

# 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:

**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 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.

**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:** Any business in which readily consumable on site food service is offered from a motor vehicle.

**NIGHTLY LODGING FACILITY:** 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.

**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**

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**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, and federal employer identification number, and shall contain such additional information as may be needed for the purpose of guidance of the licensing officer in issuing the license. Any change in the above information furnished by the applicant shall be forwarded in writing, within ten (10) days of the change, to the Licensing Officer. License application forms shall be reviewed and kept on file by the Licensing officer, or their designee. (Ord. 08-017, 8-26-2008)

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

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

**BRIAN HEAD TOWN BUSINESS FEES**

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

- C. Fees Declared Debt; Collection: Any license fee due and unpaid under this title, and all penalties thereon, shall constitute a debt to the town and may be collected by court proceedings in the same manner as any other debt, or may be turned over to a collection agency, which remedy shall be in addition to all other existing remedies.
- D. Fee Payments; Renewal And Penalty:
  - 1. The annual business license fee provided in this section shall be due and payable to the town on or before October 1 of each year for renewal of licenses for businesses which were licensed for the previous license year. Business licenses for previously unlicensed businesses shall be issued for the unexpired portion of the license year in which issued, upon payment of the annual license fee.
  - 2. If the renewal license fee is not paid on or before October 31 of the year in which the renewal license is due, in addition to the regular renewal fee required, there shall be a business license enforcement fee imposed of twenty five percent (25%) of the license fee imposed by this article, or fifteen dollars (\$15.00), whichever is greater.



3.
  - a. If the renewal license fee is not paid in full on or before November 30 of the year in which the renewal fee is due, the business license enforcement fee shall be increased to fifty percent (50%) of the license fee imposed by this chapter.
  - b. If the renewal license fee is not paid on or before December 15 of the year in which the renewal fee is due, the business license enforcement fee shall be increased to one hundred percent (100%) of the license fee imposed by this article.
4. Upon a proper showing that the business is of such a seasonal nature that business has not been conducted to date, the Licensing Officer or designee may waive the business license enforcement fee of said renewal.
5. Any previously licensed business cited for engaging in business in violation of this title shall have ten (10) days from the date of citation to come into compliance with this title. Failure of the licensee to reach compliance within ten (10) days of the date of citation will subject the business to closure and the licensee to all applicable civil and criminal penalties.
- E. **Renewal Billing Procedure:** On or before August 1 of each year, the Licensing Officer shall send a license renewal application to each current licensee within the town at the last known address of the licensee as registered with the town. (Ord. 08-017, 8-26-2008)
- F. **License Fee Adjustment To Avoid Burdening Interstate Commerce:** The business license fee imposed by this title shall not be applied so as to place an undue burden on interstate commerce. In any case, where the license fee is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce, such licensee or applicant may apply to the licensing officer, or his or her designee, for an adjustment of the fee so as to relieve such burden by submitting other supporting information as the licensing officer, or his or her designee, may deem necessary in order to determine the extent, if any, of such undue burden. The Licensing Officer, or his or her designee, shall then conduct an investigation, comparing the subject business with other businesses of like nature and shall make findings of fact from which he shall determine whether the license fee is discriminatory, unreasonable or unfair as to the licensee or applicant from the standpoint of its impact on interstate commerce, and shall recommend to the Town Manager an appropriate license fee under the circumstances, and the Town Manager shall fix the license fee in such amount. If the regular license fee has already been paid, the town manager shall order a refund of any amount over and above the amount of the license fee fixed, if any. In fixing the fee to be charged, the licensing officer, or his or her designee, may use any method which will assure that the fee assessed shall be uniform with that assessed on business of like nature; provided, however, that the amount assessed shall in no event exceed the regular fee prescribed in this title. (Ord. 08-017, 8-26-2008; amd. 2010 Code)
- G. **Refund Of Fee:** Unless otherwise provided herein, no business license fee is refundable for any reason whatsoever once the license has been issued by the town, except when the license was issued in error. If a license is denied, applicant shall be entitled to a refund of the amount paid in excess of twenty five dollars (\$25.00). The sum of twenty five dollars (\$25.00) shall be retained to offset application processing costs. (Ord. 08-017, 8-26-2008)

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

The Licensing Officer, or designee, may, at any time prior to the issuance of any business license required by this title, investigate any applicant for such license if the Licensing Officer has reasonable cause to believe that the applicant: a) has filed an application which is incomplete, erroneous or false in any respect; b) fails in any respect to qualify to do business in the town under any federal, state or town law, rule or regulation; c) has committed such act or acts as may be grounds for revocation or denial of a license application under any federal, state or town law, ordinance, rule or regulation; or d) investigation is provided for by town ordinance. The Licensing Officer, or designee, may compel the production of documents and witnesses in order to conduct such investigation as provided by this section. (Ord. 08-017, 8-26-2008)

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

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

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

- A. Specified: The licensing officer or designee may deny a license if the applicant:
  - 1. Has been convicted of a crime involving fraud or dishonesty, or a felony by any state or federal court within the past five (5) years, or now has criminal proceedings pending against him in any state or federal court for a crime involving fraud or dishonesty or a felony;
  - 2. Has obtained a license by fraud or deceit, or given false or misleading information in any application;
  - 3. Has failed to pay required taxes or fees imposed by the town;

4. Has violated the laws of the state, the United States government, or the ordinances of the town governing operation of the business for which the applicant is applying for license;
5. No longer has a current, valid permit or license from any other federal or state agency necessary for the applicant to engage in the business that is the subject of the application;
6. Has failed to comply with the conditions and requirements of any town ordinance;
7. Operates an offensive business that has become a "business and special events nuisance", as defined in section [3-1-1](#) of this title, or as determined by the town nuisance ordinance; or
8. Fails to meet the standards for the license classification set forth in section [3-2A-21](#) of this article.

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

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

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

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

A license application denial by the Licensing Officer, or designee, may be appealed to the Hearing Officer by filing a written notice of appeal with the Town Clerk within ten (10) days of denial of the license application. The Hearing Officer shall hear the appeal within thirty (30) days of the filing of the notice of appeal. After the decision of the Hearing Officer, the applicant may request an appeal of the Hearing Officer's decision to the Town Council for a final decision on behalf of the

town following the same procedures set forth herein for appeal of the licensing officer's decision. (Ord. 08-017, 8-26-2008)

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

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

- A. The name of the person to whom such certificate has been issued;
- B. The name of the business, if applicable;
- C. The type of license;
- D. The term of the license with commencement and expiration date;
- E. The purpose for which the licensee is authorized to do business;
- F. The local street address;
- G. The license or permit number; and
- H. A statement that the license is nontransferable. (Ord. 08-017, 8-26-2008)

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

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

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

- A. Defined: For purposes of this section, "unrelated business activities" shall mean two (2) or more activities in which a licensee engages or conducts business that the licensing officer or designee categorizes under separate use and/or service.
- B. Provisions To Do Business Under One Business License: If the purposes for which a licensee is authorized to do business include multiple unrelated business activities, the town shall identify each authorized unrelated business activity on the license. The business shall set forth and limit the unrelated business activity authorized by the business license to the location identified in the business license issued.
- C. Modification of Business License: All provision of this title for denial, revocation, suspension or change to the business license shall apply equally to all unrelated business activities identified on the issued license. Where an unrelated business activity is denied, revoked,

suspended or voluntarily terminated in accordance with this title, the applicant must notify the town business Licensing Officer within ten (10) days to amend the business license, or the Licensing Officer may amend the business license on his/her own initiative. All other business activities authorized by the business license shall remain in effect insofar as they are not affected by the revoked or suspended unrelated business activity. A modified business license will be issued which will identify all of the approved unrelated business activities of the business. A fee shall be retained to offset application processing costs as identified in the consolidated fee schedule. (Ord. 08-017, 8-26-2008)

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

The business license period will be from October 1 through September 30 of the following year. Renewed license certificate shall be valid through the next following September 30, unless revoked pursuant to this title. New license certificates issued between August 1 and September 30 shall be valid through September 30 of the following year, unless revoked. (Ord. 08-017, 8-26-2008)

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

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

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

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

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

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

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

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

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

With the exception of those licenses/permits listed above which specifically grant the right to make use of the town streets or sidewalks, all commercial activity shall be confined to private property and to fully enclosed buildings on that property, except as provided by this title. (Ord. 08-017, 8-26-2008)

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

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

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

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

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

days of renewal or shall forfeit the town business license for the balance of the year. (Ord. 08-017, 8-26-2008)

### **3-2A-21-2: 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. 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). 2010 Code 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, 9-18-2018**

#### **D. Terms And Conditions: Mobile vendors may obtain a license subject to the following terms and conditions:**

1. License Fee: The license fee for a mobile vendor business license shall be as set forth by the consolidated fee schedule.
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.

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 apply for a business license. 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. amd. 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.

- A. License Issuance: The business license for nightly lodging facilities will be issued by the town upon payment of necessary fees and upon a finding by the Licensing Officer or designee that the review criteria established below have been satisfied.
- B. Licensee: The applicant and licensee for nightly lodging facilities under this section shall be the owner of the facility and/or the designated property manager, if any.
- C. Application Procedure: In addition to the information required by section [3-2A-4](#) of this article, all new and renewal license applications for nightly lodging facilities must contain the name of the owner and the property manager, if any, a sales tax collection number, the physical address, the address and telephone number of the owner and/or Property Manager who is available by telephone, and all other information requested on the application forms. It is the licensee's duty to supplement all forms as information changes or as units change from one owner or manager to another.
- D. Management Standards: If the nightly lodging facility is or is to be managed by other than the owner of the nightly lodging facility, the nightly lodging facility must be properly managed by a Property Manager as a condition to receiving and maintaining a valid business license. In the event a homeowners' association exists, the association's Property Manager may be responsible for the nightly lodging facility management. In the event an owner agrees to be responsible for property maintenance, the licensee must present a statement to that effect signed by the owner. The minimum services required and management regulations include:



1. Snow Removal For Access: Snow removal during winter months to a level that allows safe access to the nightly lodging facility over the normal pedestrian access to the unit.
  2. Off Street Parking Maintenance: Snow removal service to and of off street parking facilities associated with the nightly lodging facility, so that off street parking is at all times available for use of the occupants.
  3. Yard Maintenance: Summer yard maintenance, including landscaping, to a level that is consistent with the level of landscaping and maintenance on adjoining and nearby properties.
  4. Structural Maintenance: Structural maintenance to sure building, health, safety and fire code compliance.
  5. Parking: Parking must be in compliance with the town parking ordinance, and other state laws and regulations.
  6. Inspections: Each unit will be inspected for safety issues such as fire extinguisher, smoke detectors, etc., if they are renting to the public.
  7. Signs: Signs are permitted under the town sign ordinance, title 9, chapter 14 of this code.
  8. Commercial Uses Prohibited: Nightly lodging facilities may not be used for commercial uses not otherwise permitted in the zone. Nightly lodging facilities may not be converted to corporate sponsor or business houses which are used primarily to distribute retail products or personal services to invitees for marketing or similar purposes, regardless of whether such products or services are charged for.
- E. Noise And Safety Control: The licensee and the owner of nightly lodging facilities under this section are responsible for regulating noise created by the occupants of the unit. Violation of any town noise ordinance, failure to use designated off street parking, illegal conduct, or any other abuse which violates any law regarding use or occupancy of the licensed premises, is grounds for revocation of the license. Failure to collect and deposit sales tax is also a violation of the license and grounds for revocation.
- F. Review Criteria: In determining whether or not a business license for a nightly lodging facility shall be issued, the application shall be reviewed to see if, in addition to standards and conditions applicable to issuance of all business licenses, the following conditions and standards are met:
1. The unit is located within a zone designated as allowing rentals or nightly lodging facilities for the period for which the license is applied.
  2. The building department and public safety department has reviewed the business license application for compliance with the all building, health and fire codes. Inspection of the unit may be required under section [3-2A-7](#) of this article. The applicant shall bear the cost of any such inspection and any re-inspection which may be required. The cost shall be determined by the prevailing hourly rate of the building department and/or public safety department.

3. The access to the nightly lodging facility and the layout of the unit is such that noise and physical trespass from the proposed rental unit is not likely to be a substantial intrusion to the adjoining properties.
4. The applicant may designate a property manager which is a property management company, licensed real estate broker or the owner of the nightly lodging facility. The property manager or owner shall be responsible for management of the nightly lodging facility in accordance with all state, federal and local laws, including, at a minimum, the requirements of this article. Unless otherwise designated in writing to the town, the property manager is also designated as the agent for receiving all official communications under this title from the town.
5. The application must bear a sales tax collection and accounting number for the nightly lodging facility. This number may be the sales tax accounting number used by the property management company or owner responsible for that unit, or may be specific to the unit, but no license will be effective until the sales tax number is provided. (Ord. 08-017, 8-26-2008)

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

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

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

No license shall be required for sales of surplus household goods or furnishings at a private residence in the garage or yard. If a garage sale is held more frequently than three (3) days in any one calendar quarter at the same residence, it shall be deemed to be conducting business on a regular basis and a regular business license for the sale of that kind of that kind of merchandise is required. If the sale is in a zone that does not permit the sale of merchandise as a permitted or conditional use, further sales are unlawful. Sales tax on all sales is required under state law, and this title shall not be construed as attempting to waive the requirement that tax be collected and/or paid to the proper taxing entities. (Ord. 08-017, 8-26-2008)

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

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

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

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

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

# **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)

#### **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)

# Title 3 – Business & Licensing Regulations

## CHAPTER 3

### SPECIAL EVENTS

3-3- 1: DEFINITIONS:

3-3- 2: LICENSE REQUIRED:

3-3- 3: RENEWAL OF LICENSES:

3-3- 4: APPLICATION FOR LICENSE:

3-3- 5: CONDITIONS NECESSARY FOR LICENSE APPROVAL:

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3-3- 7: ADDITIONAL LICENSES NECESSARY:

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3-3-10: INSURANCE REQUIREMENTS:

3-3-11: RUNS, WALKS, RACES, FILMMAKING AND PROMOTIONS:

3-3-12: REVOCATION FOR CAUSE; NOTICE TO CURE:

3-3-13: CRIMINAL PENALTY:

#### **3-3-1: DEFINITIONS:**

For the purpose of this Chapter, the following terms shall have the meanings herein prescribed:

**APPLICANT:** The person, or group of people, who is or are the organizer(s) of a special event and with whom the responsibility for conduct of the event lies. The "applicant" signs the special events license application and all other documents relevant to the event. If an organization intends to sponsor a special event, an individual shall represent the organization and act as the "applicant".

