



STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Nightly Rental Ordinance
AUTHOR: Bret Howser
DEPARTMENT: Administration
DATE: May 28, 2019
TYPE OF ITEM: Legislative Action

SUMMARY:

The Town Council will consider an ordinance modifying Title 3 Chapters 1, 2A, and 2B of the Town Code which deal with business licensing and nightly rental requirements.

BACKGROUND:

During the February 26, 2019 Council meeting, the Council was presented with a proposed amendment to the nightly rental code identified in the Business License Code. This generated many comments from the public and Council decided that a public hearing should be held to give the public an opportunity to express their opinions.

On March 11, 2019, the Council held a public hearing on the proposed amendments and received several people stating their concerns, solutions and opposition to the nightly rental code. The outcome of this meeting was to task the rental management companies to give a presentation to the Council on possible solutions to the nightly rental code as it addresses parking and occupancy limits.

On April 22, a group of nightly rental property managers, led by Lisa Halton, gave a presentation offering input from the nightly rental community on the best ways to address the concerns presented from concerned residents. In addition to the oral presentation, a group of nightly rental managers calling themselves the Brian Head Short Term Rental Collaborative (STRC) have sent a list of proposals to the Town (see attached).

ANALYSIS:

In light of all the input the Town has received regarding the proposed nightly rental ordinance, staff has reworked the ordinance to incorporate the following changes:

Nightly Rental Issues

- **Individual Licensing of Nightly Rentals:**

- Currently several nightly rentals can be grouped under a single license under the name of a single business license holder, such as a property management company.
- The March proposed ordinance would have required each nightly rental property to be licensed separately by the property owner, and a property manager could be designated as an agent on the license. This was intended to facilitate enforcement action directly against an offending licensee or property without adversely affecting other non-offending properties that happened to be wrapped into the same license. Staff had proposed that the

- nightly rental license fees be cut in half (ie: brought in line with all other business license fees) to partially offset the additional cost burden.
- The newly proposed ordinance would still require individual licensing of each nightly rental. However, the licensee may be any business owner (including a property management company) with the signed consent of the property owner. Under this scenario, if violations occur to the point where the business license is revoked, it is only the license for that individual nightly rental property that is revoked, and it may not affect the property owner if the license was for a property mgt company. The property owner may choose to get their own license and continue operating the nightly rental, or they may choose to allow another property mgt company to conduct business on their property.
 - The nightly rental community strongly objected to this requirement, I believe in large part due to cost. Staff recommends that we continue with the current recommendation to cut the nightly rental license cost in half (make it the same as the rest of the businesses) for now and then conduct a cost-recovery fee analysis over the course of the next year.
- **Parking:**
 - The current parking ordinances in Brian Head prohibit vehicles from parking on the street “during snow removal operations” between November 1 – April 30. Additionally, vehicles are prohibited from blocking fire access and from blocking access in general (defined as leaving less than 14’ width in the road).
 - The ordinance proposed in March would have set a maximum number of on-site parking spaces specific to each nightly rental. If the number of vehicles exceeded that maximum at any time resulting in vehicles being parked in the street, the business license holder (ie: the property owner) could have been held liable and may have been subject to a fine.
 - The newly proposed ordinance would require single family residential nightly rentals to submit a proposed maximum parking spaces that they agree to keep clear of snow, and to post near the door of the nightly rental – 1) no on-street parking, 2) the maximum parking on-site, and 3) the options/map for off-site public parking. The business license holder will only be held liable for the required information posting and keeping the on-site parking clear and will not be cited for guests violating the parking ordinances of their own accord.
 - In tandem with the requirements in the business license code, the Town parking ordinances will need to be updated to include to clarify parking prohibitions during the winter. It was suggested during a recent Town Council discussion regarding snow removal policy that the ordinance be adjusted to prohibit all street parking in the winter, and that signs be posted on either end of town declaring the parking prohibition. There was no consensus reached at that point. Staff will return with a proposed parking ordinance revision in June.
 - **Occupancy Limits:**

