

**TITLE 6A**

**BUSINESS REGULATIONS**

Adopted 10/03/2023

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**CHAPTER 1: GENERAL PROVISIONS**

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**6A-01-010. Definitions.**

For the purpose of this Title the following terms shall have the meanings herein prescribed unless a different meaning is clearly intended:

- (a) "Applicant" means any person applying for any license provided for in this Title. If the person is a partnership or corporation, then each partner, officer or director is considered an applicant and must qualify accordingly.

(b) “Application” means a formal written request for the issuance of any license permitted under this Title.

(c) “Authorized Officers” means those persons authorized by the City or other entities to inspect businesses and enforce the provisions of this Title or other applicable regulations, including peace officers, ordinance enforcement officers, and employees of the Health Department, Fire Department, or City Attorney's Office.

(d) “Business” means and includes all trades, occupations, professions or activities engaged within Fruit Heights City, carried on for the purpose of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in the term "business" unless otherwise specifically provided.

(e) “Business License Official” or “License Official” shall mean the City Recorder of Fruit Heights City or his or her designee.

(f) “City” when spelled with a capital “C,” means Fruit Heights City.

(g) “City Recorder” means the Fruit Heights City Recorder.

(h) “Consolidated Fee Schedule” means the schedule of fees adopted each year by resolution of the Fruit Heights City Council setting forth the various fees charged by the City.

(i) “Employee” means all individuals who work for an employer for salary or commission or wages and who are subject to the direction and control of such employer.

(j) “Engaging in Business” includes, but is not limited to, the sale of real or personal property at retail or wholesale, the bartering or trading of property or services, the manufacturing of goods or property and the rendering of personal services for others for consideration by persons engaged in any profession, trade, craft, business, occupation or other calling, except the rendering of personal services by an employee to his employer under any contract of personal employment.

(k) “Fire Department” means the agency with whom Fruit Heights City contracts for fire services.

(l) “Health Department” means the Davis County Health Department.

(m) “Home occupation” means any business activity entered into for profit and conducted or operated from or in any residential premises within the City except for the following activities which shall be deemed exempt from the requirements of this chapter. City residents age 18 or under who sell goods or services, temporary neighborhood sales such as garage sales, Christmas boutiques, etc. (not to exceed three days in any one calendar quarter); sales by invitation to private home parties; child care involving

four (4) or less than seven (7) children other than immediate family members; Fruit Heights community/neighborhood fund raisers, or any other business that is operated only occasionally. Other exemptions may be allowed or disallowed as specifically approved by the City Council. Each of the above-referenced exemptions is conditional upon compliance with all applicable zoning ordinances of the City and other applicable City ordinances.

(n) "Licensee" means the person who has obtained any type of license provided for in this Title. The term shall also include any employee or agent of the licensee.

(o) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, corporation, association, society or other group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise.

(p) "Place of Business" means each separate location maintained or operated by the licensee, whether or not under the same name, within the City from which business is engaged.

(q) "Mobile Business" means a portable structure, including vehicles, without a permanent foundation, from which goods or merchandise are sold or where a service is provided.

(r) "Solicitor" means a person engaged in soliciting residents at their residences

(s) "Temporary Business" means an entity conducting business within the City boundaries under a temporary business license. Where a licensee owns multiple businesses, the term applies to each separate business operating within the City regardless of whether the licensee's businesses operate under the same name.

(u) "Violated" or "Violating" means that there exists reasonable cause to believe that any ordinance, code, statute or law has been or is being violated and is not limited to guilty pleas or convictions for violating said ordinances, codes, statutes or laws.

#### **6A-01-020. Business License Required.**

Unless otherwise provided, it shall be unlawful for any person to engage in any business within the City without first having obtained a business license pursuant to this Title or to continue doing business after a previously issued business license has expired without renewing said license and paying any applicable fees and penalties.

Mobile and Temporary Businesses are subject to this requirement to obtain a business license. A separate license shall be required for each type of business defined herein and for each place of business. Each day of noncompliance shall constitute a separate violation.

#### **6A-01-030. Home Occupation Business License.**

Applicants for a license required by this Chapter for a home occupation business must complete a "Home Occupation License Application." All applications shall comply with the provisions of Section 6A-1-010(n) of this Chapter and with the pertinent provisions of Title 10 Chapter 17 of the Fruit Heights City Zoning Ordinance prior to being approved. All home occupations are exempt from License Fees unless the combined offsite impact (including increases in traffic) materially exceeds the impact of the primary residential use alone, in accordance with the Fee and Rate Schedule adopted by Resolution of the City Council, which consists of fees that are uniform in respect to the class upon which they are imposed. The City shall notify the owner of each home occupation of said exemption in any communication with the owner. A home occupation which is exempt from license fees as described above in this section may still be assessed some fees if a business license is requested and a Home Occupation Business License application submitted. All home-based occupation business licenses shall comply with Utah Code §10-1-203 & Utah Code §17-53-216.

#### **6A-01-040. Property Owners Associations.**

All owners associations or property owners associations or similar entities or associations having responsibility for maintenance of common areas or common landscaping shall register with the City, providing a contact person's name, address and phone number, and the names and addresses of all board members. Registration shall be renewed annually at the same time the City renews business licenses. A registration fee in an amount set by the City Council and set forth in the City's Consolidated Fee Schedule shall be due at the time of registration.

#### **6A-01-050. Business License Official - Duties and Responsibilities.**

It shall be the duty and responsibility of the Business License Official to:

- (a) Enforce the provisions of this Title;
- (b) Collect all business license fees and all regulatory license fees;
- (c) Process all applications and renewals of all licenses provided for in this Title;
- (d) Obtain any necessary approvals from the various City departments and divisions before issuing any business licenses or regulatory licenses; and

(e) Deny, suspend or revoke licenses as provided in Chapter 3 of this Title.

(f) Transmit the information from each approved business license application to the county assessor within 60 days following the approval of the application.

**6A-01-060. License - Application Requirements.**

(a) Applications for licenses and permits required by this title shall be made in writing to the License Official in the absence of provisions to the contrary, which applications shall be made upon forms provided by the City. The application shall show:

(1) The name of the person desiring a license;

(2) The kind of license desired, stating the business, calling, trade or profession to be performed, practiced or carried on;

(3) Any license(s) required by the Utah Division of Occupational & Professional Licensing;

(4) The class of license desired, if such licenses are divided into classes;

(5) The place where such business, calling, trade or profession is to be carried on, giving the street number, if such business, calling, trade or profession is to be carried on in any building or enclosure (a P.O. Box is insufficient to satisfy this requirement);

(6) The period of time for which such license is desired to be issued;

(7) That the proposed use of any premises by the applicant will not be in violation of city zoning regulations, that the principals of the applicant's business are properly bonded if bonding is required, and that the applicant will otherwise be in full compliance with all applicable city, state and federal laws and ordinances;

(8) Such additional information as may reasonably be required by the City as needed for the proper guidance of City officials in issuing the permit or license applied for.

(b) The truthfulness, completeness and accuracy of all of said information provided by applicant shall be attested to by an authorized representative of the business.

(c) Failure to provide all required information or providing false or misleading

information in the application shall constitute grounds for denial of the application or revocation of a permit or license which was granted in reliance on the information provided, and shall constitute a Class B misdemeanor, if such is done willfully with the intent to mislead the City.

**6A-01-070. Issuance of a Business License.**

(a) An applicant for a business license shall fill out the application in full and sign it as verification, under penalty of law, that all information contained therein is true.

(b) The application shall be returned to the Business License Official along with full payment of all business license fees.

(c) If required by separate ordinance, the Business License Official shall submit copies to other departments, divisions or agencies of the City for their review.

(d) Upon receipt of signed, written approvals from all required departments, divisions and/or agencies, the Business License Official shall be authorized to prepare a certificate of license for issuance.

(e) The certificate of license shall be signed by the City Recorder or his or her designee and shall contain the following information:

- (1) The person's name to whom the certificate is issued;
- (2) The business name;
- (3) The type of business licensed;
- (4) The date the license was issued;
- (5) The expiration date of the license;
- (6) The address of the place of business licensed; and
- (7) The business license number.

**6A-01-080. Renewals of Business Licenses.**

(a) Each year, licensees shall renew their business licenses by completing an application for a license renewal signed under penalty of law that all information contained therein is true and returning it, along with the proper fees, to the Business License Official within the time period set forth in Section 6-1-080(b) below. Renewal

applications for businesses which require police checks of the licensees under the original license application shall be submitted to the Police Department to determine whether the licensee still meets the necessary qualifications.

(b) Upon receipt of the application fees, and Police Department approval, if applicable, the Business License Official shall be authorized to prepare a certificate of license as provided in this Chapter.

#### **6A-01-090. Inspections.**

(a) Authorized officials of the City 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 officials 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.

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

(c) Authorized officials may also, at any reasonable time, stop and inspect any vehicle for which a business license is required and demand the exhibition of such license for the current term from any person engaged in the operation of such a vehicle.

#### **6A-01-100. Payment Dates of Business License Fees.**

(a) Business license fees for new businesses shall be due and payable upon making application to the Business License Official. The application shall not be processed until the fee is paid.

(b) Business license fees for renewal businesses shall be due and payable on or before the first day of January each year. If the license is not paid or postmarked by January 31st, a fifty percent (50%) penalty of the amount of the fee shall be added to the original amount due. If the fee is still not paid or postmarked by the last day of February, a seventy-five percent (75%) penalty of the amount of the fee shall be added to the original amount due. If the fee is still not paid or postmarked by March 31st, a one hundred percent (100%) penalty of the amount of the fee shall be added to the original amount.

(c) Penalty fees may be appealed to the City Manager, who may, for good cause shown, refund all or part of the applicable penalty fee that has been paid. The decision of the City Manager may be appealed to the City Council as set forth in Chapter 3 of this Title. The City Council may, upon good cause, recommend that all or

part of the penalty fee be refunded.

**6A-01-110. Term of Business Licenses.**

All business licenses except solicitor licenses and temporary businesses shall expire each year on the 31st of December. License periods for new businesses shall begin the date the application is approved and run until December 31 of the year of application. One-half of the annual fee shall be payable for all licenses issued by the City after June 30th of each year.

**6A-01-120. License - Transfer of Name or Location or Duplicate - Fee.**

(a) Any person to whom a business license has been issued to transact or carry on some business, calling, trade or profession at a definite location in the City may make application for the transfer of his/her business license for the sole purpose of transacting or carrying on the same business, calling, trade or profession as is therein mentioned at some other definite location in the City by himself or herself by filing said application with the License Official, together with the appropriate fee for such application as set forth in the City's Consolidated Fee Schedule.

(b) Any person who wishes to change his/her business name shall also make application for the change of name of such person's business license, for the sole purpose of transacting or carrying on the same business, calling, trade or profession as is therein mentioned under a new name, by filing an application with the License Official, along with the appropriate fee for such application, as set forth in the City's Consolidated Fee Schedule. The transfer fee may be waived if the name changes at the time of renewal.

(c) If the business in question has any other licenses which are required under this title, or its successor, the City may specify a different fee for a location or name change

(d) The transfer fee shall be nonrefundable regardless of whether the application is granted or denied. The City Manager, after receiving reports which shall be furnished by the License Official, the police department or the board of health, when necessary, may in his/her discretion, deny or grant the transfer of any or all of said licenses strictly within the above limitations.

**6A-01-130. License - Transfer to Other Persons Prohibited.**

No license granted or issued under any of the provisions of any ordinance of the City shall be in any manner assignable, transferable or authorize any person other than the person named therein as the licensee to carry on or conduct the licensed business, except as may be otherwise specifically provided by ordinance.

**6A-01-140. License - Posting and Display Required.**



Every certificate of license issued shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the store or place in which such licensed business, calling, trade or profession is carried on, so that the same may be easily seen. When such certificate of license shall have expired it shall be removed by the licensee from such place in which it has been posted; and no certificate of license which is not in force and effect shall be permitted to remain posted upon the wall or any part of any room, store, office or place of business after the period of such certificate or license has expired.

**6A-01-150. Misuse of License Certificates.**

It shall be unlawful to counterfeit a license certificate or to deface or mutilate or remove the same while it is required to be posted.

**6A-01-160. Duplicate Certificate of License.**

A duplicate license may be issued under the provisions of this Title for a certificate that has been lost or destroyed upon the licensee filing an affidavit attesting to such fact and paying to the License Official a duplicate license fee as set forth in the City's Consolidated Fee Schedule.

**6A-01-170. Reciprocal Recognition of Business Licenses.**

(a) A business license shall not be required for operation of any vehicle or equipment in the City when:

- (1) Such vehicle is merely passing through the City; or
- (2) Such vehicle is used exclusively in interstate commerce.

(b) A business license shall not be required of any person whose only business activity in the City is the mere delivery in the City of property sold by him at a regular place of business maintained by him outside the City where:

- (1) Such person's business is at the time of such delivery licensed by the Utah city or county in which such place of business is situated; and
- (2) The authority licensing such business grants to licensees of the City making deliveries within its jurisdiction the same privileges, upon substantially the same terms as are granted by this Section; and
- (3) Neither the property delivered nor any of the facilities by which it was manufactured, produced or processed are subject to inspection by authority of the City for compliance with health or sanitary standards prescribed by the City; and

(4) The truck or other conveyance by which such delivery is made prominently displays at all times a license plate or symbol issued by the licensing authority to evidence such business license. Such plate or symbol shall identify the licensing authority by which it is issued, shall indicate that it evidences a license issued thereby, and shall specify the year or term for which it is effective.

