

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. (Ord. 19-009, 7-8-2019)
- G. For nightly rental business licenses, failure to meet any of the standards identified in 3-2A-21-3 on three or more occasions at a single nightly rental unit may result in revocation or suspension of the ability for that unit to be operated as a nightly rental. A single egregious instance of the minimum standards identified in 3-2A-21-3 (such as violations of fire codes or building safety issues) will result in suspension of the ability for that unit to be operated as a nightly rental. (Ord. 19-0009, 7-8-2019, amd. Ord. 20-008, 8-11-2020)

1. Violations of 3-2A-21-3(E) in which the licensee or representative of the licensee attempted to resolve the noise, nuisance, or other violation by contacting Brian Head Public Safety will not be considered an instance of violation under §3-2B-1(G). (Ord. 20-008, 8-11-2020)
2. A unit which has been barred from operating as a nightly rental under §3-2B-1(G) may be allowed to operate as a nightly rental after a period of twelve (12) months following the suspension of operations of that unit. (Ord. 20-008, 8-11-2020)

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. For non-egregious infractions of the nightly rental minimum standards contained in 3-2A-21-3(D), the first and second offense at any single unit shall not proceed past the written response. Only after a third offense shall the matter be heard by the Town Manager, following a written response, and all three offenses will be considered simultaneously at a hearing. (amd. Ord. 19-009, 7-8-2019).
- 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. Revoke or suspend the licensee's privilege to operate a certain nightly rental unit; or.
 6. 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)