

**Ordinance No. 2017-51**

**AN ORDINANCE TO REPEAL AND REPLACE MUNICIPAL CODE TITLE 4, LICENSING; AND TO ADOPT MUNICIPAL CODE TITLE 4A, SPECIAL EVENTS AND TO ADOPT MUNICIPAL CODE TITLE 4B, FRANCHISED UTILITIES AND TAXES, AND TO ADOPT MUNICIPAL CODE TITLE 4C, FREEDOM FROM DISCRIMINATION**

WHEREAS, Park City has an interest in promoting public health, safety, and welfare, and

WHEREAS, the City Council finds that it is in the public interest to clarify and refine the written laws, regulations, and ordinances contained in Title 4 (Licensing) of the Municipal Code and to adopt Title 4A, Title 4B, and Title 4C so that citizens can more easily access information;

WHEREAS, the City Council finds the proposed amendments in the best interest of the residents of Park City,

WHEREAS, a public hearing was duly noticed and held on October 5, 2017;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PARK CITY, UTAH THAT:

**Section I. Repeal & Replace.** Title 4, Licensing. Title 4 is hereby repealed and replaced to read as attached in Attachment 1.

**Section II. Adopt.** Title 4A, Special Events. Title 4A is hereby adopted to read as attached in Attachment 2.

**Section III: Adopt.** Title 4B, Franchised Utilities and Taxes. Title 4B is hereby adopted to read as attached in Attachment 3.

**Section IV: Adopt.** Title 4C, Freedom From Discrimination. Title 4C is hereby adopted to read as attached in Attachment 4.

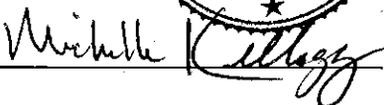
**Section V: Effective Date.** This Ordinance shall become effective upon publication.

**PASSED AND ADOPTED this 5<sup>th</sup> DAY OF OCTOBER, 2017.**

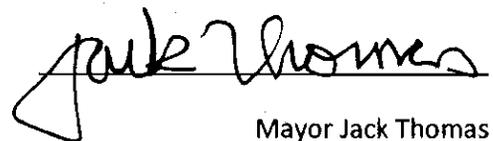
PARK CITY MUNICIPAL CORPORATION



Attest:



Michelle Kellogg, City Recorder



Mayor Jack Thomas



Approved as to form:

A handwritten signature in black ink, appearing to read 'M. D. Harrington', written over a horizontal line.

Mark D. Harrington, City Attorney

**Attachments**

Attachment 1 – Title 4

Attachment 2 – Title 4A

Attachment 3 – Title 4B

Attachment 4 – Title 4C



## **4 Licensing**

### **4-1 Definitions**

#### **4-2 General Licensing**

#### **4-3 General Application Process**

#### **4-4 Licensing Fees**

#### **4-5 Regulation Of Specific Businesses**

#### **4-6 Alcoholic Beverage Licenses**

#### **4-7 Convention Sales And Commercial Hospitality**

#### **4-8 For-Hire Vehicles**

#### **4-9 Street Vendors**

#### **4-10 Solicitors**

#### **4-11 Sexually Oriented Businesses**

### **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 ART.** Original works of fine Art, graphic Art, and aesthetic objects produced by the Artist. It shall not include any artwork produced by any Person other than the Artist displaying the artwork, or any artwork purchased or taken on consignment and held for resale.

**4-1-1.2 ARTIST.** The creator of the Art who exhibits his/her own Art for sale. Artist does not include street musician.

**4-1-1.3 AVAILABLE CITY PROPERTY.** The green space at the northeast intersection of Park Avenue and 9<sup>th</sup> Street, Park City, Utah, owned and operated by the City, and alternatively pursuant to 4-10-3(E)(1), City Park.

**4-1-1.4 BACKGROUND CHECK CERTIFICATE.** Certificate issued by the Bureau of Criminal Investigation that includes the applicant's name, certificate date of issuance, and date of expiration, and a statement that the certificate holder has met the requirements of the background check.

**4-1-1.5 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.

**4-1-1.6 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.

**4-1-1.7 CITY.** Park City, Utah.

**4-1-1.8 COMMERCIAL VEHICLES AND TRAILERS.** Motor vehicles used for a Business' normal activities, but not used to transport people to, from, and within Park City for a fee. Such vehicles include but are not limited to vehicles used for deliveries, commercial hauling, and snow removal services, as well as cargo rental vehicles, concrete trucks, and dump trucks.

**4-1-1.9 CONDUCTING BUSINESS.** For purposes of this Title the term "Conducting Business" shall include the sale or offering for sale of any goods or merchandise, marketing or promoting, or the offering or performing of any service for valuable consideration of any kind.

**4-1-1.10 CONSULTANT LICENSE.** Any individual, company, or agent Engaging in Business by performing consultant style services such as interior design, landscaping, and similar service jobs within Park City limits without having their Place of Business within the City limits must obtain a Consultant License.

**4-1-1.11 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 event operating expenditure budget.

**4-1-1.12 DABC.** The Utah Department of Alcoholic Beverage Control.

**4-1-1.13 DIVISION.** The Park City Business Licensing Division.

**4-1-1.14 EMPLOYEE BASED.** Businesses which lease or otherwise provide employees to other businesses or any Person in return for consideration. Such businesses include but are not limited to employment agencies and security firms.

**4-1-1.15 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 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/her employer under any contract of personal employment. Each manufacturing or originating company, whether individually occupying a premise, including home occupations and home offices, or co-locating, shall be required to obtain an individual Business license for that Business activity.

**4-1-1.16 EXHIBIT.** To display for sale with the intent or expectation of receiving valuable consideration for the item displayed.

**4-1-1.17 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.

**4-1-1.18 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 Title.

**4-1-1.19 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.

**4-1-1.20 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.

**4-1-1.21 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, or service of company. Corporate groups that receive gifts purchased by the corporation that are not provided by another entity and are exclusively for the group will not be considered Gifting.

**4-1-1.22 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, ski lift, gondola, or tram, and any other recreational, sports, or entertainment facility.

**4-1-1.23 INSTRUCTOR LICENSE.** Any individual engaged in instructing individuals or groups, or teaching, giving, or offering lessons, classes, training, or other programs to individuals or groups such as ice skating lessons, etc., must obtain an Instructor License.

**4-1-1.24 LICENSE FEE(S).** Fees as defined by the Business License Fee Schedule found at <http://www.parkcity.org/government/municipal-codes-policies-and-fees>.

**4-1-1.25 MAIN STREET BUSINESS IMPROVEMENT DISTRICT.** Main Street Business Improvement District (BID) is defined as all businesses located in the following area:

The BID boundary shall follow the centerline of the following streets: Beginning at the intersection of Main Street and Deer Valley Drive, then proceeding westerly on Main Street to the intersection of the 9<sup>th</sup> Street, then west on 9<sup>th</sup> Street to the intersection of the 9<sup>th</sup> Street and Park Avenue, then proceeding southerly on Park Avenue to the intersection of King Road, then easterly on King Road to Main Street, then southerly on Main Street to Hillside Avenue, then proceeding easterly along Hillside to Marsac Avenue, then proceeding northward on Marsac Avenue to the intersection of Deer Valley Drive and the point of beginning.

**4-1-1.26 MOBILE FOOD VENDOR.** Any motorized means of conveyance that is required to be licensed by the State Division of Motor Vehicles from which consumable on-site food service is offered. Mobile Food Vendors are restricted to serving construction sites.

**4-1-1.27 NIGHTLY LODGING FACILITY.** Any place where 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.

**4-1-1.28 NON-PROFIT CORPORATION.** A corporation organized for some purpose other than making a profit and, as such, may enjoy a tax exempt status.

**4-1-1.29 NUISANCE.** For the purposes of the Alcoholic Beverage Licenses Chapter of this Title, any licensed premises where:

- A. Alcoholic beverages are manufactured, sold, kept, bartered, stored, consumed, given away, or used contrary to the Alcohol Beverage Control Act or this Code;
- B. 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;

- C. Persons under the age of twenty-one (21) are permitted to purchase or drink beer or liquor;
- D. City, county, state, or federal laws or ordinances are violated by the licensee or his/her agents or patrons with the consent or knowledge of licensee which tend to affect the public health, safety, peace, or morals;
- E. Patrons throw 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
- F. 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.

**4-1-1.30 PERSON(S).** 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.

**4-1-1.31 PLACE OF BUSINESS.** A place at which one carries on and Engages in Business; each separate location maintained or operated by the licensee within Park City from which Business activity is conducted or transacted.