**CONCESSION:** A privilege to sell food, beverages, souvenirs, gifts, artwork or copyrighted or event memorabilia and general merchandise at a licensed event.

**FEES:** Charges assessed by Brian Head Town for staffing, inspections, public employees, or public equipment assessed to an event and established within the special event licensing process.

**LICENSEE:** The "applicant", as defined in this Section, becomes the "licensee" when the special event license is signed and issued by the Licensing Officer, upon meeting all the criteria in this Chapter. As the license holder, the licensee becomes the sole proprietor of the event and inherits the responsibilities connected with all licenses, fee assessments, copyrights and insurance liabilities connected with the licensed event.



**VENDOR:** Any person, group or business that transacts business within the Town limits on a temporary basis during a special event. (Ord. 08-017, 8-26-2008)

**3-3-2: LICENSE REQUIRED:**

It is unlawful for any person to conduct a special event with or without charge for admission, on public or private property a special event license for the specific event and its venue. All licenses issued pursuant to this Chapter are nontransferable and expire at the completion of the given event or upon revocation, whichever is earlier. (Ord. 08-017, 8-26-2008)

**3-3-3: RENEWAL OF LICENSES:**

Licensees under the provisions of this Chapter who successfully operate a special event under the provisions of this Chapter and who wish to have the event on an annual or periodic basis must renew each special event license as provided herein. Events which occur in series, such as concerts, falling under the criteria established in this Chapter, must have a special event license which specifically authorizes each concert in the series, even if the same performer is performing on separate occasions. (Ord. 08-017, 8-26-2008)

**3-3-4: APPLICATION FOR LICENSE:**

- A. Application Submittal: Applications for special events shall be made in writing to the Licensing Officer. Application materials are available at Town offices and must be completed and submitted to the Licensing Officer not less than thirty (30) days prior to the scheduled opening of any event, unless otherwise approved by the Town Manager upon a showing of good cause.
- B. Licensing Officer Review:
  - 1. The Licensing Officer shall review and either approve, approve with conditions, or deny the following applications:
    - a. Applications for new special events; and
    - b. Applications for special events license renewals where material elements of the event have substantially changed from the previous application.
  - 2. As used herein, a “new special event” shall mean any special event being proposed for the first time, or a prior event which was not renewed for a period exceeding one year. The Licensing Officer shall review applications for compliance with the standards for license approval described herein as follows:

- A. Staff Review and Recommendation: Upon receipt of a completed special events license application, the Licensing Officer shall review the application for compliance with Section [3-3-5](#) of this Chapter. The Licensing Officer shall subsequently return a copy of the application to the applicant with a written decision that approves as is, approves with changes and/or conditions, or denies the application and States the cause for denial. Incomplete applications will be returned to the applicant and noted accordingly. Written notice of the Town decision shall be delivered to the applicant within a reasonable time from the date of decision.
- B. Appeal: Any applicant whose application has been administratively denied may appeal the decision to the hearing officer by filing a written request to the Town Clerk within ten (10) days of the date of decision. (Ord. 08-017, 8-26-2008)

### **3-3-5: CONDITIONS NECESSARY FOR LICENSE APPROVAL:**

Applications for special events shall be reviewed for compliance with any State, federal and other Town ordinances, and the standards provided herein. The Licensing Officer or Town Manager may prohibit or restrict any special event whenever any of the following conditions is found likely to occur, unless the event is modified to eliminate said condition:

- A. The conduct of the event will substantially interrupt or prevent the safe and orderly movement of public transportation or other vehicular and pedestrian traffic in the area of its venue.
- B. The conduct of the event will require the diversion of so great a number of police, fire or other essential public employees from their normal duties as to prevent reasonable police, fire or other public services protection to the remainder of the Town.
- C. The concentration of persons, vehicles or animals will unduly interfere with the movement of police, fire, ambulance and other emergency vehicles on the streets, or with the provision of other public health or safety services.
- D. The event will substantially interfere with any other special event for which a license has already been granted or with the provision of Town services in support of other such events or governmental functions.
- E. Where applicable, the applicant fails to provide the following:
  - 1. The services of a sufficient number of traffic controllers, signs or other Town required barriers or traffic devices, along with a traffic control plan submitted for review;
  - 2. Monitors for crowd control and safety;

3. Safety, health or sanitation equipment, and services or facilities reasonably necessary to ensure that the event will be conducted without creating unreasonable negative impacts to the area and with due regard for safety and the environment;
  4. Adequate off street parking, shuttle service, or both, where necessary to minimize substantial adverse impacts on general parking and traffic circulation in the vicinity of the event;
  5. Required insurance, cash deposit or other security; or
  6. The event created the imminent possibility of violent disorderly conduct likely to endanger public safety or cause significant property damage.
- F. The applicant demonstrates an inability or unwillingness to conduct the event pursuant to the terms and conditions of this Chapter, or has failed to conduct a previously authorized event in accordance with the law or the terms of a license, or both.
- G. The applicant has not obtained the approval of any other public agencies, including the fire department, within whose jurisdiction the event or a portion thereof will occur. (Ord. 08-017, 8-26-2008)

### **3-3-6: CONFLICTING LICENSE APPLICATIONS:**

- A. Criteria: No more than one special event shall be approved for the same date, unless the Licensing Officer or designee finds that the events will not adversely impact one another and that concurrent scheduling of the events will not adversely impact the public health, safety and welfare of the Town. In making this determination, the Licensing Officer or designee will apply the following criteria:
1. Geographic separation of the events;
  2. Proposed time and duration of the events;
  3. Anticipated attendance volumes;
  4. Necessity for public personnel, equipment and/or transportation services at the events; and
  5. Anticipated traffic and parking impacts.
- B. Resolution; Order, Priorities: When more than one special event application is received for the same date, and the Licensing Officer finds that the events will adversely impact one another, or concurrent scheduling of the events will adversely

impact the public health, safety and welfare, the Licensing Officer shall resolve the conflict as provided herein. The Licensing Officer shall first attempt to reach an agreement among the conflicting applicants to modify the applications in order to resolve the conflicts and accommodate the public interest. If no voluntary agreement is reached, then the Licensing Officer shall resolve the issue based on the following order or priorities:

1. Historic Usage: Special events where the same applicant has been granted a license under this Chapter for use of a particular Town forum at a particular date, time and place prior;
2. Governmental Entities: Events planned, organized or presented by State, federal or Town governmental entities or their agents shall have priority over conflicting applications if:
  - a. The application is timely filed and processed by the Town; and
  - b. Said governmental application is made in good faith and not with the effect or purpose of improperly challenging constitutional rights of conflicting applicants.
3. First in Time Application: If neither subsection B1 or B2 of this Section is applicable, or if subsection B1 or B2 of this Section does not resolve the conflict, then the first in time application shall be given priority. The conflicting applicant shall be advised of other open dates on the Town events calendar. (Ord. 08-017, 8-26-2008)

### **3-3-7: ADDITIONAL LICENSES NECESSARY:**

Where applicable, the applicant/licensee shall provide to the Licensing Officer proof of valid special event temporary liquor or beer license, health department permit, fireworks permit and building permit, as applicable. The licensee must obtain all other permits required by law for any temporary structure constructed under the provisions of a special event license and must pass all inspections as a condition precedent to a valid special event license. Unless otherwise approved by the Licensing Officer or designee, all concessions require a temporary mobile vendor license. (Ord. 08-017, 8-26-2008)

### **3-3-8: FEES ASSESSED:**

- A. Application Fee: All special event vendor applications shall not be assessed a fee. All special event coordinator applications, whether a new application or renewal application, shall be assessed a fee according to the consolidated fee schedule. Special event coordinator application fees are due and payable upon submission of

a completed application. Special event coordinator applications shall be considered incomplete unless and until the application fee is paid in full.

- B. **Town Service Fees:** Upon receipt of a completed special event application, the Licensing Officer will provide the applicant with an estimate of fees based on estimated costs for Town services arising from the event, including, but not limited to, the use of Town personnel and/or equipment, Town transportation services, inspections and user fees. A final assessment of Town costs will occur upon completion of the special event. All Town service fees will be adjusted to reflect actual cost. Unless waived, all Town service fees must be paid in full within thirty (30) days of the final assessment of Town costs for the special event.
- C. **Financial Security:** The Licensing Officer is authorized to require an applicant to post a cash deposit or other security accepted by the Town for all estimated contingent costs prior to the issuance of a special event license, as a guarantee against fees, damages, cleanup, or loss of public property. The Town shall submit an estimation based on the special events coordinator requests for Town services to the special events coordinator prior to the special event. Costs that exceed the estimation given by the Town shall be authorized by the special events coordinator for additional costs. (Ord. 08-017, 8-26-2008)

### **3-3-9: FEE WAIVERS:**

- A. **Eligibility:** The Town Manager may waive the following special event licensing and associated fees, upon a finding of eligibility pursuant to the criteria provided herein:
  - 1. Application fee.
  - 2. Town shuttle service charges.
  - 3. Equipment usage above and beyond reasonable use charges.
- B. **Request Submitted; Criteria:** All fee waiver requests should be submitted to the Licensing Officer within ten (10) days of the date of application. Fee waiver requests shall be reviewed and approved/denied by the Town Manager. Fee waiver determinations made by the Town Manager may be appealed to the Town Council. Eligibility for a full or partial fee waiver shall be determined by the Town Manager pursuant to the following criteria, none of which shall be individually controlling:
  - 1. For profit or nonprofit status of the applicant;
  - 2. Whether the event will charge admission fees;
  - 3. Whether the event is youth oriented;

4. The duration of the event;
  5. Whether and to what extent the Town is likely to receive positive tax benefits by virtue of the event;
  6. The degree of Town services involved and whether Town costs are likely to be recovered by other revenue opportunities arising from the event;
  7. The season of occurrence; and
  8. Demonstration of hardship by the applicant.
- C. Precedent Not Established: Approval of a fee waiver for any application shall not create a precedent for future requests. (Ord. 08-017, 8-26-2008)

### **3-3-10: INSURANCE REQUIREMENTS:**

In the event that a special event, or any portion thereof, is to take place on any real property owned or leased by the Town, or will use any equipment, supplies or personal property owned or leased by the Town, or will require the use of any Town personnel and employees in their capacity as employees of the Town, including emergency and police personnel, or will in any way result in a disruption of any Town public right of way or traffic flow, applicants shall provide, upon application for a special event license, proof of liability insurance in the amount of one million dollars (\$1,000,000.00), or more, as may be required by the Licensing Officer, or their designee, and shall further name the Town municipal corporation as an additional insured. All applicants shall further indemnify and defend the Town from any claim, suit or judgment of liability arising out of injury to person or property occurring at the event, except for any claim, suit or judgment arising out of the sole gross negligence or intentional torts of the Town or its employees. (Ord. 08-017, 8-26-2008)

### **3-3-11: RUNS, WALKS, RACES, FILMMAKING AND PROMOTIONS:**

Runs, walks, races, filmmaking, parades, public demonstrations and promotions shall be considered special events, unless such event does not create substantial public impact or require Town service. For profit corporations falling under the provisions of this Chapter or who are specifically in filmmaking or promotions on public or private property must, as a provision of their license, provide proof of insurance, shooting schedule or schedule of events, produce written permission of property owners, and provide access to any set or site for purposes of Code enforcement. (Ord. 08-017, 8-26-2008)

### **3-3-12: REVOCATION FOR CAUSE; NOTICE TO CURE:**

- A. Notice to Cure: If the Licensing Officer, or any sworn law enforcement officer, determines that the conditions of any license issued pursuant to this Chapter have been or are being violated, then notice shall be given to the licensee, sponsor or designated organizer's representative of the special event to cure the violation.
- B. Failure to Cure: It is unlawful for the licensee, sponsor or on site organizer's representative of an authorized special event to fail to take reasonable steps to promptly cure any notice of violation of this Chapter. It is also unlawful for any participant or spectator to fail to comply with lawful directions issued by any sworn law enforcement officer or by the licensee, sponsor or on site organizer's representative to cure their violation of this Chapter.
- C. Clear and Present Danger: If a sworn law enforcement officer determines, after consultation with the public safety director or the public safety director's designee, that any failure to cure a violation of this Chapter creates a clear and present danger of immediate significant harm to life, public safety or property which cannot be reasonably mitigated by increased public safety enforcement and which, on balance, outweighs the benefits to the organizers or participants of the special event, the licensee, sponsor or on site organizer's representative of the special event shall be promptly notified that the license is revoked and that the special event must immediately cease and desist.
- D. Violation of Cease and Desist Order: If a license is revoked as specified in subsection C of this Section, then it shall be unlawful for any person to fail to obey the order to cease and desist from illegal activities. (Ord. 08-017, 8-26-2008)

### **3-3-13: CRIMINAL PENALTY:**

Any person who willfully violates any provision of this Chapter shall be guilty of a class B misdemeanor. Persons conduct special event license are subject to a class B misdemeanor and the event is subject to closure. Violators are subject to penalty as provided in Section [1-4-1](#) of this Code. (Ord. 08-017, 8-26-2008; amended 2010 Code)

# Title 3 – Business & Licensing Regulations

## CHAPTER 4

### ALCOHOLIC BEVERAGES

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#### **3-4-1: DEFINITIONS:**

As used in this Chapter:

**ALCOHOLIC BEVERAGES:** Includes "beer" and "liquor", as defined in this Section.

**BEER, LIGHT BEER, MALT LIQUOR OR MALTED BEVERAGES:** All products that contain sixty three one-hundredths of one percent (0.63%) of alcohol by volume or one-half of one percent (0.5%) of alcohol by weight, but not more than four percent (4%) of alcohol by volume or three and two-tenths percent (3.2%) by weight, and are obtained by fermentation, infusion or decoction of any malted grain. Beer may or may not contain hops or other vegetable products.

- A. Beer Retailer: Any business establishment engaged, primarily or incidentally, in the retail sale or distribution of beer to public patrons, whether for consumption on or off the establishment's premises, and that is licensed to sell beer by the Town, by other local authority, or both.
- B. On Premises Beer Retailer: Any beer retailer engaged, primarily or incidentally, in the sale or distribution of beer to public patrons for consumption on the beer retailer's premises. It includes taverns.



