

Heber City Municipal Code

Title 5

BUSINESS TAXES, LICENSES AND REGULATIONS

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Chapter 5.04

Business Licenses

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Section 5.04.010 License Required.

It is unlawful for any person to engage in or carry on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required, without first taking out or procuring a license for such business, trade, profession or calling. (Prior code §21-1)

Section 5.04.015 Inspections for Code Compliance / Notice of Infraction.

Prior to the issuance of a business license for a business not previously licensed at that location, or a business with a change of location, the applicant shall permit inspection of the prospective place of business to ensure compliance with building, fire, safety, and health codes, and shall comply with such orders of the City Building Department and requirements of said codes. Businesses licensed, or to be licensed within the City, shall comply with international building, fire, safety and health codes. Businesses licensed, or to be licensed within the City, may be inspected periodically for compliance with building, fire, and health codes by any appropriate department of the City or other governmental agency to ensure compliance with building, fire and health and safety codes. No business license shall be granted without all such required inspections and approval of the City Building Department. No business license shall be granted without providing evidence of a Certificate of Occupancy for all habitable and occupiable space within the building with the exception of multi-tenant commercial buildings where evidence of a Certificate of Occupancy for the space intended to be used for the business is provided.
(2006-14, Added, 07/06/2006)

Section 5.04.017 License Denial or Revocation.

The City may deny, suspend or revoke a license if the applicant:

1. Has obtained a license by fraud or deceit;

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2. Has failed to pay personal property taxes or other required taxes or fees imposed by Heber City;
 3. Has violated the laws of the State of Utah, the United States Government, or the ordinances of Heber City governing operation of the business for which the applicant is applying for the license; or
 4. Has failed to comply with the provisions of Sections 5.04.015 and 5.04.017 of the Heber City Municipal Code or other local, state or federal statutes, codes or laws related to or associated with Title 5 of the Heber City Municipal Code.
- (2006-14, Added, 07/06/2006)

Section 5.04.020 Fee--Payment in Advance.

A license shall not be issued to any person until the amount required for the license shall have been first paid to the city treasurer. Upon presentation of the treasurer's receipt to the city officer authorized to issue licenses, and upon complying with the provisions of this chapter in reference to such license, the licenses shall be issued to the applicant. (Prior code §21-2)

Section 5.04.030 Fee--Date Due.

Licenses shall be due and payable at the office of the city treasurer on or before the first day of January. A penalty shall be assessed on all delinquent licenses. (Ord. 2003-01, 2003; Ord. 90-07, 1990, Prior code §21-3)
(2003-01, Amended, 02/06/2003)

Section 5.04.040 License--Application--Issuance.

- A. All applications for license, except as otherwise provided in this code, shall be made in writing to the mayor.
- B. All licenses shall be approved by the Business Licensing Official and signed by the recorder, mayor or presiding officer of the city council under the seal of the city. The recorder shall file all applications for license with accompanying statements and bonds, and shall keep an alphabetical list of licenses issued, stating the number, name, time, place and kind of business and the amount paid, with such remarks as may be considered necessary. (Ord. 2003-01, 2003; Ord. 92-03, 1992; Prior code §21-4)
(2003-01, Amended, 02/06/2003)

Section 5.04.050 Content of License.

Every license issued shall specify, by name, the person to whom it is issued and shall designate the particular place at which the business is to be carried on. No license granted or issued under any of the provisions of this chapter shall be in any manner assignable or transferable, or authorize any other person than is therein mentioned and named to do business, or authorize any other business than is therein mentioned or named to be done or transacted, or the business therein mentioned or named to be done or transacted at any place other than is therein mentioned or named, unless specifically authorized herein. (Ord. 2003-01, 2003; Prior code §21-5)
(2003-01, Amended, 02/06/2003)

Section 5.04.060 Replacement of License.

No rebate shall be allowed upon any license unless the licensee has been damaged by fire or other unavoidable accident, or unless in case of affliction, poverty or other meritorious cause. In all such cases

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the city council shall have discretionary power as to what, if any, amount shall be rebated. (Prior code §21-6)

Section 5.04.070 Evidence of Ability to Pay.

In any action brought under or arising out of the provisions of this chapter, the fact that a person representing himself as engaged in any business or calling for the transaction of which a license is by ordinance required, or that such person exhibited a sign indicating such business or calling, shall be prima facie evidence of the ability of such person to pay for a license. (Prior code §21-7)

Section 5.04.080 Exemptions.

If any person shall furnish such evidence as shall satisfy the city council that they, by reason of misfortune, physical infirmities, or other reasonable or meritorious cause, merit exemption from the payment of any license fee herein required, the mayor may waive such license fee upon recommendation of a majority of the city council. (Ord. 92-03, 1992; Prior code §21-9)

Section 5.04.090 Transient Salesman.

See Heber City Municipal Code, Chapter 5.05. (Ord. 92-03, 1992; Ord. 90-07, 1990, Prior code §21-20)
(2006-28, Amended, 11/16/2006)

Section 5.04.100 Licenses.

A. It is unlawful for any person or entity to engage in, carry on, or pursue any business, vocation or calling without first obtaining a license to do so, and he shall (except where otherwise provided) make yearly payments into the city treasury in advance for such licenses.

B. The city council shall by resolution establish from time to time a schedule of bond amounts, penalties for delinquencies and license fees for all business activities for the carrying on of which it shall determine a license shall be required. It may also require as a condition to issuance of such license that the applicant furnish a bond, financial statement, liability insurance or take other reasonable steps for the protection of the city or its inhabitants. (Ord. 90-07, 1990, Prior code §21-21)

Section 5.04.110 Temporary Business Licenses For Retail Sales.

A. Definitions:

The term "temporary business for retail sales" shall mean any type of business using a temporary or portable structure which is set up for short-term retail sales.

The term "person" as used herein shall be constructed to include any person, firm, partnership, corporation, association, society or club, singular or plural.

B. License required: No person shall operate a temporary business without a temporary business license. It shall be unlawful for any person under the age of eighteen to engage in operating or be employed by a temporary business, unless directly supervised by an adult over 18 years old. Applicants for said temporary license will be subject to a background investigation and possess a valid driver's license. Each temporary business shall display the license in a conspicuous location. The City may deny, suspend or revoke a license if the applicant or licensee:

1. Has violated any provision of this Title or the business license requirements;
2. Has been convicted of a felony or has served a sentence for a felony conviction within five years, or a misdemeanor within the last three years involving controlled substances, alcohol, sex crimes, contributing to the delinquency of a minor, theft, possession of stolen property or, any other criminal act which

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might relate to the operation of the business.

- C. Application: Application must be made at least 48 hours prior to conducting the temporary business.
- D. License: No person shall be granted a temporary business license to exceed 6 days within any 12 month period. The license shall state the dates the temporary business may operate.
- E. License Fee: The license fee shall be \$45 plus \$10 for each day the business is to be conducted.
- F. Background Check: A background check is required.
- G. It is unlawful to operate a temporary business on dates other than those covered by the license.
- H. Temporary businesses:
 - 1. Must be conducted from a temporary structure consisting of at least three walls and a roof having no more than 400 square feet of floor space.
 - 2. Must be conducted in a commercial zone. (See Chapter 18 of this Code for zoning requirements.)
 - 3. Must be serviced by an approved electrical hook-up if electricity is to be used in connection with said operation. Extension cords from other structures will not be approved. Electrical hook-ups must conform to the currently adopted Electrical Code and must be inspected and approved by the City Building Department prior to the conducting of any business from business premises.
 - 4. Must set back at least 25 feet from the back of the curb. Temporary businesses are not allowed in areas where curb and gutter do not exist.
 - 5. Must be operated in a manner so as not to block traffic into or out of adjacent businesses or structures.
 - 6. Are limited to use of one sign of 15 square feet or less. No other means of advertising such as flashing lights, loud speakers, or calling out are permitted.
 - 7. Must meet all local and state health and safety requirements applicable to the type of business being carried on.
 - 8. Must remove the temporary structure within 24 hours after the temporary business license expires. Application for a temporary business license shall constitute authority to so remove the structure and an agreement to reimburse the city for removal and storages fees.
 - 9. Before a license is issued the applicant must:
 - a. Provide written evidence that restroom facilities for employees will be provided by another business within 300 feet of the temporary structure, and
 - b. Provide written evidence that the owner of the premises upon which the portable structure is to be placed has given his consent for the placement of the structure and has approved the type of business to be conducted.
 - c. Provide temporary sales tax license number.(Ord. 2003-01, 2003; Ord. 92-04, 1992)
(2003-01, Amended, 02/06/2003)

Section 5.04.120 Special Sales Events and Promotions

- A. Definitions: A Special Sales Event or Promotion, hereby referred to as a Sales Event, is a commercial activity conducted by businesses currently operating within Heber City. They may be conducted on or off-premise, on the public sidewalk, or on private or publicly owned parking lots.
- B. License Required: No person shall operate a Sales Event without the required license.
- C. Application: Application must be made at least 48 hours prior to the Sales Event.
- D. License: The license shall state the dates of the event sale. The Sales Event shall not extend for more than 3 consecutive working days nor more than 4 times a year.
- E. License Fee: None.
- F. Sales Event:
 - 1. Must be conducted in a commercial zone. (See Chapter 18 of this Code for zoning requirements.)
 - 2. If extension cords are utilized, they must be outdoor rated and placed in a manner to not create a hazard.
 - 3. Must be operated in a manner so as not to block traffic into or out of adjacent

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businesses or structures. Trucks and trailers may be used for storage of merchandise or inventory but may not be entered by the customer.

4. Are limited to use of one sign of 15 square feet or less. No other means of advertising such as flashing lights, loud speakers, or calling out, are permitted. Permanent signs on trucks or semi-truck trailers are not considered part of the signage.

5. Before a license is issued the applicant must: If the event is off-premise from the original business location the applicant must provide written evidence that restroom facilities for employees will be provided by another business within 300 feet and provide evidence that the owner of the premises upon which the event will be conducted has given approval to do so. (Ord. 2003-01, 2003) (2003-01, Added, 03/06/2003)

Section 5.04.130 Non-Profit Special Events

Non-profit sponsoring units of Special Events may apply for a Special Events Permit to conduct business and have concession stands in connection with requested event. If the event and the activities comply with all local and state ordinances, law, and regulations, a permit will be issued.

The sponsoring unit will be assessed a permit fee equal to \$25 per business and/or concession stand. Additionally, the sponsoring unit must provide evidence from the IRS of Non-profit status and ensure that all businesses and concession stands have a temporary sales tax number and collect the appropriate sales tax. All business activities in connection with said event shall be at locations approved by both the sponsoring unit and the city administrative officer assigned by the mayor to overview the special event. The permit issued shall entitle each individual business or concession to operate without acquiring an independent license, but the duration of the business activity shall not exceed seven calendar days. (Ord. 2003-01, 2003) (2003-01, Added, 02/06/2003)

Section 5.04.140 Seasonal Businesses

- A. Definitions:
Seasonal Businesses are limited to the following: Christmas Tree Sales, Firework Stands, Shaved Ice Stands, Nurseries, Florists and Produce Stands, and other seasonal uses as determined by staff.
- B. License required: No person shall operate a Seasonal Business without a license.
- C. Application: Application must be made at least 48 hours prior to operation of the seasonal business.
- D. License: The license shall state the period of operation, up to six months in any calendar year, which may be renewed yearly.
- E. License Fees: The license fee shall be \$55 plus \$30 Fire Inspection fee. Any seasonal business engaged in the selling of Class (c) fireworks shall pay an additional fee of \$200 plus have commercial general liability insurance including premises and operations liability and products and completed operations liability in the amount of one million dollars per occurrence and one million dollars for products and completed operations aggregate.
- F. It is unlawful to operate a seasonal business on days other than those covered by the license.
- G. Seasonal Sales:
1. Shaved Ice Stands and Firework Stands must be conducted from a temporary structure consisting of at least three walls and a roof and having no more than 400 square feet of floor space.
 2. Must be conducted in a commercial zone. (See Chapter 18 of this Code for zoning requirements.)

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3. Must be serviced by an approved electrical hook-up if electricity is to be used in connection with said operation. Extension cords from other structures will not be approved. Electrical hook-ups must conform to the currently adopted Electrical Code and must be inspected and approved by the City Building Department prior to the conducting of any business from business premises.

4. Must be set back at least 25 feet from the back of the curb. Seasonal businesses are not allowed in areas where curb and gutter do not exist.

5. Must be operated in a manner so as not to block traffic into or out of adjacent businesses or structures.

6. Are limited to use of one sign of 15 square feet or less. No other means of advertising such as flashing lights, loud speakers, or calling out are permitted.

7. Must meet all local and state health and safety requirements applicable to the type of business being carried on.

8. Must remove the temporary structure within five days after the seasonal business license expires. If the structure is not removed within the specified period of time, the licensee will be guilty of a Class B Misdemeanor and the City will be authorized to remove the structure and charge the licensee for the cost of removal plus storage expenses. Application for a Seasonal Business License shall constitute authority to so remove the structure and an agreement to reimburse the City for removal and storage fees.

9. Before a license is issued the applicant must:

a. Provide written evidence that restroom facilities for employees will be provided by another business within 300 feet of the seasonal structure;

b. Provide written evidence that the owner of the premises upon which the portable structure is to be placed has given his consent for the placement of the structure and has approved the type of business to be conducted; and

c. Provide a sales tax license number. (Ord. 2003-01, 2003)

(2003-01, Added, 02/06/2003)

Section 5.04.150 Solicitors, Peddlers, Vendors, and Transient Salesman (Transient Sales)

See Heber City Municipal Code, Chapter 5.05. (Ord. 2003-01, 2003)
(2006-28, Amended, 11/16/2006; 2003-01, Added, 02/06/2003)

Section 5.04.160 Motorized Street Vendors

A. Definitions: The selling of merchandise or solicitation for sales primarily from a motorized vehicle parked in the public street. These vendors carry merchandise, goods, and services for sale and consumption immediately from the vehicle. Examples include ice cream vendors, both individual servings and packaged servings, frozen goods vendors, produce, dairy products, hot food sales, yard care services, and health services.

1. License required: No person shall sell merchandise from a motorized vehicle without obtaining a motorized street vendor business license. It shall be unlawful for any person under the age of eighteen to engage in a motorized street vendor business. Each person selling, offering to sell, or displaying of sale retail merchandise from or on motorized vehicles on public streets or private property shall obtain a Heber City business license prior to beginning operation. Applicants for said license will be subject to a background investigation and possess a valid drivers license. Each party engaged in such a business shall display the business license in a conspicuous location at the point of sale on the lower left (driver) side of the windshield of the vehicle. The City may deny, suspend, or revoke a license if the applicant or licensee:

a. Has violated any provision of this Title or the business license requirements;

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b. Has been convicted of a felony or has served a sentence for a felony conviction within five years, or a misdemeanor within the last three years involving controlled substances, alcohol, sex crimes, contributing to the delinquency of a minor, theft, possession of stolen property or, any other criminal act with might relate to the operation of the business.

