

The Regular Meeting of the  
Brian Head Town Council  
Town Hall - 56 North Highway 143  
Brian Head, UT 84719  
**TUESDAY, JULY 25, 2017 @ 1:00 PM**

# AGENDA

- A. CALL TO ORDER 1:00**  
**B. PLEDGE OF ALLEGIANCE**  
**C. DISCLOSURES**  
**D. PUBLIC INPUT/ REPORTS (Limited to three (3) minutes) Non-Agenda Items**  
**E. APPROVAL OF THE MINUTES:** July 13, 2017 Town Council Meeting  
**F. AGENDA ITEMS:**
- 1. LOCAL CONSENT FOR ALCOHOL LICENSES FOR GRAND LODGE @ BRIAN HEAD.** Nancy Leigh, Town Clerk. The Council will consider giving local consent for a hotel alcohol license for the Grand Lodge @ Brian Head.
  - 2. COOPERATIVE AGREEMENT WITH UTAH DIVISION OF WILDLIFE.** Wendy Dowland, Public Works Assistant. The Council will consider a cooperative agreement with the Utah Division of Wildlife for the management of fish in Bristlecone Pond..
  - 3. PRIVATE PROPERTY FUEL REDUCTION DISCUSSION.** Chief Dan Benson, Public Safety Director. The Council will hold a discussion on the whether to draft ordinances requiring private property owners to clean and clear their lots for fuel mitigation.
  - 4. DISCUSSION ON TOPSOIL AND LAWN FOR SOUTH AND WEST SIDE OF BRISTLECONE POND.** Shane Williamson, Public Works Director. The Council will hold a discussion on the financial feasibility and priority of installing topsoil and grass on the south and west side of Bristlecone Pond.
  - 5. BUSINESS LICENSE CODE AMENDMENT FOR CHAPTER 1 (DEFINITIONS), CHAPTER 2A (LICENSING IN GENERAL).** Nancy Leigh, Town Clerk. The Council will consider an ordinance amending the Business License Code as it pertains to new legislation affecting mobile food vendors and home occupations.
- G. ADJOURNMENT**

**Date: July 21, 2017**

Available to Board Members as per Resolution No. 347 authorizes public bodies, including the Town, to establish written procedures governing the calling and holding of electronic meetings at which one or more members of the Council may participate by means of a telephonic or telecommunications conference. In compliance with the Americans with Disabilities Act, persons needing auxiliary communications aids and services for this meeting should call Brian Head Town Hall @ (435) 677-2029 at least three days in advance of the meeting.

## CERTIFICATE OF POSTING

I hereby certify that I have posted copies of this agenda in three public and conspicuous places within the Town Limits of Brian Head; to wit, Town Hall, Post Office and The Mall on this 21<sup>st</sup> day of July 2017 and have posted such copy on the Utah Meeting Notice Website and have caused a copy of this notice to be delivered to the Daily Spectrum, a newspaper of general circulation.

Nancy Leigh, Town Clerk





## STAFF REPORT TO THE TOWN COUNCIL

**SUBJECT:** Local Consent for Hotel Alcohol Licenses for (FIF2  
Grand Lodge, LLC a Utah LLC)  
**AUTHOR:** Nancy Leigh, Town Clerk  
**DEPARTMENT:** Administration  
**DATE:** July 25, 2017  
**TYPE OF ITEM:** Legislative Action

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### SUMMARY:

Council will consider giving local consent for a hotel alcohol license for FIF2, Grand Lodge LLC a Utah LLC (Grand Lodge). This is currently their official name which is required for their alcohol application to the Liquor Commission. The hotel license includes the bar establishment, full service or limited service restaurant and a banquet on premise license.

### BACKGROUND:

With the change in ownership and management at the Grand Lodge, they will need to reapply to the Department of Alcohol and Beverage Control (DABC) for their alcohol licenses they previously held.

The DABC recently revoked the alcohol licenses that were held by the Grand Lodge from the previous owner, Zohar Cohen. With the new ownership and management of Trigild, they will need to reapply for a hotel license in order to serve alcohol at the Grand Lodge and they are hoping to have their bar and restaurant able to serve alcohol to the public as soon as possible.

### ANALYSIS:

The Grand Lodge is requesting local consent for a hotel alcohol license as part of their services to their guests.

In speaking with DABC, they informed us that the Grand Lodge can reapply under their new ownership and management, but would still need to go thru the process of a new application, which includes local consent.



### FINANCIAL IMPLICATIONS:

The town will receive an annual fee of \$50 per license for the Grand Lodge if they are granted their alcohol licenses.. This is minor compared to their revenue they receive by having the ability to serve alcohol to their guests.

### BOARD/COMMISSION RECOMMENDATION:

N/A

**STAFF RECOMMENDATION:**

Staff recommends Council give local consent for a hotel alcohol license.

**PROPOSED MOTION:**

I move to approval local consent to FIF2 Grand Lodge LLC, a Utah LLC for a hotel alcohol license as presented and authorize the Mayor to sign the local consent.

**ATTACHMENTS:**

A – Local consent for hotel alcohol license

# HOTEL LIQUOR LICENSE

## Local Consent

**PURPOSE:** Local business licensing authority provides written consent to the Alcoholic Beverage Control Commission (1) to issue an on-premise alcohol license for a person to store, sell, offer for sale, furnish, or allow the consumption of an alcoholic product on the premises of the applicant.

**AUTHORITY:** Utah Code 32B-1-202; 32B-5-201 through 203; 32B-5-205 and -206

Brian Head Town  
Local business license authority

,  City  Town  County

hereby grants its consent to the issuance of a Hotel liquor license to:

Business Name (DBA): FIFZ GRAND Lodge, LLC a Utah LLC

Entity Name (or owner's name if sole proprietor): \_\_\_\_\_

Location Address: 314 West Hunter Ridge Drive  
Brian Head, UT 84719

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date

This is a suggested format. A locally produced city, town, or county form is also acceptable. The local consent must be submitted to the DABC by the applicant as part of a complete application.



## STAFF REPORT TO THE TOWN COUNCIL

**SUBJECT:** Cooperative Agreement with the Utah DWR  
**AUTHOR:** Wendy Dowland  
**DEPARTMENT:** Department  
**DATE:** July 25, 2017  
**TYPE OF ITEM:** Legislative Action

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### **SUMMARY:**

The Council will consider a cooperative agreement with the Utah Division of Wildlife Resources for the purpose of maintaining and managing the fish habitat at Bristlecone Pond.

### **ANALYSIS:**

Brian Head Town and the Division of Wildlife have previously worked together to enhance the recreational fishing opportunities at Bristlecone Pond. This agreement is at the request of the Utah Division of Wildlife Resources.

### **FINANCIAL IMPLICATIONS:**

There aren't any financial implications beyond what is budgeted to maintain the facilities at Bristlecone Pond and the surrounding park and pavilion.

### **BOARD/COMMISSION RECOMMENDATION:**

N/A

### **STAFF RECOMMENDATION:**

Staff recommends that Council authorize the Mayor to sign the Cooperative Agreement.