**4-1-1.32 RESTAURANT.** A Business location at which a variety of foods are prepared and at which complete meals are served to the general public in indoor or outdoor dining accommodations, and is engaged primarily in serving meals to the general public. This does not include street vendors or mobile food trucks.

**4-1-1.33 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 this Title 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.

**4-1-1.34 SHUTTLE.** A vehicle that travels between fixed locations for a set or predetermined Fare.

**4-1-1.35 SKI RESORT.** A ski area that operates as a distinct and separate enterprise and which is 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.

**4-1-1.36 SKIER DAY.** A three (3) year average of the total number of lift tickets sold each year between November 1 and June 30, 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 (3) 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 July 15 of each year.

**4-1-1.37 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.

**4-1-1.38 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 this Title, 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 valuable consideration.

**4-1-1.39 SQUARE FOOTAGE.** The aggregate number of square feet of area within a Place of Business that is used by a licensee Engaging in Business.

**4-1-1.40 TAXICAB.** A vehicle used to transport passengers for a Fare.

**4-1-1.41 TRANSPORTATION NETWORK COMPANY (TNC).** The Transportation Network Company Registration Act defines a TNC as an entity that:

1. Uses a software application to connect a passenger to a transportation network driver providing transportation network services;
2. Is not a For-Hire Vehicle; and
3. Does not own, control, operate, or manage the vehicle used to provide the transportation network services.

**4-1-1.42 UNIT.** Any separately rented portion of a hotel, motel, condominium, apartment building, single family residence, duplex, triplex, or other residential dwelling without limitation.

**4-1-1.43 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 homeowner 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.

## **4-2 General Licensing**

**4-2-1 Unlawful To Operate Without A License**

**4-2-2 Business Confined To Enclosed Building**

**4-2-3 Business Confined To Private Property**

**4-2-4 Use Of Public Property**

**4-2-5 Branch Establishments**

**4-2-6 Separate Businesses, Licensed Premises**

**4-2-7 Multiple Licensing**

**4-2-8 Duty To Display License**

**4-2-9 Exceptions to Business License**

**4-2-10 No Temporary Licenses**

**4-2-11 Certain Acts Prohibited**

**4-2-12 Licenses Non-Transferable**

**4-2-13 Outdoor Sales**

**4-2-14 Outdoor Speakers On Main Street**

**4-2-15 Vibrant Commercial Storefront In HCB And HRC Districts**

#### **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 Title. All licenses issued under the provisions of this Title are non-transferable and expire on September 30 of each year.

Unless exempted by state or federal law or by this Title, any Person who engages in Business without being issued a license or paying all necessary fees under this Title 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. Payment of such double fee or any unpaid portion thereof may be compelled by civil action in any court of competent jurisdiction. The acceptance of any portion less than the entire amount of such double fee by any officer or employee of the City shall not constitute a waiver or release of the balance thereof.

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.

#### **4-2-2 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 the Land Management Code.

#### **4-2-3 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, or 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.

#### **4-2-4 Use Of Public Property**

The City Council may grant specific temporary licenses to applicants to sell food, alcoholic beverages, 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 concessions or franchise contract with the City.

#### **4-2-5 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 Title shall not be deemed to be separate places of Business or branch establishments.

#### **4-2-6 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 has a license pursuant to provisions in the Alcoholic Beverage Licenses Chapter of this Title, that Person shall obtain a separate Business license for each licensed premises.

#### **4-2-7 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 an automatic suspension of any other license then in effect.

#### **4-2-8 Duty To Display License**

Every licensee licensed pursuant to the provisions of this Title shall display the license in some prominent part of the Place of Business. 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. Every licensee not having a fixed Place of Business shall carry such license on their Person at all times in a visible position 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.

#### **4-2-9 Exceptions To Business License**

No Business license shall be required under this Title upon the following Persons or businesses:

- A. Any individual, company, or agent that is exempted under Utah Code Title 58, unless the individual, company, or agent has office space within the limits of Park City;
- B. Traditional hotel/Restaurant offerings including private dinner bookings in Restaurants, existing entertainment such as in Restaurant outlets or lounges etc., or groups utilizing interior signage;
- C. 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;
- D. 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.

#### **4-2-10 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 Title 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.

#### **4-2-11 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 noisemaking 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.

#### **4-2-12 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.

#### **4-2-13 Outdoor Sales**

The Finance Department may grant a license to regularly licensed retail and service based Park City businesses, per the Land 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. **PROMOTION BY MERCHANTS ASSOCIATION.** An association representing tenants in a shopping center or other merchants 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.
- B. **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 Business License Fee Schedule 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.

#### **4-2-14 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 Level Three Special Event License or community celebration.

#### **4-2-15 Vibrant Commercial Storefront In HCB And HRC Districts**

- A. A vibrant commercial storefront is a storefront property which cannot meet four (4) or more of the seven (7) following conditions:
  - 1. Is a storefront property as defined in Section 15-15-1 in the HRC or HCB Districts of the Land Management Code without a current lease in place or that is not actively advertising, utilizing, or occupying the property in a way that constitutes Engaging in Business for at least two hundred and seventy (270) days per year, or that is not open and physically occupied during the hours typically consistent with the licensed use of the property for at least the past thirty (30) days; or
  - 2. Has an approved Business license but is not open during typical Business hours consistent with its licensed use to the public, or is consistently open for less than five (5) days a week, or under two hundred and seventy (270) days per year;
  - 3. There is not an active Business license in place, or any pending Business license application in the past thirty (30) days; or
  - 4. Tenants are not actively advertising, utilizing, or occupying the property in a way that fulfills the definition of Engaging in Business 4-1-1.15; or

5. A commercial storefront without signs, displays, or clear indication that they are open or occupied such as having an employee on site, doors open or clearly marked as open to the public, or lights on within the premises; or
  6. Over a Quarterly period cannot provide sales tax receipts, payroll records, quarterly profit/loss statements, or similar financial records that show consistent month-to-month occupation and commercial activity; or
  7. Cannot provide utility bills or meter readings (water, gas, trash, or electric) that are consistent with the use of similarly active licensed businesses.
- B. If a property is not considered a “vibrant commercial storefront” and the property is located in HCB and HRC zones, the property owner or Business licensee must provide proof that the property meets one (1) of the following exceptions:
1. There is an open building, planning, or construction permit for repair, rehabilitation, or construction of a building on the parcel and the owner receives a certificate of occupancy for the repair, rehabilitation, or construction within one year from the date the initial permit was issued; or
  2. The owner provides satisfactory evidence that the property is actively being offered for sale, lease, or rent. Satisfactory evidence shall include, but is not limited to, evidence that the owner has hired a real estate agent or other rental agent who advertises and promotes the commercial storefront for rent, lease, or sale, or proof the commercial storefront is offered for sale on multiple listing services or any other comparable real estate listing services.
- C. Failure to maintain a vibrant commercial storefront in the HCB or HRC zone shall result in the following:
1. The Business at the storefront property will not receive local consent or be eligible for a liquor license of any kind including Single Event Alcoholic Beverage Licenses; and,
  2. The City reserves the right to utilize the area in front of the storefront property to display Art or other educational materials in the pedestrian area in front of the property as approved by the City Council until such a space is occupied by a vibrant commercial storefront.
- D. Any property designation under this Section may be appealed and shall be conducted as set forth in 4-3-15 of this Title.

#### **4-3 General Application Process**

##### 4-3-1 License Application

##### 4-3-2 Specific Additional License Application Requirements

##### 4-3-3 License Application Fee

##### 4-3-4 Code Compliance Inspection

##### 4-3-5 Investigation

##### 4-3-6 License Issuance, Denial, Or Revocation

##### 4-3-7 Issuance Of License Certificate

##### 4-3-8 License Period

##### 4-3-9 License Certificate Renewal

##### 4-3-10 License Renewal Fee, Tax Payment, And Penalty

##### 4-3-11 License Renewal Billing Procedure

##### 4-3-12 Grounds For License Revocation Or Suspension

##### 4-3-13 Alleged License Violation

##### 4-3-14 License Revocation Or Suspension Hearing

##### 4-3-15 License Denial Appeals

#### **4-3-1 License Application**

- A. All Business license applications with a physical location within City limits require a passed Business License Inspection from the Building Department to ensure life safety standards, proper measurements for fee calculation, and Code compliance. A Business License Inspection will only be scheduled if:
1. A Certificate of Occupancy has been issued by the Building Department;
  2. A Letter of Completion has been issued by the Building Department; or
  3. There is already an existing licensed Business occupying the space and a building permit is not required to accommodate the new Business.
- B. Applications for Business licenses shall be made in writing to the Finance Manager or his/her designee. Each application shall include the:
1. Name of the applicant;
  2. Location of the Business;
  3. Payment of the applicable fee and tax to be paid, based on the information recorded on the Business License Inspection;
  4. Name and address of the local Business agent who is authorized to receive service of process and any communication regarding applicant's license;
  5. State sales tax reporting number;
  6. Copy of the Business License Inspection report showing passed;
  7. State contractor's license number, if applicable;
  8. State real estate broker's license number, if applicable; and
  9. Other information, as needed, for the purpose of guidance of the Finance Manager in issuing the license.
- C. Any change in the above information furnished by the applicant shall be forwarded in writing, within ten (10) days of the change, to the Finance Manager or his/her designee. License application forms shall be prepared and kept on file by the Finance Department.