- C. Tavern: Any business establishment engaged primarily in the retail sale or distribution of beer to public patrons for consumption on the establishment's premises, and that is licensed to sell beer under this Chapter. "Tavern" includes beer bars, parlors, lounges, cabarets, and nightclubs where the revenue from the sale of beer exceeds the revenue of the sale of food, although food need not be sold in such establishments.

**INTERDICTED PERSON:** A person to whom the sale, gift or provision of an alcoholic beverage is prohibited by law or court order.

**LICENSED PREMISES:** Any room, enclosure, building, structure or place occupied by a person licensed to sell and/or permit the consumption of alcoholic beverages on such premises under this Chapter.

**LIQUOR:** Alcohol, or any alcoholic, spirituous, vinous, fermented, malt or other liquid, or combination of liquids, a part of which is spirituous, vinous or fermented, and all other drinks, or drinkable liquids that contain more than one-half of one percent (0.5%) of alcohol by volume and is suitable to use for beverage purposes. "Liquor" does not include any beverage defined as a "beer", "malt liquor" or "malted beverage" that has an alcohol content of less than four percent (4%) alcohol by volume.

**MINOR:** Any person under the age of twenty one (21) years.

**NONPROFIT CLUB:** A social, recreational, fraternal, athletic or kindred association incorporated and regulated under the provisions of Utah Code Annotated Title 32A, Chapter 5, as amended.

**NONPROFIT CLUB LICENSE:** The license provided for in Utah Code Annotated Title 11, Chapter 10, as amended, which entitles the nonprofit club to hold, store, possess or consume alcoholic beverages, subject to applicable provisions of the alcoholic beverage control act. This license shall also constitute consent for the nonprofit club to apply for a State store license to sell liquor; however, before this license is issued, the applicant shall obtain conditional use approval from the planning commission. This license also entitles the licensee to sell beer on the licensed premises of a size not to exceed two (2) liter capacity, for consumption on the licensed premises, and to all of the privileges granted to a holder of a beer license, except such sales shall be limited to members and their guests.

**NUISANCE:** Any licensed premises where:

- A. Alcoholic beverages are sold, kept, bartered, stored, given away or used, contrary to the alcoholic beverage act or this Chapter, or where persons resort for drinking beverages, contrary to the alcoholic beverage control act, or of this Chapter; or
- B. Any persons are allowed to perform or simulate sexual intercourse, masturbation, oral copulation, anal copulation, bestiality, flagellation, or any sexual acts prohibited by law; or
- C. Any persons are allowed to simulate or actually touch, caress or fondle breasts, buttocks, anus or genitalia; or
- D. Any persons are allowed to actually display or simulate the display of pubic hair, buttocks, vulva, anus, genitalia, or female breasts below a point immediately above the top of the areola; or

- E. Films, pictures or other visual reproductions are displayed depicting acts which are prohibited in subsections B, C and D of this definition; or
- F. Minors are permitted to purchase or drink alcoholic beverages; or
- G. Laws or ordinances are violated by the licensee, or the licensee allows patrons to violate such laws or ordinances upon such premises, or, upon leaving such premises, perform acts or omissions which tend to negatively affect or place in jeopardy the public health, peace, morals, welfare, comfort or safety of patrons or citizens of Brian Head Town; or
- H. Paid or unpaid dancers, performers or entertainers mingle, perform, dance or provide services in violation of this Title; or
- I. Any violation of the terms of this Chapter or breach of the public peace or morals takes place.

**PERSON:** Any individual, partnership, firm, corporation, association, business trust or other form of business enterprise or entity, including a receiver or trustee, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context.

**RESTAURANT:** Any business establishment where a variety of foods is prepared and complete meals are served to the general public, located on a premises having adequate culinary fixtures for food preparation and dining accommodations, and that is engaged primarily in serving meals to the general public.

**SELL, SALE AND TO SELL:** Any transaction, exchange or barter whereby, for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited, ordered, delivered for value or by any means or under any pretext is 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 or the rules adopted by Brian Head Town. (Ord. 91-003, 4-9-1991)

### **3-4-2: STATUTES ADOPTED BY REFERENCE:**

The Town hereby adopts Utah Code Annotated Section 32A-12-101 et seq., "Criminal Offenses"; Utah Code Annotated Section 32A-13-101 et seq., "Criminal Procedure"; Utah Code Annotated Section 32A-14a-101 et seq., "Alcoholic Beverage Liability"; and Utah Code Annotated Section 32A-14b-101 et seq., "Minor Liability Act". (Ord. 91-005, 4-23-1991; amended 2010 Code)

### **3-4-3: LICENSE REQUIRED:**

It shall be unlawful for any person to sell an alcoholic beverage at retail and/or permit the consumption of an alcoholic beverage unless the person is licensed for such sale and/or consumption. A separate Town alcoholic beverage license shall be required for each State license on each business premises. Each day of noncompliance shall constitute a separate violation. (Ord. 91-003, 4-9-1991)

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

The alcohol beverage license application and renewal form shall be in a format and require such information as the Town Manager deems necessary to enforce this Title. The application format may be amended or revised from time to time, as the Town Manager deems necessary. (Ord. 91-003, 4-9-1991)

### **3-4-5: FEE FOR LICENSE:**

- A. All alcoholic beverage license fees shall established by Resolution of the Town Council.
- B. Alcoholic beverage license fees shall not be prorated and are nonrefundable once the license has been issued. (Ord. 91-003, 4-9-1991)

### **3-4-6: PAYMENT DATES OF LICENSE FEES:**

- A. New Licenses: Alcohol beverage license fees for new licenses shall be due and payable upon making application to the business license division. The application shall not be processed until the fee is paid and the application is complete.
- B. Renewal: Alcohol beverage license fees for renewal licenses shall be due and payable on or before June 1 of each year. If the fee plus penalty is still not paid prior to July 1, then the business shall be considered to be operating without a license in violation of Section [3-2A-1](#) of this Title, and subject to prosecution for every day of operation on or after July 1. If a license is not renewed prior to July 1, as set forth in this Section, and the business shall apply for an alcohol license on or after July 1, the application shall be treated as a new license application and applicant shall pay a new license fee. (Ord. 91-003, 4-9-1991)

### **3-4-7: QUALIFICATIONS OF LICENSEE:**

- A. Offenses Designated:
  - 1. A license shall not be granted to any business whose proprietor has been convicted or pled nolo contendere to:
    - a. A felony under any federal or State law;
    - b. Any violation of any federal or State law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, transportation, consumption or possession of alcoholic beverages;
    - c. Any crime involving moral turpitude; or
    - d. Any gambling or gambling related offense.

2. In the case of a partnership or corporation, the proscription under subsection A1 of this Section applies if any partner, managing agent, officer, director or stockholder who holds at least twenty percent (20%) of the total issued and outstanding stock of an applicant corporation has been convicted of any offense as provided in this subsection.

B. Emergency Revocation:

1. If any employee or proprietor of a licensee is convicted of any offense designated in subsection A1 of this Section, the Town may take emergency action by revoking the license according to the procedures and requirements of [Chapter 2, article B](#) of this Title.
2. In the case of a partnership or corporation that has been granted a restaurant liquor license, if any partner, managing agent, officer, director or stockholder who holds at least twenty percent (20%) of the total issued and outstanding stock of a corporation is convicted of any offense designated in subsection A1 of this Section, the Town Manager may take emergency action by immediately revoking the license.

- C. Suspension of Operation upon Arrest: Upon the arrest of any licensee on any charge set forth in subsection A1 of this Section, the Town Manager may take emergency action by immediately suspending the operation of the licensee according to the procedures and requirements of Chapter 2, Article B of this Title for the period during which the criminal matter is being adjudicated.

D. Prior Revocations:

1. The Town Manager may not grant an alcoholic beverage license to:
  - a. any person who has had any type of license, agency or permit issued under this Title or Utah Code Annotated Title 32A, revoked within the last three (3) years;
  - b. any corporation or partnership applicant if any partner, managing agent, officer, director or stockholder who holds at least twenty percent (20%) of the total issued and outstanding stock of the applicant is or was a partner or managing agent of any partnership, or is or was a managing agent, officer, director or a stockholder who holds or held at least twenty percent (20%) of the total issued and outstanding stock of any corporation that had a liquor license, agency or permit revoked within the last three (3) years.
2. A corporation or partnership applicant may not be granted an alcoholic beverage license if any partner or managing agent of the partnership or any managing agent, officer, director or stockholder who holds at least twenty percent (20%) of the total issued and outstanding stock of the corporate applicant had a license, agency or permit issued pursuant to this Title or Utah Code Annotated Title 32A, revoked while acting in their individual capacity within the last three (3) years.
3. A person acting in an individual capacity may not be granted an alcoholic beverage license if that person was a partner or managing agent of a partnership, or a managing agent, officer, director or stockholder who held at least twenty percent (20%) of the total issued and outstanding stock of a corporation that had a license, agency or permit

issued pursuant to this Title or Utah Code Annotated Title 32A, revoked within the last three (3) years.

- E. Minors: A minor may not be granted an alcoholic beverage license.
- F. Licensee No Longer Qualified: If any person to whom a license has been issued under this Title no longer possesses the qualifications required by this Title for obtaining that license, the Town Manager may suspend or revoke that license. (Ord. 91-003, 4-9-1991)
- G. Outstanding Warrants: Even after meeting the requirements provided for in this Chapter, the applicant shall not receive approval if there are any outstanding warrants on the applicant. (Ord. 91-003, 4-9-1991; amended 2010 Code)

### **3-4-8: ALCOHOL TRAINING AND EDUCATION:**

- A. Required: No person shall be granted a license to operate or maintain a trade, profession or calling, the transaction or carrying on of which requires a license, within the Town, if such person operates an establishment which as part of its business serves "alcoholic beverages", as defined in Utah Code Annotated Section 32A-1-105, to the public for consumption on the premises, unless that person shall show by certificate granted by the State division of alcoholism and drugs that each employee of the business engaging in the serving, selling or furnishing of such alcohol on the premise has completed the alcohol training and education seminar, as required in Utah Code Annotated Section 62A-15-401. (Ord. 87-009, 9-8-1987; amended 2010 Code)
- B. Current, New Employees: Every current business employee and/or new employee hired after the licensee has been licensed in compliance with subsection A of this Section, shall complete the seminar, either: 1) within sixty (60) days of commencing employment; or 2) within sixty (60) days of the effective date hereof, whichever occurs first. An extension of this subsection shall only be tolerated upon a showing that no seminar was scheduled within the allotted time period set for compliance.
- C. Revocation: Violation of this subsection will result in revocation of the license granted under subsection A of this Section. (Ord. 87-009, 9-8-1987)

### **3-4-9: ISSUANCE OF LICENSE:**

- A. Verification of Application: An applicant for an alcoholic beverage license shall fill out the application in full and sign it and have it notarized as verification under penalty of law that all information contained therein is true.
- B. Applicability: All applications for a license defined in this Chapter shall be made pursuant to this Section, regardless of whether the application is for a new license, or there is a change of ownership or a change of lessees of an existing licensed

premises, or an existing licensee is moving his business to another location in the Town.

- C. Application, Fee Submitted: The application shall be returned to the Town offices, along with full payment of the license fees.
- D. Content of Certificate: The certificate of license shall be signed by the Town Manager and the Town Treasurer, and shall contain the following information:
  - 1. The name of the person to whom the certificate is issued;
  - 2. The expiration date of the license; and
  - 3. The address of the place of business licensed.
- E. New Businesses: All applicants who are beginning a new business shall also comply with all applicable business licensing requirements.
- F. Duration, Expiration: The duration and expiration of each alcoholic beverage license under this Chapter, shall coincide with the term and expiration of the underlying Town business license. (Ord. 91-003, 4-9-1991)

#### **3-4-10: RENEWAL OF LICENSE:**

- A. Application; Fee: Each year, licensees shall renew their alcoholic beverage licenses by completing an application for a license renewal, signed under penalty of law that all information contained therein is true, and returning it along with the proper fees to the Town offices within the time period set forth in subsection [3-4-6B](#) of this Chapter.
- B. Review; Issuance: Upon receipt of the application and fees, the Town Manager shall review application under the same criteria as original application, and prepare and issue a certificate of license as provided in this Chapter.

