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TITLE 4 - LICENSING

CHAPTER 1 - IN GENERAL

4-1-1. DEFINITIONS.

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

4-1-1.1 **ALCOHOLIC BEVERAGES.** Includes "beer" and "liquor" as they are defined herein.

4-1-1.2 **ARCADE.** A business dedicating at least eighty-five percent (85%) of its square footage to amusement games only, and not more than fifteen percent (15%) dedicated to concession and/or cashiering. No food preparation is allowed and alcoholic beverages may not be sold.

4-1-1.3 **BEDROOM.** Each room in a hotel, motel, lodge, timeshare project, condominium project, single family residence or other nightly lodging facility that is intended primarily for the temporary use of transient guests for sleeping purposes.

4-1-1.4 **BEER.** Any beverage containing not less than one-half of one percent (.5%) of alcohol by volume and obtained by the alcoholic fermentation of an infusion or decoction of any malted grain, or similar products. "Heavy beer" means beer

containing more than three point two percent (3.2%) of alcohol by weight. "Light beer" means beer containing not more than 3.2% of alcohol by weight. "Beer" may or may not contain hops or other vegetable products. "Beer" includes ale, stout and porter. Beer does not include a flavored malt beverage.

4-1-1.5 **BEER LICENSE - SPECIAL EVENT TEMPORARY.** A license issued by the City to an individual or organization for a maximum period of time of thirty (30) days to sell beer at an event. Person's holding a special event temporary beer license issued by the City are also required to obtain a State Temporary Special Event Beer permit, but are not required to obtain an on-premise beer license.

4-1-1.6 **BEER RETAILER.** Any business establishment engaged, primarily or incidentally, in the retail sale or distribution of beer to public patrons, whether for consumption on or off the establishment's premises, and that is licensed to sell beer by the Commission and Park City.

4-1-1.7 **BEER RETAILER - ON PREMISE.** Any beer retailer engaged, primarily or incidentally, in the sale or distribution of beer to public patrons for consumption on the retailer's premises. It

includes taverns.

4-1-1.8 **BUSINESS**. A distinct and separate person or entity engaging in business, as those terms are defined herein. A business is distinguished from another business by separate state sales tax numbers or separate ownership.

4-1-1.9 **CHARITABLE ORGANIZATION**. "Charitable organization" means any recognized religious organization, or any social or welfare organization recognized and dedicated to the relief of the poor, care of the sick or elderly, or aid to victims of disaster, catastrophe, or personal tragedy.

4-1-1.10 **CLUB LICENSEE**. A Club Licensee is a person licensed under Chapter 5, Club Licenses, of the Alcoholic Beverage Control Act.

4-1-1.11 **COMMERCIAL VEHICLES AND TRAILERS**. Businesses that utilize motor vehicles as their normal course of business, but do not transport people to, from and within Park City for a fee. Such businesses include but are not limited to delivery trucking, commercial hauling, snow removal services, u-haul or other cargo rental vehicles, concrete trucks and dump trucks.

4-1-1.12 **COMMISSION**. The State of Utah Alcoholic Beverage Control Commission.

4-1-1.13 **CONDUCTING BUSINESS**. For purposes of this Title the term "conducting business" shall include the sale or offering for sale of any goods or merchandise, or the offering or performing

of any service for valuable consideration of any kind.

4-1-1.14 **CORPORATE SPONSOR**. Any business enterprise or combination of business enterprises which provide funding for any special event in the amount of fifty percent (50%) or more of the funds necessary to promote the event or account for fifty percent (50%) or more of the events operating expenditure budget.

4-1-1.15 **DABC**. The Utah Department of Alcoholic Beverage Control.

4-1-1.16 **DESIGNEE**. A Park City staff member qualified to process liquor-related Applications and renewals.

4-1-1.17 **DIRECTOR**. The Administrative Services Director of Park City.

4-1-1.18 **DIVISION**. The Park City Business Licensing Division.

4-1-1.19 **EMPLOYEE BASED**. Businesses which lease or otherwise provided employees to other businesses or any person in return for consideration. Such businesses include but are not limited to employment agencies and security firms.

4-1-1.20 **ENGAGING IN BUSINESS**. Includes all activities engaged in within the corporate limits of Park 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 prescribed. "Engaging in business" includes but is not limited to, the sale, rental, gifting, or

promotion of tangible personal or real 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; each manufacturing or originating company whether individually occupying a premise or co-locating shall be required to obtain an individual business license for that business activity.

4-1-1.21 **FIREWORKS PERMIT.** A permit issued by the City Fire Marshal for aerial or concession fireworks, pursuant to the Uniform Fire Code.

4-1-1.22 **GIFTING.** Includes various hospitality, gifting, filming, display, exhibiting or promotional use of goods, not for sale and other related activity that are marketing or promoting tools in which goods are given or traded to the public in general or desirable people so that the product will be associated with those people and appear in publications, media, internet, etc., and give the product exposure. Gifting is not just the display of goods with the hopes of future orders; it involves actually giving the product away, where the consideration for the gift is the exposure of the product; and includes direct or indirect interaction with customers, potential customers in order to increase awareness of a product, service of company. Corporate groups that receive gifts purchased by the corporation are not provided by another entity and are exclusively for the group will not be considered gifting.

4-1-1.23 **HOURLY UPHILL LIFT CAPACITY.** The aggregate number of persons that can be accommodated per hour by all of the ski lifts in a given ski resort operating at the maximum safe rate of operation.

4-1-1.24 **HOURLY USER CAPACITY.** The maximum number of persons that can be safely and reasonably accommodated per hour by an amusement park, golf course, athletic club, theater bowling alley, tennis club, racquetball club, swimming pool, and any other recreational, sports, or entertainment facility.

4-1-1.25 **LICENSEE.** Any person holding any beer or liquor license in connection with the operation of a place of business or private club. This term shall also include beer or liquor handling employee of the licensee. The licensee is responsible for the acts and omissions of its employees.

4-1-1.26 **LICENSED PREMISE.** Any room, building, structure, or place occupied by any person licensed to sell beer or to allow the consumption or storage of liquor on such premises under Chapter 4; provided that in any multi-roomed establishment, an applicant for an on-premise or off-premise beer license shall designate a room or portion of a building of such business for the consumption or the sale of beer, which portions shall be specifically designated in the application and, in the license issued pursuant thereto, shall be the licensed premises. Multiple dining facilities located in one building, owned or leased by one license applicant and subject to the same type of beer or

liquor license shall not be deemed separate licensed premises, and shall not be required to obtain a separate license for each area.

4-1-1.27 **LICENSE FEE(S)**.

Includes the administrative fee and service enhancement fee as defined by the Business License Fee Schedule.

4-1-1.28 **LIQUOR**. Includes alcohol, or any alcoholic, spirituous, vinous, fermented, malt or other liquid combination of liquids, a part of which is spirituous, vinous, or fermented, and all other drinks or drinkable liquids, containing more than one half one percent (.5%) of alcohol by volume; and which are suitable for beverage purposes; and includes a flavored malt beverage. Liquor does not include a beverage defined as beer.

4-1-1.29 **MANUFACTOR**. Means to distill, brew, rectify, mix, compound, process, ferment, or otherwise make an alcoholic product for personal use or for sale or distribution to others.

4-1-1.30 **MASTER FESTIVAL**. Any event held on public or private property in which the general public is invited with or without charge and which creates significant public impacts through any of the following:

- (A) the attraction of large crowds,
- (B) necessity for street closures on Main Street or any arterial street necessary for the safe and efficient flow of traffic in Park City,
- (C) use of public property,
- (D) use of City transportation services,

(E) use of off-site parking facility, or

(F) use of amplified music in or adjacent to a residential neighborhood.

4-1-1.31 **MOBILE FOOD**

VENDOR. Any motor vehicle from which consumable on-site food service is offered. Mobile food vendors are restricted to serving construction sites.

4-1-1.32 **MONTHLY RENTAL FACILITY - UNDER MANAGEMENT**.

Any place where rooms or units are rented or otherwise made available by a manager or management company for residential purposes on a monthly or longer time basis, but not including monthly or longer rental by the owner of the property without management.

4-1-1.33 **NIGHTLY LODGING**

FACILITY. Any place where or any portion is rented or otherwise made available to persons for transient lodging purposes for a period less than thirty (30) days including, without limitation, a hotel, motel, lodge, condominium project, single family residence or timeshare project.

4-1-1.34 **NON-PROFIT**

CORPORATION. A corporation, no part of the income of which, is distributable to its members, trustees or officers, or a non-profit cooperative association.

4-1-1.35 **NUISANCE**.

Any licensed premises where: alcoholic beverages are manufactured, sold, kept, bartered, stored, consumed, given away or used contrary to the Alcohol Beverage Control Act, the Utah Liquor Commission Rules and Regulations,

or this Code; or intoxicated persons are permitted to loiter about, or profanity, indecent, immoral, loud or boisterous language or immoral, unruly, disorderly, lewd, obscene conduct is permitted, or carried on; or persons under the age of twenty-one (21) are permitted to purchase or drink beer or liquor; or city, county, state or federal laws or ordinances are violated by the licensee or his agents or patrons with the consent or knowledge of licensee which tend to affect the public health, safety, peace, or morals; or patrons are throwing litter or other objects within the licensed premises or from the licensed premises in a manner which tends to affect the public safety or health; or patrons are permitted to remove opened containers of alcoholic beverages or glasses containing alcoholic beverages from the licensed premises to the public street or way.

4-1-1.36 **PEDDLER**. A person who carries goods or merchandise with him or her and sells or offers for sale those goods or merchandise on a door-to-door or transient basis rather than from a fixed location.

4-1-1.37 **PERSON**. Any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, business trust, corporation, association, society or other group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise.

4-1-1.38 **PLACE OF BUSINESS**. Each separate location maintained or operated by the licensee within Park City from which business activity is conducted or transacted. A location shall be identified by street address or by building name if a street

address has not been assigned. "Place of business" as used in connection with the issuance of beer and liquor licenses means cafes, restaurants, public dining rooms, cafeterias, taverns, cabarets, clubs, and any other place where the general public is invited or admitted for business purposes, including any patios, balconies, decks, or similar areas, and also means private clubs, corporations and associations operating under charter or otherwise wherein only the members, guest members and their visitors are invited. Occupied hotel and motel rooms that are not open to the public shall not be "places of business" as herein defined.

4-1-1.39 **RESTAURANT**. A place of business where a variety of hot food is prepared and cooked and complete meals are served to the general public in indoor dining accommodations, or in outdoor accommodation and is engaged primarily in serving meals to the general public.

4-1-1.40 **RESORT LICENSE**. A type of liquor and/or beer license available to a resort. A resort, for purposes of the Resort License definition, is a single building which physically touches the boundary of a ski area and has at least 150 dwelling or lodging units, the building itself is at least 400,000 square feet (excluding areas such as above ground surface parking) and where at least half of the units are owned by a person other than the resort licensee.

4-1-1.41 **RETAILER**. Any person engaged in the sale or distribution of alcoholic beverages to the consumer.

4-1-1.42 **ROUTE DELIVERY**. Any

delivery made to customers of a business, which makes repeated door-to-door deliveries to the same households along designated routes with an established time interval in between delivery visits. The majority of such deliveries must be to fulfill orders previously made by the customer. However, nothing in Chapter 3 shall prevent orders from being taken from established customers and filled during such delivery visits. Such businesses will include, but not be limited to, dairies and sellers of bulk meats or produce.

4-1-1.43 **SELL OR TO SELL.** Any transaction, exchange, or barter whereby, for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited, ordered, delivered for value, or by any means or any pretexts promised or obtained, whether done by a person as a principal, proprietor, or as an agent, servant or employee unless otherwise defined in this title.

4-1-1.44 **SET-UP.** Glassware, ice, and/or mixer provided by a licensee to patrons who supply their own liquor.

4-1-1.45 **SKI RESORT.** A ski area, such as the Park City or Deer Valley Ski Areas, which is operated as a distinct and separate enterprise, and which shall be deemed to include, without limitation, the ski runs, ski lifts, and related facilities that are part of the ski area and primarily service the patrons of the ski area. The ski resort includes ski instruction, tours, first aid stations, parking garages, management and maintenance facilities, and workshops, but does not include food service, ski rentals, or retail sales of goods or merchandise, which are all deemed separate businesses even if

owned by a resort operator.

4-1-1.46 **SKIER DAY.** A three (3) year average of the total number of lift tickets sold annually, including daily lift tickets, resident coupons, complimentary tickets, and an estimated average of season pass holders daily use. The three (3) year average shall be calculated by the Ski Resort and shall include the three most recent years of operation from November 1 through June 30. The City may audit the analysis and any business records relied upon for the analysis. The calculation shall be submitted to the Finance Department by October 15th of each year.

4-1-1.47 **SOLICITED DELIVERY.** A delivery of previously ordered goods or services or the United States mail. Solicited delivery includes, but is not limited to, the delivery of newspapers or publications pursuant to a subscription, the United States mail, parcel delivery services, businesses engaging in route delivery or persons delivering previously ordered goods or services on behalf of an established retailer of those goods or services.

4-1-1.48 **SOLICITOR.** A person who contacts individuals or the general public for the purpose of taking orders for goods or services, or encouraging attendance at sales presentations, lectures, seminars, or the like at which goods or services are promoted or offered for sale, whether the presentation is held within Park City or not, provided that the solicitor makes contact with the public at a location other than at the regular place of business at which the goods or services are actually sold or performed. For purposes of Chapter 3, the term "goods or services" shall

include merchandise, produce, personal services, property services, investment opportunities, franchises, time intervals in the use of ownership or real property, and any other kind of tangible or intangible thing that is given in exchange for a valuable consideration.

4-1-1.49 **SPECIAL EVENT**. Any event, public or private, with either public or private venues, requiring City licensing beyond the scope of normal business and/or liquor regulations, as defined by this Code; or creates public impacts through any of the following:

- (A) The use of City personnel,
- (B) Impacts via disturbance to adjacent residents,
- (C) Traffic/parking,
- (D) Disruption of the normal routine of the community or affected neighborhood; or
- (E) Necessitates special event temporary beer or liquor licensing in conjunction with the public impacts. Neighborhood block parties or other events requiring street closure of any residential street that is not necessary for the safe and efficient flow of traffic in Park City for a duration of less than one (1) day shall be considered a Special Event.

4-1-1.50 **SPECIAL EVENTS MANAGER**. The Special Events Manager or his/her designee within the Department of Special Events and Facilities.

4-1-1.51 **STREET CLOSURE**. The deliberate blockage of any public street or

City owned parking facility to prohibit the flow of traffic or access of vehicles. Any non-construction street closure shall require a master festival or special event license.

4-1-1.52 **SPONSOR**. A person, group, or business which has contracted to provide financial or logistical support to any special event or master festival. Such agreement may provide for advertising rights, product promotion, logo promotion, exclusivity of rights, products, or logos.

4-1-1.53 **SQUARE FOOTAGE**. The aggregate number of square feet of area within a place of business that is used by a licensee in engaging in its business.

4-1-1.54 **UNIT**. Any separately rented portion of a hotel, motel, condominium, apartment building, single family residence, duplex, triplex, or other residential dwelling without limitation.

4-1-1.55 **UNSOLICITED DELIVERY**. The delivery of any unsolicited newspaper or publication, sample product or advertising material. Unsolicited newspapers or publications, sample products or advertising material shall include, but not be limited to, handbills describing or offering goods or services for sale, any goods or products that were not previously ordered by the home owner or occupant, any newspaper or publication delivered without a subscription by the owner or occupant, and any coupons or rebate offers for goods and services.

4-1-1.56 **VENUE**. The location or locations upon which a special event or master festival is held, as well as the ingress and egress route when included in the

festival license.

4-1-1.57 **WHOLESALE**. Any person other than a licensed manufacturer engaged in importation for sale or in the sale of beer, malt liquor, or malted beverages in wholesale or jobbing quantities to retailers.

(Amended by Ord. Nos. 01-31; 10-21; 13-32)

CHAPTER 2 - BUSINESS LICENSING IN GENERAL

4-2-1. UNLAWFUL TO OPERATE WITHOUT A LICENSE.

Unless exempted by state or federal law or by this Title, it shall be unlawful for any person to engage in business within Park City, whether on a temporary or permanent basis, without first being issued the license required by this chapter. All licenses issued under the provisions of this Title are non-transferable and expire on December 31st of each year.

4-2-2. FAILURE TO OBTAIN REQUIRED LICENSE.

Unless exempted by state or federal law or by this Chapter, any person who engages in business without being issued a license or paying all necessary fees under this Chapter shall pay double the specified fee for said license. The payment of such double fee shall not relieve any person from fully complying with all the requirements of this Code, nor from any other prescribed penalties.

Except as otherwise provided in this Title, any person who temporarily or permanently

engages in business within the City without first obtaining a license as herein provided, or after such license has been revoked, shall be punished by a fine not to exceed the maximum Class B misdemeanor fine under state law or by a term of imprisonment up to six months, or by both fine and term of imprisonment as provided in section 1-1-8 of this code.

4-2-3. NO TEMPORARY LICENSES.

Any person engaging in business on a temporary basis within Park City shall be required to obtain the license required by this Chapter in the same manner and shall be subject to the same fees as a person engaging in business on a permanent basis within Park City.

4-2-4. LICENSE APPLICATION.

Applications for business licenses shall be made in writing to the Director or his or her designee. Each application shall state the name of the applicant, the location of the business, if any, the fee and tax to be paid, the name and address of the business agent residing in Park City who is authorized to receive service of process and any communication regarding applicant's license, state sales tax reporting number, state contractor's license number, if applicable, and state real estate broker's license number, if applicable, and shall contain such additional information as may be needed for the purpose of guidance of the Director in issuing the license. All applications, with the exception of those engaging in business within City limits without a physical address or as exempt by state law, must be accompanied by a completed inspection form provided by the

City that proves substantial code compliance for the property. The Chief Building Official or designee may grant an exception to the requirement for a completed inspection with the application in limited circumstances such as when a certificate of occupancy has not been yet granted or when the space is converted for another occupancy. A pre-inspection prior to application will be required when such exception is granted. No business license will be issued until the final inspection post application is approved. Any change in the above information furnished by the applicant shall be forwarded in writing, within ten (10) days of the change, to the Director. License application forms shall be prepared and kept on file by the Director or his or her designee.

(Amended by Ord. No. 13-29; 14-50)

4- 2- 5. APPLICATION FEE.

Each license application shall be accompanied by the business license fee required to be paid for the issuance of the license desired.

4- 2- 6. REFUND OF FEE.

Unless otherwise provided herein, no business license fee is refundable for any reason whatsoever, once the license has been issued by the City, except when the license was issued in error. If a license is denied, applicant shall be entitled to a refund of the amount paid in excess of twenty-five dollars (\$25.00). The sum of \$25.00 shall be retained to offset application processing costs.

4- 2- 7. INVESTIGATION.

Upon a reasonable belief that the applicant or Licensee has a fraud or felony conviction or prior criminal background or pending criminal proceeding, the Director may refer the application or Licensee for investigation to the Police Department. The Director or his or her designee may at any time inspect the business premises during normal business hours or request business documents maintained pursuant to Section 4-2-26 to verify a new application or existing Licensee.

4- 2- 8. INSPECTIONS FOR CODE COMPLIANCE/NOTICE OF INFRACTION/RE-INSPECTIONS/ PERIODIC INSPECTIONS AND LICENSE REVOCATION/STAMPED FLOOR PLANS REQUIRED FOR CHANGE OF OCCUPANCY/ COMPLAINT FILED BY CITY ATTORNEY.

(A) **INSPECTIONS FOR CODE COMPLIANCE.** Prior to applying for a license under this Title for a new business not previously licensed at that location, or an existing business with a change of location, the applicant shall be required to have the prospective place of business inspected by the appropriate departments of the City or other governmental agency to ensure compliance with building, fire, municipal and health codes unless a different inspection process is otherwise required in this Title. The Chief Building Official or designee may grant an exception to the requirement for a completed inspection with the application in limited circumstances such as when

a certificate of occupancy has not been yet granted or when the space is converted for another occupancy. A pre-inspection prior to application will be required when such exception is granted. No business license will be issued until the final inspection post application is approved.

(B) NOTICE OF INFRACTION. No license can be applied for until the required inspection reveals that the prospective place of business is in substantial compliance with the building, fire, and health codes. If during the inspection process any code infractions are found, corrections shall be made and a re-inspection scheduled within a reasonable period as identified by the inspector or Chief Building Official not to exceed thirty (30) calendar days.

(C) RE-INSPECTIONS. If a re-inspection is not scheduled within the specified time frame, a new inspection will be required. Once a property is deemed in substantial compliance with all applicable codes, the inspection will be valid for sixty (60) calendar days unless otherwise identified by the inspector or Chief Building Official. In addition to the business license fees, all new businesses or business locations shall pay an inspection fee as set forth in the rate tables in effect at the time of application. A re-inspection fee may be assessed if more than two (2) inspections are required by the City to meet code compliance. The City may take up

to ten (10) business days to complete the licensure process. Prior to the approval/issuance of any business license, additional or repeat inspections may be required for locations as identified during the inspection process.

(D) PERIODIC INSPECTIONS AND LICENSE REVOCATION.

Existing places of business licensed within the City may be inspected periodically by departments of the City for compliance with building, fire, municipal and health codes. Floor plans stamped by a design professional will be required if there is a change of occupancy in an existing business. Written notice shall be given by the Director or his or her designee to a licensee upon the finding of any code infractions which notice shall provide for a reasonable period not to exceed sixty (60) days in which to correct such infractions, the failure of which shall result in the revocation of the license by the Director or his or her designee and may require the premise be evacuated due to immediate life safety hazards.

(E) STAMPED FLOOR PLANS REQUIRED FOR CHANGE OF OCCUPANCY. Floor plans stamped by a design professional will be required if there is a change of occupancy in an existing business.

(F) COMPLAINT FILED BY CITY ATTORNEY . The Finance Manager or his or her designee may request the City Attorney to file a

complaint for non-compliance with the required standards against any applicant or any licensee who conducts business without a license or continues to conduct business beyond the time limits provided in this section.

(Amended by Ord. No. 13-29; 14-50)

4-2-9. LICENSE DENIAL/ REVOCATION.

The Director or his or her designee may deny or revoke a license if the applicant:

- (A) Has been convicted of a fraud or felony by any state or federal court within the past five (5) years or now has criminal proceedings pending against him in any state or federal court for fraud or a felony;
- (B) Has obtained a license by fraud or deceit;
- (C) Has failed to pay personal property taxes or other required taxes or fees imposed by the City;
- (D) Has violated the laws of the State of Utah, the United States Government, or the ordinances of Park City governing operation of the business for which the applicant is applying for the license; or
- (E) Is located within the boundaries of the Main Street Business Improvement District (BID) and has failed to pay the business promotion tax, set by separate ordinance, or any applicable solid waste management charges or fees. Proof of up-to-date payment will be required prior to license approval or renewal.

(Amended by Ord. No. 07-58)

4-2-10. LICENSE ISSUANCE OR DENIAL.

The Director or his or her designee shall notify the applicant of:

- (A) the denial of a license and the reason for such denial; or
- (B) the issuance of the license.

(Amended By Ord. No. 13-29)

4-2-11. APPEALS OF LICENSE DENIAL.

A license denial by the Director or his or her designee may be appealed within ten (10) days to the Park City Council by written notice of appeal. The request is to be filed with the Recorder. The Park City Council shall hear the appeal within thirty (30) days of notice of appeal.

4-2-12. ISSUANCE OF LICENSE CERTIFICATE.

All license certificates shall be signed by the Director or his or her designee, under the seal of the City, signature may be placed mechanically, and contain the following information:

- (A) The name of the person to whom such certificate has been issued;
- (B) The name of the business, if applicable;
- (C) The type of license; and

(D) The term of the license with commencement and expiration dates.

4- 2-13. LICENSE PERIOD.

Renewed license certificates shall be valid through December 31, of the year of renewal unless revoked pursuant to this Title. New license certificates issued between January 1 and September 30 shall be valid through December 31 of the year of issuance unless revoked. New license certificates issued between October 1 and December 31 may be valid through December 31 of the year following the year of issuance, unless revoked. An applicant applying for a license between October 1 and December 31st may, at the option of the applicant, pay one hundred and twenty-five percent (125%) of the amount otherwise imposed for new licenses issued and the license shall be valid through December 31 of the year following the year of issuance, unless revoked. However, an applicant may elect to pay the prorated fee pursuant to this Title on new applications between October 1 and December 31 if the applicant does not intend to do business in Park City the following year.

(Amended by Ord. No. 09-41)

4- 2-14. DUTY TO DISPLAY LICENSE.

Every licensee licensed pursuant to the provisions of this Chapter shall keep his license displayed and exhibited while the same is in force in some conspicuous part of the place of business. Every licensee not having a fixed place of business shall carry such license with him at all times while carrying on the business for which the

license is issued and shall produce the license for inspection when requested to do so by any person.

4- 2-15. BRANCH ESTABLISHMENTS.

A separate license must be obtained for each branch establishment or separate location in which business is 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.

4- 2-16. SEPARATE BUSINESSES, LICENSED PREMISES.

Where two (2) or more persons conduct separate businesses at the same location, each such person shall provide individual Utah tax identification numbers if sales transactions are taking place, federal tax identification numbers if only promotion or gifting is taking place, be responsible for all required licensing, inspections and sign permits for each such business and pay the required license fees for such business. Where a person is a licensee pursuant to provisions in the beer and liquor licensing chapter of this Title, that person shall obtain a separate business license for each licensed premises.

(Amended by Ord. No. 13-32)

4- 2-17. REGULATORY AND

PARK CITY MUNICIPAL CODE - TITLE 4 LICENSING

SERVICE ENHANCEMENT FEES IMPOSED.

Page.

There is hereby imposed and levied an annual business license fee on the types of businesses and in the amounts described below in the Business License Fee Schedule:

See Business License Fee Schedule Next

PARK CITY BUSINESS LICENSE FEE SCHEDULE									
	Transit Service Enhancement Fee		Festival Facilitation, Service Enhancement Fee		Enhanced Enforcement Fee		Administrative Fee		
	Rate	Unit of Measure	Rate	Unit of Measure	Rate	Unit of Measure	Rate Renewals	Rate New/ Inspections	Unit of Measure
Ski Resort	\$0.263	Skier Day	\$0.013	Skier Day	-	-	\$22.00	\$149.00	License
Lodging	\$19.250	Per Bedroom	\$9.488	Per Bedroom	-	-	\$17.00	\$149.00	License
Restaurant	\$0.231	Per Sq. Ft.	\$0.103	Per Sq. Ft.	-	-	\$22.00	\$149.00	License
Outdoor Dining	\$0.063	Per Sq. Ft.	\$0.029	Per Sq. Ft.	-	-	\$22.00	\$149.00	License
Retail	\$0.231	Per Sq. Ft.	\$0.103	Per Sq. Ft.	-	-	\$22.00	\$149.00	License
Large Retail (>12,000 sq. ft.)	\$0.161	Per Sq. Ft.	\$0.072	Per Sq. Ft.	-	-	\$22.00	\$149.00	License
Office, Service, Other	\$0.206	Per Sq. Ft.	\$0.013	Per Sq. Ft.	-	-	\$22.00	\$149.00	License
Warehouse	\$0.059	Per Sq. Ft.	\$0.002	Per Sq. Ft.	-	-	\$22.00	\$149.00	License
Resort and Amusement	\$1.035	Per User	\$0.048	Per User	-	-	\$22.00	\$149.00	License
For-Hire Vehicles	\$37.500	Per Vehicle	\$1.751	Per Vehicle	\$45.58	Per Vehicle	\$71.83	\$71.83	License
Other Commercial Vehicles and Trailers	\$7.500	Per Vehicle	\$0.292	Per Vehicle	-	-	\$22.00	\$149.00	License
Employee Based	\$3.750	Per Employee	\$0.146	Per Employee	-	-	\$22.00	\$149.00	License
Commercial Vending, Game and Laundry Machines	\$18.750	Per Machine	\$0.730	Per Machine	-	-	\$22.00	\$149.00	License
Escort Services	\$3.750	Per Employee	\$0.150	Per Employee	\$46.19	Per Employee	\$22.00	\$149.00	License

Transit Service Enhancement Fees and

Festival Facilitation Service Enhancement

Fees shall be subject to proration for businesses applying for a new business license after March 31. Proration will be according to the following schedule:

After March 31 – 75% of the Transit and Festival Facilitation Service Enhancement Fee, 100% of the Administrative and Enhanced Enforcement Fee.

After June 30 – 50% of the Transit and Festival Facilitation Service Enhancement Fee, 100% of the Administrative and Enhanced Enforcement Fee

After September 30 – 25% of the Transit and Festival Facilitation Service Enhancement Fee, 100% of the Administrative and Enhanced Enforcement Fee.

(Amended by Ord. Nos. 02-48; 06-37; 09-21; 09-41)

4- 2-18. REGULATION OF SPECIFIC BUSINESSES.

The minimum fee assessed for each business shall be as set forth in the rate tables as adopted by Section 4-2-17 unless set forth specifically in the sections below.

(A) **VENDING MACHINES/ MECHANICAL DEVICES** It shall be unlawful to install or permit to be installed, any kind of mechanical device operated by coin, token, or currency, which sells goods, merchandise, food, beverages, candy, or entertainment services without first having paid the applicable fee on that mechanical device. Further, it shall be unlawful for any person to permit a machine to be placed on his premises or within his place of business

any such mechanical device on which the fee has not been paid. The license for such a mechanical device, and the receipt showing payment of the license fee, shall take the form of a sticker to be placed in a visible location on the machine or device. The placement of a current sticker shall be prima facie evidence of payment of the license fees as far as the owner of the premises in which the machine is installed is concerned, and the owner of such premises or place of business shall be entitled to rely on the display of a current sticker as proof that the machine has been properly licensed. It is the duty of the owner of the machine to pay the fee, place the license sticker on the machine, and see that it is continuously displayed.

License certificate stickers on vending machines and electronic game machines shall be marked with the description of the machine, and designed so that the license sticker is not removable without destroying the sticker. There shall be a sticker on each machine. In the event a machine is replaced by another machine of a similar nature, the sticker on the machine to be replaced may be surrendered to the division, and a new sticker issued for the replacement machine without additional charge.

(B) **CONTRACTORS AND BUILDERS**. All general contractors and subcontractors, including but not limited to, builders, electricians, plumbers and back flow device technicians, with their principal place of business within Park City shall be assessed a regulatory license fee each year as set forth in the rate tables. Said fee must be paid and a business license issued prior to engaging in any construction within the City unless exempted from licensure under

U.C.A. Section 58-55-305(7) or Section 4-2-20 of this Chapter.

No contractor shall be issued a business license under this section unless and until he has provided a certified statement that he is currently licensed with the State of Utah Department of Business Regulation, including the state license number(s) and date of expiration. If said State license expires prior to December 31st of the year, each contractor must provide proof of renewal within ten (10) days of renewal or shall forfeit the City license for the balance of the year.

Contractors are required to obtain a separate office business license.

(C) **NIGHTLY RENTAL**. All nightly rental units must be licensed before being offered for rent.

(1) **LICENSE ISSUANCE**. The business license for rental of units under this section will be issued by the City upon payment of necessary fees and upon a finding by the staff that the review criteria established below has been satisfied.

(2) **LICENSEE**. The licensee for rentals under this section shall be both the local representative and the owner. The local representative shall be deemed the responsible party.

(3) **APPLICATION PROCEDURE**. All new and renewal applications must contain the property manager's name, a sales tax collection and accounting number, the street address of each

unit, the name and address of a local responsible party who is available by telephone twenty four (24) hours per day and all other information requested on the application forms. The application includes a cover form, which contains information common to all units managed, and unit forms, which contain information on each unit managed. It is the licensee's duty to supplement both forms as information changes or as units change from one manager to another.

(4) **MANAGEMENT STANDARDS**. The lodging authorized under Section 4-2-17 must be properly managed. As a condition to holding a valid license, the licensee agrees to provide or arrange for adequate property management services. In the event an owner's association exists, it shall be responsible for property maintenance. In the event an owner agrees to be responsible for property maintenance, the licensee must present a statement to that effect signed by the owner. The minimum services and management regulations required include:

(a) Snow removal during winter months to a level that allows safe access to the building over the normal pedestrian access to the unit.

(b) Snow removal service to off-street parking facilities associated with the rental property so that off-street

parking is at all times available for occupant use.

(c) Summer yard maintenance, including landscaping, weed control, and irrigation to a level that is consistent with the level of landscaping and maintenance on adjoining and nearby properties.

(d) Structural maintenance to preserve substantial code compliance as described above is required.

(e) Routine upkeep, including painting and repair to a level that is consistent with the level of maintenance on adjoining or nearby properties.

(f) Trash collection which insures that trash cans are not left at the curb for any period in excess of twenty-four (24) hours and the property must be kept free from accumulated garbage and refuse.

