar employees, except

when they may be managers or supervisors of the business. All persons making outcall meetings under this chapter, including escorts, models, guards, or escort employees shall be considered sexually oriented business employees.

U. **Specified anatomical areas** means:

1. Acts of masturbation, human sexual intercourse, sexual copulation between a person and a beast, fellatio, cunnilingus, bestiality, pederasty, buggery, or any anal copulation between a human male and other human male, human female or beast;
2. Manipulation, caressing or fondling by any person of the genitals of a human, the pubic area of a human, the uncovered female nipple or areola; or
3. Flagellation or torture by or upon a person clad in undergarment, a mask or bizarre costume, or in the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.

6-10-050. Obscenity and Nudity.

Notwithstanding anything contained in this chapter, nothing in this chapter shall be deemed to permit or allow the showing or display of any matter which is contrary to the provisions of the Salem City Code, or other applicable federal or state statute prohibiting obscenity or nudity.

6-10-060. Location and zoning restrictions.

It is unlawful for any sexually oriented business to do business at any location within the City not zoned for such business. Sexually oriented businesses licensed under this chapter shall only be allowed in areas zoned for their use pursuant to §14-12-020(23) of the Salem City Municipal Code. (Ord. No. 10-6-04)

6-10-070. Business license required.

It is unlawful for any person to operate a sexually oriented business without first obtaining a sexually oriented business license. The license shall specify the type of business for which it is obtained.

6-10-080. Exemptions from license requirements.

The provisions of this chapter shall not apply to any sex therapist or similar individual licensed to provide counseling, licensed medical practitioner, licensed nurse, psychiatrist, psychologist, nor shall it apply to any educator licensed by the State for activities in the classroom.

6-10-090. Legitimate artistic modeling.

- A. The City does not intend to unreasonably or improperly prohibit legitimate modeling which may occur in a state of nudity for purposes protected by the first amendment or similar Sate protection. The City does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling.

- B. In the event that a contract for nude modeling or appearance is signed more than forty eight (48) hours in advance of the modeling or appearance, the individual to appear nude shall not be required to obtain a license pursuant to this chapter. During such unlicensed nude appearance, it is unlawful to:
1. Appear nude or semi-nude in the presence of persons under the age of eighteen (18);
 2. Allow, offer or agree to any touching of the contracting party or other person by the individual appearing nude;
 3. Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or commit activities harmful to a minor;
 4. Allow, offer, commit or agree to any sex act as validly defined by City ordinances or State statute;
 5. Allow, offer or agree for the individual appearing nude to be within five (5) feet of any other person while performing or while nude or semi-nude.

6-10-100. Business categories- Number of licenses.

- A. It is unlawful for any business premises to operate or be licensed for more than one category of sexually oriented business.
- B. The categories of licensed sexually oriented businesses are:
1. Adult businesses;
 2. Semi-nude entertainment businesses;
 3. Adult theater
 4. Semi-nude dancing agency.
- C. Any sexually oriented business not listed in paragraph (B) is expressly prohibited, including, but not limited to, out call services, escort services, semi-nude dancing bars or similar businesses not specifically permitted.

6-10-110. Employee licenses.

It is unlawful for any sexually oriented business to employ, or for any individual to be employed by a sexually oriented business in the capacity of a sexually oriented business employee, unless that employee first obtains a sexually oriented business employee license.

6-10-120. License application-Disclosures required.

Before any applicant may be licensed to operate a sexually oriented business or as a sexually oriented business employee pursuant to this chapter, the applicant shall submit, on a form to be supplied by the business license authority, the following:

- A. The correct legal name of each applicant, corporation, partnership, limited partnership or entity doing business under an assumed name;
- B. If the applicant is a corporation, partnership or limited partnership, or individual or entity doing business under an assumed name, the information required below for individual applicants shall be submitted for each partner and each principal of the applicant, and for each officer, director and any shareholder (corporate or personal) holding more than ten percent (10%) of the stock of any applicant. Any holding company, or any entity holding more than ten percent (10%) of an applicant, shall be considered an applicant for purposes of disclosure under this Chapter;
- C. All corporations, partnerships or noncorporate entities included on the application shall also identify each individual authorized by the corporation, partnership or noncorporate entity to sign the checks for such corporation, partnership or noncorporate entity;
- D. For all applicants or individuals, the application must also state:
 - 1. Any other names or aliases used by the individual;
 - 2. The age, date, and place of birth
 - 3. Height, weight, and color of hair and eyes;
 - 4. Present business address and telephone number;
 - 5. Proposed business address and telephone number;
 - 6. Present residence address and telephone number;
 - 7. State drivers license or identification number; and
 - 8. Social security number;
- E. Acceptable written proof that the individual is at least eighteen (18) years of age or, in the case of employees to be employed in a business where a different age is required, proof of the required age;
- F. Attached to the form as provided above, two (2) color photographs of the applicant clearly showing the individual's face, and the individual's fingerprints on a form provided by the City Police Department. For persons not residing in the City, the photographs and finger prints may be on a form from the law enforcement jurisdiction where the person resides. Any fees for the photographs and fingerprints shall be paid by the applicant.
- G. A statement describing the business, occupation or employment history of the applicant for three (3) years immediately preceding the date of the filing of the

application;

