

LINDON CITY CODE

TITLE 5

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Chapter 5.04

BUSINESS TAXES, LICENSES AND REGULATIONS

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Section 5.04.010 Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

1. "Business" includes professions, trades and occupations and every kind of calling, whether or not carried on for profit.
2. "Licensee" means any person to whom a license has been issued pursuant to the provisions of this chapter.
3. "Person" means all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, corporations, Massachusetts business or common law trusts, societies and individuals engaged in any business in the city. (Ord. no. 106 § 1, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.020 Application of Rules.

Except as otherwise expressly provided, the provisions of this chapter shall apply to all city licensing activities. (Ord. no. 106 § 1, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.030 Payment of other licenses not excused.

Persons required to pay a license tax or fee for transacting and carrying on any business required under any other ordinance of the city shall remain subject to the regulatory provisions of other city ordinances. (Ord. no. 106 § 2, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

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Section 5.04.040 Effect on past actions and obligations.

Neither the adoption of the ordinance codified in this chapter nor its superseding of any portion of any other ordinance of the city shall in any manner be construed to affect prosecution for violation of any other ordinance committed prior to the adoption of the ordinance codified in this chapter, nor be construed as a waiver of any license or any penal provision applicable to any such violation, nor be construed to affect the validity of any bond or cash deposit required by any ordinance to be posted, filed or deposited, and all rights and obligations hereunto appertaining shall continue in full force and effect. (Ord. no. 106 § 3.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.050 License--Required.

1. There are imposed, upon the businesses, trades, professions, callings and occupations transacted and carried on in the city, license fees in the amounts adopted by resolution and set forth in a separate schedule. It is unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the city without first having procured a license from the city to so do and without complying with all applicable provisions of this chapter, and any violation of this chapter or failure to comply with any provisions of this chapter shall be punishable as a Class B misdemeanor.
2. This section shall not be construed to require any person to obtain a license prior to doing business within the city if such requirement conflicts with applicable statutes of the United States or of this state. (Ord. no. 106 § 1, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.060 Separate license required for each branch, establishment, and type of business at same location.

A separate license shall be obtained for each branch establishment or location of the business transacted and carried on and for each separate type of business at the same location. Each license shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designated in such license. Warehouses and distributing plants used in connection with and incidental to a business license under the provisions of this chapter shall not be deemed to be separate places of business or branch establishments. (Ord. no. 106 §5, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.070 Exemptions.

1. Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt, by virtue of the Constitution or applicable statutes of the United States or of this state, from the payment of fees prescribed by this chapter.
2. Any person claiming an exemption pursuant to this section shall file a verified statement with the business license clerk, stating facts upon which exemption is claimed.
3. The business license clerk shall, upon a proper showing contained in the verified statement, issue a license to such person claiming exemption under this section without payment to the city of the license fee required by this chapter.
4. The business license clerk, after giving notice and reasonable opportunity for hearing to a licensee, may revoke any license granted pursuant to the provisions of this section upon information that the licensee is not entitled to the exemption as provided herein. (Ord. no. 106 § 6, 1984.)

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5. Persons engaging in casual sales totaling less than \$1,000.00 per calendar year are not required to pay the license fee or obtain a business license. (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.080 Applications, issuance and contents.

Every person required to have a license under the provisions of this chapter shall make application for the same to the business license clerk of the city. Upon the payment of the prescribed license fee, the business license clerk shall issue to such person a license which shall contain:

1. The name of the person to whom the license is issued;
2. The business licensed;
3. The place where such business is to be transacted and carried on;
4. The date of the expiration of such license; and
5. Such other information as may be necessary for the enforcement of the provisions of this chapter. (Ord. no. 106 §7, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.090 Appeal from action.

Any person aggrieved by any decision of the business license clerk with respect to the issuance or refusal to issue any license may appeal first to the City Administrator and then, if necessary, to the city council by filing a notice of appeal with the clerk of the council. The city council shall thereupon fix a time and place for hearing such appeal. The clerk of the council shall give notice to such person of the time and place of hearing by serving it personally or by depositing it in the United States Post Office, postage prepaid, addressed to such person at his last known address. The city council shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provisions of this chapter. (Ord. no. 106 §11, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.100 Transferability.

No license issued pursuant to this chapter shall be transferable except in those cases where a business is sold and the license proposed to be transferred. The grantee of such business shall present himself to the business license clerk and upon payment of the transfer fee established by the city council, the business license clerk shall transfer the business license. Where a license is issued authorizing a person to transact and carry on a business at a particular place, such licensee may, upon application therefor and paying a fee in an amount determined by the city council, have the license amended to authorize the transacting and carrying on of such business under such license at some other location to which the business is or is to be moved. (Ord. no. 106 §13, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.110 Duplicate license.

A duplicate license may be issued by the business license clerk to replace any license previously issued under this chapter which has been lost or destroyed, upon the licensee filing a statement of such fact, and at the time of filing such statement paying to the business license clerk a duplicate license fee as determined by the city council. (Ord. no. 106 §14, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.120 Posting of license.

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All licenses shall be kept and posted in the following manner:

1. Any licensee transacting and carrying on business at a fixed place of business in the city shall keep a license posted in a conspicuous place upon the premises where such business is carried on.
2. Any licensee transacting and carrying on business but not operating a fixed place of business in the city shall keep a license upon his person at all times while transacting and carrying on such business. (Ord. no. 106 §15, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.130 License fees--When payable.

Unless otherwise specifically provided, all annual license fees required under the provisions of this chapter shall be due and payable in advance on January 1st of each year; provided, that license fees covering new operations commences after January 1st may be prorated on a monthly basis for the balance of the license period, but in no case shall the license fee be less than the minimum license fee as established by the municipal Council, and shall be due and payable on the first day said new operations commenced. (Ord. no. 106 §16, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.140 Failure to pay fee-- Penalty.

Business license fees are due on the first day of January, each year, for businesses existing on said date and become past due after the 31st day of January. If unpaid after the 31st day of January, the license clerk shall add a penalty of ten percent of said license fee per month; thereafter interest shall be added at the rate of one and one-half percent per month to past due accounts. Business license fees on business operations commencing after January 1st of any given year, shall be due and payable on the first day said new business operation commences and shall be past due and subject to the foregoing penalties 10 days thereafter. (Ord. no. 106 §17, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.150 Enforcement--Right of entry.

1. It shall be the duty of the business license clerk to enforce all of the provisions of this chapter. The chief of police shall render such assistance in the enforcement of this chapter as may from time to time be required by the business license clerk or the city council.
2. The business license clerk, in the exercise of the duties imposed upon him under this chapter, and acting through his deputies or duly authorized assistants shall examine or cause to be examined all places of business in the city to ascertain whether the provisions of this chapter have been complied with.
3. The business license clerk and each of his assistants and any police officer shall have the power and authority to enter, free of charge and at any reasonable time, any place of business required to be licensed under this chapter and demand an exhibition of its license certificate. It is unlawful for any person having any such license certificate in his possession under his control, to willfully fail to exhibit the same on demand. It shall be the duty of the business license clerk and each of his assistants to cause a criminal information to be filed against any person found to be violating any of the provisions of this chapter. (Ord. no. 106 §18, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.160 Fee a debt to city.

The amount of any license fee and penalty imposed by the provisions of this chapter shall be deemed a debt to

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the city in any court of competent jurisdiction for the amount of any delinquent fee, penalties, and attorney fees, incurred by the city in collecting the debt. (Ord. no. 106 §19, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.170 Remedies cumulative.

All remedies prescribed under this chapter shall be cumulative. The City is not precluded from exercising any of the remedies herein. (Ord. no. 106 § 19, 1984.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.04.180 Fee schedule.

Every person who engages in a business, trade, profession, calling or occupation within the city shall pay a license fee in the applicable amount set forth by resolution of the city council. (Ord. no. 106 §21, 1984.)

(Ord. 98-1, Repealed and Replaced, 08/24/2000)

Chapter 5.05

CABLE TV NON-EXCLUSIVE FRANCHISE

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Section 5.05.010 Grant of Franchise

This ordinance identifies and defines the terms and conditions by which a non-exclusive franchise may be granted to erect, construct, operate and maintain, upon, along, across, above, over and under the streets, alleys, easements, public ways and public places in Lindon City, Utah, any poles, wires, cables and other conductors and fixtures necessary for the interception, sale and distribution of television signals and other services. This ordinance shall be incorporated by reference in any agreement granting a franchise for cable services within the Lindon City.

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Section 5.05.020 Definitions

For the purposes of this ordinance, the following terms, phrases and words and their derivatives shall have the meaning specified herein. When not inconsistent with the context, the words used in the present tense include the future and words in the singular number include words in the plural number.

1. "Additional, other programming service or optional service" means information that an Operator makes available to all Subscribers generally.
2. "Affiliate" when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
3. "Basic service" means the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
4. "Cable Act" means the Title VI of the Communications Act of 1934 as currently established or as hereafter modified or amended.
5. "Cable Franchise Ordinance" shall mean this ordinance as approved or modified by the City Council of Lindon City.
6. "Cable Services" shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
7. "City" means Lindon City, Utah and such reorganized, consolidated, enlarged or reincorporated form as may exist during the term of a franchise. Any act to be performed by the City pursuant to this ordinance shall be deemed to be performed by authority of the City Council unless otherwise specifically designated or unless the City's City Council shall specifically designate other individuals or governmental agencies to perform such acts.
7. "FCC" means the Federal Communications Commission and any legally appointed or elected successors.
8. "Franchise" means an initial authorization, or renewal thereof issued by the City, whether such authorization is designated as a Franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a Cable System and includes the agreement between the City and any person or entity which incorporates and implements the privileges and covenants of this Franchise Ordinance.
9. "May" is permissive.
10. "Network or Cable System" means the facilities, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designated to provide Cable Services which includes video programming and which is provided to multiple Subscribers within the Service Area and is authorized by this Franchise Ordinance.
11. "Operator" means any person or group of persons who provides Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System, or who otherwise controls or is responsible for, through any arrangement, the management and operation of such a Cable System.
12. "Person" means any individual, partnership, association, joint stock company, trust, or governmental entity.
13. "Gross Revenues" means all revenues in whatever form, from any source, directly received by the Operator or Affiliate of the Operator that would constitute a Cable Operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Services in any

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manner that requires use of the Public Ways in the Service Area. Gross Revenues shall include, but are not limited to, basic, expanded basic and pay service revenues, revenues from installation, rental of converters, the applicable percentage of the sale of local and regional advertising time, cable Internet services to the extent this service is considered to be a Cable Service as defined by law, and any leased access revenues.

14. Gross Revenues do not include any fees or taxes which are imposed directly or indirectly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency. Gross Revenues do not include franchise fees, or revenue which cannot be collected by the Grantee and are identified as bad debt; provided, that if revenue previously representing bad debt is collected, this revenue shall be included in Gross Revenues for the collection period.
15. "Service area" shall mean all geographical areas within the incorporated portions of the City and any area hereinafter incorporated into the City.
16. "Shall" and "Must" are mandatory and not merely directory.
17. "State" means the State of Utah.
18. "Street or Public Way" shall mean such of the following which have been or hereafter will be dedicated to the public or rights-of-way not dedicated to the public which the City uses or rights-of-way dedicated for compatible uses and maintained under public authority and located within the service area: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, right-of-way and similar public ways and extensions and additions thereto, together with such other public property and areas that the City shall permit to be included within the definition of street from time to time which shall entitle the City and the Operator to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.
19. "Subscriber" shall mean any person who with the knowledge and permission of an Operator received either basic service or additional or optional service from the Operator.

Section 5.05.030 Franchise area and term

1. Franchise area. The franchise area shall include all of the service area.
2. Franchise term. A franchise may be granted for up to fifteen (15) years. The specific term of franchise together with the effective and expiration dates shall be specified in the franchise agreement.

Section 5.05.040 Other Ordinances

The Operator shall be subject to the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the

obligations of the Operator that are granted by a Franchise. Neither the City nor the Operator may unilaterally alter the material rights and obligations set forth in a Franchise, provided however that the Operator agrees that it is subject to the lawful exercise of the police power of the City.

Section 5.05.050 Authority Over Non- Cable Services

To the extent allowed by law, the City shall retain the authority to regulate and receive compensation for

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Non-Cable Services. If the Operator is allowed by law and chooses to provide Non-Cable Services, the Operator and the City will negotiate the terms and fees in accordance with applicable law.

Section 5.05.060 Level Playing Field

The City shall not authorize or permit any Person providing video programming services to enter into the City's Public Ways in any part of the Service Area on terms or conditions more favorable or less burdensome to such Person than those applied to an Operator pursuant to a Franchise, in order that one Operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

Section 5.05.070 Significance of franchise

1. Franchise non-exclusive. No franchise agreement shall be exclusive. The City reserves the right to grant a similar franchise to any person at any time in accordance with applicable law.
2. Authority granted. Execution of a franchise agreement between the City and an Operator shall grant to the Operator the right and privilege to construct, erect, operate, modify, and maintain in, upon, along, above, over and under the streets, alleys, easements (including all easements occupied by any utility operated by the City or any public easements which are occupied by utilities or other compatible uses), public ways and public places and on all poles or through such conduit as may exist, such towers, antennas, cable, electronic equipment, and other network appurtenances necessary for the operation of the network in the City; provided, however, that the exercise of such right and privilege shall not interfere with the use of such streets by the City and such others as designated by the City to use such streets and public ways, and provided that the exercise of such right and privilege shall not be in conflict with any ordinance, procedure, code or regulation of the City.
3. Consent prior to transfer of franchise. The franchise described herein is a privilege to be held for the benefit of the public. The franchise shall not be sold, transferred, leased, assigned or disposed of, including, but not limited to, by force or voluntary sale, merger, consolidation, receivership, foreclosure or other means without the express written consent of the City Council of the City; provided, however, that denial of such consent shall not be unreasonable, arbitrary or capricious. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Operator in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the City shall notify the Operator in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the City has not taken action on the Operator's request for transfer within one hundred twenty (120) days after receiving such request, consent by the City shall be deemed given. In no event shall a transfer of ownership be effective without a successor in interest becoming a signatory to the franchise agreement by providing the City written acceptance of all provisions of this Franchise ordinance in a form acceptable to the City. Failure to provide acceptable written acceptance shall be cause for revocation of the franchise.
4. Mortgage or pledge of network. Nothing in this ordinance shall be deemed to prohibit the mortgage or the pledge of any franchise granted pursuant to this Ordinance, or of the Network or any part thereof or a leasing by the Operator from another person of said Network or part thereof for financing purposes. However, any such mortgage, pledge or lease shall be subject to the rights of the City under this Ordinance and other applicable laws.

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5. No right of property. Anything contained herein to the contrary notwithstanding, the award of any franchise shall not impart to any Operator any right of ownership of streets or City-owned property or ownership of easement.
6. Franchise binding. Upon execution of a franchise agreement, this ordinance shall be binding upon the Operator, its successors, lessees or assignees and the City. This ordinance shall be binding upon any entity which is controlled by, or under common control with, the Operator.
7. Compliance with laws, rules and regulations. The Operator, at its expense, shall comply with all laws, orders and regulations of federal, state and municipal authorities and with any direction of any public officer or officers pursuant to law who shall legally impose any regulations, orders or duties upon the Operator.

Section 5.05.080 Operation of the franchise

1. Operator rules and regulations. The Operator may adopt rules, regulations, terms, and conditions governing the conduct of its business as are reasonable necessary to enable the Operator to exercise its rights and perform its obligations under the franchise. Any such rules, regulations, terms and conditions shall be in compliance with this ordinance and with applicable state and federal laws, rules and regulations. Upon request by the City, copies of all rules, regulations, terms and conditions including subscriber agreements together with any amendments, additions, or deletions thereto, shall be kept currently on file with the city official designated to enforce provisions of the Franchise ordinance. Subscriber agreements shall give notice of the office or manager of the Operator to whom complaints shall be directed.
2. Transmission signals. The Operator shall be responsible for insuring that the Cable System is designed, installed and operated in a manner that is in compliance with the technical and performance standards of the FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time. The Operator shall maintain tests and records in accordance with these rules and shall provide access to such documentation to the City upon reasonable request; however, the City has no authority, pursuant to federal law, to enforce compliance with such standards.
3. Signal disruption. Excluding conditions beyond its control, the Operator shall respond to subscriber outage or poor signal reception as expediently as reasonably possible after receipt of any subscriber complaint, and in any event within twenty-four (24) hours after the disruption becomes known. Service and technical employees of the Operator shall be clearly identified as employees of the Operator. Repairs to the network shall be made with as little interruption of service as possible. When possible, planned interruptions shall be scheduled at times of minimum subscriber viewing.
4. Complaint file—and reports. The Operator shall keep an accurate and comprehensive file of all complaints regarding the cable communications system and the Operator's actions in response to those complaints. The Operator shall also maintain a log and summary of all service interruptions. The files shall be available for inspection by the City during normal business hours provided such inspection does not conflict with the privacy provisions of the Cable Act and this Ordinance.
5. Notification of access to property. The Operator shall provide reasonable notice to subscribers and property owners before it enters upon or crosses any private property in order to access a

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public easement or right of way. For any type of construction, reasonable notice shall include personal contact with the owner or resident (at least 18 years of age) at least three (3) days prior to the access. If personal contact cannot be made, reasonable notice shall include mailing or posting the property with a description of the work to be done, the purpose of the work, the date and time of the work, and the authority under which the Operator may have access. All notices whether written or in person shall include a telephone number that individuals may call to ask questions or obtain additional information.

6. Restoration by Operator. The Operator shall repair, refill, replace and otherwise restore at its own expense any private or public property disrupted or managed as a result of excavation, construction, maintenance, or repair that may be caused by it and shall leave all ways and places in as reasonable good condition as that prevailing prior to the Operator's activities without affecting any electrical or telephone cable, wire, or attachments and poles.
7. Restoration by City—Reimbursement of costs. In the event of a failure by the Operator to complete within a reasonable period of time any restoration work required by this ordinance, or any other work required by City ordinance, within the time established and to the satisfaction of the City, the City shall give the Operator, by registered mail, five (5) working days' notice to correct the failure. If the failure is not corrected within the five (5) day period, the City may cause such work to be done and the Operator shall reimburse the City the costs thereof within thirty (30) days after receipt of an itemized list of such costs.
8. Notification of change in service. The Operator shall provide reasonable notice to subscribers and the City of any changes in service including but not limited to changes in available channels, tiers of service, and costs of services. Reasonable notice shall include printed notice to all subscribers and a letter to the City which details the change in service distributed at least thirty (30) days prior to the effective date of the change.
9. Rates. The Operator shall establish rates for its services and shall apply those rates uniformly to all subscribers in the service area. The Operator may conduct promotional campaigns in which its rates are discounted or waived, or offer bulk discounts for multiple dwelling units, hotels, motels, and similar institutions. The City may regulate rates to the extent now or hereafter permitted by applicable law.
10. Compliance, Books & Records. The Operator shall allow the City, upon thirty (30) days written notice, to review such of its books and records at the Operator's business office, during normal business hours and on a non-disruptive basis, as is reasonably necessary to ensure compliance with the terms of this Ordinance and/or the Franchise. Such notice shall specifically reference the Section of the Ordinance and/or Franchise which is under review, so that the Operator may organize the necessary books and records for easy access by the City. Alternatively, if the books and records are not easily accessible at the local office of the Operator, the Operator may, at its sole option, choose to pay the reasonable travel costs of the City's representative to view the books and records at the appropriate location. The Operator shall not be required to maintain any books and records for compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Operator shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books or records of any affiliate which is not providing Cable Service in the Service Area. The City agrees to treat any information disclosed by the

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Operator as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Operator shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

11. Availability of reports to the public. Such reports as required under this ordinance must be available to the public in the office of the Operator during normal business hours.
12. Legal proceedings. Operator shall notify the City in writing of any actions, suits, proceedings, or investigations at law or in equity before or by a Court, public board or body, pending or threatened against or affecting Operator, wherein a decision, finding or ruling would have a materially adverse effect on the Operator's ability to construct or operate the network.

Section 5.05.090 Customer service

1. The Operator will maintain a local, toll-free or collect call telephone access line which will be available to Subscribers twenty-four hours a day, seven days a week.
 - a. Trained representatives of the Operator will be available to respond to Subscriber telephone inquiries during Normal Business Hours.
 - b. After Normal Business Hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after Normal Business Hours must be responded to by a trained representative of the Operator on the next business day.
2. Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, will not exceed thirty seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed thirty seconds. These standards will be met no less than ninety percent of the time under Normal Operating Conditions, as measured by the Operator on a quarterly basis.
3. The Operator shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above unless a historical record of complaints indicates a clear failure to comply with the standards.
4. Under Normal Operating Conditions, the Subscriber will receive a busy signal less than three percent of the time.
5. Customer service center and bill payment locations will be open during Normal Business Hours and will be conveniently located.
6. Notice to subscribers. At the time of entering into an agreement to provide service, once a year thereafter and at any time upon request, the Operator shall provide each subscriber with written information concerning:
 - a. The procedures for making inquiries or complaints, including the name, address, and local telephone number of the employee or agent of the Operator to whom inquiries or complaints are to be directed, if applicable.
 - b. Credit for interrupted service, policies and practices.
 - c. The City official designated to be responsible for regulating the franchise, including the name and telephone number of the official.
 - d. The Operator's business hours, legal holidays, telephone number, and procedures for responding to inquiries after normal business hours.
 - e. Products and services offered.