### **PROPOSED MOTION:**

I move to approve the Cooperative Agreement between Brian Head Town and the Utah Division of Wildlife Resources for the development and management of the fish habitat located at Bristlecone Pond and authorize the Mayor to sign the agreement as presented.

### **ATTACHMENTS:**

A – Cooperative Agreement with Utah Division of Wildlife Resources.

**COOPERATIVE AGREEMENT**  
between the  
**UTAH DIVISION OF WILDLIFE RESOURCES**  
and  
**BRIAN HEAD TOWN**  
for the  
Development and Management of a Community Fishery

This cooperative Agreement, hereinafter the AGREEMENT, is made and entered into by and between the Utah Division of Wildlife Resources, hereinafter referred to as DWR, and Brian Head Town, hereinafter referred to as the TOWN, and individually and collectively known as the PARTY or PARTIES.

**I. PURPOSE:**

The purpose of this AGREEMENT is to initiate a Partnership between the DWR and the TOWN for the maintenance and management of Bristlecone Pond, owned by Brian Head Town, as a Community Fishery, hereinafter referred to as the PROJECT.

**II. STATEMENT OF MUTUAL INTERESTS AND BENEFITS:**

DWR is a division of the Utah Department of Natural Resources and has responsibility for the management of fish and wildlife in the State of Utah.

The TOWN has authority for the administration and operation of the PROJECT and manages the area for irrigation and recreational activities, and desires to create and maintain fish habitat and recreational facilities at the PROJECT for the purpose of enhancing recreational fishing opportunities.

**III. DWR WILL:**

1. Manage fish populations and species in the PROJECT for the purpose of providing a community fishery.
2. Stock the PROJECT with fish species and numbers as recommended by the DWR Regional Aquatics Program Manager and as available through each year's budget process.
3. Provide expertise in any future fish habitat improvements.
4. Enforce all State fishing rules and regulations.

**IV. THE TOWN WILL:**

1. Ensure that adequate water levels are maintained to provide a quality community fishery at the PROJECT. The TOWN may reduce the water level below this level in the event of: a) necessary repairs to the PROJECT infrastructure; b) a safety emergency; and c) need for additional water during times of shortage.
2. Provide the DWR with advance notice of any need to draw the water level down below the minimum pool, except in the case of a safety emergency.
3. Assume responsibility for the operation and maintenance of all PROJECT structures and features for their useful life.
4. Provide and maintain access to the PROJECT area at designated access points for members of the public desiring to fish and engage in other approved recreational activities. The TOWN may restrict access: a) nightly, for purposes of security; b) seasonally, in the interest of public safety; c) during future construction and maintenance; and d) during a safety emergency.
5. Provide the DWR with advance notice of closure periods, other than regular nightly closures, and except in the case of a safety emergency.
6. Allow the DWR to host free classes or other events at the PROJECT, and utilize other Brian Head Town facilities at no cost, up to three times per year. The DWR will provide advanced notice to Brian Head Town in the case of planning events at the PROJECT.

**V. IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE PARTIES THAT:**

1. Modifications within the scope of this instrument shall be made by mutual consent of the PARTIES, by the issuance of a written modification, signed and dated by all PARTIES prior to any changes being performed.
2. This AGREEMENT does not restrict DWR or the TOWN from participating in similar activities with other public or private agencies, organizations, and individuals.
3. The PARTIES to this AGREEMENT through any authorized representative will have access to and the right to examine all books, papers, or documents related to this AGREEMENT.
4. This AGREEMENT is executed as of the last date shown below and terminates on December 31, 2037.

5. This AGREEMENT may be terminated by either party with or without cause upon written notice sixty (60) days prior to termination.

6. The principal contacts for this AGREEMENT are:

Southern Region Aquatics Program Manager  
Utah Division of Wildlife Resources  
1470 N. Airport Rd.  
Cedar City, UT 84721  
(435) 865-6100

Public Works Administrative Assistant  
Brian Head Town  
56 N. Highway 143  
PO Box 190068  
Brian Head, UT 84719  
(435) 677-2029

7. The PARTIES agree that should either seek to judicially enforce the terms and conditions of the AGREEMENT for breach thereof, the prevailing PARTY will be entitled to reimbursement from the other for its costs of litigation, including reasonable attorney fees.

8. Each Party agrees to hold harmless and release the other and all its officers, agents, volunteers and employees from and against any and all loss, damages, injury, liability, suits and proceedings arising out of the performance of this Agreement which are caused solely by the negligence or willful misconduct of its officers, agents, or employees. It being the intent of the Parties that no Party will indemnify, hold harmless or release the other Party from its willful misconduct, gross negligence, or the negligent acts or omissions. If both Parties are negligent, they shall each bear their proportionate share of any allocated fault or responsibility. Nothing contained herein shall be construed as waiving immunity, the monetary damage limitations, or any other provision set forth in the Utah Governmental Immunity Act, Utah Code §§ 63G-7-101 through 63G-7-904.

The PARTIES hereto have executed this AGREEMENT as of the last date written below:

**BRIAN HEAD TOWN:**

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H.C. DEUTSCHLANDER, MAYOR

DATE



**ATTEST:**

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NANCY LEIGH, TOWN CLERK

DATE

**DWR:**

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MIKE FOWLKS, INTRIM DIRECTOR

DATE



## STAFF REPORT TO THE TOWN COUNCIL

**SUBJECT:** Private Property Fuels Reduction  
**AUTHOR:** Dan Benson  
**DEPARTMENT:** Public Safety  
**DATE:** July 18, 2017  
**TYPE OF ITEM:** Discussion

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### **SUMMARY:**

This report is for discussion into possibly drafting new town ordinances that would require property owners to clean and clear lots in an effort to enforce fuel mitigation. This will be in the area of a nuisance law/ordinance and refer to the public safety hazards associated with a property not cleaned and clear of excessive trees, tree litter, and forest fuels.

### **BACKGROUND:**

This discussion is brought about by the recent catastrophic wildland fire:

There was a substantial effort made in the late 1990's and early 2000's to encourage the clearing of debris from properties due to the devastation afforded us by the "Bark Beetle". This campaign was received very well with a lot of Public Safety Staff's direction to homeowners. Since then, there has been a lot of re-growth that now needs to be retreated, and, we have also annexed from Forest Dr. to Steam Engine. This area is of most concern because of our lack of direction to clean and clear properties for so many years.

Thought was put into ordinances at the time of the bark beetle problem, but it was at that time determined that efforts would be made to encourage the clearing and cleaning of lots by homeowners with as much support as the Town could provide. No ordinance was adopted.

### **ANALYSIS:**

Staff has contacted other communities and Utah State Forestry in an effort to get ideas and direction from them.

Kane County for example has adopted a nuisance ordinance in which if a property is found to be in non-compliance they can hire a crew to go onto a property and clean and clear it. The county will then lien the property for reimbursement. This ordinance has not been effective other than to try and scare or intimidate property owners. The County does not have the man power or means of hiring and paying for this work to happen in hopes that the lien money will at some point be collected.

Utah State Forestry has found and recommends that an education and assistance approach similar to what has been done in the past have proven to be most effective. Good education and communication with property owners goes a lot further in reaching goals than fines and threats of trespassing onto private properties.