- There are currently no occupancy limits placed on nightly rentals in town above and beyond existing fire code limitations.
 - The ordinance proposed in March would have set a maximum occupancy of 4 people plus 2 per bedroom, which was modeled after the nightly rental ordinance recently put in place by Cedar City. The nightly rental operators resoundingly opposed such a limitation.
 - The newly proposed ordinance would require single-family residential nightly rentals to post the maximum occupancy (according to fire code) near the entrance of the nightly rental.
- **Condos versus Cabins:**
 - There seems to be consensus between all parties to this discussion that the issues arising from cabins and condos being used as nightly rentals are distinct, and as such cabins and condos should be treated distinctly in regulation.
 - The ordinance proposed in March did not distinguish between cabins and condos.
 - The newly proposed ordinance limits the maximum occupancy and parking regulations to “single-family residential nightly rentals”
- **Good Neighbor Policy:**
 - There is currently no requirement for any kind of good neighbor policy.
 - The March proposal did not require any kind of good neighbor policy communication.
 - The newly proposed ordinance requires that nightly rental operators distribute a town-approved good neighbor policy to all guests and to maintain a copy in a conspicuous location within the rental unit. The details of the policy will be determined administratively.
 - The short-term rental community proposed a set of good neighbor guidelines (see attached) that could serve as a form of self policing. Staff recommends that the Town develop a similar set of guidelines specific to Brian Head that the owners are required to share with their guests.
- **Insurance Requirements:**
 - There is currently no requirement for nightly rentals to show proof of insurance to obtain a license.
 - The March proposal was silent with regard to insurance.
 - The newly proposed ordinance requires nightly rentals to show proof of “short-term rental insurance” to obtain a license.
 - During the course of the discussion there’s been a lot of information floating around regarding insurance requirements on nightly rentals. Staff contacted Roger Olcott with Farmers Insurance to try to get to the facts:
 - There’s not a legal requirement for to carry a specific short-term rental policy, but Roger Olcott strongly recommends that you do
 - The main difference between a typical homeowners policy and a short-term rental policy are that the latter includes some commercial/landlord language that could help with lost revenues and

- the like (in fact, he had several with nightly rentals clients claim lost revenue during the Brian Head Fire)
 - A short-term rental policy affords liability protections to a renter (just like a homeowners policy would) but it doesn't give extra protections like covering damaged belongings in a fire
 - A short-term rental policy does cost a little more
 - Roger thought it would be a great idea for the Town to require a short-term rental policy, and affirmed that if we included the phrase "short-term rental insurance" in our code, it wouldn't be ambiguous (insurance agents will know what that is).
- **Response Time:**
 - There is currently no minimum time within which the property manager or business licensee must respond to complaints.
 - The March proposal contained a provision requiring licensees or agents to respond to complaints within 1 hour.
 - The newly proposed ordinance requires a 4 hour response time.
- **Enforcement:**
 - The March proposal was intended to strengthen the Town's ability to enforce certain provisions, in particular parking provisions, without cracking down on the guests upon whom the Town relies to keep the local economy going. The language in the March proposal would have allowed staff to enforce the parking issue on the property owner/licensee in addition to the guest.
 - The newly proposed ordinance does not really strengthen the ability of the Town to enforce parking, excessive occupancy, or other provisions without departing from our existing policy of using a light hand with enforcement on guests. Rather, it enlists property owners/licensees in the effort to educate guests on policies and ordinances in hopes of obtaining broader voluntary compliance.
 - With specific regard to parking enforcement, Town staff will develop a warning sticker that can be quickly/easily placed on the windows of guests parked in the streets (at the officer's discretion of course). This will hopefully drive home the point that we're serious about our parking regulations without creating an unwelcoming environment for guests. If these issues persist, we can graduate to parking tickets or towing.
 - Staff does not recommend that the Town become involved in notifying owners/licensees of guest violations for the purpose of withholding deposits. It is one thing to notify an owner if there are multiple infractions by guests to work with the owner on better educating their guests, but it is an entirely different thing to try to hurry to notify owners so a deposit can be kept. This seems unnecessarily punitive in light of the warnings that will have already been given by our officers.
- **Fire Inspections:**
 - A fire inspection is currently required of all nightly rentals. This has been conducted once when the license is issued.

- The March proposal didn't change the way fire inspections were to be administered other than adding some requirements to what is to be posted by the front door.
- The new proposal would require fire inspections to be repeated every other year (biennially). Also, an additional requirement would be added to the checklist to check points of egress in all sleeping areas for compliance with International Building Code.
- **Nuisance Ordinances, Quiet Times:**
 - The current nightly rental ordinance references existing noise ordinances and holds the licensee liable for noise violations of the renters. However, the Town doesn't have a traditional noise ordinance. Noise is regulated with regard to particular licenses and permits, and OHV noise is regulated. The nuisance ordinance does not call out noise specifically as a nuisance, although the exceptions to the nuisance ordinance are all related to noise.
 - The March proposal didn't address noise specifically.
 - The Town may wish to re-address the nuisance ordinance to specifically regulate noise, perhaps implementing designated quiet times in single-family residential zones. This would give staff something concrete to regulate should the issue arise.

The attached ordinance reflects all of these changes (original ordinance in **Black**, March proposed changes in **Red**, and current proposed changes in **Blue**). The changes have been submitted to the Town Attorney for review. At the time this report was written, we hadn't yet heard back from the attorney. However we hope to have a response by the meeting on May 28.

FINANCIAL IMPLICATIONS:

It is expected that the changes in the proposed fees for nightly rental license will result in about a \$10,000 increase in General Fund revenue in FY 2020. This has already been anticipated in the FY 2020 Tentative Budget. These funds would be used for administering the newly changed ordinances, which would require quite a bit of staff time, particularly in the first year.

BOARD/COMMISSION RECOMMENDATION:

See attached recommendations from the STRC

STAFF RECOMMENDATION:

Staff recommends that Council adopt the attached ordinance revisions.