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- f. Prices and options for services and conditions of subscription to programming and other services.
 - g. Installation and service maintenance policies.
 - h. Instructions on how to use the service.
 - i. Channel positions of programming carried on the Cable System.
7. The costs associated with providing the annual notice shall be subject to the cost limitations of the 1984 Cable Act, or other applicable law.

Section 5.05.100 Extension of network and programming

1. Extension throughout service area. The Operator shall design and construct the cable communications system in such a manner as to pass by every single-family dwelling unit, multifamily dwelling unit, school, and public agency within the service area so long as it is financially and technically feasible. Service shall be extended to all properties where a minimum of ten (10) living units are occupied within a quarter linear mile of cable system. New construction shall be in accordance with an annual schedule accepted and approved by the City.
2. Non-discriminating service. Construction of the network shall be performed by the Operator in such a manner as to ensure that no group of potential subscribers is denied access to services because of the income level of the group or because of the relative cost of extending services into the particular area in which the group resides; provided however, that such extension may be denied based upon the density requirements stated above.
3. Service to public facilities. Upon request, the Operator shall provide one basic service outlet to all City buildings, fire houses, police stations, public or private schools, and libraries which are within the City and are passed by the Cable System. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The City shall take reasonable precautions to prevent any use of the Cable system in any manner that results in the inappropriate use thereof or any loss or damage to the Cable System. The City shall hold the Operator harmless from any and all liability or claims arising out of the provision and use of Cable Service required by this subsection. The Operator shall not be required to provide an outlet to such buildings where a non-standard installation is required, unless the City or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. An additional service outlet shall also be provided in each room or area where television reception is desired in any of the above-mentioned building, provided that the Operator shall be reimbursed its actual cost for labor and materials required in the installation of such service outlets which are additional to the main outlet, but no service or other charge will be made after installation.
4. Educational and governmental channels. The City shall have exclusive right to the use of dedicated channels for educational and governmental purposes, (the City Access Channels”). The Operator shall make available one channel to be used for educational and governmental cablecast programming. When first-run programming on the first City Access Channel occupies fifty percent of the hours between 11:00 a.m. and 11:00 p.m., for any twelve consecutive weeks, the City may request the use of one additional channel for the same purpose. The additional channel must maintain programming twenty- five percent (25%) of the hours between 11:00 a.m. and 11:00 p.m. for twelve consecutive weeks. If this level of programming is not maintained for

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any channel, that channel will return to the Operator for its use. The Operator also reserves the right to program the designated City Access Channel (2) during the hours not used by the City or other governmental entities. The channel(s) shall be shared with other municipalities receiving programming from the common headend receive site location. The City shall agree to indemnify, save and hold harmless the Operator from and against any liability resulting from the use of the aforementioned City Access Channel(s) by the City. The City may require as part of a Franchise authorization that the Operator prospectively provide a "Capital Contribution," paid annually during the remaining term of the Franchise, to be used specifically for educational and governmental access. The City shall give the Operator ninety (90) days' notice of such a requirement. The amount of the Capital Contribution payable by the Operator to the City shall be designated in the Franchise. The City agrees that all amounts due to the City by the Operator as the Capital Contribution may be added to the price of cable services, prorated monthly, and collected from the Operator's Subscribers as "external costs," as such term is used in 47 C.F.R. 76.922. In addition, all amounts paid as the Capital Contribution may be separately stated on Subscriber's bills as permitted in 47 C.F.R. 76.985. The Capital Contribution will be payable by Operator to the City after;

- a. The approval of the City, if required to the inclusion of the Capital Contribution on Subscribers' bills including any required approval pursuant to 47 C.F.R. 76.933;
- a. Notice to Operator's Subscribers of the inclusion; and
- b. The collection of the Capital Contribution by the Operator from its subscribers. The "Capital Contributions" are not to be considered in the calculation of Franchise Fees pursuant to this Ordinance.

Section 5.05.110 Occupancy of street and public easements

1. Existing facilities. The Operator shall utilize existing poles, conduits, and other facilities whenever feasible and shall not construct or install any new, different, or additional poles, conduits, or other facilities whether on public or private property until the written approval of the City is obtained.
2. Underground installation. The facilities of the Operator shall be installed underground to the fullest extent possible. In areas where either telephone or electric utility facilities are installed aerially at the time of construction of the Network the Operator may install its facilities aerially with the understanding that at such time as both telephone and electrical facilities are relocated underground, the Operator shall likewise place its facilities underground. Previously installed aerial cable shall be relocated with other utilities at the Operator's cost when the other utilities convert from aerial to underground construction. Any streets or sidewalks damaged or disturbed in the construction or operation of Operator's poles, cable and other installations shall be promptly repaired and restored by the Operator at its expense and to the reasonable satisfaction of the City.
3. Location and condition. The Operator shall locate all transmission lines, equipment, and structures so as to cause minimum interference with the rights and reasonable convenience of property owners. The Operator shall install and maintain its lines, equipment and structures in accordance with the requirements of the National Electrical Safety Code promulgated by the National Bureau of Standards and the National Electrical Code of the National Board of Fire

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Underwriters.

4. Excavation permits. The Operator shall not open or disturb the surface of any street, sidewalk, driveway, or public place for any purpose without first obtaining a permit of general applicability to do so from the City. In addition, where existing conduit or backyard easements are not available for underground installation, the Operator shall design the network in such a manner as to permit construction behind and parallel with street curbing, in parking strips, or under the sidewalks where available, with a minimum of street excavation.
5. Easements. Prior to the installation of any of Operator's facilities in a parking strip or public utility easements by Operator, Operator shall provide advance written notification to any property owners on whose property the easement is located. Such advance notification shall be delivered at least two (2) days prior to installation of such facilities. Such notification shall set forth the date during which Operator may be installing facilities in the public utility easement, and shall provide a telephone number where property owners may call Operator pertaining to any questions or complaints concerning use of the public utility easement by Operator. Upon commencement of installation of facilities in a public utility easement, the Operator shall proceed diligently to complete that installation. No trenches or otherwise uncovered areas shall be left open longer than necessary to complete the installation.
6. Changes required by public improvements. The Operator shall at its expense, temporarily disconnect, relocate or remove from the street or other public place any property of the Operator when required by the City by reason of traffic conditions, public safety, street vacation, street construction, street repair, installation or repair of sewer drains, water pipes, or any other type of structure or improvement by public agencies. If the City elects to change the grade of any street or public way, or to vacate or otherwise alter the same, the Operator shall relocate its poles and other installations at Operator's expense.
7. Protection of facilities. Nothing contained in this section shall relieve the City of any person, company or corporation from liability arising out of the failure to exercise reasonable care to avoid damaging the Operator's facilities while performing work connected with grading, regrading, or changing the line of any street or public place or with the construction or reconstruction of any sewer or water system.
8. Requests for removal or change. The Operator shall, at the request of any person holding a building or moving permit, temporarily raise or lower its wires to permit the building or moving to proceed.
The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the action, and the Operator shall have the authority to require such payment in advance. The Operator shall be given no less than five (5) days written notice of any move contemplated to arrange for temporary wire changes.
9. Authority to trim trees. After receiving written consent from the City the Operator shall have the authority to trim trees, upon and overhanging streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming into contact with the wires and cables of the Operator. Provided, however, that in the event of an emergency, no consent shall be necessary to remedy the emergency. The same requirements for notice that are specified for access to private property shall be required prior to trimming trees.
10. Restoration or reimbursements. In the event of disturbance of any street or private property by the

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Operator, the Operator shall, at its own expense and in a manner approved by the city or the owner, replace and restore such street or private property in as reasonable good a condition as before the work was done. All restoration work shall be guaranteed by the Operator for a period of one year to be free from material defects. In the event there is any problem with restoration work, the Operator shall, upon written notice from the City, repair the defect within fifteen (15) days (weather permitting) of receiving notice unless otherwise agreed upon by the City. In the event Operator fails to perform such replacement or restoration, the City shall have the right to do so at the sole expense of Operator.

11. Emergency removal of network. If in the case of fire or disaster in the City it shall become necessary in the reasonable judgement of the City to cut or move any of the wires, cables, amplifiers or other such appurtenances to the Network of the Operator, such cutting or moving may be completed after a reasonable attempt to contact the Operator has been made. Any repairs rendered necessary thereby shall be made by the Operator at its sole expense.
12. Alternate routing of network. In the event continued use of a street or other easement or right-of-way is denied to the Operator by the City, the Operator shall provide service to the effected subscribers over alternate routes within a reasonable period of time agreed upon by the City so long as it is financially and technically feasible to do so.

Section 5.05.120 Rights reserved to the City

1. Operator agrees to the City's right. The City reserves such rights and powers, including the lawful exercise of police power, which under applicable Federal, State or City law or regulations, the City must reserve and maintain. The Operator agrees to comply with all rules and regulations now in effect or hereafter adopted by the City, the Federal Communications Commission, the State of Utah and the United States Government.

Section 5.05.130 Payments

1. Franchise fee. The Operator shall pay to the City on a quarterly basis, on or before April 30, July 30, October 31, and January 31 of each year, a percent of the total Gross Revenues (as defined in this Ordinance) of the Operator during the immediate past quarter together with a financial statement listing the gross receipts and revenues of the Operator during that quarter. The percent of total Gross Revenues shall equal the percent in the Franchise and shall be consistent with applicable law. Notwithstanding anything contained herein to the contrary and in the event that the City is authorized by federal law to either increase or decrease the maximum permissible franchise fee amount, then the City shall have the right to change the franchise fee amount, without the consent of the Operator, provided that the Operator has received at least ninety (90) days prior written notice from the City of such change.
2. Verification. All books and records showing the Gross Revenues of the Operator shall be open at all reasonable times to the inspection of the City or agent appointed by the City in order to insure compliance with the terms of this Ordinance and/or the Franchise.
3. Additional compensation. In any payment amount is not made on or before the dates specified, the Operator shall pay interest on the amount due at the prime rate as listed in the Wall Street Journal on the date that the payment was due, compounded daily, calculated from the date the payment was originally due until the date the City receives the payment. The acceptance of any payment by

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the City may not be construed as a release or as an accord and satisfaction of any claim the City may have for further and additional sums payable as a franchise fee under this ordinance or for the performance of any other obligation of the Operator.

4. Pass-through fees. Any Operator "Pass-through" or itemization of franchise fee costs on subscribers' bills shall be in accordance with applicable law.

Section 5.05.140 Subscriber privacy

An Operator shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, state, and local law.

Section 5.05.150 Acceptance of franchise

1. Effective date of franchise. A franchise, together with the rights, privileges and authority granted thereby, shall take effect and being forced immediately upon adoption of the franchise agreement by the City Council of the City, and compliance by the Operator with the following:
 - a. The Operator shall properly execute the franchise agreement.
 - b. The Operator shall establish the surety bond as required by this section if such bond is required.
 - c. The Operator shall file with the City a certificate of insurance as required by this section.
 - d. The Operator shall advise the City in writing of its local office and its address for mail and official notifications from the City.
2. Surety bond. The City may upon execution of the franchise agreement, require the Operator to provide an irrevocable, non-canceling surety bond to the sole benefit of the City in the amount of ten thousand dollars (\$10,000.00). The surety bond shall be in a form approved by the City and shall be maintained throughout the term of the franchise. The surety company shall be authorized to transact surety business in the State of Utah. Multiple and partial drawings on the bond shall be permitted. The surety bond shall be established as security to the City for the faithful performance of the Operator of all the provisions of this Ordinance and compliance with all orders, permits, and directions of any agency of the City having jurisdiction over the Operator's acts or defaults under the franchise or any other provision of the City code. The bond shall also act as security to the City for the payment by the Operator of any claims, liens, and taxes due to the City that arise by reason of the construction, operation, or maintenance of the Network. No demands shall be made on the surety bond without providing the Operator opportunity to correct the default. Within thirty (30) days of notice that any amount has been demanded from the surety bond, the Operator shall restore the bond to the original amount.
3. Public liability insurance. Upon execution of the franchise agreement, the Operator shall provide proof of general comprehensive liability insurance coverage protecting the City against liability for loss or damage for personal injury, death, or property damage, occasioned by the operations of Operator under this ordinance in the amount of : (a) \$500,000.00 for bodily injury or death to any one person, within the limits, however, of \$1,000,000.00 for bodily injury or death resulting from any one accident, (b) \$500,000.00 for property damage resulting from any one accident, and (c) worker's compensation insurance coverage as may be required by the worker's compensation insurance and safety laws of the State of Utah and amendments thereto. The insurance policies referred to above shall contain an endorsement stating that the policies are extended to cover the liability assumed by the Operator under the terms of this ordinance and shall contain the following endorsements:

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It is hereby understood and agreed that this policy may not be canceled nor the amount of coverage thereof reduced until thirty (30) days after receipt by Lindon City by registered mail of written notice of such intent to cancel or reduce the coverage.

4. Evidence of insurance filed with city. Certificates of insurance for all insurance policies shall be filed and maintained with the City during the term of the franchise or any renewal thereof. Certified copies of the insurance policies shall be provided to the City upon reasonable request.
5. Inducements—Not offered. The Operator, by acceptance of the franchise agreement, acknowledges that it has not been induced to accept the franchise by any understanding or promise or other statement, whether verbal or written, by or on behalf of the City concerning any term or condition of the franchise.
6. Operator accepts terms of the franchise. The Operator, by acceptance of the franchise agreement, acknowledges that it has thoroughly examined, is familiar with, and agrees to be bound by the terms of conditions of this ordinance.

Section 5.05.160 Termination of franchise

1. Termination of franchise. The Operator may, at its option, terminate the franchise and surrender all rights and privileges associated with the franchise upon filing with the City a written notification of its intent to terminate the franchise and surrender all rights thereunder. Any such termination shall not become effective for a period of ninety (90) days from the date on which the Operator files notifications with the City. Operator shall remain liable for any breach of the franchise notwithstanding said termination.
2. Termination by city. A franchise may be terminated by the City for any material violation of the franchise but only after a hearing before the City Council. Prior to setting a termination hearing, the Operator shall be given at least sixty (60) days' notice by certified mail that the Operator has violated a material provision of the franchise and that the City Council will consider setting a termination hearing. The notice shall include a description of the violation which is grounds for conducting a termination hearing. In the event that the Operator has not cured the matter which constitutes a material violation of the franchise within the sixty (60) days' notice period, or has not commenced, in the opinion of the City, reasonable and diligent efforts to cure the matter, the City Council may set a public hearing to determine whether or not the franchise should be terminated. The City shall provide thirty (30) days written notice to the Operator of the date and time of the termination hearing. The hearing shall be a full public proceeding affording due process. The City Council shall consider the evidence and determine whether or not the franchise should be terminated. The Operator may appeal such determination to an appropriate court, which shall have the power to review the decision of the City de novo. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the City.
3. Ownership of network. Upon termination of a franchise, the Operator shall retain ownership of the network and shall be entitled at its option and expense to transfer or abandon the network. Any transfer of franchise and any transfer of ownership of the network shall meet the conditions of section 4, paragraph D, the Cable Act, and other applicable law. Should Operator elect to remove the network, and/or any part thereof, upon termination of a franchise, Operator shall refill, at its own

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expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to Operator's removal of the network, without affecting any electrical or telephone cables, wires, or attachments, and poles after removal. The liability insurance and indemnity as provided herein shall continue in full force and effect during the period of removal and until substantial compliance by Operator with the terms and conditions of this subsection. In the event of a failure by Operator to complete any work required by this subsection or any other work required by this ordinance, the City may cause such work to be done and Operator shall reimburse the City the reasonable costs thereof within ninety (90) days after receipt of an itemized list of such costs.

Section 5.05.170 Liability and indemnification

1. Indemnification of City in franchise operation. The Operator shall fully indemnify, defend and hold harmless the City, its officers, boards, commissions, elected officials, agents, attorneys, representative, servants and employees against any and all costs, damages, expenses, claims, suits, actions, liabilities, and judgments for damages, including but not limited to, expenses for legal fees, whether suit be brought or not, whether meritorious or frivolous, and disbursements and liabilities incurred by the City and arising out of, directly or indirectly, or related to, the operation of the Operator's cable television system including but not by way of limitation in connection with the following:
 - a. Damage to persons or property, in any way arising out of or through the acts or omissions of the Operator, its servants, officials, agents, attorneys, representatives, or employees or to which the Operator's negligence or that of its servants, agents, officials, attorneys, representative, or employees shall in any way contribute;
 - b. Request for relief in connection with any programming carried on the operator's cable system arising out of any claim for invasion of the right of privacy; for defamation of any person, firm or corporation; for the infringement or violation of any copyright, trademark, trade name, service mark or patent; or of any other right of any person, firm, or corporation;
 - c. Any and all claims arising out of the Operator's failure to comply with the provisions of this Franchise ordinance or any Federal, State, or local law, ordinance, or regulation applicable to the Operator of the Network.
2. Defense of the City. If suit for which the Operator has agreed to indemnify the city as set forth in the preceding subsection is brought or threatened against the City, either independently or jointly with the operator, or with any other person or municipality; the Operator, upon timely written notice given by the City, shall defend the City at the cost of the Operator. No right of indemnification shall be effective until such notice and a copy of the suit or other action for which indemnification is sought is provided to the Operator. If final judgment is obtained against the City either independently or jointly with the Operator or any of the defendants, the Operator shall indemnify the City and pay such judgment with all costs and satisfy and discharge the same as against the City in accordance with this section.
3. Cooperation in defense of City. In the event that the City elects to invoke its right of indemnification as set forth in this Ordinance, the City will cooperate with the reasonable requests of Operator in defending the City against any and all claims for which indemnification is sought. The Operator shall be subrogated to all rights of the City and, in defending the City, shall be entitled to assert any defense to any third-party claim which the City would be entitled to assert. The City may, in its sole discretion, elect to conduct its own defense at its own expense by giving

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the Operator written notice of the City's intent to provide its own defense and, upon such election, the Operator shall have no further duty to indemnify the City for any costs or liabilities with respect to such claims.

4. Governmental immunity. The City is in no manner or means waiving any governmental immunity it may enjoy or any immunity for its agents, officials, servants, attorneys, representatives, and/or employees.
5. Notification of settlements. The Operator shall make no settlement in any matter identified above without the City's written consent which shall not be unreasonably withheld. Failure to inform the City of settlement shall constitute a breach of this Franchise ordinance and the city may seek any redress available to it against the Operator whether set forth in this Franchise ordinance or under any other municipal, state or federal laws, or common law. In the event that the City fails to accept any bonafide settlement offer which the Operator is willing to accept and pay as full settlement of any claim or claims for which it is required to indemnify the City, the Operator's indemnification liability to the City with respect to said claim or claims under this Ordinance shall be limited to the terms of the settlement offer and the Operator shall be excused from any further indemnification to, or incurring any additional costs on behalf of, the City with respect to said claim or claims.
6. Additional rights. All rights of the City pursuant to indemnification, insurance, surety bond, or performance bonds, as provided for by this Franchise ordinance, are in addition to all other rights the City may have under this Franchise Ordinance or any other Ordinance, rule, regulation, or law.
7. 7. Exercise of rights. The City's or the Operator's exercise of or failure to exercise any rights pursuant to any section of this Franchise Ordinance shall not affect in any way the right of the City or the Operator subsequently to exercise any such rights or any other right of the City or the Operator under this Franchise Ordinance or any other ordinance, rule, regulation, or law.
8. Reasonable indemnification. It is the purpose of this section to provide reasonable indemnification to the City under the terms and conditions expressed and, in the event of a dispute, this section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of the City by the Operator in accordance with its terms.
9. Validity of section. The provisions of this section shall not be dependent or conditioned upon the validity of this Franchise Ordinance or the validity of any of the procedures or agreements involved in the renewal of the franchise, but shall be and remain a binding right and obligation of the City and the Operator even if part or all of this Franchise Ordinance, or the grant or renewal of the franchise, is declared null and void in a legal or administrative proceeding. It is expressly the intent of the Operator and the City that the provisions of this section survive any such declaration and shall be a binding obligation of and inure to the benefit of the Operator and the City and their respective successors and assigns (if any) with respect to any claims arising out of or related to, directly or indirectly, the operation of the cable system.
10. An Operator shall not be held in default under, or in noncompliance with, the provisions of the Ordinance and/or Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of Operator to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Operator's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
11. It is not the City's intention to subject an Operator to penalties, fines, forfeitures or revocation of

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a Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Operator which outweigh the benefit to be derived by the City and/or Subscribers.

12. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held invalid by the FCC or unconstitutional by any court or competent jurisdiction, such section, subsection, sentence, clause, phrase, or word shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof or of this Ordinance. The Operator shall not be bound by the provisions of any ordinances which are inconsistent with the terms of this Franchise Ordinance.