(c) Except as otherwise provided herein, a business license shall not be required of any person who is duly licensed in another county or another city in Utah, has no business location in the City and the county or other licensing city would also reciprocate if the same business were located in the City.

(1) Before reciprocity is granted, the person must fill out a business license application and show proof of a valid business license in a qualifying city or county.

(2) Reciprocity shall not be granted to solicitors, mobile food units or any business requiring police checks or police I.D. cards.

(d) The City Recorder shall, at the request of any person, upon payment of copying and postage costs, certify a copy of this section to any city or county of the State of Utah.

#### **6A-01-180. Constructive Notice of Time Periods.**

(a) All businesses, owners, licensees, or applicants are obligated to be aware of and are deemed to have constructive notice of all time periods and/or deadlines and the effect of noncompliance with said time periods and/or deadlines as set forth in this Title relating to the application, issuance, renewal, expiration, appeal or other action relating to business licenses, alcohol licenses, or any other licensing matters set forth in this Title.

(b) Nothing in this Title shall be construed as requiring the City to take any affirmative action to notify businesses, owners, licensees, or applicants of any time periods and/or deadlines or the effect of noncompliance with said time periods and/or deadlines set forth in this Title relating to the application, issuance, renewal, expiration, appeal or other action relating to business licenses, alcohol licenses, or any other licensing matters as set forth in this Title.

#### **6A-01-190. Penalty.**

(a) Any violations of this Title shall be a Class B misdemeanor.

(b) Each day of noncompliance shall constitute a separate violation.

#### **6A-01-200. Closure of Business.**

A business must notify the City in writing if they are closing. The notice should specify the date of closure and must be filed with the City within thirty (30) days of closure. If a business does not notify the City of closure and would like to reopen within one (1) year of their last license expiration date, they must pay any past due fees and penalties. If a business has not notified the City of closure and applies for a new business license at the same address, providing the same services, within one (1) year of their license expiration date, then the application will be considered a renewal and all past due fees and penalties must be paid.

## **CHAPTER 2: ASSESSMENTS AND LICENSE FEES**

- 6A-02-010. Definitions.**
- 6A-02-020. Provisions as Regulatory Measure.**
- 6A-02-030. License Fee - Required to Do Business.**
- 6A-02-040. License Fee - Not Required When.**
- 6A-02-050. License Fee Additional to all Regulatory Licenses.**
- 6A-02-055. Board of Equalization.**
- 6A-02-060. Fee - No Undue Burden on Interstate Commerce.**
- 6A-02-070. License Fees Levied.**
- 6A-02-080. Joint Licenses.**
- 6A-02-090. Branch Establishments.**
- 6A-02-100. License Fees - Debt to City - Collection.**
- 6A-02-110. Fees - Delinquent Payments - Penalty.**
- 6A-02-120. Information Not to be Made Public.**
- 6A-02-130. Recordkeeping Required.**
- 6A-02-140. Filing False Return Prohibited.**

### **6A-02-010. Definitions.**

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

(a) "Business" means and includes all activities engaged in within the corporate limits of Fruit Heights City carried on for the business of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in the term "business" unless otherwise specifically prescribed.

(b) "Employee" means the operator, owner or manager of said place of business and any persons employed by such person in the operation of the place of business in any capacity, and also any salesman, agent or independent contractor engaged in the operation of said place of business in any capacity.

(c) "Engaging in Business" means and 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 personal services for others for a consideration by persons engaged in any profession, trade, craft, business, occupation or other calling, except the rendering of personal services by an employee to his employer under any contract of personal employment.

(d) "Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society or other group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise.

(e) "Place of Business" means each separate location maintained or operated by the licensee within the City from which business activity is conducted or transacted.

**6A-02-020. Provisions as Regulatory Measure.**

The ordinance codified in this Chapter is intended to serve as a means for the City to recoup the administrative costs associated with issuance and renewal of business licenses issued within the City.

**6A-02-030. License Fee - Required to Do Business.**

It is unlawful for any person to engage in business within the City without first paying all license fees required by this Chapter, as set forth in the City's Consolidated Fee Schedule, and any other City or State taxes, fees or assessments.

**6A-02-040. License Fee - Not Required When.**

No license fee shall be imposed under this Chapter upon any person:

(a) Engaged in business for solely religious, charitable or other types of strictly nonprofit purpose who is tax exempt in such activities under the laws of the United States and the state of Utah;

(b) Engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the State;

(c) Transacting business as a trustee, receiver, or other public officer acting pursuant to judicial order or supervision; or

(d) Not maintaining a place of business within the City who has paid a like or similar license tax or fee to some other taxing unit within the state, and which taxing unit exempts from its license tax or fee, by reciprocal agreement, businesses domiciled in the City and doing business in such taxing unit.

**6A-02-050. License Fee Additional to all Regulatory Licenses.**

The license fee imposed by this Chapter shall be in addition to any and all other taxes or license fees imposed by any other provisions of the ordinances of Fruit Heights City.

**6A-02-055. Board of Equalization.**

The City Council is hereby constituted a board of equalization for the equalization of license rates. The board shall have the authority to examine license fee information, to hear complaints of persons aggrieved by their license assessments, and to make

corrections of any assessments found to be illegal, unequal or unjust. Any corrections made by said board shall be entered in a record of license abatements and the members of the board shall approve the entries before the City may adjust the accounts. The board shall meet as needed which shall ordinarily be during regular City Council meetings. All complaints made before the first day of January of each year must be presented to the board prior to January 31 or be forever barred, and all complaints made subsequent to the first day of January must be presented to the board within thirty days of the date of assessment.

**6A-02-060. Fee - No Undue Burden on Interstate Commerce.**

None of the license fees provided for by this Chapter shall be applied so as to occasion an undue burden on interstate commerce. In any case where a license fee is believed by a licensee or applicant for license to place an undue burden upon such commerce, such person may apply to the City Council for an adjustment of the fee so that it shall not be discriminatory, unreasonable or unfair as to such commerce. Such application may be made before, at or within six (6) months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, show the method of applicant's business, the gross volume or estimated gross volume of business, and such other information as the Council may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The Council may designate a person to conduct an investigation, comparing the applicant's business with other businesses of like nature. The Council or the Council's designee shall make findings of facts; shall determine whether the fee fixed by this Chapter is discriminatory, unreasonable or unfair as to applicant's business; and shall determine, or if investigated by the Council's designee, shall recommend to the Council, a license fee for the applicant in an amount that is nondiscriminatory, reasonable and fair. If the Council is satisfied that such license fee is the amount that the applicant should pay, the license fee shall be fixed in such amount. If the regular license fee has already been paid, the Council shall order a refund of the amount over and above the fee fixed by the Council. In fixing the fee to be charged, the Council shall have the power to use methods which will assure that the fee assessed shall be uniform with those assessed on businesses of like nature.

**6A-02-070. License Fees Levied.**

(a) Fees for Businesses Located in the City. There is hereby levied upon the business of every person engaged in business in the City at a place of business within the City, an annual license fee as set forth in the City's Consolidated Fee Schedule.

(b) Fee for Applications filed after June 30<sup>th</sup>. The Business License Fee for any license application filed after June 30<sup>th</sup> of any year shall be one-half the amount of the fee that would be payable for a full year license.

(c) Nonrefundable Application Fee. In the event any initial or renewal business license application is denied by the City or is withdrawn by the applicant, the City shall

be entitled to retain the sum of thirty-five dollars (\$35) as a nonrefundable business license application fee from any license fees paid or payable to the City, unless another nonrefundable business license application fee is otherwise provided for under the ordinances of the City.

(d) Enhanced Service Fees. It is hereby determined by the City Council of Fruit Heights City that Police Services are provided at enhanced levels to some businesses within the City. The Council has considered the number of calls for police service from all businesses within the City occurring over a period of one year and hereby determines that 5 police calls per year represents the basic level of municipal services provided by the City. The Council further determines that for each police call in excess of 5 for a calendar year, the business receives an enhanced level of municipal services, and that a fee of \$20.00 for each police call in excess of 5 is an amount that is reasonably related to the City's cost of providing the enhanced municipal services. For purposes of calculating the portion of the business license fee which is allocable to "enhanced service fees," the City shall determine the number of police calls received for the business by the City during the twelve month period immediately preceding the date of application and shall fix the fee in an amount that is reasonably related to the City's cost to provide the municipal service. However the enhanced service fee related to calls for police service shall not, in any case, exceed \$500.00.

(e) Fee for Special Hearings. Any person desiring a license for which a special public hearing is required shall pay the hearing fee listed in the appendix before said hearing shall be set or advertised.

#### **6A-02-080. Joint Licenses.**

Whenever any person is engaged in two or more businesses at the same location within the City, such person shall not be required to obtain separate licenses for conducting each of such businesses, but shall be issued one license which shall specify on its face all such businesses. The license fee shall be computed as if all said businesses were one business being conducted at such location. Where two or more persons conduct separate businesses at the same location, each such person shall obtain a license for such business and pay the required license tax for such business.

#### **6A-02-090. Branch Establishments.**

A separate license must be obtained for each branch establishment or location of business engaged in, within the City, as if such branch establishment or location were a separate business, and each license shall authorize the licensee to engage only in the business licensed thereby at the location or in the manner designated in such license, provided, that warehouses and distributing places used in connection with or incident to a business licensed under this Chapter shall not be deemed to be separate places of business or branch establishments.

**6A-02-100. License Fees - Debt to City - Collection.**

Any license fee due and unpaid under this Chapter and all penalties thereon shall constitute a debt to Fruit Heights City, and shall be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

**6A-02-110. Fees - Delinquent Payments - Penalty.**

License fees for renewal of an existing business license shall be due on or before January 1st of each year. In the event any fee is not paid on or before such date, a penalty shall be assessed pursuant to the provisions of Section 6A-01-100 of this Title, or its successor section, which penalty shall become part of the license fee imposed by this Chapter.

**6A-02-120. Information Not to be Made Public.**

(a) Information furnished to the License Official, as required by this Chapter, shall not be made public nor shall it be subject to the inspection of any person except the City Manager or his or her authorized agent. Records provided to the City under this Chapter are hereby classified as Private as defined in *Utah Code Ann.* §63G-2-302.

(b) It is unlawful for any person to make public or to inform any other person as to the content of any information provided in conjunction with a license application, or to permit the inspection of any such information, except as is authorized in this Section.

**6A-02-130. Recordkeeping Required.**

It shall be the duty of every person liable for the payment of any license fee imposed by this Chapter to keep and preserve for a period of three (3) years such books and records as will accurately reflect the amount of any license fee for which he or she may be liable under the provisions of this Chapter.

**6A-02-140. Filing False Return Prohibited.**

It is unlawful for any person to make a return that is false, knowing the same to be so.



## **CHAPTER 3: REVOCATION, SUSPENSION OR DENIAL OF LICENSES**

- 6A-03-010. Denial of a Business License.**
- 6A-03-020. Reasons for Suspension or Revocation.**
- 6A-03-030. Enforcement.**
- 6A-03-040. Procedure for Suspension or Revocation.**
- 6A-03-050. Appeal Procedure.**
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### **6A-03-010. Denial of a Business License.**

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

(a) The applicant does not meet the qualifications for a license as provided under this Title.

(b) 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 (3) months after it is due.

(c) Any reviewing department, division or agency of the City provided for in this Title has disapproved the application pursuant to any applicable provision of the City Code.

(d) False or incomplete information given on the application.

(e) Noncompliance with any requirement or condition set by the Planning Commission or Planning and Zoning Division, if applicable, under a conditional use permit or by the Board of Adjustment or Planning and Zoning Division, if applicable, granting a variance or special exception.

(f) Noncompliance with any City, State or federal statutes or any Health Department regulations governing the applicant's proposed business.

(g) Any other reason expressly provided for in this Title.

### **6A-03-020. Reasons for Suspension or Revocation.**

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

(a) The license does not now meet the qualifications for a license as provided under this Title.

(b) False or incomplete information given on an application.

(c) 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.

(d) The licensee has obtained or aided another person to obtain a license by fraud or deceit.

(e) The licensee has failed to pay any taxes or fees to the City when due.

(f) The licensee has refused authorized representatives of the City access to the licensed premises for the purpose of an inspection or has interfered with such representatives while in the performance of their duty in making such inspection.

(g) The licensee is not complying with a requirement or condition set by the Planning Commission or Planning and Zoning Division, if applicable, under a conditional use permit; by the Board of Adjustment or Planning and Zoning Division, if applicable, granting a variance or special exception; by the City Council, or by agreement.

(h) 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

(i) Any other reason expressly provided for by ordinance.

### **6A-03-030. Enforcement.**

(a) The Business License Official shall have the authority without a hearing, to deny a license for the reasons provided for in this Chapter.

(b) The Business License Official shall have the authority to suspend or revoke a license without a hearing, for reasons provided for 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 has passed.

(c) The Business License Official may, on his/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.

**6A-03-040. Procedure for Suspension or Revocation.**

The Business License Official shall cause written notice to be given by personal service or registered mail to the licensee at the licensee's business address of his or her decision to suspend or revoke a license, the reason for such decision, that 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 Business License Official's decision and have a hearing, and the appeal procedure.

**6A-03-050. Appeal Procedure.**

(a) Appeals of the Business License Official's decision to deny, suspend or revoke a license may be made by filing a written notice of appeal with the City Manager within fifteen (15) days of receipt of the notice of denial, suspension or revocation. All appeals shall be conducted in accordance with the provisions of *Utah Code Ann.* § 10-3-703.7, and the City Manager is hereby designated an Administrative Law Judge for the purpose of hearing such appeals.