2. Application: Application must be made at least 48 hours prior to operation of the business.

B. License: The license shall be for a one year period and renewed annually. The license shall run from January 1st of the year to December 31st.

C. License Fees: The fee shall be \$110.00 annually.

D. Conditions and Requirements for Motorized Street Vendors: Motorized Street Vendors shall comply with the following:

1. Have a clearly-audible backup warning device that activates whenever the vehicle is shifted into reverse gear.

2. Have a convex mirror mounted on the front of the vehicle so that the driver, in a normal driving position, can see the area in front of the vehicle that is obscured by the hood.

3. Have a flashing yellow beacon on the roof of the vehicle that is visible from all sides of the vehicle. This beacon shall be activated whenever the merchandise is being sold, offered for sale or displayed for sale.

4. Be prohibited from pulling any type of trailer during business operation.

5. The vehicle shall be inspected by the health department if the merchandise includes any item intended for human consumption.

6. Hours of operation shall be between 10:00 a.m. and sunset. Sunrise and sunset shall be determined on any particular day by the times listed that day in any major newspaper circulated in Wasatch County.

7. The operator of the motorized vehicle shall not sell to any person standing in the roadway.

8. The operator of the motorized vehicle shall sell, offer to sell or display for sale retail merchandise only when the vehicle is completely stopped and lawfully parked, and shall sell only from the rear or side of the vehicle nearest to the curb or edge of the roadway.

9. To reach a point of sale, the motorized vehicle shall not be moved backwards in order to sell, offer to sell or display for sale retail merchandise.

10. Each applicant for a license or renewal under this Section shall submit with its application evidence of general liability insurance in an amount not less than \$500,000. The applicant must submit to the City a certificate of insurance that provides that the policy cannot be canceled prior to giving the City at least 10 days written notice of cancellations.

11. The motorized vehicle and operator must comply with all other requirements of this Chapter and any other requirements of ordinance or statute that may be applicable.

12. The volume of any audio equipment used to advertise for the business must be approved by the Heber City Police Department.

13. Applicant shall provide a sales tax license number.

E. Lawful Advertising and Business Markings - Exception: The prohibitions of this Section shall not be construed to prohibit vehicles from carrying business markings or advertising not otherwise prohibited by law, nor shall they prohibit delivery of merchandise which was not sold or purchased on public streets.

F. Sales on Private property: Sales on private property shall be made only with the permission of the property owner or occupant.

G. Severability: If any provision of this ordinance is declared invalid by the court of competent jurisdiction, the remainder shall not be affected thereby. (Ord. 2003-01, 2003) (2003-01, Added, 02/06/2003)

Chapter 5.05

Solicitors, Peddlers, Vendors, and Transient Salesman (Transient Sales)

Sections:

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- 5.05.020 No Other City License or Approval Required.**
- 5.05.030 Definitions.**
- 5.05.040 Exemptions from Chapter.**
- 5.05.050 Solicitation Prohibited.**
- 5.05.060 Registration of Solicitors.**
- 5.05.070 Application Form.**
- 5.05.080 Written Disclosures.**
- 5.05.090 When Registration Begins.**
- 5.05.100 Issuance of Certificates.**
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- 5.05.130 Non-Transferability of Certificates.**
- 5.05.140 Denial, Suspension or Revocation of a Certificate of Registration.**
- 5.05.150 Appeal.**
- 5.05.160 Deceptive Soliciting Practices Prohibited.**
- 5.05.170 "No Solicitation" Notice.**
- 5.05.180 Duties of Solicitors.**
- 5.05.190 Time of Day Restrictions.**
- 5.05.200 Buyer's Right to Cancel.**
- 5.05.210 Penalties.**

Section 5.05.010 Purpose

Residents of the 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.

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:

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- 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.

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.

(2006-28, Added, 11/16/2006)

Section 5.05.020 No Other City License or Approval Required.

A. Registered solicitors and persons exempt from Registration need not apply for, nor obtain, any other license, permit, or registration from the City to engage in door-to-door solicitation.

B. 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.

C. 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.

D. Nothing herein is intended to interfere with or supplant any other requirement of federal, state, or other local government law regarding any license, permit, or certificate that a registered solicitor is otherwise required to have or maintain.

(2006-28, Added, 11/16/2006)

Section 5.05.030 Definitions.

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

A. **Advocating** means speech or conduct intended to inform, promote, or support religious belief, political position, or charitable activities.

B. **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.

C. **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.

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D. **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.

E. **Application Form** means a standardized form provided by the City to an Applicant to be completed and submitted as part of registration.

F. **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 Utah Department of Public Safety Bureau of Criminal Identification verified criminal history report personal to the Applicant; 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.

G. **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.

H. **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.

I. **Charitable Activities** means advocating by persons or Entities that either are, or support, a charitable organization.

J. **Charitable Organization** includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:

1. that is:

(a) a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious, social welfare or advocacy, public health, environmental or conservation, or civic organization;

(b) for the benefit of a public safety, law enforcement, or firefighter fraternal association; or

(c) established for any charitable purpose;

and

2. 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.

3. 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.

K. **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.

L. **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.

M. **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

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agreement.

N. **Disqualifying Status** means anything specifically defined in this Chapter as requiring the denial or suspension of a Certificate, and any of the following:

1. 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;

2. 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;

3. The Applicant or registered solicitor has been criminally convicted of a felony within the last ten (10) years;

4. The Applicant or registered solicitor has been incarcerated in a federal or state prison within the past five (5) years;

5. 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;

6. 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);

7. The Applicant or registered solicitor currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;

8. The Applicant or registered solicitor has an outstanding arrest warrant from any jurisdiction; or

9. 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.

O. **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.

P. **Entity** includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association.

Q. **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.

R. **Final Civil Judgment** means a civil judgment that would be recognized under state law as a judgment to which collateral estoppel would apply.

S. **Goods** means one or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.

T. **Home Solicitation Sale** means to make or attempt to make a sale

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of goods or services by a solicitor at a residence by means of door-to-door solicitation, regardless of

1. the means of payment or consideration used for the purchase;

2. the time of delivery of the Goods or Services; or

3. the previous or present classification of the Solicitor as a solicitor, peddler, hawker, itinerant merchant, or similar designation.

U. **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.

V. **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.

W. **Political Position** means any actually held belief, or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.

X. **Registered Solicitor** means any person who has been issued a current Certificate by the City.

Y. **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.

Z. **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.

AA. **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.

BB. **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:

1. 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;

2. facilitating and responding to requests from consumers who desire to cancel the sale pursuant to applicable contractual rights or law; and

3. refunding any monies paid or reversing credit card charges to those persons who timely rescind any sale pursuant to applicable contractual rights or law.

CC. **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,

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or local law.

DD. **Services** means those intangible goods or personal benefits offered, provided, or sold to a Competent Individual of a Residence.

EE. **Soliciting** or Solicit or Solicitation means any of the following activities:

1. 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;

2. Seeking to obtain prospective customers to apply for or to purchase insurance, subscriptions to publications, or publications;

3. Seeking to obtain contributions of money or any other thing of value for the benefit of any person or Entity;

4. Seeking to obtain orders or prospective customers for Goods or Services;

5. 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; or

6. Other activities falling within the commonly accepted definition of Soliciting, such as hawking or peddling.

FF. **Solicitor or Solicitors** means a person(s) engaged in Door-to-Door Solicitation.

GG. **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.

HH. **Substantiated Report** means an oral, written, or electronic report:

1. That is submitted to and documented by the City by any of the following:

a. 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;

b. City law enforcement or Licensing Officer; or

c. Any other regularly established law enforcement agency at any level of government;

2. That provides any of the following information regarding a Registered Solicitor:

a. Documented verification of a previously undisclosed Disqualifying Status of a Registered Solicitor;

b. Probable cause that the Registered Solicitor has committed a Disqualifying Status which has not yet been determined to be a Disqualifying Status;

c. 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

d. 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.

II. **Waiver** means the written form provided to Applicant by the City

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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.
(2006-28, Added, 11/16/2006)

Section 5.05.040 Exemptions from Chapter.

Exemptions From Chapter. The following are exempt from Registration under this Chapter:

A. Persons specifically invited to a Residence by a Competent Individual prior to the time of the person's arrival at the residence;

B. 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, and such state permit that specifically articulates that requiring a City permit of license is unlawful;

C. 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;

D. 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

E. Persons representing a Charitable Organization. The charitable exemption shall apply to students Soliciting contributions to finance extracurricular social, athletic, artistic, scientific or cultural programs, provided that the Solicitation has been approved in writing by the school administration, and that such student Solicitors carry current picture student identification from the educational institution for which they are Soliciting.

Those Persons exempt from Registration are not exempt from the duties and prohibitions outlined in Sections 5.05.170, 5.05.180 and 5.05.190 while Advocating or Soliciting.
(2006-28, Added, 11/16/2006)

Section 5.05.050 Solicitation Prohibited.

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.
(2006-28, Added, 11/16/2006)

Section 5.05.060 Registration of Solicitors.

Registration of Solicitors. 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

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Licensing Officer and obtain a Certificate.
(2006-28, Added, 11/16/2006)

Section 5.05.070 Application Form.

Application Form. The Licensing Officer shall provide a standard Application Form for use for the Registration of Solicitors. Upon request to the Licensing Officer, or as otherwise provided, any person or Entity may obtain in person, by mail, or facsimile, a copy of this Application Form. Each Application Form shall require disclosure and reporting by the Applicant of the following information, documentation, and fee:

A. **Review of Written Disclosures.** An affirmation that the Applicant has received and reviewed the disclosure information required by this Chapter.

B. **Contact Information.**

1. Applicant's true, correct and legal name, including any former names or aliases used during the last ten (10) years;
2. Applicant's telephone number, home address and mailing address, if different;
3. If different from the Applicant, the name, address, and telephone number of the Responsible Person or Entity; and
4. The address by which all notices to the Applicant required under this Chapter are to be sent.

C. **Proof of Identity.** An in-person verification by the Licensing Officer of the Applicant's true identity by use of any of the following which bear a photograph of said Applicant:

1. A valid driver's license issued by any State;
2. A valid passport issued by the United States;
3. A valid identification card issued by any State; and
4. A valid identification issued by a branch of the United States military. Upon verification of identity, the original identification submitted to establish Proof of Identity shall be returned to the Applicant.

D. **Proof of Registration with Department of Commerce.** The Applicant shall provide proof that either the Applicant, or the Responsible Person or Entity, has registered with the Utah State Department of Commerce.

E. **Special Events Sales Tax Number.** The Applicant shall provide a special events sales tax number for either the Applicant, or for the Responsible Person or Entity for which the Applicant will be soliciting.

F. **Marketing Information.**

1. The Goods or Services offered by the Applicant, including any commonly known, registered or trademarked names; and
2. 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.

G. **BCI Background Check.** The Applicant shall provide:

1. An original or a copy of a BCI background check as defined in 5.05.030 (F); and
2. A signed copy of a Waiver whereby Applicant agrees to allow the City to obtain a name/date of birth BCI background check on Applicant

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for purposes of enforcement of this Chapter. 1

H. **Responses to Questions Regarding ADisqualifying Status.@** The Applicant shall be required to affirm or deny each of the following statements on the Application Form:

1. Has the Applicant been Criminally Convicted of: (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;

2. 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;

3. Has the Applicant been Criminally Convicted of a felony within the last ten (10) years;

4. Has the Applicant been incarcerated in a federal or state prison within the past five (5) years;

5. Has the Applicant been Criminally Convicted of a misdemeanor within the past five (5) years involving a crime of: (i) moral turpitude, or (ii) violent or aggravated conduct involving persons or property;

6. Has a Final Civil Judgment been entered against the Applicant within the last five (5) years indicating that: (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);

7. Is the Applicant currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;

8. Does the Applicant have an outstanding arrest warrant from any jurisdiction; or

9. Is the Applicant currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.

I. **Fee.** The Applicant shall pay such fees as determined applicable by the City, which shall not exceed the reasonable cost of processing the application and issuing the Certificate and/or Identification Badge.

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

(2006-28, Added, 11/16/2006)

Section 5.05.080 Written Disclosures.

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

A. The Applicant's submission of the Application authorizes the City to verify information submitted with the Completed Application

¹See Utah Code Ann. '53-10-108(1) (b) .

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including:

1. the Applicant's address;
2. the Applicant's and/or Responsible Person or Entity's state tax identification and special use tax numbers, if any; or
3. the validity of the Applicant's Proof of Identity.

B. The City may consult any publicly available sources for information on the Applicant, including but not limited, to databases for any outstanding warrants, protective orders, or civil judgments;

1. establishing Proof of Identity is required before Registration is allowed;

C. Identification of the fee amount that must be submitted by Applicant with a Completed Application.

D. The Applicant must submit a BCI background check with a Completed Application.

E. 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.

F. 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.

G. The criteria for Disqualifying Status, denial, or suspension of a Certificate under the provisions of this Chapter.

H. That a request for a temporary Certificate will be granted or denied the same business day that a Completed Application is submitted, as long as said Application is received before 3:00 p.m. that same day.
(2006-28, Added, 11/16/2006)

Section 5.05.090 When Registration Begins.

When Registration Begins. The Licensing Officer shall not begin the Registration process unless the Applicant has submitted a Completed Application. The original identification submitted to establish Proof of Identity shall be returned after the Licensing Officer verifies the Applicant's identity. A copy of the identification may be retained by the Licensing Officer. If an original 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.

(2006-28, Added, 11/16/2006)

Section 5.05.100 Issuance of Certificates.

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

A. Temporary Certificate.

1. A temporary Certificate shall issue allowing the Applicant to immediately begin Door-to-Door Solicitation upon the following conditions:

a. applicant's submission of a Completed Application;

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b. applicant's submission of the required fee;
c. applicant establishes Proof of Identity;
d. the Applicant's representations on the Application Form do not affirmatively show a Disqualifying Status;
e. the 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 still constitute a Disqualifying Status under this Chapter.

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

B. Annual Certificate. Within twenty-five (25) calendar days of the issuance of a temporary Certificate the City shall:

1. take any and all actions it deems appropriate to verify the truthfulness and completeness of the information submitted by the Applicant, including, but not limited to those disclosed with the Application Form.

2. Issue written notice to the Applicant and the Responsible Person or Entity, if any, that the Applicant either:

a. will be issued an annual Certificate, eligible for renewal one year from the date of issuance of the temporary Certificate; or

b. will not be issued an Annual Certificate for reasons cited in Section 5.05.140 of this Chapter.

C. Renewal Certificate. An Annual Certificate shall be valid for one year from the date of issuance of the temporary Certificate and shall expire at midnight on the anniversary date of issuance. Any Annual Certificate that is not suspended, revoked, or expired may be renewed upon the request of the Registered Solicitor and the submission of a new Completed Application and payment of the Fee, unless any of the conditions for the denial, suspension or revocation of a Certificate are present as set forth in section 5.05.140, or a Disqualifying Status is present.

(2006-28, Added, 11/16/2006)

Section 5.05.110 Form of Certificate and Identification Badge.