- H. A statement detailing the license or permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or sought to operate, in this or any other county, city, state or country has ever had a license, permit or authorization to do business denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the date, the name of the issuing or denying Jurisdiction, and describe in full the reasons for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application;
- I. List all criminal convictions and the disposition of all arrests of the applicant, individual or other entity subject to disclosure under this chapter, for five (5) years prior to the date of the application. This disclosure shall include identification of all ordinance violations, except minor traffic offenses (any traffic offense designated as a felony, Class A or Class B misdemeanor shall not be construed as a minor traffic offense), stating the date, place, nature of each conviction, and sentence of each conviction or other disposition; identifying the convicting jurisdiction and sentencing court and providing court identifying case numbers or docket numbers. Applications for a sexually oriented business or employee license shall constitute a waiver of disclosure or any criminal conviction or plea of nolo contendere for the purposes of any proceeding involving the business or employee license;
- J. In the event the applicant is not the owner of record of the real property upon which the business or proposed business is 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 for the property. In addition the notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well a copy of the lease or rental agreement pertaining to the premises in which the service is or will be located;
- K. A description of the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees to be charged by the licensee, and any rules, regulations or employment guidelines under or by which the business intends to operate. This description shall also include:
 - 1. The hours that the business or service will be open to the public, and the methods of promoting the health and safety of the employees and customers and preventing them from engaging in illegal activity;
 - 2. The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities;
 - 3. The methods of supervising employees and customers from charging or

receiving fees for services or acts prohibited by this chapter or other statutes or ordinances;

4. The methods of supervising employees and customers in order to promote the health and safety of employees and customers and prevent the transmission of disease, and prevent the commission of acts of prostitution or other criminal activity.

6-10-130. License - Fees.

A. Each applicant for a sexually oriented business or employee license shall be required to pay regulatory license fees pursuant to the following schedule:

1. Yearly business regulatory license fees;
 - a. Adult business one hundred dollars (\$100);
 - b. Semi-nude dancing agencies and semi-nude entertainment businesses, one hundred fifty dollars (\$150)
2. For each business applicant, an initial investigation fee of one hundred dollars (\$ 1 00) is required for each applicant directed to submit a separate disclosure application;
3. Yearly sexually oriented business employee license fees;
 - a. Adult business employees, semi-nude entertainment business employees requiring a license but not individually providing semi-nude entertainment services to customers, and employees of semi-nude dancing agencies requiring licenses but who are not performers, fifty dollars(\$50);
 - b. Employees of semi-nude entertainment business personally providing semi-nude entertainment to patrons, one hundred fifty dollars (\$150);
 - c. Professional dancers performing in semi-nude entertainment businesses, dancing bars, one hundred dollars (\$100).

B. Any individual applying for more than one license at the same time shall pay the higher of any applicable fee, plus an additional twenty dollars (\$20) for each additional license requested.

C. These fees shall be in addition to the other licenses and fees required to do business in the City.

6-10-140. License-Bond.

Each application for sexually oriented business license shall post with the

City Recorder a cash bond in the amount of two thousand dollars(\$2000). Any fines assessed against the business, officers or managers for violations of City Ordinances shall be taken from this bond if not paid in cash within ten days after notice of the fine, unless an appeal is filed as provided by this chapter. In the event the funds are drawn against the cash bond to pay such fines the bond shall be replenished to two thousand dollars (\$2000) within fifteen days of the date of notice of any draw against it. In the event the bond is not replenished within the fifteen days, the license granted by this chapter shall automatically be suspended until such time as the bond is replenished.

6-10-150. License-premises location and name.

- A. It is unlawful to conduct a business under a license issued pursuant to this chapter at any location to which telephone calls are automatically forwarded and such business shall require a separate license.
- B. It is unlawful for any sexually oriented business to do business in the city under any name other than the name specified in the application.

6-10-160. License-Issuance conditions.

