

TITLE 14. BUSINESS REGULATIONS AND LICENSES

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Chapter 14.01. Purpose and Definitions.

14.01.010. Purposes.

Pursuant to powers granted by the State of Utah as set forth in various provisions of the Utah Code as amended, the City of Brigham City, Utah, intends by this Ordinance to regulate and license businesses and occupations within its corporate limits; to maintain a current index of licensed businesses and occupations; and to raise revenues sufficient, among other things, to offset the costs of administering this ordinance by imposing license fees upon such businesses and occupations.

14.01.020. Definitions.

For the purposes of this Title, the following words and phrases shall have the meaning herein prescribed:

Branch Establishment. A separate business location which is necessary to the operation of a business. A branch establishment may include processing, warehousing or distribution facilities which may be necessary for the full functioning of a business.¹

City. The municipality of Brigham City, Utah.

Contractor. Any person, who for a fixed sum, price, fee, percentage, or other compensation, other wages, undertakes with another to improve any building, highway, road, railroad, excavation or other structure, project, development or improvement of any kind, other than to personal property; provided further, that the term "contractor" as used in this Article shall include anyone who builds more than one structure on his own property during any one year for the purpose of sale and shall include subcontractor but shall not include anyone who merely furnished materials or supplies without fabricating the same into, or consuming the same in the performance of the work of a contractor as herein defined.

Criminal History Report. A personal criminal history record and report compiled by the state Bureau of Criminal Identification (BCI). BCI reports are to be furnished by the applicant, employee, person or individual. They are to be mailed directly from BCI to the Chief of Police.

Director. Director of Community Development²

Department. Community Development Department

Employee. The operator, owner or manager of a place of business; any person or persons employed by an operator, owner or manager in the operation of a place of business in any capacity, whether part-time or full-time; and any salespersons, agents or independent contractors engaged in the operation of a place of business in any capacity within the City.

Engaging in business or conduct of business. Includes, but is not limited to, the sale of tangible personal property at retail or wholesale, the manufacturing of goods or property and the rendering of services to others for a consideration by persons engaged in any trade, craft, business or occupation including doctors, lawyers, accountants, dentists, etc. The acts of employees rendering services to employers shall not be included in such terms unless otherwise specifically prescribed. Separate licenses shall not be required for persons who engage in business with others as a partnership or corporation legally constituted.

License. Certificate or document issued by the City evidencing permission or authority of its named holder to carry on a particular business or to pursue a particular occupation.

Licensee. The person to whom a license has been issued pursuant to the provisions of this Chapter.

Permit. A written license or instrument issued by the City authorizing and empowering the grantee thereof to some act not forbidden by law but not allowable without such authority.

Person. Any individual or natural person, receiver, assignee, trustee in bankruptcy, trust, firm, partnership, joint venture, corporation, club, company, business trust corporation, association, society or other group of individuals acting as a unit, whether social, cooperative, fraternal, nonprofit or otherwise.

Place of Business. A location maintained or operated by a licensee within the City where the licensee engages in business.

Chapter 14.02. In General

14.02.010. Unlawful to Operate Without License.

It shall be unlawful for any person to engage in business within the City without first procuring a license, or for any person to continue a business when the license pertaining thereto has *expired*, or been suspended or revoked.

14.02.020. Responsibility for Obtaining License.

It shall be the responsibility of a person engaging in business within the City to voluntarily apply for and maintain in full force and effect a valid license. The application shall be issued by the Department and shall contain the following information: Business name, address, phone number, and mailing address; owner's name, address, phone number and date of birth.

14.02.030. Separate License Required for Each Branch Establishment.

A. A separate license must be obtained for each branch establishment for a location of a business.

Exception: a. Where a Brigham City licensee provides service in the customer's residence (example: tax preparation, massage therapy).

¹ Ordinance No. 05-28, 12/15/05

² Ordinance No. 02-30, 11/21/02

b. Where a Brigham City licensee provides service in a Brigham City licensed facility (example: cosmetologist, barber, or doctor).³

Each license shall authorize the person obtaining it to carry on, pursue or conduct only that business described in such license and only at the location which is indicated thereon.

B. Exemption from multiple license requirements. A business which has separate processing, warehousing and distribution facilities used in connection with and incidental to a business, licensed under the provisions of this Title shall not be deemed to be separate places of business or branch establishments provided however, that each separate place of business shall comply with applicable zoning or other codes.

C. If the location of the primary office for the business is closed or moved, it is the responsibility of the business to inform the City within thirty (30) days of any change of location of the primary office.⁴

D. If the location of the primary office for the business is closed, then branch establishments shall also close.

E. If the location of the primary office for the business is relocated to a jurisdiction outside of Brigham City, then each branch establishment shall obtain a Brigham City business license.

14.02.040. Duty to Display License.

Every licensee licensed pursuant to the provisions of this Title shall keep his license displayed and exhibited while the same is in force in some conspicuous part of the place of business. Every licensee not having a fixed place of business shall carry such license with him at all times while carrying on the business for which the license is issued and shall produce the license for inspection when requested to do so by any person.

14.02.050. Exemptions.

The provisions of this Title shall not be deemed or construed to require the payment of a license fee by, or the issuance of a license to

A. Any governmental entity, any institution or organization which is conducted, managed or carried on wholly for the benefit of charitable purposes from which profit is not derived, directly or indirectly, by any individual, firm or profit corporation,

B. Any entertainment, concert, exhibition, or lecture on scientific, historical, literary, musical, religious or moral subject, whenever the receipt from such is to be appropriated to any church or school or to any religious or benevolent purpose within the City,

C. Any entertainment, dance, concert, exhibition or lecture by any religious, charitable, fraternal, educational, military, state, County or municipal organization or association when the receipts from such are to be appropriated for the purposes and objects for which such association or organization is formed and from which profit is not derived, either directly or indirectly, by any individual firm, or profit corporation.

D. Any wholesalers whose place of business is not located within the City and who hold a valid business license in another jurisdiction in the State of Utah are exempted from licensure.

E. Except as otherwise specified in provisions of Utah Code, any activities conducted by an individual holding a valid license issued by the State of Utah, Division of Occupational and Professional Licensing for work within the scope of their license, when such individual possesses a business license in any other legal Utah municipality and they are working in a facility with a current Brigham City business license or exempt facility (example: doctor licensed in another Utah community doing work at a licensed facility within the City). Provided, however, this exemption shall not apply to activities requiring a solicitor's license under the provisions of Chapter 14.14.

F. Any activities conducted by minor children under direction or supervision of an adult, when such activity is conducted primarily as a pastime or diversion for such minor children, or when such activity is conducted primarily as a means of providing service to others within a neighborhood. By way of illustration, such activities may include, but are not limited to, lemonade or other soft drink sales, candy sales, newspaper delivery, lawn mowing and maintenance, snow shoveling, car washing, or other similar activities.⁵

The Community Development Director or designee shall be responsible to determine those activities that are exempt from licensing under this Section.⁶

³ Ordinance No. 04-31, dated 11/4/04

⁴ Ordinance No. 05-28, dated 12/15/05

⁵ Ordinance No. 04-31, dated 11/4/04

⁶ Ordinance No. 01-27, dated 7/19/01

14.02.060. Inspections for Code Compliance.

Prior to conducting a business at a location within the City, the applicant shall permit inspections to be made of the prospective place of business by the appropriate departments of the City to ensure compliance with building, safety, zoning and other applicable codes. Applicants are also subject to inspections by the Bear River Health Department to ensure compliance with health regulations.⁷ No license shall be granted without the approval of all such required inspections. Pending compliance with the aforesaid codes, the applicant may conduct business by obtaining a temporary permit which shall be valid for a period specified by the City, but not to exceed thirty (30) days. An applicant shall have thirty (30) days in which to comply with such codes and remedy any defects or infractions after receiving written notice thereof from the Department. Existing places of business licensed within the City shall be inspected periodically by departments of the City for compliance with building, fire and health codes. Written notice shall be given by the Department to a licensee upon the finding of any code infractions, which notice shall provide for thirty (30) days in which to correct such infractions, the failure of which shall result in the revocation of the license by the Department.

Upon a showing of good cause therefore, the Division may grant in writing, an extension of time beyond the thirty (30) day period for compliance to required standards. The Community Development Director shall request the City Attorney to file a complaint against any applicant or any licensee who continues to conduct business beyond the time limits.

The Community Development Director may designate any employee as an enforcement official. Authorized officers shall be permitted to make an inspection to enforce any of the provisions of this Title or any other applicable statute or ordinance, and may enter any building or may enter upon any premises during regular business hours; or, if there are no regular business hours, the officers or their authorized representatives shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If the property owner or other responsible person refuses to allow the enforcement officers to enter and inspect the property, the officer may obtain and execute a search warrant.

No owner, occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after property request is made as herein provided, to properly permit entry therein by the authorized officer or his representative(s) for the purpose of inspection and examination to ensure compliance with this Title.⁸

14.02.070. Preparation and Listing of Licenses.

The Department shall prepare and issue an appropriate license for every person qualifying therefore under the provisions of this Title and shall state in each license the period of time for which it is issued, the name of the person to whom issued, and the location of the place of business. All licenses shall be signed by the Mayor of the City and attested by the City Recorder. The Department shall maintain a list of all persons holding licenses and the status of each such license.

14.02.080. Fees for Business License.

The license fee for all businesses shall be set by resolution of the City Council. These fees may be changed from time to time as determined by resolution of the City Council. Applicants for all such licenses shall pay license fees as otherwise fixed in this Title. In addition to the other penalties specified in this Title, in the event that a business has operated without a license, it shall pay fees and penalties equal to the fees and penalties that would have been assessed for that period of time for which the business operated prior to obtaining a business license. By way of illustration, if a business has operated for one year or portions of a year prior to obtaining a business license, the business shall pay the license fee for that period of time in which the license application is made, and shall also pay the appropriate fee for the year for the time prior to that in which the license is obtained.⁹

14.02.090. Fees for Circuses/Carnivals.

Fees for circuses/carnivals shall be set by resolution of the City Council.

14.02.100. Fee Payments.

All license fees shall be paid in advance in legal tender of the United States at the office of the Department.

⁷ Ordinance No. 09-07, dated 5/7/09

⁸ Ordinance No. 02-10, dated 3/21/02

⁹ Ordinance No. 02-10, dated 3/21/02

14.02.110. License Term and Renewal Procedure.

Business licenses shall be valid for twelve (12) months from the day of issuance, unless otherwise specified. On or before thirty (30) calendar days before expiration, the Department shall send a statement to each current licensee within the City notifying the business of the need for renewal.

Fees remaining due and unpaid as of the date of expiration shall have added thereto a penalty (late fee) in an amount set forth by resolution of the City Council. This fee may change from time to time as determined by resolution of the City Council. Businesses may not renew its business license or apply for any new business license in the name of any officer or member of the delinquent business until the mandatory late fee is paid.

In the event that a license has expired and an application is received for a new business license for a business that has operated in violation of this paragraph, the applicant shall be responsible for payment of the penalty amount.

Operating a business without a current business license is considered a separate class B Misdemeanor for every day that the business operates without a license. In the event that the City pursues legal action under this paragraph, the City is entitled to recover attorney's fees and court costs associated with such action, in addition to the outstanding business license fees.

14.02.120. Insurance Company Exemption.

Although they shall apply in all respects for the obtaining of a business license pursuant to this Chapter, the following licensees are exempt from the payment of license fees:

A. Insurance companies paying fees and licenses to the State of Utah pursuant to applicable provisions of Utah Code Annotated as amended. However, if they are not paying a City fee, a copy of the State license must be submitted to the Department.

14.02.130. Unspecified Fees or Time Periods.

The fees and time periods for licenses not specifically set forth elsewhere in this Title for the conduct of any business shall be those set forth in Section 14.02.080 through and including Section 14.02.120 of this Title. The licenses shall be effective for the time period specified on the license.

14.02.140. Mistakes in Fee Calculations.

In no event shall any mistakes made by an applicant, a licensee or the Department in the calculation of a license fee prevent or prejudice the collection by the City of the amount actually due from any person subject to licensing under this Chapter. Likewise, no such mistakes shall prevent or prejudice the refund to licensees of amounts overpaid by reason of mistakes.

14.02.150. Deviations Prohibited.

No greater or lesser amounts shall be charged or received for licenses and no license shall be issued for any period of time other than as specifically provided in this Title.

14.02.160. Refunds.

No refund shall be made against any fee for a license issued pursuant to this Chapter unless such refund is approved by the Department.

14.02.170. License Transfers.

Except as otherwise specified in this Title, a business license may be transferred from one location to another or from one business entity to another provided, however, that such transfer is contingent on the same standards at the new business license location or for the new business entity, as for the business license location or business entity that received the original business license, and subject to an administrative fee as established by resolution of the City Council.

14.02.180. Applications for General Licenses.

Applications for general licenses will have no greater than a ten (10) business day review period unless extenuating circumstances apply as determined by the Director.

14.02.190. Applications for Special Licenses.

Applications shall be required and special licenses issued pursuant to the provisions of other chapters of this Title. Approval by the Department¹⁰ must be given for special licenses required in this Title.

¹⁰ Ordinance No. 02-02, 1/10/02

Approval or denial of special licenses by the Department shall be pursuant to the standards contained in the chapter governing each license and Section 14.02.220 of this Title.

14.02.200. Bonding.

As specified in this Title, certain occupations or businesses require the posting of a cash or corporate surety bond in the sum set by resolution of the City Council in addition to whatever regular or special licenses may be required pursuant to the provisions of this Title.

All such bonds shall be conditional for the faithful observance by the licensee of all laws and ordinances of the City and for the honest performance of all duties required of the licensee by ordinance as well as for such additional purposes as may be required in the particular chapter of this Title requiring a license for such occupation or business. Proof of renewal of such bond must be presented each year.

14.02.210. Denial, Suspension, or Revocation of a License.

A. Denial of a Business License or Alcoholic Beverage License

After a person has made application to the City for a business license or alcoholic beverage license, the application may be denied for any of the following reasons:

1. The applicant does not meet the qualifications for a licensee as provided under this Title.
2. For a new application, nonpayment of a returned check for the required license fees at the time the application is made. For a business license renewal application, nonpayment of the required license fees plus penalty three months after it is due. For an alcoholic beverage license, nonpayment of the required license fees plus penalty after January 1 in any year.
3. One of the reviewing departments or divisions of the City provided for in this Title has disapproved the application pursuant to any applicable provision of the City Code.
4. False or incomplete information given on the application.
5. Noncompliance with any requirement or condition set by the Planning Commission or Community Development Department, if applicable, under a conditional use permit or design review approval; by the Appeal Authority or Community Development Department, if applicable, granting a variance or special exception; by the City Council; by the Redevelopment Agency; or by agreement.
6. Noncompliance with any City, state, or federal statutes or any Bear River Health Department regulations governing the applicant's proposed business.
7. Any other reason expressly provided for in this Title.

B. Reasons for Suspension or Revocation

An existing business license or alcoholic beverage license may be suspended or revoked for any of the following reasons:

1. The licensee does not now meet the qualifications for a license as provided under this Title;
2. False or incomplete information given on an application;
3. The licensee has violated or is violating any provision of this Title or provision of the City Code, state or federal statutes or regulations governing the licensee's business;
4. The licensee has obtained or aided another person to obtain a license by fraud or deceit;
5. The licensee has failed to pay property taxes or sales tax;
6. The licensee has refused authorized representative of the City to make an inspection or has interfered with such representatives while in the performance of their duty in making such inspection;
7. The licensee is not complying with a requirement or condition set by the Planning Commission or Community Development Department, if applicable, under a conditional use permit or design review approval; by the Appeal Authority or Community Development Department, if applicable, granting a variance or special exception; by the City Council; by the Redevelopment Agency; or by agreement;
8. Violation of this Title by the agents or employees of a licensee and violations of any other laws by the agents or employees committed while acting as an agent or employee of the licensee; or
9. Any other reason expressly provided for in this Title.