PROPOSED MOTION:

I move to adopt resolution/ordinance number ____ amending Title 3, Chapters 1, 2A, and 2B of the Brian Head Town Code updating definitions and requirements for business licensing and nightly rental licensing.

ATTACHMENTS:

A – STRC Recommendations (and good neighbor policy draft)

B – Nightly Rental Amendment Ordinance

Brian Head Short Term Rental Collaborative (STRC) Recommendations

The following recommendations have been developed by a group of local Short-Term Rental Owner Managed and Property Management companies to help address concerns brought forward to the Town Council of Brian Head. For the purposes of this presentation the group will be referred to as the Brian Head Short Term Rental Collaborative (STRC).

The goal of the recommendations is to collaborate with the Town Council to help ensure the healthy growth of the residential community while embracing the business community as a long-term, vital part of the City. To achieve this goal, we must gain the support of the community through agreed upon Ordinances and Guidelines realizing we all want to maintain the pristine experience Brian Head provides to residents as well as visitors.

We have separated recommendations specific to Ordinances (laws) and Guidelines (general rule, or piece of advice).

Ordinance Recommendations:

1. **Parking**- Adopt an ordinance that states Parking must be on the owner property at all times. This would apply to all residences in Brian Head since blocking public streets is a community fire safety concern.

Owners/Managers- add verbiage to agreements stating the following:

- Condo/Townhome-List designated areas and number of slots.
- Cabin-Parking must be on the property at all times and not public streets
- If cars exceed the capacity of parking at the location guests are expected to park in the city approved designated overflow parking areas.
- If the authorities are called to the property guests will be cited
- If the city notifies ownership of citation guests will lose their security deposit and receive an unfavorable rating from the owner.

Town Support Needed

- Town verify agreements include ordinance and consequence
- Ensure acceptable overflow parking is written in the Town ordinance (or the ordinance references the current document) listing the overflow parking locations with a detailed map that is provided with the license renewal to be provided to each guest and posted at each location.
- If citation is administered notify management company and/or owner within 72 hours so security deposit can be withheld.
- Enforcement should be the same for residents as short-term rentals since this is a community fire safety concern for the entire Town.

2. **Noise Curfew**- Adopt an ordinance outlining the Town expectation to the entire community specific to hours for noise. If this already exists provide reference to property owners/managers with license renewal.

Owners/Managers- Add verbiage to agreements that reflect the ordinance

- If the authorities are called to the property guests will be cited
- If the Town notifies ownership of citation guests will lose their security deposit and receive an unfavorable rating from the owner.

Town Support Needed

- Town verify agreements include ordinance and consequence
- If citation is administered notify management company and/or owner within 72 hours so security deposit can be withheld.
- Enforcement should be the same for residents as short-term rentals

3. **License Linked to Owners-** STRC community agrees that owners should be listed with direct contact information as a condition of annual license renewal. There should be the option to contact the management company first and primary owner second.
4. **Fire Inspections-** STRC agrees that the Town should require no less than every other year fire inspections of all SRTC properties to ensure safety for the community and guests.
5. **Property Insurance-** STRC Agrees that the Town should bring a Utah property insurance expert to discuss this with the Town Council and residents to better understand insurance process and options to coverage to help address the concerns collectively.

Short Term Rental Good Neighbor Guidelines

The Good Neighbor Guidelines (GNG) were created to educate Brian Head Short Term Rental (STR) owners and tenants/guests on the importance of being a good neighbor.

(Expectations should be set by the Town when providing license that these be posted in a public place such as a primary entrance door inside the Condo or Cabin.)

Welcome to Brian Head

We Appreciate your attention to the following items so that we can continue to provide this vacation getaway for years to come.

1. 24-Hour Contact Information is located (E.g. Refrigerator)- If at any time you have concerns about your stay or in regard to your neighbors, please call the 24-hour contact number. In the event of an emergency, please call 911. For non-emergencies dispatch please call (435)677-2043

2. Noise. Be considerate of the neighborhood and your neighbor's right to the quiet enjoyment of their home and property, especially after 10 p.m.-Refer to your Rental Agreement which outlines this Town ordinance.

3. Parking & Traffic Safety. Refer to your rental agreement which outlines expectations and potential fees. Overflow parking is provided at the locations listed on the map.

- Parking must be on the property at all times.
- Do not park on the public streets or in non-designated spaces.
- Do not park on lawns or in a manner which blocks driveways, sidewalks, alleys or mailboxes.
- Drive slowly through neighborhoods and watch for pedestrians and children playing.

4. General Respect for Neighbors. Be friendly, courteous, and treat your neighbors like you want to be treated. Respect your neighbors and their property. **No Trespassing at any time!**

5. Maintenance of Property. Be sure to pick up after yourself and keep the property clean, presentable and free of trash.

6. Garbage Disposal. Place trash at _____ [list acceptable location(s)]

7. Pets (If Allowed). Promptly clean-up after your pets. Prevent excessive and prolonged barking and keep pets from roaming the neighborhood. Control aggressive pets and be sure to abide by the local leash laws. Store pet food indoors and in a secure container to reduce the likelihood of unwanted pest problems.