#### **4-3-2 Specific Additional License Application Requirements**

- A. **ALCOHOLIC BEVERAGES.** Applications for all alcoholic beverage licenses must include the following additional information:
1. The street address of the Business location;
  2. Applicant's criminal history obtained from the Utah Bureau of Criminal Identification completed within three (3) years of applications;
  3. Proof of whether the applicant has complied with the requirements specified in the Alcoholic Beverage Control Act;
  4. The location of any other alcoholic beverage licenses held by the applicant;
  5. The name and Utah address for the Business' agent for service of process;
  6. A signature by the applicant stating under oath that the facts contained therein are true; and
  7. 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 name, street and mailing address, age, citizenship, and criminal history from the Utah Bureau of Criminal Identification for each officer, partner, or director.

- B. **SINGLE EVENT ALCOHOLIC BEVERAGES.** Applications for a Single Event Alcoholic Beverage License must include the following additional information:
1. The street address of the Business location;
  2. A notarized and detailed statement by the applicant certifying their criminal history;
  3. Proof of whether the applicant has complied with the requirements specified in the Alcoholic Beverage Control Act;
  4. The location of any other alcoholic beverage licenses held by the applicant;
  5. The name and Utah address for the Business' agent for service of process;
  6. A signature by the applicant stating under oath that the facts contained therein are true;
  7. A certificate of existence, a copy of the articles of incorporation, the written partnership agreement, or other applicable documentation showing the entity has been in existence for at least one (1) calendar year prior to the date of application;
  8. 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
  9. An affirmation indicating each officer, partner, or director meets the licensee qualifications set forth in the statutes of Utah and this Title.
- C. **NIGHTLY RENTALS.** All new and renewal applications for nightly rentals must also contain the following information:
1. Property manager's name;
  2. Street address of each Unit;
  3. The cover letter for this application with information common to all Units managed;
  4. The name, address, and telephone number of a local responsible party who is available by telephone twenty four (24) hours per day; and
  5. Supplements to the application and cover letter with any information that changes.
- D. **SEXUALLY ORIENTED BUSINESSES.** The specific requirements for a Sexually Oriented Business License, Sexually Oriented Business Employee License, and any additional requirements are located in the Sexually Oriented Businesses Chapter of this Title.
- E. **SOLICITORS.** The application for a Solicitor license shall require the following additional information:
1. Date of birth and social security number of the applicant;
  2. Signatures 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 solicited, referred to as the "primary business" in this Title; and
  3. 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 issuance of that state license by the Utah Department of Commerce and such other information as necessary to correctly identify the applicant with that Department.

#### **4-3-3 License Application Fee**

Each license application shall be accompanied by the Business License Fee required to be paid for the desired license.

#### **4-3-4 Code Compliance Inspection**

- 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 Square Footage, use, or location, the applicant shall be required to have the prospective Place of Business inspected prior to application by the Building Department, and if necessary, other government agencies to ensure compliance with building, fire, municipal, and health codes.
- 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. 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 Chief Building Official or his/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 Chief Building Official or his/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/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.

#### **4-3-5 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 Finance Manager may refer the application or licensee for investigation to the Police Department. The Finance Manager or his/her designee may at any time

inspect the Business premises during normal Business hours or request Business documents maintained pursuant to this Title to verify a new application or existing licensee.

#### **4-3-6 License Issuance, Denial, Or Revocation**

- A. The Finance Manager or his/her designee shall notify the applicant of:
1. The denial of a license and the reason for such denial; or
  2. The issuance of the license.
- B. The Finance Manager or his/her designee may deny or revoke a license if the applicant:
1. Has been convicted of a fraud or felony by any state or federal court within the past five (5) years, has been released from prison after serving a sentence for a fraud or felony within the last five (5) years, or now has criminal proceedings pending against him/her in any state or federal court for fraud or a felony;
  2. Has obtained a license by fraud or deceit;
  3. Has failed to pay personal property taxes or other required taxes or fees imposed by the City or other governmental agency;
  4. 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;
  5. 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;
  6. Fails to meet the requirements set by this Title;
  7. Conflicts with other applications or issued licenses;
  8. If applying for a Solicitor license, has 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 five (5) years; or
  9. It would be inappropriate to issue the license due to concerns regarding the community's general health, welfare, and public safety.
- C. Additionally, the Finance Manager or his/her designee may deny or revoke an alcoholic beverage license if the applicant:
1. Is less than twenty-one (21) years of age;
  2. Has been convicted of:
    - a. A felony under federal or state law;
    - b. A violation of federal law, state law, or local ordinance concerning the sale, offer for sale, warehousing, manufacture, distribution, transportation, or adulteration of an alcoholic product;
    - c. A crime involving moral turpitude; or
    - d. Driving under the influence of alcohol, drugs, or the combined influence of alcohol and drugs on two (2) or more occasions within the five (5) years before the day on which the license is issued;
  3. Has had any type of alcoholic beverage license revoked within the last three (3) years;
  4. Fails to comply with federal and state laws pertaining to the payment of taxes and contributions to unemployment and insurance funds; or

5. Fails to meet all other state requirements for the applicable license.

#### **4-3-7 Issuance Of License Certificate**

All license certificates shall be signed by the Finance Manager or his/her designee, under the seal of the City; the signature may be placed mechanically and will 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.

#### **4-3-8 License Period**

Renewed license certificates shall be valid October 1 through September 30 of the year of renewal unless revoked pursuant to this Title. New license certificates issued between October 1 and June 30 shall be valid through September 30 of the year of issuance unless revoked. New license certificates issued between July 1 and September 30 may be valid through September 30 of the year following the year of issuance, unless revoked. An applicant applying for a license between July 1 and September 1 shall pay one hundred and twenty-five percent (125%) of the amount otherwise imposed for new licenses issued and the license shall be valid through September 30 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 July 1 and September 30 if the applicant does not intend to do Business in Park City the following year.

#### **4-3-9 License Certificate Renewal**

Upon receipt of the License Fee, the Division shall issue a license certificate valid through September 30 of the next year.

#### **4-3-10 License Renewal Fee, Tax Payment, 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 October 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 July 1 and September 30, in which case the license shall be valid until September 30 of the year following the issuance of the license, upon payment of one hundred and twenty-five percent (125%) of the annual License Fee, as set forth in the Business License Fee Schedule.

If the renewal License Fee is not paid on or before October 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 Title or twenty-five dollars (\$25.00), whichever is greater.

If the renewal License Fee is not paid in full on or before November 15 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 Title or twenty-five dollars (\$25.00), whichever is greater.

If the renewal License Fee is not paid on or before January 1 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 Title.

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

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, increasing the number of employees, 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.

#### **4-3-11 License Renewal Billing Procedure**

On or before September 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.

#### **4-3-12 Grounds For License 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. **SOLICITOR LICENSE**. The following are grounds for revocation or suspension of a Solicitor license:
  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. Issuance of three (3) or more citations under this Title within any twelve (12) month period;
  5. Any other circumstances which endanger the health or safety of the residents of Park City.
- C. **ALCOHOLIC BEVERAGE LICENSE**. The following are grounds for revocation or suspension of alcoholic beverage 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 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/her 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 Utah statute, on or from the licensed premises; or
6. The licensee has been denied a license by the State of Utah under the Alcoholic Beverage Control Act as required by this Title or has had said State license revoked or suspended.

#### **4-3-13 Alleged License Violation**

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, and 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/her designee may have undertaken with the licensee, or issue an order to show cause 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. 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.