(Ord. 2002-13, Repealed and Replaced, 06/04/2002; Prev. Ord. 14-94, 06/07/1994)

Chapter 5.06

TELECOMMUNICATIONS RIGHTS- OF-WAY ORDINANCE

Sections:

5.06.010	Declaration of Finding and Intent.
5.06.020	Scope of Ordinance.
5.06.030	Excluded Activity.
5.06.040	Provisions Applicable to Excluded Providers.
5.06.050	Definitions.
5.06.060	Non-Exclusive Franchise.
5.06.070	Every Provider Must Obtain.
5.06.080	Nature of Grant.
5.06.090	Current Providers.
5.06.100	Nature of Franchise.
5.06.110	Regulatory Approval Needed.
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5.06.510	Exercise of Police Power.
5.06.520	Construction.
5.06.530	Ordinance Applicability.
5.06.540	Other Applicable Ordinances.
5.06.550	City Failure to Enforce.
5.06.560	Construed According to Utah Law.

Section 5.06.010 Declaration of Finding and Intent.

1. Findings Regarding Rights-of-Way. The City of Lindon finds that the Rights-of-Way within the City:
 - a. are critical to the travel and transport of persons and property in the business and social life of the City;
 - b. are intended for public uses and must be managed and controlled consistent with that intent;
 - c. can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
 - d. are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Rights- of-Way.
2. Finding Regarding Compensation. The City finds that the City should receive fair and reasonable compensation for use of the Rights- of-Way.
3. Finding Regarding Local Concern. The City finds that while Telecommunications Systems are in part an extension of interstate commerce, their operations also involve Rights-of-Way, municipal franchising, and vital business and community service, which are of local concern.
4. Finding regarding Promotion of Telecommunications Services. The City finds that it is in the best interests of its taxpayers and citizens to promote the development of Telecommunications Services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.
5. Findings Regarding Franchise Standards. The City finds that it is in the interests of the public to Franchise and to establish standards for franchising Providers in a manner that:
 - a. fairly and reasonably compensates the City on a competitively neutral and non- discriminatory

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- basis as provided herein;
- b. encourages competition by establishing terms and conditions under which Providers may use the Rights-of-Way to serve the public;
 - c. fully protects the public interests and the City from any harm that may flow from such commercial use of Rights-of-Way;
 - d. protects the police powers and Rights-of- Way management authority of the City, in a manner consistent with federal and state law;
 - e. otherwise protects the public interests in the development and use of the City infrastructure;
 - f. protects the public's investment in improvements in the Rights-of-Way; and
 - g. ensures that no barriers to entry of Telecommunications Providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting Telecommunication Services, within the meaning of the Telecommunications Act of 1996 ("Act") [P.L. No. 104-104].
6. Power to Manage Rights-of-Way. The City adopts this Telecommunications Ordinance pursuant to its power to manage the Rights-of- Way, pursuant to common law, the Utah Constitution and statutory authority, and receive fair and reasonable, compensation for the use of Rights-of-Way by Providers as expressly set forth by Section 253 of the Act.

Section 5.06.020 Scope of Ordinance.

This Ordinance shall provide the basic local scheme for Providers of Telecommunications Services and Systems that require the use of the Rights-of-Way, including Providers of both the System and Service, those Providers of the System only, and those Providers who do not build the System but who only provide Services. This Ordinance shall apply to all future Providers and to all Providers in the City prior to the effective date of this Ordinance, whether operating with or without a Franchise as set forth in Section 5.06.530.

Section 5.06.030 Excluded Activity.

1. Cable TV. This Ordinance shall not apply to cable television operators otherwise regulated by Chapter 5.05 (the "Cable Television Ordinance").
2. Wireless Services. This Ordinance shall not apply to Personal Wireless Service Facilities.

Section 5.06.040 Provisions Applicable to Excluded Providers.

Providers excused by other law that prohibits the City from requiring a Franchise shall not be required to obtain a Franchise, but all of the requirements imposed by this Ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

Section 5.06.050 Definitions.

"Gross Revenue" includes all revenues of a Provider that may be included as gross revenue within the meaning of Chapter 26, Title 11 Utah Code Annotated, 1953, as amended. In the case of any provider not covered within the ambit of Chapter 26, Title 11 Utah Code, the definition of "Gross Revenue" shall be that set forth in the Franchise Agreement. (Ord. 2000-12, Amended, 12/18/2000)

Section 5.06.060 Non – Exclusive Franchise.

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

Section 5.06.070 Every Provider Must Obtain.

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

Section 5.06.080 Nature of Grant.

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

Section 5.06.090 Current Providers. Except to the extent exempted by federal or state law, any Provider acting without a Franchise on the effective date of this Ordinance shall request issuance of a Franchise from the City within 90 days of the effective date of this Ordinance. If such request is made, the Provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a Franchise is not granted, the Provider shall comply with the provisions of Section 5.06.450.

Section 5.06.100 Nature of Franchise.

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

Section 5.06.110 Regulatory Approval Needed.

Before offering or providing any Services pursuant to the Franchise, a Provider shall obtain any and all

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

Section 5.06.120 Term.

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

Section 5.06.130 Compensation.

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

1. Application Fee. At the time of application, a Provider shall pay, in addition to all other fees, permits or charges, a \$500 non-refundable application fee to the City.
2. Franchise Fees. The Franchise fee, if any, shall be set forth in the Franchise Agreement, or as amended by ordinance or resolution. The obligation to pay a Franchise fee shall commence on the Completion Date. The franchise fee is offset by any annual or up-front fees referred to in the franchise agreement.
3. Excavation Permits. The Provider shall also pay fees required for an excavation permit as provided in Chapters 12.16 and 17.30. (Ord. 2000-12, Amended, 12/18/2000)

Section 5.06.140 Failure to pay fees or obtain permits.

Providers who fail to obtain the required permits or franchise, or to pay the required fees under this Ordinance shall be subject to a penalty of up to \$5000 in addition to any other fees or penalties due Lindon City as provided for under this ordinance.

Section 5.06.150 Timing.

Unless otherwise agreed to in the Franchise Agreement, all Franchise Fees shall be paid on a monthly basis within thirty (30) days of the close of each calendar month. (Ord. 2000-12, Amended, 12/18/2000)

Section 5.06.160 Fee Statement and Certification.

Each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

Section 5.06.170 Future Costs.

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

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(Ord. 2000-12, Amended, 12/18/2000)

Section 5.06.180 Taxes and Assessments.

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

Section 5.06.190 Interest on Late Payments.

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

Section 5.06.200 No Accord and Satisfaction.

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

Section 5.06.210 Not in Lieu of Other Taxes or Fees.

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

Section 5.06.220 Continuing Obligation and Holdover.

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

Section 5.06.230 Costs of Publication.

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

Section 5.06.240 Franchise Application.

To obtain a Franchise to construct, own, maintain or provide Services through any System within the City, to obtain a renewal of a Franchise granted pursuant to this Ordinance, or to obtain the City approval of a transfer of a Franchise, as provided in Subsection 5.06.360(2), granted pursuant to this Ordinance, an

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Application must be filed with City on the form attached to this Ordinance as Exhibit A, which is hereby incorporated by reference. The Application form may be changed by the City Administrator so long as such changes request information that is consistent with this Ordinance. Such Application form, as amended, is incorporated by reference.

Section 5.06.250 Application Criteria.

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

1. Obtaining an order from the PSC granting a Certificate of Convenience and Necessity.
2. Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance and use of the Rights- of-Way during the Franchise term proposed by the Provider;
3. Provider's agreement to comply with the requirements of Sections 270-350 of this Ordinance
4. Prior to making any attachments to poles, the willingness to enter into a pole attachment agreement with the city. (Ord. 2000-12, Amended, 12/18/2000)

Section 5.06.260 Franchise Determination.

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

Section 5.06.270 General Requirement.

No Provider shall receive a Franchise unless it agrees to comply with each of the terms set forth in Sections 270 through 350 governing construction and technical requirements for its System, in addition to any other reasonable requirements or procedures specified by the City or the Franchise, including requirements regarding locating and sharing in the cost of locating portions of the System with other Systems or with City utilities. A Provider shall obtain an excavation permit, pursuant to the excavation ordinance, before commencing any work in the Rights-of-Way.

Section 5.06.280 Quality.

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

Section 5.06.290 Licenses and Permits.

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

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etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

Section 5.06.300 Relocation of the System.

1. New Grades or Lines. If the grades or lines of any Rights-of-Way are changed at any time in a manner affecting the System, then a Provider shall comply with the requirements of the excavation ordinance.
2. The City Authority to Move System in case of an Emergency. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Rights-of-Way of the City, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this Section. Notice shall be given as provided in Section 5.06.500.
3. A Provider Required to Temporarily Move System for Third Party. A Provider shall, upon prior reasonable written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its System to permit the moving of said structure. A Provider may impose a reasonable charge on any Person other than the City for any such movement of its Systems.
4. Rights-of-Way Change - Obligation to Move System. When the City is changing a Rights- of-Way and makes a written request, a Provider is required to move or remove its System from the Rights-of-Way, without cost to the City, to the extent provided in the excavation ordinance. This obligation does not apply to Systems originally located on private property pursuant to a private easement, which property was later incorporated into the Rights-of-Way, if that private easement grants a superior vested right. This obligation exists whether or not the Provider has obtained an excavation permit.
5. Protect Structures. In connection with the construction, maintenance, repair, upgrade or removal of the System, a Provider shall, at its own cost and expense, protect any and all existing structures belonging to the City. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the Rights-of-Way of the City required because of the presence of the System. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Rights-of-Way of the City involved in the construction, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider pursuant to the Franchise.

Section 5.06.310 No Obstruction.

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

Section 5.06.320 Safety Precautions.

A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent

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

Section 5.06.330 Repair.

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

Section 5.06.340 System Maintenance. A Provider shall:

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

Section 5.06.350 Trimming of Trees.

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

Section 5.06.360 Notification of Sale.

1. PSC Approval. When a Provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the Provider or its successor entity shall promptly notify the City of the nature of the transaction. The notification shall include either:
 - a. the successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original Provider's Franchise Agreement, or
 - b. the successor entity's Application in compliance with Sections 240-260 of this Ordinance.
2. Transfer of Franchise. Upon receipt of a request to transfer a Franchise, the City designee, as provided in Article 8.1 of the Franchise Agreement, may send notice approving the transfer of the Franchise to the successor entity. Such approval shall not be unreasonably withheld. If the City has reason to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application for the transfer. The Application shall comply with Sections 240-260.

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3. If PSC Approval is No Longer Required. If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in Section 5.06.360(1) and the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an application. The Application shall comply with Sections 240-260.
 4. The following events shall be deemed to be a sale, assignment or other transfer of the Franchise requiring compliance with Section 5.06.360 (3);
 - a. the sale, assignment or other transfer of all or a majority of a Provider's assets to another Person;
 - b. the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in a Provider;
 - c. the issuance of additional capital stock or partnership, membership or other equity interest by a Provider so as to create a new Controlling Interest in such a Provider; or
 - d. the entry by a Provider into an agreement with respect to the management or operation of such Provider or its System.
- (Ord. 2000-12, Amended, 12/18/2000)

Section 5.06.370 Insurance, Indemnity, and Security.

Prior to the execution of a Franchise, a Provider will deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the Franchise and Section 5.05.130, and shall obtain and provide proof of the insurance coverage required by the Franchise and Section 5.05.130. A Provider shall also indemnify the City as set forth in the Franchise and Section 5.05.150.

Section 5.06.380 Oversight.

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

Section 5.06.390 Maintain Records. A Provider shall at all times maintain:

1. On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and Systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all Rights-of-Ways where work will be undertaken. As used herein, "as-built" maps includes "file construction prints." Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As-built" maps are not required of the Provider who is the incumbent local exchange carrier for the existing System to the extent they do not exist.

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2. Throughout the term of the Franchise, a Provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a Provider with respect to the System in a manner that allows the City at all times to determine whether a Provider is in compliance with the Franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a Provider shall alter the manner in which the books and/or records are maintained so that a Provider comes into compliance with this section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this Section.

Section 5.06.400 Confidentiality.

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

Section 5.06.410 Provider's Expense.

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

Section 5.06.420 Right of Inspection.

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

Section 5.06.430 Enforcement and Remedies.

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

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

Section 5.06.440 Extended Operation and Continuity of Services.

1. Continuation after Expiration. Upon either expiration or revocation of a Franchise granted pursuant to this Ordinance, the City shall have discretion to permit a Provider to continue to operate its System or provide Services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A Provider shall continue to operate its System under the terms and conditions of this Ordinance and the Franchise granted pursuant to this Ordinance.
2. Continuation by Incumbent Local Exchange Carrier. If the Provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its System and provide Services while reasonable efforts are made to negotiate a renewal in good faith, but in no case longer than six (6) months after revocation or expiration of the franchise.

Section 5.06.450 Removal or Abandonment of Franchise Property.

1. Abandoned System. In the event that (1) the use of any portion of the System is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of Provider; (2) any System has been installed in the Rights-of-Way without complying with the requirements of this Ordinance or Franchise; or (3) the provisions of Section 5.06.100 are applicable and no Franchise is granted, a Provider, except the Provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such System.
2. Removal of Abandoned System. The City, upon such terms as it may impose, may give a Provider written permission to abandon, without removing, any System, or portion thereof, directly constructed, operated or maintained under a Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, a Provider shall remove within a reasonable time the abandoned System and shall restore, using prudent construction standards, any affected Rights-of-Way to their former state at the time such System was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided in a Franchise shall continue in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this Section.
3. Transfer of Abandoned System to City. Upon abandonment of any System in place, a Provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City,

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transferring to the City the ownership of the abandoned System at no cost to the City.

4. **Removal of Above-Ground System.** At the expiration of the term for which a Franchise is granted, or upon its revocation or earlier expiration, as provided for by this Ordinance, in any such case without renewal, extension or transfer, the City shall have the right to require a Provider to remove, at its expense, all above-ground portions of a System from the Rights-of-Way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the Provider is the incumbent local exchange carrier, it shall not be required to remove its System for a period of six (6) months if reasonable efforts are being made to negotiate a renewal in good faith.
5. **Leaving Underground System.** Notwithstanding anything to the contrary set forth in this Ordinance, a Provider may abandon any underground System in place if the City has determined that the abandoned system does not materially interfere with the use of the Rights-of-Way or with the use thereof by any public utility, cable operator or other Person, and the approval is granted in writing by the City.

Section 5.06.460 Publicizing Work.

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

Section 5.06.470 Conflicts.

In the event of a conflict between any provision of this Ordinance and a Franchise entered pursuant to it, the provisions of this Ordinance shall control.

Section 5.06.480 Severability.

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

Section 5.06.490 New Developments.

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

Section 5.06.500 Notices.

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

Section 5.06.510 Exercise of Police Power.

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

Section 5.06.520 Construction.

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

Section 5.06.530 Ordinance Applicability. This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing Franchises granted prior to the effective date of this Ordinance and to a Provider providing Services, without a Franchise, prior to the effective date of this Ordinance.

Section 5.06.540 Other Applicable Ordinances.

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

Section 5.06.550 City Failure to Enforce. A Provider shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

Section 5.06.560 Construed According to Utah Law.

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

Chapter 5.07

PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES

Sections:

5.07.010	Purpose and Interpretation
5.07.020	Definitions
5.07.030	Policy Statement

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5.07.040	Industry Site Selection Criteria
5.07.050	City Site Selection Criteria
5.07.060	Priorities
5.07.070	Co-location: Use of Public Property
5.07.080	Design criteria
5.07.090	Other permitted uses
5.07.100	Inspection requirements
5.07.110	Landscaping/screening
5.07.120	Non-use/abandonment
5.07.130	Application requirements
5.07.135	Business license requirement
5.07.140	Third party review
5.07.150	Remedies
5.07.160	Severability

Section 5.07.010 Purpose and Interpretation

1. The purpose of this chapter is to provide specific regulations for the placement, construction and modification of personal wireless telecommunications facilities. The provisions of this ordinance are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting the furnishing of personal wireless services, nor shall the provisions of this ordinance be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services. To the extent that any provision or provisions of this ordinance are consistent or in conflict with any other provision of the Lindon City Municipal Code or any ordinance of Lindon City, the provisions of this ordinance shall be deemed to control.
2. In the course of reviewing any request for any approval required under this chapter made by an applicant to provide personal wireless service or to install personal wireless service facilities, the Planning Commission or the City Council, as the case may be, shall act within a reasonable period of time after the request is duly filed with the city, taking into account the nature and scope of the request, and any decision to deny a request shall be in writing and supported by substantial evidence contained in a written record.
3. Should the application of this chapter have the effect of prohibiting a person or entity from providing personal wireless service to all or a portion of the city, such provider may petition the Planning Commission or the City Council for an amendment to this code. The Planning Commission or City Council, upon receipt of such a petition, shall promptly undertake review of the petition and shall make a determination on the petition within a reasonable period of time, taking into account the nature and scope of the petition, and any decision to deny such petition shall be in writing and supported by substantial evidence contained in a written record.

(Ord. 2000-14, Add, 12/08/2000)

Section 5.07.020 Definitions

For the purposes of this chapter, the following terms shall have the meaning ascribed to them below:

1. "Antenna" shall mean any exterior apparatus designed for telephonic, radio, or television communications through the sending and/or receiving of electromagnetic waves, including equipment attached to a tower or building, for the purpose of providing personal wireless services.
2. "Antenna Height" shall mean the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure even if said highest point is an antenna.

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Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of parcel. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

3. "Antenna Support Structure" shall mean any pole, telescoping mast, tower, tripod or other structure which supports an antenna.
4. "Cell Site" shall mean a tract or parcel of land that contains the cellular communications or personal wireless services antenna, its support structure, accessory building, and parking, and may include other uses associated with and ancillary to cellular communications or personal wireless services transmission.
5. "FAA" shall mean the Federal Aviation Administration.
6. "FCC" shall mean the Federal Communications Commission.
7. "Governing Authority" shall mean the governing authority of the city, namely the City Council.
8. "Personal Wireless Service" and "Personal Wireless Service Facilities," as used in this ordinance, shall be defined in the same manner as in Title 47, U.S.C., Sec. 332(c)(7)(C), as it may be amended now or in the future.
9. "Tower" shall mean any structure that is designed and contrasted primarily for the purpose of supporting one or more antennas including self-supporting lattice towers, guy towers, or multiple towers. The term encompasses personal wireless facilities including radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like.
10. "Tower (Stealth)" shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas in a manner that shall be camouflaging and constructed in a manner to avoid detection as a cell tower (i.e. flagpole, tree, etc.).
(Ord. 2000-14, Add, 12/08/2000)

Section 5.07.030 Policy Statement

The Planning Commission and City Council have on numerous occasions and with increasing frequency been confronted with requests to site communications towers and antennas. The purpose of this chapter is to establish general guidelines for the siting of towers and antennas. The goals of this ordinance are to: (i) encourage the location of towers on public property and in non-residential areas and to minimize the total number of towers throughout the city, (ii) encourage strongly the joint use of new and existing tower sites, (iii) encourage users of towers and antennas to locate them to the extent possible, in areas where the adverse impact on the city is minimal, (iv) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas, and (v) enhance the ability of the providers of telecommunications services to provide such services throughout the city quickly, effectively, and efficiently. Accordingly, the City Council finds that the promulgation of this ordinance is warranted and necessary:

1. To manage the location of towers and antennas in the city and encourage the use of public property for the placement thereof;
2. To protect residential areas and land users from potential adverse impacts of towers, including support structure failure and falling ice;
3. To minimize adverse visual impacts of towers through careful design, siting, landscape screening, and innovative camouflaging techniques;

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4. To accommodate the growing need for towers;
5. To promote and encourage shared use/co- location of existing and new towers as a primary option rather than construction of additional single use towers, and to reduce the number of such structures needed in the future.
6. To consider the public health and safety of towers to the extent allowed by the Telecommunications Act of 1996,
7. To avoid potential damage to adjacent properties from antenna support structure failure and falling ice, through engineering and proper siting of antenna support structure.

New Uses: All towers existing on the date of passage of this ordinance shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such existing towers. New construction, other than routine maintenance on existing towers, shall comply with the requirements of this ordinance. (Ord. 2000-14, Add, 12/08/2000)

Section 5.07.040 Industry Site Selection Criteria

In siting a new site, the industry requires a location that is technically compatible with the established network. General area is to be identified based upon engineering constraints and the desired area of service. Specific locations within that general area will be evaluated using the following criteria which are not listed in order of priority:

1. Topography as it relates to line of site transmissions for optimum efficiency in telephone service.
2. Availability of road access.
3. Availability of electric power.
4. Availability of land based telephone lines or microwave link capability.
5. Leasable lands, and landlords who want facilities to be located on their properties consistent with zoning regulations.
6. Screening potential of existing vegetation, structures and topographic features.
7. Zoning that will allow low power mobile radio service facilities.
8. Compatibility with adjacent land users.
9. The least number of sites to cover the desired area.
10. The greatest amount of coverage, consistent with physical requirements.
11. Opportunities to mitigate possible visual impact.
12. Availability of suitable existing structures for antenna mounting.