A. Certificate Form. Should the Licensing Officer determine that the Applicant is entitled to a Certificate, the Licensing Officer shall issue a Certificate to the Applicant. The Certificate shall list the name of the Registered Solicitor and the Responsible Person or Entity, if any, and the date on which the Certificate expires. The Certificate shall be dated and signed by the License Officer. The Certificate shall be carried by the Registered Solicitor at all times while Soliciting in the City.

B. 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 is provided;

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8 a recent photograph of the Registered Solicitor; and (d) the date on which the Certificate expires.

(2006-28, Added, 11/16/2006)

Section 5.05.120 Maintenance of Registry.

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.

(2006-28, Added, 11/16/2006)

Section 5.05.130 Non-Transferability of Certificates.

Non-Transferability of Certificates. Certificates shall be issued only in the name of the Applicant and shall list the Responsible Party or Entity, if any. The Certificate shall be non-transferable. A Registered Solicitor desiring to facilitate or attempt to facilitate Home Solicitation Sales with different: (a) Goods or Services; or (b) Responsible Person or Entity, from those designated in the originally submitted Completed Application, shall submit a written change request to the Licensing Officer. A new Certificate based on the amended information shall issue for the balance of time remaining on the Solicitor's previous Certificate before the amendment was filed. Before the new Certificate is given to the Registered Solicitor, the Registered Solicitor shall obtain a revised Identification Badge from the City, after payment of the Fee for the Identification Badge.

(2006-28, Added, 11/16/2006)

Section 5.05.140 Denial, Suspension or Revocation of a Certificate of Registration.

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

1. **Denial of Temporary Certificate.** The City may deny a Temporary Certificate for any of the following reasons:

a. the Application Form is not complete;

b. the Applicant fails to (1) establish Proof of Identity, (2) provide a B.C.I. or (3) pay the Fees;

c. the Completed Application or B.C.I. indicates that the Applicant has a Disqualifying Status;

d. 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; or

e. violation of this Ordinance.

2. **Denial of Annual Certificate.** The City may deny a Annual Certificate for any of the following reasons:

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a. the information submitted by the Applicant at the time of the granting of the temporary Certificate is found to be incomplete or incorrect;

b. since the submission of the Completed Application, the Applicant is subject to a previously undisclosed or unknown Disqualifying Status;

c. failure to complete payment of the Fees;

d. since the submission of the Application, the City has received a Substantiated Report regarding the past or present conduct of the Applicant;

e. since the submission of the Application, 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;

f. 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); or

g. violation of this Ordinance.

3. **Denial of Annual Certificate Renewal.** The City may deny an Annual Certificate Renewal for any of the following reasons:

a. the information submitted by the Applicant when seeking renewal of a Certificate is found to be incomplete or incorrect;

b. since the submission of the renewal Application, the Applicant is subject to a previously undisclosed or unknown Disqualifying Status;

c. failure to complete payment of the Fees;

d. since the submission of the Application or granting of a Certificate, the City has received a Substantiated Report regarding the past or present conduct of the Solicitor;

e. 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;

f. 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); or

g. violation of this Ordinance.

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

C. **Notice of Denial or Suspension.** Upon determination of the Licensing Officer to deny an Applicant's Completed Application or to

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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 fourteen (14) business days from the date of mailing from the City 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/-5/-3- (GG) (2) (D), 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.

(2006-28, Added, 11/16/2006)

Section 5.05.150 Appeal.

Appeal. An Applicant or Registered Solicitor whose 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:

A. 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.

B. 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.

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

D. The Appeals Officer will render a decision no later than fifteen (15) calendar days from the date the appeal was received by the City, unless

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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 Section 5.05.150(C) the fifteen (15) calendar days shall be extended to include the additional three (3) days for rebuttal.

E. 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.

F. 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.

G. 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.

H. After the ruling of the Appeals Officer, the Applicant or Solicitor is deemed to have exhausted all administrative remedies with the City.

I. 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.

(2006-28, Added, 11/16/2006)

Section 5.05.160 Deceptive Soliciting Practices Prohibited.

A. No Solicitor shall intentionally make any materially false or fraudulent statement in the course of Soliciting.

B. A Solicitor shall immediately disclose to the consumer during face-to-face Solicitation; (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.

C. No Solicitor shall use a fictitious name, an alias, or any name other than his or her true and correct name.

D. 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.

(2006-28, Added, 11/16/2006)

Section 5.05.170 "No Solicitation" Notice.

A. Any occupant of a Residence may give notice of a desire to refuse Solicitors by displaying a **ANo 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.

B. The display of such sign or placard shall be deemed to constitute notice to any Solicitor that the inhabitant of the Residence does not desire

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to receive and/or does not invite Solicitors.

C. It shall be the responsibility of the Solicitor to check each Residence for the presence of any such Notice.

D. The provisions of this Section shall apply also to Solicitors who are exempt from Registration pursuant to the provisions of this Chapter.
(2006-28, Added, 11/16/2006)

Section 5.05.180 Duties of Solicitors.

A. Every person Soliciting or Advocating shall check each Residence for any "No Soliciting" sign or placard or any other notice or sign notifying a solicitor not to solicit on the premises, such as, but not limited to, "No Solicitation" signs. If such sign or placard is posted such Solicitor shall desist from any efforts to solicit at the Residence or dwelling and shall immediately depart from such property. Possession of a Certificate of Registration does not in any way relieve any solicitor of this duty.

B. It is a violation of this Chapter for any person Soliciting or Advocating to knock on the door, ring the doorbell, or in any other manner attempt to attract the attention of an occupant of a Residence that bears a **ANo Solicitation@** sign or similar sign or placard for the purpose of engaging in or attempting to engage in Advocating, a Home Solicitation Sale, Door-to-Door Soliciting, or Soliciting.

C. It is a violation of this Chapter 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.

D. Any Solicitor who is at any time asked by an occupant of a Residence or dwelling to leave shall immediately and peacefully depart.

E. The Solicitor shall not intentionally or recklessly make any physical contact with, or touch another person without the person's consent;

F. The Solicitor shall not follow a person into a Residence without their explicit consent;

G. The Solicitor shall not continue repeated Soliciting after a person and/or Competent Individual has communicated clearly and unequivocally their lack of interest in the subject, Goods or Services of the Solicitor;

H. The Solicitor shall not use obscene language or gestures.
(2006-28, Added, 11/16/2006)

Section 5.05.190 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.

(2006-28, Added, 11/16/2006)

Section 5.05.200 Buyer's Right to Cancel.

Buyer's Right to Cancel. In any Home Solicitation Sale, unless the

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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.

(2006-28, Added, 11/16/2006)

Section 5.05.210 Penalties.

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. Additionally, the City may refuse any subsequent applications of the Solicitor who has violated this Ordinance, or had criminal action taken against them pursuant to these provisions.

(2006-28, Added, 11/16/2006)

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Chapter 5.06

Mass Gatherings

Sections:

5.06.010 Rules Governing Temporary Mass Gatherings.

Section 5.06.010 Rules Governing Temporary Mass Gatherings.

A. All mass gatherings taking place within the incorporated area of Heber City shall comply with the Utah Department of Health, Temporary Mass Gathering Sanitation Rule as adopted by the Wasatch City-County Health Department.

B. No permit or license to so gather shall be issued under Chapter 5.04 of Heber City Municipal Code dealing with Business Licenses, unless the gathering has been approved by the Wasatch County-City Health Department; nor shall any "Owner" or "Operator" (as defined by the existing Wasatch City-County Health Department rule governing temporary mass gatherings) permit a "Temporary Mass Gathering" as defined by such rule to take place within the City or any part thereof, unless the gathering is in compliance with the rules or rules adopted by the Wasatch City-County Health Department.

(2000-28, Adopted, 12/21/2000)

Chapter 5.08

Beer, Wine and Liquor Establishments

Sections:

- 5.08.010 Application of Chapter**
- 5.08.020 Alcohol License--Required**
- 5.08.030 Grounds for Granting, Denying, Suspending, or Revoking of License**
- 5.08.040 Application Requirements**
- 5.08.045 Repealed by 2004-06**
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Section 5.08.010 Application of Chapter

The City adopts the State of Utah Alcoholic Beverage Control Act, Title 32A Utah Code Annotated 1953 (ABC) in its entirety, as amended from time to time and supplemented by these ordinances. It is the responsibility of any applicant for an alcoholic beverage license, consent or permit to be in compliance with identified conditions and requirements of State law and local ordinances prior to making application with the City for any license (including any license, consent or permit, as the specific licensing designation may be). It is the obligation of each applicant and licensee (including any licensee, consentee or permittee) to stay in compliance with State law and local ordinances regardless of changes to those laws and ordinances. (Ord. 2004-06, 2004; Ord. 83-002 §2, 1983)
(2004-06, Amended, 03/18/2004)

Section 5.08.020 Alcohol License--Required

It is unlawful for any person to engage in the sale of any kind of beer, liquor, or wine at retail or wholesale within the corporate limits of the City without first having procured a license therefore from the City, as provided in this Chapter, and obtained a license from the Utah Department of Alcoholic Beverage Control. A separate license shall be required for each place of sale which must be on display in a conspicuous place within the business.(Ord. 2004-06, 2004; Ord. 2002-11, 2002; Ord. 91-01, 1991; Ord. 89-11, 1989; Ord. 83-002 §§3--6, 1983)
(2004-06, Amended, 03/18/2004; 2002-11, Amended, 06/06/2002)

Section 5.08.030 Grounds for Granting, Denying, Suspending, or Revoking of License

- A. The following are grounds for revocation or suspension of any alcohol license or local consent:
1. The licensee has failed to comply with the requirements of the Alcohol Beverage Control Act as currently in force or amended in the future, or the requirements of this Title;
 2. The licensee or employees of the licensee have been convicted or plead guilty to violations occurring to this Title or any City, County, State or Federal law or ordinance and said

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violations occurred on the licensed premise, not including violations by patrons;

3. The licensee has attempted to transfer the license to another in violation of this Title;
 4. The licensee has become ineligible to hold a license by failing to meet the standards for licensees listed in this Title;
 5. The licensee or his agents or employees, with the knowledge of the license holder, have been engaged in the sale, distribution or delivery of controlled substances, as defined by State Statute, on or from the licensed premises; or
 6. The licensee has been denied a license by the State of Utah under the Alcoholic Beverage Control Act as required by this Title or has had said State license revoked or suspended.
- B. The following shall be considered in granting or denying a license:
1. Previous business or personal record, either within or outside of Heber City;
 2. Criminal record of the applicant. No person shall be granted a retail license unless he qualifies as provided in the State of Utah Alcoholic Beverage Control Act. The City may not grant any alcohol license or consent to any person who has been convicted of:
 - a. A felony under any Federal or State law;
 - b. Any violation of any Federal or State law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;
 - c. Any crime involving moral turpitude; or
 - d. On two or more occasions within the five years before the day on which the license is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug.

3. Location of the facility in relation to the community; and
4. No licenses, permits or consents provided for in this Chapter shall be issued to any applicant who is in arrears in the payment to the City of business license fees, or is otherwise indebted to the City for past due payments owing. (Ord. 2004-06, 2004; Ord. 83-002 §14, 1983)
(2004-06, Amended, 03/18/2004)

Section 5.08.040 Application Requirements

- A. Each person seeking an alcohol license or consent under this Chapter shall request approval from the City Council. The applicant shall file a written application to appear before the City Council with the City Recorder and include the following:
1. A description of the proposed establishment and alcohol license requested;
 2. A copy of a plat map from the County Recorder's office showing the proposed facility and properties within 600 feet of the proposed facility;
 3. A signed consent form granting an irrevocable license to the City permitting any authorized representative of the City or any law enforcement officer unrestricted right to enter and inspect the premises;
 4. Any other documents and evidence the City may require by rule or policy to allow complete evaluation of the application; and
 5. A certified original background check of the applicant by the Bureau of Criminal Investigation current within 30 days.
- B. Each application shall be signed and verified by oath or affirmation by an executive officer or any person specifically authorized by the corporation or association to sign the application, to which shall be attached written evidence of said authority.
- C. Prior to operating under the authority of this Chapter and as part of the annual renewal process, each approved applicant must obtain and provide to the Business License Administrator proof of:
1. Respective State licensure immediately upon State approval (not more than one year from approval of the original local consent);
 2. Evidence of the surety compliance bond, in the amount required by Section 5.08.100; and

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3. A certified original background check conducted by the Bureau of Criminal Investigation current within 30 days. (Ord. 2004-06, 2004; Ord. 83-002 §9, 1983)
(2004-06, Amended, 03/18/2004)

Section 5.08.050 Restrictions on Location.

A. No alcohol license shall be granted to any facility for on-premise consumption of alcohol if such facility is located within 600 feet of any public or private school, church, public library, public playground, or park, as measured from the nearest entrance of the facility by following the shortest route of ordinary pedestrian travel to the property boundary of the public or private school, church, public library, public playground, or park.

B. No alcohol license shall be granted to any facility for on-premise consumption of alcohol if such facility is located within 200 feet of any public or private school, church, public library, public playground, or park, measured in a straight line from the nearest entrance of the facility to the nearest property boundary of the public or private school, church, public library, public playground, or park.

C. The City Council may consider the proximity of the facility to any educational, religious, and recreational facility, including nursery schools, infant day care centers, trade and technical schools, and teen/youth facilities or other relevant factors in reaching a decision on whether to issue an alcohol license for on-premise or off-premise consumption. (Ord. 2004-06-2004; Ord. 87-006 §1, 1987; Ord. 83-002 §7, 1983)
(2004-06, Amended, 03/18/2004)

Section 5.08.060 License Restrictions

The City Council may issue consent or license approval for the sale of alcohol upon meeting the license classifications and regulations contained within the Alcohol and Beverage Control Act, pursuant to the following additional restrictions:

A. Restaurant License and Limited Restaurant License.

1. The City Council may grant its approval for restaurant licenses for the purpose of establishing restaurant outlets at places and in numbers the State Liquor Control Commission considers proper for the storage, sale, and consumption of liquor on premises operated as public restaurants.

2. Any facility requiring Restaurant Licenses shall be located in the C-2, C-3, C-4, CMP, I-1, and MURCZ Zones.

3. A variance to the siting provisions of section 5.08.050 may be granted by the City Council for a restaurant or limited restaurant, upon the City Council making the following findings:

a. The proposed location does not front upon the same side of the street, share access or parking with, or adjoin property lines with a church, school, library, park or playground;

b. The proposed location does not pose a threat to the health, peace, safety, and welfare of surrounding land uses;

c. The proposed location will not create an undue concentration of alcohol dispensing establishments;

d. The proposed location will not create an undue burden in controlling and policing illegal activities in the vicinity; and

e. The proposed facility will not create a nuisance to the community.

4. The City Council may approve seasonal restaurant liquor licenses established in areas and for periods it considers necessary. A seasonal restaurant liquor license may not be operated for a period longer than nine consecutive months and is subject to the following restrictions:

a. Licenses issued for operation during summer time periods are known as "Seasonal A" restaurant licenses. The period of operation for a "Seasonal A" restaurant license may begin as early as April 1 and may continue until October 31.