The City business license official shall approve the issuance of licenses to the applicant within sixty (60) days after receipt of the application, unless the official finds one or more of the following:

- A. The applicant is under eighteen (18) years of age or any higher age if the license sought requires a higher age;
- B. The applicant is overdue in payment to the city 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 as authorized by this chapter;
- D. The applicant has been convicted of a violation of a provision of this chapter within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect on the denial;
- E. The premises to be used for the business has been disapproved by the County Health Department, the City Department of Public Safety, the City Building Official or the City Zoning Official as not being in compliance with applicable laws and ordinances of the City. If any of the foregoing reviewing agencies cannot complete their review within the sixty (60) day approval or denial period the agency or department may obtain from the City business license official an extension of time for their review of no more than fifteen (15) days. The total time for the City to approve or deny a license shall not exceed seventy-five (75) days from receipt of an application. Businesses located outside the corporate boundaries of the City, but requiring a license under this chapter, may be denied a license pursuant to this chapter if the business does not have a valid business license to conduct business at the business location from the appropriate jurisdiction for that location;

1. Upon receipt of an application all departments required to review the application shall determine within ten (10) days whether or not the application is complete with all items necessary for processing. Incomplete applications shall be returned to the applicant with specification of the items which are incomplete.
 2. The time for processing applications specified in this section shall begin to run from the receipt of a complete application.
 3. In the event that a license has not been disapproved within sixty (60) days, or the seventy-five (75) days allowed after an extension, the City shall issue the license.
 4. Any license issued pursuant to subsection (3) above may be revoked by the city pursuant to the revocation procedures of section 6-7-370 through 390 if the completed review determines that the license should have been denied.
- F. The license fees required by this chapter or by other ordinances have not been paid;
- G. All applicable sales and use taxes have not been paid;
- H. An applicant for the proposed business is in violation of, or not in compliance with this chapter;
- I. An applicant has been convicted of a crime involving prostitution; exploitation of prostitution; aggravated promotion of prostitution; aggravated exploitation of prostitution; solicitation of sex acts; sex acts-for-hire compelling prostitution; aiding prostitution; sale, distribution or display of material harmful to minors; sexual performance by minors; possession of child pornography; lewdness; public indecency; or crimes involving sexual abuse or exploitation of a minor, sexual assault or aggravated sexual assault; rape; rape of a child; object rape; object rape of a child; sodomy; sodomy on a child; sexual abuse of a child; aggravated sexual abuse of a child; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; criminal contempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving similar elements from any jurisdiction regardless of the exact title of the offense, for which:
1. Less than two (2) years have elapsed from the date of conviction if the conviction is of a misdemeanor offense, or less than five (5) years if the convictions are of two or more misdemeanors within five (5) years, or less than five (5) years has elapsed from the date of the conviction if the offense was a felony;
 2. The fact that a conviction is being appealed does not prevent someone from being denied a business license for that conviction.

6-10-170. License-Term

Sexually oriented business and employee licenses issued pursuant to this chapter shall be valid from the date of issuance through December 31st of that year. The license fees required under Section 6-10-130 above shall not be prorated for any portion of a year, but shall be paid in full for whatever portion of the year the license is applied for.

6-10-180. License-Notice of change of information

Any change in the information required to be submitted under this chapter for either
a
sexually oriented business license or sexually oriented business employee license shall be given, in writing, to the business license authority and the police department within fourteen (14) days after such change.

6-10-190. License-transfer limitations.

Sexually oriented business licenses granted under this chapter shall not be transferable. It is unlawful for a license held by an individual to be transferred. It is unlawful for a license held by a corporation, partnership or other noncorporate entity to transfer any ownership part in excess of ten percent (10%) thereof, without filing a new application and obtaining prior City approval. If any transfer of the controlling interest in a business license occurs, the license is immediately null and void and the business shall not operate until a separate new license has been properly issued by the City as provided in this chapter.

6-10-200. License-Display.

It is unlawful for any sexually oriented business located within the boundaries of the City to fail to display the license granted pursuant to this chapter in a prominent location within the business premises. It is unlawful for any individual licensed pursuant of this chapter to fail, at all times while engaged in licensed activities within the corporate boundaries of the City, to carry their employee license on their person. If the individual is nude or semi-nude, such license shall be visibly displayed within the same room where the employee is performing. When requested by the police, city licensing or other enforcement personnel or health official, it is unlawful to fail to show the appropriate licenses while engaged in licensed activities within the corporate boundaries of the City.

6-10-210. License-Statement in advertisements.

It is unlawful for any advertisement by the sexually oriented business or employee to fail to state that the business or employee is licensed by the City, and shall include the City license number.

6-10-220. Regulations and unlawful activities.