(g) Housekeeping service as a part of hotel or property management company: included in property management license.

(h) Parking. On-street parking for nightly rental uses shall not result in an

obstruction to traffic and pedestrian circulation or public safety.

(i) Outdoor Displays of Goods and Merchandise. No outdoor display of goods and merchandise shall be permitted as part of any nightly rental use.

(j) Signs. Unless expressly permitted under the Municipal Sign Code, Title 12, no signs will be permitted for nightly rental uses.

(k) Commercial Uses Prohibited. Nightly rentals may not be used for commercial uses not otherwise permitted in the zone. Nightly rentals may not be converted to corporate sponsor or business houses which are used primarily to distribute retail products or personal services to invitees for marketing or similar purposes, regardless of whether such products or services are charged for.

(5) NOISE AND OCCUPANCY CONTROL. The licensee and the owner of rentals under this section are responsible for regulating the occupancy of the unit and noise created by the occupants of the unit. Violation of the noise ordinance, violation of occupancy loads, failure to use designated off-street parking, illegal conduct, or any

other abuse, which violates any law regarding use or occupancy of the premises is grounds for revocation. Failure to collect and deposit sales tax is also a violation of the license and grounds for revocation.

(6) **REVIEW CRITERIA.** In determining whether or not a business license for rental authorized under this Section shall be issued, the application shall be reviewed to see if, in addition to standards and conditions applicable to issuance of all business licenses, the following conditions and standards are met:

- (a) The unit is located within a zone and subzone designated as allowing rentals for the period, which the license is applied for.
- (b) The Park City Building Department has reviewed the business license application for compliance with the Code for abatement of dangerous buildings. Inspection of the unit may be required under Section 4-2-8. The applicant shall bear the cost of any such inspection and any re-inspection, which may be required. The cost shall be determined by the prevailing hourly rate of the Park City Building Department.
- (c) The access to the rental unit and the layout of the unit is such that noise and

physical trespass from the proposed rental unit is not likely to be a substantial intrusion to the adjoining properties. If the proposed rental units is a single family home or duplex and shares an access, hallway, common wall, or driveway with another dwelling, written consent of the owner of the other dwelling is required.

(d) The applicant must designate a responsible party. The responsible party must be a property management company, realtor, lawyer, owner, or other individual who resides within Summit County, or, in the case of a company, has offices in Summit County. The responsible party is personally liable for the failure to properly manage the rental. The responsible party must be available by telephone, or otherwise, 24 hours per day, and must be able to respond to telephone inquiries within twenty (20) minutes of receipt of such inquiries by that party's answering machine, paging device or answering service. The responsible party is also designated as the agent for receiving all official communications under this Title from Park City. If the licensee is a property management company or

individual other than the owner, such company or individual must comply with applicable state law, including U.C.A. Section 61-2-2, as amended, which requires those who receive valuable consideration to lease property to have a state license.

(e) The application must bear a sales tax collection and accounting number for the rental operation. This number may be the sales tax accounting number used by the property management company responsible for that unit, or may be specific to the unit, but no license will be effective until the sales tax number is provided.

(D) RESTAURANTS, FOOD SERVICE, TAVERNS, ETC.

(1) Outdoor dining areas connected with any food service establishment shall be assessed at a rate lower than the rest of the establishment.

(2) Catering services shall be licensed at the rate established in the Rate Tables per employee unless part of a full service restaurant or part of a restaurant operation, in which case catering is included in that license.

(3) Mobile vending trucks, serving construction sites only shall be assessed at the rate established in

the Business License Fee Schedule.

(E) **BUILDING MATERIAL, HARDWARE, LUMBER.** Lumber stores shall be assessed at the retail rate by square foot of space under roof, including retail areas, lumber storage, and shop space, but shall not be assessed for uncovered yard space.

(F) **AUTOMOTIVE SERVICES.** Car rental businesses shall be assessed at a rate per car for rental purposes as of January 1 of each license year, as established in the rate tables.

(G) **TRANSPORTATION SERVICE, PASSENGER AND SNOW REMOVAL OPERATORS.** License certificates shall take the form of a sticker to be placed on each licensed vehicle. The City shall design stickers that are suitable for this use, and non-removable without the sticker being destroyed. Various kinds of stickers may be used to show the term of a license if issued for less than one (1) year. The sticker shall be displayed on snow removal vehicles, passenger service vehicles, shuttles and taxis at all times. If no sticker is displayed, it is prima facie evidence that no license was issued. Delivery and service vehicles with a business location in Park City, on which a license fee is issued on a square footage basis shall be exempt.

(1) Ready-mix concrete trucks, ore hauling trucks, dump trucks, drilling apparatus trucks, cranes, concrete pumping trucks, and other truck-based construction or excavation equipment shall be assessed as set forth in the rate tables per business engaged in such

business.

(2) Businesses which utilize trucks in construction activity are subject to both the fee provisions of this section and also those for contractors except that an unlimited number of trucks, not exceeding nine thousand pounds gross vehicle weight (9,000 lbs. gvw), may be used in the construction activity without any charge applied to the vehicle.

(Amended by Ord. Nos. 03-02; 05-78; 08-43)

4- 2-19. SPECIAL ASSESSMENT BY DIRECTOR.

Any other business not listed in the foregoing sections shall be assessed at the rate and on the same basis as the business determined by the Director, or his or her designee, to be most similar to the business to be licensed. If the applicant and Director, or his or her designee, are not able to agree on a rate and method of assessment, the application shall be referred to the City Council for license issuance. The rate and method of assessment determined by the Council may be applied on a case by case basis, or, if it appears to be of general application or importance, may take the form of an amendment to the Code to cover that license and similar applications in the future.

4- 2-20. REVENUE MEASURE.

The revenue license fee provided for in this Chapter is imposed to raise revenue for an enhanced level of municipal services. The fees are in addition to and not a substitute

for other regulatory ordinances of Park City. The revenues raised through the revenue fee shall be used to defray the costs incurred by the City in operating, maintaining, and replacing the City transit system.

4- 2-21. EXCEPTIONS TO BUSINESS REVENUE LICENSE FEE.

No convention sales license shall be required under this Chapter upon the following persons or businesses:

(A) Any person engaged in business for solely religious, charitable, eleemosynary, or other types of strictly non-profit purposes who is tax exempt in such activities under the laws of the United States and the State of Utah, nor shall any revenue license fee be imposed on any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the State of Utah; nor shall any revenue license fee be imposed on any non-profit corporation duly incorporated according to the provisions of the Utah Non-Profit Corporation and Cooperative Association Act;

(B) Any insurance company or agent, so long as they are exempted by state law;

(C) Any sales or merchandise damaged by smoke or fire or of bankrupt concerns, where such stocks have been acquired from merchants of Park City theretofore, regularly licensed and engaged in business; provided, however, no such stocks or merchandise shall be augmented by other goods;

(D) Any individual vendor, person, firm, or corporation exhibiting, marketing or promoting goods concurrent with and as an

adjunct to a group display, meeting or convention duly authorized to be held; provided that the convention is duly licensed under other applicable ordinances, and listed as such on the properties business license. Traditional hotel/restaurant offerings including private dinner bookings in restaurants, existing entertainment such as in restaurant outlets or lounges etc., groups utilizing interior signage. Building inspections are required until code compliance is achieved. Vendors that anticipate selling a tangible product or service in meeting or convention authorized space must apply for a Temporary Utah State Sales Tax Number and report all sales to the State of Utah after the conclusion of the event. This exception does not apply during the dates of the Sundance Film Festival due to the increased impacts during this event unless the gifting, exhibiting, marketing, or promotion of goods are targeted to a group that is part of a function that is fully contained within a licensed convention space where the group has purchased a room block as part of their event.

(E) A person who sells his own property which was not acquired for resale, barter, or exchange and who does conduct such sales or act as a participant by furnishing goods in such a sale more than twice during any calendar year. Each person seeking this exemption shall furnish to the department of licensing an accurate list with the names, addresses and telephone numbers of all persons contributing items to said sale. Said list shall be filed with the licensing department at least ten (10) days prior to the sale;

(F) Any person, firm, or organization,

i.e., tournament referees, ski race officials, sport camp instructors, whose contract is for a period of thirty (30) days or less per year, and whose contract relates directly to recreation programs or services in Park City, is not required to obtain a business license;

(G) Any person who obtains an exemption from the City Council by petitioning the Council for a waiver of the fees.

(H) **RESIDENTIAL GARAGE SALES.** No license shall be required for sales of surplus household goods or furnishings at a private residence in the garage or yard. If a garage sale is held more frequently than three (3) days in any one (1) calendar quarter at the same residence, it shall be deemed to be conducting business on a regular basis and a regular business license for the sale of that kind of merchandise is required. If the sale is in a zone that does not permit the sale of merchandise as a permitted or conditional use, further sales are unlawful. Sales tax on all sales is required under state law, and this Title shall not be construed as attempting to waive the requirement that tax be collected.

(Amended by Ord. No. 13-32)

**4- 2-22. LICENSE FEES
DECLARED TO BE A DEBT AND MAY
BE FORWARDED TO A COLLECTION
AGENCY.**

Any license or tax due and unpaid under this Title and all penalties thereon shall constitute a debt to Park City and may be collected by court proceedings in the same manner as any other debt or may be turned over to a collection agency, which remedy

shall be in addition to all other existing remedies.

4- 2-23. FEE AND TAX PAYMENTS, RENEWALS AND PENALTY.

The annual business license fee provided in this Title shall be due and payable to the City on or before the first day of January of each year for renewals of licenses for businesses, which were licensed the previous year. Business licenses for previously unlicensed businesses shall be issued for the unexpired portion of the calendar year in which issued unless issued between October 1 and December 31, in which case the license shall be valid until December 31 of the year following the issuance of the license, upon payment of 125% of the annual license fee, as set forth in Section 4-2-13 above.

If the renewal license fee is not paid on or before January 15 of the year in which the renewal license is due, there shall be a business license enforcement fee imposed of twenty-five percent (25%) of the license fee imposed by this Chapter or twenty-five dollars (\$25.00) whichever is greater.

If the renewal license fee is not paid in full on or before February 15th of the year in which the renewal fee is due, the business license enforcement fee shall be increased to fifty percent (50%) of the license fee imposed by this Chapter or twenty-five dollars (\$25) whichever is greater. If the renewal license fee is not paid on or before March 1st of the year in which the renewal fee is due, the business license enforcement fee shall be increased to one-hundred percent (100%) of the license fee imposed

by this Chapter.

Upon a proper showing that the business is of such a seasonal nature that business has not been conducted to date, the Director or his or her designee may waive the business license enforcement fee of said renewals.

Upon a showing of hardship acceptable to the Director or his or her designee, the licensed business may be allowed to pay the business license fees due over a period of time not to exceed three (3) months from the due date, with interest on the unpaid balance at the rate of eighteen percent (18%) per annum.

Any previously licensed business cited for engaging in business in violation of this Title shall have five (5) days from the date of citation to come into compliance with this Title. Failure of the licensee to reach compliance within five (5) days of the date of citation will subject the business to closure and the licensee to all applicable civil and criminal penalties.

If a licensed business enlarges its place of business or increases its capacity for conducting business, i.e., adding square footage, increasing number of vending machines, number of employees, bid limits, or increasing hourly user capacity, an additional license fee shall be due and payable to the City and shall be prorated on the basis of one-twelfth (1/12th) of the total annual fee on the enlargement or increase for each month remaining in the unexpired portion of the calendar year, including the month in which such increase is accomplished. The additional license fee for adding square footage shall be due and payable on the date the City issues the

occupancy permit.

(Amended by Ord. Nos. 02-51; 02-55; 09-01; 09-41)

4- 2-24. RENEWAL BILLING PROCEDURE.

On or before December 1 of each year, the division shall send a statement to each current licensee within the City, which statement shall be upon forms calling for the computation by the licensee of a license fee for the ensuing year based upon the nature of the business, square footage, employees, and other pertinent factors.

4- 2-25. RENEWAL OF LICENSE CERTIFICATE.

Upon receipt of the license fee, the Division shall issue a license certificate valid through December 31 of the next year.

(Amended by Ord. No. 02-51; 02-55)

4- 2-26. RECORDS TO BE MAINTAINED.

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

4- 2-27. LICENSE FEE ADJUSTMENT TO AVOID BURDENING INTERSTATE COMMERCE.

The business license fee imposed by this

Title shall not be applied so as to place an undue burden on interstate commerce. In any case, where the license fee is believed by a licensee or applicant for a license to place an undue burden upon interstate commerce, such licensee or applicant may apply to the Director, or his or her designee, for an adjustment of the fee so as to relieve such burden. The Applicant shall, by supporting other information as the Director, or his or her designee, may deem necessary in order to determine the extent, if any, of such undue burden. The Director, or his or her designee, shall then conduct an investigation, comparing the subject business with other businesses of like nature and shall make findings of fact from which he shall determine whether the license fee is discriminatory, unreasonable or unfair as to the licensee or applicant from the standpoint of its impact on interstate commerce and shall recommend to the City Council an appropriate license fee under the circumstances and the City Council shall fix the license fee in such amount. If the regular license fee has already been paid, the City Council shall order a refund of any amount over and above the amount of the license fee fixed, if any. In fixing the fee to be charged, the Director, or his or her designee, may use any method which will assure that the fee assessed shall be uniform with that assessed on business of like nature; provided, that the amount assessed shall in no event exceed the regular fee prescribed in this Title.

4- 2-28. OUTDOOR SPEAKERS ON MAIN STREET.

No licensed business shall permit or cause to exist any speaker or sound amplification equipment on the outside of any premise on

Main Street with the exception of those businesses which are allowed to have outside speakers as a part of their conditional use permit for outdoor dining or performances or events approved by staff as part of a master festival license or community celebration.

CHAPTER 3 - PEDDLERS AND SOLICITORS LICENSING

4- 3- 1. LICENSE REQUIRED.

Unless exempted by state or federal law or by this Title, it shall be unlawful for any solicitor to conduct business within Park City, whether sales are actually made or orders taken, without first having obtained a solicitor's license from the City. All licenses issued under this Chapter are non-transferable.

4- 3- 2. BUSINESS CONFINED TO ENCLOSED BUILDING.

Except as authorized by this Title, all businesses within Park City are to be conducted within a fully enclosed building, except for outdoor dining or other permanent conditional uses which have been given approval under Title 13 Land Management Code.

4- 3- 3. BUSINESS CONFINED TO PRIVATE PROPERTY.

Unless specifically licensed to do so under this or other ordinances, it shall be unlawful for any person to solicit business within any public street, sidewalk, alleyway, within the public parks, golf course, or publicly owned parking areas, unless said person has received prior approval from the appropriate

City department and executed a concession contract with the City.

4- 3- 4. PEDDLERS OF GOODS OR MERCHANDISE.

Unless authorized and licensed by this Chapter, peddlers of goods or merchandise are prohibited from conducting business within Park City.

4- 3- 5. TERMS AND CONDITIONS OF SOLICITATION LICENSES.

The Finance Department may issue a license to solicitors of goods and services, accommodations, franchises, investments, or any interest in real property or time intervals in the use or ownership of property, subject to the following terms and conditions:

- (A) The solicitor makes contact with the public at a location other than at the regular place of business at which the goods and services are actually sold or performed; and
- (B) The solicitor shall only contact the public on a door-to-door basis; and
- (C) No solicitation activities shall be conducted on public streets, sidewalks, or public property; and
- (D) The solicitor shall not enter any premises in which a "No Solicitors Allowed" sign, or the equivalent thereof, has been posted; and
- (E) The solicitor may only carry goods or merchandise for display, not for sale, but the solicitor may deliver previously ordered goods or merchandise; and

(F) No solicitor shall give or pass handbills literature, or other printed matter to passersby or place them on cars, buildings, driveways, doorways or porches. The licensee, including the primary business signing the license application, shall be responsible for any littering caused by that licensee's handbills being discarded or not being picked up; and

(G) It shall be unlawful for any person to solicit from any motor vehicle by means of calling or hailing from inside or on the vehicle, or to use any sound amplification equipment to broadcast solicitations from the vehicle. Persons offering others free transportation in exchange for listening to a sales solicitation shall, by clearly printed signs, all lettering to be legible from at least ten feet (10') away by persons of 20/20 vision, attached to the outside of both sides of the vehicle, identify the vehicle as a point at which sales solicitations will be made and display the name of the business for which the solicitation will be made; and

(H) The solicitor shall inform each buyer of the right to cancel a home solicitation sale pursuant to U.C.A Section 70C-5-102 or any successor provision.

(Amended by Ord. No. 02-41)

4-3-6. APPLICATION.

The application for a solicitor license shall be signed by both the person to be licensed as a solicitor and by an authorized representative of the business or businesses for which the licensee will be soliciting, referred to as the "primary business" below. The application shall require the disclosure of the existence of any investigations by any

local, state, or federal regulatory agency into allegations of fraud, deceit, securities violations, real estate sales or brokerage license suspension proceedings, or any pending charges on any felony, provided, however, that if the applicant is a licensed real estate or securities salesman, the foregoing information concerning the applicant's background may be supplied by providing the date of the issuance of that state license by the Utah Department of Business Regulation and such other information as necessary to correctly identify the applicant with that department. The application shall contain the date of birth and social security number of the applicant. Applicants are subject to a criminal background investigation conducted by the State of Utah and the Park City Police Department. No license shall be issued to persons who have been convicted of or entered a guilty plea to any crime involving receiving stolen goods, burglary, theft, fraud, the possession or sale of controlled substances, securities violations, or prostitution within the preceding three (3) years.

(A) **LICENSE FEE.** The annual fee for a solicitor's license shall be as set forth in the Fee Resolution. A solicitor's license shall be valid for a maximum of one calendar year, provided that all such licenses will expire on December 31 of the year of issue.

(B) **DENIAL OF APPLICATION.** If the application is denied, twenty-five percent (25%) of the fee shall be retained to cover the costs of investigating the application, and the balance refunded.

(C) **PHOTO IDENTIFICATION**

REQUIRED. All licensed solicitors shall wear an identification badge prepared by the City, which shall be the City license, in full view at all times while soliciting. The badge shall state that the wearer is a solicitor for a specified primary business, and contain the photograph of the licensee.

(D) **BUSINESS RESPONSIBLE FOR SOLICITORS.** The business or businesses which have signed the application for a solicitor's license shall be jointly liable for the conduct of that solicitor while engaged in conduct intended to further the business interests of the primary business. As a result of frequent violations of this Chapter by solicitors licensed to solicit on behalf of that primary business, the City Council, may, after hearing, revoke the license of any local business, which is the primary business of a solicitor or prohibit any foreign business from doing business within Park City for up to one year. For purposes of the section, "frequent violations" shall mean three (3) or more citations issued under this Chapter within any twelve (12) month period.

4- 3- 7. STREET MUSICIANS.

Persons playing acoustic and nonamplified musical instruments, performing pantomime, magic, dancing, or any other visual or audible performances with the intent or expectation to receive valuable consideration therefore shall be licensed by the City as street musicians before any such performance. The Finance Department may issue such a license upon payment of the license fee set forth in the Fee Resolution and no license shall be granted for more than ten (10) consecutive days at a time.

(Amended by Ord. 04-10)

4- 3A- 7. ART EXHIBIT FOR SALE ON PUBLIC PROPERTY.

(Section created by Ord. 04-10)

It is the purpose and object of this Chapter that the City establishes reasonable and uniform regulations governing the registrations and manner of operations of artists using available City property in Park City. This chapter shall be construed to protect the legitimate and important governmental interests recognized by this chapter in a manner consistent with constitutional protections provided by the United States and Utah Constitutions. The purpose of these regulations is to provide for the regulation and registration of artists within the City in a manner which will protect the property values of surrounding businesses and neighborhoods, and residents from adverse secondary effects, while providing to those who desire to exhibit their works of art for sale the opportunity to do so. This chapter also aims to prevent and control the adverse effects of artists who exhibit their artistry in public places, including without limitation, creating visual blight and aesthetic concerns; blocking reasonable access and sight easements to businesses; preventing the free flow of vehicular and pedestrian traffic in the City's narrow, historic Main Street sidewalks; and forcing citizens to be exposed to unwanted and unwelcome messages, with no avenue of escape. These strong substantial and compelling governmental interests compete with public and private interests in freedom of expression and the private commercial interests of artists and the interest of the public. Therefore, the City desires in reasonable time, place, and manner,

regulations which are content neutral, to balance those interests, and thereby protect the health, safety, and welfare of the citizens and guests of Park City, preserve the quality of life, and preserve the property values and character of the surrounding neighborhoods.

(A) **DEFINITIONS.** For the purpose of this chapter, the following words shall have the following meanings:

(1) “Art” means original works of fine art, graphic art and aesthetic objects produced by the artist. It shall not include:

(a) any artwork produced by any person other than the artist displaying the artwork; or

(b) any artwork purchased or taken on consignment and held for resale.

(2) “Artist” means the creator of the art who exhibits his or her own art for sale. Artist does not include street musician licensed under Section 4-3-7.

(3) “Available City property” means the green space at the northeast intersection of Park Avenue and 9th Street, Park City, Utah, owned and operated by the City, and alternatively pursuant to subsection H(1) below, City Park.

(4) “Exhibit” means display for sale, including taking future orders, or with the intent or expectation to

receive valuable consideration.

(B) **EXHIBIT FOR SALE ON SIDEWALKS PROHIBITED.** No artist may exhibit for sale his or her art on public streets, sidewalks, or public property other than specifically designated available City property as set forth in this Chapter. It is unlawful to exhibit art for sale on publicly owned sidewalks. Furthermore, it is unlawful to exhibit art for sale without a license under this Chapter or Chapter 8, in park strip areas, pocket parks, and City-operated or otherwise public parks.

(C) **TERMS AND CONDITIONS.**

(1) **REGISTRATION REQUIRED.** Any person or groups of persons intending or expecting to receive valuable consideration for the exhibition of art shall be registered with the City as an art vendor before such exhibit. The registration shall be valid each weekend Friday through Sunday, and all holidays or special events or master festivals as approved by the Special Events Department.

(2) **APPLICATION FOR REGISTRATION.** An application for registration to use available City property for the exhibit of art for sale shall be filed with the Finance Department upon a form provided by the Finance Department, which shall include the following information:

(a) The name, address and telephone number of the applicant;

(b) The name, address, and telephone number of a responsible person whom the City may notify or contact at any time concerning the applicant's art; and

(c) A brief description of the type of art to be displayed for sale.

(3) **APPLICATION FEE.** The City Council hereby waives all fees for the one (1) season trial period.

(4) **REGISTRATION LIST.** The Finance Department shall forward the registration to the Special Events Manager. Use of space by a licensee within available City property shall be subject to the designation of the City's Planning and Zoning Administrator in accordance with the standards set forth in Section 4-3A-7(H).

(5) **DENIAL/REVOCAION.** In addition to the reasons set forth in Section 4-2-9 of the Park City Municipal Code, the Finance Department may revoke or deny an artist vendor registration for failure to meet any of the conditions or requirements herein.

(6) **APPEALS OF DENIAL.** Denial by the Finance Department may be appealed within five (5) days to the City Manager or the City Manager's designee by written notice of appeal. The notice of appeal shall be filed with the City Recorder. The City Manager or his

designee may consider the appeal based upon the written submissions. However, for good cause shown, the City Manager or his designee may also hear oral evidence and argument. The City Manager or his designee shall consider the matter using an error of law standard of review.

(D) **USE OF PROPERTY/HOLD HARMLESS.** By way of application to the City, all artists accept the available City property "as is" and the City makes no representations regarding fitness for particular purpose or otherwise regarding the suitability of said property. Anyone using available City property for art exhibit shall indemnify, defend, and hold the City and its officers and employees harmless for any loss or damage, including attorney's fees, arising out of the use of such property. This obligation shall not extend to any claims for loss, damages, or injury sustained by any person or persons, or damage to property, or to expenses, including reasonable attorney's fees, incurred thereby, resulting from actions or omissions not within the artist's reasonable control or to the acts or omissions to act by the City, its officers and employees, or other third persons.

(E) **NUMBER AND SPACING OF ARTISTS PER AVAILABLE CITY PROPERTY.** The number of exhibit areas for artists that may exhibit at the same time on any available City property is twelve (12), unless otherwise determined by the Special Events Manager upon a finding of no harm or interference with the open space nature of the area, and upon giving notice to the City Council.

(F) **LOCATION RESTRICTIONS.**

The Planning and Zoning Administrator, in designating areas within available City property, shall take into consideration the interests, (i) of providing artists reasonable opportunities for self-expression, (ii) of providing reasonable opportunities for the public to experience the artists' work, (iii) of the public to peaceably enjoy the intended open space of the City's parts, and (iv) of adequately maintaining park vegetation and properties. No artist may exhibit art for sale within available City property except within areas designated by the Planning and Zoning Administrator.

(1) **SPECIAL EVENTS.** No artist shall exhibit art for sale within one hundred feet (100') of the boundary of a location in a special event or master festival license issued by the City under Title 4, Chapter 8 of the Park City Municipal Code. However, during special events or master festivals, artists may exhibit at a location included in a special event or master festival license if the special event or master festival licensee grants written permission. Furthermore, the City expressly reserves the right to relocate artists in a manner that does not diminish capacity to other available City property during the period of a special event or master festival.

(2) **EXCEPTION.** The restrictions of this Chapter notwithstanding, nothing herein shall prohibit the City from authorizing persons to temporarily exhibit art for

sale, or conduct outdoor sales on public property, or other such areas as the City may deem appropriate, pursuant to Park City Municipal Code Section 4-3-10, or during special events or master festivals. Special event or master festival vendors shall not be governed by this section, but shall be governed by Title 4, Chapter 8 of the Park City Municipal Code.

(G) **SPACE RESTRICTIONS.** No artist may exhibit artwork for sale directly on the surface of any City facility or structure, including sidewalks or on top of a trash receptacle. No artist's exhibit may exceed ten feet (10') in height from the ground or ten feet by ten feet (10' x 10') in area, including a tent or other structure. Exhibits should be off the ground in a manner so as not to damage the lawn, vegetation, or other public property. No artist shall use any area other than the area immediately beneath the surface of the display area for the storage of items for exhibit. Artists may have a container for gratuity. Set-up shall not begin prior to 8:00 a.m. each day. All artwork, stands, and other equipment, associated debris and structures shall be removed from available City property no later than 6:00 p.m. each night. Upon finding parking conflicts, the Special Events Manager may temporarily designate and/or prohibit parking at certain locations.

(H) **RIGHTS GRANTED.** The approval of any location for use by artists shall not be construed as granting the user any property right or interest to or in any property owned by the City. The rights granted by this Chapter are subject to the

provisions of this chapter and other applicable law. Artists exhibiting their art shall be present at all times when on exhibit. No agent, employee, or other representative shall sell any artwork of an artist.

(I) **VIOLATION/REMOVAL.** If at any time the City determined that an artist's use of available City property or the exhibit placed thereon is not in compliance with the requirements of this Chapter or other applicable law, a civil notice of such violation shall be issued to the artist by an authorized City official. If, after receipt of such citation, an artist fails or refuses to remove any such exhibit in violation, the City may, after consultation with the City Attorney or his/her designee, impound such exhibit. Although prior notice of such impoundment shall not be required, the City shall take reasonable efforts to promptly notify the artist following impoundment. The owner of any impounded exhibit shall be responsible for the expense of removal and storage of such exhibit. If the owner fails to reclaim the impounded exhibit and pay the expenses of removal and storage within thirty (30) days after notice of impoundment, the exhibit may be deemed unclaimed property and may be disposed of pursuant to law.

(J) **EMERGENCY REMOVAL.** In the event that a City official or the City police or Fire department determines that an artist's use of available City property or the exhibit placed thereon constitutes an immediate physical threat to public life, safety, or health, the exhibit may be removed from the City property immediately, without any prior notice or hearing. This provision shall not be enforced in any way related to the content or

expression of the material exhibit by the artist. The City shall use reasonable care not to damage the art.

(1) **NOTICE AND HEARING.**

In the event of such emergency removal, the City shall immediately contact the artist or his/her representative if the artist has filed with the City's Finance Department the name, address, and telephone number of the artist's representative whom the City may notify or contact at any time regarding the artist's exhibit. The City shall inform the artist or his/her representative of the removal and the reason(s) therefore. If requested by the artist or his/her representative, the City shall hold an expedited hearing before the City manager or his/her designee to determine whether the removed exhibit constituted an immediate threat to the public's life, safety, or health. In the event that the City Manager or his/her designee determined that the exhibit did not constitute such an immediate threat, the City shall forthwith, at its own expense, replace the exhibit at its location.

(2) **APPEAL.** The artist or his/her representative may appeal any decision or order to the Mayor or the Mayor's designee. Any appeal shall be filed in writing within ten (10) days of the decision with the City Recorder and shall specify the basis for appeal. The Mayor or the Mayor's designee may consider the appeal based on written submissions; however, for good cause shown, the

Mayor or the Mayor’s designee may also hear oral evidence and argument.

(K) **PENALTIES.** Any violation of this chapter shall constitute a civil violation and may subject the artist to revocation, suspension, or non-renewal of rights granted hereunder by the City. Three (3) or more violations within a one (1) year period shall constitute a Class “B” misdemeanor.

(L) **SALES TAX.** All artists are responsible for individually filing all necessary reporting forms and sales tax, if any, in accordance with state law.

(Amended by Ord. 04-32; 05-44)

4-3-8. STREET VENDORS.

It shall be unlawful to sell food, flowers, agricultural products, ice cream, candy, popcorn or other goods or merchandise from push carts, mobile wagons, or motor vehicles on private or public property except as authorized and licensed under this Chapter.

(A) **SALES AT CONSTRUCTION SITES.** At bona fide construction sites a license, as described in Section 4-2-18 of this Title may be obtained to sell food from motor vehicles located on private property. Licensees must list the construction sites they intend to serve on the license application, and update the list as needed throughout the year.

Licensees shall not remain at any one site for more than a two (2) hour period per day.

(B) **SALES WITHIN THE PUBLIC RIGHT-OF-WAY.** In order to control

vending within any public right-of-way in Park City, except at construction sites, only those vendors who have obtained the grant of a franchise from the City may obtain business licenses to operate such businesses. Absent such a franchise, vending within any public right-of-way is strictly prohibited.

(C) **TERMS AND CONDITIONS.** Licensed vendors shall be subject to the following terms and conditions:

(1) **LICENSE FEE.** The license fee for a street vendor's license shall be as set forth by resolution. Licenses shall expire on December 31 of the year of issuance. If the license is not granted, the City shall retain twenty five percent (25%) of the fee to help defray the costs of processing and refund the balance.

(2) **HEALTH DEPARTMENT APPROVAL.** All vendors serving food or garden produce for human consumption from any cart, wagon, or motor vehicle must have the means of preparing, keeping, and serving the foods approved by the Summit County Health Department. This approval, in writing, must be submitted as part of the license application. Withdrawal of Health Department approval for sanitary or health violations is grounds for revocation of the City license.

(3) **LIMITATION ON LOCATIONS.** Vending from motor vehicles, which shall include any motorized means of conveyance that is required to be licensed by the State Department of Motor Vehicles,

shall be restricted to the sale of food at construction sites or, if a franchise has been obtained from the City, in the Single Family Zone, the RD-MPD Zones within Park Meadows, all Historic Residential Zones (HR-1, HR-2, HRC, HRM), and Sullivan Lane, as designated on the Official Zoning Map of Park City. Street vending is prohibited in locations included in any master festival or special event boundary. Street vending on City rights-of-way during construction or other situations creating a public health or safety concern may be prohibited by the City Engineer or Chief of Police. The City will inform any franchise holder of these limitations and the duration of their effect.

(4) VENDORS REQUIRED TO MOVE LOCATION. It shall be unlawful for any street vendor to obstruct pedestrian or vehicular traffic on streets or sidewalks. It shall also be unlawful for any street vendor to remain in a fixed location for more than one hour at a time. Vendors shall move a distance of at least fifty feet (50') from their prior location every hour during which they are conducting business. It shall be unlawful for any street vendor to conduct business in a location that impairs reasonable pedestrian or vehicular access to any adjoining building, alley, yard or other property.

(5) FRANCHISE AGREEMENT. The City, in its sole discretion, may determine the

number of franchises to award based upon public necessity, demand of service, pedestrian and vehicular traffic compatibility, competition, and public safety. Any violation of the franchise agreement is grounds for business license revocation, in addition to any other remedy at law.

(Amended by Ord. No. 03-19)

4- 3- 9. CONVENTION SALES AND COMMERCIAL HOSPITALITY.

The Finance Department may issue licenses for a period not to exceed two (2) weeks for temporary use of convention, meeting, event and other assembly rooms within any licensed convention, meeting or assembly facility for the purpose of temporary exhibiting, marketing, displaying, Gifting or promoting of goods or services. If multiple vendors are sharing a space, an umbrella organizer may obtain a convention sales license for the entire space as long as each individual vendor provides an individual tax identification number. The umbrella organizer will be charged a license fee for the umbrella license as well as a fee for each vendor listed on the application. All vendors included in the umbrella license must be located under one physical address. The umbrella organizer is also responsible for having an appropriate business license. Any person or business that is conducting point of sales transactions will be required to have a separate business license whether in conjunction with a convention or not.