**FINANCIAL IMPLICATIONS:**

An ordinance would have no immediate financial implications; however, the enforcement of such ordinance could have huge implications. The Town would then have to upfront costs to have properties cleaned and cleared. Legal fees would present an issue as properties would need to be lien-ed. Staff would also have to track and record expenses for cleaning and clearing, etc.

The education route would have some initial costs associated as we would need to spend staff time preparing mailers, and other literature. The program will eventually require more and more time from staff as request for marking lots and advising property owners will increase.

**STAFF RECOMMENDATION:**

It is the Brian Head Public Safeties recommendation that we try and work with property owners. We do this by encouraging them and assisting them with ways that they can take charge of their property and be good stewards of our forest. We will send them mailings with lists of contractors and ideas of how and what a clean lot will look like in Brian Head. We may even be able to provide examples of lots that have been sufficiently treated acceptable to our standard.

**PROPOSED MOTION:**

I move to direct staff to continue working with Utah Forestry and property owners in Brian Head and increase awareness and motivate actions that will reduce fuel loading on private property.



## STAFF REPORT TO THE TOWN COUNCIL

**SUBJECT:** Topsoil and Lawn at the Bristlecone Pond  
**AUTHOR:** Shane Williamson  
**DEPARTMENT:** Public Works/Administration  
**DATE:** July 25, 2017  
**TYPE OF ITEM:** Discussion

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### SUMMARY:

The Council will discuss the financial feasibility and priority of placing topsoil and grass on the south and west sides of the Bristlecone Pond. Also, the council will discuss the options for the project, including placement of topsoil, hydro seeding, sod placement, erosion control, or a combination of these options.

### BACKGROUND:

During the Fiscal Year 2018 Strategic Retreat, the Town Council discussed the option of adding grass on the south and west sides of the pond. More specifically, the discussion considered the options on the portion of the west pond bank located within Town owned property. Subsequently, the general consensus of the Town Council concluded that it would be nice to have usable lawn on this side of the pond to allow visitors and community members alike an additional place to picnic, view the fireworks, and enjoy the scenery. As a result, the Town Council directed staff to make a strategic action step that included pricing the options and presenting them to the Town Council.

### ANALYSIS:

The initial analysis of completing the work consists only that of Town Property and totals an area reaching 60,000 square feet. The attached map illustrates the area used in the cost estimate.

The first option includes the placement of two inches of topsoil and subsequently hydro seeding with a bluegrass/fescue mix. However, it is important to note that this option includes a lower quality, less proven grade of topsoil.

- Hauling and placement of topsoil: \$15,500
- Hydro seeding: \$10,800
- Total: **\$26,300**

The pros of the first option include lower cost and quicker completion of the project. The cons, however, draw toward no assurance of the topsoil quality and no assurance of erosion mitigation, where hydro seeding will require time to germinate and produce the grass. Thus, leaving the potential for monsoonal moisture to wash the seed and soil away.

Next, the following option is similar to the first in that we would hydro seed the lawn. However, in this case, we would employ a higher quality of top soil with a more proven track record.

- Hauling and placement of topsoil: \$22,500
- Hydro seeding: \$10,800
- Total: **\$34,300**

Similar to the first option, the pros are the quicker completion and a lower cost for seeding. However, the cons of erosion and losing the material like before continue to stay relevant in this option.

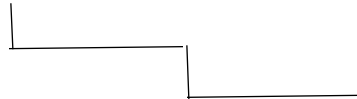
The third option would be to place the higher quality topsoil and cover it with sod. In this option, the costs tend to increase a bit.

- Hauling and placement of topsoil: \$22,500
- Sod delivery and installation: \$28,800
- Total: **\$51,300**

The pros to this option include more erosion mitigation and instant beautification. However, this is the costliest option. Also, due to the sensitivity of sod, we would need to close this section for at least one month following the placement of the sod. Additionally, the project would take more time to complete.

Overall, it is important to consider that these cost estimates do not include installation of an underground irrigation system, which would require roughly an additional \$8k - \$10k. Further, some of the erosion issues noted in options one and two could be mitigated through stepping the slope by excavating and constructing shelves, as illustrated in Figure 1. below. Ultimately, there may be other options, which can be brought up during the meeting.

*Figure 1: An illustration of stepping the slope.*



### **FINANCIAL IMPLICATIONS:**

Staff estimates that the costs of the project would range from \$26,300 to \$51,300. Also, it cannot be determined whether this improvement would generate more visitors or simply offer more improved space at the Park and Pond area. Recent park improvements have come out of RDA funds. Currently the RDA Fund Balance is \$305,000. \$70,000 of that is currently budgeted for paving the Town Trail, repainting/fixing entryway signs, and preliminary engineering for a Chair 1 parking lot.

### **BOARD/COMMISSION RECOMMENDATION:**

N/A.

### **STAFF RECOMMENDATION:**

Staff recommends that Council postpones this project considering the major financial commitment and the other recreation projection currently on the table. For example, the Town Trail improvements and the Chair 1 parking and bathrooms require funding and planning.

### **PROPOSED MOTION:**

No motion necessary, the item is discussion/informational only. The staff is seeking a general feeling concerning the path forward.

**ATTACHMENTS:**

A – Project Area Map



# Overview of Potential Seeding/Sod Project

Bristlecone Park, Brian Head, UT

## Legend

 Grass

Google Earth

© 2016 Google

400 ft







## STAFF REPORT TO THE TOWN COUNCIL

**SUBJECT:** Business License Code Amendments  
**AUTHOR:** Nancy Leigh, Town Clerk  
**DEPARTMENT:** Administration  
**DATE:** July 25, 2017  
**TYPE OF ITEM:** Legislative Action

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### SUMMARY:

The Council will review and consider amending Title 3, Chapter 2A, Licensing in General, of the Brian Head Town Code which addresses mobile food vendors and low impact home occupations. This would be by adopting Ordinance No. 17-004.

### BACKGROUND:

During the 2017 Legislative session, several laws were passed which affected business licensing, two of which were mobile food vendors and home occupations.

### ANALYSIS:

Listed below are the changes in the law affecting business licensing:

- **Home Occupations:** This bill prohibits a municipality or county from requiring a license for an occasional business that a minor operates. The municipality may not charge a license fee unless the combined offsite impact of the home-based business and primary residential use materially exceeds the offsite impact of the primary residential use alone. Municipalities must review their business license fees to ensure that they recover the cost of regulation and the municipality must define the a low impact home occupation above and beyond the primary residential use in order to collect a license fee. The town still preserves the local authority over licensing.

In speaking with Cameron Diaz, Utah League of Cities and Towns, I asked him how the home occupation legislation affects the short term rentals (nightly rentals) since nightly rentals are identified as a home occupation. He stated the town would need to define a low impact home occupation, which is what is identified under the exemptions of the licensing code. Staff has identified a low impact home occupation which would not require licensing, but those businesses such as a nightly rental or a cleaning business would still require license. Some examples of a low impact home occupation would be a consulting business in which no customers would come to the home and there would be no impact upon the property.