C. Enforcement.

1. The Community Development Director or designee shall have the authority, without a hearing, to deny a license for the reasons provided for in this Chapter.

2. The Community Development Director or designee shall have the authority to suspend or revoke a license without a hearing, for reasons provided in this Chapter. However, the suspension or revocation shall not take effect until the time period for appealing the decision as set forth in this Chapter below has passed.

3. The Community Development Director or designee may, on his or her own initiative or in response to complaints from the general public or any City department or division, investigate and gather

evidence of violations of this Title or other circumstances which may give rise to a denial, suspension, or revocation.

D. Procedure for Suspension or Revocation.

The Community Development Director or designee shall cause written notice to be given by personal service or registered mail to the licensee of his or her decision to suspend or revoke a license, the reason for such decision, that the operation of a business after the effective date of the suspension or revocation is a Class "B" misdemeanor, the licensee's right to appeal the Community Development Director or designee's decision and have a hearing, and the appeal procedure.

E. License Hearing Board.

The Mayor and City Council of Brigham City are hereby designated as the Brigham City License Hearing Board. The License Hearing Board shall have authority to hear evidence in business license matters referred to the Board. The Mayor shall serve as Chairman of the Board and the Board shall designate one member to be Vice-Chairman for a period of one (1) year.

F. Appeal Procedure.

1. Appeals of the Community Development Director or designee's decision to deny, suspend, or revoke a license may be made by filing a written notice of appeal with the Hearing Board within fifteen (15) days of receipt of the notice of denial, suspension, or revocation.

2. The notice of appeal shall be in writing and shall set forth with specificity the reasons for which the appeal is taken.

G. Hearing.

1. The hearing shall be held prior to or following completion of a regularly scheduled City Council meeting, and not later than the next regularly scheduled City Council meeting after receipt of the notice of appeal.

2. At the hearing, the Hearing Board or representative from the City Attorney's office shall present the reason for the decision to deny, suspend, or revoke the license.

3. The applicant or licensee, in person or through his or her attorney, may then present any evidence showing why the decision was in error.

4. All witnesses shall be sworn to testify truthfully. Either party is entitled to confront and cross-examine any witness.

5. Any oral or documentary evidence may be received, but the Hearing Board shall exclude all privileged, irrelevant, immaterial, or unduly repetitious evidence.

6. If the denial, suspension, or revocation appealed from is based on a finding by the Community Development Department, Fire Department, Bear River Health Department, or Police Department that the business was or would be in violation of their applicable ordinances or regulations, then that finding shall be conclusive on the Hearing Board, and the Board's decision may be based only on whether the license was properly denied, suspended, or revoked because of that Department's finding.

7. If the denial, suspension, or revocation appealed from is based on a determination by the Community Development Director or designee that grounds existed pursuant to this Code, the Hearing Board may examine the factual nature of the grounds and determine whether such grounds are sufficient to sustain the decision of the Community Development Director or designee.

8. The License Hearing Board does not have the authority to waive compliance with applicable provision of the Business License Ordinance, nor can the Hearing Board extend deadlines set forth in the ordinances or change the substance or form of the ordinances.

H. Decision of the Hearing Board.

The Hearing Board, after hearing all the evidence, shall announce its decision within seven days from the date of hearing. The Hearing Board may affirm or reverse the decision of the Community Development Director or designee. The decision shall be in writing and shall be based only upon findings of fact. The Hearing Board may designate that the prevailing party draft the Findings of Fact and Order. If the prevailing party drafts the Findings of Fact and order, the opposing party shall have five days from the date the draft is submitted within which to file objections to the draft. Upon resolution of all objections to the draft, the Hearing Board shall release the Findings of Fact and Order.

I. Appeal of Hearing Board Decision.

Any decision of the License Hearing Board may be appealed by the applicant, licensee, or City to the District Court within thirty (30) days from when the written decision is made.

J. Licensing After Revocation.

A person, whose license has been revoked, may not be issued a license for a period of twelve (12) months after the revocation.

K. Validity of Business License or Alcoholic Beverage License During Appeal.

Throughout the appeal process as outlined above, a licensee holding a suspended or revoked business or alcoholic beverage license may continue to operate his or her business in accordance with

federal, state, and local laws pending final decision on the appeal, or until the time for appeal has passed, whichever occurs first.

14.02.220. Business Owner Responsible for Concessionaire.

For purposes of business or premises' owners who contract out the sale of alcoholic beverages on the business premises to an independent concessionaire, violation by said concessionaire of any provision of this Title shall constitute grounds for suspension and/or revocation of the license of said business or premises owner.

14.02.230. Powers and Duties of Police

All police officers of the City are hereby appointed inspectors of licenses and, in addition to their several duties as police officers, are empowered and required in the performance of their duties to examine all places of business and persons who are required to have licenses to see that such licenses are in fact valid and that they are posted in a conspicuous place within the place of business or displayed as required. Police officers shall have and exercise the power:

A. To enter free of charge, at any time, any place of business for which a license is required; to demand the exhibition of a current license by any person engaged or employed in the conduct of such business; and, if such person shall then and there fail to exhibit such license, such person shall be liable for the penalties provided for violation of this Title.

B. To make arrests for the violation of any provisions of this Title.

It shall be the duty of the City police officers to cause complaints to be filed for all persons violating any of the provisions of this Title.

14.02.240. Penalties for Violation

Unless specifically provided elsewhere in this Title, any person violating any of the provisions of this Title shall be guilty of a Class B misdemeanor.

14.02.250. Effect of Conviction; Prosecution Not Barred

The conviction and punishment of any person for transacting business without a license shall not excuse or exempt such person from the payment of any license fees due or unpaid at the time of such conviction; and nothing herein shall prevent a criminal prosecution for any violation of the provisions.

14.02.260. Severability.

If any part of this Title or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this law or the application thereof to other persons and circumstances but shall be confined in its operation to the chapter, section, subdivision, sentence or part of the sentence involved and the person and circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the City Council that this Title would have been adopted if such invalid chapter, section, provisions, subdivision, sentence, or portion of such sentence or application had not been included.¹¹

Chapter 14.03. Auctions and Auctioneers.

14.03.010. License

It shall be unlawful for any person to sell or offer to sell at public auction in the City any merchandise or to keep, conduct or operate an auction house, or a transient auction house in the City for the purpose of selling or offering for sale any inventory of stock or merchandise, without first obtaining a license.

14.03.020. License Application

Application for such license shall contain the following:

A. The name of the applicant, his residence and the address of the proposed place of sale;

B. Detailed statements or representations proposed to be made or advertised regarding the goods to be sold;

C. The length of time for which the license is desired;

D. A statement as to whether or not the applicant has previously engaged in a like or similar business, designating the place and time where the same was conducted; and,

¹¹ Ordinance No. 98-19, 4/23/98

14.03.030. License Fee

The fee for licenses required for auctioneers pursuant to this Chapter shall be established in accordance with the license fees set forth in Section 14.02.080. The fee thus established will be for each auction period.

14.03.040. Exemptions.

The provisions of this Article shall not apply to any auction held for charitable or benevolent purposes or as a part of a church fair, festival or bazaar.

14.03.050. False Bidding; Auctioneer or Officer to be Present

No person shall act at any sale by auction as a by-bidder or booster to bid in behalf of the auctioneer or owner, or to run up the price of the article to be sold, or to make any false bid. The licensee, or if the licensee is a corporation then one of its officers, shall remain in continuous attendance at each auction held to assure compliance with this section.

14.03.060. Conduct Generally

Auctioneers and their assistants are forbidden to conduct their sales in such a manner as to cause people to gather in crowds on the sidewalks so as to obstruct the same; nor shall they use immoral or indecent language in crying their sales; not make or cause to be made noisy acclamations such as the ringing of bells, blowing of whistles or otherwise, through the streets in advertising their sales, and no bellman or crier, drum, fife or other musical instrument or noise making means of attracting attention of the passerby, except the customary auctioneer's flags, shall be employed or suffered to be used at or near any place of auction whatsoever.

14.03.070. Fraud

It shall be unlawful for an auctioneer or his assistants when selling or offering for sale at public auction any goods, wares or merchandise under the provisions of this Article, while describing said goods, wares or merchandise with respect to character, quality, kind or value or otherwise, to make any fraudulent, misleading, untruthful or unwarranted statements tending in any way to mislead bidders, or to substitute one article for another.

14.03.080. Duties of Auctioneer Relating to

It shall be the duty of all licensed auctioneers or auction houses to receive all articles which may be offered them for sale at auction and give receipts therefore. At the close of any sale, which must be made as the owner directs, the auctioneer shall deliver a fair account of such sale and pay the amount received for the articles to the person entitled thereto.

14.03.090. Representations as to Quality; Records Required

All sales and all persons participating in sales must truly and correctly represent at all times to the public attending such auction the facts with respect to quality of items for sale. The licensee shall keep a complete record of all sales in excess of five dollars (\$5.00) made at auction, showing the name and address of each purchaser, a description of each article sold and the date of each such sale. The record shall, at all times, be open to inspection by the Department.

14.03.100. Transfer of License Prohibited

The license granted under the provisions of this Article shall not be transferable nor shall the same be loaned or used by any person other than the one who has been licensed.

14.03.110. Revocation

Licenses issued pursuant to this Chapter may be revoked by the City Council whenever it shall have been made to appear to its satisfaction upon a proper hearing as provided in Section 14.02.220, that the licensee has violated any of the terms or provisions of this Chapter or of the licensee's bond. Upon revocation of the license, the licensee shall cease to operate thereunder and the unearned portion of the license fee and the bond shall be forfeited to the City.

14.03.120. Violation a Misdemeanor

Violation of the provisions of this Chapter is a Class B misdemeanor punishable as provided in Section 14.02.250.

Chapter 14.04. Alcoholic Beverage Licenses.

14.04.010. Definitions

Terms used in this Chapter shall have the meaning set forth in the Utah Code, unless otherwise specified below.

Club and private club. Any nonprofit corporation operating as a social club, recreational, fraternal, or athletic association, or kindred association organized primarily for the benefit of its stockholders or members.

Code enforcement officer. The officer employed by Brigham City for the purpose of the enforcement of Brigham City code violations.

Cork-finished wine. A container of wine stopped by a cork and finished by foil, lead, or other substance by the manufacturer.

General food store. Any business establishment primarily engaged in selling food and grocery supplies to public patrons for off-premises consumption.

Outlet. A location other than a state store or package agency where alcoholic beverages are sold pursuant to a license issued by local authority.

Package. Any container, bottle, vessel, or other receptacle containing liquor.

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

Public entrances and exits. As used in this Chapter, shall mean access points to buildings that are required to remain unlocked during business hours that are to be used by the general public, and does not include emergency or other exits or access points.

Public place. Refers to any of the following that are open to and generally used by the public:

- A. Streets, roads, and alleys of incorporated cities and towns;
- B. State or County highways or roads;
- C. Buildings and grounds used for school purposes, and public dance halls and adjacent grounds.
- D. Any place of public resort or amusement, unless otherwise defined in this Chapter.
- E. Lobbies, halls and dining rooms of hotels, restaurants, theaters, stores, garages, and service stations.
- F. Any public conveyance, and its depots and waiting rooms that are open to unrestricted use and access by the public.
- G. Publicly owned bathing beaches, park, or playgrounds.
- H. All other places that, under this Chapter have been declared to be a public place.

Retailer. Any person engaged in the sale or distribution of alcoholic beverages to the consumer.

School. Any building, public or private, used primarily for the general education of minors. "School" does not include an Educational Facility as defined by Utah Code.

Transaction. As used in this Chapter, means the particular portion of the exchange of legal tender for Alcoholic Beverages wherein the age of the purchaser is determined and the amount of the purchase is entered manually or mechanically on the Licensee's standard record keeping devise. Acts incidental to the transaction shall not be considered part of the transaction or beer sales transaction.

Visitor. A person holding limited privileges in a club by virtue of a visitor card purchased from the club and authorized by a sponsoring member of the club.

Warehouser. Any person, other than a licensed manufacturer, engaged in the importation for sale, storage or distribution of liquor regardless of the amount.

Wholesaler. Any persons, other than a licensed manufacturer, engaged in the importation for sale, or in the sale of beer, malt liquor, or malted beverages in wholesale quantities to retailers.

14.04.020. Compliance with Alcoholic Beverage Control Act, Commission, and City Ordinance.

All licenses shall comply with the Alcoholic Beverage Control Act of the state or its successor provisions, the regulations of the Alcoholic Beverage Control Commission, and this Chapter. If the provisions of this Chapter are inconsistent with those of the alcoholic beverage control act or the regulations of the alcoholic beverage control commission, the more restrictive provision shall prevail, to the extent permitted by law.

14.04.030. Qualification of Employees.

A. Other than as provided in Section 14.04.050, any person employed by any licensee under this Chapter for work involving the transaction, sale, serving, or dispensing of alcoholic beverages on or

about the licensed premises, whether as manager, agent or servant shall be twenty-one (21) years of age or older, and shall be legally able to work in the United States.

B. No one shall be employed who has been convicted of a felony within five (5) years prior to employment or who has not secured a judicial pardon and expungement of the record of any felony conviction entered prior to such five (5) year period, or who has within three (3) years prior been convicted of any violation of any law or ordinance involving moral turpitude, controlled substances, or relating to alcoholic beverages, driving charges involving alcohol or drugs, or of keeping a gambling or disorderly house, or who has pleaded guilty to or has forfeited bail on any such charge.

C. This section shall not operate to disqualify a person currently employed by a licensee under this Chapter, who was so employed on or before the date this ordinance is adopted and whose employment with the same licensee has been without interruption from said date. However, any such conviction for an act after the date this ordinance is adopted, shall disqualify all such convicted persons, including current employees.

14.04.040. Beer Handler's Permit

Every employee of any licensee under this Chapter, who is involved in any way with the sale, furnishing or dispensing of any alcoholic beverage shall obtain a beer handler's permit from the Bear River Health Department.

14.04.050. Certification of Employees.

No license shall be granted herein unless that person shall show that each employee of the business engaging in the serving, selling or furnishing of such alcohol has obtained a valid and current beer handler's permit and current Criminal History Report.

Every new employee hired after the licensee has been licensed in compliance with the provisions of the above paragraph who is required to obtain a beer handler's permit, shall obtain the permit within six months of commencing employment. Violation of this section will result in revocation of any license granted hereunder unless compliance with this ordinance is completed within two (2) months of the time that licensee first became aware that such violation occurred.

14.04.060. Duty to Report Change of Ownership.

If, during the term of the license year, after the license has been granted hereunder, there shall be any change in the personnel of any licensed partnership or of the officers or directors of any licensed corporation, the licensee shall forthwith report any such changes in personnel to the City licensing department.

14.04.070. Investigation by Health Department.

Any license application may be referred to the Health Department. The Health Department, if referral is made, shall make an investigation and inspection of the proposed licensed premises and shall report in writing to the Department whether the premises to be licensed are in a sanitary condition and whether the equipment used in the storage, handling, and distribution or sale of beer and other beverages and food, if any, comply with all such health regulations.

14.04.080. Display of License

Every license issued hereunder shall be posted and prominently displayed upon the licensed premises.

14.04.090. Transfer of License

Licenses issued under this Chapter shall not be transferable. The issuance of a license pursuant to this Chapter shall grant only a revocable privilege and shall not confer any vested rights of any kind or nature upon a licensee.