There are two types of Convention Sales and Hospitality Licenses.

TYPE 1 – Convention Sales License. This type of license will be available year round

except for during the dates of Sundance Film Festival.

TYPE 2 – Sundance Film Festival Convention Sales and Hospitality License. This type of license will only be available during the dates of the Sundance Film Festival.

The licenses may be issued on the following terms:

(A) **LICENSE FEE.** The license fee shall be as set forth in the Park City License Fee Schedule. An additional administrative fee as set forth in the Park City License Fee Schedule is hereby authorized for all such temporary licenses effective during any portion of the Sundance Film Festival.

(B) **STATE TAX NUMBER.** The applicant must provide individual a Utah tax identification number if sales transactions are taking place, federal tax identification numbers if only promotion or gifting is taking place, as part of the license application to assist in verifying the collection and reporting of sales tax.

(C) **REVIEW OF APPLICATIONS.**

(1) Upon a reasonable belief that the applicant or Licensee has a fraud or felony conviction or prior criminal background or pending criminal proceeding, the Director may refer the application or Licensee for investigation to the Police Department.

(2) The Finance Manager or designee shall refer the application to the Building and Planning Departments for review; the Chief

Building Official or designee to ensure compliance with the applicable building codes and fire codes including, but not limited to, determination of the maximum number of occupants the premises may safely accommodate at one time given the location and number of emergency exits; and the Planning Director or designee to ensure compliance with the Park City Land Management Code, Title 15.

(D) **TYPES OF APPLICATIONS**

(1) For Type 1 licenses, the City may take up to ten (10) business days to complete the licensure process to permit adequate time for the Police, Building, Finance and Planning Departments for review and investigation. The Departments may request reasonable evidence of title to goods proposed to be offered for sale as part of the review.

(2) Retained Council Authority for Type 2 licenses:

(i) All Type 2 licenses shall require City Council approval at a publically noticed meeting. All Type 2 license applications must be completed and received at least seven (7) calendar days prior to a regular scheduled meeting and three (3) business days prior to a special meeting.

(ii) All Type 2 license applications require the

applicant to have a pre-inspection prior to application at the place of business conducted by the Building Department for compliance with the building and fire codes. A copy of said pre-inspection report must accompany the license application submittal. The pre-inspection prior to application shall remain valid for 120 days.

(iii) All Type 2 license applications shall require an accurate floor plan and a design occupancy load stamped by a design professional to be submitted at the time of application.

(iv) All Type 2 license applicants require a final inspection by the Building Department post application after the space has been set up for the event. Business shall not be conducted until the final inspection has been passed and the applicant has been issued a Type 2 Convention Sales License.

(E) **RESPONSIBILITY OF HOST BUSINESS TO ENSURE LICENSING AND COMPLIANCE WITH THE UNIFORM BUILDING AND FIRE CODES.** Businesses which make all of or a portion or portions of their licensed business locations available to other persons for the purpose of engaging in business shall be responsible to ensure that such persons

obtain business licenses and or convention sales licenses and possess federal tax numbers and Utah state sales tax numbers listed in Park City if sales transactions are taking place. In the event a licensed hotel, motel, inn or bed-and-breakfast business fails to require such a showing, that business shall be liable for payment of all license fees and penalties payable by the person engaging in business at their licensed location. If such business is not currently licensed for assembly use, the business shall obtain the necessary inspection and permit from the Building Department. Nothing herein shall relieve the sub-letting/guest business from their individual responsibility to obtain the necessary licenses.

(Amended by Ord. Nos. 00-60; 01-38; 13-32; 14-50)

4- 3-10. OUTDOOR SALES.

The Finance Department may grant a license to regularly licensed Retail and Service based Park City businesses, per Section 15-15 of the Lane Management Code, to hold outdoor sales five (5) times a year for a duration of no longer than three (3) days for each outdoor sale; and additionally for up to fifteen (15) individual Sundays per calendar year, either within the business' own property or on public sidewalks or streets adjoining the business on the following terms:

(A) **LICENSE FEE.** The license fee for an outdoor sale license shall be as set forth in the Fee Resolution in addition to regularly issued business license for that business. No outdoor sale license shall be issued if the regular business license is not currently paid in full.

(B) **PROMOTION BY MERCHANT'S ASSOCIATION.** An association representing tenants in a shopping center or other merchant's association representing the businesses in a specific area may apply for an outdoor sale license for the members of that association by providing a list of the merchants participating, and paying a fee which shall be in lieu of and not in addition to the fee assessed against individual businesses.

(C) **SEASONAL PLANTS.** The Finance Department may issue licenses of longer duration to permit the outdoor sale, on a temporary basis, of Christmas trees, landscaping materials, or plants that are of a type and nature that reasonably require the sale to be conducted out of doors. The license fee for this kind of outdoor sale shall be as set forth in the Fee Resolution and no license shall have duration of more than eight (8) weeks. These licenses may be issued to any person or business. Sales shall be confined to commercial zones and to property under the possession and control of the applicant.

(Amended by Ord. No. 08-15)

4- 3-11. LICENSE TO BE DISPLAYED.

All licenses issued under this Chapter all be displayed by the licensee in a prominent place at the licensee's place of business. Solicitors shall carry the license on their person in a visible position. Type 2 convention sales licenses, and associated temporary occupant load signs and fire permits shall be displayed on the front door of the place of business.

(Amended by Ord. No. 14-50)

4- 3-12. MULTIPLE LICENSING.

Any one person may be issued any of the licenses described and created in this Title and may simultaneously hold more than one (1) license, and/or a regular Park City business license. The granting of multiple licenses shall not grant privileges not specifically granted by the licenses issued, nor shall the issuance of multiple licenses extend the time limitations imposed on any of these special licenses that are of a temporary nature. Suspension or revocation of one of the multiple licenses shall not act as a suspension of any other license then in effect, unless the grounds for the suspension of one are also the grounds for suspension of other licenses held by the licensee.

4- 3-13. GROUNDS FOR DENIAL OF LICENSE.

Licenses under this Chapter shall be denied if the applicant fails to meet the standards set within the license classification or for giving false or misleading information in any application category included in the application. Licenses may also be denied on the grounds that the general health, welfare, and public safety of the community make the issuance of such a license inappropriate. Licenses which conflict in location with other applications or issued licenses may be denied. Applicants whose licenses have been denied have the right to a hearing before the City Council on the reasons for denial.

4- 3-14. USE OF PUBLIC PROPERTY.

With the exception of those licenses listed above which specifically grant the right to make use of the streets or sidewalks, all commercial activity shall be confined to private property and to fully enclosed buildings on that property except as provided by this Title. The City Council may, however, grant specific temporary licenses to applicants to sell food, beer, or merchandise in City parks or at other locations on public property. In granting these temporary licenses, preferences shall be given to non-profit organizations and civic groups before profit-making businesses are licensed to conduct a temporary business within the parks or on other City property. Such licenses shall be issued only after receiving the approval of the appropriate City department and execution of a concession contract with the City.

4- 3-15. CERTAIN ACTS PROHIBITED.

It shall be unlawful for any person, business, corporation, partnership or other entity to attract or attempt to attract people to that person or that licensee's place of business by calling, shouting, hawking, ringing any bells, horn, sounding any siren or other noise making device, or by displaying any light or lantern, or by waving, hailing or otherwise signaling to passersby or by touching or physically detaining them. It shall be unlawful to pass handbills, flyers, or other advertising material by handing such material to passersby, or placing them on porches or vehicles, or attaching them to light or sign posts, or poles.

4- 3-16. EXEMPTIONS.

The licensing provisions of this Chapter shall not apply to the following kinds of activities that would otherwise fall within the purview of this Chapter:

(A) **POLITICAL ACTIONS.** No license shall be required to solicit signatures on petitions of a political nature or to canvass or solicit funds on behalf of candidates for office or ballot issues. Campaign literature may be delivered to homes, subject to the delivery conditions set forth in subsection (F) below.

(B) **RELIGIOUS ACTIONS.** No license shall be required of persons exercising their right to express their religious views, provided however, that no person shall use this exemption to sell merchandise. Delivery of any publication or material shall be subject to the delivery conditions set forth in subsection (F) below.

(C) **CIVIC GROUPS.** No licensing shall be required of local civic organizations, such as Boy Scouts, Girl Scouts, historic preservation groups, schools, museums, not-for-profit organizations, or other charities. Delivery of any publication or material shall be subject to the delivery conditions set forth in subsection (F) below.

(D) **WHOLESALE SOLICITATION.** Persons who are soliciting business on a wholesale basis only who are exempt under the provision of U.C.A. Section 10-8-80 or any successor provision. For purposes of this Chapter, the solicitation of orders to place advertising in periodicals or for later broadcasts shall be deemed wholesale solicitation, and exempt from licensing.

(E) **SOLICITED DELIVERIES.** No license shall be required of any person making a "solicited delivery."

(F) **UNSOLICITED DELIVERIES.** No license shall be required of any person making an "unsolicited delivery." However, any person making an unsolicited delivery of any kind shall not cause unsolicited material to be stacked, piled or accumulated on any driveway, porch, automobile, building, yard, doorway, stairwell, or doorknob, without the prior express consent of the occupant of the premises. It shall be unlawful for any person to deliver any unsolicited material to a residence where that person's previously delivered material remains uncollected. Additionally, any person making such an unsolicited delivery to a residence, who finds prior uncollected material there, shall properly dispose of that person's uncollected material.

(G) **STATE LICENSEES.** Solicitors who hold valid state issued licenses to act as real estate brokers or salesmen, stock brokers, or insurance agents or salesmen need not obtain a separate solicitors license from the City, but shall conduct their solicitation activities in accordance with the provisions of this Code.

(H) **DELIVERY PROHIBITION.** It shall be unlawful for any person to deliver any unsolicited material to any person, residence or premises where the occupant thereof has requested that such delivery cease or where such occupant has posted his/her desire not to receive such unsolicited material.

4- 3-17. RELATION TO BUSINESS LICENSE CHAPTER.

This Chapter is intended to supplement Chapter 2 of this Title to provide for greater flexibility in the manner of doing business. In the event that a conflict exists between the provision of this Chapter and that, so that it is unclear which category of license is required, the Director or his or her designee shall determine the proper class of license or licenses to be issued, subject to review by the City Manager and appeal to the Council.

CHAPTER 4 - BEER AND LIQUOR LICENSING

4- 4- 1. POLICY.

It is the policy of Park City Municipal Corporation to permit the operation of establishments serving beer and liquor in a manner consistent with the provisions of the Alcoholic Beverage Control Act and related provisions of State Law. It is also the policy of Park City Municipal Corporation to place the primary responsibility for maintaining order and preventing breaches of the peace within establishments selling and serving beer and liquor on the owners and managers of those establishments.

4- 4- 2. LOCAL CONSENT

(A) The issuance of a Park City beer or liquor license pursuant to Section 4-4-10 below shall constitute local consent for the purpose of any license issued by the state of Utah under the Alcoholic Beverage Control Act.

(B) Retained Council Authority:

- (1) all Special Event Temporary Alcoholic Beverage Licenses effective during the applicable

Sundance Film Festival annual Master Festival License period shall require City Council approval no later than the last regularly scheduled meeting in the preceding month of December.

(2) an Emergency Meeting may be held by Council to hear no more than twelve (12) applications for late applications. All applications must be complete and submitted no later than the first Friday in January to be heard no later than the second Thursday in January. No more than the first twelve complete applications to be submitted will be heard. A higher fee, pursuant to the fee schedule, will be required due to the expedited nature of the emergency meeting.

(Amended by Ord. Nos. 10-21, 13-19)

4- 4- 2.1. DEFINITION OF APPLICANT OR LICENSEE

Throughout this Title, the term “applicant” or “licensee” shall include the individual, or any partner, managing agent, manager, officer, director, stockholder holding at least 20% of the total issued and outstanding stock of a corporation, or member who owns at least 20% of the limited liability company applying for or being granted a license under this Title.

(Amended by Ord. No. 13-19)

4- 4- 3. LICENSEE QUALIFICATIONS.

No beer or liquor license shall be granted to any individual, partnership, corporation,

limited liability company, or association if the applicant does not meet the qualifications for a license as set forth in (A) through (E), below:

- (A) Must be twenty-one (21) years of age or older;
- (B) Must not have been convicted of:
 - (1) a felony under federal or state law;
 - (2) a violation of a federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture distribution, transportation, or adulteration of an alcoholic product;
 - (3) a crime involving moral turpitude; or
 - (4) on two (2) or more occasions within the five (5) years before the day on which the license is issued, driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs
- (C) Must not have had any type of beer or liquor license revoked within the last three (3) years;
- (D) Must comply with federal and state laws pertaining to the payment of taxes and contributions to unemployment and insurance funds; and
- (E) Must meet all other state requirements for the applicable license.

(Amended by Ord. Nos. 01-32, 01-21. 13-19)

4- 4- 4. APPLICATION FEE.

Each beer and liquor license application shall be accompanied by the regulatory license fee required by this Title. If the license is denied, fifty percent (50%) of the license fee will be retained to pay the costs of processing the application.

4- 4- 5. REFERRAL OF LICENSE APPLICATION TO CHIEF OF POLICE.

All applications filed in accordance with this Title shall be referred to the Chief of Police or designee for inspection and report. Within ten (10) business days of the date the City receives a complete application the Police shall conduct an investigation. In conducting an investigation and making a recommendation, the Chief of Police or designee may base a decision upon factors such as:

- (A) whether the applicant meets the licensee qualifications under this Title or State Code;
- (B) any criminal violations or charges against the applicant where the criminal violation at issue would make an applicant ineligible for a license under state statute or this Title;
- (C) compliance with state alcoholic beverage laws and this Title;
- (D) the nature and kind of business to be conducted by the applicant;
- (E) the nature and kind of entertainment that will occur on the premises if licensed;

(F) policies and safety protections the applicant has in place to restrict minors from accessing the portion or portions of a premises where alcoholic beverages are sold;

(G) policies and safety protections the applicant has in place to prevent minors from gaining access to and/or consuming alcoholic beverages;

(H) the proximity of the premises to any community location, school, or church.

The Chief of Police or designee shall, upon completion of such investigation, submit a recommendation as to whether the license should be granted. If recommending denial of a special event temporary alcoholic beverage, beer or liquor license application, the Chief of Police or designee shall submit a detailed report of the investigation, record the recommendation on the application, and sign the application. If recommending approval of a beer or liquor license application, the Chief of Police or designee shall record such recommendation on the application, sign the application, and may, at his/her sole discretion, submit a detailed report of the investigation.

(Amended by Ord. No. 01-32; 13-19)

4- 4- 6. REFERRAL OF APPLICATION TO BUILDING DEPARTMENT AND PLANNING DEPARTMENT.

The Finance Manager or designee shall refer the application to the Building and Planning Departments for review by the Building Official to ensure compliance with the

applicable building codes; determination of the maximum number of occupants the premises may safely accommodate at one time, given the location and number of emergency exits; and compliance with the Park City Land Management Code, Title 15. The Building and Planning Departments shall, within ten (10) business days after receiving such application, submit to the Finance Manager or designee a recommendation to approve or deny the application.

(Amended by Ord. Nos. 01-32, 13-19)

4- 4- 7. REFERRAL OF LICENSE APPLICATION TO HEALTH DEPARTMENT.

The Building Department may refer any application filed in accordance with this Title to the County Health Department which may inspect all premises to be licensed to assure compliance with all laws and regulations of the State of Utah and the ordinances, rules, and regulations of Park City governing the sanitary preparation, storage, distribution, or sale of beer and food.

(Amended by Ord. Nos. 01-32; 13-19)

4- 4- 8. PERIODIC INSPECTION OF PREMISES BY CHIEF OF POLICE AND CODE ENFORCEMENT OFFICIALS.

The Chief of Police or designee and Code Enforcement Officials shall be permitted to have access to all premises licensed or applying for license under this Title, and may make periodic inspections of said premises and may report his/her findings to

the Finance Manager or designee.

(Amended by Ord. Nos. 01-32, 13-19)

4- 4- 9. GROUNDS FOR LICENSE DENIAL, SUSPENSION, OR REVOCATION.

(A) The City shall deny a license application under this Title if:

- (1) The license application does not contain all of the information required by this Title;
- (2) The application fee is not paid;
- (3) The premises to be licensed do not comply with the applicable zoning regulations and building codes in force at the time of application;
- (4) The applicant does not meet the licensee qualifications set out in Section 4-4-3, elsewhere in this Title or in the state code;
- (5) The applicant intentionally misrepresented or concealed information required by this Title in an application for the license;
- (6) The proposed premises do not meet all applicable health and building codes, and the applicant does not provide reasonable assurances that the premises will be brought into compliance upon approval of the license;
- (7) The applicant holds other

licenses under this Title, which are not in good standing, or upon which licensed premises the provisions of this Code and state laws are frequently violated; or

(8) Applicant does not hold a current Park City business license.

(B) The City may suspend, revoke, or not renew a license under this Title if:

(1) The licensee fails to meet the licensee qualifications in Section 4-4-3, or the license could be denied for any of the reasons listed in Subsection (A) above.

(2) The licensee no longer possesses the qualifications required by state and local laws;

(3) The licensee violates state or local alcoholic beverage laws or regulations;

(4) The licensee does not pay an application fee, license cost, or fine;

(5) The licensee fails to maintain a Park City business license;

(6) The licensee fails to notify the City of a change in ownership:

(a) for a corporation, this includes changes related to corporate officers, directors of the retail licensee, or shareholders holding at least 20% of the total issued or outstanding stock of the corporation;

(b) for a limited liability company, this includes changes related to managers of the limited liability company or members owning at least 20% of the limited liability company.

(7) If any of the following fails to complete an alcohol training and education seminar (TIPS):

(a) any manager, supervisor that oversees the furnishing of alcoholic products, or any individual who serves an alcoholic product to a patron for consumption on the licensed premises where the license is a retail license;

(b) any supervisor who supervises the sale of beer, or individual who sells beer to a patron for consumption off the premises where the license is an off-premise beer retailer.

(8) The licensee is an off-premise beer retailer license and the licensee is on probation for multiple violations involving the sale of alcoholic beverages to minors, and the licensee or his/her staff are involved in any violation during the probationary period.

(9) The licensee violates a state alcoholic beverage law, Utah Department of Alcoholic Beverage

Control rule, or local ordinance.

(C) Emergency Suspension by Police is applicable for violation of any of the provisions listed above pursuant to Section 4-4-15.

(D) A denial may be appealed pursuant to 4-4-24.

(Amended by Ord. Nos. 01-32, 13-19)

4- 4-10. ISSUANCE OF LICENSE CERTIFICATE.

All beer and liquor license certificates shall be signed by the City Manager and Finance Manager, attested by the City Recorder under the seal of the City, and shall contain the following information:

(A) The street address of the licensed premises and mailing address if different;

(B) A detailed description of the portion of the building designated as the licensed premises;

(C) The maximum occupancy of the licensed premises;

(D) The beer or liquor license classification;

(E) The name of the person to whom such certificate has been issued and the name of a local contact person;

(F) The name of the business;

(G) The term of the license, including commencement and expiration dates; and

(H) That the license is subject to revocation by the City for violation of this Title or the Alcoholic Beverage Control Act.

(Amended by Ord. Nos. 01-32; 13-39)

4- 4-11. CITY LICENSE PERIOD.

Unless otherwise provided under this Title the license certificate shall be valid through December 31 of the year of issuance, unless revoked or suspended under this Title or unless the licensee's required State license is suspended, revoked or denied.

(Amended by Ord. No. 13-19)

4- 4-12. CITY RENEWAL PROCEDURE.

On or before December 1 of each year, the City shall send via first class mail, notice to each beer, restaurant liquor or Club Licensee within the City that the regulatory license fee required by this Title is due by December 31st. Upon receipt of the regulatory license fee and finding that renewal is proper pursuant to the criteria in this Title and set forth herein at Subsections (A) through (E), the Finance Manager or designee shall issue a license certificate valid through December 31st of the next licensing year.

Upon notification by the Police Department, the licensee must close the licensed premises on the expiration date of the license and keep the premises closed for the consumption or storage of beer or liquor until the date his/her renewal license is issued by the Finance Manager or designee. In the absence of such notice, pending action on license renewals, the license is deemed extended provided a renewal application

was filed on or before December 31 of the year in which the prior license was issued. The Finance Manager or designee shall prepare a list or lists of all licenses to be renewed, and the Finance Manager or designee may approve all renewals on that list or lists.

Licenses shall be renewed unless the Finance Manager or designee shall find:

- (A) The licensee has attempted to transfer or assign the license to others in violation of this Title;
- (B) The licensee no longer holds the qualifications required of licensee under the provisions of this Title;
- (C) The premises have been remodeled or changed in a manner that eliminates required exits, creates closed booths or stalls;
- (D) The licensee or his/her employees or agents have been convicted of or plead guilty to more than five (5) violations of this Title or state liquor control statutes relative to the conduct of the licensed premises in a single calendar year preceding the renewal, not including violation by patrons; or
- (E) Licensee does not hold a current valid Park City business license.

In the event the Finance Manager or designee finds any of the foregoing conditions (A) through (E) to exist with respect to a license renewal application, the Finance Manager or designee may waive the violations and grant a renewal license, grant a probationary renewal for a fixed period of time less than one year, or deny the

application for renewal. When deemed appropriate, the Council may hold hearings on specific license renewal applications prior to granting the renewal license.

(Amended by Ord. Nos. 01-32, 10-21; 13-19)

4- 4-13. LICENSES NON-TRANSFERABLE.

No license issued under this Title is transferable from the original licensee to any other person, partnership, corporation or other entity. Each year, as a part of the renewal process, the licensee shall indicate the board of directors, or all partners, and if there are any changes from the previous year, the license shall be reviewed as a new application to the extent of the changes in ownership.

(Amended by Ord. Nos. 01-32; 13-19)

4- 4-14. TRAINING REQUIREMENTS FOR THE EMPLOYEES OF BEER AND LIQUOR LICENSE PREMISES.

No applicant shall be granted a special event temporary alcoholic beverage, beer or liquor license, unless that applicant shall show by certificate(s) granted by the DABC or by adequate proof of the existence of such certificate(s), that each employee of the business engaging in the serving, selling or furnishing of such alcohol on the premises has completed the Alcohol Training and Education Seminar, as required in U.C.A. Section 62A-15-401.

Every new employee of a licensee who is required to complete this seminar shall

complete the seminar within thirty (30) days of commencing employment. Violation of this Section will result in revocation of the license granted unless the licensee provides to the Finance Manager or designee proof of compliance within thirty (30) days of the time that licensee is first notified that such violation occurred.

(Amended by Ord. Nos. 01-32, 10-21, 13-19)

**4- 4-15. EMERGENCY
SUSPENSIONS BY POLICE.**

Licenses under this Title may be suspended by the Chief of Police or designee without prior hearing provided there is probable cause to believe violations of this Title or state law are occurring, and the conditions are such that the public health and safety are endangered. Such temporary suspension shall occur only if the management or the licensee fails to remedy the situation within fifteen (15) minutes of notification by the Chief of Police or designee that a suspension will occur if the conditions complained of are not remedied in a manner that eliminates the immediate danger to public health and safety. No emergency suspension by the Chief of Police or designee shall extend beyond the ordinary close of business on the day on which the suspension was given.

(Amended by Ord. Nos. 01-32; 13-19)

**4- 4-16. OFFENSES OF
LICENSEE.**

It shall be unlawful for the holder of any license issued under this Title or any employee or agent of the holder to cause or permit to be caused on his or her premise any of the following acts:

(A) **SALE DURING REVOCATIONS.** To sell any beer or liquor during any period of a license revocation or suspension.

(B) **FAILURE TO DISPLAY LICENSE.** To fail to have the license issued under this Title on display in the licensed premises.

(C) **EXCESS HOURS OF OPERATION.** Beer may not be sold or offered for sale by any on-premise Beer retailer after 1:00 a.m. and before 10:00 a.m.

(1) Liquor may not be sold or offered for sale at a duly licensed restaurant during the following days or hours:

(a) on any day after 12 midnight and before 12 noon.

(2) Liquor may not be sold or offered by a Club Licensee during the following days or hours:

(a) all days after 1:00 a.m. and before 10:00 a.m.

Holders of off-premise beer licenses may sell beer for consumption off the premises at any time of day.

(D) **MINORS ON THE PREMISES.** To permit a minor to be in or enter into a licensed premises which holds an on-premise tavern beer license. There shall be no restriction on the admission of minors being in or remaining in any of the following licensed premises:

(1) Off-Premise Beer License

- (2) On-Premise Beer License, except taverns
- (3) Restaurant Liquor Licenses
- (4) Temporary Licenses of these classifications

It shall not be a violation of this Title for minors to enter a licensed club, provided, however, that minors must be accompanied by a parent or guardian, and shall be only within an area of the licensed premises designated as food service area. It shall be unlawful for any Club Licensee to permit minors to be within the license premises when not accompanied by a parent or guardian, or to permit minors to remain in or about the liquor service portion of the premises. Licensees may prohibit minors from entering the premises at all at their discretion by posting a sign at the entrance that states that minors are not permitted inside.

Except as otherwise provided herein, it shall not be a violation of this Title to permit minors to work in any licensed premises, regardless of license classification, provided that minors shall not work in any capacity that involves handling, selling, or serving alcoholic beverages. It shall be unlawful to permit minor employees to sell, serve, or handle alcoholic beverages. Minors may not work on or otherwise be on the premises of an On-Premise Retail Tavern.

(E) **SALE OR SERVICE TO MINORS.** To furnish or sell, directly or indirectly, through its agents or employees, an alcoholic beverage to persons under the age of twenty-one (21) years, or to permit patrons within the licensed premises to

provide alcoholic beverages to persons under the age of twenty-one (21) years on the licensed premises.

(F) **NUISANCE.** To keep or permit a nuisance on the premises as defined by this Title.

(G) **UNTAXED LIQUOR.** To possess or sell on the licensed premises any liquor which was not purchased from a Utah State Liquor Store or a package agency of that store, except as provided by State law.

(H) **ADULTERATED ALCOHOLIC BEVERAGES.** To possess or sell on the licensed premises any adulterated, impure, diluted, or misbranded liquor.

(I) **FAILURE TO CONTROL NOISE.** To permit or provide either live or recorded amplified music without first having closed all exterior doors and windows of the licensed premises to control noise. Doors may be opened to provide ingress and egress, but shall not be blocked in the open position to provide ventilation. Doors shall be equipped with automatic closing devices to keep them in the closed position except to permit ingress and egress of patrons.

(J) **OUTDOOR SPEAKERS.** To permit or cause to exist any loud speaker or sound amplification equipment on any outdoor balcony deck, patio, or garden associated with the licensed premises other than speaker systems or sound amplification equipment in conjunction with approved outdoor dining.

(K) **EXCESS HOURS OUTSIDE.** To sell or service alcoholic beverages or to

permit patrons to remain on any outdoor balcony, deck, patio, or garden associated with the licensed premises after the hour of 10 p.m. except licensed premises may permit patrons to ingress and egress through a closed door to such an area until 12 a.m. provided that food and alcohol are neither sold nor allowed to be consumed or carried out to the area.

(L) **GAMBLING**. To permit, cause, participate, or allow any gambling or gaming, as defined by the laws of the state of Utah within any licensed premises.

(M) **CONTROLLED SUBSTANCES**. To permit or tolerate, or participate in the use, sale, or possession of any unlawful controlled substance within the licensed premises.

(N) **OVERLOADING**. To permit or tolerate the licensed premises to be occupied by more persons than the assigned occupancy load for the building assigned by the Building Official or Fire Marshall under the applicable Building and Fire Code regulations.

(O) **LICENSE VIOLATION**. To permit the consumption of alcohol on any premises licensed with an off-premise beer license, or to open any container for consumption on the premises by the holder of any off-premise beer license or his/her agents or employees; or to permit, cause, or tolerate on the licensed premises the sale, use, consumption, or possession of alcoholic beverages in a manner that is in violation of the limits imposed by the license granted.

(P) **SERVICE OF INTOXICATED PERSONS**. To sell or serve alcoholic

beverages to a person who is obviously intoxicated, or to permit an obviously intoxicated person to remain in or about the premises.

(Q) **OPERATING WITHOUT REQUIRED STATE LICENSES**. To continue to sell, serve or store alcoholic beverages on a licensed premise after the state license required under the Alcoholic Beverage Control Act has been denied, suspended or revoked.

(Amended by Ord. Nos. 01-32; 06-62; 07-38; 10-21; 13-19)

4- 4-17. OFFENSES BY PATRONS.

It shall be unlawful for any person within a licensed premise under this Title, whether as a guest, patron, invitee, supplier, or in any other capacity other than as an employee of the license holder or as the licensee to commit or perform any of the following within the licensed premises:

(A) To enter or remain in any licensed premises holding an on-premise tavern license while under the age of twenty-one (21) years.

(B) To enter or remain in any premises licensed as a private club while under the age of twenty-one (21) years, except when accompanied by a parent or guardian or as a non-alcoholic handling employee of the licensee.

(C) To be in or around the portion of any licensed premise holding a private club license which is designated or functioning as a liquor selling portion of the premises,

rather than the area primarily designed and intended for the sale of food when under the age of twenty-one (21) years.

(D) To furnish directly or indirectly alcoholic beverages to any persons under the age of twenty-one (21) years, or to possess or consume alcoholic beverages while under the age of twenty-one (21) years.

(E) To enter or remain in any licensed premises after being ordered to leave the premises by the licensee or the agent or employees of the licensee.

(F) To enter or remain in any licensed premises while intoxicated.

(Amended by Ord. Nos. 10-21; 13-19)

**4- 4-18. CITATIONS/
VIOLATIONS.**

The commission of any act or offense listed in Section 4-4-16 or 4-4-17 above shall be a Class “B” misdemeanor, except violations of Section 4-4-16(E) and (Q) shall be Class A misdemeanors. Both the license holder and/or an employee or agent, and the patron of the licensed premises may be charged from the same incident, as the offenses of the licensee and the offenses of the patron are separate offenses. The licensee shall be civilly responsible for all violations permitted or caused by the agent or employee of the licensee and the criminal acts of the employees or agents committed on the premises in the course of employment shall be deemed the acts of the licensee for purposes of revocation, suspension, or non-renewal by the City.

(Amended by Ord. No. 13-19)

**4- 4-19. WHOLESALER AND
RETAILER NOT TO HAVE COMMON
INTERESTS.**

It shall be unlawful for any dealer, brewer or wholesaler to either directly or indirectly supply, give or pay for any furniture, furnishings or fixtures of a retailer, and it shall be unlawful for any dealer or brewer to advance funds, money or pay for any license of a retailer or to be financially interested either directly or indirectly in the conduct, operation, or ownership of any premises with a beer license, "club" liquor license or "seasonal" license for any of these license classes.

(Amended by Ord. No. 20-21)

**4- 4-20. BUILDING
REQUIREMENTS.**

It shall be unlawful for any person who obtains a liquor or beer license after the adoption of this Title to own, operate or manage any premises licensed for the retail sale or consumption of beer or liquor without complying with the following lighting and view requirements:

(A) During business hours, adequate lighting shall be maintained in all areas of the licensed premises to allow safe movement within the licensed premises, visibility for business activity, and visibility of all areas of the licensed premises from a point within the licensed premises at or near the main public entrance.

(B) A clear, unobstructed view of all areas of the licensed premises shall be available at all times from a point within the

licensed premises at or near the main entrance.

Persons who have obtained beer or liquor licenses from the City before adoption of this Title and who annually renew their licenses with the City shall not be required to comply with the requirements of this section.

(Amended by Ord. No. 13-19)

4- 4-21. CLOSED STALLS AND BOOTHS PROHIBITED.

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

4- 4-22. OCCUPANCY LOAD.

On any premises licensed after the date of this Title, the Building Official shall determine the maximum safe occupancy load of the building, as provided in the International Building Code, and it shall be unlawful and a Class "B" misdemeanor for any license with an assigned occupancy load to permit more than that number of persons to be within the licensed premises. Once an occupancy limit is assigned, the limit shall be posted with the license in a prominent place within the licensed premises. This provision shall not apply to premises licensed as off-premise beer licenses.

(Amended by Ord. No. 13-19)

4- 4-23. APPLICABILITY.

The provisions of this Title shall apply to all licensed premises and all licensees who are issued either a new license or a renewal of an existing license after the date of this Title. Amendments to this Title may be made from time to time, and all licenses or renewals issued hereunder are subject to amendments as they become effective, except that amendments which address structural requirements of any licensed premises existing at the time of the amendment shall not apply to existing structures until such time as the license is transferred, forfeited, or allowed to expire. As existing structures are sold, remodeled, or re-licensed, but not on renewal of existing licenses, however, full compliance will be required prior to the issuance of a new license, new class of license, or license to a new licensee at that location.