- **Mobile food vendors:** A municipality/county may not prohibit a food truck from operating within a given distance of a food establishment. It is proposed to remove the language prohibiting a food truck to operate within 500 feet of a food establishment.

The town still has the authority to impose its other regulations as it pertains to mobile food vendors. Currently, the town requires a mobile food vendor to do the following:



- a) Must be located on private property to service a construction site and must list those construction sites on the application.
- b) May not remain on a site for more than two (2) hours. (Construction sites)
- c) Must have the property owner's permission in writing.
- d) If operating in a public right of way, they must have a franchise agreement with the town.
- e) Must have approval from the Health Department.
- f) Vehicle must be currently registered with the State Motor Vehicles.
- g) Must move at least 250 feet from their location every two hours.

As you can see the town's regulations are strict and we have experienced several potential mobile food truck businesses wanting to set up a business in Brian Head, but are unable to comply with the town's regulations. Brian Head town has never licensed food truck business unless it was under the special event forum in which they are allowed during a special event.

Recently food trucks have become big business in Utah and with the new legislation in place, food trucks will become more available to the public. As it stands now, a food truck owner can procure a business license in one city but yet do business in multiple cities without having to procure multiple licenses for each city in which they conduct business. Unfortunately, the sales taxes will go to the one city that has the holds the business license, thus there are many municipalities that lose out on sales tax revenues with food truck vendors from other cities/counties.



**FINANCIAL IMPLICATIONS:**

None at this time.

**BOARD/COMMISSION RECOMMENDATION:**

N/A

**STAFF RECOMMENDATION:**

Staff recommends the Council adopt Ordinance No. 17-004, amending the Business License Code.

**PROPOSED MOTION:**

I move to adopt Ordinance No. 17-004, an ordinance amending Title 3, Chapter 2A, Licensing in General, of the Brian Head Town Code as proposed.

**ATTACHMENTS:**

A – Business License Code, Chapter 2A, Licensing in General

DRAFT



**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING TITLE 3, BUSINESS LICENSE REGULATIONS, CHAPTER 2A, LICENSING IN GENERAL OF THE BRIAN HEAD TOWN CODE, REGULATING BUSSINESS WITHIN THE TOWN OF BRIAN HEAD.**

**WHEREAS**, Brian Head Town has identified a need to amend the Brian Head Business License in order to regulate businesses within the Town limits of Brian Head, Utah; and,

**WHEREAS**, During the 2017 Legislative Session, several bills were passed which affected business licensing, such as mobile food vendors, low impact home occupations and businesses ran by minors; and

**WHEREAS**, it is in the best interests of Brian Head Town and the health, safety, and general welfare of its citizens to adopt this Ordinance:

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF BRIAN HEAD, UTAH, COUNTY OF IRON, STATE OF UTAH, AS FOLLOWS:**

**Section 1.** The Brian Head Business License Code, chapter 2A, licensing in General is hereby adopted and incorporated herein by reference in its entirety as Title 3, Chapter 2A of the Brian Head Town Code, Attachment "A", to regulate business within the Town of Brian Head, Utah. All businesses within the Town of Brian Head shall comply with the Brian Head Business License Code; and

**Section 2. Effective Date.** This Ordinance shall take effect upon its passage by a majority vote of the Brian Head Town Council and following notice and publication as required by law. Upon this Ordinance being adopted by the Brian Head Town Council of Iron County, Utah, all provisions of this Ordinance shall be incorporated into Title 3 of the Brian Head Town Code.

Ordinance No. \_\_\_\_\_

DRAFT

**Section 3. Conflict.** To the extent of any conflict between other Town, County, State, or Federal laws, ordinances or regulations and this Ordinance, the more restrictive is deemed to be controlling.

**Section 4. Severability Clause.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

**Section 5. Repealer.** All provisions of the Brian Head Town Code that are inconsistent with the expressed terms of this Ordinance and all prior Business License Codes previously adopted shall be repealed.

**PASSED AND ADOPTED BY THE BRIAN HEAD TOWN COUNCIL OF IRON COUNTY, UTAH this \_\_\_\_\_ day of July, 2017 with the following vote.**

Mayor H.C. Deutschlander	Aye___	Nay___
Council Member Clayton Calloway	Aye___	Nay___
Council Member Reece Wilson	Aye___	Nay___
Council Member Larry Freeberg	Aye___	Nay___
Council Member David Bourne	Aye___	Nay___

***BRIAN HEAD TOWN COUNCIL***  
IRON COUNTY, UTAH

By: \_\_\_\_\_  
H. C. Deutschlander, Mayor

**ATTEST:**

\_\_\_\_\_  
Nancy Leigh, Town Clerk

(SEAL)

## Chapter 2

### BUSINESS LICENSING

#### ARTICLE A. IN GENERAL

- 3-2A-1: LICENSE REQUIRED:**
- 3-2A-2: EXEMPTIONS:**
- 3-2A-3: TRIPLE FEE FOR FAILURE TO OBTAIN REQUIRED LICENSE:**
- 3-2A-4: APPLICATION FOR LICENSE:**
- 3-2A-5: FEE PROVISIONS:**
- 3-2A-6: INVESTIGATION OF APPLICANT:**
- 3-2A-7: INSPECTIONS FOR CODE COMPLIANCE:**
- 3-2A-8: CONDITIONS FOR DENIAL OF LICENSE:**
- 3-2A-9: NOTIFICATION OF ISSUANCE OR DENIAL; BUSINESS OPERATIONS DURING REVIEW AND INSPECTION:**
- 3-2A-10: APPEALS OF LICENSE DENIAL:**
- 3-2A-11: ISSUANCE OF LICENSE CERTIFICATE:**
- 3-2A-12: RENEWAL OF LICENSE CERTIFICATE:**
- 3-2A-13: UNRELATED BUSINESS ACTIVITIES:**
- 3-2A-14: TERM OF LICENSE:**
- 3-2A-15: DUTY TO DISPLAY LICENSE:**
- 3-2A-16: BRANCH ESTABLISHMENTS:**
- 3-2A-17: SEPARATE BUSINESSES, LICENSED PREMISES:**
- 3-2A-18: MULTIPLE LICENSING:**
- 3-2A-19: USE OF PUBLIC PROPERTY:**
- 3-2A-20: CERTAIN ACTS PROHIBITED:**
- 3-2A-21: CLASSIFICATION STANDARDS OF SPECIFIC BUSINESSES:**
  - 3-2A-21-1: CONTRACTORS AND BUILDERS:**
  - 3-2A-21-2: STREET VENDORS AND MOBILE FOOD VENDORS:**
  - 3-2A-21-3: NIGHTLY RENTAL FACILITIES:**
  - 3-2A-21-4: RESTAURANTS, FOOD SERVICE, TAVERNS, ETC.:**
  - 3-2A-21-5: RESIDENTIAL GARAGE SALES:**
  - 3-2A-21-6: CHILDCARE SERVICES:**
  - 3-2A-21-7: OUTDOOR SALES:**