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

**6A-03-060. Hearing.**

(a) The hearing shall be at a time, place, and day set by the City Manager, but not later than twenty-one (21) days after receipt of the notice of appeal.

(b) At the hearing, the Business License Official or his or her designee shall present the reasons for the decision to deny, suspend or revoke the license.

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

(d) All witnesses shall be sworn to testify truthfully. Either party is entitled to confront and cross-examine any witnesses.

(e) Any oral or documental evidence may be received, but the City Manager shall exclude all privileged, irrelevant, immaterial, or unduly repetitious evidence.

(f) If the denial, suspension, or revocation appealed from is based on a finding by the Building Department or Fire Department that the business was or would be in violation of any Uniform Construction Codes or on a finding by the County Health Department that the business was or would be in violation of any County Health Department regulations, then that finding shall be binding upon the City Manager, and

the Manager's decision may be based only on whether the license was properly denied, suspended, or revoked because of the Building Department, Fire District or County Health Department finding.

(g) If the denial, suspension, or revocation appealed from is based on a determination by the Business License Official that grounds existed pursuant to this Code, the City Manager may examine the factual nature of the grounds and determine whether such grounds are sufficient to sustain the decision of the Business License Official.

(h) The City Manager does not have the authority to waive compliance with applicable provisions of the Business License ordinances, nor can the Manager extend deadlines set forth in the ordinances or change the substance or form of the ordinances.

**6A-03-070. Decision of the City Manager.**

The City Manager, after hearing all the evidence, shall announce its decision within fifteen (15) days from the date of hearing. The Manager may affirm, reverse or modify the decision of the Business License Official. The decision shall be in writing and shall be based upon findings of fact.

**6A-03-080. Appeal of City Manager Decision.**

(a) Any decision of the City Manager made pursuant to the provisions of this Chapter may be appealed by any aggrieved party by filing a petition for review of the administrative decision with the District Court within thirty (30) days from the date on which the administrative decision is made.

(b) In such petition for review, the petitioner may only allege that the City Manager's decision was arbitrary, capricious, or illegal.

**6A-03-090. Licensing After Revocation.**

A person, whose license has been revoked, may not be issued a license for a period of twenty-four (24) months after the revocation.

**6A-03-100. Validity of Business License or Regulatory License During Appeal.**

Throughout the administrative appeal process as outlined above, a licensee holding a suspended or revoked business license or regulatory license may continue to operate his or her business in accordance with federal, State and local laws pending final decision on all appeals, or until the time for appeal has passed, whichever occurs first.

**6A-03-110. Enforcement Through Litigation.**

In all cases where a business has failed to obtain a business license, or keep such license in force, in violation of City ordinances requiring that a business hold a valid business license in order to carry on any business within this City, then such business is operating contrary to law and a civil action may be brought in the name of Fruit Heights City against the person failing to obtain or keep in force such licenses to recover the amount not paid, and/or to enjoin further conduct of such business. The City may, if it prevails, recover a reasonable attorney's fee incurred in such a civil action.

## CHAPTER 4: REGULATORY LICENSES

**6A-04-010. Cumulative**

**6A-04-020. Solicitors**

**6A-04-030. Retail Fireworks**

**6A-04-010. Cumulative.**

Unless otherwise provided, the licenses required by this Chapter are in addition to those required under any other Chapter of this Title.

**6A-04-020. Solicitors.**

(a) Purpose. The purpose of this ordinance is to protect Fruit Heights City residents from unreasonable intrusions upon residential privacy, consumer fraud, and deceptive, high-pressure, factually unbalanced, or otherwise unfair consumer sales practices, in a manner consistent with the constitutional rights of residential commercial solicitors to communicate their messages to willing residential listeners.

(b) Definitions. For the purposes of this Section, the following definitions shall apply:

- I. "Applicant" means a person or organization that applies for a Certificate of Registration.
- II. "Application" means the form provided by the City to apply for a Certificate of Registration or the process of applying for a Certificate of Registration.
- III. "Certification of Registration" means the written authorization to engage in commercial solicitation from Fruit Heights City.
- IV. "Home Solicitation Sale" means a sale of goods or services in which the seller or a person acting for him initiates contact and engages in a face-to-face solicitation of the sale at a residence of the resident and the resident's agreement or offer to purchase is there given to the solicitor or a person acting for him. Home solicitation sale shall not include a sale made between parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or a sale made within a residence to a third person invited therein by the resident where such sale was not initiated by unsolicited contact by a non-resident of the residence.

V. "Registered solicitor" means any person registered pursuant to this Section who has obtained a valid Certificate of Registration (or "Certificate") from Fruit Heights City.

VI. "Residence" and "residential" refers to any (1) living unit contained within any building or structure that is occupied by any person as a dwelling in conformity with the zoning laws of Fruit Heights City, together with the lot or other real property on which such residence is located; (2) any apartment, hospital room, nursing home room, assisted living home room, group home, or other similar location; and (3) any building or structure that houses the residence together with the lot or other real property on which such building or structure is located.

VII. "Resident" means any person living in a residence.

VIII. "Solicit" "solicited" "soliciting" or "solicitation" means any of the following activities engaged in with a resident at his or her place of residence:

- (i) Seeking to obtain orders for the sale or exchange of services, goods, wares, merchandise or perishables of any kind, for any kind of remuneration or consideration, regardless of whether advance payment is sought;
- (ii) Seeking to obtain prospective customers to apply for or to purchase insurance, financial services, subscriptions to publications, or publications;
- (iii) Seeking to obtain contributions of money, services, or anything of value for the benefit of any person, association, organization, corporation, or program; and
- (iv) Seeking to obtain orders or prospective customers for goods or services.
- (v) Seeking to obtain appointments or other opportunities to engage in any of the activities listed in subsections (b)(VII)(i) through (iv) above.

IX. "Solicitor" means a person engaged in soliciting residents at their residences.

- (c) Unregistered Solicitation Prohibited.

- (1) All persons desiring to engage in soliciting within Fruit Heights City who are not exempt under Subsection (d) of this Section shall, prior to the commencement of solicitation, obtain from the Fruit Heights City Registration Officer a Certificate of Registration as solicitor. The executed original of this Certificate of Registration shall be maintained by the registration officer, and a legible copy shall be worn by the registered solicitor at all times while soliciting in the City and shall be produced for inspection upon the request of any resident being solicited or any Fruit Heights City Police Officer. The Fruit Heights City Registration Officer shall be designated by the City Manager.
  - (2) Unless a registered solicitor is wearing a Certificate of Registration or is exempt from registration under the provisions of this Section, a person who is present in or at a residence within Fruit Heights City for the purpose of engaging in solicitation is hereby declared to be committing a nuisance that is punishable as set forth in this Section.
- (d) Exemptions from Registration. The following activities are exempt from the registration requirements of Subsection (e) of this Section:
- (1) Invited Solicitation. Solicitation which occurs as the result of a resident's prior and express invitation to the solicitor to come onto such resident's property. An invited solicitation shall not include the circumstance where the resident invites back a solicitor who initiated the contact with the resident at the residence. A resident's failure to post a "No Soliciting" notice in accordance with Subsection (g) of this Section shall not be construed as an exemption from registration under this Section, as an invitation to solicitation by such resident, or as an expression of such resident's desire to hear or receive solicitations.
  - (2) Noncommercial Solicitation. Solicitation which occurs as an incident to political, religious, or other noncommercial door-to-door canvassing, pamphleteering, or other dissemination of ideas.
  - (3) State Regulated Charitable Solicitation. Solicitation on behalf of (1) a charitable organization as defined by *Utah Code Ann.* §13-22-2(1), or (2) an organization listed in *Utah Code Ann.* §13-22-8(1); provided that (A) with respect to solicitation on behalf of a charitable organization as defined by §13-22-8(1), the solicitor claiming this exemption or the charitable organization has provided written verification of the organization's charitable status to the Fruit Heights City Registration Officer prior to the commencement of solicitation within the City; (B) with respect to solicitation on behalf of an organization or entity described in *Utah Code Ann.* §13-22-8(1)(g), the principal or other person authorized by the school or the applicable school district shall provide written notice to the City that the school or school district has



approved the solicitation prior to the commencement of solicitation within the city; and (C) any solicitor relying on this exemption shall carry with him while soliciting photo identification showing the nature of his affiliation with the charitable or other organization exempt from registration under this subsection on whose behalf he is soliciting.

- (4) Minor Solicitation. Solicitation involving the sale, exchange, or contribution of money, services, goods, or other consideration valued at less than \$50.
- (5) Any solicitor claiming an exemption under this section shall bear the burden of proving his or her eligibility for, or the applicability of, the exemption claimed.

(e) Application for Certificate of Registration, Review, Issuance, Denial.

- (1) Information and Documents Required. The Fruit Heights City Registration Officer shall provide a standard form for use for application for registration of solicitors to include the information set forth herein. The applicant shall state upon oath or affirmation that the information is truthfully provided to the best of the knowledge and belief of the applicant. The applicant shall supply the following information upon or with the application for registration:
  - (i) The applicant's true, correct and legal name, including any former names or aliases used within the last ten (10) years;
  - (ii) The name of any organization(s) for which the applicant will be soliciting;
  - (iii) The applicant's home and business address, and the address where the applicant can be contacted locally;
  - (iv) The names and addresses of applicant's directors, officers, and managers, if any;
  - (v) Proof that either the applicant, or the organization(s) for which applicant will be soliciting, has registered with the Utah State Department of Commerce;
  - (vi) A special events sales tax number for either the applicant, or for the organization(s) for which the applicant will be soliciting, if applicable;
  - (vii) The purpose for which soliciting will be done;

- (viii) Whether the applicant is a person against whom a judgment based upon fraud, deceit, misrepresentation, false statements, or dishonesty has been entered within five years of the date of application;
- (ix) Whether the applicant has, within five years of the date of application, been enjoined by any court, or is the subject of an administrative order issued in this or another state, if the injunction or order includes a finding or admission of fraud, material misrepresentation, or if the injunction or order was based on a finding of lack of integrity or truthfulness;
- (x) Whether the applicant has been convicted of any felony, or a misdemeanor involving fraud, deceit, misrepresentation, false statements, or dishonesty, within five years of the date of application;
- (xi) Whether the applicant has been criminally convicted of violating any of *Utah Code Ann.* §§ 76-5-401, 76-5-401.1, 76-5-401.2, 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, 76-5-405, 76-5-412, 76-5-413, 76-5a-3, 76-9-702, 76-9-702.5, or 76-9-702.7, or the corresponding laws of another state; or is otherwise subject to registration as a sex offender under Utah law or the corresponding law of another state;
- (xii) Whether the applicant has been denied a Certificate of Registration under this Section, as amended, within the year preceding the date of application, and whether the applicant has corrected the deficiency on which the previous application was based;
- (xiii) Whether the applicant has had a Certificate of Registration under this Section, as amended, revoked within the year preceding the date of application, and whether the applicant has corrected the reason for which the Certificate of Registration was revoked;
- (xiv) Whether the applicant's Certificate of Registration has been revoked within the year preceding the date of application for violation of the non-transferability provision of this Section, as amended;
- (xv) Whether the applicant has been convicted of a violation of this Section, as amended, within one year preceding the date of application;

- (xvi) The findings of a background check on the applicant conducted by the Utah Bureau of Criminal Investigations (“BCI”) within the last 180 days. The applicant may apply for this service at the BCI offices at 3888 West 5400 South, Salt Lake City, or at such other location as the BCI shall provide from time to time. The application shall not be deemed complete until the applicant has delivered the findings of the BCI background check to the License Officer, and receipt of the background check by the Registration Officer shall be a condition precedent to issuance of a Certificate of Registration;
  - (xvii) An acknowledgment that solicitation will not commence until the solicitor is in full compliance with this Section.
- (2) Incorrect or Incomplete Information. If any information contained in the application for registration becomes incorrect or incomplete, the applicant or registered solicitor shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information required herein.
- (3) Fees. The applicant shall pay application and processing fees as set by the City from time to time; provided, however, that the total of any such fees shall not exceed reasonable administrative costs incurred by the City to process an application and maintain the related records.
- (4) Grounds for Denial. A Certificate of Registration shall not be issued in any of the following circumstances:
- (i) When the applicant has falsified information on the application;
  - (ii) When the applicant is a person against whom a judgment based upon fraud, deceit, misrepresentation, false statements, or dishonesty has been entered within five years of the date of application;
  - (iii) When the applicant has, within the past five years, been enjoined by any court, or is the subject of an administrative order issued in this or another state, if the injunction or order includes a finding or admission of fraud, material misrepresentation, or if the injunction or order was based on a finding of lack of integrity or truthfulness;

- (iv) When the applicant has been convicted of any felony, or a misdemeanor involving fraud, deceit, misrepresentation, false statements, or dishonesty, within five years of the date of application;
- (v) When the applicant has been criminally convicted of violating any of *Utah Code Ann.* §§ 76-5-401, 76-5-401.1, 76-5-401.2, 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, 76-5-405, 76-5-412, 76-5-413, 76-5a-3, 76-9-702, 76-9-702.5, or 76-9-702.7, or the corresponding laws of another state; or is otherwise subject to registration as a sex offender under Utah law or the corresponding law of another state;
- (vi) When the applicant has been denied a Certificate of Registration under this Section, as amended, within the year preceding the date of application, unless the applicant has corrected the deficiency on which the previous application was based;
- (vii) When the applicant has had a Certificate of Registration under this Section, as amended, revoked within the year preceding the date of application, unless the applicant has corrected the reason for which the Certificate was revoked;
- (viii) When an applicant's Certificate of Registration has been revoked within the year preceding the date of application for violation of the non-transferability provision of this Section, as amended;
- (ix) When the applicant has failed to supply any of the documents or information listed in Subsection (e)(1) of this Section, or has failed to pay any of the fees set by the City in accordance with this Section;
- (x) When the applicant has been convicted of a violation of this Section, as amended, within one year preceding the date of application.