(Amended by Ord. No. 13-19)

4- 4-24. APPEALS OF LICENSE DENIAL OR REVOCATION.

Denial or revocation of a license under this Title may be appealed within five (5) days to the City Manager by written notice of appeal. The notice of appeal shall be filed with the City Recorder. The City Manager may consider the appeal based upon the written submissions. However, for good cause shown, the City Manager may also hear oral evidence and argument. The City Manager shall consider the matter using an error of law standard of review.

(Amended by Ord. No. 13-19)

**CHAPTER 4A – SPECIAL EVENT
TEMPORARY ALCOHOLIC
BEVERAGE LICENSES DESCRIBED**

(Adopted by Ord. No. 13-19)

**4- 4A- 1. SPECIAL EVENT
TEMPORARY ALCOHOLIC
BEVERAGE LICENSE REQUIRED.**

It shall be unlawful for any person to sell beer or liquor at any event within the City without first procuring a Special Event Temporary Alcoholic Beverage License as required by this Title. No alcoholic beverages may be served at any event(s) at which natural person(s) or entities (including, but not limited to corporations, partnerships, unincorporated associations or joint ventures) will be engaging in business unless a Special Event Temporary Alcoholic Beverage License is secured prior to the event. A City issued Special Event Temporary Alcoholic Beverage License is required if Engaging In Business at an event, even if a State Department of Alcoholic Beverage Control (DABC) license is not required.

In addition to the City license, a State Temporary Beer Event Permit or Single Event Permit shall be required for all sales of beer or liquor at any event. No license may be transferred, assigned or subleased in any manner. Licenses are invalidated by transfer or attempted transfer. All licensees shall comply with the provisions of the Alcoholic Beverage Control Act and this Title.

4- 4A- 2. LICENSE APPLICATION.

Applications for a Special Event Temporary Alcoholic Beverage License shall be made on behalf of a bona fide association, corporation, church or political organization

or a recognized lodge, chapter or other local unit, in writing, to the Finance Manager or designee and include the information set forth in (A) through (G) below:

- (A) Each application shall list the street address of the business; whether the applicant has complied with requirements specified in the Alcoholic Beverage Control Act; the location of any other beer or liquor licenses held by the applicant; the name and Utah address for the business' local agent for service of process; and any other information required by the Finance Manager or designee;
- (B) The name, street address, mailing address, date of birth, and driver's license of the party responsible for completing the application and supervising the event at which the license will be used;
- (C) A statement detailing applicant's criminal history and certified and signed by the applicant;
- (D) The application must be subscribed by the applicant who shall state under oath that the facts contained therein are true;
- (E) A certificate of existence and a copy of the articles of incorporation, the written partnership agreement, or other applicable documentation showing entity has been in existence for at least one (1) calendar year prior to the date of application;

(F) The name, contact information, and/or any other information needed by the City to verify each officer, partner, or director meets the requirements set forth in the statutes of Utah and this Title; and

(G) Affirmation indicating each officer, partner, or director meets the Licensee qualifications set forth in the statutes of Utah and this Title;

Applications may take up to ten (10) business days to process. As provided by this Title, applicants may not store, sell, serve or otherwise facilitate the consumption of alcoholic beverages by others until applicant has procured a license as required by this Title and, if required, a State issued license.

4- 4A- 3. REGULATORY SPECIAL EVENT TEMPORARY ALCOHOLIC BEVERAGE LICENSE FEE

The regulatory liquor license fee shall be set by resolution for all Special Event Temporary Beer Licenses and Special Event Liquor Licenses. The regulatory license fees shall be used by the City to defray, in part, the costs of alcohol related enforcement and responding to alcohol related offenses within Park City. This fee may be waived by the Finance Manager or designee for special event temporary licenses issued to persons participating in community sponsored events, or in events sponsored by or for the benefit of non-profit, civic, religious, or charitable organizations.

4- 4A- 4. SPECIAL EVENT TEMPORARY ALCOHOLIC

BEVERAGE LICENSE

(A) A Special Event Temporary Alcoholic Beverage License shall grant a bona fide association, corporation, church or political organization or a recognized lodge, chapter or other local unit that is conducting a convention, civic or community enterprise the privilege to store, sell, service and consume alcoholic beverages in accordance with (i) an applicant’s State liquor license or (ii) in case of Business activity where a State liquor license is not required, as outlined below.

(B) The privileges granted by this license shall be limited by the type of temporary license or permit the applicant obtains from the State as follows:

(1) Where an applicant obtains a State Temporary Beer Event permit, this license shall carry the privileges and responsibilities granted State Temporary Beer Event Permit holders and shall authorize the storage, sale, service and consumption of beer for a period not to exceed thirty (30) days. A State Temporary Beer Event Permit may authorize multiple sales outlets on different properties under one State Temporary Beer Event Permit. No person, entity, or association shall in any one (1) calendar year operate under a Special Event Temporary Alcoholic Beverage License for more than a total of ninety (90) days; or

(2) Where an applicant obtains a State Single Event Permit this license shall carry the privileges and

responsibilities granted State Single Event Permit holders and shall authorize for a period not to exceed one-hundred and twenty (120) consecutive hours or five (5) consecutive days the storage, sale, service and consumption of liquor. In any one (1) calendar year an applicant may obtain up to twelve (12) licenses provided that all such licenses in the calendar year are for seventy-two (72) hours or fewer. If any license issued to an applicant within one (1) calendar year exceeds seventy-two (72) hours, applicant may obtain no more than four (4) special event liquor licenses for that one (1) calendar year.

(C) Special Event Temporary Alcoholic Beverage Licensees must provide the Finance Manager or designee with proof of State licensure if required not less than ten (10) business days prior to the event for which the City license has been issued. Unless otherwise provided for in this Title, Special Event Temporary Alcoholic Beverage Licenses shall be valid only if a licensee has received a State liquor license from the Utah Alcoholic Beverage Control Commission for the same event. All licensees must notify the Finance Manager or designee immediately if their State license is denied, revoked, or suspended for any reason. In the event an applicant is not required to obtain a State Temporary Beer Event Permit or State Single Event Permit, the privileges granted by a Special Event Temporary Alcoholic Beverage License shall be contingent upon the type of alcoholic beverages to be served at the event as established by the Special Event Temporary Alcoholic Beverage License

application. Applicants serving only beer at an event shall receive the privileges and shall be subject to the limitations described in (B) (1) above. Applicants serving any liquor at an event shall receive the privileges and shall be subject to the limitations described in (B) (2) above.

(D) Subject to the limitations set forth in (B) (1) and (2), a Special Event Temporary Alcoholic Beverage License shall authorize the storage, sale, service and consumption of alcoholic beverages in conjunction with a master festival, special event, convention, civic or community event and pursuant to the Utah Alcoholic Beverage Control Act. Alcoholic Beverage Control Commission rules and regulations, and the ordinance of Park City

(E) No person under the age of twenty-one (21) shall sell or serve alcohol under a Special Event Temporary Alcoholic Beverage License.

4- 4A- 5. INSURANCE REQUIREMENTS.

No Special Event Temporary Alcoholic Beverage Event may take place until the applicant presents the Finance Manager or designee proof of liquor liability insurance coverage in the amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate or more as may be required by the Finance Manager or designee based on factors such as the nature, size and location of an event.

CHAPTER 5 - BEER LICENSES DESCRIBED

4- 5- 1. BEER LICENSE

REQUIRED.

It shall be unlawful for any person to engage in the business of the sale of beer at retail or wholesale within the City without first procuring a beer license as required by this Title. In addition to the City license, a State beer license shall be required for all sales of beer for on-premise consumption or for purchase or sale of beer in a container exceeding two liters. A separate license shall be required for each place of retail sale, for each separate premise, except that separate licenses are not required for each retail beer dispensing outlet located in the same building or on the same resort premise owned or operated by the same applicant. No beer license may be transferred, assigned or subleased in any manner. Licenses are invalidated by transfer or attempted transfer. All licensees shall comply with the provisions of the Alcoholic Beverage Control Act, and this Title. No Beer License shall be issued for any club or bar in the HCB District or HRC District that is regulated as a Storefront Property pursuant to LMC Chapter 15-15 unless the general public may join the club, either as an annual member or a temporary visitor, and the cost of that annual membership or temporary visitor card is not more than \$50.00.

(Amended by Ord. Nos. 07-28; 07-69; 10-21; 13-19)

4- 5- 2. LICENSE APPLICATIONS.

Applications for new beer licenses shall be made in writing to the Finance Manager or designee and include the information set forth in (A) through (E) below:

(A) Each application shall state the name, street address, mailing address, age and citizenship of the applicant; and contain an indication as to whether the applicant meets the Licensee qualifications set out in this Title.

(B) The applicant’s criminal history obtained from the Utah Bureau of Criminal Identification completed within three years of application;

(C) The Street address of the business; whether the applicant has complied with requirements specified in the Alcoholic Beverage Control Act; the location of any other beer or liquor licenses held by the applicant; the name and Utah address for the business’ agent for service of process; and any other reasonably pertinent information required by the Finance Manager or Designee;

(D) The application must be subscribed by the applicant who shall state under oath that the facts therein contained are true; and

(E) If the applicant is a partnership, association, corporation, or limited liability company the applicant shall include a certificate of existence, copy of the articles of incorporation or the written partnership agreement; and the information set forth in (A) and (B) for each officer, partner, or director.

(Amended by Ord. No. 13-19)

4- 5- 3. REGULATORY BEER LICENSE FEE.

The regulatory liquor license fee shall be set by resolution for all beer licenses. The

regulatory license fees shall be used by the City to defray, in part, the costs of alcohol related enforcement and responding to alcohol related offenses within Park City. This fee may be waived by the Finance Manager or designee for special event temporary licenses issued to persons participating in community sponsored events, or in events sponsored by or for the benefit of non-profit, civic, religious, or charitable organizations.

(Amended by Ord. No. 13-19)

4- 5- 4. RETAIL BEER LICENSE CATEGORIES.

Retail beer licenses issued under the provisions of this Title shall be classified and carry the privileges and responsibilities hereinafter set forth in this Title:

(A) **OFF-PREMISE BEER LICENSE.** An off-premise retail license shall entitle the licensee to sell bottled or canned beer on the licensed premises in accordance with the Alcoholic Beverage Control Act and the ordinances of Park City.

- (1) Beer may not be sold, provided, or possessed for off-premise consumption in containers larger than two (2) liters.
- (2) A minor may not sell beer for off-premises consumption except under the supervision of a person twenty-one (21) years of age or older who is on the premises.
- (3) A beer retailer shall display beer sold by the retailer in an area that is visibly separate and distinct

from the area where nonalcoholic beverages are displayed except that nonalcoholic beer may be displayed with alcoholic beer.

- (4) The beer retailer shall post a sign that reads, "These beverages contain alcohol. Please read the label carefully."
- (5) No consumption of beer or alcoholic beverage shall be permitted on the premises of an off-premise licensee.

(B) **ON-PREMISE RETAIL BEER LICENSE.** Any establishment desiring to sell beer at retail for on-premise consumption shall first obtain a Park City on-premise retail beer license and a State on-premise retail beer license as required under U.C.A. Section 32A-10-201. An on-premise retail beer license shall entitle the licensee to sell beer at retail in bottles, cans or at draft for consumption on the premises.

All State-issued on-premise beer retail licenses expire on the last day of February of each year. Accordingly, applicants must submit a renewal application to the DABC no later than January 31st of each year. City beer licenses shall expire on December 31st of each year and the licensee must submit a renewal application to the City prior to December 15th. All licensees must notify the City immediately if the State license is denied or revoked for any reason. On-premise licensees must provide the City with proof of State licensure by March 1 of each year or be subject to cancellation, revocation or termination of the City's license issued hereunder.

On-premise beer retail license holders may sell beer in open containers, in any size not exceeding two (2) liters, and on draft. Liquor may not be stored or sold on the premises of any on-premise retail beer licensee. Beer sold in sealed containers smaller than two (2) liters by the on-premise Licensee may be removed from the premises.

There are two types of licenses to be issued under this Section:

(1) **ON-PREMISE RETAIL TAVERN LICENSE.** An on-premise retail tavern license shall be required for all premises where the primary or main business is that of selling beer for consumption on the licensed premises. An on-premise retail tavern license shall entitle the licensee to sell bottled, canned, or draft beer for consumption on the licensed premises. No person under the age of twenty-one (21) years shall be employed or otherwise be on the premises licensed as an on-premise retail tavern.

(2) **ON-PREMISE RETAIL BEER LICENSE - ALL OTHERS.** An on-premise retail beer license restaurant shall entitle the licensee to sell beer at retail in bottles, cans or draft for consumption on the premises in conjunction with restaurant food service. No person under the age of twenty-one (21) years shall serve or sell beer under this license.

(C) **BEER CLUB LICENSE.** A Beer club Licensee shall carry the privileges of a

tavern beer license provided that such license shall be issued only to bona fide clubs which are organized, incorporated, bonded, regulated, and operated in compliance with the Alcoholic Beverage Control Act, and the Utah Alcoholic Beverage Control Commission Rules and Regulations.

(Amended by Ord. Nos. 04-19; 08-14; 10-21; 13-19)

CHAPTER 6 - LIQUOR LICENSE DESCRIBED

4-6-1. LIQUOR LICENSE REQUIRED.

No person shall operate a place of business which allows customers, members, guests, visitors, or other persons to possess, consume, or store liquor on the premises of the place of business without a liquor license issued by the City. A separate license shall be required for each place of business. No liquor license may be transferred, assigned, or subleased in any manner. All licensees shall comply with the provisions of the Alcoholic Beverage Control Act, Utah Alcoholic Beverage Control Commission rules and regulations, and this Title. No Liquor License shall be issued for any club, bar or restaurant in the HCB District or HRC District that is regulated as a Storefront Property pursuant to LMC Chapter 15-15, as described in Sections 4-6-2 and 4-6-3 unless the general public may join the club, either as an annual member or a temporary visitor, and the cost of that annual membership or temporary visitor card is not more than \$50.00.

(Amended by Ord. Nos. 07-28; 07-6; 10-21;

13-19)

4- 6- 2. LICENSE APPLICATION.

Applications for a new liquor license shall be made in writing to the Financial Manager or designee and include the information set forth in (A) through (E) below:

(A) Each application shall state the name, street address, mailing address, age and citizenship of the applicant; and contain an indication as to whether the applicant meets the licensee qualifications set out in this title;

(B) The applicant’s criminal history obtained from the Utah Bureau of Criminal Identification completed within three years of applications;

(C) The Street address of the business; whether the applicant has complied with requirements specified in the Alcoholic Beverage Control Act; the location of any other beer or liquor licenses held by the applicant; the name and Utah address for the business’ agent for service of process; and any other reasonably pertinent information required by the Finance Manager or designee;

(D) The application must be subscribed by the applicant who shall state under oath that the facts therein contained are true; and

(E) If the applicant is a partnership, association, corporation, or limited liability company the applicant shall include a certificate of existence, a copy of the articles of incorporation or the written partnership agreement; and the information set forth in (A) and (B) for each officer, partner, or

director.

Amended by Ord. Nos. 01-32, 10-21; 13-19)

4- 6- 3. REGULATORY LIQUOR LICENSE FEE.

The regulatory liquor license fee shall be set by resolution for all liquor licenses. The regulatory license fees shall be used by the City to defray, in part, the costs of alcohol related enforcement and responding to alcohol related offenses within Park City. This fee may be waived by the Finance Manager or designee for temporary licenses issued to persons participating in community sponsored events, or in events sponsored by or for the benefit of non-profit, civic, religious, or charitable organizations. This fee may be waived by the Finance Manager or designee for special event temporary licenses issued to persons participating in community sponsored events, or in events sponsored by or for the benefit of non-profit, civic, religious, or charitable organizations.

(Amended by Ord. No. 13-19)

4- 6- 4. RESTAURANT LIQUOR LICENSE.

A restaurant liquor license shall only be issued to persons licensed by the Utah Alcoholic Beverage Control Commission under U.C.A. Section 32A-4-101 to 106, as amended. A "restaurant" liquor license shall entitle the licensee to provide liquor to patrons for consumption on the premise. Only bona fide restaurants shall be entitled to a restaurant liquor license. Patrons must intend to order food, which is prepared, sold, and served on the premises, in accordance with the Alcoholic Beverage Control Act

and Utah Alcoholic Beverage Control Commission rules and regulations and the ordinances of Park City. Liquor is to be provided only in conjunction with a meal, and it shall be unlawful to serve or sell liquor except with a meal. No person under the age of twenty-one (21) years shall serve or sell liquor under this license. All liquor must be purchased in the restaurant from a server designated and trained by the licensee. Any alcoholic beverages under this license must be consumed at the patron or guest's table. A restaurant liquor license shall not entitle the storage of liquor on the licensed premises, except as designated on the application.

A restaurant liquor licensee may sell or provide a primary spirituous liquor only in a quantity not to exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the Commission, except that:

(A) A spirituous liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(1) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary spirituous liquor.

(B) Spirituous liquor need not be dispensed through a calibrated metered dispensing system if used as a flavoring on a dessert; and in the preparation of a flaming food dish, drink, or dessert;

(C) A restaurant patron may have no more than 2.5 ounces of spirituous liquor at a time; and a restaurant patron may have no

more than one spirituous liquor drink at a time before the patron.

All holders of restaurant liquor licenses shall maintain records which shall disclose the gross sales of liquor and the gross sales of food served and any other items sold for consumption on or off the premises. Such sales shall be shown separately. Each licensee shall retain all invoices, vouchers, sales slips, receipts, and other records of beer and other commodity purchases from all suppliers. Such records shall be available for inspection and audit by the Finance Manager or designee at any time following the close of the semi-annual period and for one (1) year thereafter, or as required by State regulations. Failure to properly maintain such records for such inspection and audit shall be cause for revocation of the restaurant liquor license.

Each restaurant liquor licensee shall maintain at least seventy percent (70%) of its total restaurant business from the sale of food, which does not include mix for alcoholic beverages or service charges. If any audit or inspection discloses that the sales of food on the licensed premises are below seventy percent (70%) of the gross dollar volume of business for any semi-annual period, the restaurant liquor license shall immediately be suspended and shall not be reinstated until the licensee is able to prove to the satisfaction of the Finance Manager or designee that in the future, the sales of food on the licensed premises will not fall below seventy percent (70%) of the gross dollar volume of business.

All Park City issued restaurant liquor licenses shall expire on December 31st of each year thereafter. All State-issued

restaurant liquor licenses expire on October 31st of each year. All licensees must notify the City immediately if the State liquor license is denied, suspended or revoked for any reason. Restaurant liquor license applicants must provide the City with proof of State licensure by December 1st of each year or be subject to cancellation, revocation or termination of the City's license issued hereunder. All renewal applications must attach a copy of a valid State license.

(Amended by Ord. No. 10-21; 13-19)

4- 6- 5. PRIVATE CLUB LIQUOR LICENSE.

A liquor club Licensee shall be entitled to serve, sell, and store liquor, pursuant to Utah Alcoholic Beverage Control Commission rules and regulations, and the ordinances of Park City. No person under the age of twenty-one (21) years shall serve or sell liquor. All State-issued club licenses shall expire December 31st of each year. All State-issued club liquor licenses expire on June 30 of each year. All licensees must notify the City immediately if the State-issued club liquor license is denied, suspended or revoked for any reason. Club liquor license applicants must provide the Finance Manager or designee with proof of the State licensure by July 1st of each year or be subject to cancellation, revocation or termination of the City's license issued hereunder. All renewal applications must attach a copy of a valid State license.

(Amended by Ord. Nos. 10-21; 13-19)

4- 6- 6. SEASONAL LIQUOR LICENSE.

A seasonal liquor license shall carry the privileges of a restaurant liquor license for a period of less than one (1) year to be determined by the Finance Manager or designee. No person under the age of twenty-one (21) years shall sell or serve liquor under this license.

(Amended by Ord. Nos. 04-19; 08-14; 10-21; 13-19)

CHAPTER 6A - RESORT LICENSE DESCRIBED

(Adopted by Ord. No. 10-21)

4- 6A- 1. RESORT LICENSE REQUIRED.

No person shall operate as a Resort Licensee unless licensed under the Resort License Act Utah Code Ann. § 32-A-4a-101 et seq and this Chapter.

4- 6A- 2. RESORT LICENSE.

A Resort License shall only be issued to persons capable of being licensed by the DABC under U.C.A. Section 32A-4a-101 to 205, as amended. A Resort License shall entitle the licensee to store, sell, allow service and allow consumption of alcoholic beverages within the terms of said license. Only bona fide resorts shall be entitled to a Resort License. No person under the age of twenty-one (21) years shall serve or sell liquor under this license.

In order to qualify for a Resort License the applicant must propose four or more resort sub-licensees. It is the Resort Licensee's responsibility to ensure that each resort sub-licensee operates in accordance with the restrictions placed on that type of operation.

All Park City issued Resort Licenses shall expire on December 31st of each year thereafter. All State-issued Resort Licenses expire on October 31st of each year. All licensees must notify the City immediately if the State Resort License is denied, suspended or revoked for any reason. Resort License applicants must provide the City with proof of State licensure by December 1st of each year or be subject to cancellation, revocation or termination of the City's license issued hereunder. All renewal applications must attach a copy of a valid State license.

4- 6A- 3. RESORT SUB-LICENSE

A resort sub-license may only exist under a Resort License. In order to qualify as a resort sub-licensee the sub-licensee must be located in the same building as all other sub-licensees that fall under the Resort License. A resort sub-license may be either a restaurant sublicense, a limited restaurant sublicense, an on-premise banquet sublicense, a resort spa sublicense, a club sublicense, or an on-premise beer retailer sublicense.

4- 6A- 4. RESORT LICENSE APPLICATION

In addition to the requirements in 4-4-2, the applicant shall include each resort sub-license proposed under the Resort License and shall designate each resort sub-license as either a restaurant sublicense, a limited restaurant sublicense, an on-premise banquet sublicense, a resort spa sublicense, a club sublicense, or an on-premise beer retailer sublicense. Such designation shall determine the rules applicable to the sub-licensee

consistent with Utah Code Ann. § 32A-4a-401. If a Resort sub-license is removed or a new resort sub-license is proposed a revised Resort License Application must be submitted.

4- 6A - 5. RESORT LICENSE FEE

The regulatory license fee shall be set by resolution for Resort Licenses. The regulatory license fees shall be used by the City to defray, in part, the costs of alcohol related enforcement and responding to alcohol related offenses within Park City.

CHAPTER 6B - MANUFACTURING LICENSE DESCRIBED

(Adopted by Ord. No. 10-21)

4- 6B- 1. MANUFACTURING LICENSE REQUIRED.

No person shall operate as a Manufacturing Licensee unless licensed under Chapter 8 of Title 32A of the Utah Code and this Chapter.

4- 6B- 2. MANUFACTURING LICENSE.

A Manufacturing license shall only be issued to persons capable of being licensed by the DABC under Chapter 8 of Title 32A of the Utah Code, as amended. A Manufacturing License shall authorize a Licensee to conduct business as either a winery, distillery, or a brewery.

All Park City issued Manufacturing licenses shall expire on December 31st of each year thereafter. All State-issued Manufacturing licenses expire on October 31st of each year.

All Licensees must notify the City immediately if the State Manufacturing license is denied, suspended or revoked for any reason. Manufacturing license applicants must provide the City with proof of State licensure by December 1st of each year or be subject to cancellation, revocation or termination of the City's license issued hereunder. All renewal applications must attach a copy of a valid State license.

4- 6B- 3. MANUFACTURING LICENSE - WINE

A wine Manufacturing license allows the Licensee to import, manufacture, store, transport, or export wines; sell wines at wholesale to the DABC and to out-of-state customers; purchase liquor for fortifying wine, if the DABE is notified of the purchase and date of delivery; and warehouse on its premises liquor that has been manufactures or purchased for manufacturing purposes.

A winter Manufacturing Licensee may operate on its manufacturing premises a retail facility allowing consumption of samples of wine as long as food is also available.

4- 6B- 4. MANUFACTURING LICENSE - LIQUOR

A liquor Manufacturing license allows the Licensee to import, manufacture, store, transport, or export liquor; sell liquor to the DABC and to out-of-state customers; purchase alcoholic products for blending and manufacturing purposes if the DABC is notified of the purchase and the date of delivery; and warehouse on its premises

alcoholic products which it manufactures or purchases for manufacturing purposes.

A liquor Manufacturing Licensee may not allow consumption of alcoholic beverages on its premises, except that employees and bona fide wholesale or retail purchasers may consume free of charge samples.

4- 6B - 5. MANUFACTURING LICENSE - BEER.

A beer Manufacturing license allows the Licensee to manufacture, brew, store, transport, or export beer, heavy beer, and flavored malt beverages; sell heavy beer and a flavored malt beverage to the DABC, a military installation, an out-of-state customer, a licensed wholesaler; and as otherwise authorized by the DABC or Utah Code.

A beer Manufacturing Licensee may operate on its manufacturing premises a retail facility allowing consumption on premises of beer in bottles or draft as long as food is also available.

4- 6B- 6 MANUFACTURING LICENSE APPLICATION.

In addition to the requirements in 4-4-2, the applicant shall state the type of Manufacturing license - winery, distillery or brewery - the applicant is applying for. Each Manufacturing license shall only authorize a single winery, distillery, or brewery operation.

4- 6B- 7 MANUFACTURING LICENSE FEE

The regulatory license fee shall be set by

resolution for Resort licenses. The regulatory license fees shall be used by the City to defray, in part, the costs of alcohol related enforcement and responding to alcohol related offenses within Park City.

CHAPTER 7 - SUSPENSION AND REVOCATION OF CITY-ISSUED LICENSES

4-7-1. GROUNDS FOR REVOCATION OR SUSPENSION.

Licenses issued under this Title may be suspended or revoked by the City Council for the following reasons:

(A) **BUSINESS LICENSE.** The following are grounds for revocation or suspension of business licenses:

- (1) Licensee has filed false or fraudulent license tax returns;
- (2) Licensee has been convicted of or plead guilty to or paid fines or settlements in criminal or civil actions brought by the State Tax Commission for the collection of, or arising from the non-payment of, taxes imposed by or collected by the state of Utah;
- (3) Licensee has permitted its employees, agents or patrons, to engage in illegal activities on the business premises;
- (4) The business has been the subject of a sufficient number of consumer complaints that it has the effect of tarnishing the reputation of other businesses within Park City.

(B) **PEDDLERS AND SOLICITORS LICENSE.** The following are grounds for revocation or suspension of peddlers' or solicitors' licenses:

- (1) Violation of any specific provisions or limitations on the license imposed by this Title or by the City Council in issuing the license;
- (2) Complaints from the public concerning misrepresentation of the goods or merchandise sold;
- (3) Unfair or dishonest business practices;
- (4) Any other circumstances, which endanger the health or safety of the residents of Park City.

(C) **BEER AND LIQUOR.** The following are grounds for revocation or suspension of beer or liquor related licenses:

- (1) The licensee has failed to comply with the requirements of the Alcohol Beverage Control Act as currently in force or amended in the future, or the requirements of this Title;
- (2) The licensee or employees of the licensee have been convicted or plead guilty to violations occurring under Section 4-4-15 of this Title or any city, county, state or federal law or ordinance and said violations occurred on the licensed premise, not including violations by patrons;
- (3) The licensee has attempted to

transfer the license to another in violation of this Title;

(4) The licensee has become ineligible to hold a license by failing to meet the standards for licensees listed in this Title;

(5) The licensee or his agents or employees, with the knowledge of the license holder, have been engaged in the sale, distribution or delivery of controlled substances, as defined by State statute, on or from the licensed premises.

(6) The licensee has been denied a license by the State of Utah under the Alcoholic beverage Control act as required by this Title or has had said State license revoked or suspended.

4-7-2. ACTION OF CITY MANAGER OR DESIGNEE.

Upon receiving a written complaint from any person alleging a violation of any provision of this Title the licensee or an agent of the licensee, the City or anyone designated by the City Manager with the assistance of such other departments of the City as the City Manager may direct, shall conduct an investigation of the allegations of the complaint. The City shall not investigate consumer or product liability complaints. Upon completion of the investigation, the City Manager may dismiss the matter as being without merit, settle the matter based upon the negotiations the City Manager or his or her designee may have undertaken with the licensee, or cause an order to show cause to be issued to the licensee requiring

the licensee to come forward and answer the allegations of the order to show cause.

The order to show cause may be based upon an affidavit filed by the City Manager, City Attorney, or anyone else the City Manager has designated to file such action, and said order to show cause shall specifically set forth the ordinance sections alleged to have been violated and generally describe the acts in violation. In the event an order to show cause is issued to the licensee, the City Council shall determine whether to refer the matter to a Licensed Hearing Examiner, or to hear the matter directly itself. The order to show cause shall be issued at least fourteen (14) calendar days prior to the date set for the administrative hearing, but the hearing shall be commenced in any event, within one (1) year of the service of the order to show cause upon the licensee unless otherwise agreed by the parties. Within ten (10) days from the date of the service of the order to show cause, the licensee shall file with the City a written response to the allegations contained therein.

If the matter is to be heard by the City Council, the City Council may elect one of its members to act as presiding officer for the hearing. The presiding officer shall rule on all matters of controversy, which arise during the hearing. The City Council may designate one or more of its members to act as a hearing panel, in which event the hearing panel shall follow the same procedural requirements as the Licensed Hearing Examiner is required by this Chapter to follow.

4-7-3. REVOCATION OR SUSPENSION HEARING.

In all administrative license revocation or suspension proceedings, a hearing shall be conducted as follows:

The presiding officer or Licensed Hearing Examiner shall regulate the course of the hearing to obtain full disclosure of relevant facts and afford all parties the reasonable opportunity to present their positions. The presiding officer or Licensed Hearing Examiner may determine the length of the hearing and may prevent the calling of witnesses or admission of documentary evidence where such witnesses or evidence are irrelevant, immaterial, unduly repetitious, or unnecessary due to the receipt of other evidence.

Technical rules of evidence required in court proceedings shall not apply, and the presiding officer or Licensed Hearing Examiner shall not exclude evidence solely because it is hearsay. The presiding officer or Licensed Hearing Examiner may afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence within the time frame of the hearing established by said officer.

All testimony presented at the hearing shall be given under oath administered by a person duly authorized to administer oaths. The hearing shall be recorded by electronic means or by means of a certified shorthand reporter. The record thus created shall be preserved by the City Council until such time as it is clear that no court proceedings or further administrative proceedings will be held concerning the matters which are the subject of the hearing; but a minimum of one (1) year. The recording may be transcribed at the request of any party, at the

expense of the requesting party.

The licensee shall have the right to appear at the hearing in person or by counsel, or both. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence shall be issued by the City Council when requested by any party, or may be issued by the presiding officer or hearing examiner on his or her own motion. The mere issuance of subpoenas shall not operate to require the admissibility of evidence or testimony subpoenaed.

Upon request, both the City and the licensee shall be entitled to discovery of the other's list of witnesses to be called at the hearing, including the names and addresses of such witnesses. The parties shall be entitled to have copies of, or have access to any documents to be used by either side during the course of the hearing. No other formal discovery shall be required. The standard of proof required for any action adverse to the licensee shall be that of proof by a preponderance of the evidence.

The presiding officer, if the City Council hear the matter itself, or the Licensed Hearing Examiner, shall prepare written findings of fact. In the case of an Licensed Hearing Examiner, the Examiner shall submit said findings, to the City Council. The City Council shall either accept or reject the findings of fact, or enter its own findings, and shall state the basis from the record upon which the divergence from the Licensed Hearing Examiner's recommended findings. The City Council shall prepare written conclusions of law and an order.

The Order formally entered by the City Council may be to:

- (1) dismiss the action against the licensee;
- (2) suspend the license for a specified period;
- (3) place the licensee on probation upon such conditions as the City Council may order;
- (4) permanently revoke the license in question; or
- (5) any combination of the above.

Any licensee aggrieved by an order of the City Council entered pursuant to this section may maintain an action for relief therefrom in any court of competent jurisdiction, where said court deems itself the appropriate forum for the appeal from the City Council's action. The licensee shall be required to follow orders and procedures of the appropriate court with regard to time for filing.

Nothing herein shall be construed to require a showing that the licensee shall have been first convicted in a court of laws of any violation of any law, rule or regulation. All notices required by this section may be made by personal service or by certified mail, mailed to the licensee's address as it appears in the business regulation records of the City, postage prepaid, certified, return receipt requested.

CHAPTER 8 - MASTER FESTIVAL LICENSE

4- 8- 1. DEFINITIONS.

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

(A) **APPLICANT.** The person, or group of people, who is or are the organizer(s) and with whom the responsibility for conduct of the event lies. The Applicant signs the festival license application and all other documents relevant to the event. The Applicant must be a natural person or persons, and not a corporation, corporate sponsor, or business, or any other entity, which is not a natural person. See sponsor.