#### **3-2A-1: LICENSE REQUIRED:**

Unless exempted by state or federal law, or by this title, it shall be unlawful for any person to engage in business within the town, whether on a temporary or permanent basis, without first procuring the license required by this article. (Ord. 08-017, 8-26-2008)

### 3-2A-2: EXEMPTIONS:

The licensing provisions of this article shall not apply to the following kinds of activities that would otherwise fall within the purview of this article:

- A. Political Actions: No license shall be required to solicit signatures on petitions of a political nature, or to canvass or solicit funds on behalf of candidates for office or ballot issues. Campaign literature may be delivered to homes, subject to the delivery conditions set forth in subsection F of this section.
- B. Religious Actions: No license shall be required of persons exercising their right to express their religious views; provided however, that no person shall use this exemption to sell merchandise. Delivery of any publication or material shall be subject to the delivery conditions set forth in subsection E of this section.
- C. Civic Groups: No licensing shall be required of local civic organizations, such as Boy Scouts, Girl Scouts, historic preservation groups, schools, museums, and charitable organizations. Delivery of any publication or material shall be subject to the delivery conditions set forth in subsection E of this section.
- D. Solicited Deliveries: No special license shall be required of any person making an "unsolicited delivery", other than the license(s) required by this title to engage in business.
- E. Unsolicited Deliveries: No special license shall be required of any person making an "unsolicited delivery" other than licenses(s) required by this title to engage in business. However, any person making an unsolicited delivery of any kind shall not cause unsolicited material to be stacked, piled or accumulated on any driveway, porch, automobile, building, yard, doorway, stairwell or doorknob, without the prior express consent of the occupant of the premises. It shall be unlawful for any person to deliver any unsolicited material to a residence where that person's previously delivered material remains uncollected. Additionally, any person making such an unsolicited delivery to a residence who finds his or her prior uncollected material there shall properly dispose of that person's uncollected material.
- F. State Licensees: Solicitors who hold valid state issued licenses to act as real estate brokers or agents, stock brokers, or insurance agents or salesmen, need not obtain a separate solicitor's license from the town, but shall conduct their solicitation activities in accordance with the provisions of this code.
- G. Delivery Prohibition: It shall be unlawful for any person to deliver any unsolicited material to any person, residence or premises where the occupant thereof has requested that such delivery cease or where such occupant has posted his/her desire not to receive such unsolicited material. (Ord. 08-017, 8-26-2008)
- H. Minors: A license shall not be required for a business that is operated occasionally and by an individual who is under 18 years of age. The Licensing Officer will evaluate the size, frequency, duration, visibility, and seasonality of the proposed business to determine whether the proposed business is considered occasional.
- I. Low Impact Home Occupation: Home occupation businesses which do not have employees or customers coming to the home, but the work of the business is conducted primarily within the home. Low impact home occupations are those which do not create the following: 1) on or off street parking which generates excessive

customer or client traffic that is detrimental to the residential character of surrounding properties of the neighborhood; 2) does not have retail sales at the home site or additional deliveries, 3) does not have storage of inventory or materials, 4) does not create offsite dust; 4) does not use equipment or processes that could create noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors; 5) does not cause an increase of common expenses or an increase in law enforcement and/or public safety services.

### **3-2A-3: TRIPLE FEE FOR FAILURE TO OBTAIN REQUIRED LICENSE:**

Unless exempted by state or federal law or by this article, any person who engages in business prior to submitting a completed application and payment of all fees shall pay triple the specified fee for said license. The payment of such triple fee shall not relieve any person from fully complying with all the requirements of this title, nor from any other prescribed penalties. (Ord. 08-017, 8-26-2008)

### **3-2A-4: APPLICATION FOR LICENSE:**

Applications for business licenses shall be made in writing to the town Licensing Officer or designee. Each application shall state the name of the individual applicant, the name of the business as registered with the state, the local street address of the business' physical location in the town, the business mailing address, if different from the local street address, the type of business entity (corporation, partnership, limited liability company, sole proprietorship, etc.), the license fee to be paid, the name and street address of the business' registered agent who is authorized to receive service of process, a detailed description of all anticipated business operations for which applicant seeks licensure, and any evidence of applicant's license, state sales tax reporting number, town business license retail fee, state contractor's license number, if applicable, state real estate broker's license number, if applicable, state daycare licensing number, if applicable, and federal employer identification number, and shall contain such additional information as may be needed for the purpose of guidance of the licensing officer in issuing the license. Any change in the above information furnished by the applicant shall be forwarded in writing, within ten (10) days of the change, to the Licensing Officer. License application forms shall be reviewed and kept on file by the Licensing officer, or their designee. (Ord. 08-017, 8-26-2008)

### **3-2A-5: FEE PROVISIONS:**

- A. Fee For License To Accompany Application: Each license application shall be accompanied by the business license fee required to be paid for the issuance of the license desired. The applicable license fees are listed in the consolidated fee schedule.
- B. Regulatory Fees Imposed: There is hereby imposed and levied an annual business license or permit fee based on the type of businesses described below. Fees are identified in the consolidated fee schedule on file with the town licensing officer.

BRIAN HEAD TOWN BUSINESS FEES

Application	Type Of License Issued
New business application	License
Renewal business application	License
Special events coordinator	License
Special event vendor	Permit (per event)
Door to door solicitation employee	Permit (temporary)
Door to door business	License
Sexually oriented business	License
Sexually oriented business employee	Permit per employee
Outdoor sales license	Permit
Street vendor	License

C. Fees Declared Debt; Collection: Any license fee due and unpaid under this title, and all penalties thereon, shall constitute a debt to the town and may be collected by court proceedings in the same manner as any other debt, or may be turned over to a collection agency, which remedy shall be in addition to all other existing remedies.

D. Fee Payments; Renewal And Penalty:

1. The annual business license fee provided in this section shall be due and payable to the town on or before October 1 of each year for renewal of licenses for businesses which were licensed for the previous license year. Business licenses for previously unlicensed businesses shall be issued for the unexpired portion of the license year in which issued, upon payment of the annual license fee.
2. If the renewal license fee is not paid on or before October 31 of the year in which the renewal license is due, in addition to the regular renewal fee required, there shall be a business license enforcement fee imposed of twenty five percent (25%) of the license fee imposed by this article, or fifteen dollars (\$15.00), whichever is greater.
3.
  - a. If the renewal license fee is not paid in full on or before November 30 of the year in which the renewal fee is due, the business license enforcement fee shall be increased to fifty percent (50%) of the license fee imposed by this chapter.
  - b. If the renewal license fee is not paid on or before December 15 of the year in which the renewal fee is due, the business license enforcement fee shall be increased to one hundred percent (100%) of the license fee imposed by this article.