#### **4-3-14 License 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/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 hears the matter itself, or the Licensed Hearing Examiner, shall prepare written findings of fact. In the case of a 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 for which the findings diverge 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:

- A. Dismiss the action against the licensee;
- B. Suspend the license for a specified period;
- C. Place the licensee on probation upon such conditions as the City Council may order;
- D. Permanently revoke the license in question; or
- E. 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 law 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.

#### **4-3-15 License Denial Appeals**

A license denial by the Finance Manager or his/her designee may be appealed within ten (10) days to the City Council by written notice of appeal. The request is to be filed with the Recorder. The City Council

shall hear the appeal within thirty (30) days of notice of appeal, unless both parties agree to an extension. The City Council shall conduct a de novo review in a public hearing. The City Council shall issue a written decision within ten (10) days of the hearing.

#### **4-4 Licensing Fees**

4-4-1 Records To Be Maintained

4-4-2 Regulatory And Service Enhancement Fees

4-4-3 Revenue Measure

4-4-4 Exceptions To Business License Fee

4-4-5 License Fees Declared To Be A Debt And May Be Forwarded To A Collection Agency

4-4-6 License Fee Adjustment To Avoid Burdening Interstate Commerce

4-4-7 Refund Of Fee

#### **4-4-1 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/she may be liable under this Title.

#### **4-4-2 Regulatory And Service Enhancement Fees**

There is hereby imposed and levied an annual Business License Fee in the amounts described in the Fee Schedule, found at <http://www.parkcity.org/government/municipal-codes-policies-and-fees>.

#### **4-4-3 Revenue Measure**

The revenue License Fee provided for in this Title 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.

#### **4-4-4 Exceptions To Business License Fee**

No Business License Fee shall be required under this Title upon the following Persons or businesses:

- A. Any Person engaged in Business for solely religious, charitable, 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 Revised Nonprofit Corporation Act;
- B. Any Person who obtains an exemption from the City Council by petitioning the Council for a waiver of the fees.

#### **4-4-5 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.

#### **4-4-6 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 Finance Manager or his/her designee for an adjustment of the fee so as to relieve such burden. The applicant shall, by supporting other information as the Finance Manager or his/her designee may deem necessary in order to determine the extent, if any, of such undue burden. The Finance Manager or his/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/she 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; 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 Finance Manager or his/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.

#### **4-4-7 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 twenty-five dollars (\$25.00) shall be retained to offset application processing costs.

#### **4-5 Regulation Of Specific Businesses**

4-5-1 Regulation Of Vending Machines And Mechanical Devices

4-5-2 Regulation Of Contractors And Builders

4-5-3 Regulation Of Nightly Rentals

4-5-4 Regulation Of Restaurants, Food Service, Taverns, Etc.

4-5-5 Regulation Of Building Material, Hardware, And Lumber

4-5-6 Regulation Of Automotive Services

4-5-7 Regulation Of Transportation Service, Passenger, And Snow Removal Operators

#### **4-5-1 Regulation Of Vending Machines And 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 or within his/her premises or Place of Business any such mechanical device on which the fee has not been paid.

#### **4-5-2 Regulation Of 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 by state law.

No contractor shall be issued a Business license under this Section unless and until he/she has provided a certified statement that he/she is currently licensed with the Utah Department of Commerce, including the state license number(s) and date of expiration. If said state license expires prior to December 31 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.

#### **4-5-3 Regulation Of Nightly Rentals**

All nightly rental Units must be licensed before being offered for rent.

- A. **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.
- B. **MANAGEMENT STANDARDS.** The authorized lodging 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:
1. Snow removal during winter months to a level that allows safe access to the building over the normal pedestrian access to the Unit;
  2. 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;
  3. 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;
  4. Structural maintenance to preserve substantial code compliance as described herein is required;
  5. Routine upkeep, including painting and repair to a level that is consistent with the level of maintenance on adjoining or nearby properties;
  6. Trash collection which ensures that trash cans are not left at the curb for any period in excess of twenty-four (24) hours; the property must be kept free from accumulated garbage and refuse;
  7. Housekeeping service as a part of hotel or property management company included in property management license;
  8. Parking. On-street parking for nightly rental uses shall not result in an obstruction to traffic and pedestrian circulation or public safety;
  9. Outdoor Displays of Goods and Merchandise. No outdoor display of goods and merchandise shall be permitted as part of any nightly rental use;
  10. Signs. Unless expressly permitted under the Municipal Sign Code, no signs will be permitted for nightly rental uses;
  11. 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.
- C. **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.
- D. **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:

1. The Unit is located within a zone and subzone designated as allowing rentals for the period which the license is applied for;
2. 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 Unit 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;
3. 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, twenty-four (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 the Securities Division Real Estate Division in the Utah Code, as amended, which requires those who receive valuable consideration to lease property to have a state license;
4. 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.

#### **4-5-4 Regulation Of Restaurants, Food Service, Taverns, Etc.**

Outdoor dining areas connected with any food service establishment shall be assessed at a rate lower than the rest of the establishment as listed in the Business License Fee Schedule.

Catering services shall be licensed at the rate established in the rate tables per employee unless the operation is a Solicited Delivery, part of a full service Restaurant, or part of a Restaurant operation, in which case catering is included in that license.

#### **4-5-5 Regulation Of Building Material, Hardware, And 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.

#### **4-5-6 Regulation Of Automotive Services**

Car rental businesses shall be assessed at a rate per car for rental purposes as of October 1 of each license year, as established in the rate tables.

#### **4-5-7 Regulation Of 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 are 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 based on Square Footage 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 Title 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.

#### **4-6 Alcoholic Beverage Licenses**

4-6-1 Policy

4-6-2 Local Consent

4-6-3 Beer License

4-6-4 Liquor License

4-6-5 Single Event Alcoholic Beverage License

4-6-6 Insurance Requirements

4-6-7 Referral Of License Application To Chief Of Police

4-6-8 Referral Of Application To Building Department And Planning Department

4-6-9 Referral Of Application To Health Department

4-6-10 Periodic Inspection Of Premises By Chief Of Police And Code Enforcement Officials

4-6-11 Emergency Suspensions By Police

4-6-12 Offenses Of Licensee

4-6-13 Offenses By Patrons

4-6-14 Citations/Violations

#### **4-6-1 Policy**

It is the policy of Park City Municipal Corporation to permit the operation of establishments serving alcoholic beverages 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 alcoholic beverages on the owners and managers of those establishments.

#### **4-6-2 Local Consent**

- A. The issuance of a Park City alcoholic beverage license pursuant to this Chapter 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 Single Event Alcoholic Beverage Licenses effective during the applicable Sundance Film Festival annual Level Three Special Event License period shall require City Council approval no later than the last regularly scheduled meeting in the month of December.
  2. An emergency meeting may be held by Council to hear no more than twelve (12) 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 (12) 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.

#### **4-6-3 Beer License**

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 the necessary relevant City beer license as required. 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.

#### **4-6-4 Liquor License**

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 and this Title.

#### **4-6-5 Single Event Alcoholic Beverage License**

- A. **Single Event 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 Single Event Alcoholic Beverage License as required by this Title.
1. 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 Single Event Alcoholic Beverage License is secured prior to the event. A City issued Single Event Alcoholic Beverage License is required if Engaging In Business at an event, even if a State Department of Alcoholic Beverage Control license is not required.
  2. 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.
  3. A Single Event 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.
  4. 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:
    - a. 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 Single Event Alcoholic Beverage License for more than a total of ninety (90) days; or
    - b. 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) Single Event liquor licenses for that one (1) calendar year.

5. Unless otherwise provided for in this Title, Single Event 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 his/her 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 Single Event Alcoholic Beverage License shall be contingent upon the type of alcoholic beverages to be served at the event as established by the Single Event Alcoholic Beverage License application. Applicants serving only beer at an event shall receive the privileges and shall be subject to the limitations described in (4)(a) above. Applicants serving any liquor at an event shall receive the privileges and shall be subject to the limitations described in (4)(b) above.
6. Subject to the limitations set forth in (4)(a) and (4)(b), a Single Event Alcoholic Beverage License shall authorize the storage, sale, service, and consumption of alcoholic beverages in conjunction with a Special Event, convention, civic or community event and pursuant to the Utah Alcoholic Beverage Control Act and the ordinances of Park City.
7. No Person under the age of twenty-one (21) shall sell or serve alcohol under a Single Event Alcoholic Beverage License.

- B. **Single Event Alcoholic Beverage License Application.** Applications for a Single Event 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 his/her designee and include the information as required in 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 Chapter and, if required, a State issued license.
- C. **Regulatory Single Event Alcoholic Beverage License Fee.** The regulatory liquor License Fee shall be set by resolution as listed in the Business License Fee Schedule for all Single Event Alcoholic Beverage 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 his/her designee for Single Event 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.