(Ord. 2000-14, Add, 12/08/2000)

Section 5.07.050 City Site Selection Criteria

As a fundamental element of this chapter, the telecommunications company proposing to construct an antenna support structure or mount an antenna on an existing structure is required to demonstrate, using technological evidence, that the antenna must go where it is proposed in order to satisfy its function in the company's grid system. Further, the company must demonstrate by technological evidence that the height requested is the minimum height necessary to fulfill the cell site's function within the grid system.

Applications for necessary permits will only be processed when the applicant demonstrates that it is either an FCC licensed telecommunications provider or has in place agreements with an FCC licensed

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telecommunications provider for use or lease of the support structure.

Low power mobile radio service facilities should be located and designed to minimize any adverse effect that they may have on residential property values. Sites should be placed in locations where the existing topography, vegetation, buildings or other structures provide the greatest amount of screening. Sites should be located on bare ground without visual mitigation only in districts zoned C- G, LI, MU, HI, and R & B, based on the design standards articulated in this chapter.

Location and design of sites in all districts should consider the impact of the site on the surrounding neighborhood and the visual impact within the zone district. In residential districts and residential land use areas, the minimum lot size for commercial communications towers shall be three acres.

(Ord. 2000-14, Add, 12/08/2000)

Section 5.07.060 Priorities

The following establishes the order of priorities for locating new communications facilities:

- A. Place antennas on appropriate existing structures, such as buildings, communications towers, water towers, and smokestacks in appropriately zoned districts.
- B. Place antennas and stealth towers on City property in the LI and HI and CG zone. A private property owner who leases space for a telecommunication tower is the only one who receives compensation even though numerous other property owners in the area, and the citizenry in general, are adversely affected. Requiring all telecommunication towers to be located on government property with all lease payments being paid to Lindon City instead of individual property owners evenly distributes the income from the lease payments to all the citizens of Lindon through increased government services, thus indirectly compensating all of the citizens of Lindon for the impact all citizens experience. The public policy objectives to reduce the proliferation of telecommunication towers and to mitigate their impact can best be facilitated by requiring the location of telecommunication and antenna support structures on property owned, leased or used by Lindon City as a highest priority whenever feasible. The City Council may waive the requirements of this subsection to allow antennas and towers to be placed on school district property. If based on technological or engineering data provided by the applicant, the City Council determines the location of telecommunication towers or antenna support structures on city or school district property is not feasible or practicable as required by this subsection, then the priorities set forth in the following subsections C through E, shall apply.
- C. Place antennas and towers on City property or, at the discretion of the City Council, on school district property in the MU and R&B zones.
- D. Place antennas and towers on other private non-residential property.
- E. Place antennas and towers in other residential districts only if locations for which a need has been demonstrated are not available on existing structures or in non-residential districts and only on or in existing churches, parks, utility facilities or other public facilities. An applicant for a new antenna support structure to be located in a residential zoning district shall demonstrate that a diligent effort has been made to locate the proposed communications facilities on a government structure, a private institutional structure, or other appropriate existing structures within a non-residential zoning district, and that due to valid considerations, including physical constraints and economic or technological

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feasibility, no appropriate location is available. The telecommunications company is required to demonstrate that it contacted the owners of tall structures within a one mile radius of the site proposed, asked for permission to install the antenna on those locations, and was denied for reasons other than economic ones. The information submitted by the applicant shall include a map of the area to be served by the tower, its relationship to other antenna sites in the applicant's network, and an evaluation of existing buildings taller than twenty feet, communications towers and water tanks within one mile of the proposed tower.

1. Priority of Users- priority for the use of city- owned land for antennas and towers will be given to the following entities in descending order.
 - a. Lindon City;
 - b. Public safety agencies, including law enforcement, fire and ambulance services, which are not part of Lindon City (such as the Pleasant Grove Police Department) and private entities with a public safety agreement with Lindon City;
 - c. Other governmental agencies, for uses which are not related to public safety; and
 - d. Entities providing licensed commercial wireless telecommunication services, including cellular, personal communications services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services marketed to the general public.
2. Minimum Requirements- The placement of antennas or towers on city-owned property must comply with the following requirements:
 - a. The antennas or tower will not interfere with the purpose for which the city-owned property is intended.
 - b. The antennas or tower will have no adverse impact on surrounding private property. Therefore, all new towers that are constructed shall be stealth towers.
 - c. The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of public land and other necessary provisions and safeguards. The fees shall be established by the City Council after considering comparable rates in other cities, potential expenses, risks to the city, and other appropriate factors.
 - d. The applicant will submit a letter of credit, performance bond, or other security acceptable to the city to cover the costs of antenna or tower removal.
 - e. The antennas or tower will not interfere with other users who have a higher priority as discussed in Section 5.07.060(1).
 - f. Removal may be required by the City, the terms and conditions of which will be determined on a lease by lease basis.
 - g. The applicant must reimburse the city for any costs which it incurs because of the presence of the applicant's antennas or tower.
 - h. The user must obtain all necessary land use approvals, and
 - i. The applicant will cooperate with the city's objective to promote co-locations and thus limit the number of separate antenna sites requested.
3. Special Requirements- The use of certain city- owned property, such as water tower sites and parks, for antennas or towers brings with it special concerns due to the unique nature of these sites. The placement of antennas or towers on these special city-owned sites will be allowed only when the

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following additional requirements are met:

- a. Water Tower or Reservoir Sites - The city's water towers and reservoirs represent a large public investment in water pressure stabilization and peak capacity reserves. Protection of the quality of the city's water supply is of prime importance to the city. As access to the city's water storage systems increases, so too increases the potential for contamination of the public water supply. For these reasons, the placement of antennas or towers on water tower or reservoir sites will be allowed only when the city is fully satisfied that the following requirements are met:
 - i. The applicant's access to the facility will not increase the risks of contamination to the city's water supply;
 - ii. There is sufficient room on the structure and/or on the grounds to accommodate the applicant's facility.
 - iii. The presence of the facility will not increase the water tower or reservoir maintenance cost to the city; and
 - iv. The presence of the facility will not be harmful to the health of workers maintaining the water tower or reservoir.
- b. Parks - The presence of certain antennas and towers represent a potential conflict with the purpose of some city-owned parks. In no case shall towers be allowed in designated conservation areas unless they are to be installed in areas which currently contain tower facilities. Antennas or towers will be considered only in the following parks after the recommendation of the Parks, Recreation, and Arts Commission and approval of the City Council:
 - i. Public Parks of a sufficient scale and character that are adjacent to an existing commercial or industrial use;
 - ii. Commercial recreation areas and major play fields; and
 - iii. Park maintenance facilities.
4. Application Process - All applicants who wish to locate an antenna or tower on city-owned property must submit to the city manager a completed application and detailed plan that complies with the submittal requirements of this chapter, the zoning ordinance, subdivision ordinance, comprehensive master plan and other regulations and ordinances of the city along with other pertinent information requested by the city. The applicant must also apply for a conditional use permit. All applications for conditional use permits require council review.
5. Termination - The City Council may terminate any lease if it determines that any one of the following conditions exist:
 - a. A potential user with a higher priority cannot find another adequate location and the potential use would be incompatible with the existing use;
 - b. A user's frequency broadcast unreasonably interferes with other users of higher priority, regardless of whether or not this interference was adequately predicted in the technical analysis, or
 - c. A user violates any of the standards in this ordinance or the conditions attached to the city's lease or other authorization. Before taking any action, the city will provide notice to the user of the intended termination and the reasons for it, and provide opportunity for the user to address the City Council regarding the proposed action. This procedure need not be followed in emergency situations.
6. Reservation of right - Notwithstanding the above, the City Council reserves the right to deny, for any reason, the use of any or all city-owned property by any one or all applicants.
(Ord no. 2002-10, 4/16/2002; Ord. 2000-14, 2000)

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Section 5.07.070 Co-location: Use of Public Property.

To minimize adverse visual impacts associated with the proliferation of towers, co-location of antennas by more than one (1) carrier on existing or new towers and location of such antennas on public property shall take precedent over the construction of new single-use towers as indicated below:

1. Proposed antennas may, and are encouraged to, co-locate onto existing towers. Provided such co-location is accomplished in a manner consistent with the policy, site criteria, and landscape/screening provisions contained in this chapter, then such co-locations are permitted by right and new or additional special use approval is not required, except that any permit, license, lease, or franchise requirements must be satisfied.
2. The conditional use requirement for an antenna may be waived in non-residential zones if the applicant locates the antenna on an existing structure other than an existing tower and /or if the antenna is proposed to be located on suitable public property such as a water tower, government building, or other public tower or pole. Suitability of public property shall be determined in the city's sole discretion. The applicant must submit detailed plans to the planning department for an administrative review to determine if the conditional use permit process and public hearing can be waived. No building permit will be issued until approval is granted through the administrative review.
3. The city may deny the application to construct a new tower if the applicant has not made a good faith effort to mount the antenna on an existing structure and/or public property.
4. In order to reduce the number of antenna support structures needed in the city in the future, any new proposed support structure shall be designed to accommodate antenna for more than one (1) user, unless the applicant demonstrates why such design is not feasible for economic, technical or physical reasons.
5. Unless co-location has been demonstrated to be infeasible, the site plan shall delineate an area near the base of the tower to be used for the placement of additional equipment buildings for other users. The site plan for towers in excess of one hundred feet (100') must propose space for two (2) comparable tower users while the site plan for towers under one hundred feet (100') must propose space for one (1) comparable tower user. To provide further incentive for co-location as a primary option, an existing tower may be modified or reconstructed to accommodate the co-location of an additional antenna provided the additional antenna shall be of the same type as that on the existing tower. This is permitted by right for existing towers in all zoning districts, subject to the following criteria being met:
 - a. Height: An existing tower may be modified or rebuilt to a taller height, not to exceed twenty feet (20') over the tower's existing height, to accommodate the co- location of an additional antenna. The height change may occur only once per tower.
 - b. Onsite Location: A tower which is being rebuilt to accommodate the co-location of an additional antenna may be moved onsite within fifty feet (50') of its existing location so long as it remains within the same zone and complies with the other provisions of this chapter. After the tower is rebuilt to accommodate co-location, only one (1) tower may remain on site.

(Ord. 2000-14, Add, 12/08/2000)

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Section 5.07.080 Design criteria

1. As provided above, new towers shall be designed to accommodate antenna for more than one (1) user, unless the applicant demonstrates why such design is not feasible for economic, technical, or physical reasons.
2. Facilities should be architecturally compatible with the surrounding buildings and land uses in the zoning district or otherwise integrated, through location and design, to blend in with the existing characteristics of the site to the extent practical. Therefore, all new towers that are constructed shall be stealth towers, unless the applicant justifies to the council, in its sole discretion, that a stealth tower is not technically feasible.
 - a. **Setback:** Tower setbacks shall be measured from the base of the tower to the property line of the parcel on which it is located. Unless there are unusual geographical limitations as determined in the city's sole discretion, in residential districts and residential land use areas, where permitted, towers shall be set back from all property lines a distance equal to three hundred percent (300%) of tower height as measured from ground level. Towers shall comply with the minimum setback requirements of the area in which they are located in all other zoning districts.
 - b. **Color:** Towers shall have a color generally matching the surroundings or background that minimizes their visibility and must be approved by the city, unless a different color is required by FCC or FAA.
 - c. **Lights, Signals and Signs:** No signals, lights or signs shall be permitted on towers unless required by the FCC or FAA. Should lighting be required, at the time of construction of the tower in cases where there are residential users located within a distance which is three hundred percent (300%) of the height of the tower from the tower, then approval of dual mode lighting shall be requested from the FAA.
 - d. **Equipment Structures:** Ground level equipment and buildings and the tower base shall be screened from public streets and residentially zoned properties. The standards for the equipment and buildings are as follows:
 - i. The maximum floor area is three hundred feet (300') and the maximum height is twelve feet (12').
 - ii. Ground level buildings shall be screened from adjacent properties by landscape plantings, fencing or other appropriate means, as specified herein or in the City Code.
 - iii. Equipment buildings mounted on a roof shall have a finish similar to the exterior building walls. Equipment for roof mounted antenna may also be located within the building on which the antenna is mounted. Equipment buildings, antenna and related equipment shall occupy no more than twenty-five percent (25%) of the total roof area of a building. Antenna or equipment buildings not meeting these standards require a special exception. The use must be approved on a comprehensive sketch plan or final development plan, as applicable.
3. **Federal Requirements:** All towers must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this chapter shall bring such towers and antennas into compliance with such revised standards and regulations within three (3) months of the effective date of such

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- standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for removal of the tower or antenna at the owner's expense.
4. **Building Code; Safety Standards:** To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards in applicable City building codes and the applicable standards for towers that are published by the Electronics Industries Association ("EIA"), as amended from time to time. If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within the thirty (30) days, the city may remove the tower at the owner's expense.
 5. **Structural Design:** Towers shall be constructed to the EIA Standards, which may be amended from time to time, and all applicable construction or building codes. Further, any improvements or additions to existing towers shall require submission of site plans stamped and verified by a professional engineer which demonstrate compliance with EIA Standards and all other good industry practices in effect at the time of said improvement or addition. The plans shall be submitted to and reviewed at the time building permits are requested.
 6. **Fencing:** A well-constructed masonry or stone wall, or chain link fence in all zones, not less than eight feet (8') in height from finished grade shall be provided around each tower. Access to the tower shall be through a locked gate.
 7. **Antenna height:** The applicant shall demonstrate that the antenna is the minimum height required to function satisfactorily. No antennas that is taller than this minimum height shall be approved.
 8. **Antenna support structure safety:** The applicant shall demonstrate that the proposed antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice or other debris or interference. All support structures shall be fitted with anti-climbing devices, as approved by the manufacturers.
 8. **Required parking:** If the cell site is fully automated, adequate parking shall be required for maintenance workers. If the site is not fully automated, arrangements for adequate off-street parking shall be made and documentation thereof provided to the city. Security fencing should be colored or should be of a design which blends into the character of the existing environment.
 9. **Antenna Criteria:** Antenna on or above a structure shall be subject to the following:
 - a. The antenna must be architecturally compatible with the building and wall on which it is mounted and designed and located so as to minimize any adverse aesthetic impact.
 - b. The antenna shall be mounted on a wall of an existing building in configuration as flush to the wall as technically possible and shall not project above the wall on which it is mounted unless for technical reasons the antenna needs to project above the roof line. In no event shall an antenna project more than ten feet (10') above the roofline.
 - c. The antenna shall be constructed, painted or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.
 - d. The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than the enclosure.

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- e. If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.
- f. The structure must be architecturally and visually (color, size, bulk) compatible with surrounding existing buildings, structures, and vegetation or uses or those likely to exist under the terms of the underlying zoning. Such facilities will be considered architecturally and visually compatible if they are camouflaged to disguise the facility.
- g. Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by City, in City's sole discretion, taking into consideration the site as built.
- h. On buildings thirty feet (30') or less in height, the antenna may be mounted on the roof if the following conditions are satisfied:
 - i. The city finds that it is not technically possible or aesthetically desirable to mount the antenna on a wall.
 - ii. No portion of the antenna or base station causes the height of the building to exceed the limitations set forth herein.
 - iii. The antenna or antennas and related base stations cover no more than an aggregate total of twenty-five percent (25%) of the roof area of a building.
 - iv. Roof mounted antennae and related base stations are completely screened from view by materials that are consistent and compatible with the design, color, and materials of the building.
 - v. No portion of the antenna may exceed ten feet (10') above the height of the existing building.
- i. If a proposed antenna is located on a building or a lot subject to a site review, approval is required prior to issuance of a building permit.
- j. No antenna shall be permitted on property designated as an individual landmark or as part of a historic district, unless such antenna has been approved in accordance with the city code.
- k. No antenna owner or lessee or officer or employee thereof shall fail to cooperate in good faith to accommodate other competitors in their attempts to use the same building for other antennas. If a dispute arises about the feasibility of accommodating another competitor, the city administrator may require a third party technical study, at the expense of either or both parties, to resolve the dispute.
- l. No antenna owner or lessee shall fail to assure that the antenna complies at all times with the then current applicable American National Standards Institute or FCC standards, whichever is more stringent. After installation, but prior to putting the antenna in service, each antenna owner shall provide a certification by an independent professional engineer to that effect.
- m. No antenna shall cause localized interference with the reception of any other communications signals including, but not limited to public safety signals, and television and radio broadcast signals.
- n. No person shall locate an antenna or tower on any lot or parcel except as provided in this chapter.

(Ord. 2000-14, Add, 12/08/2000)

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Section 5.07.090 Other permitted uses

In all zoning districts, antenna and associated unmanned equipment buildings are permitted as a matter of right subject to the requirements of this ordinance and the following standards:

1. The antenna is attached to the roof or sides of a building at least thirty feet (30') in height, an existing tower, and water tank, or a similar structure;
2. The following antenna are permitted under the provisions of this section:
 - a. Omnidirectional or whip antenna no more than seven inches (7") in diameter and extending no more than ten feet (10') above the structure to which they are attached; or
 - b. Panel antenna no more than two feet (2') wide and six feet (6') long, extending above the structure to which they are attached by no more than ten feet (10').
3. Antenna, antenna array and support structures not on publicly-owned property which shall not extend more than ten feet (10') above the highest point of the structure on which it is mounted. The antenna, antennas array, and its support structure shall be mounted so as to blend with the structure to which the antenna is attached. The antenna and its support structure shall be designed to withstand a wind force of one hundred (100) miles per hour without the use of supporting guy wires. The antenna, antenna array, and its support structure shall be a color that blends with the structure on which they are mounted.
4. Setback from street: No such antenna, antenna array, or its support structure shall be erected or maintained closer to any street than the minimum setback for the zone in which it is located.
5. Guy wires restricted: No guy or other support wires shall be used in connection with such antenna, antenna array, or its support structure except when used to anchor the antenna, antenna array, or support structure to an existing building to which such antenna, antenna array, or support structure is attached.

(Ord. 2000-14, Add, 12/08/2000)

Section 5.07.100 Inspection requirements

Each year after a facility become operational, the facility operator shall conduct a safety inspection in accordance with the EIA and FCC Standards and within 60 days of the inspection, file a report with the city administrator. (Ord. 2000-14, Add, 12/08/2000)

Section 5.07.110 Landscaping/screening Landscaping, as described herein, shall be required to screen as much of the support structure as possible, the fence surrounding the support structure and any other ground level features (such as a building), and in general soften the appearance of the cell site. The city may permit any combination of existing vegetation, topography, walls, decorative fences or other features instead of landscaping, if they achieve the same degree of screening as the required landscaping. If the antenna is mounted flush on an existing building, and other equipment is housed inside an existing structure, landscaping shall not be required.

Screening. The visual impacts of a tower shall be mitigated through landscaping or other screening materials at the base of the tower and ancillary structures. The following landscaping and buffering of towers shall be required around the perimeter of the tower and accessory structures, except that the

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standards may be waived by the city for those sides of the proposed tower that are located adjacent to undevelopable lands and lands not in public view. Landscaping shall be installed on the outside of fences. Further, existing vegetation shall be preserved to the maximum extent practicable and may be used as a substitute for or in supplement towards meeting landscaping requirements.

1. A row of evergreen trees a minimum of ten feet (10') tall at planting a maximum of six feet (6') apart shall be planted around the perimeter of the fence;
2. A continuous hedge at least thirty-six inches (36") high at planting capable of growing to at least forty-eight inches (48") in height within eighteen (18) months shall be planted in front of the tree line referenced above. (Ord. 2000-14, Add, 12/08/2000)

Section 5.07.120 Non-use/abandonment

In the event the use of any tower has been discontinued for a period of sixty (60) consecutive days, the tower shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the City which shall have the right to request documentation and/or affidavits from the tower owner/operator regarding the issue of tower usage. Upon such abandonment, the owner/operator of the tower shall have an additional sixty (60) days within which to:

1. Reactivate the use of the tower or transfer the tower to another owner/operator who makes actual use of the tower; or
2. Dismantle and remove the tower. If such tower is not removed within said sixty (60) days, the City may remove such tower at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all uses cease using the tower. At the earlier of sixty (60) days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval for the tower shall automatically expire. (Ord. 2000-14, Add, 12/08/2000)

Section 5.07.130 Application requirements.