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

- A. Allow persons under the age of eighteen (18) years, on the licensed premises, except that in adult businesses which exclude minors from less than all of the business premises, minors shall not be permitted in excluded areas;

- B. Allow, offer or agree to conduct any out call business with persons under the age of eighteen (18) years;
- C. To allow, offer or agree to allow any alcohol being stored, used or consumed on or in the licensed premises;
- D. Allow the outside entry to the premises to be locked while any customer is in the premises;
- E. Allow, offer or agree to gambling on the licensed premises;
- F. Allow, offer or agree to any sexually oriented business employee touching any customer;
- G. Allow, offer or agree to illegal possession, use, sale or distribution of controlled substances on the licensed premises;
- H. Allow sexually oriented business employees to possess, use, sell or distribute controlled substances while engaged in the activities of the business;
- I. Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of minor or committing activities harmful to a minor to occur on the licensed premises;
- J. Allow, offer, commit or agree to any sex act as validly defined by City ordinances or State statute in the presence of any customer;
- K. Allow, offer or agree to allow a customer to masturbate in the presence of the sexually oriented business employee or on the premises of a sexually oriented business.

6-10-230. Outcall services-Prohibited.

It is unlawful for any business or employee to offer or to provide outcall services in the City of Salem.

6-10-240. Adult business-design of premises.

- A. In addition to the general requirements of disclosure for sexually oriented businesses, any applicant for a license as an adult business shall also submit a diagram, drawn to scale, of the premises of the license. The design and construction, prior to granting a license or opening or business, shall conform to the following:
 - 1. 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 to which any patron is permitted access for any purpose, excluding

restrooms.

2. Restrooms may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person being allowed in the restroom per stall, and only one person in any stall at a time, and requiring that customers shall not be allowed access to manager's station areas.
 3. For businesses which exclude minors from the entire premises, all windows, doors and other apertures to the premises shall be darkened or otherwise constructed to prevent anyone outside the premises from seeing the inside of the premises. Businesses which exclude minors from less than all of the premises shall be designed and constructed so that minors may not see into the area from which they are excluded.
 4. The diagram must show marked internal dimensions, all overhead lighting fixtures, and lighting for illumination capacity.
- B. It shall be the duty of the licensee and the licensee's employees to insure that the views from the manager's station in subsection A of this section remain unobstructed by any doors, walls, merchandise, display racks or any other materials at all times when any customer is present on the premises, and to insure that no customer is permitted access to any area of the premises which has been designated as an area in which customers will not be permitted.
- C. The premises shall at all times be equipped and operated with overhead lighting fixtures of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one foot candle, measured at floor level. It shall be the duty of the licensee and the licensee's employees present on the premises to insure that the illumination described above is maintained at all **times when any customer is present in the premises.**

6-10-250.Semi-nude entertainment business-Design of premises.

- A .It is unlawful for business premises licensed for semi-nude entertainment to:
1. Permit a bed, sofa, mattress or similar item in any room on the premises, except that a sofa may be placed in a reception room open to the public or in any office to which customers are not admitted, and except that in an adult theater such items may be on the stage as part of a performance;
 2. Allow any door on any room used for business, except for the door to an office to which customers shall not be admitted, outside doors and restroom doors, to be lockable from the inside;
 3. Provide any room in which the employee or employees and the customer or

customers are alone together without separation by a solid physical barrier at least three feet high and six inches wide. The customer or customers shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier.

- B. Adult theaters shall also require that the performance area shall be separated from the customers by a minimum of three feet, which separation shall be delineated by a physical barrier at least three feet high.

6-10-260. Semi-nude entertainment business-Location restrictions.

It is unlawful for any business licensed for semi-nude entertainment to be located within six hundred feet (600) of a different business which is licensed for the sale or consumption of alcohol.

6-10-270. Semi-nude dancing bar prohibited.

It is unlawful for any business licensed for the sale or consumption of alcohol pursuant to City ordinances or State law to allow any person on the premises to dance, model, or perform in a state of semi-nudity.

6-10-280. Semi-nude dancing performer restriction.

It is unlawful for any person to perform or appear in a state of semi-nudity as a professional dancer, model, performer or otherwise on the premises of a business licensed for semi-nude dancing, either gratuitously or for compensation, unless that person is licensed as a sexually oriented business employee.

6-10-290. Semi-nude dancing agencies.

- A. It is unlawful for any individual or entity to furnish, book or otherwise engage the services of a professional dancer, model or performer to appear in a state of semi-nudity for Pecuniary compensation in, or for, any semi-nude entertainment business, or adult theater licensed pursuant to this chapter unless such agency is licensed pursuant to this chapter.
- B. It is unlawful for any individual or entity to furnish, book or otherwise engage or permit any person to perform as a professional dancer, model or performer in a state of semi-nudity either gratuitously or for compensation, in, or for, any business licensed pursuant to this chapter, unless such person is licensed pursuant to this chapter.