4. Upon a proper showing that the business is of such a seasonal nature that business has not been conducted to date, the licensing officer or designee may waive the business license enforcement fee of said renewal.
  5. Any previously licensed business cited for engaging in business in violation of this title shall have ten (10) days from the date of citation to come into compliance with this title. Failure of the licensee to reach compliance within ten (10) days of the date of citation will subject the business to closure and the licensee to all applicable civil and criminal penalties.
- E. Renewal Billing Procedure: On or before August 1 of each year, the Licensing Officer shall send a license renewal application to each current licensee within the town at the last known address of the licensee as registered with the town. (Ord. 08-017, 8-26-2008)
- F. License Fee Adjustment To Avoid Burdening Interstate Commerce: The business license fee imposed by this title shall not be applied so as to place an undue burden on interstate commerce. In any case, where the license fee is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce, such licensee or applicant may apply to the licensing officer, or his or her designee, for an adjustment of the fee so as to relieve such burden by submitting other supporting information as the licensing officer, or his or her designee, may deem necessary in order to determine the extent, if any, of such undue burden. The Licensing Officer, or his or her designee, shall then conduct an investigation, comparing the subject business with other businesses of like nature and shall make findings of fact from which he shall determine whether the license fee is discriminatory, unreasonable or unfair as to the licensee or applicant from the standpoint of its impact on interstate commerce, and shall recommend to the Town Manager an appropriate license fee under the circumstances, and the Town Manager shall fix the license fee in such amount. If the regular license fee has already been paid, the town manager shall order a refund of any amount over and above the amount of the license fee fixed, if any. In fixing the fee to be charged, the licensing officer, or his or her designee, may use any method which will assure that the fee assessed shall be uniform with that assessed on business of like nature; provided, however, that the amount assessed shall in no event exceed the regular fee prescribed in this title. (Ord. 08-017, 8-26-2008; amd. 2010 Code)
- G. Refund Of Fee: Unless otherwise provided herein, no business license fee is refundable for any reason whatsoever once the license has been issued by the town, except when the license was issued in error. If a license is denied, applicant shall be entitled to a refund of the amount paid in excess of twenty five dollars (\$25.00). The sum of twenty five dollars (\$25.00) shall be retained to offset application processing costs. (Ord. 08-017, 8-26-2008)

### **3-2A-6: INVESTIGATION OF APPLICANT:**

The Licensing Officer, or designee, may, at any time prior to the issuance of any business license required by this title, investigate any applicant for such license if the Licensing Officer has reasonable cause to believe that the applicant: a) has filed an application which is incomplete, erroneous or false in any respect; b) fails in any respect to qualify to do business in the town under any federal, state or town law, rule or regulation; c) has committed such act or acts as may be grounds for revocation or denial of a license application under any federal, state or town law, ordinance, rule or regulation; or d)



investigation is provided for by town ordinance. The Licensing Officer, or designee, may compel the production of documents and witnesses in order to conduct such investigation as provided by this section. (Ord. 08-017, 8-26-2008)

### **3-2A-7: INSPECTIONS FOR CODE COMPLIANCE:**

- A. Permitted; Fee: Prior to the issuance of a license to engage in a new business not previously licensed at that location or an existing business with a change of location, the applicant shall be required to permit inspections to be made of the prospective place of business of the applicant by the appropriate departments of the town or other governmental agency to ensure compliance with building, fire, health codes, and town ordinances that may apply. No license shall be granted unless any required inspection reveals that the prospective place of business is in compliance with the building, fire and health codes. In addition to the business license fees, the applicant shall pay an inspection fee as set forth in the consolidated fee schedule at the time of application.
- B. Periodic Inspections: Existing places of business licensed within the town may be inspected periodically by departments of the town for compliance with building, fire, health and other town codes. Written notice shall be given by the Licensing Officer, or their designee, to a licensee upon the finding of any code infractions, which notice shall provide for a reasonable period, not to exceed sixty (60) days, in which to correct such infractions, the failure of which shall result in the revocation of the license by the Licensing Officer or designee. (Ord. 08-017, 8-26-2008)

### **3-2A-8: CONDITIONS FOR DENIAL OF LICENSE:**

- A. Specified: The licensing officer or designee may deny a license if the applicant:
1. Has been convicted of a crime involving fraud or dishonesty, or a felony by any state or federal court within the past five (5) years, or now has criminal proceedings pending against him in any state or federal court for a crime involving fraud or dishonesty or a felony;
  2. Has obtained a license by fraud or deceit, or given false or misleading information in any application;
  3. Has failed to pay required taxes or fees imposed by the town;
  4. Has violated the laws of the state, the United States government, or the ordinances of the town governing operation of the business for which the applicant is applying for license;
  5. No longer has a current, valid permit or license from any other federal or state agency necessary for the applicant to engage in the business that is the subject of the application;
  6. Has failed to comply with the conditions and requirements of any town ordinance;
  7. Operates an offensive business that has become a "business and special

events nuisance", as defined in section [3-1-1](#) of this title, or as determined by the town nuisance ordinance; or

8. Fails to meet the standards for the license classification set forth in section [3-2A-21](#) of this article.

B. Issuance Inappropriate: Applications may also be denied on the grounds that the general health, welfare and public safety of the community makes the issuance of such a license inappropriate. (Ord. 08-017, 8-26-2008)

### **3-2A-9: NOTIFICATION OF ISSUANCE OR DENIAL; BUSINESS OPERATIONS DURING REVIEW AND INSPECTION:**

A. Notification: Within a reasonable time, the Licensing Officer or designee shall notify the applicant of:

1. The denial of a license and the reason for such denial; or
2. The issuance of the license.

B. Business Operations: Upon receipt by the Licensing Officer, or designee, of a completed license renewal application and full payment of all fees required hereunder for said application, an applicant for a renewal license may continue its business operations during the review and inspection process. Any applicant for a new license who conducts or engages in business during the review period proceeds at his or her own risk, and no legal or equitable rights exist prior to the issuance of the actual license certificate. (Ord. 08-017, 8-26-2008)

### **3-2A-10: APPEALS OF LICENSE DENIAL:**

A license application denial by the Licensing Officer, or designee, may be appealed to the Hearing Officer by filing a written notice of appeal with the Town Clerk within ten (10) days of denial of the license application. The Hearing Officer shall hear the appeal within thirty (30) days of the filing of the notice of appeal. After the decision of the Hearing Officer, the applicant may request an appeal of the Hearing Officer's decision to the Town Council for a final decision on behalf of the town following the same procedures set forth herein for appeal of the licensing officer's decision. (Ord. 08-017, 8-26-2008)

### **3-2A-11: ISSUANCE OF LICENSE CERTIFICATE:**

All issued license certificates shall be signed by the Licensing Officer or designee, under the seal of the town, which signature may be placed mechanically, and contain the following information:

- A. The name of the person to whom such certificate has been issued;
- B. The name of the business, if applicable;
- C. The type of license.