(5) Proof of Identification Required. Initial proof of identification can be faxed to the City or emailed to the City along with the completed application form, provided that in-person identification is verified with one of the following prior to or at the time of the issuance of the Certificate of Registration. No Certificate of Registration shall be issued to any applicant until the applicant submits one of the following to establish proof of identification:

- (i) A valid drivers license issued by any State;
- (ii) A valid United States Uniformed Service Identification Card;
- (iii) A valid passport issued by the United States;
- (iv) Any other official document issued by the United States or any State thereof which contains the name and photograph of the applicant.

(6) Registration Complete upon Completion of Application. Registration shall be deemed complete when the License Officer has received all of the information and documents listed in Subsection (e)(1) of this Section and the applicant has paid the applicable fee. The Certificate of Registration shall be issued within five (5) business days following the applicant's completion of registration, unless one of the circumstances listed in Subsection (e)(4) of this Section applies.

(7) Form of Certificate and Badge.

- (i) Each Certificate of Registration issued by the Registration Officer shall be numbered, shall list the name of the individual solicitor and of any organization on whose behalf the registered solicitor is authorized to solicit, the date on which the Certificate of Registration expires, and shall be dated and signed by the Registration Officer or his or her authorized designee.
- (ii) Each registered solicitor shall wear a badge prominently on his or her person, consisting of a copy of the Certificate of Registration issued by the City, a 1 ½ inch by 1 ½ inch (approximate) photograph of the solicitor that was taken within one year preceding the issuance of the Certificate of Registration to be supplied by the solicitor, and the name and address of any entity with which the solicitor is associated. Such badge shall be worn at all times while the solicitor is engaged in soliciting.
- (iii) All badges are and remain the property of the City.
- (iv) By issuing a Certificate of Registration, the City does not guarantee the accuracy of any representation contained in the application for registration or the Certificate of Registration, nor does it warrant that any statement made

by the registered solicitor is truthful. The City makes no certification as to the worthiness of any organization, its products or services, on whose behalf a solicitation is made nor as to the moral character of the registered solicitor.

(v) The following statement shall appear on each Certificate of Registration: "Fruit Heights CITY MAKES NO CERTIFICATION AS TO THE WORTHINESS OF ANY ORGANIZATION, ITS PRODUCTS OR SERVICES, ON WHOSE BEHALF A SOLICITATION IS MADE NOR AS TO THE MORAL CHARACTER OF THE REGISTERED SOLICITOR."

(8) Renewal. A Certificate of Registration shall be valid for a period of one (1) year from the date of issuance. Any registered solicitor in good standing may have his or her Certificate of Registration renewed for an additional period of not to exceed one (1) year upon request within thirty (30) days prior to the expiration of the Certificate of Registration and payment of a renewal fee as set by the City from time to time; provided, however, that the total of any such fee shall not exceed reasonable administrative costs incurred by the City to process the Certificate of Registration renewal and maintain the related records. A registered solicitor is not in good standing if he satisfies one or more grounds for denial or revocation within the meaning of this Section. An applicant desiring to obtain a Certificate of Registration subsequent to the expiration of any renewal period shall make a new application in accordance with the provisions of this Section.

(9) Non-transferability. Certificates of Registration shall be issued only in the name of the applicant and the firm, corporation or association on whose behalf the applicant is authorized to solicit. The Certificate of Registration is non-transferrable in all respects. It shall constitute a violation of this Section for a solicitor whose Certificate of Registration authorizes soliciting on behalf of a person or firm named in a Certificate of Registration to solicit on behalf of any other person or firm, organization, or association or for any purpose other than that specified in the application. Any Certificate of Registration used by a person other than the person to whom it was originally issued is void, and the City is authorized to confiscate and immediately cancel any such Certificate of Registration.

(10) Certificate Registry. The Registration Officer shall maintain and make available for public inspection a record of every application received together with any information pertaining thereto, all Certificates of Registration issued, and all pending and denied applications, with the

exception of any portion of the application received and any information pertaining thereto that qualifies as private or protected within the meaning of the Government Records Access and Management Act, *Utah Code Ann. § 63-2-101 et seq.* Each application shall be numbered in consecutive order and each Certificate of Registration issued shall be assigned a number exclusive to the registered solicitor. Each Certificate of Registration renewed shall be identified with the duplicate number of the application upon which it was initially issued. The Registration Officer shall furnish to the Chief of Police or the Director of Public Safety a listing of all Certificates of Registration issued and renewed and such Chief or Director shall maintain such listing for public inspection and for identification.

- (11) Revocation of Certificate. Any Certificate of Registration issued pursuant to the provisions of this Section shall be revoked by the Registration Officer if, following issuance of the Certificate of Registration, the Registration Officer determines that the registered solicitor was convicted of a violation of this Section or committed an act or became subject to a condition that would disqualify him or her from receiving a Certificate of Registration under Subsection (e)(4) of this Section. Notice of revocation shall be immediately given to the registered solicitor by personal service or certified mail to the address listed on the application and, if applicable, to the organization for which the registered solicitor was soliciting. The notice shall set forth the factual basis for the revocation and, if applicable, the specific provision(s) of Subsection (e)(4) of this Section that identifies and defines the disqualifying conduct. Immediately upon the giving of such notice, the Certificate of Registration shall become void and shall remain so until the revocation is rescinded. Upon receiving notice of revocation of any Certificate of Registration, the registered solicitor shall forthwith return the related badge to the City.
- (12) Appeal. An applicant whose registration is denied by the License Officer or a registered solicitor whose Certificate of Registration is revoked by the License Officer shall have the right to appeal such denial or revocation to the Council at a meeting to be held no later than twenty (20) business days following the City's receipt of the applicant's notice of appeal. The notice of appeal shall be in writing and shall be delivered either in person upon written receipt or by certified U.S. mail to the Fruit Heights City Recorder, with a copy to the Registration Officer, within ten (10) business days of the applicant's or registered solicitor's receipt of the decision from which the appeal is taken. Such notice of appeal shall identify the applicant or registered solicitor, set forth the decision of the Registration Officer that is being appealed, and state the grounds for appeal. Within ten (10) business days of the

meeting at which the applicant's or registered solicitor's appeal is heard, the City Council shall issue a decision either affirming or reversing the actions of the Registration Officer in denying an applicant's registration or revoking the registered solicitor's Certificate of Registration.

(f) Deceptive Soliciting Practices Prohibited.

- (1) No solicitor shall make any materially false or fraudulent statement in the course of soliciting. No solicitor shall fail to state a material fact necessary to make statements made, in the context of the circumstances under which they are made, not misleading.
- (2) A solicitor shall immediately disclose to the resident at the beginning of any face-to-face solicitation, either verbally or by means of a writing to be handed to the resident, (i) the name of the solicitor; (ii) the name and address of the entity with whom the solicitor is associated or for which the solicitor is engaging in solicitation; and (iii) the purpose of the solicitor's contact with the resident.
- (3) No solicitor shall use a fictitious name, an alias, or any name other than his or her legal name.
- (4) No solicitor shall represent directly or by implication that the City endorses the solicitation, or that the granting of a Certificate of Registration implies endorsement by the City of the solicitor or his or her product or service.

(g) "No Soliciting" Notices.

- (1) Any resident may give notice of his or her unwillingness to listen to solicitations or receive solicitors by displaying at his or her residence a placard or sign no smaller than 16 square inches stating "No Soliciting," "No Solicitors," "No Trespassing" or words of similar import. Such placard or sign shall be posted on or near the main entrance door or on or near the property line adjacent to the sidewalk leading to the residence.
- (2) The display of a "No Soliciting" or similar sign or placard shall constitute notice to any solicitor that the resident is unwilling to listen to solicitations.

(h) Certain Solicitations Prohibited.

- (1) It shall be a violation of this Section for any solicitor to attempt to solicit at a residence at or on which has been posted a "No Soliciting" sign or



placard in accordance with Subsection (g) of this Section. All solicitors are under the legal obligation to affirmatively check each residence for any such sign or placard. If such sign or placard is posted, a solicitor shall desist from any efforts to solicit at the residence and shall immediately depart therefrom.

(2) It is a violation of this Section for any solicitor to knock on the door, ring the door bell, or in any other manner attempt to attract the attention of an occupant of a residence that bears a "No Soliciting" or similar sign or placard. It is a violation of this Section for any solicitor through ruse, deception, or concealment of a purpose to solicit, to take action calculated to secure an audience with the occupant of a residence that has posted a "No Soliciting" or similar sign or placard.

(3) It is a violation of this Section for any solicitor who is at any time asked by the resident to leave, to fail to immediately and peacefully depart.

(i) Time of Day. It shall be unlawful for any person, whether a registered solicitor or not, to solicit any person at a residence before 8:00 a.m. or after 9:00 p.m. Mountain Time on business days, or before 9:00 a.m. or after 9:00 p.m. Mountain Time, on Saturdays, Sundays, or legal holidays as set forth in *Utah Code Ann.* § 63-13-2, unless the solicitor has express prior permission from the resident to do so.

(j) Right to Residential Solicitation Sale. In any residential solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the solicitor shall present to the resident and obtain resident's signature to a written statement which informs the resident of his or her unconditional right to cancel the sale on or before the third business day after the date of sale. Any documents memorializing the sale shall accurately set forth the date of the sale. Such notice of "Buyer's right to cancel" shall be in the form required by *Utah Code Ann.* §70C-5-103, or a current or amended version thereof or any State or federal law modifying or amending such provision.

(k) Penalties. Any person who engages in soliciting without complying with the requirements of this Section or violates any other terms or provisions of this Section shall be guilty of a class 'B' Misdemeanor and shall be punished by a fine of not to exceed \$1,000.00 and/or a jail sentence of not to exceed six (6) months. A second offense within five years of a prior conviction under this Section may be prosecuted and punished as a class A Misdemeanor.

(l) Private Right of Action. A resident who has suffered injury or damage as the result of violation of this Section shall have the right to bring a civil action for damages against the violator in the appropriate court within the State of Utah

**6A-04-030. Retail Fireworks.**

(a) Definitions.

(1) Building means an enclosed structure with a roof, which is intended for use or is used by human beings.

(2) Firework as used in this Chapter, shall have the same meaning as set forth in *Utah Code Anno.* § 11-3-2(1), and § 53-7-202, or their successor sections, as amended.

(3) Authorized Firework means a Class C common state approved explosive or a trick noisemaker as such is defined in *Utah Code Anno.* § 53-7-202.

(4) Retail Fireworks Outlet means any person, corporation, partnership, or other entity which sells authorized fireworks to any member or members of the public. It does not include in-store sales.

(5) Temporary Stand means any physical structure erected on a temporary basis from which fireworks are sold.

(b) Sales Without License Prohibited.

(1) Owner of Outlet. The owner of a Temporary Stand shall be guilty of a class B misdemeanor if any person sells a Firework from the inventory of such stand when such stand does not hold a valid license and temporary permit that authorize the operation of a Retail Fireworks Outlet.

(2) Salespersons. Any person selling a Firework at retail without a valid license and temporary permit authorizing him or her to sell Fireworks shall be guilty of a separate class B misdemeanor.

(3) Separate Offenses. For purposes of (a) and (b) above, each act of selling at a particular time and to a particular customer shall constitute a separate offense.

(c) Outlet License Requirements. The License Official shall issue a license permitting operation of a Retail Fireworks Outlet to any person who fulfills all of the following requirements:

(1) Application. The licensee shall complete and sign an application in substantially the following form, which may be amended from time to time by the signing applicant.

APPLICATION TO OPERATE RETAIL FIREWORKS OUTLET

Name of Applicant:

Address:  
Home Telephone:  
Work Telephone:

Who will own the retail fireworks outlet?

Where will the outlet be located?

Where will the outlet's inventory be kept?

Note: Misrepresentation in, or future nonconformity with statements made in this application will be grounds for revocation of any license issued to you. You must therefore keep the information in this application accurate and up-to-date.

Signature of Applicant

(1) Stand Design. The stand shall be of sturdy but temporary construction, having a roof, and enclosing no more than 500 square feet. The greatest non-diagonal dimension of the stand shall not exceed 24 feet. The stand shall have at least two doors which open outward and which measure at least 3 feet wide by 6 feet 8 inches high. The stand shall also have an interior aisle running the entire length of the stand and from one door to the other, which must be kept free of any obstructions. The stand shall be exempt from the requirements of the International Building Code.

(2) Distances. The Retail Fireworks Outlet shall be located at least the following minimum distances from the buildings or items named:

(i) At least one 100 yards from any school building, health care institution, church or other building used primarily for religious worship or ritual, gasoline filling station, or any building or site where flammable liquid is stored or present.

(ii) 50 feet from any other building.

(iii) ~~400~~ 300 feet from any other Retail Fireworks Outlet.

(iv) 20 feet from any boundary dividing tracts of land owned in fee by different persons, unless the adjacent owner gives written permission to location of the stand nearer to the boundary and an executed original of such permission is furnished to the City.

(3) Clearing Combustible Material. The site of the Retail Fireworks Outlet

shall be clear of dry grass, weeds, trash, or other combustible matter for 50 feet in any direction from the stand.

(4) Smoking. On all sides of the stand, a sign shall be posted with letters 4 inches high reading: "Smoking Prohibited within 50 Feet."