#### **3-4-11: TERM OF LICENSE:**

All alcoholic beverage licenses, no matter when issued, shall expire on the same date the licensee's underlying Town business license expires. (Ord. 91-003, 4-9-1991)

#### **3-4-12: DISPLAY OF LICENSE REQUIRED:**

Every certificate of license issued pursuant to this Chapter shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the place of business next to the certificate of business license so that the same may be easily seen. When the certificate of

license has expired, it shall be removed and no certificate of license which is not in force and effect shall be permitted to remain posted within the place of business. (Ord. 91-003, 4-9-1991)

**3-4-13: NONTRANSFERABLE LICENSE:**

Alcoholic beverage licenses are not transferable or assignable to any other person. (Ord. 91-003, 4-9-1991)

**3-4-14: NUISANCE PROHIBITED:**

It shall be unlawful for any licensee to keep or maintain a "nuisance", as defined under common law or by the alcoholic beverage control act, on the licensed premises. (Ord. 91-003, 4-9-1991)

# Title 3 – Business & Licensing Regulations

## Chapter 4

### ALCOHOLIC BEVERAGES ARTICLE A. SINGLE EVENT PERMITS

#### 3-4A-1: AUTHORITY TO GRANT PERMITS; LIMITATIONS:

#### 3-4A-2: APPLICATION REQUIREMENTS:

#### 3-4A-3: QUALIFICATIONS:

#### 3-4A-4: TOWN MANAGER'S DUTIES BEFORE GRANTING PERMIT:

#### 3-4A-5: BOND REQUIRED:

#### 3-4A-6: OPERATIONAL RESTRICTIONS:

#### **3-4A-1: AUTHORITY TO GRANT PERMITS; LIMITATIONS:**

- A. The Town Manager may issue a single event permit to a bona fide association, corporation, church or political organization, or to a recognized subordinate lodge, Chapter or other local unit thereof that is conducting a convention, civic, fundraising or community event.
- B. The single event permit shall authorize, for a period not to exceed thirty (30) days, the storage, sale, service and consumption of "beer, light beer, malt liquor or malted beverage", as defined in Section [3-4-1](#) of this Title, at an event at which the storage, sale, service or consumption of these alcoholic beverages is otherwise prohibited by State and local law. Authorization for the storage, sale, service and consumption of liquor at such event shall be obtained from the State alcoholic beverage control commission and is not governed by this Chapter or.
- C. The Town Manager may not issue more than two (2) single event permits in any one calendar year to the same association, corporation, church or political organization, or subordinate lodge, Chapter or other local unit thereof.
- D. The six hundred foot (600') and two hundred foot (200') proximity limitations to educational, religious, and recreational facilities that are applicable to State stores, package agencies and licensees, do not apply to single event permits. Nothing in this Section, however, prevents the Town Manager from considering the proximity of any educational, religious or recreational facility, or any other relevant factor in deciding whether to grant a single event permit. (Ord. 91-003, 4-9-1991)



### **3-4A-2: APPLICATION REQUIREMENTS:**

- A. Filing; Information Required: A qualified applicant for a single event permit shall file a written application at least forty five (45) days prior to the event date in the Town offices in a form as the Town Manager shall prescribe. The application shall be accompanied by:
1. A bond as specified by Section [3-4A-5](#) of this article;
  2. The times, dates, location, nature and purpose of the event;
  3. A description or floor plan designating:
    - a. The area in which the applicant proposes that alcoholic beverages be stored;
    - b. The site from which the applicant proposed that alcoholic beverages be sold or served; and
    - c. The area in which the applicant proposes that alcoholic beverages be allowed to be consumed.
  4. A statement of the purpose of the association, corporation, church, or political organization, or its local lodge, Chapter or other local unit;
  5. A signed consent form stating that authorized representatives of the Town, or any law enforcement officer, will have unrestricted right to enter the premises during the event;
  6. Proper verification evidencing that the person signing the application is authorized to act on behalf of the association, corporation, church or political organization; and
  7. Any other information as the Town Manager may direct. (Ord. 91-003, 4-9-1991)
  8. False Statements: Any person who makes any false Statement in any application, document or affidavit required by this article is guilty of a class B misdemeanor, subject to penalty as provided in Section [1-4-1](#) of this Code. (Ord. 91-003, 4-9-1991; amended 2010 Code)

### **3-4A-3: QUALIFICATIONS:**

- A. Term of Existence as Organization: In order to qualify for a single event permit, the applicant shall have been in existence as a bona fide organization for at least one year prior to the date of application.

B. Conviction of Criminal Offense:

1. The Town Manager may not grant a single event permit to any person who has been:
  - a. Convicted of a felony under any federal or State law;
  - b. Convicted of any violation of any federal or State law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration or transportation of alcoholic beverages; or
  - c. Convicted of any crime involving moral turpitude.
2. In the case of a partnership or corporation, the prescription under subsection A1 of this Section applies if any partner, managing agent, officer, director, or stockholder who holds at least twenty percent (20%) of the total issued and outstanding stock of an applicant corporation has been convicted of any offense as provided in this subsection.

C. Emergency Revocation: Upon the arrest any single event permittee on any charge set forth in subsection A of this Section, the Town Manager may take emergency action by immediately revoking the permit.

D. Prior Revocations:

1. The Town Manager may not grant a single event permit to any person who has had any type of license, agency or permit issued under Section [3-4-1](#) of this Code revoked within the last three (3) years.
2. The Town Manager may not grant a single event permit to any corporation or partnership applicant if any partner, managing agent, officer, director or stockholder who holds at least twenty percent (20%) of the total issued and outstanding stock of the applicant is or was a partner or managing agent of any partnership, or is or was a managing agent, officer, director or a stockholder who holds or held at least twenty percent (20%) of the total issued and outstanding stock of any corporation which had a liquor license, agency, or permit revoked within the last three (3) years.
3. A corporation or partnership applicant may not be granted a permit if any partner or managing agent of the partnership or any managing agent, officer, director, or stockholder who holds at least twenty percent (20%) of the total issued and outstanding stock of the corporate applicant had a liquor license, agency, or permit revoked while acting in their individual capacity within the last three (3) years.

- E. Minors: A minor may not be granted a single event permit or be employed by a single event permittee to handle alcoholic beverages.
- F. Applicant no Longer Qualified: If a person to whom a permit has been issued under this Chapter no longer possesses the qualifications required by this Title for obtaining that permit, the Town Manager may suspend or revoke that permit. (Ord. 91-003, 4-9-1991)

#### **3-4A-4: TOWN MANAGER'S DUTIES BEFORE GRANTING PERMIT:**

- A. Investigation: Before any single event permit may be granted by the Town Manager, the Town Manager and staff shall conduct an investigation, gather information, as to whether or not a permit should be granted. The information shall be considered by the Town Manager in the determination.
- B. Considerations: Before issuing any single event permit, the Manager shall:
  - 1. Determine that the applicant has complied with all basic qualifications and requirements as provided by this article and that the application is complete;
  - 2. Consider the purpose of the organization or its local lodge, Chapter or other local unit;
  - 3. Consider the time, date, location and purpose of the event; and
  - 4. Consider any other factors or circumstances he considers necessary.
- C. Information to Other Agencies: Upon approval of any application and upon issuance of a single event permit, the Town Manager shall send copies of the approved application and the permit to State and local law enforcement authorities before the scheduled event. (Ord. 91-003, 4-9-1991)

#### **3-4A-5: BOND REQUIRED:**

- A. Amount: Any applicant for a single event permit shall post a cash or corporate surety bond in the penal sum of one thousand dollars (\$1,000.00), payable to the Town, which the applicant has procured and must maintain for so long as the permit is in effect.
- B. Form: The bond shall be in a form approved by the Town Attorney, conditioned upon the permittee's faithful compliance with this article and other applicable State and local laws and ordinances.

- C. Withdrawal; Forfeit: No part of any cash or corporate bond so posted may be withdrawn during the period the permit is in effect. A bond filed by the permittee may be forfeited if the permit is revoked, or as necessary to pay clean up expenses or for damage to public or private property resulting for operation under the special permit. (Ord. 91-003, 4-9-1991)

### **3-4A-6: OPERATIONAL RESTRICTIONS:**

- A. Compliance Required: Any organization granted a single event permit and any person involved in the storage, sale or service of beer, light beer, malt liquor or malted beverage at the event for which the permit is issued, shall abide by this Title, all other applicable Town ordinances, and the special conditions and requirements provided in this Chapter. Failure to do so may result in an immediate revocation of the permit, forfeiture of the surety bond, immediate seizure of all alcoholic beverages present at the event, and disqualifies the organization from applying for a single event permit for a period of three (3) years from the date of revocation of the permit. Any alcoholic beverage seized under this subsection shall be returned to the organization after the event if forfeiture proceedings are not instituted under Utah Code Annotated Section 32A-13-103.
- B. Conditions, Requirements: Special conditions and requirements for single event permits include, but are not limited to, the following:
1. All persons involved in the storage, sale or service of alcoholic beverages at the event do so under the supervision and direction of the permittee.
  2. All alcoholic beverages stored, sold, served and consumed at the event shall be considered under the control of the permittee during the event. Attendees of the event may not bring any alcoholic beverage other than that furnished by the permittee onto the premises of the event.
  3. Each permittee shall post in a prominent place in the area in which alcoholic beverages are being sold, served and consumed a copy of the permit, together with a list of the operational restrictions and requirements of single event permits set forth in this Section.
  4. Alcoholic beverages purchased for the event may not be stored in any place other than that described in the application and designated on the permit. (Ord. 91-003, 4-9-1991)

# **Title 3 – Business & Licensing Regulations**

## **Chapter 5**

### **SEXUALLY ORIENTED BUSINESSES**

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**3-5-26: PENALTY:**

**3-5-1: PURPOSE AND FINDINGS:**

- A. It is the objective of this chapter the town establish reasonable and uniform regulations governing the operation of sexually oriented businesses and their employees in the town. This chapter shall be construed by the town to protect the governmental interests recognized by this chapter in a manner consistent with constitutional protection provided by the United States and Utah constitutions. The purpose of these regulations is to provide for the regulation of and licensing of sexually oriented businesses within the town in a manner

which will protect the property values of surrounding businesses and neighborhoods, and residents from the potential adverse secondary effects of sexually oriented businesses, while providing to those who desire to patronize sexually oriented businesses the opportunity to do so. Sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution. Licensing of sexually oriented businesses is a legitimate and reasonable means of ensuring that operators of sexually oriented businesses comply with reasonable regulations and operators do not knowingly allow their businesses to be used for illegal sexual activity or solicitation. There is convincing documented evidence that sexually oriented businesses, because of their nature, have a deleterious effect on both the existing neighboring businesses and surrounding residential areas, causing increased crime and downgrading of property values. The purpose of this chapter is to control the adverse effects of sexually oriented businesses and thereby to protect the health, safety and welfare of the citizens and guests of the town, protect the citizens from increased crime, preserve the quality of life, preserve the property values and character of the surrounding neighborhoods, and deter the spread of urban blight.

- B. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the town council, and on findings incorporated in the cases of City of Erie v. Pap's A.M., 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); Young v. American Mini Theatres, [Inc.], 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); Barnes v. Glen Theatre, Inc., 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); California v. La Rue, 409 U.S. 109, 93 S.Ct. 390, 34 L.Ed.2d 342 (1972); O'Connor v. City and County of Denver, 894 F.2d 1210 (10th Cir. 1990); Z.J. Gifts D-2, L.L.C. v. City of Aurora, 136 F.3d 683 (10th Cir. 1998); Dodger's Bar & Grill, Inc. v. Johnson County, 98 F.3d 1262 (10th Cir. 1996); Dodger's Bar & Grill, Inc. v. Johnson County Bd. of County Com'rs, 32 F.3d 1436 (10th Cir. 1994); American Target Advertising, Inc. v. Giani, 199 F.3d 1241 (10th Cir. 2000); MS News Co. v. Casado, 721 F.2d 1281 (10th Cir. 1983); Cortese v. Black, 87 F.3d 1327, (10th Cir. 1996); Heideman v. South Salt Lake City, 348 F.3d 1182 (10th Cir. 2003); Salt Lake City v. Wood, 1999 Utah App. 323, 991 P.2d 595 (Utah Ct. App. 1999); Midvale City Corp. v. Haltom, 73 P.3d 334 (Utah 2003); United States v. Freedberg, 724 F.Supp. 851 (D. Utah 1989); reports of the Iron County sheriff's office; and documents concerning the secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1984; Minneapolis, Minnesota - 1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio; Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington - 1998; Newport News, Virginia - 1996; New York Times Square study - 1994; Phoenix, Arizona - 1995-98; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence", by Kelly Holsopple, program director, freedom and justice center for prostitution resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View", by David Sherman, presented to the Michigan house committee on ethics and constitutional law, January 12, 2000; crime statistics of the city of South Salt Lake for the past seven (7) years; and the report of the attorney general's working group on the regulation of sexually oriented businesses (June 6, 1989, state of Minnesota), the Town Council finds as follows:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the unlicensed operators of the establishments. Further, there is presently no mechanism in this town to make the owners

and operators of these establishments responsible for the activities that occur on their premises.

2. Sexual acts, including masturbation, and oral and anal sex, occur at unregulated sexually oriented businesses, especially those which provide private or semiprivate booths or cubicles for viewing films, videos or live sex shows.
3. Offering and providing such unregulated space encourages such activities, which creates unhealthy conditions.
4. Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis, salmonella, campylobacter and shigella infections, chlamydia, mycoplasmal and ureoplasmal infections, trichomoniasis and chancroid.
5. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities, and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
6. The findings noted in subsections B1 through B5 of this section raise substantial governmental concerns.
7. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
8. The disclosure of certain information by those persons ultimately responsible for the day to day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and will prevent the further secondary effects of dissemination of illegal obscenity, child pornography, and to minors and materials harmful to them.
9. The general welfare, health, morals and safety of the citizens of the town will be promoted by the enactment of this chapter. (Ord. 09-011, 7-28-2009)

### **3-5-2: DEFINITIONS:**

For the purpose of this chapter, the following words shall have the following meanings herein respectively ascribed to them, unless a different meaning is clearly indicated by the context:

**ADULT ARCADE:** Any place to which the public is permitted or invited wherein coin operated or

slug operated, or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image producing devices, are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing "specified sexual activities" or "specified anatomical areas".

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

- A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides or other visual representations which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas".
- B. Instruments, devices or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.

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

- A. Persons who appear seminude;
- B. Live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities"; or
- C. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas".

**ADULT MOTEL:** A motel, hotel or similar commercial establishment which:

- A. Offers public accommodations, for any form of consideration, which regularly provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas", and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right of way, or by means of any off premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; and
- B. Offers a sleeping room for rent for a period of time less than ten (10) hours; or
- C. Allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.

**ADULT MOTION PICTURE THEATER:** A commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by



their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

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

**BUSINESS LICENSE OFFICIAL:** Brian Head Town business License Officer, or his/her designee.

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

**DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS ON:** The dominant or principal theme of the object described by such a phrase. For instance, when the phrase refers to films which are distinguished or characterized by an emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas", the films so described are those whose dominant or principal character and theme is the exhibition or description of "specified anatomical areas" or "specified sexual activities".

**EMPLOY, EMPLOYEE AND EMPLOYMENT:** Describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time or contract basis, whether or not the person is designated an employee, independent contractor, agent or otherwise. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises or similar type of function.

**ESTABLISH OR ESTABLISHMENT:** Means and includes any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of any existing business; whether or not a sexually oriented business, to any sexually oriented business;
- C. The addition of any sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of any sexually oriented business.

**HEARING OFFICER:** The Town Manager of Brian Head Town, or a designee of the Town Manager.

**LICENSEE:** A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an "employee", it shall mean the person in whose name the employee license has been issued.

**NUDITY OR STATE OF NUDITY:** The showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple.

**OPAQUE:** Impervious, having capacity to block out or obstruct the visual image of an object.

**OPERATE OR CAUSE TO OPERATE:** To cause to function or to put or keep in a state of doing business.

**OPERATOR:** Any person on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business, or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner or licensee of the business.