Application submission for special use, variance, and building permit request may utilize any combination of site plans, surveys, maps, technical reports or written narratives necessary to convey the following information:

1. A scaled site plan clearly indicating the locations, type and height of the proposed tower, on-site land uses and zoning, adjacent land uses and zoning, adjacent roadways, proposed means of access, setbacks from property lines, elevation drawings of the proposed tower, and any other proposed structures;
2. A current map and aerial as provided by the City Assessor's office showing the location of the proposed tower;
3. Legal description of the parcel, if applicable;
4. If not within the separation distance from residential areas, approximate distance between the proposed tower and the nearest residential unit, platted residentially zoned properties, and unplatted residentially zoned properties. If within the separation distance requirements, then exact distances, locations and identifications of said properties shall be shown on an updated City map;
5. A landscape plan showing specific landscape materials;
6. Method of fencing, and finished color and, if applicable, the method of camouflage and illumination;

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7. A notarized letter signed by the applicant stating the tower will comply with all EIA Standards and all applicable federal and state laws and regulations and the City Code including specifically FAA regulations;
8. A statement by the applicant as to whether construction of the tower will accommodate co-location of additional antenna for future users;
9. Certification that the antenna usage will not interfere with other adjacent or neighboring transmission or reception functions;
10. The telecommunications company must demonstrate that it is licensed by the FCC;
11. The applicant, if not the telecommunications service provider, shall submit proof of lease agreements with an FCC licensed telecommunications provider;
12. A full site plan shall be required for all cell sites, showing the antenna, antenna support structure, building, fencing, buffering, access, and all other items required in this chapter. The site plan shall not be required if the antenna is to be mounted on an existing structure;
13. At the time of site selection, the applicant should demonstrate how the proposed site fits into its overall network within the City;
14. This Ordinance shall apply to all applications which were filed prior to the effective date hereof and which have not been approved by the City Council as of the effective date of this Ordinance, and to applications filed thereafter.

(Ord. 2000-14, Add, 12/08/2000)

Section 5.07.135 Business license requirement

Each separate antenna array on a given pole, tower, building or other structure shall be considered as a separate use, and an annual business license shall be required for each such facility. The amount of the business license fee shall be set by the council by resolution. Failure to comply with any of the requirements of this code, any applicable ordinance of this city, or any state or federal law or regulation constitutes grounds to revoke the business license of the facility.

(Ord. 2000-14, Add, 12/08/2000)

Section 5.07.140 Third party review

The personal wireless service providers use various methodologies and analysis tools, including geographically based computer software, to determine the specific technical parameters of personal wireless services and low power mobile radio service facilities, such as expected coverage area, antenna configuration, topographic constraints that affect signal path, etc. In certain instances there may be a need for expert review by a third party of the technical data submitted by the personal wireless services or low power mobile radio service provider. The city council or the planning commission may require such a technical review, to be paid for by the applicant for the personal wireless services or low power mobile radio service facilities. The selection of the third party expert may be by mutual agreement among the applicant and city, or at the discretion of the city, with a provision for the applicant and interested parties to comment on the proposed expert and review its qualification. The expert review is intended to be a site-specific review of technical aspects of the personal wireless services or low power mobile radio services facilities and not a subjective review of the site selection. Such a review should address the accuracy and completeness of the technical data, whether the analysis techniques and methodologies are legitimate, the validity of the conclusions and any specific technical issues outlined by the city council,

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planning commission, city staff, or interested parties. Based on the results of the third party review, the city may require changes to the application for the personal wireless services or low power mobile radio service facilities that comply with the recommendations of the expert. The expert review of the technical submission shall address the following:

1. The accuracy and completeness of submissions;
2. The applicability of analysis techniques and methodologies;
3. The validity of conclusions reached;
4. Any specific technical issues designated by the city.

(Ord. 2000-14, Add, 12/08/2000)

Section 5.07.150 Remedies

It is a class B misdemeanor for any person, firm or corporation violating any of the provisions or terms of this chapter for each day during which the offense continued. In addition to receiving any monetary remuneration, the city shall have the right to seek injunctive relief for any and all violations of this chapter and all other remedies provided at law or in equity.

(Ord. 2000-14, Add, 12/08/2000)

Section 5.07.160 Severability

Should any section, paragraph, sentence, clause, phrase or word of this ordinance be declared invalid or unconstitutional by a court or agency of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining sections, paragraphs, sentences, clauses, phrases or words of this ordinance, all of which shall remain in full force and effect. This ordinance is necessary to protect the public health, safety and welfare of the residents of the city and covers matters of local concern. The city council finds that an emergency exists due to the need for wireless telecommunications services to be provided to potential customers, who are residents and property owners of Lindon City. Accordingly, the city council orders that this ordinance be effective immediately upon its passage, approval and publication as provided by law.

(Ord. 2000-14, Add, 12/08/2000)

Chapter 5.08

ALCOHOL SALES

Sections:

5.08.010	Definitions.
5.08.020	License--Required for retail sale of light beer.
5.08.030	License--Required for wholesale sale of beer.
5.08.040	License--Classification and privileges.
5.08.050	License--Application.
5.08.060	Licensee qualifications.
5.08.070	License--Bond.
5.08.080	License--Council authority to refuse.
5.08.090	License--Permit required.
5.08.100	License--Transfer.
5.08.110	License--Application fee--Expiration date.
5.08.120	General restrictions.

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5.08.130	Consumption of intoxicating beverages on premises.
5.08.140	License--Revocation.
5.08.150	Inspection of licensed premises.
5.08.160	Violation--Penalty.
5.08.170	Required Beer Handler's Permit.
5.08.180	Licensee--Duty to Inform.
5.08.190	Compliance Checks.
5.08.200	Application process for Beer Handler's Permit.
5.08.210	Qualifications to obtain a Beer Handler's Permit.
5.08.220	Penalties for violations by a Permit Holder.
5.08.230	Licensee penalties
5.08.240	Right to a hearing.

Section 5.08.010 Definitions.

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

- 1) "Beer" means any beverage containing not less than one-half of one percent of alcohol by weight and obtained by the alcoholic fermentation of an infusion or decoction of any malted grain or similar products. "Heavy beer" means beer containing more than 3.2 percent of alcohol by weight. "Light beer" means beer containing not more than 3.2 percent of alcohol by weight. Beer may or may not contain hops or other vegetable products. "Beer" includes ale, stout and porter.
- 2) "Liquor" and "intoxicating liquor" mean and include 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, containing more than one-half of one percent of alcohol by weight; and all mixtures, compounds or preparations, whether liquid or not, which contain more than .5% of alcohol by weight, and which are capable of human consumption; except that the term "liquor" shall not include "light beer."
- 3) "Retailer" means any person engaged in the sale or distribution of beer to the consumer.
- 4) "Sell" or "to sell," when used in this chapter in any prohibition, shall be construed to include, to solicit, or to receive an order for, to keep or expose for sale, to deliver for value or gratuitously, to peddle, to possess with intent to sell, to traffic in, for any consideration promised or obtained directly or indirectly or under any pretext or by any means whatsoever to procure or allow to be procured for any other person, and "sale" when so used shall include every act of selling as above defined.
- 5) "Wholesaler" means any person other than a brewer or retailer engaged in the importation for sale or in the sale of beer in wholesale or jobbing quantities. (Ord. no. 126 §3, 1985: prior code §6-2.)
(Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.08.020 License--Required for retail sale of light beer.

It is unlawful for any person to engage in the business of the sale of light beer at retail, in bottles or draft, within the corporate limits of the city without first having procured a license therefor from the Lindon City Council of the city as hereinafter provided. A separate license shall be required for each place of sale and the license shall at all times be conspicuously displayed in the place to which it shall refer or for which it shall be issued. All licenses shall comply with the Alcoholic Beverage Control Act of Utah and the regulations of the Alcoholic Beverage Control Commission. (Ord. No. 2004-7, amended, 06/16/2004; Ord. 98-1, Repealed and Replaced, 08/24/2000; Prior code §6-1.)

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Section 5.08.030 License--Required for wholesale sale of beer.

It is unlawful for any person to engage in the business of selling beer at wholesale within the limits of the city without first obtaining a license therefor from the Alcoholic Beverage Control Commission of Utah and paying the required fee therefor. (Ord. No. 2004-7, amended, 06/16/2004; Ord. 98-1, Repealed and Replaced, 08/24/2000; Prior code §6-3.)

Section 5.08.040 License--Classification and privileges.

1. Retail licenses issued hereunder shall be of the following type and shall carry the following privileges and be numbered numerically commencing from the number one:
 - a) Retail Beer License. A retail beer license shall entitle the licensee to sell beer in containers or on draft for consumption on or off the premises in accordance with the Utah Alcoholic Beverage Control Act.
 - b) Seasonal License. A seasonal license shall carry the privileges of the regular retail beer license and shall be for a period of less than one year.
2. It is unlawful for any licensee to purchase or acquire, or to have or possess for the purpose of sale or distribution, any beer except that which he shall have lawfully purchased from a brewer or wholesaler licensed under the privileges of the Utah Alcoholic Beverage Control Act. ((Ord. No. 2004-7, amended, 06/16/2004; Ord. 98-1, Repealed and Replaced, 08/24/2000; Prior code §6-4.)

Section 5.08.050 License--Application.

All applications for licenses authorized by this chapter shall be verified and filed with the city council and shall state the applicant's name in full and that he has complied with the requirements and possesses the qualifications specified in the Utah Alcoholic Beverages Control Act, and if the applicant is a co-partnership, the names and addresses of all partners, and if a corporation, the names and addresses of all officers and directors, and must be subscribed by the applicant who must state under oath that the facts stated therein are true. Applicants must furnish such information, including a certificate of at least five resident freeholders of the city to the effect that the licensee bears a good moral character and is a fit and proper person to be granted a license, as and when the city council shall require. (Ord. No. 2004-7, amended, 06/16/2004; Ord. 98-1, Repealed and Replaced, 08/24/2000; Prior code §6-5.)

Section 5.08.060 Licensee qualifications. No person shall be granted a retail license unless he shall be qualified as provided in the Utah Alcoholic Beverage Control Act. (Ord. No. 2004-7, amended, 06/16/2004; Ord. 98-1, Repealed and Replaced, 08/24/2000; Prior code §6-6.)

Section 5.08.070 License--Bond.

No license shall be granted by the city council until the applicant shall have filed with the council a bond as provided by the Utah Alcoholic Beverage Control Act. (Ord. No. 2004-7, amended, 06/16/2004; Ord. 98-1, Repealed and Replaced, 08/24/2000; Prior code §6-7.)

Section 5.08.080 License--Council authority to refuse.

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The city council may refuse to grant any license applied for if the city council finds that:

1. The applicant does not possess all of the qualifications required by the Alcoholic Beverage Control Act; or
2. The applicant fails to comply with the ordinances of the city, or the rules, regulations and orders of the Utah County Health Department; or
3. The applicant has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the applicant as a person engaged in the business of the sale or retail of intoxicating liquor or beer; or
4. The applicant has committed any act involving dishonesty, fraud or deceit with intent to substantially benefit himself or another, or substantially injure another; or
5. The applicant knowingly made a false statement of fact required to be revealed in the application for the license, or in any amendment or report to be made thereunder; or
6. Continuance of the license would be inconsistent with public health, safety or general welfare. (Ord. No. 2004-7, amended, 06/16/2004; Ord. No. 2002-3, Amended 1/15/2002; Ord. 98-1, Repealed and Replaced, 08/24/2000; Ord. No. 133 §1(part), 1985; Ord. 126 51, 1985; prior code §6-12.)

Section 5.08.090 License--Permit required.

No license shall be issued until the applicant therefor shall have first produced from the Utah County Health Department a permit therefor, which permit shall show that the premises to be licensed are in a sanitary condition and that the equipment used in the storage or distribution, or sale of such beer, complies with all health regulations of the city and of the state. (Ord. 98-1, Repealed and Replaced, 08/24/2000; Ord No. 2002-3, Amended 1/15/02; Ord. 133 §1 (part), 1985; prior code §6-9.)

Section 5.08.100 License--Transfer. Licenses issued under this chapter shall not be transferable and upon revocation thereof by the city council the fee paid by the licensee to the city for said license shall be forfeited to the city. (Ord. 98- 1, Repealed and Replaced, 08/24/2000; Prior code 96-10.)

Section 5.08.110 License--Application fee--Expiration date.

1. Applications provided for in this chapter shall be accompanied by the fees established by the municipal council, which fee shall be deposited in the city treasury if the license is granted and returned to the applicant if denied.
2. All licenses issued hereunder shall expire on the 31st day of December unless sooner canceled, excepting that seasonal licenses shall expire on the date set forth therein. (Ord. 98- 1, Repealed and Replaced, 08/24/2000; Prior code §6-11.)

Section 5.08.120 General restrictions.

No person shall sell beer at any public dance or to any person intoxicated, or under the influence of an intoxicating beverage. No license shall be granted to sell beer in any dance hall, theater, or in the proximity of any* church or school. No person shall sell beer to any person under the age of 21 years. It is unlawful to sell beer on Sunday and between the hours of one a.m. and seven a.m. the other six days of the week. It is unlawful to advertise the sale of light beer except under such regulations as are made by the liquor control commission of Utah; providing that a simple designation of the fact that beer is sold

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under city license may be placed in or upon the window or front of the licensed premises. It is unlawful to sell beer through a drive-up window. No licensee shall violate the terms of the license issued, nor unless he shall be so licensed shall he sell bottled or draft beer for consumption on the premises, or permit any beer to be consumed on the premises.

*All licenses issued hereunder shall expire on the 31st day of December unless sooner canceled, excepting that seasonal licenses shall expire on the date set forth therein. (Ord. 98-1, Repealed and Replaced, 08/24/2000; Ord. no. 30. 1975; prior code §6-12.)

Section 5.08.130 Consumption of intoxicating beverages on premises.

It is unlawful for any person to consume any intoxicating liquor or beverage on any premises licensed under this chapter or to have on said premises any open vessel or container containing intoxicating liquor or beverage. Unless the establishment be so licensed for on premise consumption. It is unlawful for any licensee hereunder, his agent or employee, to allow the consumption of any intoxicating liquor or beer on any premises licensed hereunder, or to allow any vessel or container containing intoxicating liquor or beer to remain open on said premises, unless the licensee be so licensed for on premise consumption. (Ord. no. 2004-7, Amended, 06/15/2004; Ord. 98- 1, Repealed and Replaced, 08/24/2000; Prior code §6-13.)

Section 5.08.140 License--Revocation.

The city council of the city may, after notice and a hearing, revoke any license granted hereunder if the city council finds that:

1. The licensee does not possess all of the qualifications required by the Liquor Control Act; or
 2. The licensee fails to comply with the ordinances of the city, or the rules, regulations and orders of the Utah County Health Department.
 3. The licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the applicant or licensee as a person engaged in the business of the sale or retail of intoxicating liquor; or
 4. The licensee has committed any act involving dishonesty, fraud or deceit with intent to substantially benefit himself or another, or substantially injure another; or
 5. The licensee knowingly made a false statement of fact required to be revealed in the application for the license, or in any amendment or report to be made thereunder; or
 6. Continuance of the license would be inconsistent with public health, safety or general welfare.
- (Ord. 98-1, Amended, 08/24/200; Ord. No. 2002-3, Amended 1/15/02; Ord. no. 133 §1(part), 1985; ord. no. 126 §2, 1985; prior code §6-14.)

Section 5.08.150 Inspection of licensed premises.

All premises licensed under this chapter shall be subject to inspection by any officer, agent, or peace officer of the city or the Alcoholic Beverage Control Commission, or the State Board of Health, and every licensee shall, at the request of the Utah County Health Department, furnish to it samples of beer which he shall have for sale. (Ord. no. 2004- 7, Amended, 06/15/2004; Ord. No. 2002-3, Amended 1/15/02; Ord. 98-1, Amended, 08/24/2000; Ord. no. 133 §1(part), 1985; prior code §6-15.)

Section 5.08.160 Violation--Penalty.

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It is unlawful for any person to violate any provision of this chapter. Unless otherwise provided herein, any person convicted of violating any provision of this chapter shall be guilty of a Class B misdemeanor. Each day that any violation or failure to perform an act required under this chapter continues shall constitute a separate offense. (Ord. no. 2004-7, Amended, 06/15/2004; Ord. 98-1, Amended, 08/24/2000; Prior code §6-16.)

Section 5.08.170 Required Beer Handler's Permit.

A licensee involved in the transaction of retail beer sales for off-premise consumption shall require all employees involved in the transaction of retail beer sales to obtain a Beer Handler's Permit from the Utah County Health Department. All employees of a licensee involved in the transaction of retail beer sales will be required to possess and wear a Beer Handler's Permit while on duty. This permit shall be worn in a conspicuous place such that the permit shall be clearly visible to any person.

New employees of a licensee shall obtain a Beer Handler's Permit within thirty (30) days of hire. During this thirty (30) day period, the employee may sell alcoholic beverages in accordance with the Utah Alcoholic Beverage Control Act, the regulations of the Alcoholic Beverage Control Commission, and the provisions of this chapter. (Ord. no. 2004-7, Amended, 06/15/2004)

Section 5.08.180 Licensee-Duty to Inform.

The licensee is required to inform the Utah County Health Department within thirty (30) days of any employee possessing a Beer Handler's Permit whose employment is terminated for conduct that would be punishable under the statutes or ordinances regulating alcoholic beverages, or when the licensee becomes aware of any other violation involving the sale of an alcoholic beverage. (Ord. no. 2004-7, Amended, 06/15/2004)

Section 5.08.190 Compliance checks.

Licensees shall permit law enforcement officers and Utah County Health Department employees to conduct random Beer Handler's Permit compliance checks on the licensee's premises. (Ord. no. 2004-7, Amended, 06/15/2004)

Section 5.08.200 Application process for a Beer Handler's Permit.

To obtain a Beer Handler's Permit, applicants must:

1. Fill out a "Beer Handler's Permit" application form available from the Utah County Health Department.
2. Produce acceptable photo identification showing the identity of the applicant;
3. Attend a Beer Handler's Permit training session administered by, or approved by, the Utah County Health Department; and
4. Pass the Beer Handler's Permit test given by the Utah County Health Department.

If paragraphs 1, 2, 3, and 4, are satisfied, the Utah County Health Department shall issue the applicant a Beer Handler's Permit photo identification card. This permit must be worn by the applicant while on duty such that the permit shall be clearly visible to any person. (Ord. no. 2004-7, Amended, 06/15/2004)

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Section 5.08.210 Qualifications to obtain a Beer Handler's Permit.

The applicant for a Beer Handler's Permit must satisfy the qualification requirements established by the Utah County Health Department. A permit shall not be granted to any individual who has had a felony conviction within three years, or a misdemeanor conviction involving alcohol or controlled substances within one year. (Ord. no. 2004-7, Amended, 06/15/2004)

Section 5.08.220 Penalties for violations by a Permit holder.

A violation of this chapter or of any law involving the sale of an alcoholic beverage is a Class B misdemeanor. Additionally, an employee possessing a Beer Handler's Permit who is convicted of any law involving the sale of an alcoholic beverage is not only subject to prosecution, but shall incur a suspension of the employee's Beer Handler's Permit as follows:

1. 1st Violation – Automatic suspension of the employee's Beer Handler's Permit for a period of one (1) year.
2. 2nd Violation – Automatic suspension of the employee's Beer Handler's Permit for a period of one (1) year.
3. Any Subsequent Violation – Automatic suspension of the employee's Beer Handler's Permit for a period of three (3) years.

(Ord. no. 2004-7, Amended, 06/15/2004)

Section 5.08.230 Licensee penalties.

Any violation of this chapter by a licensee or any employee of the licensee shall subject the licensee to the following penalties:

1. Upon a first violation of this chapter the licensee shall be issued a warning;
2. Upon any violation of this chapter which occurs within twenty-four (24) months of a prior violation, the licensee shall pay a civil fine of two-hundred-fifty dollars (\$250);
3. Upon any violation of this chapter which occurs within twenty-four (24) months of two (2) prior violations, the licensee shall pay a civil fine of five-hundred dollars (\$500) and the licensee shall have its license to sell beer suspended for a period of three (3) consecutive days, on a Thursday through Saturday;
4. Upon any violation of this chapter which occurs within twenty-four (24) months of three (3) prior violation, the licensee shall pay a civil fine of five-hundred dollars (\$500) and the licensee shall have its license to sell beer suspended for a period of thirty (30) consecutive days. Additionally, the licensee shall be placed on probation for a period of one (1) year. Any violation of this chapter by the licensee or any employee of the licensee during the period of probation shall result in the revocation of the licensee's license to sell beer. The licensee shall not be eligible to reapply for a new license for at least six (6) months from the date of revocation.

Failure to pay any fine imposed for a violation of any provision of this chapter within thirty (30) days of the imposition of such fine shall be grounds for revocation of the licensee's license to sell beer.

Nothing in this chapter shall limit the rights and powers of the Lindon City Council to grant, refuse to grant, or revoke a licensee's license to sell beer under this chapter.(Ord. no. 2004-7, Amended, 06/15/2004)

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Section 5.08.240 Right to a Hearing.

1. The licensee shall have the right to request a hearing to contest the existence of any violation of this chapter or the imposition of any penalty under this chapter. A written request for a hearing must be filed by the licensee with the Lindon City Administrator within fifteen (15) days of the date of mailing of the City's notice of a violation to the licensee. The request for a hearing shall include the licensee's name, address, telephone number, and a statement of the licensee's basis for disputing the existence of a violation or the imposition of a penalty. A timely request for a hearing shall stay the imposition of any penalty until the hearing is decided. The City Council's finding of a violation shall be considered final if the licensee fails to request a hearing within the time period set forth above.
2. The City shall notify the licensee in writing of the date and time for the hearing. Hearings before the City Council shall be conducted informally. Formal rules of evidence and court procedure shall not apply. The hearings are administrative in nature, and hearsay is admissible, but the evidence must have some probative weight and reliability to be considered. The licensee shall be given an opportunity to be heard at the hearing, shall have the right to be represented by counsel, and may call witnesses. The City Council shall consider all of the evidence and shall take any action it deems appropriate as it relates to the licensee. The City Council's decision shall be made orally at the end of the hearing or in writing within ten (10) business days following the hearing. (Ord. no. 2004-7, Amended, 06/15/2004)

Chapter 5.10

ALCOHOL BEVERAGE CONTROL ACT

Sections:

5.10.010 Adoption of the Alcoholic Beverage Control Act.

Section 5.10.010 Adoption of the Alcoholic Beverage Control Act.