#### **4-6-6 Insurance Requirements**

No alcoholic beverage license may be issued, including a Single Event Alcoholic Beverage License, until the applicant presents the Finance Manager or his/her 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 his/her designee based on factors such as the nature, size, and location of an event.

#### **4-6-7 Referral Of License Application To Chief Of Police**

All applications filed in accordance with this Chapter shall be referred to the Chief of Police or his/her 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 his/her 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 his/her designee shall, upon completion of such investigation, submit a recommendation as to whether the license should be granted. If recommending denial of a Single Event Alcoholic Beverage or an alcoholic beverage license application, the Chief of Police or his/her designee shall submit a detailed report of the investigation, record the recommendation on the application, and sign the application. If recommending approval of an alcoholic beverage license application, the Chief of Police or his/her 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.

#### **4-6-8 Referral Of Application To Building Department And Planning Department**

The Finance Manager or his/her 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, to determine the maximum number of occupants the premises may safely accommodate at one time, given the location and number of emergency exits, and to ensure compliance with the Land Management Code. The Building and Planning Departments shall, within ten (10) business days after receiving such application, submit to the Finance Manager or his/her designee a recommendation to approve or deny the application.

#### **4-6-9 Referral Of Application To Health Department**

The Building Department may refer any application filed in accordance with this Chapter 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.

#### **4-6-10 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 Chapter, and may make periodic inspections of said premises and may report his/her findings to the Finance Manager or his/her designee.

#### **4-6-11 Emergency Suspensions By Police**

Licenses under this Chapter 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 his/her designee that a suspension will occur if the conditions complained of are not remedied in a manner that eliminates the immediate danger to public health and safety. No emergency suspension by the Chief of Police or his/her designee shall extend beyond the ordinary close of business on the day on which the suspension was given.

#### **4-6-12 Offenses Of Licensee**

It shall be unlawful for the holder of any license issued under this Chapter or any employee or agent of the holder to cause or permit to be caused on his/her premises 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 CONTROL NUISANCES OR 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.
- C. **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.

#### **4-6-13 Offenses By Patrons**

It shall be unlawful for any Person within a licensed premise under this Chapter, 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 after being ordered to leave the premises by the licensee or the agent or employees of the licensee.
- B. To enter or remain in any licensed premises while intoxicated.

#### **4-6-14 Citations/Violations**

The commission of any act or offense listed in this Chapter shall be a Class "B" misdemeanor. 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.

#### **4-7 Convention Sales And Commercial Hospitality**

4-7-1 General

4-7-2 Types Of Convention Sales And Hospitality Licenses

4-7-3 Applications

4-7-4 Review Of Applications

4-7-5 Umbrella Organizers

4-7-6 State Tax Number

4-7-7 Responsibility Of Host Business To Ensure Licensing And Compliance With The Uniform Building And Fire Codes

#### **4-7-1 General**

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.

#### **4-7-2 Types Of Convention Sales And Hospitality Licenses**

- A. **TYPE 1** – Convention Sales License. This type of license will be available year round except for during the dates of the Sundance Film Festival and in a space other than convention space. Each point of sale requires a separate license. Vendors selling tangible goods are required to provide a temporary state sales tax number on their application.
- B. **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. Each vendor, identified by Federal ID number, is required to obtain a separate license. Vendors selling tangible goods are required to provide a temporary state sales tax number on their application.
- C. **TYPE 3** – Convention Sales License. This type of license will be available year round except for during the dates of the Sundance Film Festival and in a licensed convention space. A single license is required for the organizer along with a list of all participants and their temporary state sales tax numbers.

#### **4-7-3 Applications**

- A. For Type 1 and Type 3 convention sales 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.
- B. Retained Council Authority for Type 2 licenses:
  - 1. The Finance Manager or his/her designee shall refer the Type 2 convention sales license application to the Building, Planning, Parking, and Public Safety Departments for approval.
  - 2. After obtaining department approval, 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.
  - 3. 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 one hundred and twenty (120) days.
  - 4. 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.
  - 5. 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.
  - 6. All Type 2 convention sales license applications for locations within the Main Street Business Improvement District (BID) boundaries shall require a deposit receipt with Republic Services in the amount of one hundred dollars (\$100), to be submitted at time of application, and be required to pay the Main Street BID tax set forth by ordinance.

7. All Type 2 convention sales licenses will be assessed the Enhanced Enforcement Fees of forty-five dollars and fifty-eight cents (\$45.58) to be paid at time of application.
8. The loading operations of each Type 2 convention sales license shall be permitted by the Parking Division with three (3) different permits: Red, Green, and Blue, depending on the type of loading: Red, large-scale operations; Green, food and beverage; and Blue, musical equipment. Any violation of the regulations specified on each permit may result in the revocation of the Type 2 convention sales license or the inability to obtain a Type 2 convention sales license in the future.
9. Large scale load-out operations for Type 2 convention sales licenses will not be permitted until Day 6 (Tuesday) of the Sundance Film Festival.

#### **4-7-4 Review Of Applications**

Upon a reasonable belief that the applicant or licensee has a fraud or felony conviction or prior criminal background or pending criminal proceeding, the Finance Manager may refer the application or licensee for investigation to the Police Department.

The Finance Manager or his/her designee shall refer the application to the Building and Planning Departments for review. The Chief Building Official or his/her designee will 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. The Planning Director or his/her designee will ensure compliance with the Land Management Code.

#### **4-7-5 Umbrella Organizers**

For Type 1 and 2 convention sales licenses, 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.

#### **4-7-6 State Tax Number**

The applicant must provide an individual 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.

#### **4-7-7 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.

#### **4-8 For-Hire Vehicles**

##### **4-8-1 For-Hire Vehicle Operation Requirements**

- 4-8-2 Drug Free Workplace Requirement
- 4-8-3 License Requirements For Operators
- 4-8-4 Compliance Responsibility
- 4-8-5 Background Check Requirement
- 4-8-6 State Motor Vehicle Endorsement Or Commercial Driver License Required And Background Check Certificate Required For Application
- 4-8-7 Compliance With City, State, And Federal Laws
- 4-8-8 Identifying Design
- 4-8-9 Display Of Charges
- 4-8-10 Receipts For Payment Of Fare
- 4-8-11 Hiring Vehicle With Intent To Defraud
- 4-8-12 Refusing To Pay Legal Fare
- 4-8-13 Direct Route Required
- 4-8-14 Prohibited Solicitation Procedures
- 4-8-15 Solicitation Of Hotel Business Prohibited
- 4-8-16 Engaging In Liquor Or Prostitution Traffic Prohibited

#### **4-8-1 For-Hire Vehicle Operation Requirements**

- 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 valid For-Hire Vehicle Business License from the City in accordance with the procedures in this Title, except as provided below in Section I.
- 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 one million dollars (\$1,000,000) per vehicle if the vehicle provides Taxicab service, has a seating capacity of fifteen (15) passengers or fewer, including the driver, and is not operated on a regular route. 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 five million dollars (\$5,000,000) 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 Park City For-Hire Vehicle Sticker.
- D. No Person who has been convicted of or plead guilty to three (3) or more moving violations within the preceding three hundred sixty-five (365) days shall be permitted to operate a For-Hire Vehicle upon the streets of Park City.
- E. No Person who has been found to be in violation of the Park City Parking Code three (3) or more times within the preceding three hundred sixty-five (365) days shall be permitted to operate a For-Hire Vehicle on Park City streets.
- F. 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 driver's side. The For-Hire Vehicle Sticker shall be issued by the City and include the date of expiration.

- G. All For-Hire Vehicles shall have in the driver's possession a copy of the current vehicle registration, copy of the Business license, and proof of insurance as required by this Code, and the driver shall have a "P" endorsement on their Utah State driver license if operating a vehicle that seats sixteen (16) or more. Failure to produce any of this information may result in the issuance of a citation.
- H. The following items shall be prominently displayed in the passenger compartment of the For-Hire Vehicle:
  - 1. The Fare schedule; and
  - 2. Contact information, including a telephone number, for the owner or responsible party of the For-Hire Vehicle.
- I. For the purpose of this Chapter, the term 'operate for hire upon the streets of Park City' shall not include:
  - 1. The transporting by a For-Hire Vehicle properly licensed in a jurisdiction outside the corporate limits of the City; or
  - 2. The transporting by a For-Hire Vehicle of a passenger or passengers where the trip shall originate with the passenger or passengers being picked up outside the corporate limits of the City and the destination is either within or beyond the City corporate limits.
- J. 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.
- K. All office space must comply with the Land Management Code and this Title.