14.04.100. Licenses Revocable.

A. The Department may, in its discretion, when in the interest of public health, safety and welfare, and pursuant to this Title, information obtained pursuant to Sections 14.04.030, 14.04.040, and 14.04.050, as well as other information received pursuant to this Chapter, refuse to grant any license applied for. No license shall be issued if the applicant shall not possess all the qualifications required by state law.

B. Every police officer is an ex-officio inspector of license. Every such officer is authorized and empowered in his discretion and in addition to his enforcement powers, may inspect all licensed premises for compliance with state law and the City ordinances, reporting any violations to the Department.

C. The Department shall be bound by rules and regulations governing its procedure in considering and acting upon suspensions and revocations of licenses, as they may be established and amended from time to time by the City Council.¹²

14.04.110. License Fees.

A nonrefundable application fee and/or annual fee shall be required for each license or permit issued under this Chapter. Such fees shall be fixed and determined by resolution of the City Council as it from time to time deems appropriate.

14.04.120. Bond Required.

In addition to the fees required under the provisions of this Chapter, each applicant will be required to post a cash or corporate surety bond in the amount set by resolution of the City Council, which is to remain in effect during the entire license period. The bond is for the purpose of guaranteeing compliance with all City laws and ordinances and shall be forfeited in the event of the licensee's or employee's conviction of a felony, or the violation by the licensee of any laws or ordinances relating to alcoholic beverages, possession of controlled substances, gambling or keeping a disorderly house under the laws of the State of Utah, ordinances of the City or laws or ordinances or any other jurisdiction within or without the State of Utah.

14.04.130. Issuance of Licenses; Renewal

Upon receipt of the reports from the Community Development Director or designee, and, if referral is made, the Health Department, and upon review of those reports and determination by the Department, that the applicant has complied with all applicable laws, ordinances and regulations, the Department shall, in the instance of an initial application, issue a license to the applicant. A report of such issuance shall then be made to the Mayor and City Council.¹³

In the instance of a renewal application, the Department, upon receiving the aforementioned reports and determining that the applicant has complied with all applicable requirements, shall issue a renewal license to the applicant. A report of such issuance shall then be made to the Mayor and City Council.

Under this section, a renewal application will only be reviewed if it is for the same applicant and location as the previous license and for the year immediately following a licensed year. Otherwise, an initial application is required.

14.04.140. Restaurant Liquor Licenses.

Before any restaurant may sell or allow the consumption of beer or liquor on its premises, it shall first obtain a restaurant liquor license from Brigham City.

If the restaurant serves only beer it shall still be subject to state and City regulations regarding restaurant liquor licenses, except that the state restaurant liquor license need not be obtained.

The Department may issue restaurant liquor licenses for the purpose of establishing restaurant liquor outlets at places and in numbers approved for the storage, sale and consumption of liquor on premises operated as public restaurants pursuant to the Brigham City Zoning Ordinance and the following standards.

A. Restaurant liquor licensee premises may not be established within six hundred (600) feet of any public or private school, church, public library, public playground, or park as measured from the nearest entrance of the restaurant by following the shortest route or either ordinary pedestrian traffic or, where applicable, vehicular travel along public thoroughfares, whichever is the closer, to the property boundary of the public or private school, church, public library, public playground, school playground, or park.

B. Restaurant liquor licensee premises may not be established within two hundred (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 proposed outlet to the nearest property boundary of the above named.

C. The restrictions contained in paragraphs A and B of this section shall govern unless the City Council finds after a full investigation, by the Department, that compliance with distance requirements would result in peculiar and exceptional practical difficulties or exceptional and undue hardships in the granting of a restaurant liquor license. Additional circumstances may be considered and include topography, existing permanent physical barriers, sight distance, land-use issues, compatibility, travel distance, etc. In that event, the City Council may, after giving full consideration to all of the attending circumstances, following a public hearing, authorize an exemption from the distance requirements to

¹² Ordinance No. 02-01, 1/10/02

¹³ Ordinance No. 02-01, 1/10/02

relieve the difficulties or hardships if the variance may be granted without substantially impairing the intent and purpose of this Chapter. If such an exemption is granted, the City Council may impose additional restrictions upon a licensee to ensure the purpose of the intended restrictions.

Nothing in this Chapter prevents the City Council from considering the proximity of any educational, religious, and recreational facility or any other relevant factor in reaching a decision on a proposed location. For the purposes of this Chapter, educational facility includes nursery schools, infant day care centers and trade and technical schools.¹⁴

14.04.150. Application and Renewal Requirements: Restaurant Liquor License.

A person seeking a restaurant liquor license under this Chapter shall file a written application with the City, in a form prescribed by the licensing department. The restaurant liquor license fee and an initial nonrefundable application fee shall be established by resolution. The license period shall be one year commencing January 1 and ending the following December 31, and there shall be no proration of fees or license periods.

14.04.160. Qualification for Restaurant Liquor Licensee.

The Department may not grant a restaurant liquor license to a person who has been convicted of:

- A. A felony under any federal or state law.
- B. Any violation of federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages.
- C. Any crime of moral turpitude.

Upon arrest of any employee, officer, director, or managing agent of a restaurant liquor licensee, on any charge as set forth in this Chapter, the City may take emergency action by immediately suspending the operation of the licensee for the period during which the criminal matter is being adjudicated. If any such person is convicted of such an offense subsequent to the issuance of the license, the license shall be surrendered immediately. The licensee may request a hearing on the matter, in writing and within ten days of a conviction by a trial court. Any such hearing shall be pursuant to the provisions of Chapter 14.02 of the Brigham City Code.

In the case of a partnership or corporation, the offenses above apply if any partner, managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of an applicant corporation has been convicted of any offense as provided in this Chapter.

Restaurants licensed to sell liquor may sell beer in open containers, in any size not exceeding two liters, and on draft for on-premise consumption without obtaining a separate on-premise beer retailer license from the City.

All liquor will be sold and stored in accordance with state law. A quarterly investigation of the business establishment will be conducted by the Department to ensure compliance and a copy of findings will be furnished to the Mayor, the City Council, the Department¹⁵ and the Chief of Police.

14.04.170. Private Clubs

A. Before any private club may sell or allow the consumption of beer or liquor on its premises it shall first obtain a private club liquor license from Brigham City. Brigham Department may issue private club beer or liquor license to social clubs, recreational, athletic, or kindred associations, incorporated under the Utah nonprofit corporation and cooperative association act, which desire to maintain premises upon which beer or alcoholic beverages may be stored, sold, served, and consumed. All such licenses shall be issued in the name of an officer or director of the club or association.

B. No new private club liquor licensee premises shall be located closer than six hundred (600) feet to an existing private club or beer retailer on-premise licensee. The six hundred (600) feet shall be measured in a straight line between the nearest property lines of the subject properties.

C. A private club liquor licensee premises may not be established within six hundred (600) feet of any public or private school, church, public library, public playground, or park, measured from the nearest entrance of the private club by following the shortest route of either ordinary pedestrian traffic, or where applicable, vehicular travel, along public thoroughfares, whichever is the closer to the boundary of the public or private school, church, public library, public playground, school ground or park.

D. A private club liquor licensee premises may not be established within two hundred (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 proposed outlet to the nearest property boundary of the public or private school, church, public library, public playground or park.

¹⁴ Ordinance No. 02-01, 1/10/02

¹⁵ Ordinance No. 02-01, 1/10/02

E. The restrictions contained in paragraphs B, C, and D of this section govern unless the City Council finds after a full investigation, by the Department, that compliance with the distance requirements would result in peculiar and exceptional practical difficulties or exceptional and undue hardships in the granting of a private club license. Additional circumstances may be considered and include topography, existing permanent physical barriers, sight distance, land-use issues, compatibility, travel distance, etc. In that event, the City Council may, after giving full consideration to all of the attending circumstances, following a public hearing, authorize an exemption from the distance requirements to relieve the difficulties or hardships if the variance may be granted without substantially impairing the intent and purpose of this Chapter. If such an exemption is granted, the City Council may impose additional restrictions upon a licensee to ensure the purpose of the intended restrictions.¹⁶

F. If a liquor license is obtained, an on-premise beer retailer license will not be required.

G. A beer consumption only club will be required to obtain an on-premises beer retailer license.

14.04.180. Qualifications for Private Club Liquor Licensee

The Council may not grant a private club liquor license to a person who has been convicted of:

A. A felony under any federal or state law.

B. Any violation of federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages.

C. Any crime of moral turpitude.

Upon arrest of any employee, officer, director, or managing agent of a private club liquor licensee, on any charge as set forth in this Chapter, the City may take emergency action by immediately suspending the operation of the licensee for the period during which the criminal matter is being adjudicated. If any such person is convicted of such an offense subsequent to the issuance of the license, the license shall be surrendered immediately. The licensee may request a hearing on the matter, in writing and within ten days of a conviction by a trial court. Any such hearings shall be pursuant to the provisions of Section 14.02.220 of the Brigham City Code.

In the case of a partnership or corporation, the offenses above apply if any partner, managing agent, officer, director or stockholder who holds at least 20% of the total issued and outstanding stock of an applicant corporation has been convicted of any offense as provided in this Chapter.

The corporate applicant may not be granted a license if any managing agent, officer or director of the applicant had a liquor license, agency or permit revoked while acting in their individual capacity within the last three years.

If any person or entity to whom a license has been issued under this Chapter no longer possesses the qualifications required by this Chapter for obtaining that license, the City may suspend or revoke that license.

14.04.190. Application and Renewal Requirements: Private Club Liquor License.

A person seeking a private club, beer or liquor license under this Chapter shall file a written application with the City in the name of an officer or director of a corporation in a form prescribed by the Department. The annual fee for a liquor license and initial nonrefundable application fee shall be established by resolution.

All beer and liquor will be sold and stored in accordance with state law. A quarterly investigation of the business establishment will be conducted by the Department, to insure compliance, and a copy of the finding will be furnished to the Mayor, the City Council, the Department and the Chief of Police.¹⁷

14.04.200. Single Event Permits.

The City Council may issue a single event permit to a bona fide incorporated association, corporation, church, or political organization, or to a recognized subordinate lodge, Chapter, or public fairs, stock and other animal shows, celebrations, fiestas, occasional athletic contests and similar events. Beer may be sold in the original containers only upon such premises and during such time as the City Council, upon application, may designate. The permit period shall not exceed seventy-two (72) hours.

The six hundred (600) foot and two (200) hundred foot proximity limitations to educational, religious, and recreational facilities do not apply to single event permits. Nothing in this section, however, prevents the Council from considering the proximity of any educational, religious, or recreational facility, or any other relevant factor in deciding whether to grant a single event permit.

The City Council may not issue more than two single event permits in any one calendar year to the same association, incorporation, church, political organization, subordinate lodge, Chapter, or local unit thereof.

¹⁶ Ordinance No. 02-01, 1/10/02

¹⁷ Ordinance No. 02-01, 1/10/02

14.04.210. Qualifications for Single Event Permittee.

- A. In order to qualify for a single event permit, the applicant:
 - 1. May not be the holder of or be affiliated with the holder of any other type of license issued under this Chapter.
 - 2. Shall have been in existence as a bona fide organization for at least one year prior to the date of application.
- B. The Council may not grant a single event permit to any person who has been:
 - 1. Convicted of a felony under any federal or state law.
 - 2. Convicted of any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages.
 - 3. Convicted of any crime involving moral turpitude.
- C. In the case of a partnership or corporation, the offenses above apply if any partner, managing agent, officer, director, or stockholder who holds at least twenty percent (20%) of the total issued and outstanding stock of an applicant corporation has been convicted of any offense as provided in this section. The City Council may not grant a single event permit to any person who has had any type of license, agency, or permit issued under this Title revoked within the last three years.

14.04.220. License Requirements: Single Event Permit

A person seeking a single event permit under this Chapter, shall file a written application with the City, in a form prescribed by the Department. The fee for a non-refundable single event permit shall be established by resolution.

14.04.230. Beer Retailer License

Department may issue a beer retailer license:

A. Off premises license. An off-premise license may be issued to allow the licensee to sell beer on the licensed premises in original containers for consumption off the premises only, in accordance with the state law and City ordinances. Beer may not be sold, provided, or possessed for off-premises consumption in containers larger than two liters. If malt beverage coolers or malt liquor is sold by a beer retailer for off-premise consumption, the beer retailer shall display a sign at the location on the premises where malt beverages or malt liquor is sold stating: "Many malt beverages contain alcohol. Please read the label."

1. Those businesses possessing this license that are open 24 hours a day shall have all public entrances and exits and the transaction or cashier area monitored by video camera and recorder from the hours of 11:00 p.m. to 5:00 a.m. Said cameras shall be programmed in such a manner that the date and time shall appear on the video tape or film when being viewed through a monitor. The recorded tapes will be maintained by the business for a period of not less than 7 days from the day the recording ends. Said tapes will be made available to the City for review and auditing purposes upon 24 hours notice, absent exigent circumstances.

2. Any licensee may submit plans or proposals to the Chief of Police or designee to verify compliance with the intent of this section. The objective of the review is to verify that people may be reasonably identifiable through the camera based on location, direction, and distance between the camera and monitored area. Any approval obtained through such a review is not a guarantee nor warranty of the effectiveness of the plan or approval but is only to determine whether the licensee's plan or proposal satisfied the intent hereof.

B. On-premise license. A beer retailer on-premise license may be issued to a tavern, bar, cabaret, nightclub, pub, cocktail lounge, or similar establishments, to allow the licensee to sell beer, for consumption on the premises all to be exercised in accordance with state law and City ordinances. An on-premise license may be issued to a tavern, bar, cabaret, nightclub, pub, cocktail lounge, or similar establishments, to allow the licensee to sell beer, for consumption on the premises all to be exercised in accordance with state law and City ordinances. An on-premise license shall be issued to an applicant engaged in good faith in the business of dispensing and selling beer at retail, in the original containers or in draft, over a bar in these establishments.

1. On-premise License - Bowling Alley. An on-premise beer license may be issued for the entire portion of a bowling alley used in the sport of bowling and recreation.

2. On-premise license - Golf Course. An on-premise beer license may be issued for the area of a golf course used in the sport of golfing, including the club house, fairways, greens, and all areas identified as the golf course.¹⁸

¹⁸ Ordinance No. 02-01, 1/10/02

C. No new beer retailer on-premise licensee shall be located closer than six hundred (600) feet to an existing beer retailer on-premise licensee or private club liquor licensee. The six hundred (600) feet shall be measured in a straight line between the nearest property lines of the subject properties.

D. An on-premise beer retailer may not be established within 600 feet of any public or private school, church, public library, public playground, or park, measured from the nearest entrance of the on/off-premises beer retailer by following the shortest route of either ordinary pedestrian traffic, or where applicable, vehicle travel along public thoroughfares, whichever is the closer.

E. An on-premise beer retailer licensed premises may not be established 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 proposed outlet to the nearest property boundary of the above named.

F. The restrictions contained in paragraph D and E of this section shall govern unless the Brigham City Council finds after a full investigation by the Department,¹⁹ that compliance with the distance requirements would result in peculiar and exceptional practical difficulties or exceptional and undue hardships in the granting of a beer retailer license. Additional circumstances may be considered and include topography, existing permanent physical barriers, sight distance, land-use issues, compatibility, travel distance, etc. In that event, the City Council may, after giving full consideration to all the attending circumstances, following a public hearing, authorize an exemption from the distance requirements to relieve the difficulties or hardships if the exemption may be granted without substantially impairing the intent and purpose of this Chapter. If such an exemption is granted, the Department may impose additional restrictions upon the licensee to ensure the purpose of the intended restriction.²⁰

14.04.240. Qualifications: Beer Retailer Licensee

The Department may not grant a beer retailer license to a person who has been convicted of:

- A. A felony under federal or state laws.
- 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.