The "Alcoholic Beverage Control Act" as contained in Title 32A, U.C.A., 1953 as amended and constituted in 2004, is hereby adopted and incorporated as part of the Ordinances of Lindon City. Where a citation, information, or complaint is issued under Title 32A of Utah Code Annotated, 1953 as amended, as adopted herein, it shall be sufficient to use the section number of the Utah Code to designate the section number of the City Code which has been violated. Those portions of the Alcoholic Beverage Control Act, as adopted herein, referring to or dealing with felonies which are not subject to enforcement by Lindon City, or punishments associated with felonies which are not subject to enforcement by Lindon City, are not part of the adopted Code of Lindon City. Those portions of the above-referenced Utah Code provisions which are hereby adopted and incorporated as part of the Ordinances of Lindon City referring to or dealing with Class "A" misdemeanors which are not subject to enforcement by Lindon City are hereby specifically excepted, and are not part of the adopted Code of Lindon City. (Ord. no. 95-1, amended 1-95, effective date, 2-7-95; ord. no. 93-18, effective date, 10-23-93.) (Ord. 2005-4, Amended, 01/04/2005; Ord. 2000-15, Amended, 12/11/2000; Ord. 99-1, Amended, 10/03/2000; Ord. 98-1, Repealed and Replaced, 08/24/2000)

Chapter 5.12

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AMUSEMENT DEVICES

Sections:

5.12.010	License--Required.
5.12.020	License--Application.
5.12.030	Inspection.
5.12.040	License--Revocation.

Section 5.12.010 License--Required.

It is unlawful for any person, firm or corporation to carry on the business of keeping, maintaining or offering for rent or any other compensation or amusement any tables or devices on which or by means of which any game of cards or other similar game can be played without first obtaining a license therefor as hereinafter provided. (Prior code §4-33.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.12.020 License--Application. Any person desiring a license to operate any table or device described in the next preceding section shall file with the recorder of the city application in writing stating the number and kind of such table or device, the names of all persons operating or to be interested in such business or enterprise, the exact street address of each place where such tables or devices are to be kept or used, the game or games which will be permitted to be played upon or by means of such tables or devices and the rental or fees to be charged therefor. (Prior code §4-34.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.12.030 Inspection.

Every person owning, operating or in any way connected with any of the activities or the keeping, maintaining or operation of any of the devices hereinbefore mentioned shall at all times during which activities are carried on or the devices are being used, keep the rooms, building or other place in which the activities are carried on or such devices used well-lighted and open to inspection at any time by any police officer and shall not curtain or otherwise obscure vision through the windows of such room, building or other place, nor keep a lookout, guard or any mechanical warning device to warn occupants of such place of the approach of any person whomsoever. (Prior code §4-35.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.12.040 License--Revocation.

The license herein provided for may be refused or revoked, after notice and hearing, by the city council of the city if the city finds that:

- 1) The licensee fails to comply with the ordinances of the city; or
- 2) The licensee has violated any of the provisions of this chapter; or
- 3) The licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the licensee for which the license has been issued; or
- 4) The licensee has committed any act involving dishonesty, fraud or deceit with intent to substantially benefit himself or another, or substantially injure another; or
- 5) The licensee knowingly made a false statement of fact required to be revealed in the application for the license, or in any amendment or report to be made thereunder; or
- 6) Continuance of the license would be inconsistent with public health, safety or general welfare. (Ord. no. 127 §1, 1985; prior code §4-36.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

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Chapter 5.14

BURGLAR, ROBBERY AND FIRE ALARMS

Sections

5.14.010	Purpose and Scope
5.14.020	Definitions
5.14.030	Businesses and Users; Registration and Permit Required
5.14.040	Alarm Users Responsibilities
5.14.050	Alarm System Monitoring Companies Responsibilities
5.15.060	Unlawful Activation or Report of Alarm
5.14.070	Determination of False Alarm; Rebuttable Presumption
5.14.080	False Alarm; Penalty
5.14.090	Right to Hearing and Appeal
5.14.100	City Liability Limitations
5.14.110	Violation - Penalties

Section 5.15.010 Purpose and Scope

1. The purpose and scope of this ordinance is to protect the limited public safety resources and services of the city from misuse.
2. The provisions of this Chapter shall apply to all alarm users, alarm businesses, employees of alarm businesses, and alarm systems which are installed, connected, operated or maintained on or prior to the date on which the ordinance codified in this Chapter became effective, and subsequent thereto.

Section 5.15.020 Definitions

For purposes of this ordinance, the following words have the meanings respectively ascribed to them in this Section, except where the context clearly indicates a different meaning.

1. **ALARM SYSTEM** means a mechanical or electrical device designed, installed or used for the purpose of giving notice of a burglary, robbery or fire alarm or other breach of security.
2. **ALARM SYSTEM MONITOR ING COMPANY** means any individual, partnership, corporation or other form of associations that engages in the business of monitoring security alarm systems and reporting any activation of such alarm systems to the public safety department.
3. **ALARM USER** means any individual, partnership, corporation, or other form of association that owns, leases or rents a security alarm system or on whose premises a security alarm system is maintained for the protection of the premises.
4. **CHIEF OF POLICE** means the Chief of the Police of the police department serving Lindon City and the Chief's designee.
5. **DEPARTMENT** means the Public Safety Department, including police and fire, serving Lindon City.
6. **DISPATCH OR RESPONSE** means the discretionary decision whether to direct police or fire units to a location where there has been a request, made by whatever means, for police or fire assistance or investigation. There is not duty to dispatch under any circumstances, including to answer an alarm signal, and all dispatch decisions are made subject to competing priorities and available police or

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fire resources.

7. **FALSE ALARM** means an alarm signal eliciting notification to and a response by the Department when there is no evidence of a crime or fire or other activity that warrants a call for immediate Department assistance and no person who was on or near the property or has viewed a video communication from the property call for Department assistance. "False Alarm" does not include an alarm signal caused by violent conditions of nature or other extraordinary circumstances beyond the control of the alarm use.
8. **SECURITY ALARM SYSTEM** means any system, device, or mechanism for the detection and reporting of any unauthorized entry or attempted entry or property damage upon premises protected by the system that may be activated by sensors or other techniques and, when activated, automatically transmits a telephone message or emits an audible, visible, or electronic signal that can be heard, seen, or received by person outside of the protected premises and is intended to summon Department assistance.

Section 5.14.030 Businesses and Users; Registration and Permit Required

1. **Licensing.** It is unlawful for any person to engage in the practice of an alarm business, alarm company or alarm agent in the city as defined in Utah Code Section 58-55-102 (1953) as amended, without a valid license therefore issued in accordance with the provisions of the Utah Burglar Alarm Security and Licensing Act, Sections 58-55-101 et. Seq., or the Utah Code (1953), as amended.
2. **Owner Permit.** No alarm business, alarm company or alarm agent shall install any alarm system in the city unless the owner, lessee, or lawful occupant of the premises on which the alarm system is to be installed has a valid alarm permit issued by the city.
3. **User Permit.** Every alarm user shall obtain from the Department an alarm user's permit for each system prior to any installation of an alarm system. An application for a burglary, robbery or fire alarm user's permit and an initial twenty-five dollar (\$25.00) fee shall be filed with the Department. The permit shall be physically upon the premises using the alarm system and shall be available for inspection by the city.
4. **Permit Application.** The alarm user's permit application shall set forth the full name, address and telephone number of both the owner or lessee on whose premises the system will be installed, operated or maintained and the name of the person or licenses alarm business or company responsible for maintaining the alarm system.

Section 5.14.040 Alarm Users Responsibilities

An Alarm User shall:

1. Maintain the premises and security alarm system in a manner that will minimize or eliminate false alarms;
2. Review all alarm system operating instructions, including those for verification of an alarm;
3. Notify the alarm system monitoring company of a false alarm activation as soon as the user is aware of the false alarm; and
4. Not manually activate an alarm except when needing an immediate police or fire response to an emergency.

Section 5.14.050 Alarm System Monitoring Companies Responsibilities

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An Alarm System Monitoring Company engaging in business in the city shall:

1. Obtain all necessary business licenses as required by the city and the State of Utah.
2. Maintain a current record, accessible to the Public Safety Director or designee at all times, which includes the names of the alarm users serviced by the company, the addresses of the protected properties; the type of alarm system, original installation date and subsequent modifications, if any, for each protected property; and a record of the false alarms at each property.
3. Provide the Public Safety Director or designee such information as the Director requests regarding; the nature of the company's security alarms; the company's method of monitoring the alarms; the company's program for preventing false alarms, including educational programs for alarm users; and the company's method for disconnecting audible alarms.
4. Provide each of its alarm system users with: operating instructions for the alarm system, including an explanation of the alarm company's alarm verifications process; a telephone number to call for assistance in operating the system; and a summary of the provisions of this ordinance relating to penalties for false alarms and the possibility of no response from the Department to alarm systems experiencing excessive false alarms.
5. Maintain a verification process, for all monitored security alarm systems in order to prevent unnecessary Department dispatches resulting from false alarms.
6. Communicate requests for cancellations of the Department response in a manner specified by the Director or designee.
7. Maintain a record of all requests for Department responses to an alarm, including: the date and time of the alarm and request for Department response; the alarm system user's name and address; evidence of the company's attempt to verify the alarm; and, to the best of its knowledge, an explanation of the cause of any false alarm, and
8. Work cooperatively with the alarm system user and the Department in order to determine the cause of any false alarms and to prevent reoccurrences.

Section 5.14.060 Unlawful Activation or Report of Alarm

1. No person shall activate a security alarm system for the purpose of summoning the Department except in the event of fire, an unauthorized entry, robbery, or other crime being committed or attempted on the premises, or if the person needs immediate assistance in order to avoid injury or serious bodily harm.
2. Any person who notifies the Department of an activated alarm and has knowledge that such activation was apparently caused by an electrical or other malfunction shall at the same time notify the Department of the apparent malfunction.

Section 5.14.070 Determination of False Alarm; Rebuttable Presumption

For the purposes of this ordinance, there is a rebuttable presumption that the following determinations made by the Department personnel dispatched to the premises reporting an alarm signal are correct:

1. There is no evidence of a fire, crime or other activity that would warrant a call for immediate fire or police assistance at the premises.
2. No individual who was on or near the premises or who has viewed a video communication from the premises called for a fire or police dispatch or verified a need for an immediate Department response, and

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3. There is no evidence that violent conditions of nature or other extraordinary circumstances beyond the control of the alarm user caused the activation of the alarm.

Section 5.14.080 False Alarms: Penalty

1. The penalty for a false alarm is a civil infraction, and the alarm system user shall be penalized by an administrative service fee to the city according to the following schedule:
 - First false alarm in a calendar year: Written warning
 - Second false alarm: Fifty dollars: (\$50.00)
 - Third false alarm: Seventy - five dollars: (\$75.00)
 - Fourth and subsequent false alarms One Hundred dollars: (\$100.00)
2. All administrative service fees assessed under this ordinance shall be paid to the city within thirty (30) days of the date that notice of the assessment of the service fee is mailed to the alarm user. If any service fee is not paid within the time set forth above, a \$35.00 late fee shall be assessed for each month thereafter that the fee remains unpaid.
3. The city may use all available legal remedies to collect delinquent service fees and late penalties. If the delinquent service fee is owed by a business, payment of the fee and late penalties may be required prior to the renewal of the alarm user's Business or Alcoholic Beverage License.
4. An alarm permit shall be suspended for any failure by the alarm user to pay any administrative service fee and applicable late penalties imposed pursuant to this chapter within 120 days of the date that notice of the assessment of the service fee is mailed to the alarm user. The Public Safety Director may also suspend any alarm permit if the Director determines that the alarm system in question has a history of unreliability, which unreliability shall be presumed upon the occurrence of five (5) false alarms within a ninety (90) day period.
5. A suspension for unreliability may be lifted upon a showing that the conditions which caused the false alarms have been corrected. An alarm user whose alarm permit is suspended by the Director shall pay a reinstatement fee of fifty dollars (\$50) to the city before such permit shall be reinstated.
6. It shall be unlawful, and the basis for revocation of an alarm monitoring system company's business license, to knowingly provide services to an alarm user which has been ordered to be disconnected from service pursuant to the provisions of this section.
7. Any person who uses, maintains, operates or is in control of any operational alarm system in the city while the alarm permit for such alarm system is suspended shall be guilty of a Class C misdemeanor.
8. To discourage false alarms, the Department shall adopt a process of providing written notice to an alarm user, who has more than one false alarm in a calendar year, of the consequences of excessive false alarms, the need to take corrective action, and the prospect that four (4) false alarms in a six (6) month period may result in the Department disregarding any future alarms from the premises unless independent information that verifies the need for an immediate response is provided.
9. Prior to determining not to respond to a premises, the Director shall provide written notice to the user that:
 - a. Four (4) false alarms have been received from the property within a six month period;
 - b. The remedies authorized in this chapter as noted above are to be instituted;

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- c. The alarm system user may request a hearing before the Director or designee and explain why the city should not take the proposed action;
- d. If no hearing is requested, the Department will after ten (10) days from the delivery of the notice disregard alarms from the premises unless there is an in-person call or other independent information that verifies the need for an immediate response; and
- e. A requirement of an in-person communication or other verification shall remain in effect until notified otherwise.

Section 5.14.090 Right to Hearing and Appeal

1. An alarm user shall have the right to request a hearing to contest the imposition of any penalty under this chapter including: the imposition of any fee, suspension of any permit, or the determination of a false alarm. A written request for a hearing must be filed by the alarm user with the Department within ten (10) business days of the date of mailing of the notice of imposition of the penalty. Notice of the imposition of a penalty shall be considered satisfied if sent by regular mail to the alarm user's address listed in the alarm user's information card. The request for a hearing shall include the alarm user's name, address, telephone number, and a statement of the reasons for disputing the imposition of the penalty. A timely request for a hearing shall stay the imposition of any penalty until the hearing is decided. The Department's determination of a false alarm, the imposition of an administrative service fee, or suspension of a permit shall be considered final if the alarm user fails to request a hearing within the time period set forth above.
2. The Director or designee shall conduct any hearings requested by the alarm user and shall affirm, modify, or vacate the imposition of the penalty after considering all of the evidence presented. An alarm shall be presumed to be a false alarm unless the alarm user can establish the existence of an emergency or other hazard at the time of the alarm by a preponderance of the evidence. The burden of proving the existence of an emergency shall be upon the alarm user. Hearings shall be conducted informally.
3. An alarm user may appeal the decision of the Director or designee to the City Administrator by filing a written request for a hearing with the City Administrator within ten (10) business days of the decision rendered in the initial hearing. If no request for an appeal hearing is made within the ten day period, the decision rendered in the initial hearing shall be considered final. The appeal hearing shall be conducted by the City Administrator or designee. The City Administrator, or designee, shall affirm, reverse, or modify the decision rendered in the initial hearing and the action taken in the appeal hearing shall be final.

Section 5.14.100 City Liability Limitations Nothing in this chapter shall create or be construed to create a duty upon the Department of Public Safety or the city to respond to any alarm whether or not the alarm is false. An alarm, like any other request for service from the Department of Public Safety, may be responded to within the resources of the Department in light of other responses required by the Department at the time of the alarm.

Section 5.14.110 Violation - Penalties

1. An alarm system monitoring company's failure to comply with any of the requirements of this ordinance shall be a civil infraction, punishable by a fine of up to two hundred and fifty dollars (\$250.00). Each

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- day of noncompliance shall constitute a separate offense.
- Violations of the other sections of this ordinance shall be a Class C misdemeanor unless otherwise specified. (Ord. no 2003-14, Adopted, 08/05/2003)

Chapter 5.16

AUCTIONEERS

Sections:

- 5.16.010 Definition
- 5.16.020 License-Bond execution and approval
- 5.16.030 Time of sale.
- 5.16.040 Applicability to charitable functions.
- 5.16.050 False representation unlawful.
- 5.16.060 Auction house--Defined.
- 5.16.070 Auction house--License required.
- 5.16.080 Auction house--Bond required.
- 5.16.090 Transient auction house owner Designation-- Applicability of chapter.
- 5.16.100 Transient auction house owner--License and bond--Required.
- 5.16.110 Permit--Required.
- 5.16.120 Sale of jewelry.
- 5.16.130 License--Revocation.
- 5.16.140 Receipt for goods.
- 5.16.150 Conduct of auction sales-Generally.

Section 5.16.10 Definition

An "auctioneer," as contemplated in this chapter is a person who conducts a public competitive sale of property by outcry to the highest bona fide bidder. (Prior code §4-1 (part).) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.020 License--Bond execution and Approval Required.

It is unlawful for any person to engage in the business of auctioneer within the city without first procuring a license to do so. Such auctioneer shall execute a bond to the city with corporate surety in the sum of five hundred dollars conditional for the faithful observance of all laws and ordinances of the city and the honest performance of all duties required by ordinance and the protection of all persons dealing with such auctioneer against all fraud, deception and imposition; said bond to be approved by the city council and filed with the city recorder. (Prior code §4-1 (part).) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.030 Time of sale.

All sales of goods, wares or merchandise by public auction in the city must be made between the hours of seven a.m. and seven p.m. (Prior code §4-2). (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.040 Applicability of charitable functions.

The provisions of this chapter shall not apply to any auction held for charitable or benevolent purposes nor for any church fair, festival or bazaar. (Prior code §4-3)

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(Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.050 False representation unlawful.

It is unlawful for any auctioneer when selling or offering for sale at public auction any goods/wares or merchandise under the provision of this chapter, while describing said goods, wares or merchandise with respect to character, quality, kind or value or otherwise, to make any fraudulent, misleading, untruthful or unwarranted statements tending in any way to mislead bidders or to substitute an article sold for another. (Prior code §4-4.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.060 Auction house--Defined.

An "auction house," as contemplated in this chapter, is a place where personal property is sold at auction by an auctioneer. (Prior code 54-5 (part).)

(Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.070 Auction house--License required.

It is unlawful for any person to engage in the business of, or to keep, conduct or operate an auction house within the city without first obtaining a license so to do (Prior code §4-5 (part).)

(Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.080 Auction house--Bond required.

An applicant for an auction house license, who is not a transient auction house dealer, shall execute a corporate surety bond in the sum of \$500 in favor of the city and of any person injured or damaged by false or fraudulent representations in dealing with said auction house, conditioned for the faithful observance of all laws and ordinances of the city, the honest conduct of the business engaged in, and for the payment of damages of all persons injured or damaged by fraud or false or fraudulent representations in dealing with said auction house; said bond to be approved by the city council and filed with the city recorder. (Prior code §4- 5(part).) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.090 Transient auction house owner Designation-- Applicability of chapter.

Any person, or any agent, servant or employee of any person who shall sell, or offer for sale at auction any goods, wares, merchandise or articles of value in or from any hotel, rooming house, dwelling house, boarding house, store, storeroom, stall, tent, building, structure, stand or other place indoors or outdoors within the city, and who shall occupy said place for the purpose of conducting a temporary business therein, shall be deemed a transient auction house owner for the purpose of this chapter; and the person, or any agent, servant or employee thereof so engaged shall not be relieved from the provisions of this chapter by reason of association temporarily with any licensed dealer, trader, merchant or auctioneer, or by conducting such temporary transient business in connection with or as part of or in the name of any other licensed dealer, trader, merchant or auctioneer. (Prior code §4-6.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.100 Transient auction house owner--License and bond--Required.

No transient auction house owner shall be entitled to a license under any other provisions of the code of the city or as an auction house owner under the provisions of this chapter and said transient auction house owner

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shall file a corporate surety bond in like manner and for the same amount as an auction house owner. (Prior code §4-7.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.110 Permit--Required.

It is unlawful for any auctioneer, or person/ to sell or offer to sell at public auction in the city, any stock or stocks of merchandise in whole or in part, or to keep, conduct or operate an auction house or a transient auction house in the city for the purpose of selling or offering for sale any stock of merchandise in whole or in part, without first obtaining from the city council of the city a permit in writing so to do and the city council will not issue a permit for any sale until it is satisfied by proof by the applicant or otherwise that neither fraud nor deception of any kind is contemplated or will be practiced, and that neither the sale, the reasons given there for, nor the goods to be sold have been or will thereafter be fraudulently or falsely advertised or in any way whatsoever misrepresented as far as said public auction is concerned; and said application for said permit shall be by verified petition, stating the name of the applicant, his residence, the street and number of the proposed place of sale, and shall set forth in detail the goods to be sold and what statements or representations are to be made or advertised regarding the same, and the length of time for which the permit is desired, and whether or not said business was previously in operation, designating the place where the same was conducted and furnishing the city council with such further evidence as shall be deemed necessary to establish the truth of the statements made in said petition. (Prior code §4-8.)

(Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.120 Sale of jewelry.

The city council will not issue any permit to sell at public auction or to conduct or operate a public auction house for the purpose of selling any jewelry, diamonds or other precious stones, watches, gold and silver ware, gold and silver plated ware, bric-a-brac or articles of value, and other like merchandise after the 30th day of September and up to and including the 31st day of December of each and every year, except upon payment in advance of the license fee required to be paid by a transient auction house owner. (Prior code §4-9.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.130 License--Revocation. Licenses issued under this chapter may be revoked by the city council whenever it shall have been made to appear to its satisfaction upon a proper hearing that the licensee has violated any of the terms or provisions of this chapter or of the licensee's bond. Upon revocation the right of the licensee shall cease and the unearned portion of the license fee shall be forfeited to the city. (Prior code §4-10) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.16.140 Receipt for goods.

It shall be the duty of all licensed auctioneers to receive all articles which may be offered them for sale at auction, upon satisfactory proof of ownership and give receipts therefor; and at the close of any sale, which must be made as the owner directs, the auctioneer shall deliver a fair account of such sale, and pay the amount received for such articles to the person entitled thereto, deducting therefrom a commission not to exceed ten percent on the amount of such sale. (Prior code §4-11.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

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Section 5.16.150 Conduct of auction sales-Generally.

All auctioneers are forbidden to conduct their sales in such manner as to cause people to gather in crowds on the sidewalks so as to obstruct the same; nor shall they use immoral or indecent language crying their sales; or make or cause to be made noisy acclamations such as ringing of bells, blowing of whistles or otherwise, though not enumerated here, through the streets in advertising their sales; and no bellman or crier, drum or fife, or other musical instrument or noise-making means of attracting the attention of passers-by, except the customary auctioneer's flags shall be employed or suffered to be used at or near any place of sale or at or near any auction room or near any auction whatsoever. (Prior code §4-12.)

(Ord. 98-1, Repealed and Replaced, 08/24/2000)

Chapter 5.20

BILLIARD AND POOL HALLS

Sections:

- 5.20.010 Minors--Posting of regulations.
- 5.20.020 Minors--Use prohibited--Exception.
- 5.20.030 Minors--Use allowed--When.
- 5.20.040 Closing hours.

Section 5.20.010 Minors--Posting of regulations.

It is unlawful for any person to operate any pool or billiard hall in the city where games of cards are permitted to be played, or beer, as defined in this code, is kept, sold or consumed, without first making a regulation and enforcing the same and keeping posted in a conspicuous place, terms of such regulation which shall read as follows: No person under 21 years of age permitted in these premises. (Prior code §12-6 (a).) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.20.020 Minors--Use prohibited- -Exception.

It is unlawful for any person in charge of or employed in such pool or billiard hall to permit any person under the age of 21 years of age to enter upon or remain in any of such premises, or for any person under the age of 21 years to enter upon or remain in said premises for any purpose except to make deliveries or carry messages to the proprietor thereof and depart therefrom immediately. (Prior code §12-6(b).)

(Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.20.030 Minors--Use allowed-- When.

Pool and billiard halls may be kept open to minors over the age of 16 years where no beer, as herein defined, is kept or consumed, or card playing is permitted or devices of any character which may be used for gambling are kept. In all such places regulations shall be maintained and enforced which shall read as follows:

No person under the age of 16 years allowed in these premises and notice thereof posted in a conspicuous place at all times. (Prior code §12- 6(c).) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.20.040 Closing hours.

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It is unlawful for the owner keeper, manager of, or employee in, any public billiard hall or pool hall in this city, to allow permit such billiard hall or pool hall to be or remain open for business between the hours of eleven p.m. of any day and seven a.m. of the following day (Prior code §12-7.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Chapter 5.24

CIGARETTE VENDING MACHINES

Sections:

5.24.010	Cigarettes and tobacco and psychotoxic chemical solvents
5.24.020	Violation
5.24.030	Repealed by Ord. 99-21

Section 5.24.010 Cigarettes and tobacco and psychotoxic chemical solvents

Section 76-10-101 through 76-10-112 of the August 1, 1999, Utah Code, attached, are hereby adopted and incorporated as part of the Lindon City Code. Where a citation, information, or complaint is issued under these state statutes, it shall be sufficient to use the section number of the Utah Code to designate the section number of the city code which has been violated. (Ord. 99-21, Repealed and Replaced, 10/04/2000; Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.24.020 Violation

In addition to any other penalty provided by this chapter, violation of this chapter by a business shall constitute cause for the revocation of the businesses' business license.

(Ord. 99-21, Repealed and Replaced, 10/04/2000; Ord. 98-1, Repealed and Replaced, 08/24/2000)

Chapter 5.28

DANCE HALLS

Sections:

5.28.010	Definitions.
5.28.020	License--Required.
5.28.030	License--Issuance conditions.
5.28.040	License--Revocation.
5.28.050	Unlawful conduct.

Section 5.28.010 Definitions.

1. The term, "public dance," as used in this chapter shall mean any dance to which admission can be had by payment directly or indirectly of a fee or any dance to which the public generally may gain admission with or without the payment of a fee.
2. The term, "public dance hall," as used herein, shall mean any room, place or space in which a public dance shall be held or in which classes in dancing are held and instruction in dancing is given for hire. (Prior code 54~28.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

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Section 5.28.020 License--Required.

It is unlawful to hold or conduct any public dance in any dance hall or other place within the limits of the city until such dance hall or other place in which the same may be held shall first have been duly licensed. (Prior code §4-25(part).) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.28.030 License--Issuance conditions.

No license for a public dance hall shall be issued until it shall be found that the place for which it is issued complies with and conforms to all laws, ordinances, health and fire regulations applicable thereto and is properly ventilated and supplied with separate and sufficient toilet conveniences for each sex and is a safe and proper place for which it shall be used. Every person to whom a dance hall license is issued shall post the same in a conspicuous place in the dance hall covered by such license. (Prior code §4-25 (part).)

(Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.28.040 License--Revocation.

The license of any public dance hall may be revoked for the violation of any provision of this or any other ordinance or law relating to such places or rules or regulations promulgated thereunder. If at any time the license of a public dance hall shall be revoked, at least three months shall elapse before another license or permit shall be granted to the manager, owner or lessee of such dance hall. (Prior code §4-26.)

(Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.28.050 Unlawful conduct.

It is unlawful for any person to whom a dance hall license is issued to allow or permit the following conduct:

1. Abusive language which creates a risk of assault; or
2. Exposure of the private parts of any person; or
3. Gambling; or
4. Prostitution.

(Ord. no. 28 §1, 1985; prior code §4-27.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Chapter 5.32

PAWNBROKERS

Sections:

- | | |
|----------|--|
| 5.32.010 | Definition. |
| 5.32.020 | Posting of regulations--Required. |
| 5.32.030 | Right of redemption of forfeited articles. |
| 5.32.040 | Records required--Contents. |
| 5.32.050 | Ticket--Contents. |
| 5.32.060 | Ticket--Disposition. |
| 5.32.070 | Records--Inspection. |
| 5.32.080 | Ticket--Issuance--Misdemeanors designated. |
| 5.32.090 | Redemption and disposition. |

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5.32.100	Unlawful to deal with drunkards, thieves, insane or minors.
5.32.110	Employees under 16 years of age.
5.32.120	Hours.
5.32.130	Liability.
5.32.140	Violation--Penalty.

Section 5.32.010 Definition.

"Pawnbroker" means any person within the limits of the city who loans money on deposit on personal property or deals in the purchase or possession of personal property on condition of selling the same back again to the pledger or depositor or who loans or advances money on personal property by taking chattel mortgage security thereon and takes or receives such personal property in his possession. (Prior code §4-16.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.020 Posting of regulations-- Required.

It is unlawful for any person to conduct or transact a pawn broking business unless he shall keep posted in a conspicuous place in his place of business a copy of all ordinances relating to pawnbrokers. (Prior code §4-17.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.030 Right of redemption of forfeited articles.

It is unlawful in all cases in which articles pledged have been forfeited for a sale or other disposition thereof to be made by the pledgee within the period of three months after such forfeiture, during such time the pledger shall have the first right to redeem such articles at no greater advance than ten percent upon the amount when the forfeiture occurred. (Prior code 54-18.)(Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.040 Records required-- Contents.

It is unlawful for any pawnbroker or his or her agents or employees to fail to keep a permanent record of each loan, purchase or receipt of personal property. Said record shall be legibly written in ink and in the English language at the time of the transaction. No such record or any portion thereof shall be erased, obliterated or defaced. The record shall contain the following information with regard to each transaction:

1. The date of the transaction;
2. The name and address of the pledger (if the pledged property is jointly owned, each joint owner must be designated);
3. An accurate description of the goods, articles or things pawned, including the serial number of the article if any, the name of the manufacturer if available, and the dimensional description if applicable;
4. The amount of money loaned or advanced thereon or paid therefor;
5. The date and time of the day of the pledging, purchasing and receiving such goods, articles or things, and the period of time within which the pledge must be honored; and
6. The serial number of the pawn ticket. (Ord. no. 101 §A, 1983.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.050 Ticket-Contents.

In connection with each article pawned, the pawnbroker shall make out a serially numbered three-part

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ticket concerning any person(s) pawning property, in a form previously approved by the police department, and shall contain the following information:

- 1) The following information concerning the pledger:
 - a) The last, first, and middle name, b) The signature of the pledger,
 - c) The street address, city, state, and zip code,
 - d) Phone number,
 - e) Sex (male or female), f) Date of birth,
 - g) Height, h) Weight,
 - i) Race,
 - j) Scars/marks,
 - k) Identification used and pertinent numbers,
 - l) Right thumb print;
- 2) The name of the person accepting the pledged property for the pawnbroker;
- 3) A signed statement certifying that the described property has not been obtained by any illegal means and is the pledger's property and is free and clear of any encumbrances and that the pledger has a legal right to sell the pledged property. (Ord. no. 101 §B, 1983.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.060 Ticket--Disposition.

The disposition of each three-part ticket shall be made as follows:

- 1) The original shall be retained by the pawnbroker (pledges);
- 2) The first copy retained by the person (pledger) pawning the articles and
- 3) The second copy shall be maintained on the pawnbroker's premises and delivered to any representative of the city police department upon request during regular business hours. (Ord. no. 101 §C, 1983.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.070 Records--Inspection.

All of the required records and information set out in Sections 5.32.040 through 5.32.060 shall be open to the inspection of any police officer during regular business hours. (Ord. no. 101 §D, 1983.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.080 Ticket--Issuance-- Misdemeanors designated.

It is a misdemeanor for a pawnbroker or his or her agent or employee to issue any pawn ticket which is not serially numbered in sequence and shown in the ledger book referred to in Section 5.32.040, or to intentionally falsify any information on either the ledger or the three-part pawn ticket. (Ord. no. 101 §E, 1983.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.090 Redemption and disposition.

- 1) It is unlawful for any pawnbroker, or his or her agents or employees to deliver or to sell or to otherwise dispose of any pawned item for a period of 60 days from the date of receiving same to any person other than the pledger.
- 2) If requested to do so by a police officer, all goods, articles or things pawned, pledged, sold or delivered to a pawnbroker or his or her agents or employees shall be released to the city police

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department upon proof that the item was not owned by the pledger. The police department shall hold the article until such time as criminal proceedings concerning the article are fully resolved. (Ord. no. §101 F,1983.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.100 Unlawful to deal with drunkards, thieves, insane or minors.

It is unlawful for any pawnbroker to receive any goods, articles or things in pawn or pledge from a person who is intoxicated or known to be a habitual drunkard, a thief or an insane person or a person under the age of 21 years. (Prior code §4- 21.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.110 Employees under 16 years of age.

It is unlawful for any pawnbroker to employ any clerk or person under the age of 16 years to receive any pledge or make any loan. (Prior code §4-22.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.120 Hours.

It is unlawful for any pawnbroker to receive any goods by way of pawn or pledge before seven a.m. or after nine p.m., or on Sunday. (Prior code §4- 23.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.130 Liability.

The holder of a pawnbroker's license is liable for any and all acts of his employees and for any violation by them of any of the provisions of this chapter. (Prior code §4-24.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.32.140 Violation--Penalty. Violation of the provisions of Section 5.32.010 through 5.32.120 shall be punished as a misdemeanor pursuant to the provisions of those sections. (Ord. no. 101 §H, 1983.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Chapter 5.36

SECONDHAND AND JUNK DEALERS

Sections:

- 5.36.010 Definitions.
- 5.36.020 Dealing with minors.
- 5.36.030 Records.

Section 5.36.010 Definitions. As used in this chapter:

- 1) "Junk dealer" means any person engaged in buying and selling old metals, glass, rags, rubber, paper or other junk.
- 2) "Secondhand dealer" means any person who keeps a store, office or place of business for the purchase or sale of secondhand clothing or garments of any kind, or secondhand goods, wares or merchandise, except books, musical instruments and curiosities, or who engages in the business of dealing in secondhand goods. (Prior code §§4-29, 4-30.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

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Section 5.36.020 Dealing with minors.

It is unlawful for any secondhand dealer by himself, his agents or servants to purchase or receive any personal property of or from any minor under the age of 18 years. (Prior code §4-31.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.36.030 Records.

It is unlawful for any secondhand or junk dealer to fail to keep a substantial and well-bound book in which he shall enter at the time of purchase in the English language: first, a true and accurate description of every article purchased by him; second, the name, age and residence of the vendor; third, the amount paid; fourth, the date and hour of purchase. All entries shall be made in ink in a legible manner. All records of secondhand dealers and junk dealers shall be open to inspection by any peace officer at any time. (Prior code §4-32.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Chapter 5.40

SOLICITORS, CANVASSERS, AND PEDDLERS

SECTION I READOPTION: (Ord. No. 2009-6-O, Readopted, 5/5/09)
Lindon City Code Section 5.40 is hereby readopted as follows:

CHAPTER 5.40

RESIDENTIAL SOLICITATION

Sections:

- 5.40.010 Purpose
- 5.40.020 No Other City License or Approval Required
- 5.40.030 Definitions
- 5.40.040 Exemptions from Chapter
- 5.40.050 Solicitation Prohibited
- 5.40.060 Registration of Solicitors
- 5.40.070 Application Form
- 5.40.080 Written Disclosures
- 5.40.090 When Registration Begins
- 5.40.100 Issuance of Certificates
- 5.40.110 Form of Certificate and Identification Badge
- 5.40.120 Maintenance of Registry
- 5.40.130 Non-Transferability of Certificates
- 5.40.140 Denial, Suspension or Revocation of a Certificate of Registration
- 5.40.150 Appeal
- 5.40.160 Deceptive Soliciting Practices Prohibited
- 5.40.170 "No Soliciting" Notice
- 5.40.180 Duties of Solicitors
- 5.40.190 Time of Day Restrictions
- 5.40.200 Buyer's Right to Cancel
- 5.40.210 Penalties
- 5.40.220 Severability

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5.40.010 Purpose.

1. Residents of Lindon City 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 City 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 City also has a substantial interest in protecting citizens from fraud or otherwise unfair consumer sales practices as well as criminal activity.
2. There must be a balance between these substantial interests of the City 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 City 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 City adopts this Chapter to promote the City's substantial interests in:
 - a) respecting citizen's decisions regarding privacy in their residences;
 - b) protecting persons from criminal conduct;
 - c) providing equal opportunity to Advocate for and against Religious Belief, Political Position, or Charitable Activities; and
 - d) permitting truthful and non-misleading Door-to-Door Solicitation regarding lawful Goods or Services in intrastate or interstate commerce.
3. The City finds that the procedures, rules and regulations set forth in this Chapter are narrowly tailored to preserve and protect the City interests referred to herein while at the same time balancing the rights of those regulated.
4. Commercial residential solicitation generally represents a greater intrusion upon residential privacy than political, religious, or other noncommercial door-to-door solicitation involving the dissemination of ideas. Commercial residential solicitation generally entails a higher incidence of consumer fraud and unfair sales practices than political, religious, or other noncommercial door-to-door solicitation involving the dissemination of ideas. Substantial numbers of city residents do not desire to listen to or otherwise receive commercial solicitations. Additionally, some residents are particularly vulnerable to consumer fraud and unfair consumer sales practices by commercial residential solicitors.
5. As highlighted by recent serious crimes perpetrated in an adjoining municipality by a door-to-door solicitor, the transient nature of the business of residential solicitation makes it difficult to prosecute or to obtain redress for intrusions upon residential privacy and fraudulent or otherwise unfair consumer sales practices by residential solicitors because such solicitors are typically nonresidents of the City and often leave the City immediately upon completion of their commercial solicitation in the City. Furthermore, many companies that employ residential solicitors do not conduct accurate, thorough, and timely criminal background checks on prospective solicitors.

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6. Because commercial residential solicitation (a) involves the attempt to complete an economic transaction with the hearer, and (b) may include aggressive, deceptive, factually unbalanced, or otherwise unfair tactics in an effort to complete an economic transaction, commercial residential solicitation entails a heightened risk of intrusion upon residential privacy, consumer fraud, and unfair consumer sales practices, albeit by a minority of those engaged in this business. The City wishes to reassure residents, to the extent reasonably possible and consistent with the First Amendment, that the residential commercial solicitors who work within the City have not been the subject of criminal actions, consumer protection actions, or other legal orders or actions reasonably related to the risk of such solicitors' intruding upon residential privacy or committing consumer fraud or other unfair consumer sales practices, by instituting a residential solicitation registration procedure.
7. The Council finds that the potential and actual harm to citizens from residential solicitation is real, and that the provisions hereinafter set forth will, to a material degree, alleviate and avoid such harm. The Council has determined that the means chosen, as hereinafter stated, are reasonable and are closely fitted to achieve the desired objective of protecting citizens from intrusions upon residential privacy, consumer fraud, and unfair consumer sales practices, while simultaneously preserving the rights of others to engage in speech protected by the First Amendment to the United States Constitution and relevant state constitutional provisions. The regulations adopted herein are narrowly drawn and in the judgment of the Council are not more extensive than necessary to serve and protect the interests stated herein.

5.40.020 No Other City License or Approval Required.

1. Registered Solicitors and persons exempt from Registration need not apply for, nor obtain, any other license, permit, or registration from the City to engage in Door-to-Door Solicitation.
2. Any Business licensed by the City under another City 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.
3. Those Responsible Persons or Entities associated with Registered Solicitors need not apply for, nor obtain, any other license, permit, or registration from the City, provided they do not establish a temporary or fixed place of business in the City.
4. Nothing herein is intended to interfere with or supplant any other requirement of federal, state, or other local law regarding any license, permit, or certificate that a Registered Solicitor is otherwise required to have or maintain.

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

1. **“Advocating”** means speech or conduct intended to inform, promote, or support Religious Belief, Political Position, or Charitable Activities.

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2. **“Appeals Officer”** means the City Council or designee of the City responsible for receiving the information from the City and Appellant regarding the denial or suspension of a Certificate and issuing a decision as required by this Chapter.
3. **“Appellant”** means 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.
4. **“Applicant”** means 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.
5. **“Application Form”** means a standardized form provided by the City to an Applicant to be completed and submitted as part of Registration.
6. **“B.C.I.”** means an original or copy, dated no older than 180 days prior to the date of the Application, of either: (1) a verified criminal history report for the Applicant from the Utah Department of Public Safety Bureau of Criminal Identification; or (2) 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.
7. **“Business”** means a commercial enterprise licensed by the City as a person or Entity under this Title, having a fixed or temporary physical location within the City.
8. **“Certificate”** means a temporary, annual, or renewal Certificate permitting Door-to-Door Solicitation in the City, applied for or issued pursuant to the terms of this Chapter.
9. **“Charitable Activities”** means Advocating by persons or Entities that either are, or support, a Charitable Organization.
10. **“Charitable Organization”** includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other Entity:
 - a. that is:
 - i.a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or, social welfare or advocacy, public health, environmental or conservation, or civic organization;
 - ii.for the benefit of a public safety, law enforcement, or firefighter fraternal association; or
 - iii.established for any charitable purpose; and
 - b) That is tax exempt under applicable provisions of the Internal Revenue Code of 1986 as amended, and qualified to solicit and receive tax deductible contributions from the public for charitable purposes.
 - c) 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 the City or State of Utah. (Charitable Solicitation Act, Utah Code Ann. § 13-22-2(1)(a) & (b)).
11. **“Competent Individual”** means 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.

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12. **“Completed Application”** means a fully completed Application Form, a B.C.I, two copies of the original identification relied on by the Applicant to establish Proof of Identity, and the tendering of Fees.
13. **“Criminally Convicted”** means 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 is 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.
14. **“Disqualifying Status”** means 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: (I) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind.
 - b. Criminal charges currently pending against the Applicant or Registered Solicitor for: (I) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) 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: (I) moral turpitude, or (ii) 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: (I) the Applicant or Registered Solicitor had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the Applicant or Registered Solicitor was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 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.
15. **“Door to Door Solicitation”** means 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 the sale of Goods and or Services.
16. **“Entity”** includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association.