8. Tenant/Guest Responsibility. Approved guests and visitors are expected to follow the Good Neighbor Guidelines. Be sure to read your rental agreement for additional terms and restrictions which include consequences for violating the Good Neighbor Guidelines.

Other Guideline Considerations

1. **Loss of Business License for Season-** In the event the Town encounters an owner managed or property managed short term rental that incurs three or more infractions in one year the Town may consider revoking the Business License if the following conditions exist:
 - A. The SRT Owner/Management Company is not maintaining the property in a manner that supports City Ordinances. E.g. Not having driveway plowed by a service resulting in parking on public streets.
 - B. The Town receives repeated complaints of poor directions and access issues for arriving guests.
 - C. The Town has written Documentation of expected follow up by the owner/Manager who fails to meet expectations.

By signing below, I/we support the preceding recommendations to the Brian Head Town Council.

Company Name	Print Name	Signature	Date
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Title 3

BUSINESS AND LICENSE REGULATIONS

Chapter 1

DEFINITIONS

3-1-1: DEFINITIONS:

3-1-1: DEFINITIONS:

All words and phrases used in this title shall have the following meanings, unless a different meaning clearly appears from the context:

AGENT: Means any legally authorized entity acting on behalf of a property owner, including but not limited to a rental management company, property manager, an executor of the owner's estate, or other legal fiduciary.

BUSINESS: A distinct and separate "person" or entity "engaging in business", as those terms are defined in this section. A "business" may be distinguished from another business by separate state sales tax numbers, federal tax identification numbers (employer identification number), and/or separate ownership.

BUSINESS AND SPECIAL EVENTS NUISANCE: Any licensed premises where persons are permitted to use profanity, indecent, immoral, loud or boisterous language, or immoral, unruly, disorderly, lewd, obscene conduct is permitted, or carried on; or persons under the age of twenty one (21) are permitted to purchase or drink beer, alcoholic beverages or liquor; or city, county, state or federal laws or ordinances are violated by the licensee or his agents or patrons with the consent or knowledge, actual or constructive, of the licensee which tend to affect the public health, safety, peace or morals; or patrons are throwing litter or other objects within the licensed premises or from the licensed premises in a manner which tends to affect the public safety or health.

CHARITABLE ORGANIZATION: Any organization recognized by the internal revenue service (IRS) as a 501(c)(3) charitable organization, such as, but not limited, to a religious organization, or any social or welfare organization recognized and dedicated to the relief of the poor, care of the sick or elderly, or aid to victims of disaster, catastrophe or personal tragedy.

COMMERCIAL VEHICLES AND TRAILERS: Motor vehicles that are utilized in the normal course of business, including, but not limited to, delivery trucking, commercial hauling, snow removal services, transportation of goods or other cargo rental vehicles, concrete trucks and dump trucks. "Commercial vehicles and trailers" do not include those that transport people to, from and within Brian Head Town for a fee.

CONDUCTING BUSINESS: Includes the sale or offering for sale of any goods or merchandise, or the offering or performing of any service for valuable consideration of any kind.

CORPORATE SPONSOR: Any business or combination of businesses which provide funding for any special event for a substantial amount of the funds necessary to promote the event or account for substantial amount of the event's operating expenditure budget.

DESIGNEE: A Brian Head Town staff member authorized by the town Licensing Officer to process liquor related and business license applications and renewals.

ENGAGING IN BUSINESS: Includes all activities engaged in within the corporate limits of Brian Head Town 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 prescribed. "Engaging in business" includes, but is not limited to, the sale or rental of tangible personal or real property at retail or wholesale, the manufacturing of goods or property and the rendering of services for others for a consideration, except the rendering of services by an employee to his employer under any contract of employment.

FIREWORKS PERMIT: A permit issued by the town fire marshal for aerial or concession fireworks, pursuant to current fire codes.

HEARING OFFICER: The Town Manager of Brian Head Town is designated as the hearing officer for Brian Head Town.

LICENSE FEE: Includes the administrative fee as defined by the consolidated fee schedule.

LICENSED PREMISES: Any room, building, structure or place, whether permanent or temporary, occupied by any person licensed to conduct business within the town boundaries.

LICENSEE: Any person to whom a license has been issued pursuant to the provisions of this Title, including individual persons, partnerships, joint ventures, associations, clubs, trusts, corporations or any other entities qualified by law to carry on any business referred to herein. The term Licensee as used herein shall include all of the above, and shall be either the applicant or licensee., holding a valid business license in connection with the operation of a place of business.
The licensee is responsible for the acts and omissions of its employees.

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LICENSING OFFICER: The Town Clerk, or his or her designee, responsible for receiving from an applicant the completed application and either granting, suspending or denying the application.

MOBILE FOOD VENDOR TRUCK: Any business in which readily consumable on-site food service is offered from a motor vehicle.