In the case of any partnership or corporation, the offenses above apply, if any partner, managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of an applicant corporation has been convicted of any offense as provided in this Chapter.

If any such person is convicted of such an offense subsequent to the issuance of the license, the license shall be surrendered immediately. The licensee may request a hearing on the matter, in writing and within ten days of a conviction by a trial court. Any such hearings shall be pursuant to the provisions of Section 14.02.220.

Retailers must sell and store beer in accordance with state law. On-premises beer retailers may sell beer in open containers, in any size not exceeding two liters, and on draft. Liquor may not be stored or sold on the premises. The Code Enforcement Officer will conduct quarterly inspections of the on-premise retailer and furnish a written report to the Mayor, the City Council, the Department and the Chief of Police to ensure compliance.²¹

14.04.250. Application and Renewal Requirements: Beer Retailer License

A person seeking a beer retailer license under this Chapter shall file a written application with the City, in a form prescribed by the Department. The beer retailer license fee and an initial nonrefundable application fee shall be established by resolution.

14.04.260. Criminal Provisions.

Shall comply with Utah Code.

14.04.270. Prohibited to Intoxicated Person.

It is unlawful to sell any alcoholic beverage to any person actually, apparently or obviously drunk.

14.04.280. Selling to Minors

It is unlawful to sell any alcoholic beverage to any person under the age of twenty-one years and anyone doing so is strictly liable therefor, and guilty of a Class "B" misdemeanor.

¹⁹ Ordinance No. 02-01, 1/10/02

²⁰ Ordinance No. 02-01, 1/10/02

²¹ Ordinance No. 02-01, 1/10/02

14.04.290. Purchase, Possession or Consumption by Minors

It is unlawful for any person under the age of twenty-one years to purchase, possess or consume any alcoholic beverage.

14.04.300. Licensee Permitting Minor on Premises

It is unlawful for any licensee, agent or employee of an on-premise licensee to permit any person under the age of twenty-one (21) years to be in or about the licensed premises and to possess or consume any alcoholic beverages.

14.04.310. Minor Serving Alcohol.

A. It is unlawful for any licensee under this Chapter to employ or to permit any person under the age of twenty-one (21) years to transact the sale of, serve, dispense or handle alcoholic beverages.

B. Exceptions.

1. A licensee holding a restaurant license, private club license or on premise beer retailer license may employ persons eighteen (18) years of age through twenty (20) years of age to serve alcoholic beverages provided they are under the supervision of a person at least twenty-one (21) years of age and who is on the premises.

2. A licensee holding an off-premise license may employ persons under twenty-one (21) years of age to transact the sale of or handle beer in its sealed original containers provided that each such employee possess a beer handler's permit and that each such employee is under the supervision of a person at least twenty-one (21) years of age who is present on the premises.²²

14.04.320. Parent or Guardian Permitting Minor on Premises.

It is unlawful for any person having charge or custody of any minor, to take the minor into, or to suffer the minor to enter, be in, loiter about or to frequent any premises of which an on-premise license has been issued for the purpose of allowing or permitting said minor to possess or consume any alcoholic beverages.

14.04.330. Minor on Premises.

It is unlawful for any person under the age of twenty-one (21) years to enter, to be in, to loiter about or frequent any premises for which an on-premise license has been issued, for the purpose of possessing or consuming any alcoholic beverages.

14.04.340. Entering Premises Violating State and City Laws

It is unlawful for any person to visit, to loiter about, to frequent or to resort to any house, building, room or premises where any alcoholic beverages are kept, stored, sold, bartered, offered or exposed for sale in violation of state law or City ordinances.

14.04.350. Days and Times of Sale; Closure.

It shall be unlawful for any licensee or permittee under this Title to sell any alcoholic beverages during the following dates and times:

A. Restaurant Licensee: after 12:00 a.m. (Midnight) and before 12:00 p.m. (noon).

B. Private Club licensee: on Sunday and any state or federal legal holiday after 12:00 a.m. (midnight) and before 12:00 p.m. (noon); on all other days, after 1:00 a.m. and before 10:00 a.m.

C. Single Event Permittee: on Sunday after 1:00 a.m. and before 10:00 a.m. on the following Monday morning; on all other days after 1:00 a.m. and before 10:00 a.m.

D. Beer Retailer Licensee (off-premise): No restrictions.²³

E. Beer Retailer Licensee (on-premise): after 1:00 a.m. and before 10:00 a.m.

No liquor shall be sold, offered for sale or dispensed in any way on the day of any state or national elections until after the polls are closed.

14.04.360. Advertising Requirements.

It is unlawful for any person to advertise the sale of beer not in accordance with state law.

14.04.370. Consumption on Off-Premise License.

It is unlawful for any licensee with an off-premise license to suffer or allow any person to consume any alcoholic beverage upon such premises.

²² Ordinance No. 00-33, dated 9/7/00

²³ Ordinance No. 02-13, dated 6/6/02

14.04.380. Illumination of Premises

It is unlawful for any licensee to fail to keep all parts of the licensed premises, to which customers have any access, illuminated with a minimum illumination of three foot-candles at all times it is occupied or open for business.

14.04.390. Nuisances on Licensed Premises

It is unlawful for any person to commit, keep or maintain a nuisance, as defined by Section 13.01.020 and Section 13.01.030 of the Brigham City Code, upon any licensed premises. It is unlawful for any person to suffer such a nuisance to be maintained upon a licensed premise, owned, occupied, operated or controlled by him/her or which may be in his/her charge.

14.04.400. Beer Acquired from Brewer or Wholesaler.

It is unlawful for any licensee to purchase or acquire or to have or possess, or to suffer to be kept upon the license premises, any beer except that lawfully acquired from a brewer or wholesaler licensed under the provisions of state law.

14.04.410. On-Premise Employee

It is unlawful for any on-premise licensee to employ or to suffer to work for him upon the licensed premises any person who does not meet the requirements of such employment.

14.04.420. Premises Accessibility to Police Officer.

A code enforcement or City police officer shall, upon presentation of credentials, be admitted immediately into any licensed premises and permitted without hindrance or delay to inspect completely the entire licensed premises and all books and records of the licensee, at any time during which the same are open for the transaction of business; provided, however that there may be maintained upon the premises, a locked storeroom for the keeping of goods and supplies used in the business. Such storerooms shall at all times be subject to search and inspection by any police officer upon compliance with procedural requirements. It is unlawful for any licensee to deny any peace officer immediate access to the storeroom for search or inspection upon demand made for such access. It is unlawful for any licensee to suffer any person, except a bona fide employee of the licensee or peace officer, to enter or remain in the storeroom.

14.04.430. Warning of Approach of Police

It is unlawful for any person commonly known as a "lookout" to be stationed or maintained to give warning of the approach of any police officer or Code Enforcement Officer to the premises. It is unlawful to maintain or operate any electrical or other device which is used or capable of being used to give warning to persons within any such licensed premises of the approach of any police officer or Code Enforcement Officer Department personnel.

14.04.440. Disorderly Conduct On-Premises.

It is unlawful for any licensee to suffer or allow any disorderly conduct to be committed, or to suffer or allow any disorderly person to be or remain upon any licensed premises.

14.04.450. Lewd Conduct On-Premises.

Licensees under this Chapter, whose license permits the consumption of alcoholic beverages on premises, shall not allow any conduct, by any person, on said premises, that is proscribed by state law. Further the licensee shall not allow the fondling of human genitals, pubic region, buttocks or female breasts, nor allow the ultimate sex act, normal or perverted, actual or simulated, including, but not limited to intercourse, oral copulation, sodomy, masturbation, excretory functions, nor allow any showing of any visual reproductions showing the same. Further, the licensee shall not allow any person to expose, or be dressed in a manner so as to expose to the view of others, the human genitals, pubic regions, buttocks, the female breasts, at the point immediately above the top of the areola to the bottom of the breast, the human male genitals in a discernable turgid state, even if completely and opaquely covered, nor allow any visual reproductions showing the same.

14.04.460. Solicitation for Immoral Purposes On-Premises.

It is unlawful for any person to solicit any other person upon any licensed premises for illicit sexual intercourse or other immoral purpose, or to be upon such premises for the purpose of solicitation. It is unlawful for any licensee to suffer or allow any violation of the immediate preceding prohibition upon the licensed premises.

14.04.470. Begging Drinks On-Premises

It is unlawful for any person upon any public street or upon any licensed premises to beg or solicit a gift of any alcoholic beverage.

14.04.480. Sale During License Revocation or Suspension.

It is unlawful for any person to sell alcoholic beverage after the revocation of any license issued to him/her, or during a period of suspension of such license.

14.04.490. Licensee Responsibility.

It is unlawful for any licensee hereunder to fail to maintain full control of the conduct of the business upon the licensed premises, or to fail to inform himself of the manner in which the business is conducted and of the activities of his agents, servants, and employees in and about the licensed premises, and by accepting a license hereunder, the licensee unconditionally guarantees to the City that neither he/she nor his/her agents, servants, or employees will violate the terms of this Chapter upon the licensed premises, and for breach of such guarantee the license may be revoked.

14.04.500. Search of Licensed Premises.

Every licensee, by accepting a license issued under the provisions of this Chapter, thereby irrevocably consents that any City peace officer, upon compliance with procedural requirements, may at any time during the effective period of the license freely enter and inspect and search the licensed premises for any alcoholic beverage or for any other goods or chattels illegally possessed or kept thereon, or for evidence of any alleged crime under investigation by such police officer, and further consents to the seizure of any such alcoholic beverage, goods, chattels or evidence, the property of the licensee, which may be found therein upon such a search.

14.04.510. Criminal Responsibility for Conduct of Another.

A. If a violation of this Title is committed by any person in the employ of the occupant of any premises in which the offense is committed or by any person who is required by the occupant to be or remain in or upon the premises, or to act in any way for the occupant, the occupant is prima facie considered a party to the offense committed and is liable as a principal person who is not provided to have committed it under or by the direction of the occupant. Nothing in this section relieves the person actually committing the offense from liability.

B. If a violation of this Title is committed by a corporation or association, the officer or agent of the corporation or association in charge of the premises in which the offense is committed is prima facie considered a party to the offense committed, and is personally liable to the penalties prescribed for the offense as a principal offender. Nothing in this section relieves the corporation or association or the person who actually committed the offense from liability.

14.04.520. Penalty for Violation.

General Provision. A violation of this Chapter shall be a Class "B" misdemeanor, unless otherwise established by state law.

14.04.530. Severability

If any part of this ordinance shall be held invalid, such part shall be deemed severable and the invalidity thereof shall not affect the remaining parts of this ordinance.²⁴

Chapter 14.05. Cabarets and Nightclubs.

14.05.010. Definitions.

"Cabaret" or "nightclub" means any restaurant or other business establishment licensed for the on-premises consumption of alcoholic beverages which permits its patrons to dance or entertains its patrons with live performers who sing, dance, or play musical instruments. It shall not include an adult live entertainment business required to be licensed as a Sexually Oriented Business under Chapter 18 of this Title.

14.05.020. License Required

It is unlawful for any person or entity to operate a cabaret or nightclub without first obtaining a license.

²⁴ Ordinance No. 98-55, 12/10/98

14.05.030. Application; Fee:

- A. Submission: Applications shall be made to the Community Development Department
- B. Referral to Chief of Police: The application shall be referred to the Chief of Police, who shall within ten (10) days after receiving the application, report to the Community Development Department whether the premises is in compliance with the requirements of this Chapter, and whether the cabaret or nightclub has been operated in compliance with the requirements of this Chapter.
- C. Initial Applications; Referrals: Initial applications shall be referred to the following departments and divisions:
 - 1. Fire Department, to determine compliance with all fire codes;
 - 2. Building Inspections Division, to determine compliance with all building codes; and
 - 3. Planning Division, to determine compliance with all zoning ordinances.
- D. Reporting Violations; Duty: The Fire Department, the Building Inspections Division, and the Planning Division shall have a continuing duty to report to the Community Development Department any violations of the premises which have not been corrected.
- E. Fee: The fee for a cabaret license or nightclub license shall be the fee as determined by resolution of the City Council.

14.05.040. Compliance with Laws.

No license shall be issued for a cabaret or nightclub unless and until it shall be found that the premises for which it is issued complies with and conforms to all laws, ordinances and regulations applicable thereto and is a safe and proper place for the purposes for which it shall be used pursuant to such license.

14.05.050. Unlawful Activities.

- A. It is unlawful for any person to whom a license under this Chapter has been issued to allow or permit, on the licensed premises, any act to be committed on the premises that is in violation of the statutes of the State of Utah or the ordinances of the City.
- B. It shall be unlawful for any holder of a cabaret or nightclub license to allow any dancer, model, performer, or any other person to appear on the premises in violation of Chapter 14.18 of this Title.
- C. It shall be unlawful for any dancer, model, or performer, or any other person to appear on the premises of a cabaret or nightclub in violation of Chapter 14.18 of this Title.

14.05.060. Interior Visibility.

A clear, unobstructed view of the entire interior of a cabaret or nightclub, or such portions of a business establishment where dancing or entertainment is allowed, permitted or provided, shall be maintained by the licensee at all times. The required view must be visible from either the entrance or from another location open to plain view. The licensee shall not erect or maintain any enclosures within the interior which obstructs the view of all areas where dancing or entertainment is allowed, permitted or provided, and no booth, blind or stall shall be maintained unless all tables, chairs and occupants, if any therein, are kept open to plain view.

14.05.070. Lighting

All cabarets or nightclubs shall maintain a minimum of two (2) candlepower light measured at a level of five feet (5') above the floor.

14.05.080. Hours of Operation

No cabaret or nightclub shall provide dancing or entertainment between the hours of one o'clock (1:00) A.M. and ten o'clock (10:00) A.M.

Chapter 14.06 Seasonal and Temporary Licenses

14.06.010. Definitions.

In addition to the definitions set forth in Section 14.01.020, the following words and phrases used in this Chapter shall have the meaning herein prescribed:

Agricultural Vendor. A person engaged in the sale of fruits and/or vegetables from stands, motor vehicles, roadsides, or through door-to-door solicitation.

Ice Cream Vendor as used in this Chapter includes any person traveling by Ice Cream Vendor Vehicle, from place to place, or from street to street carrying, conveying, or transporting ice cream, frozen confectionaries, or similar goods and wares, offering or exposing the same for sale from a wagon, motor vehicle, or other vehicle of conveyance.

Ice Cream Vendor Vehicle as used in this Chapter is any wagon, motor vehicle or any type of conveyance used by an Ice Cream Vendor to transport, offer or expose for sale of ice cream or similar goods or wares for sale.

Mobile Food Vendors. A vendor that uses a movable cart-type stand or mobile unit or vehicle to sell, offers for sale, or offers to give away food or beverages

Person. An individual, a co-partnership, firm, corporation or association.

Religious or charitable organizations. Any organization which can provide written approval from the Internal Revenue Service that the organization has been granted tax exempt status under Section 501(c)(3) of the Internal Revenue Code, or its successor.

Sales event. An event where two or more temporary merchants, display any goods, wares or services at a location in the City for the purpose of sale or soliciting orders to be filled in the future, for financial gain or profit.

Seasonal Business. A temporary business based on specific seasonal periods such as Christmas trees, fireworks, snow cone sales, and locally grown agricultural produce.

Snow Cone Shack. A structure not larger than fifty (50) square feet and a height no greater than twelve feet (12'), placed on an approved location as described in Section 14.06.100. For the purposes of this Chapter, a snow cone shack shall not be a mobile unit on wheels, but rather a structure that is placed on the ground at its approved location during the seasonal period for which it is licensed.