**PARK:** Any public land which has been designated for park or recreational activities, including, but not limited to, a park, playground, trails, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the town which is under the control, operation or management of Brian Head Town.

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

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

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

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

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

**SEMINUDE MODEL STUDIO:**

- A. Any place where a person, who regularly appears in a state of seminudity, is provided for pecuniary consideration, to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.
- B. It is a defense to prosecution for any violation of this chapter that a person appearing in a state of seminudity did so in a modeling class operated:
  1. By a college, junior college or university supported entirely or partly by taxation;

2. By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college or university supported entirely or partly by taxation; or
3. In a structure:
  - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a seminude person is available for viewing; and
  - b. Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.

**SEMINUDE OR STATE OF SEMINUDITY:** A state of dress in which any opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

**SEXUALLY ORIENTED BUSINESS:** An adult arcade, adult bookstore, adult motion picture theater, adult novelty store, adult theater, adult video store, adult cabaret, seminude model studio, or adult motel.

**SPECIFIED ANATOMICAL AREAS:**

- A. Human male genitals in a state of sexual arousal; or
- B. Less than completely and opaquely covered buttocks, anus, anal cleft or cleavage, male or female genitals, or a female breast.

**SPECIFIED CRIMINAL ACTIVITY:**

- A. Any of the following offenses as they are defined by applicable Utah state statute: prostitution or promotion of prostitution; dissemination of obscenity or illegal pornographic materials; sale, distribution or display of harmful material to a minor; sexual abuse; sexual abuse of a child; sexual exploitation of children; sexual performance by a child; possession or distribution of child pornography; sexual battery; rape; indecent exposure; indecency with a child; the crimes of criminal pandering, tax violations, embezzlement or racketeering, if such crimes are directly related to the operation of a sexually oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving the same elements from any jurisdiction if the offenses were committed in the state of Utah, regardless of the exact title of the offense, for which:
  1. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
  2. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
  3. Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the

convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty four (24) month period.

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

**SPECIFIED SEXUAL ACTIVITY:** Acts of, or simulating:

A. Masturbation;

B. Sexual intercourse;

C. Sexual copulation with a person or a beast;

D. Fellatio;

E. Cunnilingus;

F. Bestiality;

G. Pederasty;

H. Buggery;

I. Sodomy;

J. Excretory functions as part of or in connection with any of the activities set forth in subsections A through I of this definition.

**TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS:** Any of the following:

A. The sale, lease or sublease of the business;

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

C. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**VIEWING ROOM:** A room, booth or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, video cassette or other video production. (Ord. 09-011, 7-28-2009)

**3-5-3: APPLICABILITY:**

A. General Applicability: This chapter imposes regulatory standards and license requirements on certain business activities which are characterized as sexually oriented businesses, and

certain employees of those businesses characterized as sexually oriented business employees. Except where the context or specific provisions require, this chapter does not supersede or nullify any other related ordinances.

**B. Applicability Of Regulations To Existing Businesses:**

1. The provisions of this chapter shall be applicable to all persons and businesses described in this chapter, whether the described business or activities were established or commenced before, on or after the effective date hereof, and regardless of whether such persons and businesses are currently licensed to do business in the town.
2. Upon adoption, the provisions of this chapter shall apply to the activities of all sexually oriented businesses and sexually oriented business employees described herein, whether such businesses or activities were established or commenced before, on, or after the effective date hereof. All existing sexually oriented businesses and sexually oriented business employees are hereby granted a de facto temporary license to continue operation or employment for a period of ninety (90) days following the effective date hereof. Within said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must make application for a license pursuant to this chapter. Within said ninety (90) days, sexually oriented businesses must make any necessary changes to the interior configurations of the regulated business premises to conform to this chapter. (Ord. 09-011, 7-28-2009)

**3-5-4: OBSCENITY:**

Notwithstanding anything contained in this chapter, nothing in this chapter shall be deemed to permit or allowing the showing or display of any material which is contrary to the provisions of this code, or other applicable federal or state statutes prohibiting obscenity. (Ord. 09-011, 7-28-2009)

**3-5-5: BUSINESS CATEGORIES:**

The categories of sexually oriented business are:

- A. Adult arcade;
- B. Adult bookstore, adult novelty store, adult video store;
- C. Adult cabaret;
- D. Adult motel;
- E. Adult motion picture theater;
- F. Adult theater; and
- G. Seminude model studio. (Ord. 09-011, 7-28-2009)

### **3-5-6: LICENSE REQUIRED:**

It is unlawful:

- A. Business License: For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the town pursuant to this chapter. The license shall specify the type of sexually oriented business for which it is obtained.
- B. Employee License: For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the town pursuant to this chapter.
- C. Work Permit: For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business work permit pursuant to this chapter. (Ord. 09-011, 7-28-2009)

### **3-5-7: APPLICATION FOR LICENSE; DISCLOSURE:**

- A. Signature: If a person who wishes to operate a sexually oriented business is an individual, they shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, the application shall include the full legal name, address and state of incorporation of the business. Each officer, director, general partner, or other person who owns a controlling interest in the business, or who will participate directly in decisions relating to management and control of the business, shall sign the license application as an applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.
- B. Temporary License Issued: Upon filing a completed application for a sexually oriented business license or sexually oriented business work permit, the Business License Official shall issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the town to deny or grant the license.
- C. Complete Application; Required Information: An application shall be considered complete when it contains the information required in this subsection as follows:
  - 1. The full legal name and any other names or aliases used by the applicant;
  - 2. The applicant's date and place of birth;
  - 3. Present business address and telephone number;
  - 4. Identification issued by a federal or state governmental agency with the individual's colored photograph, signature and physical description;
  - 5. Fingerprints on a form provided by the public safety department;
  - 6. The identity of each individual authorized by the corporation, partnership or non-corporate entity to receive service of process.

7. If the application is for a sexually oriented business license, the application shall be accompanied by a sketch or diagram showing the interior configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches ( $\pm 6''$ ).
- D. Specified Criminal Activity: Each applicant must provide a statement of whether the applicant has been convicted of, or has pled guilty or nolo contendere to, a "specified criminal activity", as defined in section [3-5-2](#) of this chapter, and if so, the specified criminal activity involved, and the date, place and jurisdiction of each.
- E. Notarized Statement From Property Owner: In the event the applicant is not the owner of record of the real property upon which the sexually oriented business or proposed sexually oriented business is or is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of sexually oriented business for which the applicant seeks a license to operate a sexually oriented business on the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well as the copy of the lease or rental agreement pertaining to the premises on which the sexually oriented business is or will be located.
- F. License Additional: A license or permit required by this chapter is in addition to any other licenses or permits required by the town, county or state to engage in the business or occupation. Persons engaged in the operation of a sexually oriented business or in employment in a sexually oriented business shall comply with all other applicable local, state and federal laws, ordinances and statutes, including zoning ordinances, as may be required.
- G. Confidentiality Of Information: The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the town on a confidential basis, except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order. The information provided by a sexually oriented business license applicant in connection with the application for a license under this chapter shall be maintained by the town. (Ord. 09-011, 7-28-2009)

### **3-5-8: FEES FOR APPLICATION:**

- A. Each applicant for a sexually oriented business license shall be required to pay a regulatory license fee as set forth in the consolidated fee schedule adopted by resolution.
- B. This fee shall be in addition to the other licenses and fees required to do business in the town. (Ord. 09-011, 7-28-2009)

### **3-5-9: ISSUANCE OF LICENSE:**

- A. Time Limit For Issuance: Under no circumstances shall the total time for the town to issue a license or issue a written intent to deny an application for a license exceed thirty (30) days from the receipt of a completed application.
- B. Conditions For Denial: The business license official shall issue a license to the applicant unless the official finds one or more of the following to be true by a preponderance of the evidence:
1. The applicant is under eighteen (18) years of age or any higher age, if the license sought requires a higher age.
  2. The applicant is overdue in payment to the town of taxes, fees, fines or penalties assessed against the applicant or imposed on the applicant in relation to a sexually oriented business.
  3. The applicant has falsely answered a material question or request for information specifically authorized by this chapter.
  4. The license fees required by this chapter have not been paid.
  5. All applicable sales and use taxes have not been paid.
  6. Each applicant must provide a statement of whether the applicant has been convicted of or has pled guilty or nolo contendere to a "specified criminal activity", as defined in section [3-5-2](#) of this chapter, and if so, the specified criminal activity involved, the date, place and jurisdiction of each. The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section.
- C. Content Of License; Display Required: The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. (Ord. 09-011, 7-28-2009)

### **3-5-10: CHANGE IN LICENSE INFORMATION:**

The licensee shall submit, in writing, any change in the information required to be submitted under this chapter for either a sexually oriented business license or sexually oriented business work permit to the business license official within fourteen (14) days after such change. (Ord. 09-011, 7-28-2009)

### **3-5-11: LOCATION REGULATIONS AND RESTRICTIONS:**

- A. Zoning: It is unlawful for any sexually oriented business to do business at any location within the town not zoned for such business. Businesses regulated by this chapter shall not be



located closer than six hundred feet (600') to each other and not closer than six hundred feet (600') to protected uses.

- B. Additional Location Requirements: It is unlawful for any business licensed as a sexually oriented business to be located within six hundred feet (600') of a business licensed for the sale or consumption of alcohol or liquor.
- C. Method Of Measurement: The six hundred foot ('600) limitation is measured from the nearest property line of the business regulated by the chapter to the nearest property line of the other sexually oriented business or business licensed for the sale or consumption of alcohol, or area of protected use.
- D. Single Location And Name:
  - 1. It is unlawful to conduct business under a license issued pursuant to this chapter at any location other than the licensed premises.
  - 2. It is unlawful for any sexually oriented business to do business in the town under any name other than the business name specified in the application.
- E. Moving Of Business Location: It is unlawful for any sexually oriented business, as regulated herein, to relocate or otherwise move its location or area of operation. A sexually oriented business wishing to relocate must submit the appropriate application for a license as required under this chapter. Such application shall be reviewed under the terms and conditions of this chapter and applicable town ordinances. (Ord. 09-011, 7-28-2009)

### **3-5-12: EMPLOYEE PERMIT REQUIREMENTS AND REGULATIONS:**

- A. Employee Work Permit Required: It is unlawful for any person to act as a sexually oriented business employee, without first obtaining a sexually oriented business work permit, as specified in subsection B of this section.
- B. Sexually Oriented Business Employee Work Permits: It is unlawful for any sexually oriented business to employ, or for any individual to be employed as a sexually oriented business employee, unless that employee first obtains a sexually oriented business employee work permit.
- C. Application For Permit; Disclosure:
  - 1. Temporary License: Upon the filing of a completed application for a sexually oriented business employee work permit, the Business License Official shall issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the town to deny or grant the work permit.
  - 2. Complete Application; Required Information: An application shall be considered complete when it contains the information required in this subsection as follows.
    - a. The correct legal name of each applicant;

- b. Present business address and telephone number;
- c. Identification issued by a federal or state governmental agency with the individual's date of birth, colored photograph, signature and physical description;
- d. The individual's fingerprints on a form provided by the public safety department;
- e. Each applicant must provide a statement of whether the applicant has been convicted of or has pled guilty or nolo contendere to a "specified criminal activity", as defined in section [3-5-2](#) of this chapter, and if so, the specified criminal activity involved, the date, place, and jurisdiction of each. The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section.

3. License Additional: A license or permit required by this section is in addition to any other licenses or permits required by the town, county or state to engage in the business or occupation. Persons engaged in the operation of a sexually oriented business or in employment in a sexually oriented business shall comply with all other applicable local, state and federal laws, ordinances and statutes, including zoning ordinances, as may be required.

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

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

E. Issuance And Term Of Permit:

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

- a. The applicant is less than eighteen (18) years of age.
- b. The applicant has failed to provide information as required by subsection C2 of this section for issuance of a license or has falsely answered a question or request for information on the application form.
- c. The license application fee required by this section has not been paid.

- d. The applicant has been convicted of a "specified criminal activity", as defined in section [3-5-2](#) of this chapter, or has been shown to have committed two (2) or more violations of subsection [3-5-20A](#) of this chapter within the previous year.
  2. Sexually oriented business employee work permits may be obtained at any time throughout the year. All employee work permits will expire on September 30 following issuance.
  3. Sexually oriented business licenses and sexually oriented business employee work permits may be renewed only by making application and payment of a fee as provided for in this chapter. Application for renewal should be made at least ninety (90) days before the expiration date of said licenses and work permits, and when made less than ninety (90) days before the expiration date, the expiration of the license or work permit will not be affected.
- F. Change In Employee Information: Any change in the information required to be submitted under this chapter for a sexually oriented business work permit will be given, in writing, to the Business License Official within fourteen (14) days after such change.
- G. License Fees: Each applicant for a sexually oriented employee work permit shall be required to pay yearly regulatory license fees as set forth in this chapter.
- H. License Display: A sexually oriented business employee shall keep the employee's work permit on his or her person or on the premises where the licensee is then working and shall, while working on the sexually oriented business premises, produce such work permit for inspection upon request by a law enforcement officer or other town official performing functions connected with the enforcement of this chapter. (Ord. 09-011, 7-28-2009)

### **3-5-13: FEE PROVISIONS; MAXIMUM:**

The initial license and annual renewal fees for a sexually oriented business license or a sexually oriented business employee license shall be set by the Town Council at an amount determined by the Town Council as sufficient to pay the cost of administering this chapter. In no event shall the fees exceed two hundred dollars (\$200.00) for the initial fee of a sexually oriented business and one hundred dollars (\$100.00) for annual renewal; and one hundred dollars (\$100.00) for the initial sexually oriented business employee license work permit and fifty dollars (\$50.00) for annual renewal. These fees shall be in addition to all other licenses and fees required to do business in the town. (Ord. 09-011, 7-28-2009)

### **3-5-14: TERM OF LICENSE:**

A license shall be issued for a period not to exceed twelve (12) months. All sexually oriented business licensees shall expire on September 30 of each year regardless of when issued. The license fees required shall not be prorated for any portion of the year. (Ord. 09-011, 7-28-2009)

### **3-5-15: DISPLAY OF LICENSE:**

Any sexually oriented business located within must display the license granted pursuant to this chapter in a prominent public location within the business premises. (Ord. 09-011, 7-28-2009)

### **3-5-16: NONTRANSFERABLE LICENSE:**

Sexually oriented business licenses granted under this chapter shall not be transferable. (Ord. 09-011, 7-28-2009)

### **3-5-17: HOURS OF OPERATION:**

All premises licensed to operate a sexually oriented business shall only operate between the hours of ten o'clock (10:00) A.M. and two o'clock (2:00) A.M. of the following day. (Ord. 09-011, 7-28-2009)

### **3-5-18: EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS:**

A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, films, video cassettes/DVDs, or other video reproductions characterized by an emphasis on the display of specified sexual activities or specified anatomical areas, shall comply with the following requirements. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

- A. Diagram Of Premises: Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all manager's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (.6"). The business license official may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- B. Sworn Application: The application shall be sworn to be true and correct by the applicant.