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b. Licenses issued for operation during winter time periods are known as "Seasonal B" restaurant licenses. The period of operation for a "Seasonal B" restaurant license may begin as early as September 1 and may continue until May 31.

B. Off-premise Beer Retailer's License.

An off-premise beer retailer's license may sell beer at retail in the original containers to go. Such license shall not permit consumption upon the premises.

1. All store managers are subject to a criminal background check pursuant to the standards set forth in Section 5.08.030(B)(2).

2. Any facility requiring Off-premise Retail Licenses shall be located in the C-2, C-3, C-4, and MURCZ Zones.

3. Beer shall not be disbursed under any license within the City between the hours of one a.m. and five a.m.

4. Beer shall not be sold by any licensee to any person under the influence of intoxicating liquor, beverage or drugs.

5. No licensee shall sell, give away, dispense or deliver beer to any person under the age of twenty-one years.

6. No licensee, employee or other person shall sell or dispense beer within the City unless they are twenty-one years of age or older unless the licensee's sales are restricted to the selling of beer for off-premises use in its original container in which case the licensee, employee, or other person selling the beer need only be 18 years of age, except any such 18, 19, or 20 year old must be supervised by a person 21 years of age or older who is on the premises.

7. All licensees shall be strictly responsible for the compliance with all rules and regulations governing the sale of beer as adopted by the City Council.

8. The beer license of any licensee charged with the violation of this Chapter may be suspended by order of the Mayor, pending disposition of the charges.

9. Tap beer shall not be sold by off-premise beer retailers.

10. Beginning July 1, 1987, no person shall be granted a license to operate or maintain a trade, profession or calling, the transaction or carrying on of which requires a license within the City, if such person operates an establishment which, as part of its business, serves alcoholic beverages, as defined in Section 3A-1-5(1), Utah Code Annotated, to the public for consumption on the premises, unless that person shall show by certificate(s) granted by the Utah Department of Alcoholic Beverage Control, or by adequate proof of the existence of such certificate(s), that each employee of the business engaging in the serving, selling or furnishing of such alcohol on the premises has completed the Alcohol Training and Education Seminar, as required in Section 32A17-3(1), Utah Code Annotated.

11. Every new employee, hired after the licensee has been licensed in compliance with subsection A of this Section, who is required to complete this seminar shall complete the seminar within six months of commencing employment.

12. Violation of this Section shall result in revocation of the license granted under this Chapter, unless compliance with this Section is completed within two months of the time that licensee first became aware that such violation occurred.

C. Tavern License.

1. The number of tavern licenses authorized in the City:

a. Shall be limited by the population. The initial ratio shall be one license per each two thousand population or portion thereof.

b. Shall be reviewed and fixed from time to time by Resolution of the City Council. If the Council finds that the number of such licenses issued creates an unusual law enforcement problem, the Council has the right to adjust the ratio of population to licenses issued.

2. Any facility requiring Tavern Licenses, shall be located in the C-2, C-3, C-4 and MURCZ Zones.

3. Taverns must front upon a street designated as an arterial or collector within the Master Facilities Plan, or be within a building the main entrance of which building fronts on a collector or

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arterial street.

D. Private Club License.

1. Class A and Class C Private Clubs.
 - a. Class A and Class C Private Clubs may be located within the PC, RA-2 or R-14 Zones as a bona fide County Club within an approved Golf Course.
2. Class B, C, and D Private Clubs.
 - a. Class B, C, and D Private Clubs shall be located within the C-2, C-3, or C-4 Zones;
 - b. Class B Private Clubs must front upon a street designated as an arterial or collector within the Master Facilities Plan, or be within a building the main entrance of which building fronts on a collector or arterial street.
 - c. Class B Private Clubs must provide a copy of its Bylaws & Policies for review by the City Council upon requesting local consent.

E. State Stores.

State Stores should be located within the C-2, C-3, and C-4 Commercial Zones along a collector or arterial street as shown within the Master Facilities Plan.

F. Package Agencies.

1. Type 1-5 Package Agencies shall be located within the C-2, C-3, or C-4 Zones;
2. Type 1-5 Package Agencies must front upon a street designated as an arterial or collector within the Master Facilities Plan, or be within a building the main entrance of which building fronts on a collector or arterial street.
3. Type 3 Package Agencies must be separated from Taverns and Private Clubs by a distance of 400 feet as measured from property line to property line.

G. On-premise Banquet License.

On-premise Banquet licenses may be approved for a Sports Center, Hotel, Convention Center, or Hotel, within approved accommodations for groups or gatherings of persons.

H. Special Use Permits.

Special Use Permits for industrial, manufacturing, scientific, educational, or health care purposes shall be located within the I-1, BM&P, CMP Zones.

I. Single Event Permits.

1. A Single Event Permit shall entitle a bona fide corporation, church, political organization, or incorporated association or a subordinate lodge, chapter, or other local unit thereof that is conducting a convention, civic, or community enterprise to sell beer at such event.
2. Single Event Permits may not exceed 72 consecutive hours (three days).
3. No more than four (4) Single Event Beer Permits may be granted to any entity in one calendar year.
4. The Single Event shall comply with Heber City Code, Chapter 5.06 "Mass Gatherings".
5. The application for the Single Event shall specify the days of operation and the location of the alcohol sales.
6. A variance to the current provisions of Sections 5.08.050, 5.08.060 and Chapter 9.44 of the Heber City Code may be granted by the City Council for a Single Event, upon compliance with the following, and the City Council making the following findings:
 - a. The proposed Single Event's location does not front upon the same side of the street, share access or parking with, or adjoin property lines with a church, school, library, or playground;
 - b. The proposed Single Event does not pose a threat to the health, peace, safety, and welfare of surrounding land uses;
 - c. The proposed Single Event will not create an undue concentration of alcohol dispensing establishments;
 - d. The proposed Single Event will not create an undue burden in controlling

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and policing illegal activities in the vicinity;

- e. The proposed Single Event will not create a nuisance to the community;
- f. The proposed Single Event provides a significant revenue benefit to the community;
- g. The proposed Single Event shall comply in all provisions and restrictions contained in Title 32 A, Chapter 12 of the "Alcoholic Beverage Control Act", Utah Code Annotated;
- h. No outdoor Single Event shall continue after 11:00 p.m., unless such Event is located in a Public Park, in such case, the Event shall not continue after 9:00 p.m.
- i. The proposed Single Event shall comply with all provisions of Section 5.08.060 (I) (7) Beer Garden in Public Parks, Limited;
- j. The application for a Single Event must have been in existence as a bona fide organization for at least one year prior to the date of applicaiton;
- k. The proposed Single Event must be at least 150 feet from any public playground, measured in a straight line from the nearest entrance of the boundaries of the specific playground sandlot.

7. BEER GARDEN IN PUBLIC PARKS, LIMITED. The governing body of the City has deemed it advisable to allow and license limited public sale at retail and consumption on the sale premises of cereal malt beverages in specific areas of the public parks of said City, and during community-wide celebrations, on certain other public grounds. Such sale shall be by responsible person otherwise duly licensed under the City Code, and shall be allowed for limited periods of time, as hereinafter specifically provided.

- a. LICENSE CREATED. There is hereby created a license, to be denominated a Class A Limited Beer Garden License. A person to whom the City has issued a current valid Beer Garden License will hereinafter be referred to as a Class A Beer Garden Licensee.
- b. AREA DESIGNATED. A Class A Beer Garden License shall designate specifically an area in a City park, or alternatively, other public grounds in the Central Business District in the City, which area shall be used for the purposes of the license, and which area will hereinafter be referred to as a Beer Garden.
- c. HOURS OF OPERATION. The hour of operation for any Beer Garden in a public park shall not begin before 10:00 a.m. and continue past 9:00 p.m.
- d. NO OTHER AREA TO BE USED. No cereal malt beverage may be sold at retail or consumed in any City park of the City, or on any other public grounds of said City, whether in the Central Business District or otherwise, except that a Class A Beer Garden Licensee may use the Beer Garden designated on the Beer Garden License for purposes of retail sale, and consumption by adult consumers of cereal malt beverages on the premises of the Beer Garden; and provided further:
 - i. That such sale and consumption shall be limited to the designated Beer Garden;
 - ii. The licensee must comply with all applicable laws and ordinances;
 - iii. The licensee must have all of the qualifications set out in City ordinances and state statutes for a liquor dealer's license;
 - iv. The licensee must pay a license fee for each Beer Garden location in accordance with the fee schedule established and adopted; and
 - v. The licensee must hold a current valid license from the City for the sale of alcoholic liquor or beer at retail for consumption of the premises.
- e. AREA. The Beer Garden shall not exceed one thousand square feet in area, shall be contiguous, and shall have its boundaries clearly marked.
- f. PARKS AND CENTRAL BUSINESS DISTRICT. No Beer Garden License shall be issued for premises other than in a City park of said City, except in the City's Central Business District. No Beer Garden License shall be issued for public grounds in the Central Business District of said City except during community-wide public celebrations or holidays. For purposes of this

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Ordinance, "Central Business District" is defined as the C-3 Zone.

g. DURATION. The duration of a Beer Garden License shall not exceed two days. No person shall be issued more than three Beer Garden Licenses during any calendar year. No Beer Garden License shall be transferred from the Beer Garden Licensee to whom it was originally issued.

h. COMPLIANCE WITH OTHER REGULATIONS. Each Class A Beer Garden, while in operation, shall comply with all of the requirements of the ordinance relating to dealers in alcoholic liquor, provided that no additional permit shall be required and no additional fee shall be required.

J. Manufacturers and Wholesale Facilities.

1. Alcohol Manufacturing and Wholesale facilities shall be located within the I-1, BMP, or CMP Zones.

2. Beer Manufacturing Facilities, operated in conjunction with a Tavern or Restaurant License, shall be located in the C-2, C-3, C-4, or MURCZ Zones.

K. Liquor Warehousing License.

Liquor Warehousing facilities shall be located within the I-1 Zone.

L. Temporary Special Event Beer Permits.

1. A Special Event Temporary Beer License shall entitle a bona fide corporation, church, political organization, or incorporated association or a subordinate lodge, chapter, or other local unit thereof that is conducting a convention, civic, or community enterprise to sell beer at such event.

2. Special Event Permits shall last no longer than three (3) days.

3. No more than four (4) Special Event Beer Permits may be granted to any entity in one calendar year.

4. The Special Event shall comply with Heber City Code, Chapter 5.06 "Mass Gatherings".

5. The application for the special event shall specify the days of operation and the location of the beer sales.

M. On-Premise Beer Retailer Licenses.

1. The holder of an On-Premise Beer Retailer License may only sell beer at retail for consumption upon the premises. Premises as used in this section is limited to the open room area surrounding the restaurant facilities and shall not include any isolated areas or other areas segregated by partitions, walls, or other barriers. On-Premise Beer Retailer Licenses will only be issued to a holder of and in connection with a valid restaurant license.

2. On-Premise Beer Retailer Licenses may be permitted in the C-2, C-3, C-4, or MURCZ Zones.(Ord. 2004-06, 2004; Ord. 83-002 §11, 1983)

(2009-03, Amended, 02/19/2009; 2008-25, Amended, 10/02/2008; 2006-16, Amended, 07/20/2006; 2004-06, Amended, 03/18/2004)

Section 5.08.070 Separation Required

Only one tavern or private club may be located on either side of a street between the intersections of two (2) streets. Beyond the extent of the lot and block system of the City, there shall be only one tavern or private club on either side of a street for a distance of 400 feet along the street right of way, as measured from property line to property line. (Ord. 2004-06, 2004; Ord. 83-002 §10, 1983)

(2004-06, Amended, 03/18/2004)

Section 5.08.080 Approval Expiration

Any alcohol license that is issued or approved by the City will expire if the same has not been put to use at the location approved within six months after the license was authorized by the City Council. "Put to use" as used herein means that the facility must be operating as a full time business establishment.

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In the event an alcohol dispensing facility in possession of a valid alcohol license ceases to operate as a full time alcohol dispensing facility for a period of 30 days, the license shall expire. Any license that so expires is not subject to renewal and any rights connected therewith shall terminate as of the date of expiration. (Ord. 2004-06, 2004; Ord. 83-002 §12, 1983)

(2004-06, Amended, 03/18/2004)

Section 5.08.090 Standards for Facilities with On-Site Consumption of Alcohol

All facilities within Heber City providing for on-site consumption of any alcohol product shall comply with the following:

A. It shall be unlawful for any closed booths to exist on premises licensed for the retail sale or consumption of beer or liquor. This provision shall not prevent the use and operation of private dining or conference rooms as a part of the licensed premises.

B. It shall be unlawful for any object or sign to cover more than 25% of the window surface area along the front of the building. (Ord. 2004-06, 2004; Ord. 83-002 §13, 1983)

(2004-06, Amended, 03/18/2004)

Section 5.08.100 Bond--Amounts Designated

Every licensee shall be required to post a cash bond or a corporate bond with a surety acceptable to the City in the amount of two thousand dollars, which sum shall be forfeited to the City upon the violation of this Chapter by the licensee. The amount of the bond may be changed from time to time by Resolution of the City Council. (Ord. 99-11, 1999; Ord. 88-04 §1, 1988; Ord. 83-002 §8, 1983)

(2004-06, Amended, 03/18/2004; Manual, Adopted, 06/03/1999)

Section 5.08.110 Licenses--Nontransferable

Licenses issued under this Chapter shall not be transferable and the license fees shall be forfeited to the City upon revocation. ((Ord. 87-004 §§1, 2, 1987; Ord. 83-002 §10, 1983)

(2004-06, Amended, 03/18/2004)

Section 5.08.120 Licenses--Expiration

All licenses issued under this chapter shall expire on December 31 of each year.

(2004-06, Added, 03/18/2004)

Section 5.08.130 Prohibited Acts

No alcohol license or local consent shall be granted to any facility within Heber City that engages in an activity regulated by Chapter 5.40 of this Title.

(2004-06, Added, 03/18/2004)

Section 5.08.140 Emergencies

A. Upon the declaration of an emergency, as defined by Utah Code Annotated Section 63-5-8, 1953, as amended, all alcohol beverage licenses are automatically suspended, which suspension may be lifted by the City Council at any time.

B. It is unlawful for the holder of any license issued under this chapter or the holder's agent,

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employee, manager or representative to sell or serve beer and/or liquor during the period of temporary suspension.

C. The City Council may revoke or suspend any license or consent issued under this chapter for any violation of local, state, or federal law by the licensee or consentee.

D. Alcohol licenses issued under this Chapter may be suspended by the Chief of Police or his/her designee without prior hearing provided that there is probable cause to believe that violations of this Chapter or state law are occurring, and the conditions are such that the public health and safety are endangered. Such temporary suspension shall occur only if the management or the licensee fails to remedy the situation within fifteen (15) minutes of notification by the Chief of Police or his/her designee that a suspension will occur if the conditions complained of are not remedied in a manner that eliminates the immediate danger to public health and safety. No emergency suspension by the Chief of Police or his/her designee shall be lifted until the emergency is remedied.