#### **4-8-2 Drug Free Workplace Requirement**

- A. Consistent with the Utah Code, 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 Vehicle licensees shall certify that the licensee has adopted such a policy prior to being issued a For-Hire Vehicle Business License from the City.
- B. The 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 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/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 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.

#### **4-8-3 License Requirements For Operators**

It is unlawful for any Person to operate a For-Hire Vehicle upon the streets of the City without having a valid Park City For-Hire Vehicle Business License.

#### **4-8-4 Compliance Responsibility**

The licensee shall not be relieved of any responsibility for compliance with the provisions of this Title, whether the licensee leases or rents For-Hire Vehicles to drivers, or whether the licensee pays salary, wages, or any other form of compensation.

#### **4-8-5 Background Check Requirement**

- A. All drivers shall obtain an original background check report from the Utah Bureau of Criminal Investigation (BCI). All drivers shall also obtain a driver license record report from the Utah Driver License Division showing "Valid" as license status. The City shall be permitted to further investigate any information that is relevant to such background checks 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 a BCI Identification Record.
- B. 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, or has been released from prison, in any jurisdiction within 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 dishonesty, 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.
- C. 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.
  - D. 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 BCI 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 BCI 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.
  - E. 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/she is convicted of any disqualifying criminal offense, or otherwise fails to comply with the provisions of this Section, at any time while he/she possesses a Background Check Certificate.
  - F. Failure to comply with the continuing obligation to notify the Finance Manager or his/her designee within twenty-four (24) hours of: a disqualifying conviction pursuant to Subsection (B) above, or the accumulation of three (3) moving violation convictions during the past three hundred sixty-five (365) days is a Class "A" misdemeanor.

#### **4-8-6 State Motor Vehicle Endorsement Or Commercial Driver License Required And Background Check Certificate 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 license issued by the state.
- 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.

#### **4-8-7 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.

#### **4-8-8 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 (2¼") 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.

#### **4-8-9 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.

#### **4-8-10 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.

#### **4-8-11 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.

#### **4-8-12 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.

#### **4-8-13 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/her destination, unless otherwise directed by the passenger.

#### **4-8-14 Prohibited Solicitation Procedures**

- A. No driver shall solicit patronage by:
1. Using a tone of voice that a reasonable Person would consider to be loud or annoying;
  2. Using a sign;
  3. Engaging in any activity or behaving in a manner that would annoy a reasonable Person or obstruct the movement of any Persons;
  4. Following 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 on duty and such vehicle is upon the public streets. The driver of a For-Hire Vehicle is permitted to leave the driver's compartment when actively aiding passengers in loading or unloading the vehicle.

#### **4-8-15 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.

#### **4-8-16 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/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 to 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.

#### **4-9 Street Vendors**

##### **4-9-1 General**

##### **4-9-2 Sales At Construction Sites**

##### **4-9-3 Sales Within Public Right-of-Way**

##### **4-9-4 Terms And Conditions**

#### **4-9-1 General**

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 Title.

#### **4-9-2 Sales At Construction Sites**

At bona fide construction sites a license, as described in Section 4-5-4 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.

#### **4-9-3 Sales Within 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.

#### **4-9-4 Terms And Conditions**

Licensed vendors shall be subject to the following terms and conditions:

- A. **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.
- B. **LIMITATION ON LOCATIONS.** Vending from motor vehicles, which shall include any motorized means of conveyance that is required to be licensed by the State Division 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 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.
- C. **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.

- D. **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.

#### **4-10 Solicitors**

4-10-1 Solicitor Of Goods Or Merchandise

4-10-2 Terms And Conditions Of Solicitation Licenses

4-10-3 Art Exhibition For Sale On Public Property

4-10-4 Exemptions

#### **4-10-1 Solicitor Of Goods Or Merchandise**

Unless authorized and licensed by this Chapter, Solicitors of goods or merchandise are prohibited from Conducting Business within Park City.

#### **4-10-2 Terms And Conditions Of Solicitation Licenses**

The Finance Department may issue a license to a Solicitor 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;
- B. The Solicitor shall only contact the public on a door-to-door basis;
- C. No solicitation activities shall be conducted on public streets, sidewalks, or public property;
- D. The Solicitor shall not enter any premises in which a "No Solicitors Allowed" sign, or the equivalent thereof, has been posted;
- E. The Solicitor may only carry goods or merchandise for display, not for sale, but the Solicitor may deliver previously ordered goods or merchandise;
- 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;
- 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 twenty-twenty (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;

- H. The Solicitor shall inform each buyer of the right to cancel a home solicitation sale pursuant to state law; and
- I. The Business or businesses which have signed the application for a Solicitor 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.

#### **4-10-3 Art Exhibition For Sale On Public Property**

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. **EXHIBIT FOR SALE ON SIDEWALKS PROHIBITED.** No Artist may Exhibit for sale his/her Art on public streets, sidewalks, or public property other than specifically designated Available City Property as set forth in this Title. 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 the Special Events Title in park strip areas, pocket parks, and City-operated or otherwise public parks.

#### **B. 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 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. **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 this Title.

C. **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.

D. **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.

E. **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 parks, 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 License issued by the City under Title 4A. However, during special events, Artists may Exhibit at a location included in a Special Event License if the Special Event 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.

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, or during Special Events or Level Three Special Events. Special Event vendors shall not be governed by this Chapter, but shall be governed by the Special Events Title of the Park City Municipal Code.

F. **SPACE RESTRICTIONS.** No Artist may Exhibit Art 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 Art, 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.

- G. **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 Art of an Artist.
- H. **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.
- I. **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.
- J. **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.
- K. **SALES TAX.** All Artists are responsible for individually filing all necessary reporting forms and sales tax, if any, in accordance with state law.

#### **4-10-4 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 below under Unsolicited Deliveries.
- 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 below under Unsolicited Deliveries.
- C. **CIVIC GROUPS.** No license 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 below under Unsolicited Deliveries.
- D. **WHOLESALE SOLICITATION.** No license shall be required of Persons who are soliciting Business on a wholesale basis only who are exempt under any provision of the Utah Code. 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 Solicitor 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.

#### **4-11 Sexually Oriented Businesses**

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- 4-11-23 Adult Business, Design Of Premises
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- 4-11-25 Alcohol Prohibited
- 4-11-26 Severability
- 4-11-27 Compliance By Present Licensees

#### **4-11-1 Title For Citation**

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

#### **4-11-2 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.

#### **4-11-3 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.

#### **4-11-4 Definitions**

For the purpose of this Chapter only 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, including, 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. **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.
- J. **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.
- K. **OPERATOR**. The manager or other natural Person principally in charge of a Sexually Oriented Business.
- L. **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.
- M. **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.
- N. **SEXUALLY ORIENTED BUSINESS**. Semi-Nude Entertainment Businesses and Adult Businesses as defined by this Chapter.
- O. **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.
- P. **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.

**4-11-5 Obscenity And Lewdness - Statutory Provisions**

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

Notwithstanding anything contained in this Chapter, nothing in this Chapter shall be deemed to permit or allow conduct or the showing or display of any matter which is contrary to the provisions of the Park City Criminal Code regarding '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.

**4-11-6 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.

**4-11-7 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.

**4-11-8 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.

**4-11-9 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.

#### **4-11-10 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 (10%) 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 driver 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 4-11-12.
- I. Each applicant is required to meet with the Police Chief or his/her designee.

#### **4-11-11 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 driver 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 4-11-12.
- 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.

#### **4-11-12 Additional Application Requirements**

Attached to the application form for any license under this Chapter 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 event 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.

#### **4-11-13 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.

#### **4-11-14 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.

#### **4-11-15 Employment Or 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.

#### **4-11-16 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.

#### **4-11-17 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/she 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 statues 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 4-11-10, 4-11-11, and 4-11-12; 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.

#### **4-11-18 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.

#### **4-11-19 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.

#### **4-11-20 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.

#### **4-11-21 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.

#### **4-11-22 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.

#### **4-11-23 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 (A)(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.

#### **4-11-24 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;

#### **4-11-25 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.

#### **4-11-26 Severability**

In the event that any provision of this Chapter is declared invalid for any reason, the remaining provisions shall remain in effect.