Temporary merchant. Any person whether a resident of the City or not, who within the limits of the City:

A. Engages in a temporary business of selling and/or delivering goods, wares or services, or who conducts meetings open to the general public where franchises, distributorships, contracts or business opportunities are offered to the public; or

B. Sells, offers or exhibits for sale any goods, wares or services, franchises, distributorships, contracts or business opportunities, during the course of or any time within six months after a lecture or public meeting pertaining to such goods, wares, services, franchises, business opportunities, contracts or distributorships.

The foregoing notwithstanding, a temporary merchant, for the purposes of this section, shall not include the following:

A. A person who shall occupy any business establishment for the purpose of conducting a permanent business therein; provided, however, that no person shall be relieved from the provisions of this Chapter by reason of a temporary association with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with, as part of, or in the name of any local dealer, trader, merchant or auctioneer; or

B. Any sales of merchandise damaged by smoke or fire, or of bankrupt concerns, where such stock has been acquired from a merchant or merchants of the City regularly licensed and engaged in business; provided, however, no such stock or merchandise shall be augmented by new goods; or

C. A person who sells his or her own property which was not acquired for resale, barter or exchange, and who does not conduct such sales more than twice during any calendar year; or

D. Art exhibits, where participating artists sell their original works, and which do not contain any sale(s) of art work purchased or taken on consignment and held for resale, providing such art exhibits are sponsored by a local responsible organization;

E. Religious or charitable organizations as defined in this section;

F. Sales of goods, wares or services at a convention, meeting or exposition which is not open to nor advertised to the general public, to the extent such sales are made to registered members of the sponsoring organization, provided the sponsoring organization or its designated agent delivers to the City license supervisor, at least fifteen days in advance of such convention, meeting or exposition, a statement of the organization's qualification for this exemption and a statement of the common interest or category of those who will be attending such convention, meeting or exposition; and providing all persons selling or purchasing goods, wares or services at such convention, meeting or exposition shall wear or display in a conspicuous manner a tag stating the name of the sponsoring organization;

14.06.020. License Required, Display.

It shall be unlawful for any Person to engage in, carry on or conduct a seasonal or temporary business, except as exempted in this Chapter, without first securing a license for such business. The licensee shall conspicuously display such license in his place of business so that the same is plainly visible to the public.

14.06.030. License Fees.

The fee for licenses required by this Chapter shall be established in accordance with Section 14.02.080, and all matters relating to fee payments, renewals, etc., shall be governed by resolution.

14.06.040. License Period.

The period or duration of a seasonal or temporary business license as described herein.

14.06.050. Agricultural Vendors.

A. License. It shall be unlawful for any person to conduct the business of agricultural vendor, except as exempted in this Chapter, without first securing a license for such business. The licensee shall conspicuously display such license in his place of business so that the same is plainly visible to the public.

B. License Period. The license period for an agricultural vendor is based on the seasonal period for the harvest of the fruit or vegetable product. Fruits or vegetables may be sold during the production period and for a reasonable period of time thereafter to be determined at the time of licensing depending upon the produce but not to exceed ninety (90) days after the conclusion of the production period.

C. Exemptions. Agricultural Vendors who sell only fruits and vegetables produced and sold from their own homes or property are exempt from licensing or the payment of license fees under this Chapter.

D. Inspections. The Department reserves the right to inspect any premises or location utilized for carrying on the business of agricultural vendor to assure compliance with the provisions of this Chapter.

E. Locations. An Agricultural Vendor must sell their products from a commercial or industrial business parking lot or from their home or property as described in subsection C.

F. Unlawful Acts. It shall be unlawful for an agricultural vendor to supply an exempted location with produce grown at non-exempted locations or to sell any merchandise other than fruits and vegetables at an exempted location.

14.06.060. Christmas Tree Sales.

A. License. It shall be unlawful for any person to engage in the business of selling trees commonly called "Christmas Trees," in the City without first obtaining a license.

B. Written Consent to Cut Trees Required. It shall be unlawful for any person to sell at any time or to offer for sale in the City any Christmas tree cut or procured from or within the public domain of the United States, or of the State of Utah or from any private lands within or without the State of Utah, without written authority having been first obtained from the United States, said State of Utah or from the owner of such private lands, as the case may be, to cut and remove such trees.

C. Unlawful to Possess or Sell Untagged Trees. It shall be unlawful for any person to have in his possession for sale, or to sell or offer for sale in the City, trees from the sources described in subsection B, unless the same shall have been officially tagged with a tag furnished or approved either by the United States Forest Service or the Department of Forestry of the State of Utah.

D. Application for License. Any person desiring a license to sell and dispose of such trees within the City shall make application to the Department. Such application shall specifically state and set forth the source of title to the trees to be sold and whether said trees, or any of them, were cut or procured within any public domain of the United States, the State of Utah, or from any private lands, either within or without the State of Utah. Applicants shall be required in connection with such application to furnish the Department with evidence of ownership of such trees and/or authority to cut and procure the same from the public domain or from private lands.

E. Issuing of License and License Period. Upon satisfactory showing made by the applicant that he has a bona fide title to said trees and that the same were not obtained illegally or in violation of any laws of the United States, or of the State of Utah, or any law, rule or regulation of the State or County from which such trees have been obtained, and that the applicant has authority to cut and procure the same from either the public domain or from private land, the Department shall grant to such applicant a license upon the payment of a fee which shall be determined by resolution. Such license shall be valid for a period of sixty (60) days from November 1st of each year.

F. Location. Christmas tree sales must be located on a commercial or industrial business parking lot and not on or within the landscape area of said business site.

G. Clean-Up Deposit. A cleanup deposit as set by resolution of the City Council shall be required of the licensee to assure the removal of unsold trees and related debris remaining on the premises to the conclusion of the license period. Said deposit shall be refunded to the licensee, provided the premises are left clean and free of unsold trees and related debris as determined by inspection.

14.06.070. Firework Stands.

A. License. It shall be unlawful for any person to conduct or engage in the selling of fireworks without first securing a Brigham City business license. Firework stands are governed and regulated by Utah Code.

- B. Inspection. Each firework stand is required to be inspected according to Utah Code.
- C. Location. Firework sales must be conducted within a licensed commercial building or within a firework stand located on a commercial or industrial business parking lot and not on or within the landscape area of said business site.

14.06.080. Ice Cream Vendors.

A. License Requirements. A license required by this Chapter shall not be issued to any person or entity until all of the following have been completed:

- 1. applicant must pay the license fee;
- 2. applicant must present proof of insurance as provided for in subsection D;
- 3. applicant must provide Brigham City with a list of potential drivers together with proof of age, driver's license and photo ID as provided for in subsection E;
- 4. applicant must provide Brigham City with proof that each street vending vehicle to be used pursuant to the requested license is equipped as required by subsection F.

B. License Duration.

- 1. An Ice Cream Vendor license shall be valid for the calendar year in which it is issued, or part thereof remaining.
- 2. No Ice Cream Vendor license shall be renewable year to year.
- 3. A new license, meeting all of the criteria by this Chapter, must be obtained each year.

C. License Revocation.

- 1. A license required by this Chapter may be revoked at any time by action of the City Council for cause pursuant to hearing procedures set forth in Section 14.02.220.
- 2. Upon Brigham City's discovery that the Ice Cream Vendor is in violation of any provision of this Chapter, Brigham City may terminate the Ice Cream Vendor's license pursuant to hearing procedures provided for in Section 14.02.220.

D. Insurance. The applicant shall present to the City a copy of their insurance for each Street Vending Vehicle in use which provides a \$1,000,000 minimum coverage for injury to or death of one person, and \$1,000,000 for one accident, and Property Damage Liability Insurance with limits of \$1,000,000 for each accident and \$2,000,000 aggregate with the City named as the additional insured. Each policy shall require a notice of cancellation to Brigham City thirty (30) days prior to termination.

E. Driver Certification. Each Ice Cream Vendor business applying for a license under this Chapter shall submit a list of drivers who will operate an Ice Cream Vending Vehicle in Brigham City. All drivers on that list shall:

- 1. possess a valid Utah Driver's License;
- 2. be 18 years of age or older;
- 3. provide the Police Department a Criminal History Report; and
- 4. obtain a photo identification card, a copy of which shall be filed by the Department with the license application and the original shall be carried by the licensee whenever he/she is performing the business of an Ice Cream Vendor.

F. Equipment Required for Ice Cream Vending Vehicles. The following equipment shall be required on any Ice Cream Vending Vehicle in Brigham City:

- 1. a swing arm caution sign reading "SLOW Children Crossing" that can be extended horizontally from the left side of the vehicle;
- 2. a convex mirror mounted on the front of the Ice Cream Vending Vehicle so that the driver, in his/her normal seated position, can see the area in front of the truck obscured by the hood;
- 3. an amber beacon light placed on the top of the Ice Cream Vending Vehicle which is visible to oncoming traffic and operable when the Ice Cream Vending Vehicle is in the process of offering the product for sale.

G. Ice Cream Vending Restrictions. The following restrictions shall apply to any Ice Cream Vendor within the city limits of Brigham City:

- 1. it shall be unlawful to stop for the purposes of selling without the swing arm stop sign in its extended position;
- 2. an Ice Cream Vendor driver shall not vend on streets where the speed limit exceeds twenty-five (25) miles per hour;
- 3. an Ice Cream Vendor shall vend only when the Ice Cream Vending Vehicle is lawfully parked;
- 4. an Ice Cream Vendor shall vend only from the curb or edge of the roadway;
- 5. an Ice Cream Vendor shall not vend to any person standing in the roadway;
- 6. an Ice Cream Vendor shall not back the Ice Cream Vending Vehicle to make or attempt a sale;

7. an Ice Cream Vendor shall not permit any unauthorized person to ride on or in the vending vehicle.

H. Prohibited Conduct. The following restrictions shall apply to any Ice Cream Vending Vehicle within the City limits of Brigham City:

1. No Ice Cream Vending Vehicle may be stopped or parked:
 - a. on a sidewalk;
 - b. within fifty (50') feet of an intersection;
 - c. on or in a crosswalk;
 - d. between a safety zone and the adjacent curb;
 - e. alongside or opposite any street excavation or obstruction when stopping or parking would obstruct traffic;
 - f. in front of or within five (5') feet of a public or private driveway;
 - g. within thirty (30') feet of any flashing signal, stop or yield sign, or traffic control signal.
 - h. alongside or opposite a curb area which has been constructed to provide accessibility to the sidewalk.
2. No person authorized to engage in business of vending under this Chapter shall do any of the following:
 - a. unduly obstruct pedestrian or motor vehicle traffic flow;
 - b. obstruct traffic signals or regulatory signs;
 - c. stop, stand, or park any vehicle, pushcart, or any other conveyance upon any street for the purpose of selling during the hours when stopping, standing, and parking have been prohibited by signs or curb markings;
 - d. leave any Ice Cream Vending Vehicle unattended at any time, or store, park, or leave such Ice Cream Vending Vehicle in a public space overnight;
 - e. operate any sound amplifier system contrary to the provisions of Title 13;
 - f. conduct business on private residential property;
 - g. conduct business on private commercial property without first having obtained a temporary business license under Title 14 for the specific business location;
 - h. conduct business on public property except for dedicated streets.

14.06.090. Mobile Food Vendors.

A. Authorized Vendors. A mobile food vendor may only be allowed to vend at community wide events, such as Peach Days, Heritage Art Festival, and other approved special events through the proper special event licensing process. For the purposes of this Chapter a mobile food vendor is not: a licensed food service or catering business contracted for a business event, such as a grand opening, special sales or promotion where there is no charge to the patronage public; or a licensed food service or catering business contracted by a business to provide services strictly to their employees, whether for charge or no charge.

B. License. It shall be unlawful for any person to conduct or operate as a mobile food vendor without first securing a Brigham City business license.

C. Inspection. Each vendor is required to be inspected for the special event.

D. Health Department. Each vendor must be approved by the Bear River Health Department.

E. Location. The location of the vendor is determined by the special event coordinator and not allowed to be in the public right-of-way unless the public right-of-way is closed to the public for the special event.

14.06.100. Snow Cone Vendors.

A. Information Required. A license required by this Chapter shall not be issued to any person until the following have been provided and completed:

1. Application;
2. Payment of the license fee;
3. Proposed location of snow cone shack. A map or site plan of the location must include sufficient information to verify its location with critical site feature: Show and include the following:
 - a. location within parking lot;
 - b. if applicable, indicate the total number of parking stalls that will be used;
 - c. proximity to streets, sidewalk, and nearest drive approach; and
 - d. location of parking stalls and drive aisles.
4. Written permission by owner or business of property at the proposed location. The written permission must include the name of the person, the person's title and contact information.
5. A footprint of the structure with the width and length dimensions; and
6. A picture or elevation of the structure. Include the overall height.

B. License Period. The license period shall consist of a maximum of one hundred eighty (180) consecutive days during a twelve (12) month period.

C. Health Department Approval. The Bear River Health Department shall inspect the facility and provide proof of approval to the City.

D. Electrical Connection. Each snow cone shack shall be connected to an approved electrical source. A building permit is required for metered connections.

E. Employee Restroom. A restroom shall be provided for all employees on premise, either within the Snow Cone Shack or within the primary business on which the Snow Cone Shack is located. The property or business owner must provide written consent for the use of their restroom facility during the duration of the license period. Hours of operation may be limited based on access to a restroom.

F. Location. Snow cone shacks must be located on a commercial or industrial business parking lot and not on or within the landscape area of said business site. The following shall be addressed prior to issuance of the license:

1. Vehicular and Pedestrian Safety. Shall comply with Title 29.
2. Drive Aisles and Thorough Ways. The drive aisles and thorough ways for vehicular traffic within the parking lot shall not be impeded by the location of the Snow Cone Shack.
3. Sidewalks and Streets. A Snow cone shack must be set back at least five (5') feet from a public sidewalk or ten (10') feet from the curb of the street if no public sidewalk is present for safety purposes.

G. Waste and Storage.

1. Used water must be properly disposed of per regulations of the Bear River Health Department.
2. During hours of operation a garbage can must be placed near the snow cone shack and be properly emptied and maintained on a regular basis.
3. There shall be no outside storage of products for the business operation, including trailers and carts.

14.06.110. Temporary Merchants.

A. Information Required. A Temporary Merchant must submit to the license office, at least one working day prior to a sales event, the following information:

1. Application;
2. Location of the sales event;
3. Dates of commencement and termination of the sales event; and
4. Written permission by owner or business of property at the proposed location. The written permission must include the name of the person, the person's title and contact information.

B. License Period. The license period for a Temporary Merchant shall be for a period not to exceed ten (10) consecutive days in length and may not occur more than once each calendar quarter at the same location. Location for the purpose of this section shall mean the same parcel of land as described by a parcel's address.

C. Location. Temporary Merchants must be located on a commercial or industrial business parking lot and not on or within the landscape area of said business site.

D. Identity of Merchants. Hearing and Determination.

1. In case an applicant shall claim to be a permanent merchant and is required to take out a license upon the ground that the applicant is a Temporary Merchant, the Department shall so notify the applicant in writing; and in case the applicant shall deny in writing that they are a Temporary Merchant within the terms of subsection F, of its definition in Section 14.06.010, or its successor, the Department shall submit to the City Administrator the denial of the applicant; whereupon the City Administrator shall notify such applicant in writing that on a day and at a time and place therein mentioned the City Administrator shall take up for hearing the question as to whether the applicant is or is not a temporary merchant, at which time and place the applicant may appear to be heard.