(B) **CONCESSION.** A privilege to sell food, beverages, souvenirs, or copyrighted or logoed event memorabilia at a licensed event.

(C) **FEES.** Charges assessed by Park City for licensing, staffing, equipment use/rental, property use/rental, clean up, inspections, public employees, or public equipment assessed to an event or festival and established within the festival licensing process.

(D) **LICENSEE.** The Applicant, as defined above, becomes the "licensee" when the Master Festival License or Special Event License is signed by the Special Events Manager, upon meeting all the criteria in this Chapter. As the license holder, the licensee becomes the sole proprietor of the event and inherits the responsibilities connected with all licenses, fee assessments, copyrights, and insurance liabilities connected with the licensed event.

(Amended by Ord. No. 01-31)

4- 8- 2. UNLAWFUL TO

OPERATE WITHOUT A LICENSE.

It is unlawful for any person to conduct a Special Event or Master Festival with or without charge for admission, on public or private property, without first applying for and being granted a Master Festival License or special event license for the specific event and its venue(s). All licenses issued pursuant to this Title are non-transferrable and expire at the completion of the given event, or upon revocation, whichever is earlier.

(Amended by Ord. No. 01-31)

4-8-3. RENEWAL OF LICENSES.

Licenses under the provisions of this Chapter who successfully operate a master festival or special event under the provisions of this Chapter and who wish to have the event on an annual or periodic basis, must renew each Master Festival or Special Event License as provided in Section 4-8-4 herein. Events, which occur in series such as concerts, falling under the criteria established in this Chapter, must have a Master Festival or Special Event License, which specifically authorizes each concert in the series, even if the same performer is performing on separate occasions.

(Amended by Ord. No. 01-31)

4-8-4. MASTER FESTIVAL LICENSE APPLICATION PROCEDURE.

(A) **APPLICATION SUBMITTAL.** Applications for Special Events and Master Festivals shall be made in writing to the

Special Events Manager. Application materials are available at City Special Events Department and the Chamber Bureau offices, and must be completed and submitted to the Special Event Manager not less than ninety (90) days prior to the scheduled opening of any Master Festival, and not less than sixty (60) days prior to the scheduled opening of any Special Event, unless otherwise approved by the City Council, or by the Special Events Manager for Special Events, upon a showing of good cause.

(B) **CITY COUNCIL REVIEW.** The City Council of Park City shall review and either approve, approve with conditions, or deny the following applications:

- (1) Applications for new master festivals;
- (2) Applications for master festival license renewals where material elements of the event have substantially changed from the previous application; and
- (3) Appeals of administrative decisions made pursuant to Subsection (C) Administrative Review, herein.
- (4) As used herein, a 'new Master Festival' shall mean any master festival being proposed for the first time, or a prior master festival which was not renewed for a period exceeding one (1) year. The City Council shall review applications for compliance with the standards for license approval described at Section 4-8-5 herein as

follows:

(a) **Staff Review and Recommendation.** Upon receipt of a complete Master Festival License application and accompanying fee, City staff shall review the application for compliance with Section 4-8-5 herein. Staff shall subsequently return a copy of the application to the Applicant with comments and a recommendation, i.e., approve as is, approve with changes and/or conditions, or cause for denial. Incomplete applications will be returned to the Applicant and noted accordingly. Following review of the Master Festival License application and notice to the Applicant, the Special Events Manager shall schedule the application for a public hearing before the City Council.

(b) **City Council Hearing.** Master festival applications requiring City Council review and appeals of administrative Master Festival or Special Event decisions shall be heard at a duly noticed public hearing of the City Council. The City Council shall review the application for compliance the standards set forth at Section 4-8-5 herein, and shall record its decision with

written findings of fact, conclusions of law, and condition of approval, if applicable. Written notice of the City Council ' s decision shall be delivered to the Applicant within ten (10) days of the date of decision.

(C) **ADMINISTRATIVE REVIEW.**

The Special Events Manager shall review and shall have the authority to administratively approve, approve with conditions, or deny the following applications:

- (1) Special Event applications;
- (2) Applications for Master Festival License renewals where material elements of the event have not substantially changed from the previous application. Upon receipt of a complete Master Festival License application and accompanying fee, the Special Events Manager shall review the application for compliance with Section 4-8-5 herein.

Following review of the application, the Special Events Manager shall record his/her decision with written findings of fact, conclusions of law, and conditions of approval, if applicable, and deliver written notice of such decision to the Applicant. Any Applicant whose application has been administratively denied may appeal the decision to the City Council by filing a written request to the Special Events Manager within ten (10) days of the date of decision. The City Council shall hear the matter de novo and with public hearing.

Upon receipt of a complete master festival license application and accompanying fee, the Special Events Manager shall review the application for compliance with Section 4-8-5 herein. Following review of the application, the Special Events Manager shall record his/her decision with written findings of fact, conclusions of law, and conditions of approval, if applicable, and deliver written notice of such decision to the Applicant.

(Amended by Ord. 01-31)

4-8-5. STANDARDS FOR LICENSE APPROVAL.

Applications for Master Festivals and Special Events shall be reviewed for compliance with the standards provided herein. The Special Events Manager or City Council may prohibit or restrict any Special Event or Master Festival whenever any of the conditions enumerated in this Section is found likely to occur, unless the event is modified to eliminate said conditions.

(A) The conduct of the event will substantially interrupt or prevent the safe and orderly movement of public transportation or other vehicular and pedestrian traffic in the area of its venue.

(B) The conduct of the event will require the diversion of so great a number of police, fire, or other essential public employees from their normal duties as to prevent reasonable police, fire, or other public services protection to the remainder of the City.

(C) The concentration of persons,

vehicles, or animals will unduly interfere with the movement of police, fire, ambulance, and other emergency vehicles on the streets or with the provision of other public health and safety services.

(D) The event will substantially interfere with any other Special Event or Master Festival for which a license has already been granted or with the provision of City services in support of other such events or governmental functions.

(E) Where applicable, the Applicant fails to provide the following:

(1) The services of a sufficient number of traffic controllers, signs or other City required barriers or traffic devices;

(2) Monitors for crowd control and safety;

(3) Safety, health, or sanitation equipment, and services or facilities reasonably necessary to ensure that the event will be conducted without creating unreasonable negative impacts to the area and with due regard for safety and the environment;

(4) Adequate off-site parking and traffic circulation in the vicinity of the event;

(5) Required insurance, cash deposit, or other security; or

(6) Any other services or facilities necessary to ensure compliance with City noise, sign, or

other applicable ordinance(s).

(F) The event created the imminent possibility of violent disorderly conduct likely to endanger public safety or cause significant property damage.

(G) The Applicant demonstrates inability or unwillingness to conduct the event pursuant to the terms and conditions of this Chapter or has failed to conduct a previously authorized event in accordance with the law or the terms of a license, or both.

(H) The Applicant has not obtained the approval of any other public agencies, including the Park City Fire District, within whose jurisdiction the event or a portion thereof will occur.

(Amended by Ord. No. 01-31)

4-8-6. CONFLICTING LICENSE APPLICATIONS.

(A) No more than one (1) Master Festival or Special Event shall be approved for the same date(s) unless the Special Events Manager or City Council finds that the events will not adversely impact one another and that concurrent scheduling of the events will not adversely impact the public health, safety, and welfare. In making this determination, the Special Events Manager or City Council will apply the following criteria:

- (1) Geographic separation of the events;
- (2) Proposed time and duration of the events;

(3) Anticipated attendance volumes;

(4) Necessity for public personnel, equipment, and/or transportation services at the events; and

(5) Anticipated traffic and parking impacts.

(B) When more than one (1) Special Event or Master Festival application is received for the same date(s), the Special Events Manager finds that:

(1) the events will adversely impact one another; or

(2) concurrent scheduling of the events will adversely impact the public health, safety, and welfare, the Special Events Manager shall resolve the conflict as provided herein.

(C) The Special Events Manager shall first attempt to reach an agreement among the conflicting Applicants to modify the applications in order to resolve the conflicts and accommodate the public interest. If no voluntary agreement is reached, then the Special Events Manager shall resolve the issue based on the following order or priorities:

(1) Historic usage special events or master festivals where the same Applicant has been granted a license under this Chapter for use of a particular City forum at a particular date, time, and place for more than three (3) consecutive years;

(2) Events planned, organized, or

presented by state, federal, or City governmental entities or their agents shall have priority over conflicting applications if:

- (a) the application is timely filed and processed by the City;
- (b) said governmental application is made in good faith and not with the effect or purpose of improperly chilling constitutional rights of conflicting Applicants; and

(3) If neither subsection (1) or (2) do not resolve the conflict, then the first-in-time application shall be given priority. The conflicting Applicant shall be advised of other open dates on the City's events calendar.

(Amended by Ord. No. 01-31)

4- 8- 7. LICENSES NECESSARY FOR A SPECIAL EVENT LICENSE AND MASTER FESTIVAL LICENSE.

The Applicant/licensee shall provide to the Special Events Manager proof of a valid Special Event temporary liquor or beer license, fireworks license, and building permit, as applicable, as well as a receipt acknowledging that all application fees have been paid. The licensee must obtain all permits for any temporary structure constructed under the provisions of a Master Festival License and must pass all inspections as a condition precedent to a valid Special Event License. Temporary concessions on public or private property

may be approved in conjunction with a Master Festival or Special Event in the sole discretion of the City. Such concessions must be directly related to the event and meet a demonstrated need of participants. Unless otherwise approved by City Council, all concessions require a regular business license.

(Amended by Ord. No. 01-31)

4- 8- 8. FEES TO BE ASSESSED.

(A) **APPLICATION FEE.** First-time Master Festival applications shall be assessed a fee of one hundred dollars (\$100). Special Event and renewal Master Festival applications shall be assessed a fee of fifty dollars (\$50). All application fees are due and payable upon submission of a completed application. Applications shall be considered incomplete unless and until the application fee is paid in full.

(B) **CITY SERVICE FEES.** Upon receipt of a completed Master Festival or Special Event application, the Special Events Manager will provide the Applicant with an estimate of fees based on estimated costs for City services arising from the event, including but not limited to the use of City personnel and/or equipment, City transportation services, inspections, and user fees. A final assessment of City costs will occur upon completion of the special event. All City service fees will be adjudged to reflect actual cost. Unless waived pursuant to Section 4-8-9, all City service fees must be paid in full within thirty (30) days of the final assessment of City costs for the master festival or special event.

(C) **FINANCIAL SECURITY.** The

Special Events Manager is authorized to require an Applicant to post a cash deposit or other security accepted by the Legal Department for all estimated contingent costs prior to the issuance of a master festival license, as a guarantee against fees, damages, clean up, or loss of public property.

(Amended by Ord. No. 01-31)

4- 8- 9. FEE WAIVERS.

(A) The City Manager may waive the following Master Festival or Special Event licensing and associated fees upon a finding of eligibility pursuant to the criteria provided herein:

- (1) Application fee;
- (2) Facility rentals;
- (3) Field rentals; and
- (4) Use of public parking spaces and bleachers.

(B) All fee waiver requests should be submitted to the Special Events Manager at the time of application, but in no case later than the first day of the proposed event. Fee waiver determinations made by the City Manager may be appealed to the City Council. Eligibility for a full or partial fee waiver shall be determined by the City Manager pursuant to the following criteria, none of which shall be individually controlling:

- (1) For-profit or non-profit status of the Applicant;
- (2) Whether the event will

charge admission fees;

- (3) Whether the event is youth-oriented;
- (4) The duration of the event;
- (5) Whether and to what extent the City is likely to receive positive tax benefits by virtue of the event;
- (6) The degree of City services involved and whether City costs are likely to be recovered by other revenue opportunities arising from the event;
- (7) The season of occurrence; and
- (8) Demonstration of hardship by the Applicant.

Fee waiver requests must be filed annually, unless otherwise approved in a City services agreement by the City Council. Approval of a fee waiver for any application shall not create a precedent for future requests.

(Amended by Ord. Nos. 01-31; 06-57)

4- 8-10. INSURANCE REQUIREMENTS.

Applicants shall provide upon application for a Master Festival License proof of liability insurance in the amount of two million dollars (\$2,000,000) or more as may be required by the Special Events Manager or the City Attorney's Office, and shall further name Park City Municipal Corporation as an additional insured. All Applicants shall further indemnify the City

from liability occurring at the event, except for any claim arising out of the sole negligence or intentional torts of the City or its employees.

(Amended by Ord. No. 01-31)

4- 8-11. RUNS, WALKS, FILM-MAKING, AND PROMOTIONS.

Runs, walks, film-making, parades, public demonstrations, and promotions shall be considered Special Events unless such event does not create substantial public impact or requires substantial City service. Any run, walk, film, or promotion undertaken by any for-profit business or corporation, must first be licensed as a business under Chapter 2, Business Licenses. For-profit corporations falling under the provisions of this Chapter or who are specifically in film-making or promotions on public or private property must, as a provision of their license, provide proof of insurance, shooting schedule or schedule of events, produce written permission of property owners, and provide access to any set or site for purposes of Code enforcement.

(Amended by Ord. No. 01-31)

4- 8-12. CRIMINAL PENALTY.

Any person who willfully violates any provision of this Chapter shall be guilty of a Class B misdemeanor. Persons conducting Special Events or Master Festivals without having first obtained a Master Festival License are subject to arrest and the event is subject to closure.

(Amended by Ord. No. 01-31)

4- 8-13. REVOCATION FOR CAUSE; NOTICE TO CURE.

(A) **NOTICE TO CURE.** If the Special Events Manager or any sworn law enforcement officer determines that the conditions of any license issued pursuant to this Chapter have been or are being violated, then notice shall be given to the licensee, sponsor, or designated organizer’s representative of the Special Event or Master Festival to cure the violation.

(B) **FAILURE TO CURE.** It is unlawful for the licensee, sponsor, or on-site organizer’s representative of an authorized Special Event or Master Festival to fail to take reasonable steps to promptly cure any notice of violation of this Chapter. It is also unlawful for any participant or spectator to fail to comply with lawful directions issued by any sworn law enforcement officer or by the licensee, sponsor, or on-site organizer’s representative to cure their violation of this Chapter.

(C) **CLEAR AND PRESENT DANGER.** If a sworn law enforcement officer determines, after consultation with the Chief of Police or the Chief of Police’s designee, that any failure to cure a violation of this Chapter creates a clear and present danger of immediate significant harm to life, public safety, or property which cannot be reasonably mitigated by increased public safety enforcement and which, on balance, outweighs the constitutionally protected rights of the organizers or participants in the Special Event or Master Festival, the licensee, sponsor, or on-site organizer’s representative of the Special Event or Master Festival shall be promptly notified that the license is revoked and that the

Special Event or Master Festival must immediately cease and desist.

(D) **VIOLATION OF CEASE AND DESIST ORDER.** If a license is revoked as specified in Subsection (C) above, then it shall be unlawful for any person to fail to obey the order to cease and desist from illegal activities.

(Amended by Ord. No. 01-31)

CHAPTER 8A - PUBLIC OUTDOOR MUSIC PLAZAS

(Created by Ord. 00-36)

4-8A-1. TITLE FOR CITATION.

This section shall be known and may be referred to as the Public Outdoor Music Plaza Ordinance.

4-8A-2. PURPOSE: REASONABLE LICENSING PROCEDURES.

It is the purpose and object of this Chapter that the City establish reasonable and uniform regulations governing the licensing and manner of operations of public outdoor music plazas in Park City. This Chapter shall be construed to protect the legitimate and important governmental interests recognized by this Chapter in a manner consistent with constitutional protections provided by the United States and Utah Constitutions. The purpose of these regulations is to provide for the regulation and licensing of public outdoor music plazas within the City in a manner which will protect the property values of surrounding businesses and neighborhoods, and residents from the potential adverse secondary effects, while providing to those who desire to perform in and patronize public outdoor music plazas the opportunity to do so. The purpose of this Chapter is to prevent and control the adverse effects of public outdoor music plazas and thereby to protect the health, safety, and welfare of the citizens and guests of park City, protect the citizens from increased noise, preserve the quality of life, preserve the property values and character of the surrounding neighborhoods.

4-8A-3. APPLICATION OF PROVISIONS.

This Chapter imposes regulatory standards and license requirements on certain activities, which are characterized as “public outdoor music plazas”. It is not the intent of this Chapter to suppress any speech activities protected by the First and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Utah, but to impose content-neutral regulations which address the adverse secondary effects of public outdoor music plazas. This Chapter is intended to supersede any other related ordinances including, but not limited to, Title 6 Chapter 3, Noise and Title 15, Land Management Code, of the Municipal Code.

4-8A-4. DEFINITIONS.

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

(A) **AMPLIFIED EVENT OR MUSIC.** An event or music utilizing an amplifier or other input of power so as to obtain an output of greater magnitude or volume through speakers or other electronic devices.

(B) **STAGES.** The raised and semi-enclosed platforms that are designed to attenuate sound, or as otherwise approved by special events staff.

4-8A-5. MASTER FESTIVAL LICENSE; REVIEW PROCEDURE.

The public outdoor music plazas identified

at Section 4-8A-6 herein may be programmed for public performances and outdoor music, subject to the regulations and conditions of this Chapter and subject to master festival licensing review pursuant to Title 4, Chapter 8, Master Festival License. No licensee nor performer shall accrue any vested rights under this revocable license.

(Amended by Ord. No. 03-18; 03-31; 04-13)

4-8A-6. PUBLIC OUTDOOR MUSIC PLAZAS.

The following locations, dates and times may be programmed for public performances and outdoor music:

(A) **LOWER SUMMIT WATCH PLAZA.**

(1) **LOCATION.** On the north end of Summit Watch Plaza. Approved plans are on file with the Special Events Department.

(2) **OPERATION DAYS/HOURS/MONTHS.** This stage may be programmed a maximum of three (3) days per week from June 1st through Labor Day. Programming is limited to a maximum of three (3) hours per day and shall begin no earlier than 12:00 Noon and conclude no later than 8:30 p.m. A timer device will be installed that shuts the power of the stage and sound system off at 8:30 p.m.

(3) **TYPE OF MUSIC.** Amplified and acoustic with prerecorded music allowed during breaks. For amplified events or music on Summit Watch Plaza, the

program manager shall be responsible to ensure that the sound system maintains the sound at an A-weighted sound level adjustment and maximum decibel level of ninety (90), as measured twenty-five feet (25') in front of the stage.

(B) **MINER'S PLAZA.**

(1) **LOCATION.** 415 Main Street.

(2) **OPERATION DAYS/HOURS/MONTHS.** This stage may be programmed a maximum of two (2) days per week from June 1st through Labor Day. Programming is limited to a maximum of three (3) hours per day and shall begin no earlier than 12:00 Noon and conclude no later than 8:30 p.m. Programming of this stage shall not conflict with any City-sponsored or duly licensed master festival as approved by the Special Events Department, including but not limited to dates reserved for the Park City Arts Festival. A timer device will be installed that shuts the power of the stage and sound system off at 8:30 p.m.

(3) **TYPE OF MUSIC.** Solo and duo acts with microphones for vocal, with prerecorded music during breaks. For amplified events, the program manager shall be responsible to ensure that the sound system maintains the sound at an A-weighted sound level adjustment and maximum decibel level of 90, as measured twenty-five feet (25') in

front of the stage.

(C) **TOWN LIFT PLAZA.**

(1) **LOCATION.** 825 Main Street.

(2) **OPERATION DAYS/HOURS/MONTHS.** This stage may be programmed a maximum of three (3) days per week from June 1st through Labor Day. The maximum duration of programming per day shall not exceed four (4) hours and shall begin no earlier than 12:00 Noon and must conclude no later than 8:30 p.m. Programming of this stage shall not conflict with any City-sponsored or duly licensed master festival as approved by the Special Events Department, including but not limited to dates reserved for the Park City Arts Festival. A timer device will be installed that shuts the power of the stage and sound system off at 8:30 p.m.

(3) **TYPE OF MUSIC.** Amplified and acoustic acts with microphones for vocal, with prerecorded music during breaks. For amplified events, the program manager shall be responsible to ensure that the sound system maintains the sound at an A-weighted sound level adjustment and maximum decibel level of ninety (90), as measured twenty-five feet (25') in front of the stage.

(D) **UPPER SUMMIT WATCH PLAZA.**

(1) **LOCATION.** On the south end of Summit Watch Plaza. Approved plans are on file with the Special Events Department.

(2) **OPERATION DAYS/HOURS/MONTHS.** This stage may be programmed a maximum of three (3) days per week from June 1st through Labor Day. Programming is limited to a maximum of three (3) hours per day and shall begin no earlier than 12:00 Noon and must conclude no later than 8:30 p.m. A timer device will be installed that shuts the power of the stage and sound system off at 8:30 p.m.

(3) **TYPE OF MUSIC.** Amplified and acoustic with prerecorded music allowed during breaks. For amplified events or music at on Upper Summit Watch Plaza, the program manager shall be responsible to ensure that the sound system maintains the sound at an A-weighted sound level adjustment and maximum decibel level of 90, as measured twenty-five feet (25') in front of the stage.

(Amended by Ord. 01-20; 02-12; 03-18; 03-31; 03-35; 04-13)

4-8A-7. GENERAL REGULATIONS.

(A) The program manager, or his/her designee, shall provide on-site management for each event.

(B) A sound technician shall provide on-site noise monitoring for each event with music, amplified or otherwise, and any amplified event.

(C) Except as otherwise provided at Subsection 6(A) herein, for amplified events or music, the program manager shall be responsible to ensure that the sound system maintains the sound at an A-weighted sound level adjustment and maximum decibel level of 90, as measured twenty-five feet (25') in front of the stage. The data currently available to the City indicates that a maximum decibel level of 90 satisfies the purpose of this ordinance. The City may amend this ordinance consistent with newly acquired data.

(D) All events shall be open to the public and free of charge.

(E) No event shall exceed 250 people at one time unless a separate master festival license is granted for that event.

(F) The Police Department or other proper City official shall have access at all times to all public outdoor music plazas under this Chapter, and may make periodic inspection of said premises whether the officer or official is in uniform or plain clothes.

(G) All events shall take place only on authorized stages and shall have clean-up services directly following each event so as to leave the plazas in a clean and litter free manner.

4-8A- 8. ALCOHOL.

It is unlawful for the licensee or any person

or business to allow the sale, storage, supply, or consumption of alcoholic beverages at the public outdoor music plazas, unless licensed pursuant to Chapters 4-6 of Title 4, as applicable.

4-8A-9. LICENSE HOLDER, PROGRAM BOARD.

(A) The licensee(s) will hire a program manager, approved by the City, said approval not to be unreasonably withheld. The program manager will be responsible for general management of each public outdoor music plaza and on-site oversight for each event. Agreements with the individual property owners will be provided to the City Special Events Department by the program manager.

(B) The licensee(s) shall schedule events in accordance with the regulations set forth in this Chapter. Nothing herein shall allow the City to regulate the content or otherwise censor plaza productions or speech. The licensee(s) shall at all times hold the City harmless and indemnify the City from all claims, actions and liability arising from the licensee(s)' use of the public outdoor music plazas. The licensee(s) shall maintain their own liability insurance, with the City listed as an additional insured in a form approved by the City Attorney.

(C) Nothing in this Chapter shall be interpreted to create a contract or implied-contract between the City and any performer, or public outdoor music plaza owner.

(Amended by Ord. 03-31; 04-13)

4-8A-10. ON-GOING

COMPLIANCE EVALUATION.

(A) Licensee(s) shall post a phone number at each venue so that individuals may phone in comments. Based upon such comments, the special events staff may issue additional conditions consistent with the intent of this Chapter to the program manager, including decreasing DB levels in three (3) DB increments with at least three (3) days between each reduction. A summary of, and recommended response to comments will be forwarded to the City Council within seven (7) days of the end of each month of operation, or sooner if requested by the program manager to resolve any issue.

(B) The Police Chief, or his/her designee, may suspend the licenses granted herein and schedule a revocation hearing before the City Council at the next regularly scheduled City Council meeting for any of the following causes:

- (1) Any violation of this Chapter as evidenced by a citation issued by the Police Department.
- (2) Any violation of law or City ordinance.
- (3) Upon any other evidence that the program manager or entertainer constitutes a hazard or nuisance to the health, safety, or welfare of the community.

(Amended by Ord. 03-31; 04-13)

4-8A-11. TRANSFER LIMITATIONS.

The master festival licenses granted under this Chapter are not transferable without the written consent of the Mayor. It is unlawful for an individual to transfer a public outdoor music plaza master festival license without City approval as provided herein. If any transfer of the controlling interest in a public outdoor music plaza license occurs without City approval, the license is immediately null and void and the public outdoor music plaza shall not operate until a separate new license has been properly issued by the City as herein provided. The City will not unreasonably withhold consent of transfer provided the proposed licensee is a non-profit organization within Park City, meets all the criteria of this Chapter, and demonstrates experience managing special events.

4-8A-12. PLAZA LICENSES IN LIEU OF ADMINISTRATIVE PERMITS FOR OUTDOOR MUSIC AND OUTDOOR SPEAKERS.

The master festival licenses granted under this Chapter are in lieu of any administrative conditional permit (CUP) for outdoor music, including outdoor speakers, pursuant to Title 15 of the Municipal Code, Land Management Code. The Planning Department shall not issue any outdoor music permits in the Historic Commercial Business (HCB) zoning district north of Heber Avenue. The City may still issue outdoor music permits in conjunction with an approved master festival license.

(Amended by Ord. 04-13)

CHAPTER 9 - SEXUALLY ORIENTED BUSINESSES

4-9-1. TITLE FOR CITATION.

This Chapter shall be known and may be referred to as the Sexually Oriented Business Licensing Ordinance.

(Amended by Ord. No. 06-81)

4-9-2. PURPOSE: REASONABLE LICENSING PROCEDURES.

It is the purpose and object of this Chapter that the City establish reasonable and uniform regulations governing the licensing and manner of operations of Sexually Oriented Businesses and their Employees in Park City. This Chapter shall be construed to protect the governmental interests recognized by this Chapter in a manner consistent with constitutional protections provided by the United States and Utah Constitutions. The purpose of these regulations is to provide for the regulation and licensing of Sexually Oriented Businesses within the City in a manner which will protect the property values of surrounding businesses and neighborhoods, and residents from the potential adverse secondary effects of Sexually Oriented Businesses, while providing to those who desire to patronize Sexually Oriented Businesses the opportunity to do so. Sexually Oriented Businesses are frequently used for unlawful sexual activities, including prostitution. Licensing of Sexually Oriented Businesses and Employees is a legitimate and reasonable means of ensuring that operators and Employees of Sexually Oriented Businesses comply with reasonable regulations and operators do not knowingly allow their businesses to be used for illegal sexual activity or solicitation. There is

convincing documented evidence that Sexually Oriented Businesses, because of their nature, have a deleterious effect on both the existing neighboring businesses and surrounding residential areas, causing increased crime and downgrading of property values. The purpose of this Chapter is to control the adverse effects of Sexually Oriented Businesses and thereby to protect the health, safety, and welfare of the citizens and guests of Park City, protect the citizens from increased crime, preserve the quality of life, preserve the property values and character of the surrounding neighborhoods, and deter the spread of urban blight.

(Amended by Ord. No. 06-81)

4-9-3. APPLICATION OF PROVISIONS.

This Chapter imposes regulatory standards and license requirements on certain business activities, which are characterized as "Sexually Oriented Businesses". It is not the intent of this Chapter to suppress any speech activities protected by the First and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Utah, but to impose content-neutral regulations which address the adverse secondary effects of Sexually Oriented Businesses. Nothing in this Chapter is intended to supersede or nullify any other related ordinances including, but not limited to, the Municipal Code of Park City, Utah, or the Park City Land Management Code.

(Amended by Ord. No. 06-81)

4-9-4. DEFINITIONS.

For the purpose of this section the following words shall have the following meanings:

(A) **ADULT BUSINESS.** An Adult Theater, Adult Motion Picture Theater, Adult Bookstore, Adult Video Store, or Escort Service.

(B) **ADULT BOOKSTORE or ADULT VIDEO STORE.** A business which:

(1) holds itself out as such a business; or

(2) for more than thirty percent (30%) of the retail floor or shelf space of the premises, offers for sale or rental, for any form of consideration, any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations the central theme of which depicts or describes Specified Sexual Activities or Specified Anatomical Areas, or instruments, devices or paraphernalia which are designated for use in connection with Specified Sexual Activities, except for legitimate medically-recognized contraceptives.

(C) **ADULT MOTION PICTURE THEATER** - a business which:

(1) holds itself out as such a business; or

(2) as its principal business,

regularly shows films, motion pictures, video cassettes, slides or similar photographic reproductions which are primarily characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

(D) **ADULT THEATER**. A business which:

(1) holds itself out as such a business; or

(2) regularly features persons who appear in a state of nudity or live performances which are primarily characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

(E) **BUSINESS PREMISES**. The real property upon which the Sexually Oriented Business is located, and all appurtenances thereto and buildings thereon, include, but not limited to, the Sexually Oriented Business, the grounds, private walkways, and parking lots and/or parking areas adjacent thereto, under the ownership, control, or supervision of the Licensee, as described in the application for a business license.

(F) **EMPLOYEE**. A person who performs any service on the premises or renders any services directly related to the operation of any 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, whether or not on a temporary or permanent basis, and

whether or not said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" shall also include a Licensee's designated agent. "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.

(G) **ESCORT**. Any person who, for consideration, accompanies other persons to or about social affairs, entertainments or places of amusement or consorts with others about any place of public resort or within any private quarters, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(H) **ESCORT SERVICES**. A business, contractor, agency, or person which:

(1) holds itself out as such a business; or

(2) for a fee, commission, hire, reward, or profit, furnishes or offers to furnish the names of persons or who introduces, furnishes, or arranges for persons, who may accompany other persons to or about social affairs, entertainments or places of amusement, or who may consort with others about any place of public resort, or within any private quarters.

(I) **LICENSEE**. 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.

(J) **NUDITY** or **STATE OF NUDITY**.

A state of dress in which the areola of the female breast, or male or female genitals, pubic region, or anus are covered by less than the covering required in the definition of semi-nude.

(K) **OBSCENE**. Any material or performance is obscene if:

- (1) the average person, applying contemporary community standards, finds that, taken as a whole, it appeals to prurient interest in sex;
- (2) it is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sado-masochistic abuse, or excretion; and
- (3) taken as a whole, it does not have serious literary, artistic, political or scientific value.

(L) **OPERATOR**. The manager or other natural person principally in charge of a Sexually Oriented Business.

(M) **SEMI-NUDE**. A state of dress in which a person wears opaque clothing covering:

- (1) only the male or female genitals, pubic region, anus, by an opaque cover that is four inches wide in the front and five inches wide in the back tapering to one inch at the narrowest point; and if applicable,
- (2) the nipple and areola of the female breast.

(N) **SEMI-NUDE ENTERTAINMENT BUSINESS**. A business, including an 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.

(O) **SEXUALLY ORIENTED BUSINESS**. Semi-Nude Entertainment Businesses and Adult Businesses as defined by this Chapter.

(P) **SPECIFIED ANATOMICAL AREAS**. The human male or female pubic area or anus with less than a full opaque covering, or the human female breast from the beginning of the areola, papilla or nipple to the end thereof with less than full opaque covering.

(Q) **SPECIFIED SEXUAL ACTIVITIES** means:

- (1) acts of:
 - (a) masturbation;
 - (b) human sexual intercourse; or
 - (c) sodomy
- (2) manipulating, caressing or fondling by any person of:
 - (a) the genitals of a human;
 - (b) the pubic area of a human; or

(c) the breast or breasts of a human female.

(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.

(Amended by Ord. No. 06-81)

4-9-5. OBSCENITY AND LEWDNESS - STATUTORY PROVISIONS.

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

Notwithstanding anything contained in this section, nothing in this section shall be deemed to permit or allow conduct or the showing or display of any matter which is contrary to the provisions of the Criminal Code, Section 8-4-20 'Lewdness'.

Provided, however, that for the purpose of this Sexually Oriented Business Chapter, the definition of private parts shall be construed to mean Nudity as defined in this Chapter.

(Amended by Ord. No. 06-81)

4-9-6. BUSINESS LICENSE REQUIRED, EMPLOYEE LICENSE REQUIRED .

It shall be unlawful for any person to engage

in a Sexually Oriented Business within the boundaries of Park City, Utah, as specified herein, without first obtaining a Sexually Oriented Business license from Park City Municipal Corporation. Providing Escort Services within Park City shall be considered engaging in business. The business license shall specify the type of Sexually Oriented Business for which it is obtained. It shall be unlawful of any Employee of a Sexually Oriented Business to perform any services in the boundaries of Park City, Utah, without first obtaining a Sexually Oriented Business Employee license from Park City Municipal Corporation. Any person operating as an independent contractor in Park City, Utah, shall obtain both a Sexually Oriented Business license and an Employee license from Park City Municipal Corporation.