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17. **“Fees”** means 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.
18. **“Final Civil Judgment”** means a civil judgment that would be recognized under state law as a judgment to which collateral estoppel would apply.
19. **“Goods”** means one or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.
20. **“Home Solicitation Sale”** means to make or attempt to make a Sale of Goods or 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 or Services; or
 - c. the previous or present classification of the Solicitor as a solicitor, peddler, hawker, itinerant merchant, or similar designation.
21. **“Licensing Officer”** means the City employee(s) or agent(s) responsible for receiving from an Applicant or Registered Solicitor the Completed Application and either granting, suspending, or denying the Applicant’s Certificate.
22. **“No Solicitation Sign”** means a reasonably visible and legible sign that states “No Soliciting,” “No Solicitors,” “No Salespersons,” “No Trespassing,” or words of similar import.
23. **“Political Position”** means any actually held belief, or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.
24. **“Registered Solicitor”** means any person who has been issued a current Certificate by the City.
25. **“Registration”** means the process used by the City Licensing Officer to accept a Completed Application and determine whether or not a Certificate will be denied, granted, or suspended.
26. **“Religious Belief”** means 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.
27. **“Residence”** means any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of the City, 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 rights of way.
28. **“Responsible Person or Entity”** means 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 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.

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29. **“Sale of Goods or Services”** means the conduct and agreement of a Solicitor and the Competent Individual in a Residence regarding a particular Good(s) or Service(s) that entitles the consumer to rescind the same within three days under any applicable federal, state, or local law.
30. **“Services”** means those intangible goods or personal benefits offered, provided, or sold to a Competent Individual of a Residence.
31. **“Soliciting”** or **“Solicit”** or **“Solicitation”** means 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.
32. **“Solicitor”** or **“Solicitors”** means a person(s) engaged in Door-to-Door Solicitation.
33. **“Submitted in Writing”** means the information for an appeal of a denial or suspension of a Certificate, submitted in any type of written statement to the City offices by certified, registered, priority, overnight or delivery confirmation mail, facsimile, or hand delivery.
34. **“Substantiated Report”** means an oral, written, or electronic report:
- a. That is submitted to and documented by the City;
 - b. By any of the following:
 - i. A Competent Individual who is willing to provide law enforcement or other City employees with publicly available identification of their name, address, and any other reliable means of contact;
 - ii. City law enforcement or Licensing Officer; or
 - iii. Any other regularly established law enforcement agency at any level of government;
 - c. That provides any of the following information regarding a Registered Solicitor:
 - i. Documented verification of a previously undisclosed Disqualifying Status of a Registered Solicitor;
 - ii. Probable cause that the Registered Solicitor has committed a Disqualifying Status which has not yet been determined to be a Disqualifying Status;
 - iii. Documented, eye-witness accounts that the Registered Solicitor has engaged in repeated patterns of behavior that demonstrates failure by the Registered Solicitor to adhere to the requirements of this Chapter; or
 - iv. Probable cause that continued licensing of the Registered Solicitor creates exigent circumstances that threaten the health, safety, or welfare of any individuals or entities within the City.

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35. **“Waiver”** means the written form provided to Applicant by the City wherein Applicant agrees that the City 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.

5.40.040 Exemptions from Chapter. Individuals that qualify for exemption under this Chapter need not Register as required by this Chapter. Those Persons exempt from Registration are not exempt from the duties and prohibitions outlined in Sections 5.40.170, 5.40.180 and 5.40.190 while Advocating or Soliciting. 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. An invited solicitation shall not include the circumstance where the resident invites back a solicitor who initiated the contact with the resident at the residence. A resident’s failure to post a “No Soliciting” may not be construed as an invitation to solicitation by such resident, or as an expression of such resident’s desire to hear or receive solicitations;
2. Persons whose license, permit, certificate or registration with the State of Utah 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. Solicitation on behalf of a charitable organization as defined by Utah Code Ann. §13-22-2(1), or an organization listed in Utah Code Ann. §13-22-8(1). This 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 by the school administration.

5.40.050 Solicitation Prohibited. Unless otherwise authorized, permitted, or exempted pursuant to the terms and provisions of this Chapter, the practice of being in and upon a private Residence within the City 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.

5.40.060 Registration of Solicitors.

1. Unless otherwise exempt under this Chapter, all persons desiring to engage in Door-to-Door Solicitation within the City, prior to doing so, shall submit a Completed Application to the Licensing Officer and obtain a Certificate.

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2. The executed original of this Certificate of Registration shall be maintained by the Licensing Officer, and a legible copy shall be maintained on Registered Solicitor's person at all times while soliciting in the City and shall be produced for inspection upon the request of any resident being solicited or any Peace Officer.
3. Unless a person is a Registered Solicitor and has a Certificate of Registration and identification badge in their possession as required in this Chapter, or is otherwise exempt from registration under the provisions of this Chapter, it is a violation of this Chapter for said person to be present in or at a residence within the City for the purpose of engaging in solicitation. Violations of this subsection shall be punishable as set forth in this Chapter.

5.40.070 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:

1. **Review of Written Disclosures.** An affirmation that the Applicant has received and reviewed the disclosure information required by this Chapter.
2. **Contact Information.**
 - a. Applicant's true, correct and legal name, including any former names or aliases used during the last ten (10) years;
 - b. Applicant's telephone number, home address and mailing address, if different and the address and telephone number where the applicant can be contacted locally;
 - c. If different from the Applicant, the name, address, and telephone number of the Responsible Person or Entity; and
 - d. The address by which all notices to the Applicant required under this Chapter are to be sent.
3. **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:
 - a. A valid driver's license issued by any State and authorized by such state to be used as a valid form of identification;
 - b. A valid passport issued by the United States;
 - c. A valid identification card issued by any State;
 - d. 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.

4. **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 Utah State Department of Commerce;

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5. **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;
6. **Marketing Information.**
 - a. The Goods or Services offered by the Applicant, including any commonly known, registered or trademarked names;
 - b. Whether the Applicant holds any other licenses, permits, registrations, or other qualifications required by federal or state law to promote, provide, or render advice regarding the offered Goods or Services.
7. **BCI Background Check.** The Applicant shall provide:
 - a. An original or a copy of a BCI background check as defined in 5.40.030; and
 - b. A signed Waiver, including names and date of birth, whereby Applicant agrees to allow the City to obtain BCI background check on Applicant for purposes of enforcement of this Chapter.
8. **Responses to Questions Regarding “Disqualifying Status.”** The Applicant shall be required to affirm or deny each of the following statements on the Application Form:
 - a. Has the Applicant been Criminally Convicted of: (I) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind.
 - b. Are any criminal charges currently pending against the Applicant for: (I) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind.
 - c. Has the Applicant been Criminally Convicted of a felony within the last ten (10) years;
 - d. Has the Applicant been incarcerated in a federal or state prison within the past five (5) years;
 - e. Has the Applicant been Criminally Convicted of a misdemeanor within the past five (5) years involving a crime of: (i) moral turpitude, (ii) theft or burglary, or (iii) violent or aggravated conduct involving persons or property.
 - f. Has a Final Civil Judgment been entered against the Applicant within the last five (5) years indicating that:
 - i. the Applicant had either engaged in fraud, or intentional misrepresentation, or
 - ii. that a debt of the Applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2), (a)(4), (a)(6), or (a)(19);
 - g. 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;
 - h. Does the Applicant have an outstanding arrest warrant from any jurisdiction; or
 - i. Is the Applicant currently subject to a protective order or stalking injunction based on physical or sexual abuse issued by a court of competent jurisdiction.
9. **Fee.** The Applicant shall pay such fees as determined applicable by the City, which shall not exceed the reasonable cost of processing the application and issuing the Certificate and/or Identification Badge.

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10. **Execution of Application.** The Applicant shall execute the Application Form, stating upon oath or affirmation, under penalty of perjury, that based on the present knowledge and belief of the Applicant, the information provided is complete, truthful and accurate.

5.40.080 Written Disclosures. The Application Form shall be accompanied by written disclosures notifying the Applicant of the following:

1. The Applicant's submission of the Application authorizes the City to verify information submitted with the Completed Application including:
 - a. the Applicant's address;
 - b. the Applicant's and/or Responsible Person or Entity's state tax identification and special use tax numbers, if any;
 - c. the validity of the Applicant's Proof of Identity;
2. The City may consult any publically available sources for information on the Applicant, including but not limited, to databases for any outstanding warrants, protective orders, or civil judgments.
3. Establishing Proof of Identity is required before Registration is allowed;
4. Identification of the fee amount that must be submitted by Applicant with a Completed Application;
5. The Applicant must submit a BCI background check with a Completed Application;
6. To the extent permitted by State and/or federal law, the Applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection;
7. The City 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 City offices whether or not a Certificate is denied, granted, or renewed.
8. The criteria for Disqualifying Status, denial, or suspension of a Certificate under the provisions of this Chapter.
9. That a request for a temporary Certificate will be granted or denied as soon as practical, but which shall be no later than the first full business day after a Completed Application is submitted.

5.40.090 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 shall be retained by the Licensing Officer. If an original B.C.I. background check is submitted by the Applicant, the Licensing Officer shall make a copy of the B.C.I. and return the original to the Applicant.

5.40.100 Issuance of Certificates. The Licensing Officer shall review the Completed Application submitted by the Applicant and issue a Certificate in accordance with the following:

1. **Temporary Certificate.** A temporary Certificate shall issue allowing the Applicant to 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;

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- c. Applicant establishes Proof of Identity pursuant to the requirement of this chapter;
- d. the Applicant's representations on the Application Form do not affirmatively show a Disqualifying Status;
- e. the B.C.I. does not affirmatively show a Disqualifying Status; and
- f. the Applicant has not previously been denied a Certificate by the City, or had a Certificate revoked for grounds that constitute a Disqualifying Status under this Chapter.

A temporary Certificate will automatically expire after twenty-five (25) calendar days from issuance, or upon the granting or denial of an annual Certificate, whichever period is shorter.

2. **Annual Certificate.** Within twenty-five (25) calendar days of the issuance of a temporary Certificate the City shall:
 - a. 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.
 - b. Issue written notice to the Applicant and the Responsible Person or Entity, if any, that the Applicant either:
 - i. will be issued an Annual Certificate, eligible for renewal on an annual basis; or
 - ii. will not be issued an Annual Certificate for reasons cited in Section 5.40.140 of this Chapter.
3. **Renewal Certificate.** An annual Certificate shall be valid from the date of issuance of the temporary Certificate and shall expire at midnight on December 31st of the year in which the certificate is issued. Any annual Certificate that is not suspended or revoked 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, suspension or revocation of a Certificate are present as set forth in section 5.40.140, or a Disqualifying Status is present.

5.40.110 Form of Certificate and Identification Badge.

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1. **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 License Officer. The Certificate shall be carried by the Registered Solicitor at all times while Soliciting in the City.
2. **Identification Badge.** With both the temporary and annual Certificates, the City shall issue each Registered Solicitor an Identification Badge that shall be worn prominently on his or her person while Soliciting in the City. The Identification Badge shall bear the name of the City and shall contain:
 - a. the name of the Registered Solicitor;
 - b. address and phone number of the Registered Solicitor, or the name, address, and phone number of the Responsible Person or Entity;
 - c. a recent photograph of the Registered Solicitor;
 - d. the date on which the Certificate expires; and
 - e. The statement **“THE CITY OF LINDON MAKES NO CERTIFICATION AS TO THE WORTHINESS OF ANY ORGANIZATION, ITS PRODUCTS OR SERVICES, ON WHOSE BEHALF A SOLICITATION IS MADE OR AS TO THE MORAL CHARACTER OF THE REGISTERED SOLICITOR.”.**

5.40.120 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 City. 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 City’s law enforcement agency a listing of all Applicants, those denied, and those issued a Certificate.

5.40.130 Non-Transferability of Certificates. Certificates shall be issued only in the name of the Applicant and even though a Responsible Party or Entity, if any, shall be listed on the Certificate, it shall not be deemed to be issued to that Responsible Party or Entity. The Certificate shall be non-transferable. A Registered Solicitor desiring to facilitate or attempt to facilitate Home Solicitation Sales with different goods or services or to solicit for another Responsible Person or Entity, from those designated in the originally submitted Completed Application, shall submit a new application to the Licensing Officer.

5.40.140 Denial, Suspension or Revocation of a Certificate of Registration.

1. **Denial.** Upon review, the Licensing Officer shall refuse to issue a Certificate to an Applicant for any of the following reasons:
 - a. **Denial of Temporary Certificate.**
 - i. the Application Form is not complete;
 - ii. the Applicant fails to (1) establish Proof of Identity, (2) provide a B.C.I. or (3) pay the Fees;

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- iii. the Completed Application or B.C.I. indicates that the Applicant has a Disqualifying Status; or
- iv. The Applicant has previously been denied a Certificate by the City, or has had a Certificate revoked for grounds that still constitute a Disqualifying Status under this chapter.

2. Denial of Annual Certificate.

- i. The information submitted by the Applicant at the time of the granting of the temporary Certificate is found to be incomplete or incorrect;
- ii. Since the submission of the Completed Application, the Applicant is subject to a previously undisclosed or unknown Disqualifying Status;
- iii. Failure to complete payment of the Fees;
- iv. Since the submission of the Application, the City has received a Substantiated Report regarding the past or present conduct of the Applicant that would result in a disqualified status;
- v. The City 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
- vi. Since the submission of the Application, a Final Civil Judgment has been entered against the Applicant indicating that: (I) the Applicant had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2), (a)(4), (a)(6), or (a)(19).

c. Denial of Annual Certificate Renewal.

- i. The information submitted by the Applicant when seeking renewal of a Certificate is found to be incomplete or incorrect;
- ii. Since the submission of the renewal Application, the Applicant is subject to a previously undisclosed or unknown Disqualifying Status;
- iii. Failure to complete payment of the Fees;
- iv. Since the submission of the Application or granting of a Certificate, the City has received a Substantiated Report regarding the past or present conduct of the Solicitor;
- v. The City 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
- vi. Since the submission of the Application, a Final Civil Judgment has been entered against the Applicant indicating that: (I) the Applicant had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. § 523(a)(2), (a)(4), (a)(6), or (a)(19).

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3. **Suspension or Revocation.** The City shall either suspend or revoke a Certificate when any of the reasons warranting the denial of a Certificate occurs.

4. **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 City 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 City relied on to make the decision, the availability of the documentation for review by Applicant upon one (1) business day notice to the City, 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 Section 5.40.030(34)(C)(4), 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.

5.40.150 Appeal. An Applicant or Registered Solicitor who's Certificate has been denied or suspended shall have the right to appeal to the City Council 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 of Utah to do so, and makes the assertion of an agency relationship. The following procedures and requirements shall apply:

1. Any appeal must be Submitted in Writing to the City Recorder with a copy to the License Officer 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.
2. Upon request of the Applicant or Registered Solicitor, within one business day, the City will make available any information upon which it relied in making the determination to either deny or suspend the Certificate.
3. The Appeals Officer 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 City, Applicant or Registered Solicitor. Any additional information submitted by any party to the appeal to the Appeals Officer shall be simultaneously submitted to the opposing party. If desired, any party shall have three (3)

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business days to submit rebuttal documentation to the Appeals Officer regarding the additional information submitted by the opposing party.

4. The Appeals Officer 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 this Section, the fifteen (15) calendar days shall be extended to include the additional three (3) days for rebuttal.
5. The denial or suspension of the Certificate shall be reversed by the Appeals Officer if upon review of the written appeal and information submitted, the Appeals Officer finds that the Licensing Officer made a material mistake of law or fact in denying or suspending the Applicant or Registered Solicitor's Certificate.
6. 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.
7. The decision of the Appeals Officer 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.
8. Nothing herein shall impede or interfere with the Applicant's, Solicitor's, or City's right to seek relief in a court of competent jurisdiction.

5.40.160 Deceptive Soliciting Practices Prohibited.

1. No Solicitor shall intentionally make any materially false or fraudulent statement in the course of Soliciting.
2. A Solicitor shall immediately disclose to the consumer during face-to-face Solicitation; (i) the name of the Solicitor; (ii) the name and address of the entity with whom the Solicitor is associated; and (iii) 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.
3. No Solicitor shall use a fictitious name, an alias, or any name other than his or her true and correct name.
4. No Solicitor shall represent directly or by implication that the granting of a Certificate of Registration implies any endorsement by the City of the Solicitor's Goods or Services or of the individual Solicitor.

5.40.170 "No Solicitation" Notice.

1. Any occupant of a Residence may give notice of a desire to refuse Solicitors by displaying a "No Solicitation" 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.
2. 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.

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3. It shall be the responsibility of the Solicitor to check each Residence for the presence of any such Notice.
4. The provisions of this Chapter shall apply also to Solicitors who are exempt from Registration pursuant to the provisions of this Chapter.

5.40.180 Duties of Solicitors.

1. 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 of Registration does not in any way relieve any solicitor of this duty.
2. 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 a 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.
3. It is a violation of this Chapter for 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.
4. Any Solicitor who is at any time asked by an occupant of a Residence or dwelling to leave shall immediately and peacefully depart.
5. The Solicitor shall not intentionally or recklessly make any physical contact with, or touch another person without the person's consent;
6. The Solicitor shall not follow a person into a Residence without their explicit consent;
7. 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;
8. The Solicitor shall not use obscene language or gestures.

5.40.190 Time of Day Restrictions. It shall be unlawful for any person, whether licensed or not, to solicit at a Residence before 9:00 a.m. or after 9:00 p.m. Mountain Time, unless the Solicitor has express prior permission from the resident to do so.

5.40.200 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 § 70C-5-103, Utah Code Annotated, 1953, or a current version thereof or any State or Federal law modifying or amending such provision.

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5.40.210 Penalties. Any person who violates any term or provision of this Chapter shall be guilty of a Class B Misdemeanor and shall be punished by a fine of not to exceed \$1,000.00 and/or a jail sentence of not to exceed six (6) months.

5.40.220 Severability. If any provision of this chapter is held by a court of competent jurisdiction to be unconstitutional or for any reason invalid, such ruling or decision shall not affect the validity of the remaining provisions, which are adopted separately and independently and shall remain in force and effect. (Ordinance 2006-13, Section repealed 12/5/2006, Ord. no. 9 §6, 1963, Ord. 98-1, Repealed and Replaced, 08/24/2000) (Ord. No. 2009-6-O, Readopted, 5/5/09)

Chapter 5.44

CONDUCTING BUSINESS ON STREET OR SIDEWALKS

Sections:

5.44.010 Unlawful--Exception.

Section 5.44.010 Unlawful--Exception.

It is unlawful for any person to engage in or carry on any business, profession, trade, vocation or avocation on any street, alley or sidewalk or in or from any automobile, vehicle, stand or structure located in or upon the streets, alleys or sidewalks of the city; provided, however, this chapter shall not prohibit any business or occupation licensed or permitted under the ordinances of the city. (Prior code §15-11.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Chapter 5.48

LANDFILL LICENSE FEE

Sections:

5.48.010 Definitions.
5.48.020 Hazardous Waste.
5.48.030 Authorization of the construction and demolition landfill license fee.
5.48.040 License and Fees.

Section 5.48.010 Definitions.

For the purpose of this chapter, the following words-and phrases shall have the following meanings:

- 1) "Contractor" means the entity operating the construction and demolition landfill.
- 2) "Construction and demolition landfill" means the facility authorized by the Lindon City Council and Planning Commission to accept construction or demolition materials from individuals and contractors throughout the Utah County area.
- 3) "Construction or demolition materials" means the solid waste from construction or demolition activities,

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including wood, brick, stone, rubble, concrete, drywall, and other building materials, but does not include small amounts of such materials that are disposed of by regular household waste disposal methods.

- 4) "Dispose" or "Disposal" means to abandon, deposit, or otherwise discard materials as a final action after its use has been achieved or its use is no longer intended.
- 5) "Hazardous waste" means a solid waste or combination of solid waste which is a hazardous waste under the Utah "Solid and Hazardous Waste Act," U.C.A. §26-141, and regulations issued under it. (Ord. no. 2-95, enacted 3-95, effective date, 3-7-95.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.48.020 Hazardous Waste.

This title does not apply to the generation, transportation, treatment, storage, or disposal of hazardous waste, including asbestos or asbestos products. (Ord. no. 2-95, enacted 3-95, effective date, 3-7-95.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.48.030 Authorization of the construction and demolition landfill license fee.

Lindon City may license a contractor to establish and maintain a construction and demolition landfill in the city. The contractor shall qualify for and obtain any necessary conditional use permit and shall be in compliance with all applicable federal, state, and local statutes and ordinances. The contractor shall also comply with all business license requirements imposed by Chapter 5.04. (Ord. no. 2-95, enacted 3-95, effective date, 3-7-95.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)

Section 5.48.040 License and Fees.

The contractor shall pay a fee as established by the city to compensate the city for regulation and oversight of the operation. The council may annually adjust this fee by resolution. The funds collected pursuant to this section shall be applied to the general fund of Lindon City. (Ord. no. 2-95, enacted 3-95, effective date, 3-7-95.) (Ord. 98-1, Repealed and Replaced, 08/24/2000)