6-10-300. Performers-Prohibited activities.

It is unlawful for any professional dancer, model or performer, while performing in any business licensed pursuant to this chapter:

- A. To touch in any manner any customer;
- B. To throw any object or clothing off the stage area;
- C. To accept any money, drink or any other object directly from any person; or

- D. To allow another person to touch such performer or to place any money or object on the performer or within the costume or person of the performer; or
- E. For the performer to place anything within the costume or adjust or move the costume while performing so as to render the performer in a state of nudity.

6-10-310. Performers-costume requirements.

It is unlawful for Performers in semi-nude entertainment business to fail to comply with the following costume requirements;

- A. Performers shall at all times be costumed during performances in a manner not to violate any City Ordinance concerning disorderly conduct or lewdness, and such Performers shall not perform or conduct themselves in such a manner as to violate the provisions of any City Ordinance. No performer shall appear in any business, licensed as a semi-nude entertainment business, during a performance or appearance with less than opaque clothing which meets the definition of semi-nude, and in the case of a female performer, cover the areola and nipple of such performer in a shape and color other than the natural shape and color of the nipple and areola.
- B. While on the portion of a business licensed as a semi-nude entertainment business used by customers, performers shall be dressed in an opaque clothing covering the performer's cleft of buttocks and pubic area and, in the case of female, the nipple and areola of the breast.

6-10-320. Stage requirements.

It is unlawful for any performer in a business licensed as a semi-nude entertainment business to appear in costume other than on a stage which shall be at least three feet from the portion of the premises on which customers are allowed, and which shall be separated from the customers by a solid barrier or railing, the top of which shall be at least two feet from the floor.

6-10-330. Customers-Prohibited activities.

It is unlawful for any person, or any customer of any business to touch in any manner any performer; to place any money or object on or within the costume or person of any performer; or to give or offer to give to any such performer any drinks, money or objects while such performer is performing; except that money may be placed on the stage which shall not be picked up by the performer except by hand.

6-10-340. Nudity-Defenses to prosecution.

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

- A. By a proprietary school licensed by the State, or a college, junior college or university supported entirely or partly by taxation;

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

6-10-350. Existing Business-Compliance time limits.

- A. The provisions of this chapter shall be applicable to all persons and businesses described herein, whether the herein-described activities were established before or after the effective date of the ordinance codified in this chapter, and regardless of whether such person and businesses are currently licensed to do business in the City.
 - 1. All semi-nude entertainment business and employees thereof requiring licenses and semi-nude dancing agency licenses shall have seventy-five (75) days from the effective date of the ordinance codified in this chapter, or until their licenses must be renewed, whichever is first, to comply with the provisions of this chapter.
 - 2. All adult businesses shall have one hundred thirty-five (I 35) days from the effective date of the ordinance codified in this chapter, or until their current license must be renewed, whichever is first in time, to comply with the provisions of this chapter.
- B. For the year 1997, all businesses required by this chapter to be licensed as sexually oriented businesses shall be credited against the fees required by this chapter with the regulatory license fees paid for the current 1997 license.

6-10-360. Violation-Injunction when.

An entity or individual who operates or causes to be operated a sexually oriented business, without a valid license, 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 herein, and any other remedy available at law or in equity.

6-10-370. Violation-License suspension or revocation.

- A. The city may issue a notice suspending or revoking a sexually oriented business or employee license granted under this chapter if a licensee, or an employee of the licensee has:
 - 1. Violated or is not in compliance with this chapter;
 - 2. Has refused to allow any inspection of the premises of the sexually oriented business specifically authorized by this chapter, or by any other statute or ordinance;

3. Has failed to replenish the cost bond as provided in this chapter; such suspension shall extend until the bond has been replenished;
 4. A licensee or employee gave materially false or misleading information in obtaining the license;
 5. A licensee or an employee knowingly operated the sexually oriented business or worked under the employee license during the period when the business licensee or employee licensee's license was suspended;
 6. A licensee has committed an offense which would be grounds for denial of a license for which the time period required has not elapsed;
 7. On two or more occasions within a twelve-month period, a person or persons committed in or on, or solicited for on the licensed premises, an offense which would be grounds for denial of a license for which a conviction has been obtained, and the person or persons were employees, whether or not licensed, of the sexually oriented business at the time the offenses were committed;
 8. A licensee is delinquent in payment to the City for ad valorem taxes, or sales taxes related to the sexually oriented business.
- B. Suspension or revocation shall take effect within ten days of the issuance of notice, unless an appeal is filed with the City as provided by this chapter. The revocation or suspension is stayed pending the outcome of the appeal with the City.
- C. The fact that a criminal conviction is being appealed shall have no effect on the revocation of a license.