- D. The term of the license with commencement and expiration date;
- E. The purpose for which the licensee is authorized to do business;
- F. The local street address;
- G. The license or permit number; and
- H. A statement that the license is nontransferable. (Ord. 08-017, 8-26-2008)

### **3-2A-12: RENEWAL OF LICENSE CERTIFICATE:**

Upon receipt of the license fee, the town shall issue a license certificate valid through September 30 of the next year. (Ord. 08-017, 8-26-2008)

### **3-2A-13: UNRELATED BUSINESS ACTIVITIES:**

- A. Defined: For purposes of this section, "unrelated business activities" shall mean two (2) or more activities in which a licensee engages or conducts business that the licensing officer or designee categorizes under separate use and/or service.
- B. Provisions To Do Business Under One Business License: If the purposes for which a licensee is authorized to do business include multiple unrelated business activities, the town shall identify each authorized unrelated business activity on the license. The business shall set forth and limit the unrelated business activity authorized by the business license to the location identified in the business license issued.
- C. Modification of Business License: All provision of this title for denial, revocation, suspension or change to the business license shall apply equally to all unrelated business activities identified on the issued license. Where an unrelated business activity is denied, revoked, suspended or voluntarily terminated in accordance with this title, the applicant must notify the town business Licensing Officer within ten (10) days to amend the business license, or the Licensing Officer may amend the business license on his/her own initiative. All other business activities authorized by the business license shall remain in effect insofar as they are not affected by the revoked or suspended unrelated business activity. A modified business license will be issued which will identify all of the approved unrelated business activities of the business. A fee shall be retained to offset application processing costs as identified in the consolidated fee schedule. (Ord. 08-017, 8-26-2008)

### **3-2A-14: TERM OF LICENSE:**

The business license period will be from October 1 through September 30 of the following year. Renewed license certificate shall be valid through the next following September 30, unless revoked pursuant to this title. New license certificates issued between August 1 and September

30 shall be valid through September 30 of the following year, unless revoked. (Ord. 08-

017, 8- 26-2008)

### **3-2A-15: DUTY TO DISPLAY LICENSE:**

Every licensee licensed pursuant to the provisions of this article shall keep the license displayed and exhibited while the same is in Every licensee not having a fixed place of business shall carry such license with them at all times while carrying on the business for which the license is issued and shall produce the license for inspection when requested to do so by any person. (Ord. 08-017, 8-26-2008)

### **3-2A-16: BRANCH ESTABLISHMENTS:**

A separate license must be obtained for each branch establishment or separate physical location in which business is engaged within the town, as if such branch establishment or location were engage only in the business licensed thereby at the location or in the manner designated in such license; provided, that warehouses and distributing places used in connection with or incident to a business licensed under this article shall not be deemed to be separate places of business or branch establishments. (Ord. 08-017, 8-26-2008)

### **3-2A-17: SEPARATE BUSINESSES, LICENSED PREMISES:**

Where two (2) or more persons conduct separate businesses at the same location, each such person shall obtain a separate license for each such business and pay the required license fee for such business. Where a person is a licensee pursuant to provisions in the beer and liquor licensing chapter of this title, that person shall obtain a separate business license for each licensed premises. (Ord. 08-017, 8-26-2008)

### **3-2A-18: MULTIPLE LICENSING:**

Any one person may be issued any of the licenses and/or permits described and created in this title and may simultaneously hold more than one license, and/or a regular town business license. The granting of multiple licenses shall not grant privileges not specifically granted by the licenses issued, nor shall the issuance of multiple licenses extend the time limitations imposed on any of these special licenses that are of a temporary nature. Suspension or revocation of one of the multiple licenses shall not act as a suspension of any other license then in effect, unless the grounds for the suspension of one are also the grounds for suspension of other licenses held by the licensee. (Ord. 08-017, 8-26-2008)

### **3-2A-19: USE OF PUBLIC PROPERTY:**

With the exception of those licenses/permits listed above which specifically grant the right to make use of the town streets or sidewalks, all commercial activity shall be confined to

private property and to fully enclosed buildings on that property, except as provided by this title. (Ord. 08-017, 8-26-2008)

### **3-2A-20: CERTAIN ACTS PROHIBITED:**

It shall be unlawful for any person, business, corporation, partnership or other entity to attract or attempt to attract people tolling, shouting, hawking, ringing any bells, horn, sounding any siren or other noise making device, or by displaying any light or lantern, or by waving, hailing or otherwise signaling to passersby or by touching or physically detaining them. (Ord. 08-017, 8- 26-2008)

### **3-2A-21: CLASSIFICATION STANDARDS OF SPECIFIC BUSINESSES:**

#### **3-2A-21-1: CONTRACTORS AND BUILDERS:**

- A. Fee Assessed: All general contractors and subcontractors, including, but not limited to, builders, electricians, plumbers and backflow device technicians, with their principal place of business within the town, shall be assessed a license fee each year as set forth in the consolidated fee schedule, which shall be paid and a business license issued prior to engaging in any construction within the town, unless exempted from licensure under state law.
- B. State Licensing Requirements: No contractor shall be issued a business license under this section unless and until they have provided a copy of a valid state contractor's license which validates that the contractor is currently licensed with the state department of commerce, including the state license number and date of expiration. If said state license expires prior to September 30 of the year, each contractor must provide proof of renewal within ten (10) days of renewal or shall forfeit the town business license for the balance of the year. (Ord. 08-017, 8-26-2008)

#### **3-2A-21-2: STREET VENDORS AND MOBILE FOOD VENDORS:**

It shall be unlawful to sell food, flowers, agricultural products, ice cream, candy, popcorn or other goods or merchandise from push carts, mobile wagons or motor vehicles on private or public property, except as authorized and licensed under this article.

##### **A. Sales At Construction Sites:**

- 1. A business license may be obtained for a mobile food vendor to sell food from motor vehicles located on private property as a service to construction sites. Licensees must list the construction sites they intend to serve on the license application, and update the list as needed throughout the year.
- 2. Licensees shall have written permission from the owner of the private property to sell food from that property, and shall not remain at any one site for more than a two (2) hour period per day.

##### **B. Sales Within Public Rights Of Way: In order to control vending within any public right**

of way in the town, except at construction sites, only those mobile food vendors who have obtained the grant of a franchise from the town may obtain business licenses to operate such businesses. Absent such a franchise, vending within any public right of way is strictly prohibited.

C. Terms And Conditions: Licensed street vendors shall be subject to the following terms and conditions:

1. License Fee: The license fee for a street vendor business license shall be as set forth by the consolidated fee schedule.
2. Health Department Approval: All vendors serving food or garden produce for human consumption from any cart, wagon or motor vehicle must have the means of preparing, keeping and serving the foods approved by the health department. This approval, in writing, must be submitted as part of the license application. Withdrawal of health department approval for sanitary or health violations is grounds for revocation of the town license.
3. Limitation On Locations: Vending of food from motor vehicles, which shall include any motorized means of conveyance that is required to be licensed by the state department of motor vehicles, shall be restricted to the sale of food at construction sites or special events. ~~Street vending of food is prohibited in locations that are within five hundred feet (500') of any established and properly licensed business conducting food sales.~~ Street vending on town rights of way during construction or other situations creating a public health or safety concern may be prohibited by the building department or public safety department. The town will inform any franchise holder of these limitations and the duration of their effect.
4. Street Vendors Required To Move Location: It shall be unlawful for any street vendor to obstruct pedestrian or vehicular traffic on streets or sidewalks. It shall also be unlawful for any street vendor to remain in a fixed location for more than two (2) hours at a time. Vendors shall move a distance of at least two hundred fifty feet (250') from their prior location every two (2) hours during which they are conducting business. It shall be unlawful for any street vendor to conduct business in a location that impairs reasonable pedestrian or vehicular access to any adjoining building, alley, yard or other property.
5. Franchise Agreement: The town, in its sole discretion, may determine the number of franchises to award based upon public necessity, demand of service, pedestrian and vehicular traffic compatibility, competition and public safety. Any violation of the franchise agreement is grounds for business license revocation, in addition to any other remedy at law. (Ord. 08-017, 8-26-2008)

### **3-2A-21-3: NIGHTLY RENTAL FACILITIES:**

All nightly lodging facilities must be licensed before being offered for rent or used for nightly lodging. Licensed/contracted property management or rental agencies do not require a separate license for each rental location.