(5) Fire Fighting Equipment. The Retail Fireworks Outlet shall have, within easy reach inside the stand, fire extinguishers with a combined rating of at least 2A:10-B:C.

(6) Display. The Fireworks held for sale must be displayed, if at all, only behind a counter or at a place which is not accessible to customers.

(7) Packaging. Fireworks shall be stored, handled, displayed, and sold only in closed packages.

(8) Storage. No more than 200 pounds gross weight of Fireworks shall be stored or held for sale at any time in the stand. No Fireworks shall be kept overnight in the stand. Inventory which cannot be kept in the stand must be kept in a one-hour fire-rated roofed room located at a place where a stand could be located under this section.

(9) Security. The stand shall at all times be locked on the outside with locks which can readily and quickly be opened from the inside.

(10) Zoning. The Retail Fireworks Outlet must conform to the applicable provisions of the City Zoning Ordinances, including, but not limited to, the setback and sign requirements.

(11) Heating and Light. The stand shall not be illuminated by an open flame or exposed heating elements. Heating and lighting appliances shall be approved by Underwriters' Laboratories or similar authority, and shall be maintained in good condition.

(12) Occupation of Stand. No person shall sleep overnight in the stand.

(13) Other Merchandise. The Retail Fireworks Outlet shall sell no merchandise other than Fireworks.

(14) Sales Restrictions.

(i) Fireworks may only be sold on or between June 26 and July 26; on or between December 20 and January 2; and 15 days before and on the Chinese New Year.

(A) A sign, clearly visible to the general public, shall be

posted at all Fireworks sales locations, indicating the legal dates for discharge of Fireworks as set forth in this Chapter. Sign lettering shall be not less than 1" high with a minimum 3/16" stroke on a contrasting background.

(ii) Fireworks shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

(15) Insurance. The owner or operator of the Retail Fireworks Outlet shall furnish to the license official certificate showing insurance coverage in the following types and amounts, and showing the City as an additional insured:

(i) Personal injury and public liability coverage \$300,000, plus an additional \$200,000 per employee on duty at any time.

(ii) Property damage \$200,000, liability coverage.

(iii) Products liability coverage \$500,000.

(16) Inspection. The City Fire Marshall shall inspect the Retail Fireworks Outlet prior to issuance of a license but after such Outlet has been made ready for operation, and shall examine such outlet for conformity with this section.

(17) Fee. The owner or operator of the Retail Fireworks Outlet shall pay to the City a fee as set forth in the City's Consolidated Fee Schedule for temporary stands which shall not be refundable for any reason. This fee must be received by the City before the Retail Fireworks Outlet is inspected by the City for compliance with this section.

(d) Transfer Prohibited. A license which has been issued to one person shall not be valid in the hands of another person.

(e) Other Provisions in this Title.

(1) Other Licenses. Persons holding licenses issued pursuant to this Chapter shall be responsible for obtaining other licenses necessary under this Title.

(2) Incorporation. The provisions contained in other Chapters of this Title shall apply to this Chapter, except where inconsistent with the provisions of this Chapter or where inapplicable to the facts and circumstances of Fireworks retailing.

## **CHAPTER 6-05: ALCOHOLIC BEVERAGES**

- 6A-05-010. Adoption Of Utah Alcoholic Beverage Control Act.**
- 6A-05-020. Policy**
- 6A-05-030. Definitions**
- 6A-05-040. State Issued Alcohol License Required.**
- 6A-05-050. Business License Required.**
- 6A-05-060. Temporary Special Event.**
- 6A-05-070. Local Consent - Limited.**
- 6A-05-080. Prohibition of Alcohol on Community Location**
- 6A-05-090. State Offenses.**
- 6A-05-100. Violations.**
- 6A-05-110. Severability.**

### **6A-05-010. Adoption Of Utah Alcoholic Beverage Control Act.**

The Alcoholic Beverage Control Act, Utah Code Annotated sections 32B-1-101 et seq., as amended from time to time (the "Act"), is hereby adopted by this reference in its entirety as if set forth in full herein. The Act, as adopted herein, shall be construed to apply only to the incorporated areas of the City and shall be interpreted and constructed where necessary to carry out the intent of this chapter.

### **6A-05-020. Policy:**

It is the policy of the city of Fruit Heights to permit the operation of establishments serving alcoholic beverages in accordance with the provisions of the Act and related provisions of State Law. It is also the policy of the City to place the primary responsibility for maintaining order and preventing breaches of the peace within establishments selling and serving alcoholic beverages on the owners and managers of those establishments. The City intends to simplify alcoholic beverage management by not duplicating state regulations and limit the city's regulatory interests to business licensing and to land use concerns.

### **6A-05-030. Definitions.**

The definitions set forth herein are intended to follow and be consistent with similar definitions set forth in the Act. To the extent used in this Chapter, all other terms set forth in the Act are hereby adopted by reference as if more particularly set forth herein.

(a) "Act" refers to The Alcoholic Beverage Control Act, Utah Code Annotated sections 32B-1-101 et seq., as amended from time to time

(b) “Alcoholic Beverage” means “beer” or “liquor,” as such terms are more particularly defined in this Section.

(c) “Beer” means a product that contains at least .5% of alcohol by volume, but not more than 5% of alcohol by volume or 4% by weight; and is obtained by fermentation, infusion, or decoction of malted grain. Beer may or may not contain hops or other vegetable products. Beer includes a product that contains alcohol in the percentages described herein and is referred to as beer, ale, porter, stout, lager, or a malt or malted beverage. Beer does not include a “flavored malt beverage” as more particularly defined in this Section.

(d) “Commission” means the Utah Alcoholic Beverage Services Commission.

(e) “Community location” means a public or private school, a church, a public library, a public playground, or a public park.

(f) “Liquor” means a liquid that is alcohol, an alcoholic, spirituous, vinous, fermented, malt, or other liquid; a combination of liquids, a part of which is spirituous, vinous, or fermented; or other drink or drinkable liquid; and contains at least .5% alcohol by volume and is suitable to use for beverage purposes. Liquor includes “heavy beer,” “wine,” and a “flavored malt beverage,” but does not include “beer,” as such terms are defined in this Section.

(g) “Person” means an individual, partnership, firm, corporation, limited liability company, association, business trust, or other form of business enterprise, including a receiver or trustee, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed by the context.

(h) “Trail” means a linear corridor of property which is planned as part of the Parks and Trails Master Plan or recognized as a City facility by the Parks and Trails Master Plan, although not classified as a park, and maintained by the City for the purpose of recreation and alternate transportation as a part of the transportation system. A trail is not a park as such term is used in the definition of “community location” as more particularly set forth herein.

(i) “Wine” means an alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, plants, honey, or milk, or other like substances, whether or not another ingredient is added. Wine is considered “liquor” for purposes of this Chapter.

#### **6A-05-040. State Issued Alcohol License Required.**

No establishment may serve alcoholic beverages within the city without the

appropriate valid license or permit issued by the Utah Alcoholic Beverage Services Commission pursuant to the Act.

**6A-05-050. Business License Required.**

Any establishment that wants to sell alcoholic beverages must have or obtain a business license from the City, subject to the general requirements set forth in chapter 1 of this title and the requirements included in this chapter.

**6A-05-060. Temporary Special Event.**

No alcohol may be sold, offered for sale, or furnished at retail for on-premise consumption at a temporary event without the appropriate valid license or permit issued by the Utah Alcoholic Beverage Services Commission pursuant to the Act, which will authorize the storage, service, and consumption of alcohol at such event.

Any temporary event must first obtain a temporary business license from the City, subject to the general requirements set forth in chapter 1 of this title and the requirements included in this chapter.

**6A-05-070. Local Consent - Limited.**

(a) Local Consent Form. The City Council shall have a public vote to grant or deny local consent. Upon an affirmative, simple majority vote, the authorized individual shall sign the Local Consent form for State licensing of any establishment wishing to sell alcoholic beverages, whether temporary or permanent.

(b) Business License Required. Local Consent shall only be granted if the applicant has the appropriate city business license.

(c) No Other Local Consent. The City shall not grant local consent for any State issued liquor licenses within the City other than for the following as defined in the Act (Utah Code §32B-1-102):

- (1) Full Service Restaurant License;
- (2) Limited Service Restaurant License;
- (3) Beer Only Restaurant License;
- (4) Bar Establishment License; and a
- (5) Temporary Event Permit.



(e) Compliance. Any person or licensee granted local consent under the terms and provisions of this Chapter shall comply with all applicable provisions of the Act.

**6A-05-080 Prohibition of Alcohol on Community Location**

It is unlawful for any person to consume any alcoholic beverage, or to have in his or her possession any alcoholic beverage within any Community Location, including any Trails, unless otherwise permitted by state permit or license.

**6A-05-090. State Offenses.**

To the extent applicable to the retail sale of beer within the City and subject to the jurisdiction of the City, the offenses set forth in Title 32B, Chapter 4, of the Utah Code, as amended, known as the Criminal Offenses and Procedures Act, are hereby adopted by reference as if fully set forth herein.

**6A-05-100. Violations.**

Unless otherwise expressly provided in this Chapter or by State law, any violations of this Chapter be deemed a class B misdemeanor. Any violations of this Chapter shall be subject to criminal and/or civil penalties and procedures. In addition to the criminal penalties, upon a defendant's conviction of any offense defined in this Chapter, the court may order restitution, defense costs, and other applicable criminal penalties as set forth in *Utah Code Ann.* § 32B-4-305, as amended. In addition to criminal or civil penalties, any violations of this Chapter shall also be subject to administrative enforcement action such as suspension, probation or revocation of beer license, suspension, probation, or revocation of business license.

**6A-05-110. Severability.**

If a provision of this Chapter or the application of a provision to a person or circumstance is held invalid, the remainder of this Chapter shall be given effect without the invalid provision or application. The provisions of this Chapter are severable.

## **CHAPTER 6:           SEXUALLY ORIENTED BUSINESSES**

- 6A-06-010. Title for Citation.**
- 6A-06-020. Purpose and Findings.**
- 6A-06-030. Application of Provisions.**
- 6A-06-040. Definitions.**
- 6A-06-050. Obscenity and Lewdness - Statutory Provisions.**
- 6A-06-060. Location and Zoning Restrictions.**
- 6A-06-070. Business License Required.**
- 6A-06-080. Business Categories - Number of Licenses.**
- 6A-06-090. License - Fees.**
- 6A-06-100. License - Bond.**
- 6A-06-110. License - Premises Location and Name.**
- 6A-06-120. Issuance of License.**
- 6A-06-130. Inspection**
- 6A-06-140. Expiration of License; Denial of Renewal.**
- 6A-06-150. Suspension.**
- 6A-06-160. Revocation.**
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- 6A-06-190. License - Display.**
- 6A-06-200. License - Statement in Advertisements.**
- 6A-06-210. Regulations and Unlawful Activities.**
- 6A-06-220. Outcall Services - Operation Requirements.**
- 6A-06-230. Additional Regulations for Adult Motels.**
- 6A-06-240. Adult Business - Design of Premises.**
- 6A-06-250. Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos.**
- 6A-06-260. Semi-Nude Entertainment Business - Design of Premises.**
- 6A-06-270. Semi-Nude Entertainment Business - Location Restriction.**
- 6A-06-280. Semi-Nude Dancing Agencies.**
- 6A-06-290. Performers - Prohibited Activities.**
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- 6A-06-310. Existing Businesses - Compliance Time Limits.**
- 6A-06-320. Exterior Portions of Sexually Oriented Businesses.**
- 6A-06-330. Signage.**
- 6A-06-340. Massages or Baths Administered by Person of Opposite Sex.**
- 6A-06-350. Hours of Operation.**
- 6A-06-360. Exemptions.**
- 6A-06-370. Notices.**
- 6A-06-380. Injunction.**
- 6A-06-390. Severability.**

**6A-06-010. Title for Citation.**

The provisions codified in this Chapter shall be known and may be referred to as the “Sexually Oriented Business and Employee Licensing Ordinance.”

**6A-06-020. Purpose and Findings.**

(a) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not 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 materials.

(b) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the City Council, and on findings incorporated in the cases of *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *Iacobucci v. City of Newport, Ky*, 479 U.S. 92 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *California v. LaRue*, 409 U.S. 109 (1972); *United States v. O'Brien*, 391 U.S. 367 (1968); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir.1997); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir.1986); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir.1995); *South Florida Free Beaches, Inc. v. City of Miami*, 734 F.2d 608 (11th Cir.1984); and *N.W. Enterprises v. City of Houston*, 27 F.Supp. 2d 754 (S.D. Tex.1998), as well as studies conducted in other cities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group On the Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the City Council finds that:

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

(2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at 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 booths and/or cubicles encourages such activities, which creates unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(6) At least 50 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 B, Non A, Non B amebiasis, salmonella infections, and shigella infections.

(7) As of June, 2001, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 793,025.

(8) The total number of cases of genital chlamydia trachomatis infections in the United States reported in 2000 was 702,093, a 6% increase over the year 1999.

(9) The total number of cases of early (less than one year) syphilis in the United States reported during the twelve year period 1996-2000 was 212,672.

(10) The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,730,911 cases reported during the period 1996-2000.

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

(12) According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(13) 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 operators of the facilities to self-regulate those activities and maintain those facilities.

(14) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films.

(15) Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity.

(16) Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use.

(17) Alcohol consumption in adult establishments increases the likelihood of crime, illegal drug use, and illegal sexual activity, and encourages undesirable behavior that is not in the interest of the public health, safety, and welfare.

(18) The findings noted in paragraphs numbered (1) through (17) raise substantial governmental concerns.

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

(20) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of sexually oriented businesses. Further, such licensing procedure will place a heretofore non-existent incentive on operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the 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.