(2004-06, Added, 03/18/2004)

Chapter 5.14

Telecommunications Franchises

Sections:

- 5.14.010 Legislative Intent.**
- 5.14.020 Definitions.**
- 5.14.030 Unlawful Activity.**
- 5.14.040 Grant of Franchise.**
- 5.14.050 Required Extensions of Service.**
- 5.14.060 Two-Way Capability.**
- 5.14.070 Procedure for Remediating Franchise Violations.**
- 5.14.080 Alternative Remedies.**
- 5.14.090 Franchise Fee.**
- 5.14.100 Application.**
- 5.14.110 Application Fee.**

Section 5.14.010 Legislative Intent.

The City finds that the continuation and development of cable television and communications system has great benefit and impact upon the residents of Heber City. Because of the complex and rapidly changing technology associated with cable television, the City further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such persons as the City shall designate. It is the City's intent to ensure that City resident receive a high quality cable television and communications service comparable to the best offered in any community in Wasatch County and the surrounding areas; that any inconvenience to residents in the development, operation, and maintenance of a cable system or systems be minimized; and that the City is properly compensated for the administration of cable television and communication franchises and the use of the public facilities permitted by this Chapter. It is the intent of this Chapter to provide for the means to attain the best possible public interest in these matters, and any franchise issued pursuant to this Chapter shall be deemed to include this finding as an integral part thereof. (Ord. 96-03, 1996)

Section 5.14.020 Definitions.

- A. "Basic Cable" is the lowest priced tier of service that includes the retransmission of local broadcast television signals.
- B. "Cable Act" collectively means the Cable Communications Policy Act of 1984 (Public Law No. 98-549, 47 USC 5221 (Suppl.)) as amended, and the Cable Television Consumer Protection and Competition Act of 1992, as amended.
- C. "Cable Communications System", "System", or "Systems", also referred to as "Cable Television System", "Cable System", "CATV System", or "Community Antenna TV System", shall have the meaning specified for "Cable Communication System" in the Cable Act. Unless otherwise specified, it shall in this document refer to the cable communications system constructed and operated in the City under this ordinance.
- D. "City" means the City of Heber.
- E. "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- F. "Franchise" means the non-exclusive, revocable right granted to the Grantee by which the City authorizes the Grantee to erect, construct, reconstruct, operate, dismantle, test, use and maintain A

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Cable Communications System in the City.

- G. "Franchising Authority" means the City of Heber, Utah.
- H. "Grantee" means TCI Cablevision of Utah, Inc., or the lawful successor, transferee, or assignee thereof.
- I. "Grantor" means the City of Heber, Utah
- J. "Gross Revenues" means all cash, credits, property of any kind or nature or other consideration received directly or indirectly by the Grantee, arising from or attributable to the operation of the Cable Television System in the City.
- K. "Person" means an individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee, joint stock company, trust, corporation, governmental entity, or personal representative thereof.
- L. "Public Way" or "Street" shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or right-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's System over poles, wire, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the System.
- M. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.
- N. "Subscriber" means a person or user of the System who lawfully receives communications and other services therefrom with the Grantee's express permission. (Ord. 96-03, 1996)

Section 5.14.030 Unlawful Activity.

- A. It is unlawful to operate a Cable Communications System within the City without first obtaining from the City a Franchise to do so.
- B. No Cable Communications System shall be allowed to occupy or use the streets of the City without a franchise.
- C. In addition to the criminal and civil remedies provided by the Federal and State law, it is a misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any person to tamper with, remove, or injure any property, equipment, or part of the System or any means of receiving services provided thereto, without the express consent of the Grantee. (Ord. 96-03, 1996)

Section 5.14.040 Grant of Franchise.

- A. Subject to the requirements of this ordinance, the City may grant to any Grantee a nonexclusive, revocable Franchise to construct, operate, maintain, and reconstruct a Cable Communications System within part or all of the City. The Franchise shall constitute both a right and an obligation to provide the services of a Cable Communications System as required by the provisions of this ordinance.
- B. The term of any new or renewal Franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall remain in effect for a period of fifteen years, unless terminated sooner

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as hereinafter provided.

C. The material provisions of any franchises granted pursuant to this ordinance shall be comparable, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. The Franchising Authority shall not authorize or permit a System to operate within the Franchise area on terms or conditions more favorable or less burdensome to any one operator. (Ord. 96-03, 1996)

Section 5.14.050 Required Extensions of Service.

A. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the franchise agreement.

B. No Subscriber shall be refused service arbitrarily. (Ord. 96-03, 1996)

Section 5.14.060 Two-Way Capability.

A. The Grantee shall design and construct the system in such a manner as to provide return response capability and so as to permit the introduction of return video and two-way data signals as production technology allows and as the demand requires.

B. Should Grantee become a provider of, and should the City elect to purchase data or other telecommunication services other than traditional Cable services from the Grantee in the service area, the City shall pay no more than an amount based on the lowest competitor's price in the service area for like services. The Grantee may offer to provide such services to the City at the lowest competitor's price in the service area for like services. The Grantee may offer to provide such services to the City at the lowest competitor's price less a competitive differential.

1. No provision contained herein shall require the Grantee to provide or prohibit the Grantee from providing telecommunication services to the City which will classify the Grantee as a common carrier or public utility, or otherwise subject it to regulatory authority outside of that for the traditional Cable services currently provided by the Grantee in the service area. To this end:

a. The Grantee may refuse telecommunication service including but not limited to data, voice or other non-traditional Cable service to the City, or control, monitor and/or maintain any portion of the system including but not limited to the optical path and the optical/electronic interface required to provide such services.

b. The City shall fully disclose the type(s) of services it will transmit and receive on the Grantee's system.

2. All applications of the system by the City under this section are intended solely for their use, and are not for resale or commercial use.

3. Should the Grantee become a provider of such services to the City, the Grantee's liability for any malfunction or failure of transmission under this section shall be limited to repair of the malfunctioning facility and restoration of transmission capability. Grantee shall have no liability for special or consequential damages of lost data or economic loss resulting from the City's or the County's inability to transmit signals over said facilities except to the extent the loss or damages are the consequence of Grantee's willful misconduct. (Ord. 96-03, 1996)

Section 5.14.070 Procedure for Remediating Franchise Violations.

A. In the event that the City believes Grantee has violated any provision of the Franchise, the City may make a written demand on Grantee that it remedy such violation. From delivery of such notice the Grantee shall (a) within 14 days respond to the Franchising Authority, contesting the assertion of noncompliance, or (b) have thirty (30) days to cure such default, or (c) in the event that, by the nature of default, such default cannot be cured with the thirty (30) day period, initiate reasonable steps to remedy

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such default and notify the Franchising Authority of the steps being taken and projected date that they will be completed.

If the Grantee fails to comply with 5.14.070 or the City believes the Grantee to still be not in compliance, and the alleged violation is of a significant material provision of the franchise, a meeting with the mayor shall be held to review the alleged violation. If this meeting does not result in a satisfactory resolution, and/or Grantee requests a hearing, then a hearing shall be held, and Grantee shall be provided with an opportunity to be heard upon thirty (30) days written notice to Grantee of the time and the place of the hearing and the allegation of Franchise violations.

1. Any hearing will be conducted by the City Council.
2. The costs incurred by the parties for attorney's fees, expert witness fees and other expenses shall be borne solely by the party incurring the costs.

3. All witnesses testifying at any hearing held pursuant to this section shall be sworn witnesses and shall be subject to direct and cross-examination. However, formal rules of evidence applicable to the trial of civil and criminal proceedings in the trial courts of the State of Utah shall not be applicable to the hearing, the provisions of the Administrative Procedures Act, commencing at Section 63-46b-1, et. seq. U.C.A. 1953, as amended, or any such hearing. The hearing may be continued from time to time.

4. The City Council shall upon conclusion of the hearing prepare findings of fact and conclusions. The decision shall be made, filed and mailed to the Grantee not later than thirty (30) calendar days after the conclusion of the hearing.

B. If, after the hearing, the City Council determines that a non-compliance occurred or still exists, then Grantor may impose a remedy including, without limitation

1. making the correction itself, and charging the cost to the grantee;
2. commencing an action at law for monetary damages, or seeking other equitable relief;

3. requiring the filing of a financial performance instrument by the Grantee to insure future performance; or

4. in the case of a substantial default of a material provision of the Franchise, declaring the Franchise terminated.

C. If the decision by the City Council is that there are grounds for termination of the Franchise and that the Franchise shall be terminated, the City Council shall adopt a resolution which terminates the Franchise and include its findings and conclusions. A copy of the resolution shall be mailed to the Grantee.

D. The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, for such non-compliance or alleged defaults are caused by strikes, acts of God, power outages, or other event reasonably beyond its ability to control. (Ord. 96-03, 1996)

Section 5.14.080 Alternative Remedies.

No provision of this ordinance shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provisions of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this ordinance nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by the Grantee, or judicial enforcement of the Grantee's obligation by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity.

No provision of this ordinance shall be deemed to bar any rights the Grantee may have under law and the right to review of any decision by the City Council by a court of competent jurisdiction. (Ord. 96-03, 1996)

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Section 5.14.090 Franchise Fee.

A. For the use of the streets and for the purposes of providing revenue with which to defray the costs or regulation arising out of the granting of this Franchise under this ordinance, Grantee shall pay a Franchise Fee.

B. During the term of the Franchise, Grantee shall pay to the City an amount equal to five percent (5%) per year of the Grantee's annual Gross Revenue received.

C. The Franchise Fee shall be paid quarterly forty-five (45) days after the end of each quarter. Each payment shall be accompanied by a report from a representative of the Grantee showing the basis for the computation.

D. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.

E. Any Franchise fees which remain unpaid after the dates specified in Section 5.14.090(3) shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid. (Ord. 96-03, 1996)

Section 5.14.100 Application.

A. No initial license franchise shall be issued except upon written application to the City. Such forms shall contain such information as the City Council may prescribe as to:

1. Citizenship and character of the applicant;
2. The financial, technical and other qualifications of the applicant to operate the

System;

3. Complete information as to its principals and ultimate beneficial owners, including, in the case of corporations, all stockholders, both nominal and beneficial, owning 1% or more of the issued and outstanding stock, and in the case of incorporated associations, all members and ultimate beneficial owners however designated.

4. Description in detail of the equipment or facilities proposed to be constructed, installed and maintained.

5. A statement or schedule setting forth the number of channels and all of the television or radio stations proposed to be received, transmitted, conducted, relayed or otherwise conveyed over its system.

6. Such other information as the City may deem appropriate or necessary. Such application shall be signed by the applicant or a duly authorized representative.

B. The City Council, after the last date fixed for the receipt of the application, shall cause to be published in a newspaper of general circulation within the City, a notice of a public hearing, giving the time, date, place of such hearing, and listing the names of the applicants and inviting public examination of the applicant and qualification of said applicants.

C. A public hearing shall be conducted in accordance with the standards of due process fairness to applicants and the public and in accordance with the FCC rules and regulations and orders and policies pertinent to such hearing. Each applicant shall be notified of the time and location of his/her application to be considered.

D. At the option of the City and upon application of the Grantee, any franchise granted under this chapter may be renewable in the same manner as required herein for obtaining an original franchise except those provisions which are by their terms expressly inapplicable. The City Council may, at its option, waive compliance with any or all of the requirement of this section. Any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the

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provisions of any subsequent provision of Federal or State law. (Ord. 96-03, 1996)

Section 5.14.110 Application Fee.

Each initial application shall be accompanied by a non-refundable filing fee in the amount of one thousand dollars (\$1,000.00), which shall be payable to the City Recorder. (Ord. 96-03, 1996)

REPEAL. All City ordinances in conflict with these provisions are hereby repealed. However, all provisions in force immediately prior to this ordinance shall continue in force hereafter for the purpose of any pending legal action, all rights acquired, all fines, penalties and forfeitures imposed, and any liabilities already incurred. (Ord. 96-03, 1996)

SEVERABILITY. If any provisions of this ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby. (Ord. 96-03, 1996)

EMERGENCY CLAUSE. Wherefore, to protect the safety and welfare of the citizens of Heber City, this ordinance shall take effect immediately upon passage. (Ord. 96-03, 1996)

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Chapter 5.20

Public Dancehalls

Sections:

5.20.010 Consumption of Alcoholic Beverages Prohibited.

5.20.020 Hours of Operation.

Section 5.20.010 Consumption of Alcoholic Beverages Prohibited.

It is unlawful for any person to drink any alcoholic liquor, beverage, or beer in any public dancehall within the limits of the city. (Prior code §21-34)

Section 5.20.020 Hours of Operation.

It is unlawful for any public dance to be held in the city between the hours of one a.m. and six a.m. (Prior code §10-14)

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Chapter 5.24

Hotels

Sections:

5.24.010 Register Required.

Section 5.24.010 Register Required.

It is unlawful for any keeper of any hotel, boardinghouse or roominghouse to fail to keep a register, in which such keeper shall require each guest to write his or her name and place of residence before occupying any room in such place; or to fail to keep such register open to public inspection at all times. Any person, be he owner, proprietor, clerk, or other person having regular or temporary charge of any hotel, boardinghouse, roominghouse, or lodginghouse, who violates any provisions of this section is guilty of an offense. (Prior code §10-34)

Chapter 5.28

Transient Room Tax

Sections:

- 5.28.010 Purposes**
- 5.28.020 Definitions.**
- 5.28.030 Imposition of Transient Room Tax**
- 5.28.040 Collection Process**
- 5.28.050 Imposition of Penalties and Interest**
- 5.28.060 Collection Time**

Section 5.28.010 Purposes

Pursuant to the legal authority granted by the State of Utah, Heber City intends by this ordinance to generate revenue for general fund purposes by the imposition and collection of a municipal transient room tax. (Ord 98-13, 1998; Ord. 97-11, 1997)

Section 5.28.020 Definitions.

For purposes of this ordinance:

A. "Public Accommodation" means a place providing temporary sleeping accommodations to the public and includes:

1. a motel;
2. a hotel;
3. a motor court;
4. an inn;
5. a bed and breakfast establishment;
6. a condominium; and
7. a resort home.

B. "Rents" include:

1. rents; and
2. timeshare fees or dues.