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MOBILE VENDOR: Any means of conveyance of goods or merchandise from tents/canopies, push carts, mobile wagons, trailers, or motor vehicles.

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NIGHTLY LODGING RENTAL FACILITY: Also called "short-term rental" Any place providing temporary sleeping accommodations to the public for a period less than thirty (30) days, including, without limitation, a hotel, motel, lodge, condominium project, single-family residence, bed and breakfast, boarding house, inn, resort, rooming house, recreational lodging unit, private campground, or timeshare project.

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NONPROFIT CORPORATION: A corporation or company which is not conducted or maintained for the purpose of making a profit and/or no part of the income of which is

distributable to its members, trustees or officers, or a nonprofit cooperative association.

PERMIT: Permits may be issued by the Licensing Officer, or his or her designee, to any business, individual or special events that are identified in subsection [3-2A-5B](#) of this title, as a permit holder in lieu of a license. Permits are considered temporary in nature unless otherwise identified.

PERSON: Any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, business trust, corporation, association, organization, society or other group of individuals acting as a unit, whether mutual, cooperative, fraternal, for profit, nonprofit, or otherwise.

PLACE OF BUSINESS: Each separate location maintained or operated by the licensee within Brian Head Town from which business activity is conducted or transacted. A location shall be identified by street address or by building name if a street address has not been assigned. "Place of business" means cafes, restaurants, public dining rooms, cafeterias, taverns, cabarets, and any other place where the general public is invited or admitted for business purposes, including any patios, balconies, decks or similar areas, and also means private clubs, corporations and associations operating under charter or otherwise wherein only the members, guest members and their visitors are invited. Occupied hotel, motel rooms, condominiums and cabins that are not open to the public shall not be "places of business" as herein defined.

RESTAURANT: A place of business where a variety of food is prepared and/or cooked and complete meals are served to the general public and is engaged primarily in serving meals to the general public.

ROUTE DELIVERY: Any delivery made to customers of a business which makes repeated door to door deliveries to the same households along designated routes with an established time interval in between delivery visits. The majority of such deliveries must be to fulfill orders previously made by the customer. Such businesses will include, but not be limited to, dairies and sellers of bulk meats or produce.

SALE/SELL OR TO SELL: Any transaction, exchange or barter whereby, for any consideration, or by any means or any pretext promised or obtained, whether done by a person as a principal, proprietor, or as an agent, servant or employee, unless otherwise defined in this title.

SEASONAL BUSINESS: A business engaging in business for more than thirty (30) days in a given year, but not exceeding more than six (6) months in the same year.

SEXUALLY ORIENTED BUSINESS: A "business" as defined in [chapter 5](#) of this title, "Sexually Oriented Businesses".

SOLICITED DELIVERY: A delivery of previously ordered goods or services or the United States mail. "Solicited delivery" includes, but is not limited to, the delivery of newspapers or publications pursuant to a subscription, the United States mail, parcel delivery services, businesses engaging in route delivery or persons delivering previously ordered goods or services on behalf of an established retailer of those goods or services.

SPECIAL EVENT: Any event, public or private, with either public or private venues, requiring town licensing beyond the scope of normal business and/or liquor regulations, as defined by this

code; or any event held on public or private property in which the general public is invited, with or without charge, and which creates significant public impacts through any of the following:

- A. The attraction of large crowds;
- B. Necessity for street closures on any arterial street necessary for the safe and efficient flow of traffic in Brian Head Town;
- C. Use of public property;
- D. Use of town transportation services;
- E. Use of off-site parking facility;
- F. Use of amplified music in or adjacent to a residential neighborhood;
- G. Use of town personnel;
- H. Impacts via disturbance to adjacent residents;
- I. Disruption of the normal routine of the community or affected neighborhood; or
- J. Necessitates special event temporary beer or liquor licensing in conjunction with the public impacts.

SPONSOR: A person, group or business which has contracted to provide financial or logistical support to any special event or festival. Such agreement may provide for advertising rights, product promotion, logo promotion, exclusivity of rights, products or logos.

STREET CLOSURE: The deliberate blockage of any public street or town owned parking facility to prohibit the flow of traffic or access of vehicles. Any non-construction street closure shall require a special event license.

UNIT: Any separately rented portion of a hotel, motel, condominium, single-family residence, duplex, triplex or other residential dwelling without limitation.

UNSOLICITED DELIVERY: Delivery that is not a solicited delivery, including the delivery of any unsolicited newspaper or publication, sample product or advertising material. Unsolicited newspapers or publications, sample products or advertising material shall include, but not be limited to, handbills describing or offering goods or services for sale, any goods or products that were not previously ordered by the homeowner or occupant, any newspaper or publication delivered without a subscription by the owner or occupant, and any coupons or rebate offers for goods and services.

VENDOR: Any person, group or business that transacts business within the town limits on a temporary basis for no more than twenty nine (29) days, such as special events.