2. At the time and place named in the notice, the City Administrator shall take up the matter and shall determine the question upon the facts presented, and shall enter an order according to the City Administrator's judgment upon the facts so presented. If it shall be determined that the applicant is a Temporary Merchant, the applicant shall pay the license fee according to the fee resolution.

E. Each Sale without a License - Separate Offense. The sale of each article by a temporary merchant, a temporary merchant sponsor or a participant, without a license therefore, shall be a separate offence under and a separate violation of this Chapter. A violation of this Chapter shall be a Class B misdemeanor.

14.06.120. Violation.

Violation of the provisions of this Chapter is a Class B misdemeanor.

Chapter 14.07. Public Dance Licenses.

14.07.010. Definitions.

In addition to the definitions set forth in Section 14.01.020, the following words and phrases used in this Chapter shall have the meaning herein prescribed:

Public Dance. Any dance to which admission can be obtained by paying a fee; or by the purchase, possession or presentation of a ticket or token in which a charge is made for caring for clothing or other property at such dance; or by the payment of a fee for music from a music record vending machine or music from any number of musicians personally present and playing in the presence of those in attendance.

During the Conduct of a Public Dance. The period of time commencing one hour before actual dancing commences and ending one hour after the dance concludes, including all periods of intermission or entertainment in between.

14.07.020. License Required.

It shall be unlawful for any person to hold, commence, carry on or conduct any public dance in any hall or building within the City without first obtaining a license.

14.07.030. Exemption.

The provisions of Section 14.02.050, shall apply to exclude the licensing of dances sponsored by churches, schools, nonprofit associations, etc., as therein specified.

14.07.040. License Application: Qualifications of Applicant.

The application for a dance license shall be accompanied by the amount of the license fee required by this Chapter. The application shall be upon a form or forms furnished by the Department, signed by the applicant and addressed to the Department. The application form shall require information relative to the location of the dance premises, applicant's age, citizenship, moral character and reputation and felony or misdemeanor convictions, if any, involving moral turpitude. If the applicant is a partnership, association or corporation the same information shall be obtained with respect to each partner, association, member or corporate officer and director, although the application need only be signed by a single partner, member, or officer. Each individual licensee must be over the age of twenty-one (21) years, of good moral character and a citizen of the United States. No license shall be granted to any applicant who has been convicted of a felony or misdemeanor involving moral turpitude. If the applicant is a partnership, association or corporation, each partner, association member, or corporate officer or director shall meet all of the foregoing qualifications as if such applicant were an individual.

14.07.050. Investigation: Referral of Application.

The City Police Department shall examine all applications and investigate all applicants for licenses under this Chapter.

Inspectors from the City Fire, Inspection, and Community Development Department, and the County Board of Health shall examine the premises wherein any public dance is to be conducted to determine whether or not the same complies with and conforms to all laws, ordinances and health regulations of the City, County and the State of Utah applicable thereto.

Following such examinations and investigations the recommendations of the Police, Inspection, and Community Development Department and the County Board of Health shall be made in writing to the Community Development Director or designee, who shall forward the information to the Department. The Department shall consider such recommendations and determine the suitability of granting a license. If the inspections by the City Fire and Inspection Departments and the County Board of Health and investigations of applicants by the Police Department determine the premises and applicants to be in compliance with and conform to all laws, ordinances, and health regulations of the City, County, and State of Utah, the Department shall issue the license. If such inspections and investigations determine the premises and/or applicants not to be in such compliance, the license shall not be issued.²⁵

The Police Department shall be permitted access to all premises licensed or under consideration to be licensed pursuant to this Chapter, shall make periodic inspections thereof, and shall report its findings to the Department.

²⁵ Ordinance No. 02-01, 1/10/02

14.07.060. License Suspension, Revocation.

Any license issued pursuant to the provisions of this Chapter may, after a hearing, be suspended or revoked for the violation by the licensee of any provisions of this or any other applicable ordinance or law, or if it shall be determined that the licensee is no longer a fit person to hold a license under the standards set forth in this Chapter. The City Council shall hear and determine all suspension and revocation matters pursuant to the provisions of Section 14.02.020.

14.07.070. License Not Transferable.

Licenses issued pursuant to this Chapter shall not be transferable.

14.07.080. License to Be Displayed.

Each license issued pursuant to this Chapter shall at all times be displayed on or in the licensed premises in a place readily visible to the public.

14.07.090. License Fee.

A license fee as computed in accordance with 14.02.080 shall be paid to the City when the application is submitted for approval. The dance license shall be effective for a dance or dances from the date of approval until December 31st of that year. Applicants must then reapply and be approved by the Department for a new license.

14.07.100. Prohibited Activities.

- A. It shall be unlawful for a licensee under this Chapter during the conduct of a public dance:
 - 1. To permit any person to bring, possess or consume beer or other alcoholic beverages of any kind in or upon the licensed premises.
 - 2. To permit any person to bring, possess, use or consume controlled substances, as the same are defined under the Utah Controlled Substances Act, in or upon the licensed premises.
 - 3. To permit any intoxicated, boisterous or disorderly person to enter, re-enter, be or remain in or upon the licensed premises.
 - 4. To prevent compliance to the smoking requirements of the Utah State Code.
 - 5. To permit the commission of any indecent, gross, violent or vulgar act in or upon the licensed premises.
- B. It shall be unlawful for any person during the conduct of a public dance:
 - 1. To bring, possess or consume beer or other alcoholic beverages of any kind in or upon the licensed premises.
 - 2. To bring, possess, use or consume controlled substances as the same are defined in the Utah Controlled Substances Act, in or upon the licensed premises.
 - 3. To be intoxicated, boisterous or disorderly in or upon the licensed premises.

14.07.110. Illumination: Visibility.

The licensed premises, including any adjacent booth, blind, stall or seating area shall be kept properly illuminated at all times during the conduct of a public dance. Any such adjacent booth, blind, stall or seating area shall also be visible and open to full view from the entrance to the main dance floor.

14.07.120. Hours.

No dancing shall be permitted in or upon the licensed premises between the hours of 1:00 a.m. and 8:00 a.m. of any day except New Year's Day when said prohibition shall be between the hours of 2:00 a.m. and 8:00 a.m.

14.07.130. Minors.

Minors not accompanied by an adult and who are under the age of 16 years shall not be allowed to attend any public dance.

14.07.140. Violation a Misdemeanor.

Violation of the provisions of this Chapter is a Class B misdemeanor.

Chapter 14.08. Home Occupations.

14.08.010. Definitions.

In addition to the definitions set forth in Section 14.01.020, the following words and phrases used in this Chapter shall have the meaning herein prescribed:

Home Occupations. Any business activity entered into for profit and conducted or operated from or in residential premises within the City. Home occupations shall not be construed to include those activities exempted from business licensing requirements.³²

14.08.020. License Required: Display.

It shall be unlawful for any person to engage in a home occupation without first securing a license therefor. The licensee shall conspicuously display such license in his place of business so that the same is plainly visible to the public.

14.08.030. Procedure.

Applicants shall receive, fill out, and file with the Department, a business license application as required under the provisions of Chapter 14.02. The provisions set forth in said Chapter shall be controlling as to all matters relating to the requirements for and issuance of a license, license fees, exemptions, renewals, etc.

14.08.040. Inspections.

The Department reserves the right to inspect any premises licensed for home occupation which present a potential danger to the public health, morals or welfare but does not require all such premises to be inspected.

14.08.050. Zoning Requirements.

Home occupations shall comply with all zoning requirements as set forth in the City Zoning Code, and a conditional use permit shall be obtained from the planning commission before a license can be issued.

14.08.060. Violation a Misdemeanor.

Violation of the provisions of this Chapter is a Class B misdemeanor.

Chapter 14.09. Reserved for Future Use.

Chapter 14.10. Reserved for Future Use.

Chapter 14.11. Pawnbrokers.

14.11.010. Definitions.

Terms used in this Chapter shall have the meaning set forth in the Utah Code, unless otherwise specified below.

14.11.020. License Required: License Fee.

It shall be unlawful for any person to engage in the business of a Pawnbroker in the City without having previously obtained a license to operate as a Pawnbroker in accordance with the provisions of this Chapter. Such person shall make application for a license to the Department in such form as the Department shall require.

The license fee for a Pawnbroker shall be determined in accordance with Section 14.02.080.

Fee payments as well as renewal billings shall be governed by Section 14.02.100 and Section 14.02.110.

14.11.030. Display of License and Ordinance.

Licenses shall be displayed prominently in the Pawnbroker's place of business together with a copy of all ordinances pertaining to the conduct or transactions of the Pawnbroker's business in such manner that they can be easily seen and perused by all who do business with such Pawnbroker.

14.11.040. Bond Required.

Before any license is issued to a Pawnbroker under the provisions of this Chapter, the Applicant therefor shall execute and deliver to the City a bond in the principal amount as set by resolution of the City Council executed by a corporate surety authorized to do business in the State of Utah and conditioned upon the faithful performance of the licensee of all requirements under this Chapter.

³² Ordinance No. 01-27, dated 7/19/01.

14.11.050. Disclosure Provisions.

All Pawnbrokers shall comply with Utah Code addressing Pawnshops.

Chapter 14.12. Private Security or Detective.

14.12.010. License Required.

It shall be unlawful for any person to engage in the business of a private detective, security officer or investigator, or to provide watchman, guard, or private patrolman services for a fee or a reward unless such person first obtains a license from the City as herein provided.

14.12.020. License Procedure.

Any person desiring to engage in a business regulated by this Chapter shall make application to the Department for such license. Each applicant at the time of filing his application, and each prospective employee of a licensee herein, shall appear in person before the City Chief of Police who shall inquire of him as to his experience and qualifications and other basic requirements as herein provided to engage in such business. Each person is required to provide their personal Criminal History Report. The Chief of Police shall then file his written findings and recommendations with the Department. The Department shall either issue or deny such license or allow said employment based upon the recommendations of the Chief of Police and pursuant to Section 14.02.220 and Section 14.12.040 of this Title, and upon the payment of the required fee.²⁶

14.12.030. License Duration, Revocation.

A license required by this Chapter shall be for the calendar year and may be revoked at any time for cause pursuant to hearing procedures set forth in Section 14.020.220.

14.12.040. Persons Disqualified From Licensing.

No license required by this Chapter shall be issued to any person, nor shall any person be employed by a licensee licensed under this Chapter who is not a citizen of the United States; who is under the age of twenty-one (21) years of age; who has been convicted of a felony by the courts of this or any other state or of the United States or who has been convicted anywhere of any act or acts which, if done in the State of Utah, would constitute an assault, theft, larceny, unlawful entry, extortion, buying or receiving stolen property, unlawfully using or possessing or carrying weapons or burglar's tools or escaping from lawful custody, or of a crime or crimes involving moral turpitude. Nor shall any person who makes any false statement in his application for a license required by this Chapter be deemed a qualified person for such license. Information concerning the above matters shall be delivered to the Department by the Police Department.

14.12.050. Information Concerning Applicant Required.

A. The applications required by this Chapter shall set forth name, age, experience and address of the applicants.

B. If the applicant is a partnership, such information shall be given regarding each member of the partnership, the person to be in active charge of such partnership and all employees.

C. If the applicant is a corporation, information shall be given concerning each officer, director, local employees and the person to be in active charge of such corporation.

14.12.060. Bond Required.

Each application for a license shall be accompanied by a corporate surety bond in the amount as set by resolution of the City Council, executed by a surety company authorized to do business in the State of Utah and conditional upon the person applying for the license complying with all of the laws and ordinances regulating the business of the type set forth in this Chapter and all lawful requirements made by the City Council and paying all damages occasioned to any person by reason of any statement, misrepresentation, fraud or deceit of the licensed person, his agents or employees, or which may result from any other violation of law or ordinance in carrying on the licensed business. Bond which is posted must remain in effect thirty (30) days after business has closed.

²⁶ Ordinance No. 02-01, 1/10/02

14.12.070. License Fee.

The fee for licenses required by this Chapter shall be established in accordance with Section 14.02.080, and all matters relating to fee payments, renewals, etc., shall be governed as provided in Chapter 14.02. There shall be no proration of the license fee.

14.12.080. Badges: Uniforms Resembling City Police.

A licensee or employees of a licensee shall not wear a uniform or display a badge that is in any way similar to the uniform or badge worn and displayed by the City Police or any other official law enforcement agency acting within the State of Utah. The decision of the Chief of Police as to any similarity shall be final and failure to comply with the decision of the Chief of Police shall be grounds for revocation of the license.

14.12.090. Vehicles Resembling City Police.

A licensee or employees of a licensee shall not operate a motor vehicle in the performance of his business with a label, decal or business name that is in any way similar to the label, decal or name appearing on the motor vehicles of the City Police Department or any other official law enforcement agency acting within the State of Utah. The decision of the Chief of Police as to any such similarity shall be final and failure to comply with the decision of the Chief of Police shall be grounds for revocation of the license.

14.12.100. Firearms, Sirens, Lights.

A licensee must comply with all state and federal laws governing concealed weapons and open weapon carry. No permits shall be issued for a siren or warning lights resembling those used by law enforcement or public safety emergency response vehicles.

14.12.110. Misrepresenting Fact of Licensing.

It shall be unlawful for any person to represent to any other person that he is duly licensed to carry on the type of business set forth in this Chapter when in fact he is not so licensed or employed.

14.12.120. License Not Transferable.

Licenses granted under the provisions of this Chapter are not transferable.

14.12.130. Exemptions.

Nothing in this Chapter shall be construed as requiring a license by any watchman or person regularly employed as a watchman by a firm or corporation or any person investigating credit records or insurance claims.

14.12.140. Violation A Misdemeanor.

Violation of the provisions of this Chapter is a Class B misdemeanor.

Chapter 14.13. Collectors of Garbage and Waste Material.

14.13.010. Definitions.

In addition to the definitions set forth in Section 14.01.020, the following words and phrases used in this Chapter shall have the meanings herein prescribed:

Garbage. Kitchen and Table refuse, leavings and offal, and also every accumulation of described waste of animal and vegetable waste and other matter that attends the preparation, consumption, decay or dealing in the storage of meats, fish, fowls, birds, fruits and vegetables.

Waste Matter. Crockery, bottles, tin cans, trimmings from lawns and gardens, pasteboard boxes, rags, paper, cold ashes, sawdust, shavings and package materials, but excluding boards and pieces of lumber, car bodies and parts and major household appliances.

14.13.020. License Required.

It shall be unlawful for any person other than the Solid Waste Department of the City, to collect, remove, or dispose of garbage or waste material for hire within the City without having previously obtained a license to operate as a collector of garbage or waste material.

14.13.030. Licensing of Collectors of Garbage and Waste Materials.

Any person who desires to engage in the business of collection of garbage and waste materials as defined in this Chapter may so do upon the following conditions:

A. Such person shall obtain a license from the Department to collect garbage or waste materials within the City.

14.13.040. License Fee.

The fee for licenses required by this Chapter shall be established in accordance with Section 14.02.080 and all matters relating to fee payments, renewals, etc., shall be governed as provided in Chapter 14.02.

14.13.050. Violation A Misdemeanor.

Violation of the provisions of this Chapter is a Class B misdemeanor.

Chapter 14.14. Solicitors.

14.14.010. Definitions.

In addition to the definitions set forth in Section 14.01.020, the following words and phrases used in this Chapter shall have the meaning herein prescribed:

Solicitor. Any person selling, offering for sale or taking orders for merchandise, or conducting any activity for which the person receives consideration or remuneration, door-to-door within the City. Merchandise shall include goods, food, wares, photographs, subscriptions to any kind of publications, tickets, coupons or receipts representing value. The term Solicitor includes, but is not limited to, photographers, sellers of magazines, cosmetics, home care products, etc., and any other person engaged in direct sales, whether to residences or businesses, but specifically excludes newspaper carriers, candidates for public office, or persons conducting activities on behalf of religious organizations.