C. "Transient" means a person who occupies a public accommodation for 30 consecutive days or less. (Ord 98-13, 1998; Ord. 97-11, 1997)

Section 5.28.030 Imposition of Transient Room Tax

A municipal transient room tax of 1% of the rents charged to transients occupying public accommodations in the City after October 1, 1998, is imposed which shall be levied on the transient at the same time as and collected in the same manner as sales and use taxes as provided in Title 59 Chapter 12 Part 2 of the Utah Code known as the Local Sales and Use Tax Act, except as collection of such tax may be otherwise allowed pursuant to Section 59-12-354 of the Utah Code and authorized by ordinance or by resolution of the City Council. (Ord 98-13, 1998; Ord. 97-11, 1997)

Section 5.28.040 Collection Process

Persons providing public accommodations shall be required to collect the municipal transient room tax at the same time and in the same manner as for sales and use taxes as provided in Title 59, Chapter 12 and other provisions of the Utah Code relating to sales and use taxes. The municipal transient room tax may be collected directly by the City from persons providing public accommodations pursuant to the authority of Section 59-12-354 of the Utah Code, notwithstanding Section 59-12-206 of the Utah Code, or may be administered and collected pursuant to a contract with the Utah State Tax Commission as the City Council may from time to time authorize by ordinance or resolution. With the passage of this ordinance the Mayor of Heber City is authorized to contract with the Utah State

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Tax Commission to administer and collect the tax. (Ord. 98-13, 1998)

Section 5.28.050 Imposition of Penalties and Interest

If the City does not contract with the State Tax Commission to administer and collect the tax, penalties and interest shall be imposed equal to the penalties and interest rates authorized for the State Tax Commission under Sections 59-1-401 and 59-1-402 of the Utah Code, determined and applied in the same manner as set forth in Sections 59-1-401 and 59-1-402 of the Utah Code. (Ord. 98-13, 1998)

Section 5.28.060 Collection Time

As required by Section 59-12-354(6) of the Utah Code, the municipal transient room tax shall be collected on the first day of a calendar quarter from the person providing public accommodation. (Ord. 98-13, 1998)

Chapter 5.40

Sexually Oriented Businesses

Sections:

- 5.40.010 Purpose and Findings.**
- 5.40.020 Definitions.**
- 5.40.030 Sexually Oriented Business License Required.**
- 5.40.040 Application for Sexually Oriented Business License.**
- 5.40.050 Issuance of Sexually Oriented Business License.**
- 5.40.060 Sexually Oriented Business Employee License Required.**
- 5.40.070 Application for Sexually Oriented Business Employee License.**
- 5.40.080 Issuance of Sexually Oriented Business Employee License.**
- 5.40.090 Fees.**
- 5.40.100 Inspections.**
- 5.40.110 Expiration and Renewal of Licenses.**
- 5.40.120 Suspension of Licenses.**
- 5.40.130 Revocation of Licenses.**
- 5.40.140 Right to Appeal.**
- 5.40.150 Transfer of Licenses Not Permitted.**
- 5.40.160 Live Viewing Booths Prohibited; Exhibition of Sexually Explicit Films, Videos, Compact Discs, or Visual Representations in Viewing Booths.**
- 5.40.170 Nudity, Sexual Activity, Live Entertainment and Performances.**
- 5.40.180 Dressing Rooms.**
- 5.40.190 Minimum Lighting Level.**
- 5.40.200 Exterior Display.**
- 5.40.210 Hours of Operation.**
- 5.40.220 Minors Prohibited.**
- 5.40.230 Inspection of External Boundaries and Reporting of Specified Criminal Activity.**
- 5.40.240 Penalties.**
- 5.40.250 Severability.**

Section 5.40.010 Purpose and Findings.

A. That the purpose of this Chapter is to establish reasonable and uniform regulations to minimize and control the negative secondary effects of sexually oriented business within the City in order to promote the health, safety, and welfare of the citizens of the City. The provisions of this Chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials or communications, including sexually oriented entertainment. Similarly, it is not the purpose of effects of this Chapter to restrict or deny access by adults to sexually oriented entertainment protected by the First Amendment, or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market. Furthermore, it is not the intent of effects of this Chapter to condone or legitimize the distribution or exhibition of entertainment that is obscene.

B. Based on evidence concerning the adverse secondary effects of sexually oriented businesses on the community presented to the City Council; on findings incorporated in the cases of *City of Renton v. Playtime theaters, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters*, 426 U.S. 50 (1976); *California v. LaRue*, 409 U.S. 109 (1972); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *Dodger's Bar & Grill, Inc. v. Johnson County*, 98 F.3d 1262 (10th Cir. 1996); *Connection Distrib. Co. v. Reno*, 154 F.3d 281 (6th Cir. 1998); *Sundance Assocs. v. Reno*, 139 F.3d 804 (10th Cir. 1998); *American Library Association v. Reno*, 33 F.3d 78 (D.C. Cir. 1994); *Dodger's Bar & Grill, Inc. v. Johnson County*, 32 F.3d

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1436 (10th Cir. 1994); *American Target Advertising, Inc. v. Giani*, 199 F.3d 1241; *MS News Co. v. Casado*, 721 F.2d 1281 (10th Cir. 1983); *Cortese v. Black*, No. 95-1429, 1996 U.S. App. LEXIS 15311 (10th Cir., June 25, 1996); *Salt Lake City v. Wood*, 1999 Utah App. 323, 991 P.2d 595 (Utah Ct. App. 1999); *United States v. Freedberg*, 724 F.Supp. 851 (D. Utah 1989); and on studies and findings in other cities and counties contained in the record before the County Planning Commission, the City Council finds as follows:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities.

2. Sexual acts, including masturbation and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or rooms for viewing films, videos, or live sexually oriented entertainment. Such activities may result in spreading communicable diseases, such as syphilis, gonorrhea, and human immunodeficiency virus (HIV).

3. Offering sexually oriented entertainment under conditions that encourage such activities creates unhealthy conditions.

4. Sanitary conditions in some sexually oriented businesses are unhealthy, in part because of the failure of owners and operators to regulate those activities and maintain their facilities.

5. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view sexually oriented films.

6. The findings noted in paragraphs number (a) through (e) raise substantial governmental concerns.

7. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

8. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on operators to see that sexually oriented businesses are run in a manner consistent with the health, safety and welfare of patrons and employees, as well as the citizens of the County. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, and fully in possession and control of the premises and activities occurring therein.

9. The regulation of nudity in sexually oriented businesses will further the substantial governmental interests in preventing prostitution and other sex-related crimes, including illegal sex acts, and protecting the public health, safety, and welfare.

10. Removal of doors on viewing booths in sexually oriented businesses and requiring sufficient lighting on premises with viewing booths will advance the substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult arcades and theaters and will facilitate enforcement of the provisions of this Chapter and other federal, state and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety, and welfare.

11. Requiring sufficient lighting in all sexually oriented businesses will advance the substantial governmental interest in curbing illegal sexual activity on the premises of sexually oriented businesses, and will facilitate enforcement of the provisions of this Chapter and other federal, state and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety, and welfare.

12. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of sexually oriented businesses, and by employees of such businesses, will facilitate the enforcement of the provision of this Chapter and other federal, state and local laws, and will thereby further the substantial government interest in protecting the public health, safety, and welfare.

13. A person who recently has been convicted of a sexually related crime is not an appropriate individual to operate or be employed in a sexually oriented business.

14. Barring such individuals from the management of and employment in sexually oriented businesses for a period of years serves as a deterrent to and prevents the commission of sexually

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related criminal acts, including conduct which leads to the transmission of sexually transmitted diseases.
(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.020 Definitions.

For purposes of this Chapter,

A. "Adult Arcade" means any place to which the public is permitted or invited where either (a) motion picture machines, projectors, video or laser disc players, or (b) other video or image-producing devices, run via coin, token, or any form of consideration, and regularly show images to five or fewer persons at one time; and where the images regularly shown and/or live entertainment presented are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

B. "Adult Bookstore, Adult Novelty Store, or Adult Video Store" means a commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:

1. books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; or

2. instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

C. "Adult Cabaret" means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

1. persons who appear in a state of semi-nudity;

2. live entertainment characterized by the depiction or description of specified anatomical areas or specified sexual activities; or

3. films, motion pictures, video cassettes, compact discs, slides or other visual representations that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

D. "Adult Motion Picture Theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, compact discs, slides, or similar visual representations are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

E. "Adult Theater" means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of semi-nudity, live performances which are characterized by the depiction or description of specified anatomical areas, or specified sexual activities.

F. "Covering" means any opaque clothing or wearing apparel, including pasties, but does not include any substance that can be washed off the skin, such as paint or make-up, or any substance designed to simulate the appearance of the anatomical area beneath it.

G. "Employee" means a person who performs any service or work on the premises of a sexually oriented business, including but not limited to providing entertainment, performing work of a management or supervisory nature, or performing support function, on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage, or other compensation by the operator of said business. Employee does not include a person on the premises exclusively for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

H. "Employee Station" means an area on the premises of a sexually oriented business designated for occupancy exclusively by one or more employees whose duties include assuring

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compliance with the provisions of this Chapter.

I. "Health Director" means the Wasatch County Health Director or his authorized representative.

J. "Licensee" means, with respect to a sexually oriented business license issued under this Chapter, a person in whose name a license to operate a sexually oriented business has been issued. With respect to a sexually oriented employee license issued under this Chapter, licensee means a person in whose name a license has been issued authorizing employment in a sexually oriented business.

K. "Licenses" means both sexually oriented business licenses and sexually oriented business employee licenses.

L. "Live Viewing Booth" means any private or semi-private booth, or any viewing room of less than one hundred fifty (150) square feet of floor space, to which the public may gain admittance, wherein a live performances are regularly shown to five (5) or fewer persons at any one time.

M. "Nude Model Studio" means any place where a person who appears semi-nude or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include:

1. a proprietary school licensed by the State of Utah, or a college, junior college or university supported entirely or in part by public taxation;

2. a private college or university that offers educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;

or

3. an establishment holding classes in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; where in order to participate in a class a student must enroll at least three days in advance of the class; and where no more than one semi-nude model is on the premises at any one time.

N. "Nudity" or "Nude" means exposing to view the genitals, pubic area, vulva, perineum, anus, anal cleft or cleavage, or pubic hair with less than a fully opaque covering; exposing to view any portion of the areola of the female breast with less than a fully opaque covering; exposing to view male genitals in a discernibly tumid state, even if entirely covered by an opaque covering; or exposing to view any devise, costume, or covering that gives the appearance of or simulates any of these anatomical areas.

O. "Operate" or "Cause to be Operated" shall mean to cause to function or to put or keep in operation. Operator means any person on the premises of a sexually oriented business who is authorized to exercise overall operational control or hold primary responsibility for the operation of a sexually oriented business or who caused to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

P. "Person" means an individual, proprietorship, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form of character.

Q. "Regularly features" or "Regularly shown" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as part of the ongoing business of the sexually oriented business.

R. "Semi-nudity" or "Semi-nude" means exposing to view, with less than a fully opaque covering, any portion of the female breast below the top of the areola or any portion of the buttocks. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other clothing, provided that the areola is not exposed in whole or in part.

S. "Sexual Encounter Center" means a business or commercial enterprise that, as one of its principal business purposes, regularly features or offers for any form of consideration:

1. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

2. activities between male and female persons and/or persons of the same sex when

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one or more of the persons is semi-nude.

T. “Sexually Oriented Business” means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude model studio, or sexual encounter center.

U. “Specified Anatomical Areas” means:

1. the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
2. less than completely and opaquely covered human genitals, pubic region, buttocks or female breast below a point immediately above the top of the areola.

V. “Specified Criminal Activity” means any of the following offenses:

1. prostitution offenses defined in Title 76, Chapter 10, Part 13 of the Utah Code, as amended, or in local ordinances; Pornographic and Harmful Materials and Performances offenses defined in Title 76, Chapter 10, Part 12, as amended, or in local ordinances; Lewdness, Sexual Battery, Public Urination, or Lewdness Involving a Child, as defined in Title 76, Chapter 9, Part 7 of the Utah Code, as amended, or in local ordinances; Sexual Offenses defined in Title 76, Chapter 5, Part 4 of the
2. For which:
 - a. less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or
 - b. less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.
3. The fact that a conviction is being appealed shall not prevent such conviction from constituting a specified criminal activity as defined in this section.

W. “Specified Sexual Activities” means any of the following:

1. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
2. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
3. excretory functions as a part of or in connection with any of the activities set forth in (a) or (b) above.

X. “Video Booth” means any private or semi-private booth or any viewing room of less than one hundred fifty (150) square feet of floor space or area to which the public may gain admittance, wherein a still or motion picture machine, projector, video monitor, or similar equipment is maintained for the purpose of regularly showing still or motion pictures, films, video cassettes, compact discs, or similar images or visual representations that are characterized by an emphasis on the depiction or description of specified anatomical areas or specified sexual activities to five (5) or fewer persons at any one time.

Y. “Live Viewing Booth” means any private or semi-private booth or any viewing room of less than one hundred fifty (150) square feet of floor space or area to which the public may gain admittance, wherein the following are regularly featured:

1. persons who appear in a state of semi-nudity;
2. live entertainment characterized by the depiction or description of specified anatomical areas or specified sexual activities

Z. “Transfer of Ownership or Control” of a sexually oriented business shall mean of the following:

1. the sale, lease, or sublease of the business;
2. the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
3. the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the

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death of the person possessing the ownership or control.
(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.030 Sexually Oriented Business License Required.

- A. Businesses subject to sexually oriented business licensing are classified as follow:
1. adult arcades;
 2. adult bookstores, adult novelty stores, or adult video stores;
 3. adult cabarets;
 4. adult motion picture theaters;
 5. adult theaters;
 6. nude model studios;
 7. sexual encounter centers; and
 8. any combination of classifications set forth in paragraphs (a) through (g) above, each of which shall be separately licensed.
- B. No person shall:
1. Operate a sexually oriented business without a valid sexually oriented business license issued by the City Executive pursuant to this Chapter
 2. In connection with operating a sexually oriented business, retain the services of a person as an employee, as defined in this Chapter, who is not licensed as a sexually oriented business employee by the City pursuant to this Chapter.
- C. Any person who violates this section shall be guilty of class B misdemeanor.
(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.040 Application for Sexually Oriented Business License.

- A. An application for a sexually oriented business license shall be submitted to the City Business License Administrator on a form provided by the City and shall include all information required by this Chapter.
- B. An application for a sexually oriented business license shall identify and be signed by the following persons:
1. If the business entity is owned by an individual, that individual.
 2. If the business entity is owned by a corporation each officer or Director of the corporation and each individual with a 20 percent or greater ownership interest in the corporation.
 3. If the business entity is owned by a partnership, each partner and each individual with a 20 percent or greater ownership.
- C. An application for a sexually oriented business license must designate one or more individuals who are to be principally responsible for the operations of the proposed sexually oriented business, if a license is granted. At least one person so designated must be involved in the day-to-day operation of the proposed sexually oriented business on a regular basis. Each person so designated, as well as the business entity itself, shall be considered a license applicant, must qualify as a licensee under this Chapter, and shall be considered a licensee if a license is granted.
- D. An application for a sexually oriented business license shall be deemed complete provided it contains the following:
1. If the applicant is:
 - a. an individual, state that legal name and any aliases of such individual;
 - b. a partnership, state the complete name of the partnership and all of its partners;
 - c. a corporation, state the complete name of the corporation and the date of its incorporation, provide evidence that the corporation is in good standing under the laws of its state of

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incorporation, and state the names and capacity of all officers and Directors, the name of the registered corporate agent, and the address of the registered office for service of process.