6-10-380. Effect of license revocation.

When a license issued pursuant to this chapter is revoked, the revocation shall continue indefinitely, and the licensee shall not be issued a sexually oriented business or employee license for at least one year from the date of such revocation.

6-10-390. Appeal procedures.

- A. If the license is denied or approved with qualifications, or if a notice of suspension, revocation or citation or a civil fine is imposed, the applicant or licensee may file an appeal with the City Recorder.
- B. Filing of an appeal must be within ten (10) days of the date of service of the notice of any denial, qualified approval, suspension, revocation or civil fine. Upon receiving the notice of such appeal, the City Recorder shall schedule a hearing before the City manager within twenty (20) days from the date of the appeal unless such time shall be extended for good cause.

- C. The City Manager shall hold a public hearing on the record, and take such facts and evidence as necessary to determine whether the denial, qualified approval, suspension, revocation or civil fine was proper under the law.
- D. The burden of proof shall be on the City.
- E. After the hearing, the City Manager shall have seven (7) working days, unless extended for good cause, in which to render findings of fact, conclusions of law, and make a recommendation for the City Mayor.
- F. Either party may object to the recommendation of the hearing officer by filing the party's objection and-reason, in writing, to the City Mayor within seven days following the recommendation. In the event the City Manager recommends upholding a suspension or revocation, the license shall be immediately suspended, and shall remain suspended until any subsequent appeal is decided. If no objections are received within the seven days, the City Mayor may immediately adopt the recommendation of the City Manager.
- G. If objections are received, the City Mayor shall have ten (10) working days to consider such objections before issuing the final decision. The City Mayor may, in the Mayor's discretion, take additional evidence or require written memorandum on issues of fact or law. The standard by which the City Mayor shall review the decision of the hearing officer is whether substantial evidence exists in the record to support the hearing officer's recommendation.
- H. An applicant aggrieved by the City Mayor decision shall have judicial review of such decision pursuant to Rule 65 (B), Utah Rules of Civil Procedure, or any other applicable ordinance, statute or rule providing for such review.

6-10-400. Violation-Penalty.

In addition to revocation or suspension of a license, as provided in this chapter, each violation of this chapter shall, upon citation by the City Recorder, require the licensee to pay a civil penalty in the amount of five hundred dollars (\$500). Such fines shall be deducted from the cost bond posted pursuant to this chapter, unless paid within ten (10) days of notice of the fine or the final determination after any appeal. In addition to the civil fines provided in this chapter, the violation of any provision of this chapter shall be a Class B. Misdemeanor. Each day of violation shall be considered a separate offense.

6-10-410. Severability.

In the event that any provision of this chapter is declared invalid for any reason, the remaining provisions shall remain in effect.

(Ordinance No. 8-5-98 & Ord. No. 3-1-00-A)

CHAPTER 11 - HORSE DRAWN CARRIAGES

6-11-010 When and Where Permitted.

Horse drawn carriages for hire are permitted during the Pond Town Christmas celebration, from the Friday following Thanksgiving through New Year's Day. The staging area for carriage rides shall be in the main parking lot for Knoll Park, in an area designated in the permit. The route for horse drawn carriages shall commence at the parking lot at Knoll Park and proceed south around the head of Salem Pond to 200 South and Main Street, where the horse drawn carriage must turn around and return over the same route back to the parking lot.

6-11-020 Permit Required.

Prior to operating a horse drawn carriage during Pond Town Christmas, a franchise agreement must be entered into with the City. The franchise will be non-exclusive and require a minimum of twelve percent (12%) of the gross revenues to be paid to the City. When the annual rate is established by the Council, each franchisee will pay the same percentage as the fee for that year. The franchise agreement will be for one year, but may have a City option to extend it for additional year(s), subject to the applicable franchise fee for future years. Persons providing carriage rides for their families or church groups at no charge are required to have a permit from the City, but no fee will be assessed for those permits. Such permits are valid for only three days during the Pond Town Christmas celebration, as designated on the permit.

6-11-030 Insurance.

Each franchisee shall provide liability insurance in the amount designated by the City Council in the franchise agreement. The franchisee is required to provide a

certificate of insurance to the City, naming Salem City, its officials, employees, and agents as additional insureds.

6-11-040 Rules and Regulations.