#### **4-11-27 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.

## **4A Special Events**

### **4A-1 Definitions**

#### **4A-2 Special Event Permitting**

#### **4A-3 Public Outdoor Music Plazas**

### **4A-1-1 Definitions**

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

**4A-1-1.1 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 Special Event Permit application and all other documents relevant to the event. If the Applicant is a corporation, corporate Sponsor, or business, or any other entity, which is not a natural person, the co-applicant or responsible party must be a natural person or persons. See Sponsor.

**4A-1-1.2 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.

**4A-1-1.3 CONCESSION.** A privilege to sell food, beverages, souvenirs, or copyrighted or logoed event memorabilia at a permitted event.

**4A-1-1.4 FEE(S).** Charges assessed by Park City for permitting, staffing, equipment use/rental, property use/rental, set-up, clean up, inspections, public employees, or public equipment assessed to a Special Event and established within the event permitting process.

**4A-1-1.5 PERMITTEE.** The Applicant, as defined above, becomes the "Permittee" when the Special Event Permit is signed by the Economic Development Manager or his/her designee, upon meeting all the criteria in this Title. As the permit holder, the Permittee becomes the sole proprietor of the event and inherits the responsibilities connected with all licenses and permits, Fee assessments, and insurance liabilities connected with the permitted event.

#### **4A-1-1.6 SPECIAL EVENT.**

- A.** A sporting, cultural, entertainment, or other type of unique activity, whether held for profit, nonprofit, or charitable purposes, occurring for a limited or fixed duration that impacts the City by involving the use of, or having impact on, City property, or requiring City licensing or services beyond the scope of normal business and/or liquor regulations, as defined by this Code; or creates public impacts through any of the following:
1. Full or partial street or sidewalk closures necessary for the safe and efficient flow of traffic in Park City; and /or
  2. Use of public property, facilities, trails, or parks; and/or
  3. Use of City parking facilities; and/or
  4. Use of amplified sound above that defined in Title 6 of this Code; and/or
  5. Outdoor or temporary events that do not normally occur with the permitted use.
- B.** Any organized activity involving the use of, or having an impact on, the above shall require a permit as outlined in Section 4A-2-1 of this Code. Event levels are determined based on degree of City impacts including but not limited to: anticipated attendance, use of amplified sound, transportation and parking, use of public or private property, and admission. Any

event may be defined as either a Level One Event, a Level Two Event, a Level Three Event, or a First Amendment Event if they meet one or more of the listed criteria in the given category:

**1. LEVEL ONE EVENT:**

- a. The attraction of crowds up to 199 people; or
- b. Necessity for rolling street closure.

**2. LEVEL TWO EVENT:**

- a. The attraction of crowds between 200 and 499 people; or
- b. Necessity for partial street closure.

**3. LEVEL THREE EVENT:**

- a. The attraction of crowds between 500 people; or
- b. Necessity for full street closure.

**4. FIRST AMENDMENT EVENT:** An activity conducted for the purpose of persons expressing their political, social, religious, or other views protected by the First Amendment to the United States Constitution and Article 1, Section 15 of the Utah Constitution, including but not limited to speechmaking, picketing, protesting, marching, demonstrating, or debating public issues on any City street or other property during the event. 'First Amendment Events' shall not include:

- a. Solicitations or events which primarily propose a commercial transaction;
- b. Rallies, races, parades, or events conducted with motor vehicles or bicycles;
- c. Footraces.

**4A-1-1.7 SPECIAL EVENTS COORDINATOR.** The City employee designated by the Economic Development Manager within the Special Events Department, which administers the provisions in the Special Events Chapter of this Code.

**4A-1-1.8 SPECIAL EVENT PERMIT.** A permit sought by an Applicant for an event as defined in this Chapter, granted through the Special Events Department.

**4A-1-1.9 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.

**4A-1-1.10 STAGE(S).** The raised and semi-enclosed platforms that are designed to attenuate sound, or as otherwise approved by Special Events staff.

**4A-1-1.11 VENUE.** The location or locations upon which a Special Event is held, which may include the ingress and egress route as approved in the conditions of the Special Event Permit.

#### **4A-2 Special Event Permitting**

4A-2-1 Unlawful To Operate Without A License; Exceptions

4A-2-2 Renewal Of Permit(s)

4A-2-3 Special Event Permit Application Procedure

4A-2-4 Standards For License Approval

4A-2-5 Conflicting Permit Applications

4A-2-6 Licenses Necessary For A Special Event Permit

4A-2-7 Fees To Be Assessed; Exceptions

4A-2-8 Events In Parking Structures

4A-2-9 Fee Reductions

4A-2-10 Insurance Requirements

4A-2-11 Permit Application Supplemental Documents

4A-2-12 Film-Making

4A-2-13 Criminal Penalty

4A-2-14 Revocation For Cause And Notice To Cure

#### **4A-2-1 Unlawful To Operate Without A License; Exceptions**

- A. It is unlawful for any person to conduct a Special Event with or without charge for admission, on public or private property, without first applying for and being granted a Special Event Permit for the specific event and its Venue(s). All permits issued pursuant to this Title are non-transferrable and expire at the completion of the given event, or upon revocation, whichever is earlier.
- B. The following are exempt from Special Event licensing:

1. Funeral processions by a licensed mortuary;
2. Activities lawfully conducted by a governmental agency within the scope of authority;
3. Filming activities if a permit for such activities has been issued by the City;
4. First Amendment activities: If it is not reasonably possible to obtain a permit in advance of a First Amendment Event, no permit shall be required providing that the prohibitions of Subsections B, C, D and E of Section 4A-2-4 are not violated.

#### **4A-2-2 Renewal Of Permit(s)**

Permittees under the provisions of this Title who successfully operate a Special Event under the provisions of this Title and who wish to have the event on an annual or periodic basis must renew each Special Event Permit as outlined in Section 4A-2-3 herein. Event levels will be determined through the renewal process, regardless of recurrence or previously determined event levels. Activities that occur in series, falling under the criteria established in this Title, must have a Special Event Permit, which specifically authorizes each activity in the series, even if the same activity is held on separate occasions.

#### **4A-2-3 Special Event Permit Application Procedure**

- A. **APPLICATION SUBMITTAL.** All requests for Special Event Permit(s) shall be made on a Special Event application or First Amendment Event application prescribed by the City and submitted to the Special Events Coordinator. Application materials are available at City Special Events Department and online at the City's website, and must be completed and submitted to the Special Event Coordinator not less than ninety (90) days prior to the scheduled opening of any Level Three Event, not less than sixty (60) days

prior to the scheduled opening of any Level Two Event, and not less than thirty (30) days prior to the scheduled opening of any Level One or First Amendment Event unless otherwise approved by the City Council, or by the Economic Development Manager or his/her designee for Special Events, upon a showing of good cause.

B. **ADDITIONAL REQUIREMENTS.** In addition to an application for a Special Event Permit, the Economic Development Manager or his/her designee shall require the Applicant to provide as necessary:

1. Insurance coverage, waiver and release of damages and indemnification as described in Section 4A-2-10;

2. Supplemental documents, including a transport and traffic control plan, contingency plan, and site map described in Section 4A-2-11;

3. Proof that the Applicant has obtained any applicable city, county, state, or other governmental agency approvals, permits, or licenses as described in Section 4A-2-6.

C. **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 Level Three Events;

2. Applications for Level Three Event permit renewals where material elements of the event have substantially changed from the previous application; and

3. Appeals of administrative decisions made pursuant to Subsection (D) Administrative Review, herein.

4. As used herein, a 'new Level Three Event' shall mean any Level Three Event being proposed for the first time, an event renewal of a Level One, Level Two or First Amendment Event that now qualifies as a Level Three Event, or a Level Three Event which was not renewed for a period exceeding one (1) year. The City Council shall review applications for compliance with the standards for permit approval described at Section 4A-2-4 herein as follows:

a. Staff Review and Recommendation. Upon receipt of a complete Level Three Event application and accompanying Fee, City staff shall review the application for compliance with Section 4A-2-4 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 Level Three Event application and notice to the Applicant, the Special Events Coordinator shall schedule the application for a public hearing before the City Council.

b. City Council Hearing. Level Three Event applications requiring City Council review and appeals of administrative 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 with the standards set forth at Section 4A-2-4 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.