(Amended by Ord. Nos. 06-81; 08-45)

4-9-7. EXEMPTIONS FROM LICENSE REQUIREMENTS.

The provisions of this Chapter shall not apply to any sex therapist or similar individual licensed by the State of Utah to provide bona fide sexual therapy or counseling, licensed medical practitioner, licensed nurse, psychiatrist, psychologist, nor shall it apply to any educator licensed by the State of Utah for activities in the classroom.

4-9-8. ARTISTIC MODELING.

The City does not intend to unreasonably or improperly prohibit legitimate modeling or exhibitions, which may occur in a State of Nudity for purposes protected by the First Amendment or similar State protections.

4- 9- 9. BUSINESS CATEGORIES; SINGLE LICENSE.

It is unlawful for any Business Premises to operate or be licensed for more than one category of Sexually Oriented Business. The categories of Sexually Oriented Businesses are:

- (A) Adult Bookstore or Adult Video Store;
- (B) Adult Motion Picture Theater;
- (C) Adult Theater;
- (D) Semi-Nude Entertainment Businesses; and
- (E) Escort Service.

(Amended by Ord. No. 06-81)

4- 9-10. BUSINESS LICENSE APPLICATION.

Before any Applicant may be licensed to operate a Sexually Oriented Business in Park City, Utah, pursuant to this Chapter, the Applicant shall submit to the Business License Clerk, on a form to be supplied by the Park City Business License Clerk, the following:

- (A) The correct legal name of each applicant, corporation, partnership, limited partnership or entity doing business under an assumed name.
- (B) If the Applicant is a corporation, partnership or limited partnership or individual or entity doing business under an

assumed name the information required below for individual Applicants shall be submitted for each partner and each principal of an Applicant and for each officer or director. Any holding company, or any entity holding more than ten percent of an Applicant, shall be considered an Applicant for purposes of disclosure under this Chapter.

- (C) All corporations, partnerships or non-corporate entities included on the application shall also identify each individual authorized by the corporation, partnership or non-corporate entity to sign the checks for such corporation, partnership or non-corporate entity.

- (D) For all Applicants the application must also state:

- (1) any other names or aliases used by the individual;
- (2) present physical address and telephone number of the Business Premises;
- (3) any internet websites that the business operates;
- (4) present residence and telephone number;
- (5) Utah drivers license or identification number; and
- (6) Social security number.

- (E) Acceptable written proof that any individual is at least twenty-one (21) years of age;

(F) In the event the Applicant is not the owner of record of the real property upon which the business or proposed business is or is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of business for which the Applicant seeks a license for the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well as the copy of the lease or rental agreement pertaining to the premises in which the service is or will be located;

(G) A description of the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees for services to be charged by the licensee and any rules, regulations or employment guidelines under or by which the Sexually Oriented Business intends to operate. This description shall also include:

- (1) the hours that the business or service will be open to the public and the methods of promoting the health and safety of Employees and patrons and preventing them from engaging in illegal activity;
- (2) the methods of supervision preventing the Employees from engaging in acts of prostitution or other related criminal activities;
- (3) the methods of supervising Employees and patrons to prevent employees and patrons from

charging or receiving fees for services or acts prohibited by this Chapter or other statutes or ordinances;

(4) the methods of screening Employees and customers in order to promote the health and safety of Employees and customers and prevent the transmission of disease, and prevent the commission of acts of prostitution or other criminal activity.

(H) Each applicant is required to attach to the application form the additional items listed under Section 4-9-12 of this Chapter.

(I) Each applicant is required to meet with the Police Chief or his/her designee.

(Amended by Ord. Nos. 06-81; 08-45)

4-9-11. EMPLOYEE LICENSE APPLICATION.

(A) 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 Park City Business License Clerk by the person to whom the Employee license shall be issued. Each application for an Employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the Park City Business License Clerk. Applications must be submitted to the office of the Park City Business License Clerk during regular working hours. Each applicant shall be required to give the following information on the application form:

- (1) The correct legal name of the applicant, and any other names or aliases used by the applicant or by which the applicant is known;
- (2) Present residence address, and telephone number;
- (3) Present business name, address, and telephone number;
- (4) Utah drivers license or identification number;
- (5) Social security number;
- (6) Age, date, and place of birth; and
- (7) Height, weight, hair color, and eye color.

(B) Each applicant shall provide acceptable written proof that the applicant is at least twenty-one (21) years of age;

(C) Each applicant is required to attach to the application form the additional items listed under Section 4-9-12 of this Chapter.

(D) Each applicant is required to meet with the Police Chief or his/her designee and sign a statement of understanding of the applicable laws and regulations.

(Created by Ord. Nos. 06-81; 08-45)

4- 9-12. ADDITIONAL APPLICATION REQUIREMENTS.

Attached to the application form for any license under this ordinance shall be the

following:

(A) Two (2) color photographs of the applicant clearly showing the individual's face and the individual's fingerprints on a form provided by the Park City Police Department. For persons not residing in Park City, the photographs and fingerprints shall be on a form from the law enforcement jurisdiction where the person resides. Fees for the photographs and fingerprints shall be paid by the applicant directly to the issuing agency;

(B) A statement detailing the license or permit history of the applicant for the five (5) year period immediately preceding the date of the filing of the application, including whether such applicant possessed or previously possessed any liquor licenses. The statement shall list all other jurisdictions in which the applicant owned or operated, or presently owns or operates a Sexually Oriented Business. The statement shall also state whether the applicant has ever had a license, permit, or authorization to do business denied, revoked, or suspended in this or any other county, city, state, or territory. In the even of any such denial, revocation, or suspension, state the date, the name or issuing or denying jurisdiction, and state in full the reasons for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application; and

(C) A statement detailing all criminal convictions, pleas of no contest except those which have been expunged, and pleas that are currently being held in abeyance and have not yet been dismissed, for the applicant, individual, or entity subject to disclosure under this Chapter for five (5)

years prior to the date of the application. This disclosure shall include identification of all ordinance violations, excepting minor traffic offenses, any traffic offense designated as a felony shall not be construed as a minor traffic offense; stating the date, place, nature of each conviction, plea of no contest, except those which have been expunged, and plea that is currently being held in abeyance and has not yet been dismissed, and sentence of each conviction or other disposition; identifying the convicting jurisdiction and sentencing court and providing the court identifying case numbers or docket numbers.

(Created by Ord. No. 06-81; Amended by Ord. No. 08-45)

4- 9-13. CONSENT FOR BACKGROUND CHECK.

Submission of an application for a Sexually Oriented Business license or Employee license shall constitute voluntary consent for criminal background checks by the Park City Police Department, the Utah Bureau of Criminal Identification, and the Federal Bureau of Investigation pursuant to any proceeding involving the Sexually Oriented Business license or Employee license.

(Created by Ord. No. 06-81)

4- 9-14. LICENSE FEES.

Each applicant for a Sexually Oriented Business license and Sexually Oriented Business Employee license shall be required to pay regulatory license fee pursuant to the schedule established by resolution of the Park City Council.

(Amended by Ord. No. 06-81)

4- 9-15. FALSE OR MISLEADING INFORMATION; DISCLOSURE.

It is unlawful to knowingly:

- (A) Submit false or materially misleading information on a Sexually Oriented Business license or Employee license application;
- (B) Provide false or materially misleading information to a Park City Business License clerk or Police chief or his/her designee for the purpose of obtaining a Sexually Oriented Business license; or
- (C) Fail to disclose or omit information for the purpose of obtaining a Sexually Oriented Business license or Employee license.

(Created by Ord. No. 06-81)

4- 9-16. EMPLOYMENT OF PERSONS WITHOUT PERMITS UNLAWFUL.

It is unlawful for any Sexually Oriented Business operating in or engaging employees in Park City, Utah, to employ, retain, or contract, or for any individual to be employed or contracted by a Sexually Oriented Business in the capacity of a Sexually Oriented Business Employee in Park City, Utah, unless that Employee first obtains and possesses a Sexually Oriented Business Employee license from Park City Municipal Corporation. It is not sufficient that the owner or employee of Sexually Oriented Business has a business license in any other location or jurisdiction.

For purposes of this Chapter, all owners, corporations, partnerships, or anyone who has any ownership interest in the Sexually Oriented Business doing business in Park City, Utah, shall be criminally liable as a party to any violation of this Chapter. In addition, any manager or person with supervisory status over the unlicensed Employee doing business in Park City, Utah, shall be criminally liable as a party to any violation of this Chapter.

Any Employee who knowingly, intentionally, recklessly, or with criminal negligence introduces, furnishes, arranges, transports, assists or refers, or offers to introduce, furnish, arrange, transport, assist or refer any unlicensed Employee to provide, or for the purpose of providing Escort Services in Park City, Utah, shall be criminally liable.

(Created by Ord. No. 06-81; Amended by Ord. No. 08-45)

4- 9-17. SINGLE LOCATION AND NAME.

(A) Conducting business, as defined in this Title, under a license issued pursuant to this Chapter at any location other than the licensed Business Premises is unlawful. 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 under any name other than the business name specified in the application.

(Amended by Ord. No. 06-81)

4- 9-18. LICENSE - ISSUANCE CONDITIONS.

(A) The Park City Business License clerk or his/her designated representative, shall refer all applications for licenses to the Police Chief for his investigation and recommendations.

(B) The Police Chief shall recommend the approval of a license pursuant to this Chapter unless he finds one or more of the following:

(1) The applicant is under twenty-one (21) years of age;

(2) The Applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against the applicant or imposed upon the Applicant in relation to a Sexually Oriented Business;

(3) The Applicant has falsely answered a material question or request for information as authorized by this Chapter;

(4) The Applicant has violated a provision of this Chapter or similar provisions found in statutes or ordinances from any jurisdiction within two (2) years immediately preceding the application. A criminal conviction for a violation of a provision of this Chapter or similar provisions from any jurisdiction, whether or not being appealed, is conclusive evidence of a violation, but a conviction is not necessary to prove a violation;

(5) The Business Premises to be used has been disapproved by the Summit County Health Department, the Fire Marshal, the building officials, or the zoning officials as not being in compliance with applicable laws and ordinances of the City. If any of the foregoing reviewing agencies cannot complete their review within the thirty (30) day approval or denial period, the agency or department may obtain an extension of time of no more than fifteen (15) days for review.

(6) All required license fees have not been paid;

(7) All applicable sales and use taxes have not been paid;

(8) An Applicant for the proposed business is in violation of or not in compliance with this Chapter or similar provisions found in state statutes or ordinances from any other jurisdiction;

(9) An Applicant has been convicted or pled nolo contendere to a crime involving:

- (a) Prostitution; exploitation of prostitution; aggravated promotion of prostitution; aggravated exploitation of prostitution; solicitation of sex acts; sex acts for hire; compelling prostitution; aiding prostitution; sale, distribution, or display of

material harmful to minors; sexual performance by minors; contributing to the delinquency of a minor; possession of child pornography; lewdness; obscenity; indecent exposure; any crime involving sexual abuse or exploitation of a child; sexual assault or aggravated sexual assault; rape; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; any felony; any violation under the Utah Controlled Substances Act or substantially similar state or federal statute; any crime of violence; criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses or offenses involving similar elements from any jurisdiction, regardless of the exact title of the offense; for which:

- (i) Less than two (2) years have elapsed from the date of conviction, if the conviction is of a misdemeanor offense, or less than five (5) years if the convictions are of two (2) or more misdemeanors within the five (5) years; or
- (ii) Less than five (5) years have elapsed

from the date of conviction if the offense is a felony;

(b) The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this Chapter.

(10) An applicant has not provided the Park City Business License Clerk with a complete application. An application is not complete until the applicant has provided all applicable requirements of Sections 4-9-10, 4-9-11, and 4-9-12; met with the Police chief or his/her designee; and paid all fees.

(C) The Police Chief shall make a report of his findings to the Park City Business License Clerk together with his recommendation, if any, within forty-five (45) days of receipt of a completed application including payment of all fees. If the Police chief or his/her designee cannot complete his/her review within the forty-five (45) day approval or denial period, the Police Chief or his/her designee may obtain an extension of time of no more than fifteen (15) days for his/her review. The total time for the City to approve or deny a license shall not exceed sixty (60) days from the receipt of a completed application and payment of all fees.

(Amended by Ord. No. 06-81)

4- 9-19. APPEALS OF LICENSE DENIAL.

Any applicant denied a Sexually Oriented

Business license or Employee license may appeal pursuant to Section 4-2-11(A), provided such request is filed within ten (10) days after receipt of notice of denial.

(Created by Ord. No. 06-81)

4- 9-20. POSSESSION AND DISPLAY OF EMPLOYEE LICENSE.

It is unlawful for any individual licensed pursuant to this Chapter to fail to, at all times while engaged in licensed activities within the corporate boundaries of the City, carry their Park City Municipal Corporation Sexually Oriented Business license on their person. If the individual is Semi-Nude, such license shall be visibly displayed within the same room as the Employee is performing. When requested by police, City licensing or other enforcement personnel or health official, it is unlawful to fail to show the appropriate licenses while engaged in licensed activities within the corporate boundaries of the city.

(Created by Ord. Nos. 06-81; 08-45)

4- 9-21. CHANGES IN INFORMATION.

Any change in the information required to be submitted under this Chapter for a Sexually Oriented Business license shall be given, in writing, to the Park City Business License Clerk, within fourteen (14) days after such change.

(Amended by Ord. No. 06-81)

4- 9-22. TRANSFER LIMITATIONS.

Sexually Oriented Business licenses granted under this Chapter are not transferable. It is unlawful for an individual to transfer a Sexually Oriented Business license. It shall be unlawful for a Sexually Oriented Business license held by a corporation, partnership or other non-corporate entity to transfer any part in excess of ten percent (10%) thereof, without filing a new application and obtaining prior City approval. If any transfer of the controlling interest in a Sexually Oriented Business licensee occurs, the license is immediately null and void and the Sexually Oriented Business shall not operate in Park City, Utah, until a separate new license has been properly issued by the City as herein provided.

(Amended by Ord. No. 08-45)

4- 9-23. GENERAL REGULATIONS.

It is unlawful for any Sexually Oriented Business to:

- (A) Allow persons under the age of eighteen (18) years, or the age of twenty one (21) years if required by applicable liquor ordinance, on the Business 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 Escort Services with persons under the age of eighteen (18) years;
- (C) Allow, offer or agree to allow any alcohol being stored, used or consumed on or in the Business Premises;

- (D) Allow the outside door to the premises to be locked while any customer is in the Business Premises;
- (E) Allow, offer or agree to gambling on the Business Premises;
- (F) Allow, offer or agree to any Employee of a Sexually Oriented Business touching any patron or customer;
- (G) Allow, offer or agree to illegal possession, use, sale or distribution of controlled substances on the Business 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 Business Premises, or in the event of an Escort or Escort Services, the Escort or 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 specified sexual activity in the presence of any customer or patron;
- (K) Allow, offer or agree to allow a patron or customer to commit Specified Sexual Activities in the presence of an Employee or on the Business Premises;
- (L) Allow, offer or agree to any

Employee of a Sexually Oriented Business appearing before any customer or patron in a State of Nudity, unless licensed as an Adult Theater;

(M) Allow, offer, or agree that any Employee of a Sexually Oriented Business should appear before any customer or patron in a State of Partial Nudity without their employee license on their person or in their immediate control.

(N) Allow, offer, or agree to commit an act of lewdness as defined in Section 8-4-20 of this Code; or

(O) Not permit the Police Department or other proper City official to have access at all times to all premises licensed or applying for a license under this Chapter, or to make periodic inspection of said Business Premises whether the officer or official is in uniform or plain clothes.

(Amended by Ord. Nos. 06-81; 08-45)

4- 9-24. ESCORT SERVICE OPERATION REQUIREMENTS.

It is unlawful for any business or Employee providing Escort Services contracted for or provided in Park City, to fail to comply with the following requirements:

(A) All businesses licensed to provide Escort Services pursuant to this Chapter shall provide to each patron a written contract in receipt of consideration 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 Operator shall keep and maintain a copy of each written contract entered into pursuant to this section for a period of not less than one (1) year from the date of provision of services. The contracts shall be numbered and entered into a register listing the contract number, name, names of all Employees involved in the contract and pecuniary compensation paid.

(B) All Escort Services licensed pursuant to this Chapter shall maintain an open office at which at least one (1) responsible Employee conducts the affairs of the business and acts as manager and Licensee's designated agent and may be personally contacted during all hours Escorts are working. The address and phone number of the Business Premises shall appear and be included in all patron contracts and published advertisements.

(C) Escort 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 Escort. The business Operator shall keep and maintain copies of all published advertisements for a period not less than one (1) year from the date of publishing.

(Created by Ord. No. 06-81)

4- 9-25. 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

Business 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 a 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 (1) person be allowed in the restroom per stall and only one (1) 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 must show marked internal dimensions, all overhead lighting fixtures and ratings for illumination capacity.

(B) It shall be the duty of Licensee and

Licensee's Employees to insure that the views from the manager's station of all areas specified in section (1) above remain unobstructed by any doors, walls, merchandise, display racks or any other materials, at all times that any patron is present in 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 (1) foot candle measured at floor level. It shall be the duty of Licensee and Licensee's Employees present on the premises to insure that the illumination described above is maintained at all times that any patron is present in the premises.

(Amended by Ord. No. 06-81)

4- 9-26. SEMI-NUDE ENTERTAINMENT BUSINESS; INTERIOR DESIGN.

Adult Theaters shall require that the performance area shall be separated from the patrons by a minimum of three feet (3'), which separation shall be delineated by a physical barrier at least three feet (3') high. It is unlawful for Business Premises licensed for Semi-Nude Entertainment to:

- (A) 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;

(B) allow any door on any room used for the business, except for the door to an office to which patrons shall not be admitted, outside doors and restroom doors to be lockable from the inside;

(C) 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 (3') high and six inches (6") 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;

4- 9-27. ALCOHOL PROHIBITED.

It is unlawful for any business licensed pursuant to this Chapter to allow the sale, storage, supply, or consumption of alcoholic beverages on the Business Premises. It is unlawful for any person to possess or consume any alcoholic beverage on the Business Premises of any Sexually Oriented Business.

(Amended by Ord. No. 06-81)

4- 9-28. SEVERABILITY.

In the event that any provision of this Chapter is declared invalid for any reason, the remaining provisions shall remain in effect.

(Created by Ord. No. 06-81)

4- 9-29. COMPLIANCE BY

PRESENT LICENSEES.

Any person, firm or corporation which held any business license from Park City which lawfully permits the activities regulated hereby or was doing business on the effective date of this amendment, shall have forty-five (45) days from the effective date of this amendment to submit the application required in this Chapter or be deemed as operating as Sexually Oriented Business without a license. Additionally, Employees of business designated by this Chapter who are required to obtain an Employee license shall have forty-five (45) days from passage of this amendment to submit application for an employee license or be deemed as operating without a license.

(Created by Ord. No. 06-81)

CHAPTER 10 - FRANCHISED UTILITIES AND CABLE TELEVISION OPERATORS

4-10- 1. BUSINESS LICENSE REQUIRED.

All franchised utilities and cable television operators must obtain from the City a license to do business within the City. It shall be unlawful for a franchised utility or cable television operator to conduct business in Park City without a license. The City shall not charge a business license fee, but the fees for the franchise license amount below and any franchise fee imposed by virtue of a franchise agreement must be timely paid to receive a business license.

4-10- 2. FRANCHISE LICENSE.

There is hereby imposed on all franchised utilities, except 'energy suppliers' taxed

pursuant to Chapter 13 of this title, telecommunications providers taxed pursuant to Chapter 14A of this title, and cable television operators who conduct business within the City a franchise license. The franchise license shall be three and one-half percent (3.5%) of the gross revenue of the franchised utility or cable television operator derived from the sale of its service or product within Park City's corporate limits. For purposes of this Chapter, gross revenue, shall include all revenue generated from the sale of the franchisee's product or service. The franchise fee imposed by other ordinances as a consideration for granting the franchises shall be excluded from the gross revenue.

(Amended by Ord. No. 04-26)

4-10- 3. EXCLUSIONS.

This franchise license fee shall not apply to 'energy suppliers' taxed pursuant to Section 4-13, telecommunications providers taxed pursuant to Chapter 14A of this title, or revenue derived from the sale of household appliances by a franchisee, service of appliances, or to the sale or rental of telephone switching equipment not included in "exchange access service".

(Amended by Ord. No. 04-26)

4-10- 4. PAYMENT OF FEE .

The fee is payable in monthly installments which shall be due on or before the 15th day of the month following the billing cycle of the utility or cable television operator. The fee shall be paid on the basis of the preceding month's actual collections. A service charge of one and a half percent

(1.5%) per month of the total amount due may be imposed on late payments.

(Amended by Ord. No. 04-26)

4-10- 5. PENALTY.

The operation of a franchised utility or cable television business within Park City without paying the required fees shall be a Class "B" misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000.00) for each day of each violation and imprisonment of the corporate officials responsible for the violation for not more than six months in the County jail for each day of each violation. These criminal penalties are in addition to, and not in lieu of a civil action to recover the license fee due, or a civil action to terminate the franchise. Each connection to the utility or cable television system through which service is provided by the franchisee is hereby deemed a separate transaction or sale, and each such sale, while unlicensed, shall constitute a separate violation.

(Amended by Ord. No. 04-26)

CHAPTER 11 - RESORT COMMUNITIES SALES TAX

4-11- 1. DEFINITIONS.

For purposes of this Chapter, all terms used shall have the same meaning and definition as applied to those terms by the provisions of U.C.A. 59-12-405, and the State Tax Commission regulations adopted under U.C.A. Title 59, Chapter 12, Part 4.

(Amended by Ord. No. 04-22)

4-11- 2. RESORT COMMUNITIES SALES TAX IMPOSED.

Except as otherwise provided herein, there is levied and there shall be collected and paid a tax upon every retail sale within Park City of tangible personal property, services, meals, lodging, admission to places of recreation, entertainment or amusements, utility service and all other personal property taxed under U.C.A. 59-12, within Park City at the rate of one and one-tenth percent (1.1%) of the retail selling price.

(Amended by Ord. Nos. 04-22; 07-37)

4-11- 3. PLACE OF SALE.

For the purpose of this Chapter, the location of a sales transaction shall be determined in accordance with U.C.A. Sections 59-12-207.1 through 59-12-207.4.

(Amended by Ord. No. 04-22)

4-11- 4. COLLECTION AND PAYMENT OF TAX.

The tax imposed by this ordinance is in addition to and not in lieu of the general sales tax imposed under the provisions of the local sales and use tax ordinance adopted by Park City, and the state sales tax under U.C.A. 59-12. The procedure for collection and payment of this tax shall be identical to the procedure prescribed by U.C.A. Sections 59-12-401(2) and 59-12-402(2) and the State Tax Commission Regulations adopted under that Chapter.

(Amended by Ord. No. 04-22)

4-11- 5. STATE STATUTES

APPLICABLE.

(A) Except as hereinafter provided, and except as they are inconsistent with the provisions of the Local Sales Tax Law of Utah, all other provisions of U.C.A. 59-12 pertaining to sales tax as in force at the effective date of this ordinance, and as thereafter amended, are hereby adopted in full and made a part of this ordinance as though fully set forth herein, except for the provisions stating the rate of the tax applied.

(B) Wherever, and to the extent that in U.C.A. 59-12, the State of Utah is named or referred to as the taxing agency, the name of Park City shall be substituted therefore. Nothing in this paragraph shall be deemed to require substitution of the name of the municipality for the word "State" when that word is used as part of the title of the State Tax Commission, or of the Constitution of Utah, nor shall the name of the municipality be substituted for that of the State in any section when the result of that substitution would require action to be taken by or against the City or any agency thereof, rather than by or against the State Tax Commission in performing the functions incident to the administration or operation of this ordinance.

(C) If an annual license has been issued to a retailer under U.C.A. 59-12, an additional license shall not be required by reason of this section.

4-11-6. EXCLUSIONS.

As provided in U.C.A. Section 59-12-401, the resort communities tax imposed under this section shall not apply to the sale of:

- (A) a motor vehicle;
- (B) an aircraft;
- (C) a water craft;
- (D) a modular home;
- (E) a manufactured home;
- (F) a mobile home; or
- (G) the sales and uses described in U.C.A. Section 59-12-104 to the extent the sales and uses are exempt from taxation under that section.

(Amended by Ord. No. 04-22)

CHAPTER 12 - SALES AND USE TAX

4-12- 1. PURPOSE.

It is the purpose of this ordinance to conform the sales and use tax of Park City to the requirements of the Sales and Use Tax Act, U.C.A. 59-12, as currently amended.

4-12- 2. SALES AND USE TAX.

(A) There is levied and there shall be collected and paid a tax upon every retail sale of tangible personal property, services and meals made within Park City at the rate of one percent (1%). An excise tax is hereby imposed on the storage, use, or other consumption in Park City of tangible personal property from any retailer on or after the operative date of this ordinance at the rate of one percent (1%) of the sales price of the property. For the purpose of this ordinance all retail sales shall be presumed to have been consummated at the place of

business delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. In the event a retailer has no permanent place of business, the place or places at which the retail sales are consummated shall be as determined under the rules and regulations prescribed by and adopted by the State Tax Commission. Public utilities as defined by U.C.A. 54, shall not be obligated to determine the place or places within any county or municipality where public utilities services are rendered, but the place of sale or the sales tax revenue arising from such service allocable to Park City shall be as determined by the State Tax Commission pursuant to an appropriate formula and other rules and regulations to be prescribed and adopted by it.

(B) Except as hereinafter provided, and except insofar as they are inconsistent with the provisions of the Sales and Use Tax Act, all of the provisions of U.C.A. 59-12, as amended, and in force and effect on the effective date of this ordinance, insofar as they relate to sales taxes, are hereby adopted and made a part of this ordinance as though fully set forth herein. Wherever, and to the extent that in U.C.A. 59-12, the State of Utah is named or referred to as the taxing agency, the name of Park City shall be substituted therefore. Nothing in this subparagraph shall be deemed to require substitution of the name of Park City for the word "State" when that word is used as part of the title of the State Tax Commission, or of the Constitution of the State of Utah, nor shall the name of Park City be substituted for that of the State in any section when the result of that substitution would require action to be taken by or against Park City or any agency thereof, rather than by or against

the State Tax Commission in performing the functions incident to the administration or operation of the ordinance.

(C) If an annual license has been issued to a retailer under U.C.A. 59-12, an additional license shall not be required by reason of this section. There shall be excluded from the purchase price paid or changed by which the tax is measured:

(1) The amount of any sales or use tax imposed by the State of Utah upon a retailer of consumer; and

(2) The gross receipts from the sale of or the cost of storage, use or other consumption of tangible personal property upon which a sales or use tax has become due by reason of the sale transaction to any other municipality or any county in the State of Utah, under the sales or use tax ordinances enacted by that county or municipality in accordance with the Sales and Use Tax Act, U.C.A. 59-12.

CHAPTER 13 - MUNICIPAL ENERGY SALES AND USE TAX

4- 13-1. DEFINITIONS.

Those definitions contained under U.C.A. Section 10-1-303, as amended, are hereby incorporated by reference.

4- 13-2. TAX IMPOSED.

There is imposed on every sale or use of taxable energy made within Park City Municipal Corporation a tax of six percent (6%) of the delivered value of taxable energy to the consumer.

4- 13-3. EXEMPTIONS FROM THE TAX.

No tax under this ordinance is imposed on the sale or use of taxable energy, which is exempt from taxation pursuant to U.C.A. Section 10-1-305 or its successor sections, which are incorporated by reference herein.

4- 13-4. NO EFFECT ON EXISTING FRANCHISE AGREEMENTS; TAX CREDITS.

There is allowed a credit against the tax due under this ordinance for any contractual franchise fee paid where:

(A) The taxpayer 's energy supplier pays a contractual franchise fee to Park City Municipal Corporation pursuant to a franchise agreement in effect on July 1, 1997;

(B) The contractual franchise is passed through by the energy supplier to the taxpayer as a separately itemized charge; and

(C) The energy supplier has accepted the franchise.

4- 13-5. TAX COLLECTION.

This ordinance incorporates by reference the tax collection provisions of the U.C.A. 59-12, Par. 1, Tax Collection, and any amendments thereto, for the purpose of levying and collecting the tax imposed by this ordinance. The Finance Director is hereby authorized to contract, in a form approved by the City Attorney, with the State Tax Commission effective July 1,

1997 and thereafter to have the Commission perform all functions relative to administration or operation of this ordinance, except an energy supplier which estimates that the municipal energy sales and use tax collected annually by it from its Utah customers equals \$1 million or more shall pay the tax imposed by this ordinance directly to Park City Municipal Corporation. In such case, the energy supplier may retain that percentage of the tax authorized under U.C.A. Section 59-12-108 for the energy supplier's costs of collecting and remitting the tax. The energy supplier shall remit the tax no later than forty-five (45) days after the end of the month in which the tax was collected.

CHAPTER 14 - TELE-COMMUNICATIONS AND RIGHTS-OF-WAY

4-14-1. SCOPE OF ORDINANCE.

This ordinance shall provide the basic local scheme for providers of telecommunications services and systems that require the use of the rights-of way, including providers of both the system and service, those providers of the system only, and those providers who do not build the system but who only provide services. This ordinance shall apply to all future providers and to all providers in the City prior to the effective date of this ordinance, whether operating with or without a franchise as set forth in Section 4-14-12(B). This ordinance shall not apply to cable television operators otherwise regulated by a franchise granted by the City, nor personal wireless service facilities. Providers excused by other law that prohibits the City from requiring a franchise shall not be required to obtain a franchise,

but all of the requirements imposed by this ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

4-14-2. DEFINED TERMS.

(A) **APPLICATION**. The process by which a provider submits a request and indicates a desire to be granted a franchise to utilize the rights-of-way of all, or a part, of the City. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a provider to the City concerning: the construction of a telecommunications system over, under, on or through the rights-of-way; the telecommunications services proposed to be provided in the City by a provider; and any other matter pertaining to a proposed system or service.

(B) **CITY**. Park City, Utah.

(C) **COMPLETION DATE**. The date that a provider begins providing services to customers in the City.

(D) **CONSTRUCTION COSTS**. All costs of constructing a system, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.

(E) **CONTROL OR CONTROLLING INTEREST**. Actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the system or of a provider. A rebuttable presumption of the existence of control or a controlling interest shall arise from the

beneficial ownership, directly or indirectly, by any person, or group of persons acting in concert, of more than twenty-five percent (25%) of any provider, which person or group of persons is hereinafter referred to as "controlling person". "Control" or "controlling interest" as used herein may be held simultaneously by more than one person or group of persons.

(F) **FCC**. The Federal Communications Commission, or any successor thereto.

(G) **FRANCHISE**. The rights and obligation extended by the City to a provider to own, lease, construct, maintain, use or operate a system in the rights-of-way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include:

(1) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;

(2) any other permit, agreement or authorization required in connection with operations on rights-of-way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the rights-of-way.

(H) **FRANCHISE AGREEMENT**. A contract entered into in accordance with the provisions of this ordinance between the

City and a franchisee that sets forth, subject to this ordinance, the terms and conditions under which a franchise will be exercised.

(I) **INFRASTRUCTURE PROVIDER**. A person providing to another, for the purpose of providing telecommunication services to customers, all or part of the necessary system, which uses the rights-of-way.

(J) **OPEN VIDEO SERVICE**. Any video programming services provided to any Person through the use of rights-of-way, by a provider that is certified by the FCC to operate an open video system pursuant to sections 651, *et seq.*, of the Telecommunications Act, to be codified at 47 U.S.C. Title VI, Part V, regardless of the system used.

(K) **OPEN VIDEO SYSTEM**. The system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing open video services to or from subscribers or locations within the City.

(L) **OPERATOR**. Any person who provides service over a telecommunications system and directly or through one or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.

(M) **ORDINANCE** or **TELECOMMUNICATIONS ORDINANCE**. This telecommunications ordinance concerning the granting of

franchises in and by the City for the construction, ownership, operation, use or maintenance of a telecommunications system.

(N) **PERSON**. Includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

(O) **PERSONAL WIRELESS SERVICES FACILITIES**. Has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as cellular and PCS Services that do not install any system or portion of a system in the rights-of-way.

(P) **PROVIDER**. An operator, infrastructure provider, resaler, or system lessee.

(Q) **PSC**. The Public Service Commission, or any successor thereto.

(R) **RESALER**. Any person that provides local exchange service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission.

(S) **RIGHTS-OF-WAY**. The surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing, and owned by or otherwise dedicated to the City.

(T) **SIGNAL**. Any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

(U) **SYSTEM OR TELECOMMUNICATIONS SYSTEM**. All conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased, or used by a provider, located in the rights-of-way and utilized in the provision of services, including fully digital or analog, voice, data and video imaging and other enhanced telecommunications services. Telecommunications system or systems also includes an open video system.