Each franchisee shall comply with the following requirements:

A. Carriages.

1. Carriages shall be kept in good working order and maintained in a clean and attractive manner.
2. All carriages will have a rubber covering over the wheels thick enough to protect the streets from damage and to keep noise to a minimum.
3. Warning taillights shall be mounted at the rear of the carriage and shall be operated in a flashing mode continuously while the carriage is in traffic and shall conform to all applicable requirements of the Motor Vehicle Code of the State of Utah.
4. Some form of lighting, as approved by the Public Safety Department shall be displayed from the front of the carriage/horse in order to provide notice to oncoming vehicles of the presence of the horse and carriage.
5. All carriages shall be fitted with reflective decals on both sides of the carriage and at the shoulders of the horse.
6. Carriages shall not carry more people than the lesser of six persons or the number of persons the carriage was designed to hold.
7. No one other than the driver or trainee may sit in the driver's seat. A trainee must be accompanied by a trainer, who shall be qualified to be a driver.
8. A "Slow Moving Vehicle" or "Agricultural Vehicle" emblem shall be attached to the rear of the carriage.

9. All carriages shall be equipped with a horn or warning device which shall be in good working order and capable of emitting sound audible under normal conditions from a distance of not less than 40 feet, but no horn shall emit an unreasonably loud or harsh sound.

10. Each carriage shall be equipped with brakes capable of stopping the carriage and adjusted to as to provide equal braking to each wheel without locking.

B. Horses.

1. A maximum of two horses are allowed to pull a carriage.

2. Horses shall be fitted with equipment to prevent horse dung from dropping on the streets and public rights-of-way.

3. No horse may be used to draw a carriage unless the animal is in good health. If the Public Safety Director has a question about the health of a horse, a certificate as to the horse's health and ability to pull a carriage shall be provided from a veterinarian licensed to practice in the State of Utah.

4. No horse shall be used to draw a carriage unless the animal has been acclimatized to the conditions (i.e., sights, sounds, movement, etc.) inherent in the intended job.

5. The horse may not have any open sores or wounds, nor may such horse be lame or have any other ailments.

6. The hooves of the horse must be properly shod, utilizing rubber shoes or pads or "drill tec" shoes to prevent slippage on slick surfaces.

7. The horse must be properly cleaned, with no offensive odors, caked dirt

or mud.

8. No horse shall be used if that horse is demonstrating any signs of injury, exhaustion or illness.

9. No bit, harness, tack, blanket, piece of equipment, or tool shall be used upon a horse unless that item is appropriately clean, safe for use, and, if applicable, properly fits the animal.

10. All horses used in the business shall be at all times treated in a humane manner.

C. Operators and Drivers.

1. No person under the age of eighteen years shall drive a horse-drawn carriage.

2. No person shall operate a horse-drawn carriage while under the influence of alcoholic beverages or drugs.

3. Every person operating a horse-drawn carriage shall be subject to all applicable laws, rules, and regulations of this Chapter and the Motor Vehicle Code of the State of Utah.

4. Each driver must demonstrate his or her ability to drive and care for the horse and equipment.

5. Drivers are prohibited from smoking, eating, or wearing head phones while the carriage is in motion for optimum safety and control of the horse and carriage.

6. No driver shall abandon his or her carriage, permit another to drive the carriage, except a trainee, or permit any passenger to ride on the driver's seat.

D. Operations.

1. Since the Pond Town Christmas celebration occurs during the winter season, the City Public Safety Director may order operations to cease if he/she determines the streets are too snowy or icy on a given day/night to safely proceed with carriage rides.

2. Carriages shall not operate in any other manner not specifically addressed herein which is deemed by the City Public Safety Director to be unduly hazardous or congestive in its effects. The City Public Safety Director has the authority to impose upon a carriage operator at any time any specific restrictions deemed necessary in the interest of public safety or welfare.

3. No person shall operate a horse-drawn carriage in any manner which impedes or blocks the normal or reasonable movement of pedestrian or vehicular traffic unless such operation is necessary for safe operation or in compliance with law.

11-4-050 Violation.

A violation of this Chapter by a franchisee shall be grounds for immediate termination of the franchise agreement. The Public Safety Director is authorized to make the determination of a violation and may unilaterally terminate the agreement. The franchisee may appeal the decision to the City Council, which appeal will be heard at the Council's next regularly scheduled meeting, provided that 24 hours' notice must be given of the agenda item, in accordance with the Utah Open Meetings Act.

(ordinance 121416)

CHAPTER 12 – MOBILE FOOD VENDORS

6-12-010	<u>License Required</u>
6-12-020	<u>Conditions and Requirements</u>
6-12-030	<u>Restrictions</u>
6-12-040	<u>Conditions for Operating at City Facilities</u>
6-12-050	<u>Violation</u>

6-12-010 License Required

- A. A mobile food vendor business license shall be required for each mobile food truck, concession cart, concession trailer, or other mobile vending unit. The permit fee for a mobile food vendor business is \$50.00, plus \$25 for a fire safety inspection. In the event a mobile food vendor is already licensed in another city in Utah County, the fee is reduced to \$15.00 to cover the administrative expenses of the City, if the vendor can show a copy of the license from the other City, a copy of the health department food truck permit issued by the Utah County Health Department, and a copy of the fire safety inspection conducted on the mobile food truck, concession cart, or concession trailer.
- B. The permit is good for the calendar year in which it is issued. A mobile food vendor business license must be renewed each year, following the procedures for a business license.