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

(22) 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 criminal activity.

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

(24) The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this ordinance.

(25) The barring of such individuals from operation or employment in sexually oriented businesses for a period of five (5) years for a previous felony conviction serves as a deterrent to further criminal conduct, and prevents conduct which leads to the transmission of sexually transmitted diseases.

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

(27) When more than one sexually oriented business use occupies the same location or business address, the secondary effects caused by such businesses are increased. Secondary effects are eliminated or controlled to a greater degree when only a single sexually oriented business use is allowed to occupy the same location.

#### **6A-06-030. Application of Provisions.**

This Chapter imposes regulatory standards and license requirements on certain business activities which are characterized as sexually oriented businesses, and certain employees of those businesses characterized as sexually oriented business employees. Except where the context or specific provisions require, this Chapter does not supersede or nullify any other related ordinances, including but not limited to those codified in other chapters and provisions of the Business Regulations of the City.

#### **6A-06-040. Definitions.**

For the purpose of this Chapter, the following words shall have the following meanings:

(a) "Adult Arcade" means 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, videos, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(b) "Adult Bookstore" or "Adult Video Store" means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, electronic media or other visual representations that are characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas"; or

(2) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities." A principal business purpose exists if materials offered for sale or rental depicting or describing "specified sexual activities" or "specified anatomical areas" generate 20% or more of the business's income, or account for 20% or more of inventory, or occupy 20% or more of total floor space. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult bookstore" or "adult video store." Such other business purposes will not serve to exempt such commercial establishments from being categorized as an "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(3) "Adult Cabaret" means a nightclub, bar, restaurant, café or similar commercial establishment that regularly, commonly, habitually, or consistently features:

(i) Persons who appear in a state of nudity or semi-nudity; or

(ii) Live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(iii) Films, motion pictures, video cassettes, slides, photographic reproductions, or other image producing devices that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

(iv) persons who engage in "exotic" or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

(c) "Adult Motel" means a hotel, motel or similar commercial establishment

that:

(1) Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or

(2) Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.

(d) "Adult Motion Picture Theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(e) "Adult Theater" means a theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(f) "Director" means the Chief of Police and such employee(s) of the City Police Department as he or she may designate to perform the duties of the Director under this ordinance.

(g) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

(h) "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(i) "Escort Agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes



for a fee, tip, or other consideration.

(j) “Establishment” means and includes any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) The additions of any sexually oriented business to any other existing sexually oriented business; or

(4) The relocation of any sexually oriented business; or

(5) A sexually oriented business or premises on which the sexually oriented business is located.

(k) “Licensed Day-Care Center” means a facility licensed by the State of Utah, whether situated within the City or not, that provides care, training, education, custody, treatment or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

(l) “Licensee” means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

(m) “Live Theatrical Performance” means a play, skit, opera, ballet, concert, comedy, or musical drama.

(n) “Nude Model Studio” means any place where a person who appears in a state of nudity or displays “specified anatomical areas” is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

(o) “Nudity” or a “State of Nudity” means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

(p) “Patron” means any person who contracts with or employs any escort services or escort or the customer of any business licensed pursuant to this Chapter.

(q) “Person” means an individual, proprietorship, partnership, corporation,

association, or other legal entity.

(r) "Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to Section 6-06-070 of this ordinance.

(s) "Semi-nude" means a state of dress in which opaque clothing covers no more than the female breast below a point immediately above the top of the areola; and the male or female genitals, pubic region, and anus shall be fully covered by an opaque covering no narrower than four inches wide in the front and five inches wide in the back, which shall not taper to less than one inch wide at the narrowest point.

(t) "Semi-nude Dancing Agency" means any person, agency, firm, corporation, partnership, or any other entity or individual which furnishes, books, or otherwise engages or offers to furnish, book, or otherwise engage the service of a professional dancer licensed pursuant to this Chapter for performance or appearance at a business licensed for adult theaters.

(u) "Semi-nude Entertainment Business" means a business, including adult theater, where employees perform or appear in the presence of patrons of the business in a state of semi-nudity. A business shall also be presumed to be a semi-nude entertainment business if the business holds itself out as such a business.

(v) "Sexual Encounter Center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(2) Activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

A principal business purpose exists if the services offered are intended to generate business income.

(w) "Sexually Oriented Business" means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center or semi-nude entertainment business.

(x) "Sexually Oriented Business Employees" means those employees who work on the premises of a sexually oriented business in activities related to the sexually

oriented portion of the business. This includes all managing employees, dancers, escorts, models, and other similar employees, whether or not hired as employees, agents, or as independent contractors. Sexually Oriented Business Employees shall not include individuals whose work is unrelated to the sexually oriented portion of the business, such as janitors, bookkeepers, and similar employees. Sexually oriented business employees shall not include cooks, serving persons, and similar employees, except where they may be managers or supervisors of the business. All persons making outcall meetings under this Chapter, including escorts, models, guards, escort runners, drivers, chauffeurs, and other similar employees, shall be considered sexually oriented business employees.

(y) "Specified Anatomical Areas" means:

(1) The human male genitals in a discernibly turgid state, even if fully and opaquely covered;

(2) Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

(z) "Specified Criminal Activity" means any of the following offenses:

(1) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states, or other countries;

(2) For which:

(i) Fewer than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(ii) Fewer than five (5) 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 felony offense;

(iii) Fewer than five (5) years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period;

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

(aa) "Specified Sexual Activities" means:

(1) Acts of:

- (i) Masturbation,
- (ii) Human sexual intercourse,
- (iii) Sexual copulation between a person and a beast,
- (iv) Fellatio,
- (v) Cunnilingus,
- (vi) Bestiality,
- (vii) Pederasty,
- (viii) Buggery, or
- (ix) Any anal copulation between a human male and another

human male, human female, or beast;

(2) Manipulating, caressing or fondling by any person of:

- (i) The genitals of a human,
- (ii) The pubic area of a human,
- (iii) The uncovered female nipple and areola;

(3) 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.

(bb) "Substantial Enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas existed on January 1, 2004.

(cc) "Transfer of Ownership or Control" of a sexually oriented business means and includes any of the following:

(1) The sale, lease, or sublease of the business;

(2) The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device that 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.

### **6A-06-050. Obscenity and Lewdness - Statutory Provisions.**

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 the provisions of Title 14 of this Code, "lewdness" as defined in this Code, or other applicable federal or State statutes prohibiting obscenity.

### **6A-06-060. Location and Zoning Restrictions.**

It is unlawful for any sexually oriented business to do business at any location within the City not zoned for such business. Sexually oriented businesses licensed as adult business or semi-nude entertainment businesses pursuant to this Chapter shall only be allowed in areas where they are specifically designated as permitted or conditional uses pursuant to Title 11 of the Fruit Heights City Code.

### **6A-06-070. Business License Required.**

(a) It shall be unlawful:

(1) For any person to operate a sexually oriented business without a valid sexually oriented business operator's license ("operator's license") issued by the Director pursuant to this ordinance; or

(2) For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license ("employee license") issued to such employee by the Director pursuant to this ordinance; or

(3) For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the Director pursuant to this ordinance.

(4) It shall be a defense to subsections (2) and (3) of this Section if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.

(b) An application for a sexually oriented business operator's license must be made on a form provided by the City. The application must be accompanied by a sketch or a 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 must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Prior to issuance of an operator's license, the premises must be inspected by the health department,

building department, and zoning department. Prior inspection by the health department and building department shall be required only when the provisions set forth in Sections 6-06-250 and/or 6-06-240 are applicable.

(c) All applicants for a license must be qualified according to the provisions of this ordinance. The application may request, and the applicant shall provide, such information reasonably necessary (including fingerprints) to enable the City to determine whether the applicant meets the qualifications established under this ordinance. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

(d) If a person who wishes to own or operate a sexually oriented business is an individual, he or she must sign the application for an operator's license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10%) percent or greater interest in the business must sign the application for an operator's license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, all corporate officers and directors must sign the application for an operator's license as applicant.

(e) Applications for an operator's license, whether original or renewal, must be made to the Director by the intended operator of the enterprise. Applications must be submitted to the office of the Director or the Director's designee during regular working hours. Application forms shall be supplied by the Director. The following information shall be provided on the application form:

(1) The name, street address (and mailing address if different) of the applicant(s);

(2) The applicant's Social Security number and/or his/her state or federally issued tax identification number;

(3) The name under which the establishment is to be operated and a general description of the services to be provided. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state: 1) the sexually oriented business's fictitious name; and 2) submit the required registration documents;

(4) Whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined herein, and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;

(5) Whether the applicant has had a previous license under this ordinance or other similar sexually oriented business ordinance from another city or county denied, suspended or revoked, including the name and location of the

sexually oriented business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;

(6) Whether the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses;

(7) The single classification of license, as found in Section 6-06-080, for which the applicant is filing;

(8) The telephone number of the establishment;

(9) The address and legal description of the tract of land on which the establishment is to be located;

(10) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;

(11) If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same;

(12) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section 6-06-250 hereunder.

(f) Each application for an operator's license shall be accompanied by the following:

(1) Payment of the application fee in full;

(2) If the establishment is a State of Utah corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

(4) If the establishment is a limited partnership or limited liability company formed under the laws of the State of Utah, a certified copy of the certificate of limited partnership or limited liability company, together with all amendments thereto;

(5) If the establishment is a foreign limited partnership or limited liability company, a certified copy of the certificate of limited partnership or limited liability company and the qualification documents, together with all amendments thereto;

(6) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;

(7) If the persons identified as the fee owner(s) of the tract of land in item (6) is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually oriented business to have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business;

(8) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the property to be certified; and the property lines of any established religious institution/synagogue, school, public park or recreation area within 1,000 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted;

(9) Any of items (2) through (8) above shall not be required for a renewal application if the applicant states that the documents previously furnished to the Director with the original application or previous renewals thereof remain correct and current.

(g) Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the Director by the person to whom the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full.



Application forms shall be supplied by the Director. Applications must be submitted to the office of the Director or the Director's designee during regular working hours. Each applicant shall be required to give the following information on the application form:

- (1) The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;
- (2) Age, and date and place of birth;
- (3) Height, weight, hair color, and eye color;
- (4) Present residence address and telephone number;
- (5) Present business address and telephone number;
- (6) Date, issuing state, and number of photo driver's license, or other state issued identification card information;
- (7) Social Security Number; and
- (8) Proof that the individual is at least eighteen (18) years old.

The personal information provided in this subsection shall be confidential, and shall not be disclosed to the public except to the extent required by state or federal law.

(h) Attached to the application form for any license under this ordinance shall be the following:

- (1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Police Department. Any fees for the photographs and fingerprints shall be paid by the applicant.
- (2) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state, or country, has ever had any license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
- (3) A statement whether the applicant has, within the past five (5) years, been convicted, or is awaiting trial on pending charges, of a "specified

criminal activity” as defined herein and, if so, the “specified criminal activity” involved, the date, place and jurisdiction of each.

(i) Every application for a license under this ordinance shall contain a statement under oath that:

(1) The applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is true and correct; and

(2) The applicant has read the provisions of this Chapter.

(j) A separate application and operator's license shall be required for each sexually oriented business classification as set forth in Section 6-06-080.

(k) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business operator or employee license.

**6A-06-080. Business Categories - Number of Licenses.**

(a) It is unlawful for any business premises to operate or be licensed for more than one category of sexually oriented business, except that a business may have a license for both outcall services and a semi-nude dancing agency on the same premises.

(b) The categories of sexually oriented businesses are:

- (1) Outcall services;
- (2) Adult businesses;
- (3) Semi-nude entertainment businesses;
- (4) Semi-nude dancing agency.

**6A-06-090. License - Fees.**

Each applicant for a sexually oriented business or employee license shall be required to pay regulatory license fees as set forth in the Consolidated Fee Schedule.

**6A-06-100. License - Bond.**

Each applicant for a sexually oriented business license shall post, with the Director, a cash or corporate surety bond payable to Fruit Heights City in the amount of two thousand dollars. Any fines assessed against the business, officers, or managers for violations of City ordinances shall be taken from this bond if not paid in cash within ten days after notice of the fine, unless an appeal is filed as provided by this Chapter. In the event the funds are drawn against the cash or surety bond to pay such fines, the bond shall be replenished to two thousand dollars within fifteen days of the date of notice of any draw against it.

**6A-06-110. License - Premises Location and Name.**

(a) It is unlawful to conduct business under a license issued pursuant to this Chapter at any location other than the licensed premises. Any location to which telephone calls are automatically forwarded by such business shall require a separate license.

(b) It is unlawful for any sexually oriented business to do business in the City under any name other than the business name specified in the application.

**6A-06-120. Issuance of License.**

(a) Upon the filing of an application for a sexually oriented business employee license, the Director shall issue a temporary license to said applicant. The application shall then be referred to the appropriate City departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of the completed application. After the investigation, the Director shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(2) The applicant is under the age of eighteen (18) years; or

(3) The applicant has been convicted of a "specified criminal activity" as defined herein; or

(4) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule, or regulation, or prohibited by a particular provision of this ordinance; or

(5) The applicant has had a sexually oriented business employee license revoked by the City within two (2) years of the date of the current application.

If the sexually oriented business employee license is denied, the temporary license previously issued is immediately rendered null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as forth in subsection (i) of this Section.

(b) A license issued pursuant to subsection (a) of this Section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. While engaged in employment or performing services on the sexually oriented business premises, an employee shall, at all times, possess the license in such manner as to be available for immediate inspection upon lawful request.