VENUE: The location or locations upon which a special event or festival is held, as well as the ingress and egress route when included in the special event license. (Ord. 08-017, 8-26-2008)

Title 3 – Business & Licensing Regulations

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: MOBILE 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. (Ord. 17-005, 7-25, 2017)

- 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 generate 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 or inventory or materials, 4) does not 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. (Ord. 17-005, 7-25, 2017).

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, if applicant is licensed under another agency regulations, then applicant shall submit a copy of the valid permit/license issued by such agency,~~ 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)

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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, or county~~ 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 voluntary 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 SEPARATE LICENSE REQUIRED FOR SEPARATE PHYSICAL LOCATIONS~~:

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)

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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: MOBILE VENDORS:

It shall be unlawful to sell food, flowers, agricultural products, ice cream, candy, popcorn or other goods or merchandise from tents/canopies, push carts, mobile wagons, trailers or motor vehicles (collectively "Mobile Vendors") on private or public property, except as authorized and licensed under this article. This section shall in no way govern temporary commercial structures, which are instead regulated under the Land Management Code and the International Building Code. Consistent with Utah Code § 10-1-203(5), a license is not required for a business that is only operated occasionally and operated by an individual under the age of 18 (such as a lemonade stand). 2010 Code, amd. Ord. 18-010, 9-10-2018

A. Sales At Construction Sites:

1. A business license may be obtained for a mobile vendor to conduct business 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. 2010 Code, amd. Ord. 18-010, 9-10-2018
2. Licensees shall have written permission from the owner of the private property to conduct business on that property and shall not remain at any one site for more than a two (2) hour period per day. 2010 Code, amd. Ord. 18-010, 9-10-2018

B. Sales Within Public Rights Of Way: Vending within any public right of way is strictly prohibited (except as allowed under the terms of a special event permit). amd. Ord. 18-010, 9-10-2018

C. Special Events: Mobile Vendors may operate on private land under a special event permit and with the permission of the property owner according to conditions of the special event permit. If the special event permit allows for the event to operate within a specific public right of way, mobile vendors associated with that special event may operate within the public right of way according to the conditions of the special event permit. Ord. 18-010, 9-10-2018

D. Terms And Conditions: Mobile vendors may obtain a license subject to the following terms and conditions: 2010 Code, amd. Ord. 18-010, 9-10-2018

1. License Fee: The license fee for a mobile vendor business license shall be as set forth by the consolidated fee schedule. 2010 Code, amd. Ord. 18-010, 9-10-2018
2. Health Department Approval: All mobile vendors serving food or garden produce for human consumption 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. 2010 Code, amd. Ord. 18-010, 9-10-2018

3. Fire Inspection Approval. All mobile vendors which meet Utah State guidelines for a "food truck" serving food for human consumption must submit proof of inspection when applying for a business license. amd. Ord. 18-010, 9-10-2018
4. Limitation On Locations: Mobile vendors shall be restricted to construction sites or special events. 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. Ord. 17-005, 7-25-2017, amd Ord. 18-010, 9-10-2018
5. Mobile Vendors Required To Move Location: It shall be unlawful for any mobile vendor to obstruct pedestrian or vehicular traffic on streets or sidewalks. 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, except as allowed under the conditions of a special event permit. It shall be unlawful for any mobile vendor to conduct business in a location that impairs reasonable pedestrian or vehicular access to any adjoining building, alley, yard or other property. 2010 Code amd. Ord. 18-010, 9-10-2018

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. No person shall operate or engage in any nightly rental activity within the town without first obtaining and maintaining a valid business license as required by this chapter.~~

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- 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. The applicant and licensee for nightly lodging facilities under this section shall be the owner of the property which will be used as a nightly rental or the operator of the nightly rental (such as a property manager) with the written and signed consent of the property owner. The owner of the property which will be used as a nightly rental. If multiple properties will be used for nightly rentals, each separate location will be licensed individually in accordance with 3-2A-16 of this article. A property owner may designate an agent to apply for and obtain the business license and report and remit associated taxes and fees; however, the license shall be in the property owner's name and the property owner shall sign the business license agreement.~~
- 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~~ rental facilities must contain the name of the owner and the property 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, ~~plot plans and building or floor plans one quarter inch to scale showing square footage of the home, number of bedrooms or all sleeping areas within the home, parking, the number of on-site parking~~

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spaces, 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 Minimum Standards for Licensing: If the nightly lodging rental facility is or is to be managed by other than the owner of the nightly lodging rental facility, the nightly lodging rental facility must be properly managed by a Rental 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 service standards required to obtain and maintain a nightly rental business license with the Town, and management regulations include:

1. All nightly rental must meet all applicable building, health, fire codes and town ordinances for the intended use.
2. Maximum occupancy of any nightly rental shall be two (2) person per bedroom plus four (4) additional persons. Notwithstanding the nightly rental shall not exceed the maximum occupancy as allowed by fire code shall be posted. All nightly rentals must identify a maximum occupancy sign posted in plain view near the main entry of all single family residential nightly rentals.
3. Snow Removal For Access: Snow removal during winter months to a level that allows safe access to the nightly lodging rental facility over the normal pedestrian access to the unit.
4. Off Street Parking Maintenance: Snow removal service to and off from off-street parking facilities associated with the nightly lodging rental facility must be maintained, so that off street parking is at all times available for use of the occupants.
5. 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.
6. Parking: Parking must be in compliance with the town parking ordinance including limitation on on-street parking, and other state laws and regulations. Nightly rentals shall be limited to a maximum number of vehicles parked on-site based on the total available developed off-street parking spaces on premises. Single family residential nightly rentals shall post the maximum on-site parking in plain view near the main entry along with a declaration prohibiting on-street parking between November 1 and April 30 as well as a map of available overflow public parking. Staff will determine the maximum number of vehicles allowed before the license is issued. If a parking violation occurs, the business license holder may be cited for a violation of town ordinances.
7. Structural Maintenance: Structural maintenance to sure building, health, safety and fire code compliance.
8. 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.

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~~Parking: Parking must be in compliance with the town parking ordinance, and other state laws and regulations.~~

6.9 Inspections: Each unit will be inspected for safety issues such as fire extinguisher, smoke detectors, maximum occupancy limits, appropriate egress, etc., if they are renting to the public. Units will be inspected at the time the license is granted, and will be re-inspected at least biennially. Inspections and re-inspections will be at the cost of the licensee.

710. Signs: Signs are permitted under the town sign ordinance, title 9, chapter 14 of this code. Good Neighbor Policy: Licensees are required to distribute a copy of a town-approved Good Neighbor Policy to all guests/renters at the licensee's expense and to keep a copy of the Good Neighbor Policy in a conspicuous place within the unit.

11. Response to Complaints: The owner or property manager shall respond to complaints and concerns within ~~one~~four hours of any phone call or notification. Failure of the owner or property manager to respond in a timely manner may result in a violation and possible fines to the owner and/or property manager or revocation of the business license.

12. Insurance: Property and casualty insurance covering nightly rental use (a short-term rental insurance policy) must be maintained on the nightly rental facility at all times. Licensee must provide proof of such insurance upon request.

~~8.1213. Commercial Uses Prohibited:~~ Nightly ~~lodging-rental~~ facilities may not be used for commercial uses not otherwise permitted in the zone. Nightly ~~lodging-rental~~ 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.

14. Collection of Applicable Taxes & Fees: ~~Failure of the licensee to collect and deposit sales tax or the Brian Head Enhanced Service Business License Fee is also a violation of the license and grounds for revocation.~~

E. Noise And Safety Control: The licensee and the owner of nightly ~~lodging-rental~~ 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 or the Brian Head Enhanced Service Business License Fee is also a violation of the license and grounds for revocation.~~

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F. Review Criteria: In determining whether or not a business license for a nightly ~~lodging-rental~~ 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-rental~~ 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 rental 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.~~

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5. The application must bear a sales tax collection and accounting number for the nightly lodging rental 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)

Commented [NL1]: Addressed in Section B

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)

Title 3 – Business & Licensing Regulations

Chapter 2

BUSINESS IN GENERAL ARTICLE B. SUSPENSION AND REVOCATION OF TOWN ISSUED LICENSES

3-2B-1: GROUNDS FOR REVOCATION OR SUSPENSION:

3-2B-2: ACTION OF TOWN MANAGER OR DESIGNEE:

3-2B-3: HEARING ON REVOCATION OR SUSPENSION:

3-2B-4: CRIMINAL PENALTY:

3-2B-1: GROUNDS FOR REVOCATION OR SUSPENSION:

Licenses issued under this title may be suspended or revoked by the Licensing Officer, Hearing Officer or Town Council for the following reasons:

- A. Licensee has filed false or fraudulent information on the license application;
- B. Licensee has been convicted of or pled guilty to, or paid fines or settlements in criminal or civil actions brought by the state tax commission for the collection of, or arising from the nonpayment of, taxes imposed by or collected by the state;
- C. Licensee has permitted its employees, agents or patrons to engage in illegal activities on the licensed premises;
- D. The business has been the subject of a sufficient number of consumer complaints that it has the effect of tarnishing the reputation of other businesses within the town; and
- E. Any of the grounds for denial of a license application as set forth in section [3-2A-8](#) of this title. (Ord. 08-017, 8-26-2008)

[F. Failure to meet the standards identified in 3-2A-21, Classification Standards of Specific Businesses.](#)

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3-2B-2: ACTION OF TOWN MANAGER OR DESIGNEE:

- A. Investigation: Upon receiving a written complaint from any person alleging a violation of any provision of this title by the licensee or an agent of the licensee, the town, or anyone

designated by the Town Manager with the assistance of such other departments of the town as the Town Manager may direct, shall conduct an investigation of the allegations of the complaint. The town will not investigate consumer or product liability complaints. Upon completion of the investigation, the Town Manager may dismiss the matter as being without merit, settle the matter based upon the negotiations the Town Manager or designee may have undertaken with the licensee, or cause an order to show cause to be issued to the licensee requiring the licensee to come forward and answer the allegations of the order to show cause.