6-12-202 Conditions and Requirements

A mobile food vendor license is subject to the following conditions and requirements:

1. The nature, location, and manner of operation of the activity does not constitute a health or safety hazard to the public.
2. The mobile food vendor has permission from the property owner where the foods are to be sold.
3. The mobile food truck, concession cart, or concession trailer has had a food truck permit issued to it by the Utah County Health Department and has had a fire safety inspection.
4. Workers preparing food for immediate consumption, whether on premises, or “to go” must have a valid food handler’s permit issued by the Utah County Health Department.
5. The sales must be located in a public facilities, commercial, or industrial zoning district. Home deliveries are also allowed in any residential zone.
6. The use does not interfere with pedestrian access-ways, fire lines, driveways, or traffic visibility.
7. Parking on the property is adequate to serve any existing permanent uses and the proposed mobile food vendor use.
8. No mobile food vendor license shall be issued or valid during the period of the Salem Days celebration.

9. The mobile food vendor license is on display during operating hours.
10. The mobile food vendor license must be displayed on site.

6-12-030 Restrictions

Concession and booth permits for the Salem Days celebration shall be limited to the number established by the City Council / Salem Days Committee. The cost of concession and booth permits shall be in the amounts set by the City Council / Salem Days Committee. No person shall operate concession or booths during Salem Days without a permit issued by the City. Any person violating the provision of this paragraph is guilty of a class C misdemeanor.

6-12-040 Conditions for Operating at City Facilities

A mobile food vendor may locate and operate from City properties under the following conditions:

1. Activities at a specific location are limited to forty-eight (48) hours.
2. The City Recreation Director has approved and signed a permit for the date(s) and location.

6-12-050 Violation

A mobile food vendor operating without a mobile food truck vendor license, or in violation of any of the provisions of this Chapter, shall be guilty of a class C misdemeanor. (ordinance #4-18-18-C)

CHAPTER 13 – Cannabis Production Establishments

- 6.12.010 Purpose**
- 6.12.020 Definitions.**
- 6.12.030 License and Other Requirements**
- 6.12.040 Site Application**

5.48.010 Purpose

The purpose of this Chapter is to comply with Utah Code Ann. §4-41a-406 and to regulate, within the parameters of the State Code, cannabis production establishments. It is the intent that, as provisions of the State Code change, applicable changes are automatically incorporated into this Chapter.

5.48.020 Definitions

The definitions contained in Utah Code Ann. §4-41a-102 are incorporated in this Chapter.

5.48.030 License and Other Requirements

- A. Every person desiring to operate a cannabis production establishment within Salem City is required to obtain a business license for such operation. Prior to receiving a City business license, an applicant for such license must:
 - i. show proof that they have been issued a State license for that establishment;
 - ii. receive site plan approval from the DRC;
 - iii. pay a license fee, in the amount necessary to cover the costs of the site plan review and issuing the license. The cost may be established by the Council by resolution or by inclusion in the annual budget of the City.
- B. An applicant for a cannabis cultivation facility must meet the operating requirements of Utah Code Ann. §4-41a-501 in order to obtain and renew the license.
- C. An applicant for a cannabis processing facility must meet the requirements of Utah Code Ann. §§4-41a-601 through 603 in order to obtain and renew the license.
- D. An applicant for an independent cannabis testing laboratory must meet the requirements of Utah Code Ann. §§4-41a-701 and 702 in order to obtain and renew the license.

5.48.040 Site License Application

- A. Application Requirements: To be considered for a Site License, a Provider must submit an application to the City, on a form provided by the City. In addition to any other information required on that form, the application must include the following information:

1. Show how the applicant will comply with Utah Code Ann. §4-41a-501, 601, or 701, as applicable to the application.
2. A scaled site plan or rendering, scaled elevation view, and other supporting drawings and calculations, showing the location and dimension of all improvements. Fuel and fertilizers are to be kept in separate buildings at least fifty feet apart. If growing lights or security lights are being used, a diagram or similar material is to be included, showing how the light will be contained to the applicant's property. The submittal must include sufficient information to determine compliance with the standards and requirements of this Chapter.
3. Show that all of the zoning requirements have been met. (ordinance 8-07-19-B)