2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, state the fictitious name to be used and submit copies of documentation evidencing the registration of the business name under applicable laws.

3. State whether any applicant has been convicted of a specified criminal activity, and if so, the specified criminal activity involved and the date, place, and jurisdiction of each such conviction.

4. State whether any applicant has had a previous license under this Chapter or other similar regulation of another jurisdiction denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended, or revoked, as well as the date of the denial, suspension or revocation; and state whether the applicant has been a partner in a partnership or an officer, Director or 20 percent or greater owner of a corporation licensed under this Chapter or other similar regulation of another jurisdiction whose license has previously been denied, suspended or revoked, including the name and location of the business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

5. State whether any applicant holds any other licenses under this Chapter or other similar regulation from another jurisdiction and, if so, the names and locations of other such licensed businesses.

6. State the classification of license for which the applicant is filing.

7. State the location of the proposed sexually oriented business, including a legal description of the property (i.e., block and lot), street address, and telephone number(s), if any.

8. State the mailing address of each applicant and each person signing the application.

9. Submit a recent photograph of each applicant who is a natural person, taken by the Heber City Police Department which clearly shows the applicant's face.

10. Submit the fingerprints of each applicant who is a natural person, recorded by the Heber City Police Department.

11. For any applicant who is a natural person, describe and identify the location of any tattoos on such person's face, arms, legs, or hands, or any other anatomical area that normally would be visible when such person is on the premises of the proposed sexually oriented business.

12. State the driver's license number of each applicant who is a natural person and each person signing the application, or, for an applicant that is not a natural person, the applicant's federally issued tax identification number.

13. Submit proof that each applicant who is a natural person is at least eighteen (18) years old.

14. Submit a sketch or diagram showing the configuration of the premises of the sexually oriented business, including the locations of all stages and customer's seating and a statement of total floor space occupied by the business. The diagram shall also designate the place at which the adult business license will be conspicuously posted, if granted. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

15. If an applicant wishes to operate a sexually oriented business featuring one or more video booths, the applicant shall comply with the additional application requirements set forth in this Chapter.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.050 Issuance of Sexually Oriented Business License.

A. Within thirty (30) days of receipt of a completed application for a sexually oriented business license, the City shall (1) investigate the information provided in the application, including the

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criminal background of the applicant(s) and shall record the results of the investigation in a written recommendation; (2) notify the Fire Marshall, the Building Inspector, and the Health Director of such application.

B. The Fire Marshall and Health Director shall provide to the City a written certification of whether the premises are in compliance with the fire code and health statutes and health regulations.

C. The Building Inspector shall complete a written certification of whether the premises are in compliance with the Building Code and the provisions of this Chapter related to physical characteristics of the premises.

D. Within thirty (30) days after receipt of a completed sexually oriented business license application, the City shall approve or deny the issuance of a license. The City shall approve the issuance of a license to an applicant unless it is determined that one or more of the following findings are true:

1. An applicant who is a natural person is under eighteen (18) years of age.
2. An applicant has failed to provide information required by this Chapter, or has falsely answered a question or request for information on the application form.
3. An applicant has been denied an adult business license or has had a license to operate a sexually oriented business revoked within the preceding twelve (12) months by any jurisdiction.
4. An applicant has been convicted of a specified criminal activity as defined in this Chapter.

5. The proposed sexually oriented business would violate or fail to be in compliance with any provisions of this Chapter, the Fire Code, state and local Health Department statutes and regulations, the Building Code, the Planning and Zoning Code, or any other applicable state statute or local ordinance.

6. The application and investigation fee required by this Chapter has not been paid.

7. An applicant is overdue in payment to the City or County of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to any sexually oriented business, which are not the subject of a pending appeal or other legal challenge.

E. Where a sexually oriented business license is denied because of (1) failure to pay fees; (2) failure to pay taxes, fees, fines, or penalties assessed against a sexually oriented business; (3) failure to provide information required by this Chapter, or (4) the premises fail to comply with this Chapter, the Fire Code, state and local Health Department statutes and regulations, the Building Code, the Planning and Zoning Code, or any other applicable state statute or local ordinance, the applicant shall have 90 days within which to cure these deficiencies and amend the denied application and resubmit it to the City Business License Administrator.

F. If the City determines that no other grounds for denial of a license exist under Subparagraph (4) of this section, the City shall not delay approval of the application past the end of the 30 day period provided in this section solely because the Fire Chief, the Health Director, or the Building Inspector have not issued to the City the written certifications required in this section. Absent a showing that the applicant obstructed the required inspections by the Fire Marshall, the Health Director, or the Building Inspector, the failure to obtain the required certifications timely is not, standing alone, a ground for denial of a sexually oriented business license application.

G. A sexually oriented business license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the licensed sexually oriented business, and the classification for which the license is issued. All sexually oriented business licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.

H. The City shall advise the applicant in writing of the reasons for any license denial or revocation.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.060 Sexually Oriented Business Employee License Required.

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A. No person shall act as an employee, as defined in this Chapter, on the premises of a sexually oriented business without having secured a sexually oriented business employee license pursuant to this Chapter.

B. Any person who violates this section shall be guilty of class B misdemeanor.
(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.070 Application for Sexually Oriented Business Employee License.

A. An application for a sexually oriented business employee license shall be submitted to the City on a form provided by the City and shall include all information required by this Chapter.

B. An application for a sexually oriented business employee license shall be completed according to the instructions of the application form, which shall require the following:

1. State the applicant's name and any other names (including "stage" names) or aliases used by the applicant.

2. State the applicant's date and place of birth.

3. State the applicant's height, weight, and hair and eye color.

4. Submit a recent photograph of the applicant, taken by the Heber City Police Department, which clearly shows the applicant's face.

5. Submit the applicant's fingerprints, recorded by the Heber City Police Department.

6. State the applicant's present residence address and telephone number.

7. State the applicant's present or intended business address and telephone number.

8. State the applicant's driver's license number.

9. Submit a birth certificate demonstrating that the applicant is at least eighteen (18) years old.

10. Provide a statement detailing the sexually oriented business-related license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate a sexually oriented business, in this or any other jurisdiction, and whether the applicant has ever had a sexually oriented business-related license, permit, or authorization to do business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation, or suspension. Attach a copy of any order of denial, revocation, or suspension.

11. State whether the applicant has been convicted of a specified criminal activity and, if so, the specified criminal activity involved and the date, place and jurisdiction of each such conviction.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.080 Issuance of Sexually Oriented Business Employee License.

A. Upon the filing of a completed application for a sexually oriented business employee license, the City shall issue a temporary license to said applicant immediately, which license shall expire in 30 days.

B. Within five (5) days of receipt of a completed application for a sexually oriented business employee license, the City shall commence investigation of the criminal background of the applicant and the information provided in the application.

C. Within 30 days of the issuance of the temporary sexually oriented business employee license, the County Executive shall approve or deny the issuance of a permanent license. The City shall approve issuance of a permanent sexually oriented business employee license unless it finds one or more of the following:

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1. The applicant has failed to provide information requested on the application form, or has falsely answered a question or request for information on the application form.
2. The applicant is under eighteen (18) years of age.
3. The applicant has been convicted of a specified criminal activity.
4. The sexually oriented business employee license is to be used for employment in a business prohibited by local, state, or federal law, statute, rule or regulation.
5. The applicant has been denied a sexually oriented business employee license or has had a sexually oriented business employee license revoked within the preceding twelve (12) months by an jurisdiction.

D. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. The City shall advise the applicant in writing of the reason(s) for any such denial.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.090 Fees.

A. Every application for a new sexually oriented business license shall be accompanied by a non-refundable application and investigation fee as determined by the City Council.

B. Every application for renewal of a sexually oriented business license shall be accompanied by a non-refundable application and investigation fee as determined by the City Council.

C. In addition to the application and investigation fee required in subsections (1) or (2) above, every applicant that is granted a sexually oriented business license (new or renewal) shall pay to the County an annual, non-refundable license fee as determined by the City Council within thirty (30) days of license issuance or renewal.

D. Every application for a new sexually oriented business employee license shall be accompanied by an annual, non-refundable application, investigation, and license fee as determined by the City Council.

E. Every application for renewal of a sexually oriented business employee license shall be accompanied by an annual, non-refundable application, investigation, and license fee as determined by the City Council.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.100 Inspections.

A. An applicant, operator or licensee of a sexually oriented business shall permit law enforcement officers, and any other federal, state, county, or city agency in the performance of any function connected with the enforcement of this Chapter and regularly conducted by such agencies, to inspect those portions of the premises of a sexually-oriented business occupied by patrons for purposes of ensuring compliance with this Chapter, at any time the business is occupied or open for business.

B. An applicant, operator, or licensee who operates a sexually oriented business or his agent or employee, who knowingly refused to allow the inspection of the premises under this section shall be guilty of a class B misdemeanor.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.110 Expiration and Renewal of Licenses.

A. Each license issued pursuant to this Chapter shall expire one year from the date of issuance and may be renewed by making application as provided in this section. Application for renewal shall be made no more than ninety (90) days and no less than forty-five (45) days before the expiration date. If application is made less than forty-five (45) days before the expiration date, the license will not

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be extended pending a decision on the application, but will expire on its normal expiration date.

B. An application for renewal of a sexually oriented business license shall be submitted to the city on a form provided by the City. The renewal application may request and the applicant shall provide the information required by this Chapter. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application. The completed renewal applications shall be accompanied by copies of any document or materials submitted in connection with the initial license application that have been revised or require revisions to reflect any change in circumstances or conditions. Sketches or diagrams submitted with an initial sexually oriented business license application may be resubmitted with subsequent renewal applications, provided that the applicant certifies in writing that the sketch or diagram still depicts the premises accurately.

C. The City shall make determinations concerning the approval of license renewals based on the same criteria used to evaluate applications for new licenses under this Chapter.

D. The City shall advise the applicant in writing of the reason(s) for any denial of a license renewal.

E. When the City denies an application for renewal of a license, the applicant shall not be issued another license for one year from the date of denial. However, if the City finds, subsequent to denial, that the basis for denial of the renewal license has been cured, corrected, or abated, the applicant shall be granted a renewal license if at least ninety (90) days have elapsed since the denial was issued.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.120 Suspension of Licenses.

A. The City shall suspend a sexually oriented business license or a sexually oriented business employee license for a period not to exceed forty-five (45) days if it determines that a licensee:

1. has violated or is not in compliance with any section of this Chapter; or
2. has knowingly allowed an employee to violate or fail to comply with any section

of this Chapter.

B. The City shall suspend a sexually oriented business license for a period not to exceed forty-five (45) days if it determines that a licensee, has knowingly refused to allow an inspection of the licensed sexually oriented business premises as authorized by this Chapter, or has knowingly directed an employee to refuse such an inspection.

C. The City shall suspend a sexually oriented business employee license for a period not to exceed forty-five (45) days if it determines that a license has violated or is not in compliance with any section of this Chapter.

D. Before suspending any sexually oriented business license, the City shall hold a hearing. The City shall give not less than 10 days written notice of the date, time and place of the hearing to the licensee. The notice shall inform the licensee of the alleged grounds for suspension of the license. Notice shall be deemed given and effective when placed in the United States mail, first-class, postage prepaid and directed to the licensee at the mailing address given in the original application for license. If, following the hearing, the City finds by a preponderance of the evidence that the alleged grounds for suspension exist, the City shall suspend the license. The City shall advise the licensee in writing of the reason(s) for any suspension.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.130 Revocation of Licenses.

A. The City shall revoke a sexually oriented business license or sexually oriented business employee license if grounds for suspension under section 11.04.120 are found to exist, and the license in question has been suspended once within the preceding eighteen(18) months.

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B. The City shall revoke a sexually oriented business license if it determines by a preponderance of the evidence that:

1. a licensee gave false or misleading information in the material submitted during the application process;
2. the licensee(s) failed to comply timely with any requirement or condition placed on the license at the time of issuance;
3. a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
4. a licensee has knowingly allowed prostitution, solicitation, or the commission of a felony on the premises;
5. a licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
6. a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;
7. a licensee has been convicted of a specified criminal activity, during the term of the license;
8. a licensee is delinquent in payment to the City, County or State for any taxes, penalties or fees past due that were assessed or imposed in relation to any sexually oriented business; or
9. a licensee has transferred a sexually oriented business license from one licensee to another or from one location to another in violation of this Chapter.

C. The City shall revoke a sexually oriented business employee license if it determines by a preponderance of the evidence that:

1. the licensee gave false or misleading information in the material submitted during the application process;
2. the licensee has knowingly acted as an employee on the premises of a sexually oriented business during a period of time when the licensee's license was suspended;
3. the licensee has been convicted of a specified criminal activity during the term of the license; or
4. the licensee has transferred the sexually oriented business employee license from one licensee to another in violation of this Chapter.

D. Before revoking any sexually oriented business license or sexually oriented business employee license, the City shall hold a hearing. The City shall give not less than 10 days written notice of the date, time and place of the hearing to the licensee, and shall inform the licensee of the alleged grounds for revocation of the license. Notice shall be deemed given and effective when placed in the United States mail, first-class, postage prepaid and directed to the licensee at the mailing address given in the original application for license. If, following the hearing, the City finds by a preponderance of the evidence that the alleged grounds for revocation exist, the City shall revoke the license. The City shall advise the licensee in writing of the reason(s) for any revocation.

E. When the City revokes a license, the licensee shall not be issued another license for one (1) year from the date the revocation became effective.
(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.140 Right to Appeal.

A. Any denial, suspension, or revocation of a new or renewal license under this Chapter may be appealed to the City legislative body by written notice within forty-five days (45) days of such denial, suspension, or revocation.

B. Any person adversely affected by a final decision of the City legislative body may petition the district court for review.

C. Any licensee lawfully operating a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to operate said

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business during the pendency of an appeal to the City legislative body or to the district court, provided that the City legislative body finds by a preponderance of the evidence that continued operation by the licensee or employment of the licensee pending appeal will not adversely effect the public health, safety, or general welfare.

D. Any licensee lawfully acting as an employee in a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to serve in such capacity during the pendency of an appeal to City legislative body or to the district court, provided that the City legislative body finds by a preponderance of the evidence that continued employment of the licensee in a sexually oriented business will not adversely effect the public health, safety, or general welfare of the public.

E. In the event that an applicant for a new sexually oriented business license or a new sexually oriented business employee license seeks review of the denial of a new license, either before the City legislative body or the district court, and such review does not result in a final judicial decision within ninety(90) days of the date the appeal was filed, the City Executive shall issue such applicant a provisional sexually oriented business license or sexually oriented business employee license upon request of the applicant. However, no provisional license shall issue if the City legislative body determines that operation of the sexually oriented business or licensing of the sexually oriented business employee will adversely affect the health, safety, or general welfare of the public. The provisional license:

1. will allow an applicant for a sexually oriented business license to operate the sexually oriented business named in the license application under the same terms as a sexually oriented business operating under a regularly issued license under this Chapter, provided that the provisional license is subject to expiration as set forth in this section;

2. will allow an applicant for a sexually oriented business employee license to act as an employee of the premises of a sexually oriented business under the same terms as a sexually oriented business employee license issued pursuant to this Chapter, provided that the provisional license is subject to expiration as set forth in this section; and

3. will be subject to the same terms, conditions, and requirements as a sexually oriented business licensee or sexually oriented business employee licensee regularly licensed under this Chapter.