(V) **SYSTEM LESSEE**. Any person that leases a system or a specific portion of a system to provide services.

(W) **TELECOMMUNICATIONS**. The transmission, between or among points specified by the user, of information of the user's choosing, *e.g.*, data, video, and voice, without change in the form or content of the information sent and received.

(X) **TELECOMMUNICATIONS SERVICES OR SERVICES**. Any telecommunications services provided by a provider within the City that the provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992, 47 U.S.C. Section 521, *et seq.*, and the Telecommunications Act of 1996. Telecommunications system or systems also includes an open video system.

(Y) **WIRE.** Fiber optic telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

(Amended by Ord. No. 04-26)

4-14-3. FRANCHISE REQUIRED.

(A) **NON-EXCLUSIVE FRANCHISE.** The City is empowered and authorized to issue non-exclusive franchises governing the installation, construction, and maintenance of systems in the City's rights-of-way, in accordance with the provisions of this ordinance. The franchise is granted through a franchise agreement entered into between the City and provider.

(B) **EVERY PROVIDER MUST OBTAIN.** Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every provider must obtain a franchise prior to constructing a telecommunications system or providing telecommunications services using the rights-of-way, and every provider must obtain a franchise before constructing an open video system or providing open video services via an open video system. Any open video system or service shall be subject to the customer service and consumer protection provisions applicable to the cable TV companies to the extent the City is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular telecommunications systems may be used for multiple purposes does not obviate the

need to obtain a franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide telecommunications services over the same system, must also obtain a telecommunications franchise.

(C) **NATURE OF GRANT.** A franchise shall not convey title, equitable or legal, in the rights-of-way. A franchise is only the right to occupy rights-of-way on a non-exclusive basis for the limited purposes and for the limited period stated in the franchise; the right may not be subdivided, assigned, or subleased. A franchise does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the City's property. The franchise agreement may impose additional limitations upon the provider, such as location of utilities. This section shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise from the City.

(D) **CURRENT PROVIDERS.** Except to the extent exempted by federal or state law, any provider acting without a franchise on the effective date of this ordinance shall request issuance of a franchise from the City within ninety (90) days of the effective date of this ordinance. If such request is made, the provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a franchise is not granted, the provider shall comply with the provisions of section 4-14- 9(D).

(E) **NATURE OF FRANCHISE.** The

franchise granted by the City under the provisions of this ordinance shall be a nonexclusive franchise providing the right and consent to install, repair, maintain, remove and replace its system on, over and under the rights-of-way in order to provide services, unless otherwise specified by the franchise agreement.

(F) **REGULATORY APPROVAL NEEDED.** Before offering or providing any services pursuant to the franchise, a provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

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

4-14-4. COMPENSATION AND OTHER PAYMENTS.

(A) **TELECOMMUNICATIONS TAX.** As provided for in Chapter 14A of this Title.

(B) **APPLICATION FEE.** In order to offset the cost to the City to review an application for a franchise and in addition to all other fees, permits or charges, a provider shall pay to the City at the time of application, five hundred dollars (\$500) as a non-refundable application fee.

(C) **EXCAVATION PERMITS.** The

provider shall also pay fees required for an excavation permit as provided in the City's Fee Resolution or applicable code.

(D) **FUTURE COSTS.** A provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties, including but not limited to attorneys and other consultants, in connection with any renewal or provider-initiated renegotiation, or amendment of this ordinance or a franchise, provided, however, that the parties shall agree upon a reasonable financial cap at the offset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association.

(E) **CONTINUING OBLIGATION AND HOLDOVER.** In the event a provider continues to operate all or any part of the system after the term of the franchise, such operator shall continue to comply with all applicable provisions of this ordinance and the franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

(F) **COSTS OF PUBLICATION.** A provider shall assume any publication costs associated with its franchise that may be

required by law.

(Amended by Ord. No. 04-26)

4-14- 5. FRANCHISE APPLICATIONS.

(A) FRANCHISE APPLICATION.

To obtain a franchise to construct, own, maintain or provide services through any system within the City, to obtain a renewal of a franchise granted pursuant to this ordinance, or to obtain the City approval of a transfer of a franchise, as provided in Section 4-14-7(A)(2), granted pursuant to this ordinance, an application must be filed with City. The application form may be changed by the City Manager so long as such changes request information that is consistent with this ordinance.

(B) APPLICATION CRITERIA. In making a determination as to an application filed pursuant to this ordinance, the City may, but shall not be limited to, request the following from the provider:

- (1) A copy of the order from the PSC granting a Certificate of Convenience and Necessity.
- (2) Certification of the provider's financial ability to compensate the City for provider's intrusion, maintenance and use of the rights-of-way during the franchise term proposed by the provider;
- (3) Provider 's agreement to comply with the requirements of Section 4-14-6 of this ordinance.

(C) FRANCHISE

DETERMINATION. The City, in its discretion, shall determine the award of any franchise on the basis of these and other considerations relevant to the use of the rights-of-way, without competitive bidding.

4-14-6. CONSTRUCTION AND TECHNICAL REQUIREMENTS.

(A) GENERAL REQUIREMENT. No provider shall receive a franchise unless it agrees to comply with each of the terms set forth in this section governing construction and technical requirements for its system, in addition to any other reasonable requirements or procedures specified by the City or the franchise, including requirements regarding locating and sharing in the cost of locating portions of the system with other systems or with City utilities. A provider shall obtain an excavation permit before commencing any work in the rights-of-way.

(B) QUALITY. All work involved in the construction, maintenance, repair, upgrade and removal of the system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality, and in accordance with the City 's design standards, construction specifications, and latest edition standard drawings. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety or welfare, or quality of service or reliability, then a provider shall, at its own cost and expense, promptly correct all such conditions.

(C) **LICENSES AND PERMITS.** A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including but not limited to any necessary approvals from persons and/or the City to use private property, easements, poles and conduits. A provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

(D) **RELOCATION OF THE SYSTEM.**

(1) **NEW GRADES OR LINES.** If the grades or lines of any rights-of-way are changed at any time in a manner affecting the system, then a provider shall comply with the requirements of the excavation ordinance or other applicable City regulation.

(2) **THE CITY AUTHORITY TO MOVE SYSTEM IN CASE OF AN EMERGENCY.** The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the system and appurtenances on, over or under the rights-of-way of the City, in which event the City shall not be liable therefore to a provider.

The City shall notify a provider in

writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this section. Notice shall be given as provided in Section 11.4.

(3) **A PROVIDER REQUIRED TO TEMPORARILY MOVE SYSTEM FOR THIRD PARTY.**

A provider shall, upon prior reasonable written notice by the City or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of said structure. A provider may impose a reasonable charge on any person other than the City for any such movement of its systems.

(4) **RIGHTS-OF-WAY CHANGE - OBLIGATION TO MOVE SYSTEM.** When the City is changing a rights-of-way and makes a written request, a provider is required to move or remove its system from the rights-of-way, without cost to the City, to the extent provided in the excavation ordinance. This obligation does not apply to systems originally located on private property pursuant to a private easement, which property was later incorporated into the rights-of-way, if that private easement grants a superior vested right.

This obligation exists whether or not the provider has obtained an excavation permit.

(5) **PROTECT STRUCTURES.** In connection with the construction, maintenance, repair, upgrade or removal of the system, a provider shall, at its own cost and expense, protect any and all existing structures belonging to the City and any historically significant structure or building, as designated by the Historic District Commission. A provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the rights-of-way of the City required because of the presence of the system. Any such alteration shall be made by the City or its designee on a reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other rights-of-way of the City involved in the construction, maintenance, repair, upgrade or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a provider pursuant to the franchise.

(6) **NO OBSTRUCTION.** In connection with the construction, maintenance, upgrade, repair or removal of the system, a provider shall not unreasonably obstruct the rights-of-way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the City without the prior consent of the

appropriate authorities.

(7) **SAFETY PRECAUTIONS.** A provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

(8) **REPAIR.** After written reasonable notice to the provider, unless, in the sole determination of the City, an imminent danger exists, any rights-of-way within the City which are disturbed or damaged during the construction, maintenance or reconstruction by a provider of its system may be repaired by the City at the provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a provider an itemized statement of the cost for repairing and restoring the rights-of-ways intruded upon.

The provider shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof.

(9) **SYSTEM**

MAINTENANCE. A provider shall:

(a) Install and maintain all parts of its system in a non-dangerous condition throughout the entire period of its franchise.

(b) Install and maintain its system in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.

(c) At all reasonable times, permit examination by any duly authorized representative of the City of the system and its effect on the rights-of-way.

(10) **TRIMMING OF TREES.** A provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over rights-of-way so as to prevent the branches of such trees from coming in contact with its system. See Title 14.

4-14- 7. FRANCHISE AND LICENSE NON-TRANSFERRABLE.

(A) **NOTIFICATION OF SALE.**

(1) **NOTIFICATION AND ELECTION.** When a provider is the subject of a sale, transfer, lease,

assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the provider or its successor entity shall promptly notify the City of the nature of the transaction. The notification shall include either:

(a) the successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement, or

(b) the successor entity's application in compliance with Section 4-14-5 of this ordinance.

(2) **TRANSFER OF FRANCHISE.** Upon receipt of a notification and certification in accordance with Section 4-14-7(A)(1)(a), the City designee, as provided in Section 4-14-9(A)(1), shall send notice affirming the transfer of the franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this ordinance or the franchise agreement, it may require an application for the transfer. The application shall comply with Section 4-14-5.

(3) **IF PSC APPROVAL NO**

LONGER REQUIRED. If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in Section 4-14-7(A), and the City has good cause to believe that the successor entity may not comply with this ordinance or the franchise agreement, it may require an application. The application shall comply with Section 4-14-5.

(B) **EVENTS OF SALE.** The following events shall be deemed to be a sale, assignment or other transfer of the franchise requiring compliance with Section 7.1:

- (1) the sale, assignment or other transfer of all or a majority of a provider's assets to another person;
- (2) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a provider by one (1) or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in a provider;
- (3) the issuance of additional capital stock or partnership, membership or other equity interest by a provider so as to create a new controlling interest in such a provider; or
- (4) the entry by a provider into an agreement with respect to the management or operation of such provider or its system.

4-14-8. OVERSIGHT AND

REGULATION.

(A) **INSURANCE, INDEMNITY, AND SECURITY.** Prior to the execution of a franchise, a provider will deposit with the City an irrevocable, unconditional letter of credit as required by the terms of the franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise. A provider shall also indemnify the City as set forth in the franchise.

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

(C) **MAINTAIN RECORDS.** A provider shall at all times maintain:

- (1) On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and systems installed or constructed in the rights-of-way, properly identified and described as

to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all rights-of-ways where work will be undertaken.

As used herein, 'as-built' maps includes file construction prints. Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within thirty (30) days of completion of work or within thirty (30) days after completion of modification and repairs.

As- built maps are not required of the provider who is the incumbent local exchange carrier for the existing system to the extent they do not exist.

(2) Throughout the term of the franchise, a provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a provider with respect to the system in a manner that allows the City at all times to determine whether a provider is in compliance with the franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a provider shall alter the manner in which the books and/or records are maintained so that a provider comes into compliance with this section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental

entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this section.

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

(E) **PROVIDER'S EXPENSE**. All reports and records required under this ordinance shall be furnished at the sole expense of a provider, except as otherwise provided in this ordinance or a franchise.

(F) **RIGHT OF INSPECTION**. For the purpose of verifying the correct amount of the franchise fee, the books and records of the provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the City shall not audit the books and records of the provider more often than annually. The provider agrees to reimburse the City the reasonable costs of an audit if the audit

discloses that the provider has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

4-14- 9. RIGHTS OF CITY.

(A) ENFORCEMENT AND REMEDIES.

(1) **ENFORCEMENT - CITY DESIGNEE.** The City is responsible for enforcing and administering this ordinance, and the City or its designee, as appointed by the City Manager, is authorized to give any notice required by law or under any franchise agreement.

(2) **ENFORCEMENT PROVISION.** Any franchise granted pursuant to this ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this ordinance, including, but not limited to, defining events of default, procedures for accessing the bond/security fund, and rights of termination or revocation.

(B) **FORCE MAJEURE.** In the event a provider's performance of any of the terms,

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

(C) EXTENDED OPERATION AND CONTINUITY OF SERVICES.

(1) **CONTINUATION AFTER EXPIRATION.** Upon either expiration or revocation of a franchise granted pursuant to this ordinance, the City shall have discretion to permit a provider to continue to operate its system or provide services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A provider shall continue to operate its system under the terms and conditions of this ordinance and the franchise granted pursuant to this ordinance.

(2) **CONTINUATION BY INCUMBENT LOCAL EXCHANGE CARRIER.** If the provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its system and provide services without regard to revocation or expiration, but shall be obligated to negotiate a

renewal in good faith.

(D) **REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY.**

(1) **ABANDONED SYSTEM.**

In the event that:

(a) the use of any portion of the system is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of provider;

(b) any system has been installed in the rights-of-way without complying with the requirements of this ordinance or franchise; or

(c) the provisions of Section 3-5 are applicable and no franchise is granted, a provider, except the provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such system.

(2) **REMOVAL OF ABANDONED SYSTEM.** The City, upon such terms as it may impose, may give a provider written permission to abandon, without removing, any system, or portion thereof, directly constructed, operated or maintained under a franchise. Unless such permission is granted or unless otherwise provided

in this ordinance, a provider shall remove within a reasonable time the abandoned system and shall restore, using prudent construction standards, any affected rights-of-way to their former state at the time such system was installed, so as not to impair their usefulness.

The City shall have the right to inspect and approve the condition of the rights-of-way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this ordinance and any security fund provided in a franchise shall continue in full force and effect during the period of removal and until full compliance by a provider with the terms and conditions of this section.

(3) **TRANSFER OF ABANDONED SYSTEM TO CITY.** Upon abandonment of any system in place, a provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned system.

(4) **REMOVAL OF ABOVE-GROUND SYSTEM.** At the expiration of the term for which a franchise is granted, or upon its revocation or earlier expiration, as provided for by this ordinance, in any such case without renewal, extension or transfer, the City shall have the right to require a provider to remove, at its expense, all above-

ground portions of a system from the rights-of-way within a reasonable period of time, which shall not be less than one hundred eighty (180) days.

If the provider is the incumbent local exchange carrier, it shall not be required to remove its system, but shall negotiate a renewal in good faith, unless otherwise provided for in the franchise agreement.

(5) **LEAVING UNDERGROUND SYSTEM.** Notwithstanding anything to the contrary set forth in this ordinance, a provider may abandon any underground system in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator or other person, unless otherwise provided for in the franchise agreement.

4-14-10. OBLIGATION TO NOTIFY.

(A) **PUBLICIZING WORK.** Before entering onto any private property, a provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed. Nothing herein authorizes the provider to trespass.

4-14-11. GENERAL PROVISIONS.

(A) **CONFLICTS.** In the event of a conflict between any provision of this ordinance and a franchise entered pursuant to it, the provisions of this ordinance in effect at the time the franchise is entered into shall control.

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

(C) **NEW DEVELOPMENTS.** It shall be the policy of the City to liberally amend this ordinance, upon application of a provider, when necessary to enable the provider to take advantage of any developments in the field of telecommunications which will afford the provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

(D) **NOTICES.** All notices from a provider to the City required under this

ordinance or pursuant to a franchise granted pursuant to this ordinance shall be directed to the officer as designated by the City Manager. A provider shall provide in any application for a franchise the identity, address and phone number to receive notices from the City. A provider shall immediately notify the City of any change in its name, address, or telephone number.

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

4-14-12. FEDERAL, STATE AND CITY JURISDICTION.

(A) **CONSTRUCTION.** This ordinance shall be construed in a manner consistent with all applicable federal and state statutes.

(B) **ORDINANCE APPLICABILITY.** This ordinance shall apply to all franchises granted or renewed after the effective date of this ordinance. This ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing franchises granted prior to the effective date of this ordinance and to a provider providing services, without a franchise, prior to the effective date of this ordinance.

(C) **OTHER APPLICABLE ORDINANCES.** A provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A provider shall comply with all applicable

general laws and ordinances enacted by the City pursuant to its police powers. In particular, all providers shall comply with the City zoning and other land use requirements.

(D) **CITY FAILURE TO ENFORCE.** A provider shall not be relieved of its obligation to comply with any of the provisions of this ordinance or any franchise granted pursuant to this ordinance by reason of any failure of the City to enforce prompt compliance.

(E) **CONSTRUED ACCORDING TO UTAH LAW.** This ordinance and any franchise granted pursuant to this ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.

CHAPTER 14A – TELECOMMUNICATIONS TAX

(Chapter created by Ord. No. 04-26)

4-14A-1. DEFINITIONS.

As used in this Chapter:

(A) “Commission” means the State Tax Commission.

(B) (1) Subject to Subsections (B)(2) and (3), “customer” means the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract.

(2) For purposes of this ordinance, “customer” means:

- (a) the person who is obligated under a contract with a telecommunications provider to pay for telecommunications service received under the contract; or
 - (b) if the end user is not the person described in Subsection (B)(2)(a), the end user of telecommunications service.
- (3) “Customer” does not include a reseller:
 - (a) of telecommunications service; or
 - (b) for mobile telecommunications service, or a serving carrier under an agreement to serve the customer outside the telecommunications provider’s licensed service area.
- (C)
 - (1) “End user” means the person who uses a telecommunications service.
 - (2) For purposes of telecommunications service provided to a person who is not an individual, “end user” means the individual who uses the telecommunications service on behalf of the person who is provided the telecommunications service.
- (D) “Gross Receipts attributed to the municipality” means those gross receipts from a transaction for telecommunications services that is located within the municipality for the purposes of sales and use taxes under Utah Code Title 59, Chapter 12, Sales and Use Tax Act and determined in accordance with Utah Code Section 59-12-207.
- (E) “Gross Receipts from telecommunications service” means the revenue that a telecommunications provider receives for telecommunications service rendered except for amounts collected or paid as:
 - (1) a tax, fee, or charge:
 - (a) imposed by a governmental entity;
 - (b) separately identified as a tax, fee, or charge in the transaction with the customer for the telecommunications service; and
 - (c) imposed only on a telecommunications provider.
 - (2) sales and use taxes collected by the telecommunications provider from a customer under Title 59, Chapter 12, Sales and Use Tax Act; or
 - (3) interest, a fee, or a charge that is charged by a telecommunications provider on a customer for failure to pay for telecommunications service when payment is due.

(F) “Mobile telecommunications service” is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(G) “Municipality” means Park City Municipal Corporation.

(H) “Place of primary use”:
(1) for telecommunications service other than mobile telecommunications service, means the street address representative of where the customer’s use of the telecommunications service primarily occurs, which shall be:

(a) the residential street address of the customer; or

(b) the primary business street address of the customer; or

(2) for mobile telecommunications service, is as defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sect. 124.

(I) Notwithstanding where a call is billed or paid, “service address” means:

(1) if the location described in this Subsection (I)(1) is known, the location of the telecommunications equipment:

(a) to which a call is charged; and

(b) from which the call

originates or terminate;

(2) if the location described in Subsection (I)(1) is not known but the location described in this Subsection (I)(2) is known, the location of the origination point of the signal of the telecommunications service first identified by:

(a) the telecommunications system of the telecommunications provider; or

(b) if the system used to transport the signal is not a system of the telecommunications provider, information received by the telecommunications provider from its service provider; or

(3) if the locations described in Subsection (I)(1) or (2) are not known, the location of a customer’s place of primary use.

(J) (1) Subject to Subsections (J)(2) and (J)(3), “telecommunications provider” means a person that:

(a) owns, controls, operates, or manages a telecommunications service; or

(b) engages in an activity described in Subsection (J)(1)(a) for the shared use with or resale to any person of the telecommunications service.

(2) A person described in Subsection (J)(1) is a telecommunications provider whether or not the Public Service Commission of Utah regulates:

- (a) that person; or
- (b) the telecommunications service that the person owns, controls, operates, or manages.

(3) "Telecommunications provider" does not include an aggregator as defined in Utah Code Section 54-8b-2.

(K) "Telecommunications service" means:

(1) telephone service, as defined in Utah Code Section 59-12-102, other than mobile telecommunications service, that originates and terminates within the boundaries of this state; and

(2) mobile telecommunications service, as defined in Utah Code Section 59-12-102:

- (a) that originates and terminates within the boundaries of one state; and
- (b) only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.

4-14A-2. LEVY OF TAX.

There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to Park City.

4-14A-3. RATE.

The rate of the tax levy shall be four percent (4%) of the telecommunication provider's gross receipts from telecommunications service that are attributed to the municipality. If the location of a transaction is determined to be other than this municipality then the rate imposed on the gross receipts for telecommunications services shall be determined pursuant to the provisions of Utah Code Section 10-1-407.

4-14A-4. RATE LIMITATION AND EXEMPTION THEREFROM.

This rate of this levy shall not exceed four percent (4%) of the telecommunication provider's gross receipts from telecommunication service attributed to Park City unless a higher rate is approved by a majority vote of the voters in Park City that vote in:

- (A) a municipal general election;
- (B) a regular general election; or
- (C) a local special election.

4-14A-5. EFFECTIVE DATE OF TAX LEVY.

This tax shall be levied beginning July 1, 2004.

4-14A-6. CHANGES IN RATE OR REPEAL OF TAX.

This ordinance is subject to the requirements of Utah Code Section 10-1-403. If the tax rate is changed or the tax is repealed, then the appropriate notice shall be given as provided in Utah Code Section 10-1-403.

4-14A-7. INTERLOCAL AGREEMENT FOR COLLECTION OF THE TAX.

On or before the effective date of the ordinance, Park City shall enter into the uniform interlocal agreement with the Commission as described in Utah Code Section 10-1-405 for the collection, enforcement, and administration of this municipal telecommunications license tax.

4-14A-8. PROCEDURES FOR TAXES ERRONEOUSLY RECOVERED FROM CUSTOMERS.

Pursuant to the provisions of Utah Code Section 10-1-408, a customer may not bring a cause of action against a telecommunications provider on the basis that the telecommunications provider erroneously recovered from the customer the municipal telecommunication license tax except as provided in Utah Code Section 10-1-408.

4-14A-9. REPEAL OF INCONSISTENT TAXES AND FEES.

Any tax or fee previously enacted by Park City under authority of Utah Code Section 10-1-203 or Utah Code Title 11, Chapter 26, Local Taxation of Utilities Limitation is

hereby repealed.

Nothing in this ordinance shall be interpreted to repeal any municipal ordinance or fee which provides that the municipality may recover from a telecommunications provider the management costs of the municipality caused by the activities of the telecommunications provider in the rights-of-way of the municipality, if the fee is imposed in accordance with Utah Code Section 72-7-102 and is not related to the municipality's loss of the use of a highway as a result of the activities of the telecommunications provider in a right-of-way, or increased deterioration of a highway as a result of the activities of the telecommunications provider in a right-of-way nor does this ordinance limit park City's right to charge fees or taxes on persons that are not subject to the municipal telecommunication license tax under this ordinance and locate telecommunications facilities, as defined in Utah Code Section 72-7-108, in this municipality.

CHAPTER 15 - FOR-HIRE VEHICLE LICENSING

(Chapter created by Ord. No. 98-45)

4-15-1. DEFINITIONS.

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

(A) **CERTIFICATE OF INSPECTION**. The form pursuant to Section 4-15-5 certifying the for-hire vehicle has passed all requirements established in

the Park City vehicle inspection checklist. Park City will accept a current Salt Lake City Vehicle Inspection Checklist in lieu of a certificate of inspection.

(B) **FARE**. The consideration or charge of a for-hire vehicle to provide service for a passenger within Park City. Consideration may include non-cash value such as participating in a commercial promotional activity such as viewing real estate or timeshare information, merchandise or art display, or display of movies, videos, or DVDs within or on a vehicle in exchange for the passenger delivery.

(C) **FOR-HIRE VEHICLE**. A vehicle used to transport passengers for a fee. For-hire vehicles include shuttles, taxicabs, limousines, or similar vehicles used for the purposes outlined in this Chapter.

(D) **FOR-HIRE VEHICLE BUSINESS LICENSE**. A Park City business license issued by Park City authorizing the licensee thereof to conduct a for-hire vehicle business.

(E) **FOR-HIRE VEHICLE DRIVERS LICENSE**. The permission granted by the State through the issuance of a Z endorsement for a person to drive a for-hire vehicles having less than fifteen (15) passengers including the driver.

(F) **FOR-HIRE VEHICLE STICKER**. A sticker issued by the City indicating that the owner of the vehicle has met all requirements to obtain a business license from the City to conduct a for-hire vehicle business.

(G) **SHUTTLE**. A vehicle that travels

between fixed locations for a set or predetermined fare.

(H) **TAXICAB**. A vehicle used to transport passengers for a fare.

(I) **BLACK CAR AND LIMOUSINE**. A vehicle that has pre-arranged fees set prior to services.

(J) **BACKGROUND CHECK CERTIFICATE**. Certificate issued by Park City Police that includes the driver's name, Drivers License number, certificate date of issuance and date of expiration and a statement that the certificate holder has met the requirements of the background check.

(Amended by Ord. Nos. 00-60; 02-48; 02-52; 11-07)

4-15-2. REQUIREMENTS FOR FOR-HIRE VEHICLE OPERATION.

(A) No person shall operate or permit a for-hire vehicle owned or controlled by such person to be operated as a vehicle for hire upon the streets of Park City without first having obtained a for-hire vehicle business license from the City in accordance with the procedures established in this Chapter.

(B) No person shall operate or permit a for-hire vehicle owned or controlled by such person to be operated as a vehicle for hire upon the streets of Park City without first having obtained commercial transportation insurance coverage for at least \$750,000 per vehicle if the vehicle provides taxicab service, has a seating capacity of eight (8) passengers or fewer, including the driver, and is not operated on a regular route, or \$1,500,000.00 per vehicle if the vehicle's

seating capacity is fifteen (15) passengers or less including the driver. If the vehicle seats sixteen (16) or more passengers, including the driver, the owner is to provide proof of commercial transportation insurance coverage for at least \$5,000,000.00 per vehicle. Proof of this commercial insurance shall be required prior to the issuance of the for-hire vehicle permit.

(C) No person shall operate or permit a for-hire vehicle owned or controlled by such person to be operated as a vehicle for hire upon the streets of Park City without first having obtained a certificate of inspection.

(D) All vehicles that have been licensed by the City shall be issued a for-hire vehicle sticker that shall be used as an identifying marking. The for-hire vehicle sticker must be placed on the bottom left corner of the rear window of the vehicle on the drivers side. The for-hire vehicle sticker shall be issued by the City and the numbers on the sticker shall correspond to the numbers on the business license.

(E) All for-hire vehicles shall have in the drivers possession a copy of the current certificate of inspection or Salt Lake City Corporation Vehicle Inspection Checklist, copy of the business license, proof of insurance as required in Section 4-15-2(B), and the driver shall have a “Z” or “P” endorsement on their Utah State driver’s license. Failure to produce any of this information may result in the issuance of a citation.

(F) For the purpose of this section, the term ‘operate for hire upon the streets of Park City’ shall not include the transporting, by a for-hire vehicle properly licensed in a

jurisdiction outside the corporate limits of the City, of a passenger or passengers for hire where a trip shall originate with the passenger or passengers being picked up outside the corporate limits of the City and where the destination is either within or beyond the City corporate limits. The term ‘operate for hire upon the streets of Park City’ means and shall include the soliciting or picking up of a passenger or passengers within the corporate limits of the City, whether the destination is within or outside of the corporate limits of the City.

(G) All office space must comply with Title 15, Park City Land Management Code.

(Amended by Ord. Nos. 02-48; 02-52; 04-61)

4-15-3. DRUG FREE WORKPLACE REQUIREMENT

(A) Consistent with U.C.A. Sections 34-38-101 et.seq., as amended, all for-hire vehicle licensees shall adopt and implement a drug free workplace policy prior to obtaining a business license from the City. All for-hire licensees shall certify that the licensee has adopted such a policy prior to being issued a for-hire business license from the City.

(B) The for-hire licensee shall publish and provide a written policy statement to all employees informing them that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees who violate the policy.

(C) The for-hire licensee shall notify all

employees that as a condition to employment, the employee shall abide by the terms of the drug free workplace policy statement and shall notify the employer within five (5) calendar days if he or she is convicted of criminal drug or alcohol related violations.

(D) The drug free workplace policy shall include the establishment of a drug free awareness program to make employees aware of:

- (1) the dangers of drug and alcohol abuse in the workplace;
- (2) the licensee’s policy of a drug free workplace;
- (3) any available drug counseling, rehabilitation and employee assistance programs; and
- (4) any penalties or disciplinary action that may be imposed upon an employee for violation of the drug free workplace policy.

(E) The for-hire licensee shall notify the City within ten (10) calendar days after receiving notice that an employee has been convicted of a criminal drug violation in the workplace.

(F) The licensee shall make an ongoing, good faith effort to maintain a drug free workplace.

(Amended by Ord. No. 11-07)

4-15-4. FEES.

No for-hire vehicle business license shall be

issued or continued in operation unless the licensee thereof has paid an annual business regulatory fee established by the Park City Fee Resolution. Such fees shall be in addition to any other fees or charges established by proper authority and applicable to the licensee of the vehicle or vehicles under the licensee’s operation and control.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-5. FOR-HIRE VEHICLE PERMITS FOR ALL VEHICLES AUTHORIZED UNDER BUSINESS LICENSE.

A licensee is required to have the total number of vehicles authorized under such licensee’s business license to obtain the for-hire vehicle sticker required by Section 4-15-2, or its successor, for each and every vehicle.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-6. VEHICLE INSPECTION PRIOR TO LICENSING.

(A) Prior to the use and operation of any vehicle under the provisions of this Chapter, the vehicle shall be thoroughly examined by a State inspection certified mechanic and issued a certificate of inspection by the City’s business license clerk.

(B) All for-hire vehicles shall pass an annual inspection by a State inspection certified mechanic to insure the cleanliness and safety of each vehicle issued a for-hire vehicle sticker.

(C) The inspection criteria shall be

printed on the vehicle inspection checklist and shall be completed by a State inspection certified mechanic. The vehicle shall be thoroughly examined and upon successful completion of the inspection shall be issued a completed Certificate of Inspection by the City.

(D) A copy of a current Salt Lake City Corporation vehicle inspection checklist shall fulfill the City's requirements for a certificate of inspection.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-7. LICENSE REQUIRED FOR OPERATORS.

It is unlawful for any person to operate a for-hire vehicle upon the streets of the City without having first obtained and having then in force a valid taxicab driver's license endorsement or CDL class C driver's license with a P endorsement issued by the state, under the provisions of this Chapter.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-8. COMPLIANCE RESPONSIBILITY.

The licensee shall not be relieved of any responsibility for compliance with the provisions of this Chapter, whether the licensee leases or rents for-hire vehicles to drivers, or whether the licensee pays salary, wages or any other form of compensation.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-9. BACKGROUND CHECK REQUIREMENT

(A) Prior to being permitted to operate a for-hire vehicle, all drivers shall obtain a Park City Police issued background check certificate. The background check certificate must be renewed every three years.

Operating a vehicle without a background check certificate may result in the suspension or revocation of the For-Hire business license.

(B) All drivers shall obtain a fingerprint card and U.S. Federal Bureau of Investigation (FBI) application materials and submit the FBI Identification Record to the Park City Police Department for review. The City shall be permitted to further investigate any information that is relevant to such background check in order to determine the accuracy of the information. This investigation may include, but is not limited to, requiring the applicant driver to provide additional information. Drivers who possess a current Salt Lake City Vehicle Operator's Certificate (VOC) may submit their VOC in lieu of an FBI Identification Record.

(C) The Park City Police Department shall review the Identification Record of each driver and identify if the driver has engaged in a disqualifying criminal offense, as set forth by this section. A driver is deemed to have engaged in a disqualifying criminal offense if the driver has been convicted, or found not guilty by reason of insanity, of any of the crimes listed in this section, or of a conspiracy or attempt to commit any such crime, in any jurisdiction during the five (5) years preceding the request for the certificate. Disqualifying offenses shall include:

- (1) Murder
- (2) Assault or aggravated assault

- (3) Kidnapping or hostage taking
- (4) Rape, aggravated sexual abuse or other sex crime, including, but not limited to, unlawful sexual activity with or sexual abuse of a minor, enticing a minor over the internet, unlawful sexual intercourse or conduct, object rape or sodomy, forcible sexual abuse, aggravated sexual assault, sexual exploitation of a minor, incest, lewdness or obscene acts, sex acts for hire, or solicitation of sex.
- (5) Stalking
- (6) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon.
- (7) Extortion
- (8) Robbery, burglary, theft, bribery
- (9) Distribution of, or intent to distribute, a controlled substance.
- (10) Felony arson
- (11) Felony involving a threat
- (12) Felony involving willful destruction of property.
- (13) Felony involving dishonest, fraud, or misrepresentation.
- (14) Possession or distribution of stolen property.
- (15) Felony involving importation or manufacture of a controlled substance.
- (16) Illegal possession of a controlled substance punishable by a maximum of imprisonment of more than one year.
- (17) Reckless driving, driving while under the influence of alcohol or a controlled substance, or being in or about a vehicle while under the influence of alcohol or a controlled substance with the intent of driving.