- B. Order To Show Cause: The order to show cause may be based upon an affidavit filed by the Town Manager, Town Attorney, or anyone else the Town Manager has designated to file such action, and said order to show cause shall specifically set forth the ordinance sections alleged to have been violated and generally describe the acts in violation.
- C. Hearing; Written Response To Allegations: In the event an order to show cause is issued to the licensee, the Town Manager shall determine whether to refer the matter to the Town Council, or to hear the matter directly himself. The order to show cause shall be issued at least fourteen (14) calendar days prior to the date set for the administrative hearing, but the hearing shall be commenced, in any event, within six (6) months of the service of the order to show cause upon the licensee, unless otherwise agreed by the parties. Within ten (10) days from the date of the service of the order to show cause, the licensee shall file with the town a written response to the allegations contained therein.
- D. Hearing By Town Council: If the matter is to be heard by the Town Council, the Town Council may elect one of its members to act as presiding officer for the hearing. The presiding officer shall rule on all matters of controversy which arise during the hearing. The Town Council may designate one or more of its members to act as a hearing panel, in which event the hearing panel shall follow the same procedural requirements as the Town Manager is required by this article to follow. (Ord. 08-017, 8-26-2008)

3-2B-3: HEARING ON REVOCATION OR SUSPENSION:

In all administrative license revocation or suspension proceedings, a hearing shall be conducted as follows:

- A. Generally: The Hearing Officer or presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and afford all parties the reasonable opportunity to present their positions. The Hearing Officer or presiding officer may determine the length of the hearing and may prevent the calling of witnesses or admission of documentary evidence where such witnesses or evidence are irrelevant, immaterial, unduly repetitious, or unnecessary due to the receipt of other evidence.
- B. Rules Of Evidence: Technical rules of evidence required in court proceedings shall not apply, and the presiding officer or Hearing Officer shall not exclude evidence solely because it is hearsay. The presiding officer or Hearing Officer may afford to all parties the opportunity to present evidence, argue, respond, conduct cross examination, and submit rebuttal evidence within the time frame of the hearing established by said officer.

- C. Testimony; Record Maintained: All testimony presented at the hearing shall be given under oath administered by a person duly authorized to administer oaths. The hearing shall be recorded by electronic means or by means of a certified shorthand reporter. The record thus created shall be preserved by the Town Council until such time as it is clear that no court proceedings or further administrative proceedings will be held concerning the matters which are the subject of the hearing, but a minimum of one year. The recording may be transcribed at the request of any party, at the expense of the requesting party.
- D. Witnesses; Evidence: The licensee shall have the right to appear at the hearing in person or by counsel, or both. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued by the hearing officer when requested by any party or may be issued by the presiding officer or hearing examiner on his or her own motion. The mere issuance of subpoenas shall not operate to require the admissibility of evidence or testimony subpoenaed.
- E. Discovery: Upon request, both the town and the licensee shall be entitled to discovery of the other's list of witnesses to be called at the hearing, including the names and addresses of such witnesses. The parties shall be entitled to have copies of or have access to any documents to be used by either side during the course of the hearing. No other formal discovery shall be required. The standard of proof required for any action adverse to the licensee shall be that of proof by a preponderance of the evidence.
- F. Findings: The presiding officer, if the Town Council hears the matter itself, or the Hearing Officer, shall prepare written findings of fact. In the case of the Hearing Officer, the Hearing Officer shall submit said findings to the Town Council. The Town Council shall either accept or reject the findings of fact, or enter its own findings, and shall state the basis from the record upon which the divergence from the Town Manager's recommended findings. The Town Council shall prepare written conclusions of law and an order.
- G. Formal Order: The order formally entered by the Town Council may be to:
 1. Dismiss the action against the licensee;
 2. Suspend the license for a specified period;
 3. Place the licensee on probation upon such conditions as the town council may order;
 4. Permanently revoke the license in question; or
 5. Any combination of the above.
- H. Appeal: Any licensee aggrieved by an order of the Town Council entered pursuant to this section may maintain an action for relief therefrom in any court of competent jurisdiction, where said court deems itself the appropriate forum for the appeal from the Town Council action. The licensee shall be required to follow orders and procedures of the appropriate court with regard to time for filing.
- I. Prior Conviction Not Required: Nothing herein shall be construed to require a showing that the licensee shall have been first convicted in a court of laws of any violation of any law, rule or regulation.

J. Notice Requirements: All notices required by this section may be made by personal service or by certified mail, mailed to the licensee's address as it appears in the business regulation records of the town, postage prepaid, certified, return receipt requested. (Ord. 08-017, 8-26-2008)

3-2B-4: CRIMINAL PENALTY:

Any person who willfully violates any provision of this title shall be guilty of a class B misdemeanor, subject to penalty as provided in section [1-4-1](#) of this code. Persons conducting business without having first obtained a business license are subject to the business being closed. (Ord. 08-017, 8-26-2008; amd. 2010 Code)