(c) A license issued pursuant to subsection (a) of this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the Director that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 6-6-090. Non-renewal of a license shall be subject to appeal as set forth in subsection (i) of this Section.

(d) If application is made for a sexually oriented business operator's license, the Director shall approve or deny issuance of the license within thirty (30) days of receipt of the completed application. The Director shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(2) An applicant is under the age of eighteen (18) years;

(3) An applicant has been denied a license by the City to operate a sexually oriented business within the preceding twelve (12) months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;

(4) An applicant is overdue in payment to the City for taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to the sexually oriented business for which license is sought, or the property on which the sexually oriented business is located or will be located;

(5) An applicant has been convicted of a "specified criminal activity" as

defined herein;

(6) The premises to be used for the sexually oriented business have not been approved by the health department, building department, and zoning department as being in compliance with applicable laws and ordinances, if such approval is required under other sections of this ordinance;

(7) The license fee required under this ordinance has not been paid;

(8) An applicant of the proposed establishment is in violation of or is not in compliance with one or more of the provisions of this ordinance.

(e) A license issued pursuant to subsection (d) of this Section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the business classification as set forth in Section 6-06-080 for which the license is issued. The 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.

(f) If so required under other sections of this ordinance, the health department, building department, and zoning department shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the Director. The certification shall be promptly presented to the Director. Failure of an appropriate department to timely certify its inspection shall not be grounds for refusing to issue a license within the mandatory time period prescribed in subsection (d). In the event the Director fails to render a decision on the application within the time specified herein, the operator shall be permitted to commence operation of the business.

(g) A sexually oriented business license shall issue for only one business classification, as set forth in Section 6-06-080.

(h) In the event that the Director determines that an applicant is not eligible for a sexually oriented operator's license, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the receipt of the completed application by the Director, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this ordinance. Notice of denial shall be sent to the applicant in accordance with the notice provisions set forth in Section 6-06-370.

(i) An applicant may appeal the decision of the Director regarding a denial to the City Council by filing a written notice of appeal with the City Recorder within ten (10) days from receipt of the notice of denial. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may, within fifteen (15) days from the date of

filing of the notice of appeal, submit a responsive staff report to the City Council. After reviewing such report, as well as the Director's written decision, if any, and exhibits submitted to the Director, the City Council shall vote either to uphold or overrule the Director's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the City Recorder receives the notice of appeal. The status quo immediately prior to denial of the license shall be maintained during the pendency of the appeal. Judicial review of a denial by the Director and City Council may be made pursuant to Section 6-06-170 of this ordinance. The status quo shall continue to be maintained during the pendency of judicial review.

(j) A license issued pursuant to this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the Director that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 6-06-090.

#### **6A-06-130. Inspection.**

The City shall regularly inspect the premises of the sexually oriented business in order to ensure compliance with the provisions of this ordinance. An applicant or licensee shall permit representatives of the Police Department and/or Health Department to inspect the premises at any time the establishment is open for business. Such inspection shall be limited to visual assessment of the activities conducted in areas to which patrons have access or are allowed access; to requests for inspection of the licenses required under this ordinance; and to requests for identification of those individuals who reasonably appear to be under the age of 18.

#### **6A-06-140. Expiration of License; Denial of Renewal.**

(a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 6-06-070. Application for renewal should be made at least thirty (30) days before the expiration date. When application is made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

(b) When the Director denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. Notwithstanding the provisions of this section, in the event a licensee appeals the non-renewal of a license, the status quo immediately prior to non-renewal shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits as set forth in Section 6-06-170.

#### **6A-06-150. Suspension.**

The Director shall suspend a license for a period not to exceed thirty (30) days if

he or she determines that licensee or an employee of licensee has:

- (a) Violated or is not in compliance with any section of this ordinance;
- (b) Operated or performed services in a sexually oriented business while intoxicated by the use of alcoholic beverages or controlled substances;
- (c) Refused to allow prompt inspection of the sexually oriented business premises as authorized by this ordinance;
- (d) With knowledge, permitted gambling by any person on the sexually oriented business premises.

A licensee may appeal the suspension of a license to the City Council in accordance with the procedure set forth in Section 6-06-120. Notwithstanding any other provisions of this section, in the event a licensee appeals the suspension of a license, the status quo immediately prior to suspension shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits as set forth in Section 6-04-170.

**6A-06-160. Revocation.**

- (a) The Director shall revoke a license if a cause of suspension in Section 6-06-150 occurs and the license has been suspended within the proceeding twelve (12) months.
  - (b) The Director shall revoke a license if he or she determines that:
    - (1) A licensee gave materially false or misleading information in the material submitted during the application process;
    - (2) A licensee was convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;
    - (3) A licensee has, with knowledge, permitted the possession, use, or sale of controlled substances on the premises;
    - (4) A licensee has, with knowledge, permitted the sale, use, or consumption of alcoholic beverages on the premises;
    - (5) A licensee has, with knowledge, permitted prostitution on the premises;
    - (6) A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;

(7) A licensee has, with knowledge, permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises;

(8) A licensee is delinquent in payment to the City or State for any taxes, fees, fines, or penalties relating to the sexually oriented business or the premises thereon;

(9) A licensee has, with knowledge, permitted a person under eighteen (18) years of age to enter or remain in the establishment; or

(10) A licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee of the establishment;

(11) A licensee has, with knowledge, permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business.

(c) When the Director revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a license for one (1) year from the date revocation became effective. A licensee may appeal the revocation of a license to the City Council in accordance with the procedure set forth in Section 6-06-120. Notwithstanding any other provision of this Section, in the event the licensee appeals the revocation of a license, the status quo immediately prior to revocation shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits as set forth in Section 6-06-170.

#### **6A-06-170. Judicial Review.**

Within thirty (30) days of a denial of an initial or renewal application by the Director and City Council, or suspension or revocation of a license by the Director, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

#### **6A-06-180. No Transfer of License.**

(a) A licensee shall not transfer his/her employee 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 application and set forth in the operator's license.

(b) An operator's license shall not be transferable from one location to another.

#### **6A-06-190. License - Display.**



It is unlawful for any sexually-oriented business location within the boundaries of the City to fail to display the license granted pursuant to this Chapter in a prominent location within the business premises. It is unlawful for any individual licensed pursuant to this Chapter to fail to carry their employee license on their person while engaged in licensed activities within the corporate boundaries of the City. If the individual is semi-nude, such license shall be visibly displayed in the same room in which the individual is performing. Individuals or businesses engaged in licensed activities within the corporate boundaries of the City violate the law if they fail to show the appropriate licenses when requested to do so by police, City licensing officials, health officials or other enforcement personnel.

**6A-06-200. License - Statement in Advertisements.**

It is unlawful for any advertisement by the sexually oriented business or employee to fail to state that the business or employee is licensed by the City, and such advertisement shall include the City license number.

**6A-06-210. Regulations and Unlawful Activities.**

It is unlawful for any sexually oriented business or sexually oriented business employee to:

(a) Allow persons under the age of eighteen years on the licensed premises, except that in adult businesses which exclude minors from less than all of the business premises, minors shall not be permitted in excluded areas;

(b) Allow, offer, or agree to conduct any outcall business with persons under the age of eighteen years;

(c) To allow, offer, or agree to allow any alcohol to be stored, used, or consumed on or in the licensed premises;

(d) Allow the outside door to the premises to be locked while any customer is in the premises;

(e) Allow, offer, or agree to gambling on the licensed premises;

(f) Allow, offer, or agree to any sexually oriented business employee touching any patron or customer; except that outcall employees and customers may touch, except that any touching of specified anatomical area, whether clothed or unclothed, is prohibited;

(g) Allow, offer, or agree to illegal possession, use, sale, or distribution of controlled substances on the licensed premises;

(h) Allow sexually oriented business employees to possess, use, sell, or

distribute controlled substances while engaged in the activities of the business;

(i) Allow, offer, or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or committing activities harmful to a minor to occur on the licensed premises or, in the event of an outcall employee or business, the outcall employee committing, offering, or agreeing to commit prostitution, attempting to commit prostitution, soliciting prostitution, soliciting a minor, or committing activities harmful to a minor;

(j) Allow, offer, commit, or agree to any sex act as validly defined by City ordinances or State statute in the presence of any customer or patron;

(k) Allow, offer, or agree to any employee appearing before any customer or patron in a state of nudity;

(l) Allow, offer, or agree to allow a patron or customer to masturbate in the presence of a sexually oriented business employee or on the premises of a sexually oriented business.

(m) Appear in a state of nudity before a patron on the premises of a sexually oriented business.

#### **6A-06-220. Outcall Services - Operation Requirements.**

It is unlawful for any business or employee that provides outcall services contracted for in the City to fail to comply with the following requirements:

(a) All businesses licensed to provide outcall services pursuant to this Chapter shall provide to each patron a written contract in receipt of pecuniary compensation for services. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount such services shall cost the patron, and any special terms or conditions relating to the services to be performed. The contract need not include the name of the patron. The business licensee shall keep and maintain a copy of each written contract entered into pursuant to this Section for a period not less than one year from the date of provision of services thereunder. The contracts shall be numbered and entered into a register listing the contract number, date, names of all employees involved in the contract, and pecuniary compensation paid.

(b) All outcall businesses licensed pursuant to this Chapter shall maintain an open office or telephone at which the licensee or licensee's designated agent may be personally contacted during all hours outcall employees are working. The address and phone number of the license location shall appear and be included in all patron contracts and published advertisements. For outcall businesses whose premises are licensed within the corporate limits of the City, private rooms or booths where the patrons may meet with the outcall employee shall not be provided at the open office or

any other location owned or leased by the service, nor shall patrons meet outcall employees at the business premises.

(c) Outcall services shall not advertise in such a manner that would lead a reasonably prudent person to conclude that specified sexual activities would be performed by the outcall employee.

(d) All employees of outcall services who provide outcall services within the City shall be licensed in accordance with this Chapter, regardless of the primary location of the business.

**6A-06-230. Additional Regulations for Adult Motels.**

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this Chapter.

(b) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(c) For purposes of subsection (b) of this Section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(d) Violation of subsection (b) of this Section shall constitute a misdemeanor.

**6A-06-240. Adult Business - Design of Premises.**

(a) In addition to the general requirements of disclosure for a sexually oriented business, any applicant for a license as an adult business shall also submit a diagram, drawn to scale, of the premises of the license. The design and construction, prior to granting a license or opening for business, shall conform to the following:

(1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms.

(2) Restrooms may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person being allowed in the restroom per stall, and only one person in any stall at a time, and requiring that patrons shall not be allowed access to manager's station areas.

(3) For businesses which exclude minors from the entire premises, all windows, doors and other apertures to the premises shall be darkened or otherwise constructed to prevent anyone outside the premises from seeing the inside of the premises. Businesses which exclude minors from less than all of the premises shall be designed and constructed so that minors may not see into the area from which they are excluded.

(4) The diagram required shall not necessarily be a professional engineer's or architect's blueprint; however, the diagram must show marked internal dimensions, all overhead lighting fixtures, and ratings for illumination capacity.

(b) It shall be the duty of the licensee and the licensee's employees to insure that the views from the manager's station in subsection (1) of this Section remain unobstructed by any doors, walls, merchandise, display racks, or any other materials at all times that any patron is present within the premises, and to insure 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.

(c) The premises shall at all times be equipped and operated 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 footcandle, measured at floor level. It shall be the duty of the licensee and the licensee's employees present on the premises to insure that the illumination described above is maintained at all times that any patron is present within the premises.

#### **6A-06-250. Regulations Pertaining to Exhibition of Sexually Explicit Films and 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, a film, video cassette, or other video reproduction, that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a

designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The Director 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 said diagram 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 may be made without the prior approval of the Director or his designee.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two 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 the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (5) of this Section remains unobstructed at all times. No doors, walls, partitions, curtains, merchandise, display racks, or other object(s) shall obstruct from view of the manager's station any portion of the premises to which patrons have access. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to subsection (1) of this Section.

(7) The 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 five (5) foot-candle as measured at the floor level.

(8) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present

in the premises.

(9) No viewing room or booth may be occupied by more than one person at any time.

(10) No opening of any kind shall exist between viewing rooms or booths.

(11) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no more than one person at a time occupies a viewing booths or rooms, and to ensure that no person attempts to make an opening of any kind between the viewing booths or rooms.

(12) The operator of the sexually oriented business shall, each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

(b) A person having a duty under Subsections (1) through (14) of this Section is in violation of this Chapter if he/she, with knowledge, fails to fulfill that duty.

**6A-06-260. Semi-Nude Entertainment Business - Design of Premises.**

(a) It is unlawful for business premises licensed for semi-nude entertainment to:

(1) Permit a bed, sofa, mattress, or similar item in any room on the premises, except that a sofa may be placed in a reception room open to the public or in any office to which patrons are not admitted, and except that in an adult theater such items may be on the stage as part of a performance;

(2) Allow any door on any room used for the business to be lockable from the inside. Doors to an office to which patrons shall not be admitted, outside doors, and restroom doors are exempt from this requirement;

(3) Provide any room in which the employee or employees and the

patron or patrons are alone together without a separation by a solid physical barrier at least three feet high and six inches wide. The patron or patrons shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier.

(b) Adult theaters shall also require that the performance area shall be separated from the patrons by a minimum of three feet, which separation shall be delineated by a physical barrier at least three feet high.

**6A-06-270. Semi-Nude Entertainment Business - Location Restriction.**

It is unlawful for any business licensed for semi-nude entertainment to be located within five hundred (500) feet of a business licensed for the sale or consumption of alcohol.