- A. License Issuance: The business license for nightly lodging facilities will be issued by the town upon payment of necessary fees and upon a finding by the Licensing Officer or designee that the review criteria established below have been satisfied.
- B. Licensee: The applicant and licensee for nightly lodging facilities under this section

shall be the owner of the facility and/or the designated property manager, if any.

- C. Application Procedure: In addition to the information required by section [3-2A-4](#) of this article, all new and renewal license applications for nightly lodging facilities must contain the name of the owner and the property manager, if any, a sales tax collection number, the physical address, the address and telephone number of the owner and/or Property Manager who is available by telephone, and all other information requested on the application forms. It is the licensee's duty to supplement all forms as information changes or as units change from one owner or manager to another.
- D. Management Standards: If the nightly lodging facility is or is to be managed by other than the owner of the nightly lodging facility, the nightly lodging facility must be properly managed by a Property Manager as a condition to receiving and maintaining a valid business license. In the event a homeowners' association exists, the association's Property Manager may be responsible for the nightly lodging facility management. In the event an owner agrees to be responsible for property maintenance, the licensee must present a statement to that effect signed by the owner. The minimum services required and management regulations include:
1. Snow Removal For Access: Snow removal during winter months to a level that allows safe access to the nightly lodging facility over the normal pedestrian access to the unit.
  2. Off Street Parking Maintenance: Snow removal service to and of off street parking facilities associated with the nightly lodging facility, so that off street parking is at all times available for use of the occupants.
  3. Yard Maintenance: Summer yard maintenance, including landscaping, to a level that is consistent with the level of landscaping and maintenance on adjoining and nearby properties.
  4. Structural Maintenance: Structural maintenance to sure building, health, safety and fire code compliance.
  5. Parking: Parking must be in compliance with the town parking ordinance, and other state laws and regulations.
  6. Inspections: Each unit will be inspected for safety issues such as fire extinguisher, smoke detectors, etc., if they are renting to the public.
  7. Signs: Signs are permitted under the town sign ordinance, title 9, chapter 14 of this code.
  8. Commercial Uses Prohibited: Nightly lodging facilities may not be used for commercial uses not otherwise permitted in the zone. Nightly lodging facilities may not be converted to corporate sponsor or business houses which are used primarily to distribute retail products or personal services to invitees for marketing or similar purposes, regardless of whether such products or services are charged for.
- E. Noise And Safety Control: The licensee and the owner of nightly lodging facilities under this section are responsible for regulating noise created by the occupants of the unit. Violation of any town noise ordinance, failure to use designated off street parking, illegal conduct, or any other abuse which violates any law regarding use or occupancy of the licensed premises, is grounds for revocation of the license. Failure to collect and

deposit sales tax is also a violation of the license and grounds for revocation.

F. Review Criteria: In determining whether or not a business license for a nightly lodging facility shall be issued, the application shall be reviewed to see if, in addition to standards and conditions applicable to issuance of all business licenses, the following conditions and standards are met:

1. The unit is located within a zone designated as allowing rentals or nightly lodging facilities for the period for which the license is applied.
2. The building department and public safety department has reviewed the business license application for compliance with the all building, health and fire codes. Inspection of the unit may be required under section [3-2A-7](#) of this article. The applicant shall bear the cost of any such inspection and any re-inspection which may be required. The cost shall be determined by the prevailing hourly rate of the building department and/or public safety department.
3. The access to the nightly lodging facility and the layout of the unit is such that noise and physical trespass from the proposed rental unit is not likely to be a substantial intrusion to the adjoining properties.
4. The applicant may designate a property manager which is a property management company, licensed real estate broker or the owner of the nightly lodging facility. The property manager or owner shall be responsible for management of the nightly lodging facility in accordance with all state, federal and local laws, including, at a minimum, the requirements of this article. Unless otherwise designated in writing to the town, the property manager is also designated as the agent for receiving all official communications under this title from the town.
5. The application must bear a sales tax collection and accounting number for the nightly lodging facility. This number may be the sales tax accounting number used by the property management company or owner responsible for that unit, or may be specific to the unit, but no license will be effective until the sales tax number is provided. (Ord. 08- 017, 8-26-2008)

#### **3-2A-21-4: RESTAURANTS, FOOD SERVICE, TAVERNS, ETC.:**

Restaurants will be required to meet the requirements of the state health department and county health department, and will provide a copy of the valid food handlers permit with the submittal of the application. Restaurants and food services must meet the requirements of all local ordinances of the town and the county, and state and federal laws, regulating food services. (Ord. 08-017, 8-26-2008)

#### **3-2A-21-5: RESIDENTIAL GARAGE SALES:**

No license shall be required for sales of surplus household goods or furnishings at a private residence in the garage or yard. If a garage sale is held more frequently than three (3) days in any one calendar quarter at the same residence, it shall be deemed to be conducting business on a regular basis and a regular business license for the sale of that kind of that kind of merchandise is required. If the sale is in a zone that does not



permit the sale of merchandise as a permitted or conditional use, further sales are unlawful. Sales tax on all sales is required under state law, and this title shall not be construed as attempting to waive the requirement that tax be collected and/or paid to the proper taxing entities. (Ord. 08-017, 8-26-2008)

### **3-2A-21-6: CHILDCARE SERVICES:**

Daycare services will be required to meet the requirements of the state department of health and will provide a copy of the valid permit with the submittal of the application. Daycare services must meet the requirements of all local ordinances of the town and the county, and state and federal laws, regulating childcare services. (Ord. 08-017, 8-26-2008)

### **3-2A-21-7: OUTDOOR SALES:**

A licensed business may hold an outdoor sale five (5) times a year for a duration of no longer than five (5) days for each outdoor sale on public sidewalks or streets adjoining the business on the following terms:

- A. Promotion By Merchants' Association: An association representing tenants in a shopping center or other merchants' association representing the businesses in a specific area may apply for an outdoor sale permit for the members of that association by providing a list of the merchants participating, and paying a fee which shall be in lieu of and not in addition to the fee assessed against individual businesses.
- B. Seasonal Plants: The business licensing officer may issue permits of longer duration to permit the outdoor sale, on a temporary basis, of Christmas trees, landscaping materials, or plants that are of a type and nature that reasonably require the sale to be conducted out of doors. The permit fee for this kind of outdoor sale shall be as set forth in the consolidated fee schedule and no permit shall have duration of more than eight (8) weeks. These permits may be issued to any person or business. Sales shall be confined to commercial zones and to property under the possession and control of the applicant. (Ord. 08-017, 8-26-2008)