14.14.020. License Required.

It shall be unlawful for any person to conduct the business of a Solicitor without first securing a license therefor, unless otherwise exempted as provided in this Chapter.

14.14.030. Exemptions.

Persons already licensed pursuant to the provisions of Chapter 14.02 but who also engage in soliciting activities are exempt from further licensing under this Chapter provided they obtain photo identification cards and pay associated fees adopted by resolution.

14.14.040. License Duration, Revocation.

A license required by this Chapter shall be for the calendar year and may be revoked at any time by action of the City Council for cause pursuant to hearing procedures set forth in Section 14.020.220.

14.14.050. Warrants Search.

Each individual applying for a Solicitors identification card is required to submit to a criminal warrant search.

14.14.060. Photo Identification Cards. ²⁷

The City shall furnish one photo identification card for each applicant and/or employee. A copy of the card shall be filed by the Department with the license application and the card shall be carried by the licensee. Each applicant and/or employee shall:

- A. Submit to the taking of two photographs by the Department; and
- B. Sign his name to the identification cards.
- C. Pay the cost of the photo identification card when issued, as defined in the currently adopted Government Records Access and Management Act, fee schedule.

14.14.070. License Fee.

The fee for licenses required by this Chapter shall be established in accordance with Section 14.02.080, and all matters relating to fee payments, renewals, etc., shall be governed as provided in Chapter 14.02. There shall be no proration of the license fee.

14.14.080. Violation is a Misdemeanor.

Violation of the provisions of this Chapter is a Class B misdemeanor.

²⁷ Ordinance No. 04-31, dated 11/4/04

Chapter 14.15. Apartment Houses, Rental Dwelling Units and Mobile Home Parks

14.15.010. Definition.

In addition to the definitions set forth in Section 14.01.020, the following words and phrases used in this Chapter shall have the meaning herein prescribed:

Agent, Local or Resident. A person who resides in the State of Utah.

Apartment House or Apartment. Any building so arranged, designed, built, rented, loaned, let or hired out to be used or occupied as the home, residence, or dwelling unit of three or more families living independently of each other. As used herein, the term "Apartment House" shall include Three-Family Dwellings, Four-Family Dwellings and Multi-Family Dwellings.

Dwelling, Single Family. A building arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.

Dwelling, Two-Family. A building arranged or designed to be occupied by two (2) families, the structure having only two (2) dwelling units.

Dwelling, Three-Family. A building arranged or designed to be occupied by three (3) families, the structure having only three (3) dwelling units.

Dwelling, Four-Family. A building arranged or designed to be occupied by four (4) families, the structure having only four (4) dwelling units.

Dwelling, Multi-Family. A building arranged or designed to be occupied by more than four (4) families, and having more than four (4) dwelling units.

Mobile Home. Means a structure that is transportable in one or more sections, built on a permanent chassis and designed to be used without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

Mobile Home Park. Means any plot of ground upon which two or more mobile homes, occupied for dwelling or sleeping purposes, are located, regardless of whether or not a charge is made for such accommodation.

Mobile Home Space. Means a plot of ground within a mobile home park which is designed for the accommodation of one mobile home.

Owner. Shall mean the person having ownership. Person includes any individual, group of individuals, partnership, corporation, association or other legal entity.

Rental Dwelling Unit. Shall mean any individual dwelling unit that is rented, loaned, let or hired out to be used or occupied as a home or residence.

14.15.020. License Required.

It shall be unlawful for any person, firm, corporation, or association as owner, lessee, or agent thereof, to keep, conduct, operate or maintain for rent or lease any single family dwelling, two-family dwelling, mobile home or apartment house within the city, or cause or permit the same to be done, unless said person, firm, corporation, association or partnership holds a current, unrevoked business license under this Chapter. A license may be required in accordance with Utah Code 10-8-85.5 or its successor law. Licenses shall be good for 365 days from the day of issuance. Said licenses are not transferrable between parties or structures and parties holding such licenses shall give notice in writing within forty-eight hours to the Department after having transferred or otherwise disposed of the legal or equitable control of any premises licensed under these provisions. Such notice of transferred interest shall be deemed a request to cancel the business license and shall include the name(s), address(es), and phone number(s) regarding parties succeeding to the ownership or control of the premises.

14.15.030. License Fees.

The license fee for an apartment house, rental dwelling unit or mobile home park business license shall be as set by resolution of the City Council.

14.15.040. Application for License.

Applications for an apartment house, rental dwelling unit or mobile home park business license shall have a 14-day review period and final determination as to the suitability of issuing a license shall be made by the Department. Application for said license shall be made on forms provided by the Department and shall contain the following information.

- A. The location and address of said apartment house, rental dwelling unit or mobile home park.
- B. The number of units located in said apartment house, rental dwelling unit or mobile home park.
- C. The name, address, and telephone number of each of the following: The applicant, the owner of the fee title interest, the owners of any equitable interest, the local operating agent, and the

resident manager; also the designation of a legal representative and agent, who must reside in the State of Utah, for service of each corporate and out of state owner.

D. The signature of the owners of the premises, and the operator if different, agreeing to comply with the provisions of this Chapter.

Upon annual renewal of a license under this Chapter, the licensee shall update any information contained in sub-paragraphs A through D of this Section to specify any changes that have occurred during the license period.

14.15.050. Restrictions for Issuance of Licenses.

No license shall be issued or renewed under this Chapter for a nonresident applicant unless such applicant formally designates in writing with a power of attorney in the name of his resident agent for receipt of service for notice of violation of the provisions of this Chapter or any other applicable ordinances, and for service of process pursuant to this Chapter acknowledged by said agent. No license shall be issued or renewed under this Chapter unless the applicant, owner, and operator agree as a condition precedent by signing the license application, to such inspections as may be required pursuant to Section 14.15.060 to determine whether the apartment house, rental dwelling unit or mobile home park is in compliance with applicable requirements. The failure of the applicant and/or operator to consent to such inspection shall be grounds for the denial and/or revocation of a business license.

14.15.060. Investigations by City.

The original application for a license under this Chapter and all renewals thereof shall be referred for approval to the departments listed below for investigation as to whether or not all laws, ordinances, and regulations, pertaining to life/fire safety, fire protection and prevention, and applicable codes have been and are being complied with.

14.15.070. Fire Marshal.

The original application for a license under this Chapter and renewals thereof, shall be referred to the Fire Department for investigation as to whether or not all laws, ordinances and regulations pertaining to life/fire safety and fire protection and prevention have been and are being complied with. The Fire Marshal shall report to the Department within seven days as to the fitness of the apartment house, rental dwelling unit or mobile home park regarding compliance with said laws and ordinances.

14.15.080. Investigation by Community Development.

The original application for a license under this Chapter shall be referred to the Community Development Department for investigation as to whether or not the requirements of the land use ordinances and building codes have been complied with. The Community Development Department shall report to the Department within seven days as to the fitness of the apartment house, rental dwelling unit or mobile home park regarding compliance with said codes.

14.15.090. Issuance of License.

Within seven days after receiving recommendations from the Fire and Community Development Departments, the Department shall act upon the application in respect to granting or denying the same, as it shall deem just and proper.

14.15.100. Penalty of Violation.

Notwithstanding any other provision in this Chapter, any person or party who violates any provision of this Chapter shall be deemed guilty of a misdemeanor and upon conviction thereof may be imprisoned for a period not to exceed six (6) months, be fined in an amount not exceeding \$1000 if the defendant is an individual, or the greater amount of \$2,000, in the event the defendant is a corporation, association or partnership, or be both so imprisoned and fined.

Chapter 14.16. Reserved for Future Use.

Chapter 14.17. Swap Meets and Flea Markets.

14.17.010. License Required.

A. It is unlawful and punishable as provided in this Chapter for any person, firm, corporation, charity or other entity to hold or participate as a vendor at a swap meet without first having obtained a license therefore as is herein provided.

B. Criminal History Reports for applicants and all employees shall be submitted to the Chief of Police.

C. Licensees shall comply with the Swap Meets and Flea Markets Act of the Utah Code.

14.17.020. Fees.

The fee for any licenses issued pursuant to this Chapter shall be as set forth in Section 14.02.080 of this Title.

14.17.030. Qualifications for Licensees.

A license issued pursuant to this Chapter shall be denied, suspended or revoked where the applicant:

- A. Is not eighteen (18) years or older; or
- B. Is not found to be of good moral character; or
- C. Is presently charged with a felony in violation of any law relating to burglary, theft, robbery, receiving stolen property, or any law involving moral turpitude; or
- D. Is presently being charged with a misdemeanor in violation of any law or ordinance relating to theft, receiving stolen property, or any law or ordinance involving moral turpitude;
- E. Has a current outstanding warrant;
- F. Is a partnership, any member of which lacks any of the qualifications of this section; or
- G. Is a corporation or other entity in which an officer or director lacks any of the qualifications of this section.

14.17.040. Penalties.

In addition to other penalties provided by law, any person, firm, corporation, charity or other entity violating any of the provisions of this Chapter shall be guilty of a Class B misdemeanor. No swap meet licensee or swap meet seller shall be deemed to have complied with the provisions of this Chapter if:

- A. He fails to properly provide the information required by this Chapter, or
- B. He gives false information as to his identity or as to any other information required by this Chapter.

Chapter 14.18. Sexually Oriented Businesses.^{28, 29}

14.18.010. Purpose and Findings.

A. Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of Brigham City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within Brigham City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

B. Findings. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Brigham City Council, and on findings incorporated in the cases of *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *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 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 other cases; and on testimony to Congress in 136 Cong. Rec. S 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S 5636; 134 Cong. Rec. E 3750; and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona – 1984; Minneapolis, Minnesota-1980; Houston, Texas - 1997; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California - 1991; Los Angeles, California -

²⁸ Section 14.18 added with adoption of Ordinance 98-16, 4/23/98

²⁹ Entire Section 14.18 amended with adoption of Ordinance 05-04, dated 2/3/05

1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio - ; and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York Times Square study - 1994; Phoenix, Arizona - 1995-98; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000, and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Brigham City Council finds:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the unlicensed operators of the establishments, if any. Further, there is presently no mechanism in this City to make the owners and operators of these establishments responsible for the activities that occur on their premises.

2. Certain employees of unregulated sexually oriented businesses defined in this ordinance as adult theatres and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

3. Sexual acts, including masturbation, and oral and anal sex, occur at unregulated sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

4. Offering and providing such unregulated space encourages such activities, which creates unhealthy conditions.

5. Persons frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses, or for the purpose of purchasing or selling illicit drugs.

6. Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and shigella infections, chlamydial, myoplasmal and ureoplasmal infections, trichomoniasis and chancroid.

7. According to research from the Kaiser Family Foundation, an estimated 650,000 to 900,000 Americans are infected with HIV. The number of new HIV infections occurring each year is now about 41,000. Men and women of all races are most likely to be infected by sexual contact.

8. Relevant statistics revealed that a total of 1,893 AIDS cases had been reported in Utah through June 2000.

9. The Centers for Disease Control and Prevention estimates that as many as 1 in 3 people with HIV do not know they are infected.

10. The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990.

11. The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

12. The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

13. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See, e.g. Findings of U.S. Dept. of Health & Human Services.

14. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

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

16. The findings noted in paragraphs number 1 through 15 raise substantial governmental concerns.

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

18. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore-nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons

and employees, as well as the citizens of Brigham City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

19. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theatres.

20. Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

21. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and will prevent the further secondary effects of dissemination of illegal obscenity, child pornography, and to minors, materials harmful to them;

22. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this ordinance is designed to prevent or who are likely to be witnesses to such activity.

23. The fact that an applicant for an adult use has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.

24. The barring of such individuals from employment in sexually oriented businesses for a specified period of years serves to prevent distribution of illegal material, to prevent conduct which leads to the transmission of sexually transmitted diseases, and to preclude the establishment of criminal enterprises within Brigham City.

25. The general welfare, health, morals and safety of the citizens of Brigham City will be promoted by the enactment of this ordinance.

14.18.020. Definitions.

For purposes of this Chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Adult Arcade. "Adult Arcade" shall mean any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing "specified sexual activities" or specified "anatomical areas."

Adult Bookstore, Adult Novelty Store, Adult Video Store. "Adult Bookstore, Adult Novelty Store, or Adult Video Store" means a commercial establishment which has 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 to the sale or rental, for any form of consideration, of any one or more of the following:

A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas";

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

Adult Cabaret. "Adult Cabaret" means a nightclub, bar, juice bar, restaurant bottle club, theater, concert hall, auditorium, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features: (a) persons who appear semi-nude, or (b) films, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas."

Adult Motel. "Adult motel" means a motel, hotel, or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, and which regularly provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas" and which regularly advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, and (b) offers a sleeping room for rent for a period of time less than ten (10) hours.

Adult Motion Picture Theater. "Adult Motion Picture Theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

Community Development Department. "Community Development Department" means the Brigham City Community Development Department.

Controlling Interest. "Controlling Interest" means the power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The ownership, control, or power to vote twenty per cent or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.

Distinguished or Characterized by an Emphasis Upon. "Distinguished or Characterized by an Emphasis Upon" means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or description of Specified Sexual Activities or Specified Anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or description of "specified anatomical areas" or "specified sexual activities."

Employ, Employee, and Employment. "Employ, Employee, and Employment" describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Establish or Establishment. "Establish or Establishment" shall mean and include any of the following:

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

Hearing Officer. "Hearing Officer" shall mean the Mayor of Brigham City or a designee of the Mayor.

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

Nude or State of Nudity. "Nude or State of Nudity" shall mean a state of dress in which opaque clothing covers less than that area of the human body defined herein as "Semi-Nude or State of Semi-Nudity".

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

Person. "Person" shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

Regularly Features or Regularly Shown. "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 a part of the ongoing business of the sexually oriented business.

Semi-Nude or State of Semi-Nudity. "Semi-Nude or State of Semi-Nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

Semi-Nude Model Studio. "Semi-Nude Model Studio" means any place where a person, who regularly appears in a state of semi-nudity is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

It is a defense to prosecution for any violation of this ordinance that a person appearing in a state of semi-nudity or semi-nudity did so in a modeling class operated:

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

Sexual Encounter Establishment. "Sexual Encounter Establishment" means a business or commercial establishment, that as one of its principle business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or when one or more of the persons is semi-nude. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

Sexually Oriented Business. "Sexually Oriented Business" shall mean an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, or adult entertainment out-call service in the form of semi-nude dancing or exhibition, adult motion picture theater, adult theater, semi-nude model studio, or sexual encounter establishment.

Sexually Oriented Entertainment Activity. "Sexually Oriented Entertainment Activity" means the sale, rental, or exhibition for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances which are characterized by an emphasis on the exposure or display of specific sexual activity.

Specified Anatomical Areas. "Specified Anatomical Areas" shall mean human genitals, anus, cleft of the buttocks, or the female breast.

Specified Criminal Activity. "Specified Criminal Activity" means any of the following offenses:

A. prostitution or promotion of prostitution; dissemination of obscenity or illegal pornography; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; lewdness; sexual battery; rape; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving the same elements from any jurisdiction regardless of the exact title of the offense; for which:

- 1. 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;
- 2. 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; or
- 3. less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

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

Specified Sexual Activity. "Specified Sexual Activity" means any of the following:

- A. Acts of:
 - 1. Masturbation,
 - 2. Human sexual intercourse,
 - 3. Sexual copulation between a person and a beast,
 - 4. Fellatio,
 - 5. Cunnilingus,
 - 6. Bestiality,
 - 7. Pederasty,
 - 8. Buggery, or
 - 9. Any anal copulation between a human male and another human male, human female, or beast;
- B. Manipulating, caressing or fondling by any person of:
 - 1. The genitals of a human,

2. The pubic area of a human,
3. The breast or breasts of a human female;
- C. Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.
- D. Excretory functions as a part of or in connection with any of the activities described in (a) above.