(18) Felony involving a driving offense.

(D) If a driver's criminal record discloses arrests for a disqualifying offense without indicating disposition, the Police Department must investigate and make a determination as to whether the arrest resulted in a disqualifying offense as provided under this section.

(E) Prior to making a final decision to deny a background check certificate, the Police Department shall advise the driver that the Identification Record discloses a disqualifying offense. If the driver's Identification Record inaccurately contains a disqualifying offense, the driver may seek to complete or correct the Information Record by contacting the local jurisdiction responsible for the information and the FBI within thirty (30) days following notice of the disqualifying information. The driver must also notify the Police Department and indicate their intent to correct any inaccurate information. The Police Department must then receive a copy of the FBI record or certified true copy of the information from the appropriate court before granting a background check certificate. If no such notification is received within the thirty (30) day period, the Police Department shall make a final determination based on available information.

(A) If the Park City Police Department determines that there is no disqualifying criminal offense on a driver's record within five years of requesting the certificate or if the driver possesses a valid Salt Lake City Vehicle Operator's Certificate (VOC) and the driver has a valid P or Z endorsement on his or her Driver's License, it shall issue the

driver a background check certificate.

(G) The background check certificate shall include the driver's name, Drivers License number, certificate date of issuance and date of expiration and a statement that the certificate holder has met the requirements of the background check.

(H) Any person who complies with the background check certificate requirements shall have a continuing obligation to disclose to the Police Department within twenty four (24) hours if he or she is convicted of any disqualifying criminal offense, or otherwise fails to comply with the provisions of this section, at any time while he or she possesses a background check certificate.

(Amended by Ord. No. 11-07)

4-15-10. STATE MOTOR VEHICLE ENDORSEMENT OR COMMERCIAL DRIVERS LICENSE AND BACKGROUND CHECK REQUIRED FOR APPLICATION.

(A) Before any application is accepted by the Finance Manager, the applicant shall be required to show that such applicant has a current motor vehicle Z endorsement issued by the state authorizing the transportation of fifteen (15) or less passengers including the driver.

(B) A for-hire vehicle that seats sixteen (16) or more passengers shall require the driver to have a valid CDL license with a Class C or a P endorsement.

(C) Before any application is accepted by the Finance Manager, the applicant shall

be required to show that such applicant has a valid background check certificate.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-11. COMPLIANCE WITH CITY, STATE AND FEDERAL LAWS.

Every driver licensed under this Chapter shall comply with all city, state and federal laws. Failure to do so may result in the suspension or revocation of a business license by the City.

4-15-12. IDENTIFYING DESIGN.

(A) Each for-hire vehicle shall bear on the outside of each rear or front door, in painted letters not less than five-sixteenths inch (5/16") stroke and more than two and one quarter inches (2 1/4") in height, the name of the licensee and the company number, which number shall also be painted or placed on the rear of the for-hire vehicle.

(B) The identifying design shall be permanent. The use of magnetic or removable signs is prohibited.

(C) A City representative will inspect each vehicle at the time of licensing or license renewal to ensure compliance with this section. The City representative will then witness the application of the for-hire vehicle sticker.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-13. DISPLAY OF CHARGES.

All rates to be charged for the use of a for-hire vehicle shall be posted on the inside of the vehicle in such a manner as to be plainly

visible to all passengers.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-14. RECEIPTS FOR PAYMENT OF FARE.

The driver of any for-hire vehicle shall, upon demand by the passenger, render to such passenger a receipt for the amount charged, either by a mechanically printed receipt or by specially prepared receipt, on which shall be the name of the owner, business license number, amount of charges, and date of transaction.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-15. HIRING VEHICLE WITH INTENT TO DEFRAUD.

It is unlawful for any person to hire any vehicle defined in this Chapter with intent to defraud the person from whom it is hired of the value of such service.

(Amended by Ord. No. 11-07)

4-15-16. REFUSING TO PAY LEGAL FARE.

It is unlawful for any person to refuse to pay immediately the legal fare of any of the vehicles mentioned in this Chapter after having the same.

(Amended by Ord. No. 11-07)

4-15-17. DIRECT ROUTE REQUIRED.

Any for-hire vehicle driver employed to carry a passenger to a definite point shall

take the most direct route possible that will carry the passenger safely and expeditiously to his or her destination, unless otherwise directed by the passenger.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-18. PROHIBITED SOLICITATION PROCEDURES.

(A) No driver shall solicit patronage in a loud or annoying tone of voice or by sign or in any manner annoy any person or obstruct the movement of any persons, or follow any person for the purpose of soliciting patronage.

(B) The driver of any for-hire vehicle shall remain in the driver's compartment or immediately adjacent to their vehicle at all times when such vehicle is upon the public streets. The driver of a for-hire vehicle is permitted to leave the drivers compartment when actively aiding passengers in loading or unloading the vehicle.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-19. SOLICITATION OF HOTEL BUSINESS PROHIBITED.

It is a violation of this Chapter for any driver of a for-hire vehicle to solicit business for any hotel, motel or other nightly lodging business, or to attempt to divert patronage from one hotel, motel or other nightly lodging business to another.

(Amended by Ord. Nos. 02-48; 11-07)

4-15-20. ENGAGING IN LIQUOR OR PROSTITUTION TRAFFIC PROHIBITED.

It is unlawful for any for-hire vehicle driver to sell intoxicating liquor or to knowingly transport persons for the purpose of buying liquor unlawfully, or to solicit business for any house of ill repute or prostitute. It is also unlawful for any for-hire vehicle driver to permit any person to occupy or use his or her vehicle for the purpose of prostitution, lewdness or assignation, with knowledge or reasonable cause to know that the same is or is to be used for such purposes, or to direct, take or transport, or offer or agree to direct, take or transport any person to any building or place, or to any other person, with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation.

(Amended by Ord. Nos. 02-48; 11-07)

**CHAPTER 16 - EMPLOYMENT
DISCRIMINATION**

Chapter adopted by Ordinance 10-13

4-16-1. PURPOSE.

Every individual in the City has the right to work and earn wages through gainful employment. Discriminatory employment practices are detrimental because they impede the social and economic progress of the City by preventing all of the City's citizens from contributing to or fully participating in the cultural, spiritual, social and commercial life of the community, which is essential to the growth and vitality of the City's neighborhoods and businesses. The Utah Antidiscrimination Act, Utah Code Section 34A-5-101 et seq., addresses employment related discrimination based on

race; color; sex; pregnancy; childbirth, or pregnancy-related conditions; religion; national origin; age (if 40 years of age or older); and disability, but does not address discrimination based on sexual orientation or gender identity.

The City has found that discrimination in employment on the basis of sexual orientation and gender identity must be addressed. The denial or deprivation of employment rights because of an individual's sexual orientation or gender identity is detrimental to the health, safety and welfare of the City's citizens and damages the City's economic well-being. The purpose of this chapter is to provide a clear and comprehensive mandate for the prevention and elimination of discrimination in employment in the City against individuals based upon sexual orientation or gender identity and this chapter shall be liberally construed to achieve that purpose.

4-16-2. ADMINISTRATION.

The City Manager is responsible for administering and implementing this Chapter.

4-16-3. NO PRIVATE RIGHT OF ACTION; NO SPECIAL RIGHTS.

This chapter does not create a private cause of action, nor does it create any right or remedy that is the same or substantially equivalent to the remedies provided under federal or state law. This chapter does not create any special rights or privileges which would not be available to all of the City's citizens because every person has a sexual orientation and a gender identity.

4-16-4. SEVERABILITY.

If any section, sentence, paragraph, term, definition or provision of this chapter is for any reason determined to be illegal, invalid, superseded by other authority or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section, sentence, paragraph, term, definition or provision of this chapter, all of which will remain in full force and effect.

4-16-5. DEFINITIONS.

In this chapter:

(A) **ADMINISTRATOR** means the person designated by the City Manager to receive, investigate, and conciliate complaints under this chapter and includes the Administrator's designated representatives.

(B) **CITY** means the city of Park City, Utah.

(C) **CITY ATTORNEY** means the City's duly appointed City Attorney.

(D) **COMPLAINANT** means a person, including the Administrator, who files a complaint under this chapter.

(E) **CONCILIATION** means the attempted resolution of issues raised in a complaint filed under this chapter, or raised in the investigation of the complaint, through informal negotiations involving the Complainant, the Respondent, and the

Administrator.

(F) **CONCILIATION AGREEMENT** means a written agreement setting forth the resolution of issues by conciliation under this chapter.

(G) **DISCRIMINATION** means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person because of a person's actual or perceived sexual orientation or gender identity or because of a person's association with any such person. Discrimination shall not be interpreted to require or to grant or accord preferential treatment to any person because of that person's sexual orientation or gender identity.

(H) **EMPLOYEE** means any individual applying with or employed by an employer. The term does not include an elected official.

(I) **EMPLOYER** means any person employing fifteen (15) or more employees in the City for each working day in each of the twenty (20) or more calendar weeks in the current or preceding calendar year, and includes any agent of such a person.

(J) **EMPLOYMENT AGENCY** means any person, and any agent of a person, undertaking to procure employees or opportunities to work for any other person in the City or holding itself out to be equipped to procure employees or opportunities to work for any other person in the City.

(K) **GENDER IDENTITY** means a person's actual or perceived gender identity, appearance, mannerisms, or other

characteristics of an individual with or without regard to the person’s sex at birth.

(L) **LABOR ORGANIZATION** means any organization that exists for the purpose in whole or in part of collective dealing with Employers concerning grievances, terms or conditions of employment; or other mutual aid or protection in connection with employment.

(M) **CITY MANAGER** means the duly appointed and qualified City Manager of Park City.

(N) **OTHERWISE QUALIFIED** means a person who possesses the following required by an employer for any particular job, job classification, or position:

- (1) education;
- (2) training;
- (3) ability;
- (4) moral character;
- (5) integrity;
- (6) disposition to work;
- (7) adherence to reasonable rules and regulations; and
- (8) other job related qualifications required by an employer.

(O) **PERSON** means one or more individuals, partnerships, associations, corporations, legal representatives, trust or trustees, receivers and the City.

(P) **RELIGIOUS ORGANIZATION** means a religious corporation, association, educational institution, society, trust or any entity or association which is a wholly owned or controlled subsidiary or agency of any religious corporation, association, society, trust or corporation sole.

(Q) **RESPONDENT** means a person identified in a complaint as having committed an unlawful practice under this chapter.

(R) **SEXUAL ORIENTATION** means a person’s actual or perceived orientation as heterosexual, homosexual, or bisexual.

(S) **UNLAWFUL PRACTICE** means a discriminatory act or practice relating to employment that is prohibited under this chapter.

4-16-6 EXEMPTIONS

This chapter does not apply to:

- (A) a religious organization;
- (B) an expressive association whose employment of a person protected by this chapter would significantly burden the association’s rights of expressive association under *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000);
- (C) the United States government, any of its departments or agencies, or any corporation wholly owned by it; or the State of Utah or any of its departments, agencies, or political subdivisions except for the City.

4-16-7 UNLAWFUL EMPLOYMENT PRACTICES

(A) **EMPLOYERS.** An employer may not refuse to hire, promote, discharge, demote, or terminate any persons, and may not retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against any person otherwise qualified because of a person's sexual orientation or gender identity.

(B) **EMPLOYMENT AGENCIES.** An employment agency may not refuse to list and properly classify for employment, or refuse to refer a person for employment, in a known available job for which the person is otherwise qualified because of a person's sexual orientation or gender identity.

(C) **LABOR ORGANIZATIONS.** A labor organization may not exclude any person otherwise qualified from full membership rights in the labor organization, expel the person from membership in the labor organization, or otherwise discriminate against or harass any of the labor organization's members in full employment of work opportunity, or representation, because of a person's sexual orientation or gender identity.

(D) **TRAINING PROGRAMS.** An employer, labor organization, joint apprenticeship committee, or vocational school, providing, coordinating, or controlling apprenticeship programs, or providing, coordinating, or controlling on-the-job-training programs, instruction, training, or retraining programs may not deny to, or withhold from, any qualified person, the right to be admitted to, or participate in any apprenticeship training program, on-the-job-training program, or

other occupational instruction, training or retraining program because of a person's sexual orientation or gender identity.

(E) **NOTICES AND ADVERTISEMENTS.** Unless based upon a bona fide occupational qualification, or required by and given to an agency of government for security reasons, an employer, employment agency, or labor organization may not print, or circulate, or cause to be printed or circulated, any statement, advertisement, or publication, use any form of application for employment or membership, or make any inquiry in connection with prospective employment or membership that expresses, either directly or indirectly any limitation, specification, or discrimination because of a person's sexual orientation or gender identify.

It is unlawful for a joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to print or publish, or cause to be printed or published, any notice or advertisement relating to admission to, or employment in, any program established to provide apprenticeship or other training by the joint labor-management committee that indicates any preference, limitation, specification, or discrimination based on sexual orientation or gender identity.

Nothing in this chapter prohibits a notice or advertisement from indicating a preference, limitation, specification, or discrimination based on sexual orientation or gender identity when sexual orientation or gender identity is a bona fide occupational qualification for employment.

(F) **NO PREFERENTIAL TREATMENT.** Nothing in this chapter shall be interpreted to require any employer, employment agency, labor organization, vocational school, joint labor-management committee, or apprenticeship program subject to this chapter to grant preferential treatment to any person because of the person's sexual orientation or gender identity on account of an imbalance which may exist with respect to the total number or percentage of persons of any sexual orientation or gender identity employed by any employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that sexual orientation or gender identity available in the City's available work force.

4-16-8 UNLAWFUL INTIMIDATION, RETALIATION, AND COERCION

It is unlawful for any person to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, or for testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this chapter.

4-16-9 PROCEDURES FOR FILING COMPLAINTS

(A) Any person who claims to have been injured by an unlawful employment practice subject to the City's jurisdiction under this

Chapter may file a complaint with the Administrator. A complaint may also be filed by the Administrator if the Administrator has reasonable cause to believe that a person has committed an unlawful employment practice. A complaint must be filed within 180 calendar days after an alleged unlawful employment practice has occurred.

(B) A complaint must be in writing on a form provided by the Administrator, made under oath or affirmation, and contain the following information:

- (1) The Complainant's name, address and signature
- (2) The date the alleged unlawful employment practice occurred;
- (3) A statement of the facts upon which the allegation of an unlawful employment practice are based; and
- (4) The respondent's name and address.

(C) Promptly after the filing of a complaint, the Administrator shall:

- (1) Provide the Respondent named in the complain written notice that a complaint alleging the commission of an unlawful employment practice has been filed against the Respondent;
- (2) Furnish a copy of the complaint to the Respondent; and
- (3) Advise the Respondent of the Respondent's procedural rights and

obligations, including the right to file a written, signed, and verified informal answer to the complaint within 15 days after service of notice of the complaint.

(D) Not later than the 15th day after service of the notice and copy of the complaint, a Respondent may file an answer to the complaint. The answer must be in writing, made under oath or affirmation, and contain the following information:

- (1) The Respondent's name, address, telephone number, and signature of the Respondent or the Respondent's attorney if any; and
- (2) A concise statement of facts in response to the allegations in the complaint, including facts of any defense or exception.

4-16-10 INVESTIGATION

(A) Upon the filing of a complaint, the Administrator shall commence an investigation to determine the facts behind the complaint and whether there is reasonable cause to believe the Respondent committed an unlawful employment practice, except that no investigation may commence if, after reviewing the allegations of the complaint, the Administrator determines that the complaint does not come within the scope of this chapter. Upon determining that a particular complaint does not come within the scope of this chapter, the Administrator shall dismiss the complaint, notify the Complainant and Respondent and take no further action.

(B) In connection with any investigation

of a complaint filed under this chapter, the Administrator shall seek the voluntary cooperation of any person to:

- (1) obtain access to premises, records, documents, individuals, and any other possible source of information.
- (2) examine, record, and copy necessary materials; and
- (3) take and record testimony or statements of any person reasonable necessary for the furtherance of the investigation.

(C) The Administrator may request the City Attorney to issue an executive branch subpoena or subpoena duces tecum to compel the attendance of a witness or the production of relevant materials or documents.

(D) The Administrator may dismiss a complaint during the investigation and prior to referral to the City Attorney if the Administrator determines that:

- (1) the complaint was not filed within the required time period;
- (2) the location of the alleged unlawful employment practice is not within the City's jurisdiction;
- (3) the employer does not employ a sufficient number of employees in the City to meet this chapter's jurisdictional requirements;
- (4) the alleged unlawful employment practice is not a

violation of this chapter;

(5) the Complainant refuses to cooperate with the Administrator in the investigation of the complaint or enforcement of an executed conciliation agreement;

(6) the Complainant cannot be located after the Administrator has performed a reasonable search; or

(7) a conciliation agreement has been executed by the Complainant and Respondent.

4-16-11. CONCILIATION

(A) During or after the investigation, but subsequent to the mailing of the notice of the complaint to the Respondent, the Administrator shall, if the Respondent appears to have committed an unlawful employment practice, attempt to conciliate the complaint. In conciliating a complaint, the Administrator shall try to achieve a just resolution and obtain assurances that the Respondent will satisfactorily remedy any violation of the Complainant's rights and take action to ensure the elimination of both present and future unlawful employment practices. A conciliation agreement may include: sensitivity training for the Respondent and/or the Respondent's employees; the Respondent's agreement to adopt and pursue a policy of non-discrimination in employment practices; and the Respondent's agreement to not engage in discriminatory practices in the future.

(B) A conciliation agreement executed under this section must be in writing in a form approved by the City Attorney and must be signed and verified by the Respondent and the Complainant, subject to

approval of the Administrator who shall indicate approval by signing the agreement.

(C) If a Respondent voluntarily enters into a conciliation agreement, the Administrator shall immediately dismiss the complaint.

4-16-12. DISPOSITION OF A COMPLAINT

(A) If, upon completion of an investigation of a complaint, the Administrator determines that an unlawful employment practice has occurred and is unable to secure an acceptable conciliation agreement from the Respondent, then the Administrator shall refer the case to the City Attorney. The Administrator shall refer the entire file to the City Attorney, who shall determine how best to pursue further action, if any, on the complaint.

(B) If the City Attorney determines that cause exists to find that an unlawful employment practice occurred and the facts are sufficient to warrant the initiation of an action in justice court, then the City Attorney shall provide written notification to the Respondent and the Complainant that an action to enforce this chapter may be initiated in justice court. If the City Attorney determines that there is no cause that an unlawful employment practice occurred or that the facts are insufficient to warrant the initiation of an action in justice court, the City attorney shall provide written notification to the Respondent and the Complainant and notify the Administrator who shall then dismiss the complaint.

4-16-13. OFFENSES AND PENALTIES

A person violates this chapter if the person engages in any action made unlawful by this chapter. An offense committed under this chapter by an employer employing fifty (50) or fewer employees is punishable by a civil fine of not more than \$500.00. An offense committed under this chapter by an individual employing fifty-one (51) or more employees or by an employment agency or labor organization is punishable by a civil fine of not more than \$1,000.00.

**CHAPTER 17 - HOUSING
DISCRIMINATION**

Adopted by Ordinance No. 10-12.

4-17-1. PURPOSE.

Every individual in the City has the right to seek housing. Discriminatory housing practices are detrimental because they impede the social and economic progress of the City by preventing all of the City's citizens from contributing to or fully participating in the cultural, spiritual, social and commercial life of the community, which is essential to the growth and vitality of the City's neighborhoods and businesses.

The Utah Fair Housing Act, Utah Code Section, 57-21-1 et seq., addresses housing related discrimination based on race; color; religion; sex; national origin; familial status; source of income; and disability, but does not address discrimination based on sexual orientation or gender identity.

The City has found that discrimination in housing on the basis of sexual orientation and gender identity must be addressed. The denial or deprivation of access to housing because of an individual's sexual orientation

or gender identity is detrimental to the health, safety, and welfare of the City's citizens and damages the City's economic well-being. The purpose of this chapter is to provide a clear and comprehensive mandate for the prevention and elimination of discrimination in housing in the City against individuals based upon sexual orientation or gender identity and this chapter shall be liberally construed to achieve that purpose.

4-17-2. ADMINISTRATION

The City Manager is responsible for administering and implementing this chapter.

4-17-3. NO PRIVATE RIGHT OF ACTION; NO SPECIAL RIGHTS

This chapter does not create a private cause of action, nor does it create any right or remedy that is the same or substantially equivalent to the remedies provided under federal or state law. This chapter does not create any special rights of privileges which would not be available to all of the City's citizens because every person has a sexual orientation and a gender identity.

4-17-4. SEVERABILITY

If any section, sentence, paragraph, term, definition or provision of this chapter is for any reason determined to be illegal, invalid, superseded by other authority or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other section,

sentence, paragraph, term, definition or provision of this chapter, all of which will remain in full force and effect.

4-17-5. DEFINITIONS

In this chapter:

(A) **ADMINISTRATOR** means the person designated by the City Manager to receive, investigate, and conciliate complaints under this Chapter and includes the Administrator's designated representatives.

(B) **CITY** means the city of Park City, Utah

(C) **CITY ATTORNEY** means the City's duly appointed City Attorney

(D) **COMPLAINANT** means a person, including the Administrator, who files a complaint under this chapter.

(E) **CONCILIATION** means the attempted resolution of issues raised in a complaint filed under this chapter, or raised in the investigation of the complaint, through informal negotiations involving the Complainant, the Respondent, and the Administrator.

(F) **CONCILIATION AGREEMENT** means a written agreement setting forth the resolution of issues by conciliation under this chapter.

(G) **DISCRIMINATION** means any direct or indirect exclusion, distinction, segregation, limitation, refusal, denial, or other differentiation in the treatment of a person or persons because of a person's

actual or perceived sexual orientation or gender identity or because of a person's association with any such person. Discrimination shall not be interpreted to require or to grant or accord preferential treatment to any person because of that person's sexual orientation or gender identify.

(H) **DWELLING** means any building or structure, or a portion of a building or structure, occupied as, or designated or intended for occupancy as, a residence of one or more families inside the City and vacant land that is offered for sale or lease for the construction or location of a dwelling inside the City.

(I) **GENDER IDENTITY** means a person's actual or perceived gender identity, appearance, mannerisms, or other characteristics of a person with or without regard to the person's sex at birth.

(J) **CITY MANAGER** means the duly appointed and qualified City Manager of Park City.

(K) **PERSON** includes one or more individuals, corporations, limited liability companies, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under the United State Bankruptcy Code, receivers, and fiduciaries.

(L) **REAL ESTATE BROKER or SALESPERSON** means a principal real estate broker, an associate real estate broker, or a real estate sales agent as those terms are defined in Utah Code Section 61-2-2 or any successor provision.

(M) **RELIGIOUS ORGANIZATION** means a religious corporation, association, educational institution, society, trust, or any entity or association which is a wholly owned or controlled subsidiary or agency of any religious corporation, association society, trust or corporation sole.

(N) **RENT** means to lease, sublease, let, or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

(O) **RESIDENTIAL REAL ESTATE RELATED TRANSACTION** means the making or purchasing loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or secured by residential real estate; or selling, brokering, or appraising residential real property inside the City.

(P) **RESPONDENT** means a person identified in a complaint as having committed an unlawful housing practice under this chapter.

(Q) **SEXUAL ORIENTATION** means a person’s actual or perceived orientation as heterosexual, homosexual, or bisexual.

(R) **UNLAWFUL PRACTICE** means a discriminatory act or practice relating to housing that is prohibited under this chapter.

4-17-6. EXEMPTIONS

This chapter does not apply to a temporary or permanent residence facility operated by a nonprofit organization; a charitable organization; or a person in conjunction with a religious organization, association, or

society, including any dormitory operated by a public or private educational institution, if the discrimination is based on sexual orientation or gender identity for reasons of personal modesty or privacy or in the furtherance of a religious organizations’ sincerely held religious beliefs.

This chapter does not prohibit or restrict a religious organization or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from limiting the sale, rental, or occupancy of dwellings it owns or operates for primarily noncommercial purposes to persons of the same religious, or from giving preference to such persons.

This chapter does not prohibit distinctions based on a person’s inability or failure to fulfill the terms and conditions, including financial obligations, of a lease, rental agreement, contract of purchase or sale, mortgage, trust deed, or other financing agreement.

This chapter does not apply to: 1) the United States government, any of its departments or agencies, or any corporation wholly owned by it; or 2) the government of the State of Utah or any of its departments, agencies, or political subdivision, except for the City.

4-17-7. UNLAWFUL HOUSING PRACTICES

(A) It is discriminatory housing practice to do any of the following:

- (1) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the sale or rental, or

otherwise deny or make unavailable any dwelling from any person because of the person's sexual orientation or gender identity;

(2) discriminate against any person in the terms, conditions, or privileges of the sale or rental of any dwelling or in providing facilities or services in connection with the dwelling because of the person's sexual orientation or gender identity;

(3) represent to any person that any dwelling is not available for inspection, sale, or rental when in fact the dwelling is available.

(4) to make a representation orally or in writing or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or posted any notice, statement or advertisement, or to use any application form for the sale or rental of a dwelling, that directly or indirectly expresses any preference, limitation, or discrimination based on sexual orientation or gender identity, or expresses any intent to make any such preference, limitation, or discrimination.

(5) to induce or attempt to induce, for profit, any person to buy, sell, or rent any dwelling by making representations about the entry or prospective entry into the neighborhood of persons of a particular sexual orientation or gender identity;

(6) engage in any discriminatory

housing practices because of sexual orientation or gender identity based upon a person's association with another person;

(B) It is a discriminatory housing practice for a real estate broker or salesperson to do any of the following because of a person's sexual orientation or gender identity:

(1) to discriminate against any person in making available a residential real estate transaction, or in the terms or conditions of the transaction, inside the City, because of a person's sexual orientation or gender identity;

(2) to deny any person access to, or membership or participation in , any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings inside the City or to discriminate against any person in the terms or conditions of access, membership, or participation in the organization, service, or facility inside the City because of a person's sexual orientation or gender identity; or

(3) engage in any discriminatory housing practices inside the City because of sexual orientation or gender identity based upon a person's association with another person.

(C) Exceptions. This chapter does not apply to the following:

(1) The sale or rental of any single-family dwelling, if the owner:

(i) does not own an interest in or title to four or more single-family dwellings held for lease or sale at one time located inside the city;

(ii) has not sold two or more single-family dwellings inside the City in which the owner did not reside in the dwelling within the 24-month period preceding the sale or rental of the dwelling; and

(iii) does not use the services or facilities of any real estate broker, agent, or salesperson, or of any other person in the business of selling or renting dwellings, in connection with the sale or rental of the dwelling inside the City.

(2) The rental of a dwelling that is occupied or intended to be occupied by no more than four families living independently of each other, when the owner actually maintains and occupies part of the dwelling as a residence.

(3) Nothing in this section prohibits conduct against a person because of the person's conviction by a court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance under state or federal law.

4-17-8. UNLAWFUL INTIMIDATION, RETALIATION, AND COERCION

It is unlawful for any person to discriminate against, harass, threaten, harm, damage, or otherwise penalize another person for opposing an unlawful practice, for filing a complaint, or for testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under this chapter.

4-17-9. PROCEDURES FOR FILING COMPLAINTS

(A) Any person who claims to have been injured by an unlawful housing practice may file a complaint with the Administrator. A complaint may also be filed by the Administrator if the Administrator has reasonable cause to believe that a person has committed an unlawful housing practice. A complaint must be filed within 180 calendar days after an alleged unlawful housing practice has occurred.

(B) A complaint must be in writing on a form provided by the Administrator, made under oath or affirmation, and contain the following information:

(1) The Complainant's name, address, and signature;

(2) The date the alleged unlawful housing practice occurred;

(3) A statement of the facts upon which the allegation of an unlawful practice are based; and

- (4) The Respondent's name and address.
- (C) Promptly after the filing of a complaint, the Administrator shall:
 - (1) Provide the Respondent named in the complaint written notice that a complaint alleging the commission of an unlawful housing practice has been filed against the Respondent.
 - (2) Furnish a copy of the complaint to the Respondent; and
 - (3) Advise the Respondent of the Respondent's procedural rights and obligations, including the right to file a written, signed, and verified informal answer to the complaint within 15 days after service of notice on the complaint.
- (D) Not later than the 15th day after service of the notice and copy of the complaint, a Respondent may file an answer to the complaint. The answer must be in writing, made under oath or affirmation, and contain the following information:
 - (1) The Respondent's name, address, telephone number, and signature of the Respondent or the Respondent's attorney, if any; and
 - (2) A concise statement of facts in response to the allegations in the complaint, including facts of any defense or exception.

4-17-10. INVESTIGATION

- (A) Upon the filing of a complaint, the

Administrator shall commence an investigation to determine the facts behind the complaint and whether there is reasonable cause to believe that Respondent committed an unlawful housing practice, except that no investigation may commence if, after reviewing the allegations of the complaint, the Administrator determines that the complaint does not come within the scope of this chapter. Upon determining that a particular complaint does not come within the scope of this chapter, the Administrator shall dismiss the complaint, notify the Complainant and the Respondent and take no further action.

(B) In connection with any investigation of a complaint filed under this chapter, the Administrator shall seek the voluntary cooperation of any person to:

- (1) obtain access to premises, records, documents, individuals, and any other possible source of information;
- (2) examine, record, and copy necessary materials; and
- (3) take and record testimony or statements of any person reasonably necessary for the furtherance of the investigation.

(C) The Administrator may request the City Attorney to issue an executive branch subpoena or subpoena duces tecum to compel the attendance of a witness or the production of relevant materials or documents.

(D) The Administrator may dismiss a complaint during the investigation and prior

to referral to the City Attorney if the Administrator determines that:

- (1) the complaint was not filed within the required time period;
- (2) the location of the alleged unlawful housing practice is not within the City's jurisdiction;
- (3) the alleged unlawful housing practice is not a violation of this chapter;
- (4) the Complainant refuses to cooperate with the Administrator in the investigation of the complaint or enforcement of an executed conciliation agreement;
- (5) the Complainant cannot be located after the Administrator has performed a reasonable search; or
- (6) a conciliation agreement has been executed by the Complainant and Respondent.

4-17-11. CONCILIATION

(A) During or after the investigation, but subsequent to the mailing of the notice of the complaint to the Respondent, the Administrator shall, if it appears that the Respondent has committed an unlawful housing practice, attempt to conciliate the complaint. In conciliating a complaint, the Administrator shall try to achieve a just resolution and obtain assurances that the Respondent will satisfactorily remedy any violation of the Complainant's rights and take action to ensure the elimination of both present and future unlawful housing

practices. A conciliation agreement may include: sensitivity training for the Respondent and/or the Respondent's employees; the Respondent's agreement to adopt and pursue a policy of non-discrimination in its practices; and the Respondent's agreement to not engage in discriminatory practices in the future.

(B) A conciliation agreement executed under this section must be in writing in a form approved by the City Attorney and must be signed and verified by the Respondent and the Complainant subject to approval of the Administrator who shall indicate approval by signing the agreement.

(C) If a Respondent voluntarily enters into a conciliation agreement, the Administrator shall immediately dismiss the complaint.

4-17-12. DISPOSITION OF A COMPLAINT

(A) If, upon completion of an investigation of a complaint, the Administrator determines that an unlawful housing practice has occurred and is unable to secure an acceptable conciliation agreement from the Respondent, then the Administrator shall refer the case to the City Attorney. The Administrator shall refer the entire file to the City Attorney, who shall determine how best to pursue further action, if any, on the complaint.

(B) If the City Attorney determines that cause exists that an unlawful housing practice occurred and the facts are sufficient to warrant the initiation of an action in justice court, then the City Attorney shall provide written notification to the

Respondent and the Complainant that an action to enforce this chapter may be initiated in justice court. If the City Attorney determines that there is no cause that an unlawful housing practice occurred or that the facts are insufficient to warrant the initiation of an action in justice court, the City Attorney shall provide written notification to the Respondent and the Complainant and notify the Administrator who shall then dismiss the complaint.

4-17-13. OFFENSES AND PENALTIES

A person violates this chapter if the person intentionally or knowingly violates a provision of this chapter or if the person intentionally or knowingly obstructs or prevents compliance with this chapter. An offense committed under this chapter by a Respondent owning or operating twenty (20) or fewer dwellings is punishable by a fine of not more than \$500.00. An offense committed under this chapter by a Respondent owning or operating twenty-one (21) or more dwellings or by a Real Estate Broker or Salesperson is punishable by a fine of not more than \$1,000.00.