**6A-06-280. Semi-Nude Dancing Agencies.**

(a) It is unlawful for any individual or entity to furnish, book, or otherwise engage the services of a professional dancer, model, or performer to appear in a state of semi-nudity for pecuniary compensation in or for any semi-nude entertainment business or adult theater licensed pursuant to this Chapter, unless such engaging individual or entity is licensed pursuant to this Chapter.

(b) It is unlawful for any individual or entity to furnish, book, or otherwise engage or permit any person to perform as a professional dancer, model, or performer in a state of semi-nudity or nudity, either gratuitously or for compensation, in or for any business licensed pursuant to this Chapter, unless such dancer, model or performer is licensed pursuant to this Chapter.

**6A-06-290. Performers - Prohibited Activities.**

It is unlawful for any professional dancer, model, or performer, while performing in any business licensed pursuant to this Chapter, to:

- (a) Appear before any customer or patron in a state of nudity;
- (b) Touch in any manner any other person;
- (c) Throw any object or clothing off the stage area;
- (d) Accept any money, drink, or any other object directly from any person; or
- (e) Allow another person to touch such performer or to place any money or object on the performer or within the costume or person of the performer; or
- (f) Place anything within the costume or adjust or move the costume while

performing so as to render the performer in a state of nudity.

**6A-06-300. Patrons - Prohibited Activities.**

It is unlawful for any person or any patron of any business to touch in any manner any performer; to place any money or object on or within the costume or person of any performer; or to give or offer to give any such performer any drinks, money, or object while such performer is performing; except that money may be placed on the stage, which shall not be picked up by the performer except by hand.

**6A-06-310. Existing Businesses - Compliance Time Limits.**

The provisions of this Chapter shall be applicable to all persons and businesses described herein, whether the herein-described activities were established before or after the effective date of the provisions codified in this Chapter and regardless of whether such persons and businesses are currently licensed to do business in the City.

(a) All such persons and businesses requiring outcall service licenses shall have forty-five days (45) from the effective date of the ordinance codified in this Chapter, or until their current license expires, whichever is first in time, to comply with the provisions of this Chapter.

(b) All semi-nude dancing agency licensees shall have seventy-five (75) days from the effective date of the ordinance codified in this Chapter, or until their license must be renewed, whichever is first, to comply with the provisions of this Chapter.

(c) All adult businesses and semi-nude entertainment businesses that are not covered under subsections (a) and (b) shall have one hundred thirty-five (135) days from the effective date of the ordinance codified in this Chapter, or until their current license must be renewed, whichever is first, to comply with the provisions of this Chapter.

**6A-06-320. Exterior Portions of Sexually Oriented Businesses.**

(a) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(b) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this ordinance.

(c) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other



than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

(1) The establishment is a part of a commercial multi-unit center; and

(2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(d) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

### **6A-06-330. Signage.**

(a) In addition to applicable City ordinances regarding signs, the following sign regulations shall apply to all sexually oriented businesses within the City. In the event of conflict between the provisions of this Section and the provisions of the City sign ordinances, the more restrictive provisions shall apply. Notwithstanding any other city ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(b) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

(1) Not contain any flashing lights;

(2) Be a flat plane, rectangular in shape;

(3) Not exceed seventy-five (75) square feet in area; and

(4) Not exceed ten (10) feet in height or ten (10) feet in length.

(c) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

(d) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

(e) Secondary signs shall have only one (1) display surface. Such display surface shall:

- (1) Be a flat plane, rectangular in shape;
- (2) Not exceed twenty (20) square feet in area;
- (3) Not exceed five (5) feet in height and four (4) feet in width; and
- (4) Be affixed or attached to any wall or door of the enterprise.

(f) The provisions of item (1) of subsection (b) and subsections (c) and (d) shall also apply to secondary signs.

**6A-06-340. Massages or Baths Administered by Person of Opposite Sex.**

It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex.

**6A-06-350. Hours of Operation.**

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) a.m. and eleven o'clock (11:00) a.m. on weekdays and Saturdays. No sexually oriented business shall open for business or remain open for business on Sunday or any legal holiday recognized by the State of Utah.

**6A-06-360. Exemptions.**

(a) It is a defense to prosecution under this ordinance that a person appearing in a state of nudity did so in a modeling class operated:

- (1) By a proprietary school, licensed by the State of Utah, a college, junior college, or university supported entirely or partly by taxation;
- (2) By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

(b) Notwithstanding any other provision in this ordinance, movies rated G, PG, PG-13, or R, by the Motion Picture Association of America (MPAA), or live theatrical performances with serious artistic, social, or political value, that depict or describe specified anatomical areas or specified sexual activities, are expressly exempted from regulation under this ordinance.

**6A-06-370. Notices.**

(a) Any notice required or permitted to be given by the Director or any other City office, division, department or other agency under this ordinance to any applicant, operator or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the Director. Notices mailed as above shall be deemed given upon signature for receipt. In the event that any notice given by mail is returned by the postal service, the Director or his designee shall cause it to be posted at the principal entrance to the establishment. Notice by posting shall be deemed given twenty-four (24) hours from time of posting.

(b) Any notice required or permitted to be given to the Director by any person under this ordinance shall not be deemed given until and unless it is received in the office of the Director.

(c) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Director in writing of any change of residence or mailing address.

**6A-06-380. Injunction.**

A person who operates or causes to be operated a sexually oriented business without a valid operator's license, or in violation of Section 6-6-060 of this ordinance, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation.

**6A-06-390. Severability.**

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

**6A-06-400. Penalty.**

Unless otherwise specifically provided herein or provided by law, any person who violates any provision of this Chapter shall be guilty of a class B misdemeanor, subject to fines, forfeitures, penalties and/or imprisonment as provided by law.

## **CHAPTER 7: RENTAL DWELLINGS**

- 6A-07-01. Applicability.**
- 6A-07-02. License Required.**
- 6A-07-03. Application for License.**
- 6A-07-04. Review and Approval Procedures.**
- 6A-07-05. Rules and Regulations.**
- 6A-07-06. Inspections.**
- 6A-07-07. Fees.**
- 6A-07-08. Good Landlord Incentive Program.**

### **6A-07-01: Applicability.**

In addition to all rules and regulations set forth in Chapter 1 of this title, the regulations contained in this chapter shall apply to rental dwelling licenses.

### **6A-07-02. License Required.**

It shall be unlawful for any person, as owner, lessee or agent thereof, to keep, conduct, operate or maintain any rental dwelling within the city without first obtaining the license required by this chapter.

### **6A-07-03. Application for License.**

(a) All applications for a rental dwelling license shall be made in writing upon the forms provided by the city. In addition to the information required by Chapter 1 of this title, an application for a rental dwelling license shall also show:

1. A record, including the address, of each rental dwelling unit owned by the applicant.
2. A valid e-mail address for the owner and property manager of each rental dwelling unit.
3. A signed statement certifying the rental dwelling unit's compliance with applicable safety and building codes.

(b) Applicants who desire to participate in the city's good landlord program shall also complete and submit the good landlord program agreement, which shall be

provided by the city.

**6A-07-04. Review and Approval Procedures.**

The process for review and approval of an application for a rental dwelling license shall be in accordance with Chapter 1 of this title.

**6A-07-05. Rules and Regulations.**

(a) One License: Only one rental dwelling license shall be required for each person or entity owning rental dwelling units within the city.

(b) Amendment to License: Any licensee who acquires or sells any rental dwelling unit within the city after licensure but before renewal shall amend the license within thirty (30) days of acquisition or sale of the rental dwelling unit and shall pay the fees required by this title

**6A-07-06. Inspections.**

(a) The business license official or their designee shall be permitted to make an inspection of any rental dwelling unit to enforce any of this title or any other applicable statute or ordinance, and may enter the building or may enter upon the premises during regular business hours; or, if there are no regular business hours, the business license official or their designee 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 an inspection, the business license official or their designee may obtain and execute a search warrant.

(b) No owner, occupant, or any other person having charge, care, or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to properly permit entry therein by the business license official or their designee for the purpose of inspection and examination to ensure compliance with this title.

**6A-07-07. Fees.**

(a) The fees for a rental dwelling license shall be in accordance with the city's current consolidated fee schedule as approved by the city council.

(b) A disproportionate service fee shall be paid for each rental dwelling unit in accordance with the current consolidated fee schedule. A disproportionate service fee shall not be charged for an owner occupied unit in a multi-unit building.

(c) Members of the city's good landlord incentive program shall be eligible for a discount on the disproportionate service fee.

**6A-07-08. Good Landlord Incentive Program.**

(a) The city shall establish a good landlord incentive program that provides discounts toward the payment of certain business licensing fees to owners of rental dwelling units who actively implement those aspects of the program determined by the city to be related to the control and prevention of illegal activity on rental dwelling units, and who keep their properties free of code violations that affect the quality of life within the city. All applicants for a rental dwelling license shall be informed of the availability of the program.

(b) No discount shall be provided to any landlord unless and until the city certifies that the requirements of this section and all other requirements of the good landlord incentive program have been met.

(c) No landlord shall qualify for discounts under the good landlord incentive program unless all of the following minimum requirements are met at the time of application for a rental dwelling license:

(i) The landlord, or the landlord's bona fide agent for all aspects of property management, and all managers of the landlord responsible for the day to day management of the rental dwelling units, shall attend and complete an acceptable landlord training program once every two (2) years. First time applicants must attend a pre-approved four (4) hour training course.

1. First time applicants to the good landlord incentive program shall be required to complete the training within six (6) months of the date of application.

2. Failure to complete the program within the time frame specified

in subsection (c)(1)(a) of this section shall be grounds for disqualification from the program.

3. Any landlord previously disqualified from the good landlord incentive program shall be required to show evidence of completion of the required training program, and pay any sums due and owing (including past due license fees, code enforcement penalties due and owing, or any other amounts owed to the city), and compliance with the provisions of this code at the time of reapplication to the good landlord incentive program.

(ii) The landlord shall implement and maintain those aspects of property management determined by the city to be related to the control and prevention of illegal activity on rental property.

(iii) The rental dwellings and the surrounding premises must be owned and maintained in compliance with city ordinances affecting the use, care or maintenance of real property (zoning ordinances, property maintenance regulations, fit premises regulations, property maintenance code, housing codes, health codes, etc.), and the premises kept free of any public nuisance as defined by city ordinance or state law; provided, however, that a landlord will be considered to be in compliance with this requirement if violations are corrected in the time frame required under any notice of violation.

(iv) The landlord shall have paid any outstanding civil penalty assessed against the landlord for failing to correct a notice of violation applicable to the landlord's rental dwelling.

(d) The annual discount allowed under the program against the payment of business licensing fees attributable to rental dwellings shall be in accordance with the city's current consolidated fee schedule.

(e) The discount provided herein is conditioned upon the landlord's compliance with the requirements of the program during the term of the licensing year for which the discount is granted.

(i) If it is determined that a landlord, or any of a landlord's rental dwelling units, is not in compliance with the requirements of the good landlord incentive program during any portion of the licensing period for which a discount was provided, the landlord, together with all his or her rental dwelling units, shall be disqualified from the program, and the discount

shall be disallowed in accordance with the provisions of Chapter 1 of this title for the entirety of the term of such license. The landlord shall be required to pay the full fee for every rental dwelling unit listed on their license application for that year.

(ii) After disqualification, the landlord may qualify for the program in the next licensing year only if the landlord has corrected the problems leading to the disqualification and paid all amounts disallowed in the prior year.



**FRUIT HEIGHTS CITY  
ORDINANCE NO. 2023-04**

**AN ORDINANCE OF THE FRUIT HEIGHTS CITY COUNCIL ADOPTING THE  
PROVISIONS OF A NEW TITLE 6A RELATING TO BUSINESS REGULATIONS.**

WHEREAS, the City Council of the Fruit Heights has reviewed provisions of the current City Code relating to business regulations and finds that public interest will be served by updating the City Code to comply with changes in the Utah Code; and

WHEREAS, the City Council has held a public hearing and has determined that the proposed adoption of Title 6A will serve the public interest;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Fruit Heights, Utah as follows:

**Section 1. Repeal.** The new Title 6A is comprised of various sections of the current Fruit Heights Municipal Code. Due to the multiple sections affected, and the continuing process of updating all of the Municipal Code, the City is not repealing the specific sections replaced by Title 6A. However, in the event of a conflict between the provisions of Title 6A and any previously adopted Code, the provisions of Title 6A shall be controlling. Following the completion of the Municipal Code updates, the City Council will repeal any remaining and outdated sections.

**Section 2. Adoption and Codification.** Title 6A of the Fruit Heights Municipal Code as more particularly set forth in Exhibit A, attached hereto and incorporated herein by reference, is hereby adopted and codified.

**Section 3. Severability.** If any section, part or provision of this ordinance is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this ordinance, and all sections, parts and provisions of this ordinance shall be severable.

**Section 4. Effective Date.** This ordinance, for the protection of public health, safety and welfare, shall be effective immediately upon its passage.

PASSED AND APPROVED this \_\_\_ day of October, 2023.

**FRUIT HEIGHTS CITY COUNCIL**

ATTEST:

\_\_\_\_\_  
City Recorder

[SEAL]



By: \_\_\_\_\_  
John Pohlman, Mayor

**VOTING:**

Diane Anderson    Yea     Nay \_\_\_\_\_

Gary Anderson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Eileen Moss	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
George Ray	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Florence Sadler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
John Pohlman	Yea <input type="checkbox"/>	Nay <input type="checkbox"/>

**ATTEST:**



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Jacob Smith, City Recorder

**DEPOSITED** in the office of the City Recorder this 3 day of October, 2023.

**RECORDED** this 3 day of October, 2023.