Transfer of Ownership or Control. "Transfer of Ownership or Control" of a sexually oriented business shall mean any of the following:

- A. The sale, lease, or sublease of the business;
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Viewing Room. "Viewing Room" shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

14.18.030. Classification.

Sexually oriented businesses shall be classified as follows:

- A. Adult arcades;
- B. Adult bookstores, adult novelty stores, adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;
- F. Adult theaters;
- G. Semi-nude model studios; and
- H. Sexual encounter establishments.

14.18.040. License Required.

A. It shall be unlawful for any person to operate a sexually oriented business in Brigham City without a valid sexually oriented business license.

B. It shall be unlawful for any person to be an "employee," as defined in this Chapter, of a sexually oriented business in Brigham City without a valid sexually oriented business employee license.

C. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the Community Development Department a completed application made on a form provided by the Community Development Department. The application shall be signed by the applicant and notarized.

D. An application shall be considered complete when it contains the information required in Paragraphs 1 through 6 as follows:

1. The applicant's full true name and any other names used in the preceding five (5) years.
2. Current business address or another mailing address of the applicant.
3. Written proof of age, in the form of a copy of a birth certificate or driver's license or other picture identification document issued by a governmental agency.
4. If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number (if one currently exists) of the proposed sexually oriented business.
5. If the application is for a sexually oriented business license, the name and address of the statutory agent or other agent authorized to receive service of process.
6. A statement of whether the applicant has been convicted or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each. The statement shall also disclose whether the applicant has had a previous sexually oriented business or sexually oriented business employee license under this ordinance or other sexually oriented business ordinances from another City or County denied, suspended, or revoked within the past two years, 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 whether the applicant has been a partner in a partnership or an officer, director, or stockholder with a controlling interest in a corporation that is licensed under this ordinance whose license has previously been 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.

The information provided pursuant to Paragraphs 1 through 6 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Community Development Department within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

E. An application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who are required to comply with portions of this Chapter relating to the physical design of facilities or premises shall submit a diagram meeting the requirements of that section.

F. If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each officer, director, general partner or other person who will participate directly in decisions relating to management and control of the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 14.18.050 and each applicant shall be considered a licensee if a license is granted.

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

H. The information provided by an applicant in connection with an application for a license under this Chapter shall be maintained by the Community Development Department on a confidential basis, except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order. The information provided by a sexually oriented business license applicant in connection with the application for a license under this Chapter shall be maintained by the Community Development Department.

14.18.050. Issuance of License.

A. Within forty (40) days of the initial filing date of the completed application under Section 14.18.040(C), the Community Development Department shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Community Development Department shall approve the issuance of a license unless one or more of the following is found by a preponderance of evidence to be true:

1. An applicant is less than eighteen (18) years of age.
2. An applicant has failed to provide information as required by Section 14.18.040 for issuance of a license or has falsely answered a question or request for information on the application form.
3. The license application fee required by this Chapter has not been paid.
4. An applicant has been convicted of a specified criminal activity, as defined in this ordinance, or has been shown to have committed a violation of Section 14.18.070(A), Section 14.18.100(B), or Section 14.18.180 of this Title within the previous year.
5. In the case of a sexually oriented business license application, the premises is not in compliance with the interior configuration requirements of this Chapter.

B. Upon the filing of a completed application for a sexually oriented business employee license, the Community Development Department shall issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the City to deny or grant the license. Within forty (40) days of the initial filing date of the receipt of a completed application, the Community Development Department shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Community Development Department shall approve the issuance of a license unless one or more of the following is found by a preponderance of evidence to be true.

1. The applicant is less than eighteen (18) years of age.
2. The applicant has failed to provide information as required by Section 14.18.040 for issuance of a license or has falsely answered a question or request for information on the application form.
3. The license application fee required by this section has not been paid.
4. The applicant has been convicted of a specified criminal activity, as defined in this Title, or has been shown to have committed a violation of Section 14.18.070(A) or Section 14.18.100(B) of this Title within the previous year.

C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing and shall produce such license for inspection upon request by a law enforcement officer or other City official performing functions connected with the enforcement of this Chapter.

14.18.060. Fees

The initial license and annual renewal fees for a sexually oriented business license or a sexually oriented business employee license shall be set by the City Council at an amount determined by the Council as sufficient to pay the cost of administering this Title.

14.18.070. Inspection.

A. Sexually oriented business operators and sexually oriented business employees shall permit officers or agents of Brigham City who are performing functions connected with the enforcement of this Chapter to inspect the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with this Chapter, from time to time while the sexually oriented business is occupied by patrons or open for business. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this section.

B. The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

14.18.080. Expiration of License.

Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in Sections 14.18.040 and 14.18.060. Application for renewal should be made at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected.

14.18.090. Suspension.

The City shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if it is determined that the sexually oriented business licensee has knowingly or recklessly violated this Chapter or has knowingly or recklessly allowed an employee to violate this Chapter. The City shall issue a written letter of intent to suspend a sexually oriented employee license if it is determined that the employee has knowingly or recklessly violated this Chapter.

14.18.100. Revocation.

A. The City shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license if a cause of suspension in Section 14.18.090 occurs and the license has been suspended within the preceding twelve (12) months.

B. The City shall issue a letter of intent to revoke a sexually oriented business license or, in the case of an employee, a sexually oriented business employee license, if the Officer determines by a preponderance of evidence that:

1. The licensee has knowingly or recklessly given false or misleading information in the application for the license.

2. The sexually oriented business licensee has knowingly or recklessly allowed possession, use, or sale of controlled substances on the premises, or in the case of an employee, the sexually oriented business employee licensee has knowingly or recklessly engaged in the possession, use, or sale of controlled substances on the premises. It shall be a defense to revocation proceedings under this subsection that such possession, use, or sale occurred pursuant to a valid medical prescription.

3. The sexually oriented business licensee has knowingly or recklessly allowed prostitution on the premises or, in the case of an employee, the sexually oriented business employee licensee has engaged in prostitution on any licensed premises.

4. The sexually oriented business licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was suspended or, in the case of an employee, the sexually oriented business employee licensee has been employed as a sexually oriented business employee at a time when the employee's license was suspended.

5. The sexually oriented business licensee committed an act in violation of Title 18 United States Code Section 2257, or successor law, in or on the premises, or in the case of an employee, the

sexually oriented business employee licensee committed an act in violation of Title 18 United States Code Section 2257, or successor law, in or on the premises.

6. The sexually oriented business licensee has knowingly or recklessly allowed any specified sexual activity to occur in or on the premises or, in the case of an employee, the sexually oriented business employee licensee has engaged in any specified sexual activity in or on any licensed premises.

C. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license.

D. For the purposes of this section, and for this entire Chapter, an act by any employee that constitutes grounds for revocation of that employee's license shall also be imputed to the sexually oriented business for purposes of revocation proceedings if the Hearing Officer determines by a preponderance of evidence that an officer, director, or general partner, or an employee who managed, supervised, or controlled, or participated directly in decisions relating to management or control of the operation of the business, knowingly or recklessly allowed such act to occur on the premises.

E. Nature of Revocation. When, after the notice and hearing procedure described in Section 14.18.110, the Hearing Officer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective, provided that, if the conditions of Section 14.18.110(B) are met, a Provisional License will be granted pursuant to that section. If, subsequent to a revocation based solely on subsection (B)(1) of this section, the Community Development Department finds that the basis for the revocation has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under subsections (B)(2), (B)(3), (B)(4), (B)(5), or (B)(6) of this section, an applicant may not be granted another license until at least one (1) year has elapsed.

14.18.110. Hearing; Denial, Revocation, and Suspension; Appeal.

A. If the Community Development Department determines that facts exist for denial, suspension, or revocation of a license under this Chapter, the City shall notify the applicant or licensee (respondent) in writing of the City's intent to deny, suspend or revoke the license, including the grounds therefore, by personal delivery, or by certified mail.

1. The notification shall be directed to the most current business address or other mailing address on file with the Community Development Department for the respondent. Within ten (10) working days of receipt of such notice, the respondent may provide to the Community Development Department a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended, or revoked.

2. Within five (5) days of the receipt of respondent's written response, the Community Development Department shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding. Within ten (10) working days of the receipt of respondent's written response, the City Hearing Officer shall conduct a hearing at which respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the City's witnesses. The hearing shall take no longer than two (2) days, unless extended to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written opinion within five (5) days after the hearing. If a court action challenging the City's decision is initiated, the City shall prepare and transmit to the court a transcript of the hearing within ten (10) days after the issuance of the Hearing Officer's written opinion.

3. If a written response from respondent is not received by the Community Development Department within the time stated in paragraph (A)(1) above, or if after a hearing, the Hearing Officer concludes that grounds as specified in this Title exist for denial, suspension, or revocation of the license, then such denial, suspension, or revocation shall become final five (5) days after the Hearing Officer sends, by certified mail, written notice to the respondent that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Hearing Officer finds that no grounds exist for denial, suspension, or revocation of a license, then within five (5) days after the hearing, the Hearing Officer shall immediately withdraw the intent to deny, suspend, or revoke the license and shall notify the respondent in writing by certified mail of such action. The Community Development Department shall contemporaneously therewith issue the license to the applicant.

B. An applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction.

14.18.120. Transfer of License.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

14.18.130. Hours of Operation.

No sexually oriented business shall open to do business before 10:00 a.m. or remain open after 11:00 p.m., provided that, a sexually oriented business which has obtained a license to sell alcoholic beverages from the State of Utah may remain open to sell alcoholic beverages under the terms of that license, but may not conduct sexually oriented entertainment activity after 11:00 p.m.

14.18.140. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

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

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

2. The application shall be sworn to be true and correct by the applicant.

3. No alteration in the configuration or location of a manager's station or viewing room may be made without the prior approval of the Community Development Department.

4. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Paragraph 1 of this subsection.

5. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

6. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

7. It shall be the duty of the operator, and of any employees present on the premises, to ensure that not more than one person is present in a viewing room at any time. No person shall enter a viewing room that is occupied by another person.

8. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no openings of any kind exist between viewing rooms. No person shall make an attempt to make an opening of any kind between viewing rooms.

9. It shall be the duty of the operator, or of any employee who discovers two or more patrons in a viewing room or discovers any person making or attempting to make an opening of any kind between viewing rooms, to immediately escort such persons from the premises.

10. It shall be the duty of the operator, or of any employee, who discovers an opening of any kind between viewing rooms to immediately secure such rooms, and prevent entry into them by any patron until such time as the wall between the rooms has been repaired to remove the opening. Removal and repairing of openings between viewing rooms shall be in a manner that is as structurally substantial as the original wall construction.

11. It shall be the duty of the operator, at least once each business day, to inspect the walls between viewing rooms for openings of any kind.

12. It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- a. That no loitering is permitted in viewing rooms.
- b. That the occupancy of viewing rooms is limited to one person.
- c. That sexual activity on the premises is prohibited.
- d. That the making of openings between viewing rooms is prohibited.
- e. That violators will be required to leave the premises.
- f. That violations of Subparagraphs (b), (c) and (d) of this paragraph are unlawful.

13. It shall be the duty of the operator to ensure that floor coverings in viewing rooms are nonporous, easily cleanable surfaces, with no rugs or carpeting.

14. It shall be the duty of the operator to ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of or permanently covered by nonporous easily cleanable material.

15. It shall be the duty of the operator to ensure that premises are clean and sanitary. Such duty shall be fulfilled if the operator complies with the following cleaning procedures:

- a. The operator shall maintain a regular cleaning schedule of at least two cleanings per day, documented by appropriate logs.

- b. The operator shall provide an employee to check all areas for garbage, trash, body fluids and excrement and to remove and clean all areas with a disinfectant. All solid waste generated by the business shall be collected from the premises for disposal at a lawful solid waste disposal facility at least once each week. Prior to collection solid waste shall be stored in a manner that prevents access by animals or members of the public and which will not facilitate the creation of a health nuisance.

- c. Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video cameras, and windows and other surfaces.

16. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises in which patrons are permitted, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. A manager's station shall not exceed forty (40) square feet of floor area. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this paragraph must be by direct line of sight from the manager's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

- B. It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

14.18.150. Loitering and Exterior Lighting and Monitoring Requirements.

- A. It shall be the duty of the operator of a sexually oriented business to: (a) initiate and enforce a no loitering policy within the external boundaries of the real property upon which the sexually oriented businesses are located; (b) post conspicuous signs stating that no loitering is permitted on such property; (c) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (d) provide lighting of the exterior premises to provide for visual inspection or provide video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises is open for business. The monitors shall be installed within a manager's station.

- B. It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

14.18.160. Penalties and Enforcement.

A person who knowingly or recklessly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Chapter shall be fined not to exceed \$2500. Each day the violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

The City Attorney is hereby authorized to institute criminal or civil proceedings necessary for the enforcement of this Chapter to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the City, provided, however, that nothing in this section and no action taken thereunder, shall be held to exclude such criminal proceedings as may be

authorized by other provisions of the City code, or any of the laws or ordinances in force in the City or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

14.18.170. Applicability of Title to Existing Businesses.

Upon adoption, the provisions of this Title shall apply to the activities of all sexually oriented businesses and sexually oriented business employees described herein, whether such businesses or activities were established or commenced before, on, or after the effective date of this Title. All existing sexually oriented businesses and sexually oriented business employees are hereby granted a De Facto Temporary License to continue operation or employment for a period of ninety (90) days following the effective date of this Title. Within said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must make application for a license pursuant to this Chapter. Within said ninety (90) days, sexually oriented businesses must make any necessary changes to the interior configurations of the regulated business premises to conform to this Chapter.

14.18.180. Additional Regulations Concerning Live Public Nudity.

It is unlawful for a sexually oriented business to knowingly or recklessly violate the following regulations or to knowingly or recklessly allow an employee or any other person to violate the following regulations.

A. It shall be a violation of this Chapter for a patron, employee, or any other person to knowingly, recklessly, or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

B. It shall be a violation of this Chapter for a person to knowingly, recklessly, or intentionally in a sexually oriented business appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least six (6) feet from any patron or customer and on a stage at least two (2) feet above the elevation of the floor.

C. It shall be a violation of this Chapter for any employee, while semi-nude in a sexually oriented business, to knowingly, recklessly, or intentionally receive any pay or gratuity directly from any patron or customer or for any patron or customer to knowingly, recklessly, or intentionally pay or give any gratuity directly to any employee, while said employee is semi-nude in a sexually oriented business.

D. It shall be a violation of this Chapter for any employee, while semi-nude, to knowingly, recklessly, or intentionally touch a customer or the clothing of a customer.

14.18.190. Obscenity and Lewdness – Statutory Provisions.

A. Notwithstanding anything contained in this Chapter, nothing in this Chapter shall be deemed to permit or allow the showing or display of any matter which is contrary to applicable federal or State statutes prohibiting obscenity.

B. Notwithstanding anything contained in this Chapter, nothing in this Chapter shall be deemed to permit or allow conduct or the showing or display of any matter which is contrary to the provisions of Utah Code Sections 76-9-702 and 702.5 “Lewdness,” or its successor law. Provided, however, that for the purpose of sexually oriented businesses the definition of “private parts” shall be construed to mean “nudity” as defined in this Chapter.

14.18.200. Severability.

Brigham Municipal Code Title 14.18 and each section and provision of said chapter thereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.