- C. Alterations To Manager's Station: No alteration in the configuration or location of a manager's station or viewing room may be made without the prior approval of the business license official.
- D. Access To Non-permitted Areas: It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection A of this section.
- E. Lighting: The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- F. Sexual Activity: It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.
- G. Number Present In Viewing Room: It shall be the duty of the operator, and of any employees present on the premises, to ensure that not more than one person is present in a viewing room at any time. No person shall enter a viewing room that is occupied by another person.
- H. Openings In Viewing Room: It shall be the duty of the operator, and of any employees present on the premises, to ensure that no opening of any kind exist between viewing rooms. No person shall make an attempt to make an opening of any kind between viewing rooms.
- I. Removal Of Violators In Viewing Room: It shall be the duty of the operator, or of any employee who discovers an opening of any kind between viewing rooms, to immediately secure such rooms, and prevent entry into them by any patron until such time as the wall between the rooms has been repaired to remove the opening. Removal and repairing openings between viewing rooms shall be in a manner that is as structurally substantial as the original wall construction.
- K. Daily Inspections: It shall be the duty of the operator, at least once each business day, to inspect the walls between viewing rooms for openings of any kind.
- L. Signage: It shall be the duty of the operator to post conspicuous signs in well lighted entry areas of the business stating all of the following:
  - 1. That no loitering is permitted in viewing rooms.
  - 2. That the occupancy of viewing rooms is limited to one person.
  - 3. That sexual activity on the premises is prohibited.
  - 4. That the making of openings between viewing rooms is prohibited.
  - 5. That violators will be required to leave the premises.
  - 6. That violations of subsections L2, L3 and L4 of this section are unlawful.

- M. Flooring: It shall be the duty of the operator to ensure that floor coverings in viewing rooms are nonporous, easily cleanable surfaces, with no rugs or carpeting.
- N. Wall Surfaces: It shall be the duty of the operator to ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of, or permanently covered by, nonporous, easily cleanable material.
- O. Sanitation, Cleaning: It shall be the duty of the operator to ensure that premises is clean and sanitary. Such duty shall be fulfilled if the operator complies with the following cleaning procedures:
1. The operator shall maintain a regular cleaning schedule of at least two (2) cleanings per day, documented by appropriate logs.
  2. The operator shall provide an employee to check all areas for garbage, trash, bodily fluids and excrement and to remove and clean all areas with a disinfectant. All solid waste generated by the business shall be collected from the premises for disposal at a lawful solid waste disposal facility at least once each week. Prior to collection, solid waste shall be stored in a manner that prevents access by animals or members of the public and which will not facilitate the creation of a health nuisance.
  3. Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video cameras, and windows and other surfaces.
- P. Unobstructed View: The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises in which patrons are permitted, including the interior of each viewing room, but excluding restrooms, to which any patron is permitted access for any purpose. A manager's station shall not exceed forty (40) square feet of floor area. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this subsection remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises. (Ord. 09-011, 7-28-2009)

### **3-5-19: STAGE REQUIREMENTS:**

It shall be a violation of this chapter for an employee to knowingly or intentionally, in a sexually oriented business, appear in a state of seminudity unless the employee is at least three feet (3') from patrons and customers and on a stage at least two feet (2') from the floor. (Ord. 09-011, 7-28-2009)

### **3-5-20: PROHIBITED CONDUCT AND ACTIVITIES:**

- A. Sexually Oriented Business Licensee And Employee Conduct: It is unlawful for any sexually oriented business licensee or sexually oriented business employee to knowingly or intentionally:
1. Allow persons under the age of eighteen (18) years, or the age of twenty one (21) years if required by any applicable alcohol ordinance, on the business premises;
  2. Allow, offer or agree to gambling on the business premises;
  3. Allow, offer or agree to the illegal possession, use, sale or distribution of controlled substances on the licensed premises;
  4. Permit, commit, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor or commit activities harmful to the minor to occur on the licensed premises;
  5. Permit, commit, offer or agree to permit any live "specified sexual activity", as defined by town ordinances or state statutes in the presence of any customer or patron;
  6. Permit, offer or agree to a patron or customer to masturbate within or upon the premises of a sexually oriented business;
  7. Appear in a state of nudity before a patron on the premises of a sexually oriented business;
  8. Refuse to permit officers or agents of the town who are performing functions connected with the enforcement of this chapter to inspect the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with this chapter, at any time the sexually oriented business is occupied by patrons or open for business. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this subsection. The provisions of this subsection do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.
- B. Unlawful Activities Of Patrons: It is unlawful for any patron to knowingly or intentionally:
1. Touch in any manner a sexually oriented business employee while the sexually oriented business employee is seminude;
  2. Place any money or object on or within the costume or person of any sexually oriented business employee while the sexually oriented business employee is seminude; or
  3. Appear in a state of nudity before another person on the premises of a sexually oriented business. (Ord. 09-011, 7-28-2009)

### **3-5-21: INJUNCTION:**

An entity or individual who, without a valid license, operates or causes to be operated a sexually oriented business, or who employs or is employed as an employee of a sexually oriented business, or who operates such a business or functions as such an employee in violation of the provisions of this chapter, is subject to a suit for injunction in addition to the civil and criminal violations provided in this chapter, and any other remedy available at law or in equity. (Ord. 09-011, 7-28-2009)

### **3-5-22: SUSPENSION:**

The town shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if it is determined that he sexually oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this chapter. The town shall issue a written letter of intent to suspend a sexually oriented employee work permit if it is determined that the employee has knowingly violated this chapter. (Ord. 09-011, 7-28-2009)

### **3-5-23: REVOCATION:**

- A. The Business License Official shall issue a written intent to revoke a sexually oriented business license or a sexually oriented business employee work permit if a cause of suspension in section [3-5-22](#) of this chapter occurs and the license has been suspended within the preceding twelve (12) months.
- B. The Business License Official shall issue a written intent to revoke a sexually oriented business license or a sexually oriented business employee work permit if the official determines that a licensee or an employee, with the knowledge of the licensee:
  - 1. Knowingly gave false or misleading information in the application or in any document or diagram related to the operation of the sexually oriented business.
  - 2. Knowingly allowed possession, use, or sale of controlled substances on the premises.
  - 3. Knowingly allowed prostitution on the premises.
  - 4. Knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended.
  - 5. A licensee has been convicted, pled guilty or nolo contendere to a "specified criminal activity", as defined in section
- C. The fact that any conviction is being appealed shall have no effect on the revocation of the license.
- D. For the purposes of this chapter, an act by a sexually oriented business employee that constitutes grounds for revocation of that employee's work permit shall be imputed to the sexually oriented business for purposes of denial, suspension or revocation proceedings



only if the Hearing Officer determines by a preponderance of evidence that an officer, director or general partner, or an employee who managed, supervised or controlled the operation of the business, knowingly allowed such act to occur on the sexually oriented business premises.

- E. Nature Of Revocation: When, after the notice and hearing procedure described in this chapter, the Business License Official revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation becomes effective; provided, that if the conditions of section [3-5-24](#) of this chapter are met, a provisional license will be granted pursuant to that section. If, subsequent to revocation, the enforcement officer finds that the basis for the revocation found in subsections B1, B4 and B7 of this section have been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under subsections B2, B3, B5 and B6 of this section, an applicant may not be granted another license until the appropriate number of years required under this chapter has elapsed. (Ord. 09-011, 7-28-2009)

### **3-5-24: HEARING ON DENIAL, SUSPENSION OR REVOCATION; APPEAL:**

- A. Notice Requirements; Hearing Procedure: If the Business License Official determines that facts exist for denial, suspension or revocation of a license under this chapter, the town shall notify the applicant or licensee (respondent) in writing of the town's intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail.
1. The notification shall be directed to the most current business address or other mailing address on file with the Business License Official for the respondent. Within ten (10) working days of receipt of such notice, the respondent may provide to the business license official a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended or revoked.
  2. Within five (5) working days of the receipt of respondent's written response, the business license official shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding. Within ten (10) working days of the receipt of respondent's written response, the Hearing Officer shall conduct a hearing at which respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross examine any of the town witnesses. The hearing shall take no longer than two (2) working days, unless extended to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written opinion within five (5) days after the hearing. If a court action challenging the town decision is initiated, the town shall prepare and transmit to the court a transcript of the hearing within ten (10) working days after the issuance of the Hearing Officer's written opinion.
  3. If a written response from the respondent is not received by the Business License Official within the time stated in subsection A1 of this section, or if after a hearing, the Hearing Officer concludes that grounds as specified in this chapter exist for denial, suspension or revocation of the license, then such denial, suspension or revocation shall become final five (5) working days after the hearing officer sends, by certified mail, written notice to the

respondent that the license has been denied, suspended or revoked. Such notice shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the hearing officer finds that no grounds exist for denial, suspension or revocation of a license, then within five (5) working days after the hearing, the hearing officer shall immediately withdraw the intent to deny, suspend or revoke the license and shall notify the respondent in writing by certified mail of such action. The hearing officer shall contemporaneously therewith issue the license to the applicant.

- B. Appeal: An applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain or otherwise enjoin the town enforcement of the denial, suspension or revocation, the town shall immediately issue the aggrieved party a provisional license. The provisional license shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the aggrieved party's appeal or other action to restrain or otherwise enjoin the town enforcement.
- C. Application During Temporary Or Provisional License Periods: Sexually oriented businesses or sexually oriented business employees operating or working under temporary licenses, provisional licenses, or de facto temporary licenses shall be subject to the applicable provisions of this chapter. (Ord. 09-011, 7-28-2009)

### **3-5-25: REQUIREMENTS TO COME INTO COMPLIANCE:**

Licenses issued prior to the adoption date hereof to operate a sexually oriented business in which persons appear nude or in a state of nudity within any public or patronized area, shall not be renewed. Such licensees, whether the license is active or expired, may apply for a sexually oriented business license under this chapter; provided, that all other provisions of this chapter are satisfied. Any sexually oriented business licensed under this chapter must comply with the provisions and operational guidelines as set forth in this chapter on or before June 1, 2009, except that all sexually oriented business shall comply with section [3-5-20](#) of this chapter immediately the effective date hereof. (Ord. 09-011, 7-28-2009)

### **3-5-26: PENALTY:**

In addition to revocation or suspension of a license as provided in this chapter, the violation of any provision of this chapter shall be a class B [1-4-1](#) of this code. Each day of a violation shall be considered a separate offense. The prosecuting agency shall have the discretion to charge any offense under this chapter as an infraction. (Ord. 09-011, 7-28-2009; amd. 2010 Code)

# Title 3 – Business & Licensing Regulations

## CHAPTER 6

### DOOR TO DOOR SOLICITATION

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3-6-21: PENALTIY

#### **3-6-1: PURPOSE:**

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

- B. There must be a balance between these substantial interests of the Town and its citizens, and the effect of the regulations in this Chapter on the rights of those who are regulated. Based on the collective experiences of the Town officials derived from regulating business activity, protecting persons and property from criminal conduct, responding to the inquiries of citizens regarding door to door solicitation, the experience of its law enforcement officers and those affected by door to door canvassing and solicitation, as well as judicial decisions outlining the boundaries of constitutional protections afforded and denied persons seeking to engage in door to door solicitation, the Town adopts this Chapter to promote the Town's substantial interests in:
1. Respecting citizen's decisions regarding privacy in their residences;
  2. Protecting persons from criminal conduct;
  3. Providing equal opportunity to advocate for and against religious belief, political position or charitable activities; and
  4. Permitting truthful and non-misleading door to door solicitation regarding lawful goods or services in intrastate or interstate commerce.
- C. The Town finds that the procedures, rules and regulations set forth in this Chapter are narrowly tailored to preserve and protect the Town interests referred to herein, while at the same time balancing the rights of those regulated. (Ord. 06-006, 12-12-2006)

### **3-6-2: NO OTHER TOWN LICENSE OR APPROVAL REQUIRED:**

- A. Registered solicitors and persons exempt from registration need not apply for, nor obtain, any other license, permit or registration from the Town to engage in door to door solicitation.
- B. Any business licensed by the Town under another Town ordinance that uses employees, independent contractors or agents for door to door solicitation in an effort to provide any tangible or intangible benefit to the business, shall be required to have such solicitors obtain a certificate, unless otherwise exempt from registration.
- C. Those responsible persons or entities associated with registered solicitors need not apply for, nor obtain, any other license, permit or registration from the Town, provided they do not establish a temporary or fixed place of business in the Town.
- D. Nothing herein is intended to interfere with or supplant any other requirement of federal, State or other local government law regarding any license, permit or certificate that a registered solicitor is otherwise required to have or maintain. (Ord. 06-006, 12-12-2006)

### **3-6-3: DEFINITIONS:**

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

**ADVOCATING:** Speech or conduct intended to inform, promote or support religious belief, political position or charitable activities.

**APPELLANT:** The person or entity appealing the denial or suspension of a certificate, either personally as an applicant or registered solicitor, or on behalf of the applicant or registered solicitor.

**APPLICANT:** An individual who is at least sixteen (16) years of age and not a corporation, partnership, limited liability company, or other lawful entity who applies for a certificate permitting door to door solicitation.

**APPLICATION FORM:** A standardized form provided by Brian Head Town to an applicant to be completed and submitted as part of registration.

**BCI:** An original or copy, dated no older than one hundred eighty (180) days prior to the date of the application, of either: a) a Utah department of public safety bureau of criminal identification verified criminal history report personal to the applicant; or b) verification by the Utah department of public safety bureau of criminal identification that no criminal history rising to the level of a disqualifying status exists for the applicant.