F. A provisional license will expire on whichever of the following three dates is earliest:

1. the date that a judicial decision is issued upholding the license denial;
2. the date on which a non-provisional sexually oriented business license or sexually oriented business employee license is issued to the applicant pursuant to a judicial decision overturning the license denial; or

3. the date one year from the issuance of the provisional license.

G. In the event that judicial review of the denial of a new license application is still pending thirty (30) days before the expiration date of a provisional license, the provisional licensee may file a renewal license application with the City Business License Administrator pursuant to Section 11.04.110 of this Chapter. The City shall grant an application for renewal of a provisional license unless the City determines that new grounds exist for denial of a license application under this Chapter, which grounds did not exist at the time of the provisional license was first issued. In the event that an application for renewal of a provisional license is denied and the applicant seeks judicial review of that denial, the City has the right to consolidate such review with the pending judicial appeal of the previous license denial.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.150 Transfer of Licenses Not Permitted.

A. A sexually oriented business license is not transferable from one licensee to another or from one location to another.

B. A sexually oriented business employee license is not transferable from one licensee to

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another, but the use of the license by the individual to whom it was issued may be transferred from one licensed sexually oriented business to another such licensed establishment during the term of the license, provided that the licensee gives written notice of such transfer to the City Business License Administrator within fifteen (15) days of such transfer.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.160 Live Viewing Booths Prohibited; Exhibition of Sexually Explicit Films, Videos, Compact Discs, or Visual Representations in Viewing Booths.

A. No person may operate or cause to be operated a sexually oriented business which contains one or more live viewing booths.

B. No person may operate or cause to be operated a sexually oriented business which contains one or more video booths unless the following requirements are met:

1. The sexually oriented business license application required under this Chapter shall be accompanied by a diagram of the premises showing a plan thereof which specifies the location of one or more employee's stations and the location of all overhead lighting fixtures, and which designates any portion of the premises in which patrons will not be permitted. The diagram shall also designate the place at which the sexually oriented business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches.

2. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an employee's station of every area of the premises to which any patron is permitted access for any purpose, including the interior of all viewing booths and excluding restrooms. Restrooms may not contain video reproduction equipment, and no entertainment of any kind may be offered in restrooms. If the premises has two or more employee's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the employee's stations. The view required in this subsection must be by direct line of sight from the employee's station.

3. No alteration in the configuration or location of an employee's station shall be made without the prior approval of the City.

4. At least one employee shall be on duty and situated in each employee station at all times that any patron is present inside the premises.

5. An employee station shall not exceed thirty-two (32) square feet of floor area, and no single dimension of any employee's station shall exceed eight (8) feet.

6. The view from each employee station(s) shall remain unobstructed by any doors, curtains, partition, walls, merchandise, display racks or other materials.

7. No patron may at any time be permitted access to any area of the premises which has been designated in the license application filed pursuant to this Chapter as an area in which patrons will not be permitted.

8. No video booth may be occupied by more than one person at a time.

9. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, including both the interior of video booths and restrooms, at an illumination level of not less than five (5.0) foot candles as measured at floor level.

10. The illumination described above shall be maintained at all times that any patron is present in the premises. In the event of a power failure, the business shall stop operating immediately and all patrons shall be cleared from the premises. The premises shall not be reopened until the minimum illumination level can be assured.

11. No openings of any kind shall be permitted to exist in between video booths or in

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any wall of a video booth.

12. No person shall make or attempt to make an opening of any kind between video booths or in any wall of a video booth.

13. The walls of each video booth shall be inspected regularly during each business day to determine if any openings or holes exist.

14. All floor coverings in video booths shall nonporous; easily cleanable surfaces, with no rugs or carpeting.

15. All wall surfaces, ceiling surfaces and seating surfaces in video booths shall be constructed of, or permanently covered by, nonporous, easily cleanable material.

C. A person who operates a sexually oriented business or his agent or employee shall be guilty of a Class B Misdemeanor if he operates a sexually oriented business in violation of this section.
(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.170 Nudity, Sexual Activity, Live Entertainment and Performances.

A. It shall be unlawful for a person to knowingly and intentionally, in a sexually oriented business, to appear in a state of nudity, or to engage in specified sexual activities. Violation of this subsection (1) shall constitute a Class B misdemeanor.

B. Any employee appearing on the premises of a sexually oriented business in a state of semi-nudity, as defined in this Chapter, must be on a stage that is at least 36 inches from the floor, and at a distance at least 72 inches from all parts of a clearly designated area in which patrons will be present.

C. The stage shall be separated by railing from the area in which patrons may be present. The railing shall be at least 36 inches from the floor.

D. No employee appearing on the premises of a sexually oriented business in a state of semi-nudity, may intentionally or knowingly touch a customer or a customer's clothing or permit himself or herself to be touched by a customer or a customer's clothing.
(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.180 Dressing Rooms.

A. All sexually oriented businesses that offer live entertainment must provide separate dressing room facilities for female and male entertainers which shall not be occupied or used by anyone other than entertainers.

B. This section shall not apply to an employee's bona fide use of a restroom or of a single-sex dressing room that is accessible only to entertainers.
(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.190 Minimum Lighting Level.

A. The premises of every sexually oriented business shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, including restrooms, at an illumination level of not less than five (5.0) foot candles as measured at floor level.

B. The illumination described in subsection (1) shall be maintained at all times that any patron is present in the premises. In the event of a power failure, the business shall stop operating immediately and all patrons shall be cleared from the premises. The premises shall not be reopened until the minimum illumination level can be assured.
(Ord. 2001-19, Add, 06/05/2002)

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Section 5.40.200 Exterior Display.

A. No sexually oriented business shall be operated in any manner that permits the observation from outside the premises of any material or live entertainment displaying specified sexual activities or specified anatomical areas, as defined in this Chapter, or any live person in a state of nudity or semi-nudity, whether by means of display, decoration, sign, window or any other means.

B. No sexually oriented business shall be operated unless adequate lighting of the exterior premises is provided for visual inspection or video monitoring.
(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.210 Hours of Operation.

No sexually oriented business shall remain open at any time between the hours of 2:30 a.m. and 7:00 a.m. on weekdays and Saturdays, and 2:30 a.m. and noon (12:00 p.m.) on Sundays, nor shall any entertainment, service, or product be provided to a customer on the premises of a sexually oriented business during those hours.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.220 Minors Prohibited.

A. No person under the age of 18 years shall be permitted on the premises of a sexually oriented business.

B. Mistake of age is not a defense to a violation of this section, unless the person under age 18 who was permitted on the premises exhibited to the operator or his agent or employee a draft cared, driver's license, birth record, or other official or apparently official document purporting to show that the person was eighteen years of age or over, and the person to whom that document was exhibited did not otherwise have reasonable cause to believe that the person seeking admittance was under eighteen years old.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.230 Inspection of External Boundaries and Reporting of Specified Criminal Activity.

A. It shall be the duty of the operator of a sexually oriented business to:

1. initiate and enforce inspection of the external boundaries of the real property upon which the sexually oriented business is located;
2. post conspicuous signs stating that the external boundaries of the real property are subject to routing inspection by management;
3. designate one or more employees to monitor the activities of persons within the external boundaries of the real property upon which the sexually oriented business is located by visually inspecting the boundaries at least once every thirty (30) minutes or inspecting such boundaries by use of video cameras and monitors;
4. provide adequate lighting of the exterior premises to provide for visual inspection or video monitoring of the external boundaries. The video cameras and monitors shall operate continuously at all times that the premises is open for business. The monitors shall be installed withing a manager's station; and

B. Immediately report any specified criminal activity observed by any inspecting employee to the local police agency, and fully cooperate in the investigation by that agency.

C. Any licensee knowingly or intentionally failing to comply with any requirement of this section is guilty of a Class B Misdemeanor.

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(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.240 Penalties.

A. Unless otherwise expressly provided in this Chapter, knowing violations of this Chapter shall constitute a class B misdemeanor punishable by fine in an amount not exceeding \$1,000 or by imprisonment in the County jail for a period of time not to exceed six (6) months, or by any combination of said fine and imprisonment.

B. Each day that a sexually oriented business operates in violation of this Chapter is a separate offense or violation.

C. Any person who operates or causes to be operated a sexually oriented business in violation of the Chapter is subject to a suit for injunction as well as prosecution for criminal violations.

(Ord. 2001-19, Add, 06/05/2002)

Section 5.40.250 Severability.

If any section, subsection or clause of this Chapter shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

(Ord. 2001-19, Add, 06/05/2002)

Chapter 5.48

Pawnbrokers

Sections:

- 5.48.01 Pawnbroker Defined.**
- 5.48.02 License--Required.**
- 5.48.04 License--Bond Required.**
- 5.48.06 Hours of Business.**
- 5.48.07 Recordkeeping requirement.**
- 5.48.08 Records--Legibility--Access for Inspection.**
- 5.48.09 Records--Copies to Police Department.**
- 5.48.10 Receiving items from certain persons prohibited.**
- 5.48.11 Furnishing of False Information.**
- 5.48.12 Receiving items with Altered Identification Numbers.**
- 5.48.13 Licensee Liable for acts of Employees.**
- 5.48.14 Penalties.**
- 5.48.15 Validity.**

Section 5.48.01 Pawnbroker Defined.

"Pawnbroker" means any person who loans money on deposit of personal property, or deals in the purchase, exchange or possession of personal property on condition of selling the same back again to the pledgor or depositor, or who loans or advances money on personal property by taking chattel mortgage security thereon and takes or receives such personal property into his or her possession, and who sells the unredeemed pledges together with such new merchandise as will facilitate the sale of the same. (ord. 89-01, 1989)

Section 5.48.02 License--Required.

The license fee for a pawnbroker shall be two hundred fifty dollars per year, or any part thereof. (Ord. 89-01 1989)

Section 5.48.04 License--Bond Required.

Before any license is issued to a pawnbroker under the provisions of this chapter, the applicant for such license shall execute and deliver to the city a bond in the sum of two thousand five hundred dollars (\$2500.00) executed by a corporate surety authorized to do business in the state of Utah, and conditioned upon the faithful performance of such licensee of all ordinances of the city respecting pawnbrokers. (Ord. 91-02 1991: Prior Ord. 89-01 1989)

Section 5.48.06 Hours of Business.

It is unlawful for any pawnbroker to receive any goods by way of pawn or pledge, or to keep his place of business open before the hour of seven a.m. or after seven p.m. of any day or on Sunday; provided, however, that on Saturday of each week and on days preceding legal holidays, and the last fifteen days of December of each year, it shall be lawful for said pawnbroker to keep his or her place of business open until eleven p.m. (Ord. 89-01 1989)

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Section 5.48.07 Recordkeeping requirement.

A. It is unlawful for any person licensed by this chapter to fail to keep upon the licensed premises a substantial and well-bound book in which he shall enter in the English language at the time of receiving any goods, including those on consignment and including coins and currency, which coins and currency are obtained at a price other than face value:

1. An accurate account and description of each item received, including, but not limited to all names, numbers and other identifying marks, and including all indication of ownership thereon;

2. The amount of money paid or value of property traded;

3. The date, both day and hour, of receiving said items;

4. The name, address and description of the person making the transaction;

5. A numerical identifier obtained from identification containing a photograph of the person making the transaction. The person presenting the identification must be the same person whose photograph appears upon the identification;

6. The date of sale, disposal or scrapping of the item shall be added when the item is sold, scrapped or otherwise disposed of.

B. The description required by subsections A1 and A2 above shall include such further information or description or identification marks as may be required by the police department in bulletins given to licensees from time to time.

C. Each licensee shall also keep a separate record which shall be sent to the police department and which shall be cross-referenced to the book referred to in subsections A and B of this section, and which shall contain, in addition to the requirement of said subsections:

1. A certificate, accompanied by the signature of the person delivering said item(s) that he/she has the legal right to pawn or sell said item(s);

2. A legible fingerprint of the person making the transaction, preferably the right thumbprint;

3. A legible signature of the person receiving the item at time of transaction of each item.

D. No entries of any record shall be erased, obliterated or defaced and the receiving licensee shall keep the record available during business hours for inspection by any city police officer.

E. It is unlawful for any person to dispose of or alter any items received for a period of thirty days from the date of receiving such items, except to return to the person originally pawning the item. Such items shall be available for inspection by any city police officer during reasonable business hours while in licensee's possession or control.

F. If requested to do so by a peace officer of the city police department, any item delivered to the licensed business must be retained and held, until released by the police department or placed in the custody of a police agency to be held as evidence.

G. The records required to be maintained by this chapter shall be maintained by the business for a period of two years from the date of transaction. (Ord. 92-03, 1992; Ord. 89-01 1989)

Section 5.48.08 Records--Legibility--Access for Inspection.

All entries shall be made with non-erasable ink in a legible manner. The police department shall also be permitted to have access, during business hours, to all premises licensed under this chapter for the purpose of the inspection of such premises and records. (Ord. 89-01 1989)

Section 5.48.09 Records--Copies to Police Department.

It is unlawful for any person licensed by this chapter to fail to submit a copy of all entries required to be maintained by this chapter to the city police department upon request by such agency.

Heber City Municipal Code

(Ord. 89-01 1989)

Section 5.48.10 Receiving items from certain persons prohibited.

It is unlawful for any person licensed pursuant to this chapter or any employee of any person licensed pursuant to this chapter to receive any items from a person who is under eighteen years of age, or who is either intoxicated or obviously mentally deficient. (Ord. 89-01 1989)

Section 5.48.11 Furnishing of False Information.

It is unlawful for any person to wilfully give the licensee or his or her agents or employees false or misleading information which the licensee is required by this chapter to obtain from such person. (Ord. 89-01 1989)

Section 5.48.12 Receiving items with Altered Identification Numbers.

No business licensed pursuant to this chapter shall receive any item which has obviously had the manufacturer's serial number or an owner's personal identification mark altered, defaced, or obviously mutilated or removed. (Ord. 89-01 1989)

Section 5.48.13 Licensee Liable for acts of Employees.

The holder of a license under this chapter is strictly liable for any and all acts of his or her own employees for any violation of them or any provisions of this chapter. (Ord. 89-01 1989)

Section 5.48.14 Penalties.

Any person violating, causing or permitting a violation of any provision of this Ordinance shall be guilty of a misdemeanor. Any violator of this Ordinance, upon conviction, shall be punished by a fine of not more than \$1,000.00 or by a jail sentence not to exceed six months, or by both such fine and jail sentence. (Ord. 89-01 1989)

Section 5.48.15 Validity.

If any part of this Ordinance is or shall be declared by a court of competent jurisdiction to be invalid, such invalidity shall not invalidate the remainder of this Ordinance. (Ord. 89-01, 1989)