**BUSINESS:** A commercial enterprise licensed by Brian Head Town as a person or entity under this Title, having a fixed or temporary physical location within Brian Head Town.

**CERTIFICATE:** A temporary, annual or renewal certificate permitting door to door solicitation in Brian Head Town applied for or issued pursuant to the terms of this Chapter.

**CHARITABLE ACTIVITIES:** Advocating by persons or entities that either are, or support, a charitable organization.

**CHARITABLE ORGANIZATION:**

- A. Includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:
  - 1. That is a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare or advocacy, public health, environmental or conservation, or civic organization:
    - a. For the benefit of a public safety, law enforcement or firefighter fraternal association; or
    - b. Established for any charitable purpose; and
  - 2. That is tax exempt under applicable provisions of the internal revenue Code, as amended, and qualified to solicit and receive tax deductible contributions from the public for charitable purposes.
- B. "Charitable organization" includes a Chapter, branch, area or office, or similar affiliate, or any person soliciting contributions within the State for a charitable organization that has its principal place of business outside Brian Head Town or the State of Utah.

**COMPETENT INDIVIDUAL:** A person claiming or appearing to be at least eighteen (18) years of age and of sufficiently sound mind and body to be able to engage in rational thought, conversation and conduct.

**COMPLETED APPLICATION:** A fully completed application form, a BCI, two (2) copies of the original identification relied on by the applicant to establish proof of identify, and the tendering of fees.

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

**DISQUALIFYING STATUS:** Anything specifically defined in this Chapter as requiring the denial or suspension of a certificate, and any of the following:

- A. The applicant or registered solicitor has been criminally convicted of: 1) felony homicide; 2) physically abusing, sexually abusing or exploiting a minor; 3) the sale or distribution of controlled substances; or 4) sexual assault of any kind.
- B. Criminal charges currently pending against the applicant or registered solicitor for: 1) felony homicide; 2) physically abusing, sexually abusing or exploiting a minor; 3) the sale or distribution of controlled substances; or 4) sexual assault of any kind.
- C. The applicant or registered solicitor has been criminally convicted of a felony within the last ten (10) years;
- D. The applicant or registered solicitor has been incarcerated in a federal or State prison within the past five (5) years;
- E. The applicant or registered solicitor has been criminally convicted of a misdemeanor within the past five (5) years involving a crime of: 1) moral turpitude; or 2) violent or aggravated conduct involving persons or property.
- F. A final civil judgment been entered against the applicant or registered solicitor within the last five (5) years indicating that: 1) the applicant or registered solicitor had either engaged in fraud or intentional misrepresentation; or 2) that a debt of the applicant or registered solicitor was non-dischargeable in bankruptcy pursuant to 11 USC Section 523(a)(2), (a)(4), (a)(6), or (a)(19);
- G. The applicant or registered solicitor is currently on parole or probation to any court, penal institution or governmental entity, including being under house arrest or subject to a tracking device.
- H. The applicant or registered solicitor has an outstanding arrest warrant from any jurisdiction;  
or

- I. The applicant or registered solicitor is currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.

**DOOR TO DOOR SOLICITATION:** The practice of engaging in or attempting to engage in conversation with any person at a residence, whether or not that person is a competent individual, while making or seeking to make or facilitate a home solicitation sale, or attempting to further a sale of goods and or services.

**ENTITY:** Includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association.

**FEES:** The cost charged to the applicant or registered solicitor for the issuance of a certificate and/or identification badge, which shall not exceed the reasonable costs of processing the application and issuing the certificate and/or identification badge.

**FINAL CIVIL JUDGMENT:** A civil judgment that would be recognized under State law as a judgment to which collateral estoppel would apply.

**GOODS:** One or more tangible items, wares, objects or merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.

**HOME SOLICITATION SALE:** To make or attempt to make a sale of goods and services by a solicitor at a residence by means of door to door solicitation, regardless of:

- A. The means of payment or consideration used for the purchase;
- B. The time of delivery of the goods and services; or
- C. The previous or present classification of the solicitor as a solicitor, peddler, hawker, itinerant merchant, or similar designation.

**LICENSING OFFICER:** The Town Clerk, or designee, responsible for receiving from an applicant or registered solicitor the completed application and either granting, suspending or denying the applicant's certificate.

**NO SOLICITATION SIGN:** A reasonable visible and legible sign that States "No Soliciting", "No Solicitors", "No Salesperson", "No Trespassing", or words of similar import.

**POLITICAL POSITION:** Any actually held belief, or information for, against or in conjunction with any political, social, environmental or humanitarian belief or practice.

**REGISTERED SOLICITOR:** Any person who has been issued a current certificate by Brian Head Town.

**REGISTRATION:** The process used by the Town Licensing Officer to accept a completed application and determine whether or not a certificate will be denied, granted or suspended.

**RELIGIOUS BELIEF:** Any sincerely held belief, or information for, against or in conjunction with, any theistic, agnostic, or atheistic assumption, presumption or position, or religious doctrine, dogma or practice, regardless of whether or not the belief or information is endorsed by any other person or public or private entity.

**RESIDENCE:** Any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of Brian Head Town, together with the lot or other real property on which the living unit is located. This does not include the sidewalk, public street or public right of way.

**RESPONSIBLE PERSON OR ENTITY:** That person or entity responsible to provide the following to an applicant, registered solicitor, and the competent individual in a residence to whom a sale of goods or services is made or attempted to be made by means of a home solicitation sale:

- A. Maintaining a State sales tax number, a special events sales tax number, computing the sales taxes owing from any sale of goods or services, paying the sales taxes, and filing any required returns or reports;
- B. Facilitating and responding to requests from consumers who desire to cancel the sale pursuant to the applicable contractual rights or law; and
- C. Refunding any monies paid or reversing credit card charges to those persons who timely rescind any sale pursuant to applicable contractual rights or law.

**SALE OF GOODS OR SERVICES:** The conduct and agreement of a solicitor and the competent individual in a residence regarding a particular goods or service(s) that entitles the consumer to rescind the same within three (3) days under any applicable federal, State or local law.

**SERVICES:** Those intangible goods or personal benefits offered, provided, or sold to a competent individual of a residence.

**SOLICITING, SOLICIT OR SOLICITATION:** Any of the following activities:

- A. Seeking to obtain sales or orders for the exchange of goods, wares, merchandise or perishables of any kind, for any kind of remuneration or consideration, regardless of whether advance payment is sought;
- B. Seeking to obtain prospective customers to apply for or to purchase insurance, subscriptions to publications or publications;
- C. Seeking to obtain contributions of money or any other thing of value for the benefit of any person or entity;
- D. Seeking to obtain orders or prospective customers for goods or services;
- E. Seeking to engage an individual in conversation at a residence for the purpose of promoting or facilitating the receipt of information regarding religious belief, political position, charitable conduct, or a home solicitation sale;
- F. Other activities falling within the commonly accepted definition of "soliciting", such as hawking or peddling.

**SOLICITOR OR SOLICITORS:** A person or persons engaged in door to door solicitation.

**SUBMITTED IN WRITING:** The information for an appeal of a denial or suspension of a certificate,



submitted in any type of written Statement to the Town offices by certified, registered, priority, overnight or delivery confirmation mail, facsimile or hand delivery.

**SUBSTANTIATED REPORT:** An oral, written or electronic report:

- A. That is submitted to and documented by Brian Head Town:
- B. By any of the following:
  - 1. A competent individual who is willing to provide law enforcement or other Town employees with publicly available identification of their name, address, and any other reliable means of contact;
  - 2. A Town law enforcement or Licensing Officer; or
  - 3. Any other regularly established law enforcement agency at any level of government.
- C. That provides any of the following information regarding a registered solicitor:
  - 1. Documented verification of a previously undisclosed disqualifying status of a registered solicitor;
  - 2. Probable cause that the registered solicitor has committed a disqualifying status which has not been determined to be a disqualifying status;
  - 3. Documented, eyewitness accounts that the registered solicitor has engaged in repeated patterns of behavior that demonstrate failure by the registered solicitor to adhere to the requirements of this Chapter; or
  - 4. Probable cause that continued licensing of the registered solicitor creates exigent circumstances that threaten the health, safety, or welfare of any individual or entity within Brian Head Town.

**TOWN MANAGER:** The Town Manager or designee of Brian Head Town responsible for receiving the information from the Town and appellant regarding the denial or suspension of a certificate and issuing a decision as required by this Chapter.

**WAIVER:** The written form provided to applicant by the Town wherein applicant agrees that the Town may obtain a name/date of birth, BCI background check on the applicant for licensing purposes under this Chapter, and which contains applicant's notarized signature. (Ord. 06-006, 12-12-2006)

### **3-6-4: EXEMPTIONS FROM CHAPTER:**

- A. The following are exempt from registration under this Chapter:
  - 1. Persons specifically invited to a residence by a competent individual prior to the time of the person's arrival at the residence;

2. Persons whose license, permit, certificate or registration with the State permits them to engage in door to door solicitation to offer goods or services to an occupant of the residence;
  3. Persons delivering goods to a residence pursuant to a previously made order, or persons providing services at a residence pursuant to a previously made request by a competent individual.
  4. Persons advocating or disseminating information for, against, or in conjunction with any religious belief or political position, regardless of whether goods, services, or any other consideration is offered or given, with or without any form of commitment, contribution, donation, pledge or purchase; and
  5. Persons representing a charitable organization. The charitable exemption shall apply to students soliciting contributions to finance extracurricular, social, athletic, artistic, scientific or cultural programs; provided, that the solicitation has been approved in writing by the school administration, and that such student solicitors carry current picture student identification from the educational institution for which they are soliciting.
- B. Those persons exempt from registration are not exempt from the duties and prohibitions outlined in Sections 3-6-17, 3-6-18 and 3-6-19 of this Chapter while advocating or soliciting. (Ord. 06-006, 12-12-2006)

### **3-6-5: SOLICITATION PROHIBITED:**

Unless otherwise authorized, permitted or exempted pursuant to the terms and provisions of this Chapter, the practice of being in an upon a private residence within the Town by solicitors, for the purpose of home solicitation sales or to provide goods or services, is prohibited and is punishable as set forth in this Chapter. (Ord. 06-006, 12-12-2006)

### **3-6-6: REGISTRATION OF SOLICITORS:**

Unless otherwise exempt under this Chapter, all persons desiring to engage in door to door solicitation within the Town, prior to doing so, shall submit a completed application to the Licensing Officer and obtain a certificate. (Ord. 06-006, 12-12-2006)

### **3-6-7: APPLICATION FORM:**

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

- A. Review Of Written Disclosures: An affirmation that the applicant has received and reviewed the disclosure information required by this Chapter.
- B. Contact Information:
1. Applicant's true, correct and legal name, including any former names or aliases used during the last ten (10) years;
  2. Applicant's telephone number, home address and mailing address, if different;
  3. If different from the applicant, the name, address and telephone number of the responsible person or entity; and
  4. The address by which all notices to the applicant required under this Chapter are to be sent.
- C. Proof of Identity: An in person verification by the Licensing Officer of the applicant's true identity by use of any of the following, which bear a photograph of said applicant:
1. A valid driver's license issued by any State.
  2. A valid passport issued by the United States.
  3. A valid identification card issued by any State.
  4. A valid identification issued by a branch of the United States military.
- Upon verification of identity, the original identification submitted to establish proof of identity shall be returned to the applicant.
- D. Proof of Registration with Department of Commerce: The applicant shall provide proof that either the applicant, or the responsible person or entity, has registered with the State department of commerce.
- E. Special Events Sales Tax Number: The applicant shall provide a special events sales tax number for either the applicant, or for the responsible person or entity for which the applicant will be soliciting.
- F. Marketing Information:
1. The goods or services offered by the applicant, including any commonly known registered or trademarked names.
  2. Whether the applicant holds any other licenses, permits, registration, or other qualifications required by federal or State law to promote, provide, or render advice regarding the offered goods or services.
- G. BCI Background Check: The applicant shall provide:

1. An original or a copy of a "BCI" background check, as defined in Section 3-6-3 of this Chapter; and
  2. A signed copy of a waiver whereby applicant agrees to allow the Town to obtain a name/date of birth BCI background check on applicant for purposes of enforcement of this Chapter.
- H. Responses To Questions Regarding "Disqualifying Status": The applicant shall be required to affirm or deny each of the following Statements on the application form:
1. Has the applicant been criminally convicted of: a) felony homicide; b) physically abusing, sexually abusing, or exploiting a minor; c) the sale or distribution of controlled substances; or d) sexual assault of any kind;
  2. Are any criminal charges currently pending against the applicant for: a) felony homicide; b) physically abusing, sexually abusing, or exploiting a minor; c) the sale or distribution of controlled substances; or d) sexual assault of any kind;
  3. Has the applicant been criminally convicted of a felony within the last ten (10) years;
  4. Has the applicant been incarcerated in a federal or State prison within the past five (5) years;
  5. Has the applicant been criminally convicted of a misdemeanor within the past five (5) years involving a crime of: a) moral turpitude; or b) violent or aggravated conduct involving persons or property;
  6. Has a final civil judgment been entered against the applicant within the last five (5) years indicating that: a) the applicant had either engaged in fraud, or intentional misrepresentation; or b) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 USC Section 523(a)(2), (a)(4), (a)(6) or (a)(19);
  7. Is the applicant currently on parole or probation to any court, penal institution or governmental entity, including being under house arrest or subject to a tracking device;
  8. Does the applicant have an outstanding arrest warrant from any jurisdiction; or
  9. Is the applicant currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.
- I. Fee: The applicant shall pay such fees as determined applicable by the Town, which shall not exceed the reasonable cost of processing the application and issuing the certificate and/or identification badge.
- J. Execution of Application: The applicant shall execute the application form, stating upon oath or affirmation, under penalty or perjury, that based on the present knowledge and belief of the applicant, the information provided is complete, truthful and accurate. (Ord. 06-006, 12-12-2006)

### **3-6-8: WRITTEN DISCLOSURES:**

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

- A. The applicant's submission of the application authorizes the Town to verify information submitted with the completed application, including:
  - 1. The applicant's addresses;
  - 2. The applicant's and/or responsible person or entity's State tax identification and special use tax numbers, if any;
  - 3. The validity of the applicant's proof of identity;
- B. The Town may consult any publicly available sources for information on the applicant, including, but not limited to, databases for any outstanding warrants, protective orders or civil judgments.
- C. Establishing proof of identity is required before registration is allowed.
- D. Identification of the fee amount that must be submitted by applicant with a completed application.
- E. The applicant must submit a BCI background check with completed application.
- F. To the extent permitted by the State and/or federal law, the applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection.
- G. The Town will maintain copies of the applicant's application form, proof of identity, and identification badge. These copies will become public records available for inspection on demand at the Town offices whether or not a certificate is denied, granted or renewed.
- H. The criteria for disqualifying status, denial or suspension of a certificate under the provisions of this Chapter.
- I. That a request for a temporary certificate will be granted or denied within two (2) business days that a completed application is submitted. (Ord. 06-006, 12-12-2006)

### **3-6-9: WHEN REGISTRATION BEGINS:**

The Licensing Officer shall not begin the registration process unless the applicant has submitted a completed application. The original identification submitted to establish proof of identity shall be returned after the Licensing Officer verifies the applicant's identity. A copy of the identification may be retained by the Licensing Officer. If an original BCI background check is submitted by the applicant, the Licensing Officer shall make a copy of the BCI and return the original to the applicant. (Ord. 06-006, 12-12-2006)

### **3-6-10: ISSUANCE OF CERTIFICATES:**

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

#### **A. Temporary Certificate:**

1. A temporary certificate shall issue allowing the applicant to immediately begin door to door solicitation upon the following conditions:
  - a. Applicant's submission of a completed application;
  - b. Applicant's submission of the required fee;
  - c. Applicant establishes proof of identity;
  - d. The applicant's representations on the application form do not affirmatively show a disqualifying status;
  - e. The BCI does not affirmatively show a disqualifying status; and
  - f. The applicant has not previously been denied a certificate by the Town, or had a certificate revoked for grounds that still constitute a disqualifying status under this Chapter.
2. A temporary certificate will automatically expire after twenty five (25) calendar days from issuance, or upon grant or denial of an annual certificate, whichever period is shorter.

#### **B. Annual Certificate: Within twenty five (25) calendar days of the issuance of a temporary certificate, the Town shall:**

1. Take any and all actions it deems appropriate to verify the truthfulness and completeness of the information submitted by the applicant, including, but not limited to, those disclosed with the application form.
2. Issue written notice to the applicant and the responsible person or entity, if any, that the applicant either:
  - a. Will be issued an annual certificate, eligible for renewal one year from the issuance of the temporary certificate; or
  - b. Will not be issued an annual certificate for reasons cited in Section 3-6-14 of this Chapter.

#### **C. Renewal Certificate: An annual certificate shall be valid for one year from the date of issuance of the temporary certificate and shall expire at twelve o'clock (12:00) midnight on the anniversary date of issuance. Any annual certificate that is not suspended, revoked or expired may be renewed upon the request of the registered solicitor and the submission of**

a new completed application and payment of the fee, unless any of the conditions for the denial in Section 3-6-14 of this Chapter, or a disqualifying status, is present. (Ord. 06-006, 12-12-2006)

### **3-6-11: FORM OF CERTIFICATE AND IDENTIFICATION BADGE:**

- A. Certificate Form: Should the Licensing Officer determine that the applicant is entitled to a certificate, the Licensing Officer shall issue a certificate to the applicant. The certificate shall list the name of the registered solicitor and the responsible person or entity, if any, and the date on which the certificate expires. The certificate shall be dated and signed by the Licensing Officer. The certificate shall be carried by the registered solicitor at all times while soliciting within the Town.
- B. Identification Badge: With both the temporary and annual certificates, the Town shall issue each registered solicitor an identification badge that shall be worn prominently on his or her person while soliciting in the Town. The identification badge shall bear the name of the Town and shall contain: 1) the name of the registered solicitor; 2) address and phone number of the registered solicitor, or the name, address and phone number of the responsible person or entity if such is provided; 3) a recent photograph of the registered solicitor; and 4) the date on which the certificate expires. (Ord. 06-006, 12-12-2006)

### **3-6-12: MAINTENANCE OF REGISTRY:**

The Licensing Officer shall maintain and make available for public inspection a copy or record of every completed application received and the certificate or written denial issued by the Town. The applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection. The Licensing Officer may furnish to the head of the Town law enforcement agency a listing of all applicants, those denied, and those issued a certificate. (Ord. 06-006, 12-12-2006)

### **3-6-13: NONTRANSFERABILITY OF CERTIFICATES:**

Certificates shall be issued only in the name of the applicant and shall list the responsible party or entity, if any. The certificate shall be nontransferable. A registered solicitor desiring to facilitate or attempt to facilitate home solicitation sales with different: a) goods and services; or b) responsible person or entity, from those designated in the originally submitted completed application, shall submit a written change request to the Licensing Officer. A new certificate based on the amended information shall issue for the balance of time remaining on the solicitor's previous certificate before the amendment was filed. Before the new certificate is given to the registered solicitor, the registered solicitor shall obtain a revised identification badge from the Town, after payment of the fee for the identification badge. (Ord. 06-006, 12-12-2006)

### **3-6-14: DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATE OF REGISTRATION:**

A. Denial: Upon review, the Licensing Officer shall refuse to issue a certificate to an applicant for any of the following reasons:

1. Denial of Temporary Certificate:

- a. The application form is not complete;
- b. The applicant fails to: 1) establish proof of identity; 2) provide a BCI; or 3) pay the fees;
- c. The completed application or BCI indicates that the applicant has a disqualifying status; or
- d. The applicant has previously been denied a certificate by the Town, or has had a certificate revoked for grounds that still constitute a disqualifying status under this Chapter.

2. Denial of Annual Certificate:

- a. The information submitted by the applicant at the time of the granting of the annual certificate is found to be incomplete or incorrect;
- b. Since the submission of the completed application, the applicant is subject to a previously undisclosed or unknown disqualifying status;
- c. Failure to complete payment of the fees;
- d. Since the submission of the application, the Town has received a substantiated report regarding the past or present conduct of the applicant;
- e. Since the submission of the application, the Town or other governmental entity has either criminally convicted or obtained a civil injunction against the applicant for violating this Chapter or similar federal, State or municipal laws in a manner rising to the level of a disqualifying status; or
- f. Since the submission of the application, a final civil judgment has been entered against the applicant indicating that: 1) the applicant has either engaged in fraud or intentional misrepresentation; or 2) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 USC Section 523(a)(2), (a)(4), (a)(6), or (a)(19).

3. Denial of Annual Certificate Renewal:

- a. The information submitted by the applicant when seeking renewal of a certificate is found to be incomplete or incorrect;
- b. Since the submission of the renewal application, the applicant is subject to a previously undisclosed or unknown disqualifying status;
- c. Failure to complete payment of the fees;



- d. Since the submission of the application or granting of a certificate, the Town has received a substantiated report regarding the past or present conduct of the solicitor;
  - e. The Town or other governmental entity has either criminally convicted or obtained a civil injunction against the applicant for violating this Chapter or similar federal, State or municipal laws in a manner rising to the level of a disqualifying status; or
  - f. Since the submission of the application, a final civil judgment has been entered against the applicant indicating that: 1) the applicant had either engaged in fraud or intentional misrepresentation; or 2) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 USC Section 523(a)(2), (a)(4), (a)(6), or (a)(19).
- B. Suspension or Revocation: The Town shall either suspend or revoke a certificate when any of the reasons warranting the denial of a certificate occurs.
- C. Notice of Denial or Suspension: Upon determination of the Licensing Officer to deny an applicant's completed application or to suspend a registered solicitor's certificate, the Town shall cause written notice to be sent to the applicant or registered solicitor by the method indicated in the completed application. The notice shall specify the grounds for the denial or suspension, the documentation or information the Town relied on to make the decision, the availability of the documentation for review by applicant upon one business day notice to the Town, and the date upon which the denial or suspension of the certificate shall take effect. It shall further State that the applicant or registered solicitor shall have ten (10) business days from the receipt of the notice of denial or suspension to appeal the same. The denial or suspension of the certificate shall be effective no sooner than two (2) calendar days from the date the notice is sent, unless that suspension is because of exigent circumstances outlined in subsection C4 of the definition of "substantiated report" in Section 3-6-3 of this Chapter, in which case, the suspension is effective immediately. The denial or suspension shall remain effective unless and until the order is rescinded, overturned on appeal, or determined by a court to be contrary to equity or law. Failure to appeal the suspension of a certificate automatically results in its revocation. (Ord. 06-006, 12-12-2006)

### **3-6-15: APPEAL:**

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

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

- B. Upon request of the applicant or registered solicitor, within one business day, the Town will make available any information upon which it relied in making the determination to either deny or suspend the certificate.
- C. The Town Manager shall review, de novo, all written information submitted by the applicant or registered solicitor to the Licensing Officer, any additional information relied upon by the Licensing Officer as the basis for denial, suspension or revocation, and any additional information supplied by the Town, applicant or registered solicitor. Any additional information submitted by any party to the Town Manager shall be simultaneously submitted to the opposing party. If desired, any party shall have three (3) business days to submit rebuttal documentation to the Town Manager regarding the additional information submitted by the opposing party.
- D. The Town Manager will render a decision no later than fifteen (15) calendar days from the date the appeal was taken, unless an extension of time is agreed upon by the parties. In the event that any party to the appeal submits rebuttal information as allowed in subsection C of this Section, the fifteen (15) calendar days shall be extended to include the additional three (3) days for rebuttal.
  - 1. The denial or suspension of the certificate shall be reversed by the Town Manager if, upon review of the written appeal and information submitted, the Town Manager finds that the Licensing Officer made a material mistake of law or fact in denying or suspending the applicant or registered solicitor's certificate.
  - 2. If the written appeal and information submitted indicates that the Licensing Officer properly denied or suspended the certificate of the applicant or registered solicitor, the denial or suspension of the certificate shall be affirmed and constitute a determination that the suspended certificate is revoked.
  - 3. The decision of the Town Manager shall be delivered to the applicant or registered solicitor by the means designated in the completed application, or as otherwise agreed upon when the appeal was filed.
- E. After the ruling of the Town Manager, the applicant or solicitor is deemed to have exhausted all administrative remedies with the Town.
- F. Nothing herein shall impede or interfere with the applicant's, solicitor's or Town's right to seek relief in a court of competent jurisdiction. (Ord. 06-006, 12-12-2006)

### **3-6-16: DECEPTIVE SOLICITING PRACTICES PROHIBITED:**

- A. No solicitor shall intentionally make any materially false or fraudulent Statement in the course of soliciting.
- B. A solicitor shall immediately disclose to the consumer during face to face solicitation: 1) the name of the solicitor; 2) the name and address of the entity with whom the solicitor is associated; and 3) the purpose of the solicitor's contact with the person and/or competent

individual. This requirement may be satisfied through the use of the badge and an informational flyer.

- C. No solicitor shall use a fictitious name, an alias, or any name other than his or her true correct name.
- D. No solicitor shall represent directly or by implication that the granting of a certificate of registration implies any endorsement by the Town of the solicitor's goods or services, or of the individual solicitor. (Ord. 06-006, 12-12-2006)

### **3-6-17: NO SOLICITATION NOTICE:**

- A. Any occupant of a residence may give notice of a desire to refuse solicitors by displaying a "No Solicitors" sign which shall be posted on or near the main entrance door or on or near the property line adjacent to the sidewalk leading to the residence.
- B. The display of such sign or placard shall be deemed to constitute notice to any solicitor that the inhabitant of the residence does not desire to receive and/or does not invite solicitors.
- C. It shall be the responsibility of the solicitor to check each residence for the presence of any such notice.
- D. The provisions of this Section shall apply also to solicitors who are exempt from registration pursuant to the provisions of this Chapter. (Ord. 06-006, 12-12-2006)

### **3-6-18: DUTIES OF SOLICITORS:**

- A. Every person soliciting or advocating shall check each residence for any "No Soliciting" sign or placard, or any other notice or sign notifying a solicitor not to solicit on the premises, such as, but not limited to, "No Solicitation" signs. If such sign or placard is posted, such solicitor shall desist from any efforts to solicit at the residence or dwelling and shall immediately depart from such property. Possession of a certificate or registration does not in any way relieve any solicitor of this duty.
- B. It is a violation of this Chapter for any person soliciting or advocating to knock on the door, ring the doorbell, or in any other manner attempt to attract the attention of an occupant of residence that bears a "No Solicitation" sign or similar sign or placard for the purpose of engaging in or attempting to engage in advocating a home solicitation sale, door to door soliciting, or soliciting.
- C. It is a violation of this Chapter of any solicitor, through ruse, deception or fraudulent concealment of a purpose to solicit, to take action calculated to secure an audience with an occupant at a residence.
- D. Any solicitor who is at any time asked by an occupant of a residence or dwelling to leave shall immediately and peacefully depart.

- E. The solicitor shall not intentionally or recklessly make any physical contact with, or touch another person without the person's consent.
- F. The solicitor shall not follow a person into a residence without their explicit consent.
- G. The solicitor shall not continue repeated soliciting after a person and/or competent individual has communicated clearly and unequivocally their lack of interest in the subject, goods or services of the solicitor.
- H. The solicitor shall not use obscene language or gestures. (Ord. 06-006, 12-12-2006)

### **3-6-19: TIME OF DAY RESTRICTIONS:**

It shall be unlawful for any person, whether licensed or not, o'clock (9:00) A.M. or after nine o'clock (9:00) P.M. Mountain Standard Time, unless the solicitor has express prior permission from the resident to do so. (Ord. 06-006, 12-12-2006)

### **3-6-20: BUYER'S RIGHT TO CANCEL:**

In any home solicitation sale, unless the buyer requests the solicitor to provide goods or services without delay in an emergency, the seller or solicitor shall present to the buyer and obtain buyer's signature to a written statement which informs the buyer of the right to cancel within the third business day after signing an agreement to purchase. Such notice of "Buyer's Right to Cancel" shall be in the form required by Utah Code Annotated Section 70C-5-103, or a current version thereof, or any State or federal law modifying or amending such provision. (Ord. 06-006, 12-12-2006)

### **3-6-21: PENALTY:**

Any person who violates any term or provision of this Chapter shall be guilty of a class B misdemeanor and subject to penalty as provided in Section 1-4-1 of this Code. (Ord. 06-006, 12-12-2006; amended 2010 Code)