- D. **ADMINISTRATIVE REVIEW.** The Economic Development Manager or his/her designee shall review and shall have the authority to administratively approve, approve with conditions, or deny the following applications:
1. Level One and Level Two Event applications;
  2. First Amendment Event applications;
  3. Applications for Level Three Event renewals where material elements of the event have not substantially changed from the previous application. Upon receipt of a complete Level Three Event application and accompanying Fee, the Special Events Coordinator shall review the application for compliance with Section 4A-2-4 herein.
- E. **DECISION.** Upon receipt of a complete Special Event Permit application and accompanying Fee, the Special Events Coordinator shall review the application for compliance with Section 4A-2-4 herein. Following review of the application, the Special Events Coordinator shall record his/her decision with written findings of fact, conclusions of law, and conditions of approval, to the Economic Development Manager or his/her designee for final administrative approval. Once approved by the Economic Development Manager or his/her designee, the Special Event Coordinator will deliver written notice of such decision to the Applicant.
- F. **APPEALS.** 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 Coordinator within ten (10) days of the date of decision. The City Council shall hear the matter de novo and with public hearing.

#### **4A-2-4 Standards For License Approval**

Applications for Special Event Permit(s) shall be reviewed for compliance with the standards provided herein. The Economic Development Manager or his/her designee or City Council may deny or restrict any Special Event whenever any of the conditions enumerated in this Section cannot be eliminated or sufficiently mitigated by Conditions of Approval to ensure public safety and consistency with the Park City General Plan.

- A. The Special Event does not provide positive economic, cultural, or community value, or is not in accordance with the goals outlined in the Park City General Plan. The economic, cultural, and community value shall be determined by the City pursuant to the following criteria:
  1. Does not unreasonably restrict existing public access or adversely impact shared space or the public due to the number of events, the nature of the event, proposed location and/or location conditions;
  2. Provides diversity or uniqueness to the existing event calendar;
  3. Is not primarily retail and/or solely to avoid more restrictive general zoning and license regulations;
  4. Provides economic benefit to the City through tax benefits, resort visitation, or marketing or branding value, compared to community impacts and costs of services.
- B. The conduct of the Special 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.

- C. The conduct of the Special 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.
- D. 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.
- E. The Special Event will substantially interfere with any other Special Event for which a permit has already been granted or with the provision of City services in support of other such events or governmental functions.
- F. 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 Special 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 ordinance(s).
- G. The event creates the imminent possibility of violent disorderly conduct likely to endanger public safety or cause significant property damage.
- H. The Applicant demonstrates inability or unwillingness to conduct the event pursuant to the terms and conditions of this Title or has failed to conduct a previously authorized event in accordance with the law or the terms of a permit, or both.
- I. 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.
- J. **EXCEPTIONS.** Applications for First Amendment Event permits will be reviewed for compliance with the standards outlined in Subsections B, C, D, E, G, and H above. In reviewing any Application for a permit for a First Amendment Event, the Economic Development Manager or his/her designee may place reasonable time, place, and manner of restrictions on the First Amendment Event. No such restriction shall be based on the content of the beliefs expressed or anticipated to be expressed during the First Amendment Event, or on factors such as the identity or appearance of persons expected to participate in the assembly.

**4A-2-5 Conflicting Permit Applications**

- A. No more than one (1) Special Event shall be approved for the same date(s) unless the Economic Development Manager or his/her designee 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 Economic Development Manager or his/her designee 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. In cases where an event double booking conflict arises, the Economic Development Manager or his/her designee will encourage any secondary, or subsequent, Applicant to review the feasibility of collocating with the original Applicant. If collocating proves impractical, the Economic Development Manager or his/her designee will encourage any secondary, or subsequent, Applicant to offer a viable alternative strategy that meets the needs of all Applicants, while also ensuring adequate public safety measures remain intact.
- C. If no voluntary agreement is reached, then the Economic Development Manager or his/her designee shall resolve the issue based on the following order of priorities:
1. The Special Event that provides the greatest overall value to the City based on economic, cultural, and community impacts, which for recurring events may be based on annual event debrief with recommendations from the Special Event Advisory Committee.
  2. Special 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.
- D. If no voluntary agreement is reached, 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.

#### **4A-2-6 Licenses Necessary For A Special Event Permit**

The Applicant/licensee shall procure any applicable city, county, state, or other governmental agency approvals, permits, or licenses.

#### **4A-2-7 Fees To Be Assessed; Exceptions**

- A. **APPLICATION FEE.** Special Event application Fees shall be assessed according to the Fee resolution. 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. An Applicant for a recurring event that qualifies as a new event level is responsible for Fee amounts of the given level.
- B. **CITY SERVICE FEES.** Upon receipt of a completed Special Event Permit application, the Special Events Coordinator 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 reduced pursuant to Section 4A-2-9, all City service Fees must be paid in full within thirty (30) days of the final assessment of City costs for the Special Event.

- C. **FINANCIAL SECURITY.** The Special Events Coordinator 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 Special Event Permit, as a guarantee against Fees, damages, clean up, or loss of public property.
- D. **EXCEPTIONS.** Specified Fees do not apply to an application for a First Amendment Event permit if the Applicant demonstrates, by sufficient evidence, that the imposition of Fees would create a financial hardship on the Applicant or would have a detrimental effect on services provided to the public.

#### **4A-2-8 Events In Parking Structures**

Applications for Special Events taking place within a parking structure shall be reviewed for compliance with all Codes relating to Special Events along with the standards provided below:

- A. Location – Special Events or hospitality functions taking place within a parking structure shall only take place in Historic Recreation Commercial (HRC) District and Historic Commercial Business (HCB) District zones.
- B. Duration – Permitted Special Events or hospitality events taking place within a parking structure may not exceed ten (10) calendar days in duration.
- C. Frequency – Individual parking structures will be eligible to be converted into an event or hospitality use no more than two times during one calendar year.
- D. Application Requirements – In addition to the Special Event application requirements, Applicants wishing to utilize a parking structure for a temporary assembly use as part of a Special Event or hospitality function must also provide the following:
  - 1. An original set of design plans stamped by a Utah licensed mechanical engineer that meet the intent of required ventilation standards as per the International Mechanical Code Section 403.3.1.1 for both occupancies. This plan must be approved by the Building Official.
  - 2. Design plans that demonstrate plumbing systems and fixtures provided within the event space meet the intent of the plumbing fixture requirements of IBC Chapter 29. This plan must be approved by the Building Official.
  - 3. All plans must be approved by the Deputy Fire Marshal and shall demonstrate compliance with the International Fire Code.

#### **4A-2-9 Fee Reductions**

- A. Annually, the City will allocate up to two hundred thousand dollars (\$200,000) to be used to reduce City Service Fees required for Special Events. Allocation of reduced Fees will be determined at the sole discretion of the Economic Development Manager and Budget Manager(s),

City Manager, and City Council. Unmet thresholds at the end of a year will not be carried forward to future years.

- B. The City Manager may reduce the following Special Event permitting and associated City Service Fees up to a total of twenty five thousand dollars (\$25,000) after reviewing a recommendation from the Economic Development Manager and Budget Manager upon a finding of eligibility pursuant to the criteria provided herein:
1. Application;
  2. Building permit;
  3. Facility and/or equipment rentals;
  4. Field and/or park rentals;
  5. Special use of public parking permit;
  6. Bleachers;
  7. Trail; and
  8. Public Safety Personnel.

If the total Fee reduction request exceeds twenty five thousand dollars (\$25,000) or includes other City Service Fees outside the Fees mentioned above, then the request must be approved by City Council in a Public Meeting.

- C. All Fee reduction requests will be reviewed twice a year. All Special Event Fee reduction requests must be submitted to the Special Events Coordinator prior to the application deadlines:
1. October 1st -- Events occurring between January 1st and June 30th.
  2. April 1st -- Events occurring between July 1st and December 31st.

Applications received outside of the normal application process may be considered for reductions but must demonstrate an immediate need for reduction and provide justification to why the application was not filed within the specified deadline.

- D. Fee reduction applications will be evaluated by a City Staff review committee comprised of City Departments which the Fees directly impact and a recommendation will be submitted to the Special Events Department. Special Events staff will make a recommendation to the Economic Development Manager, Budget Manager(s), and City Manager or City Council. Final determinations will be made by these parties as outlined above in Section 4A-2-9(B). All decisions may be appealed with the final decision given by the City Council. Eligibility for a full or partial Fee reduction shall be determined by the City pursuant to the following criteria, none of which shall be individually controlling:
1. Charges event admission or Fees for participation and policy for attendees or participants unable to pay such Fees;
  2. Event provides free programs to the community, or raises funds for organizations that provide free programs, benefiting local youth, seniors, or under-served constituents;

3. Provides economic opportunities to the community including positive tax benefits, raises funds or provides revenue opportunities to the City to offset City services and costs required by the event;
4. Provides community and/or economic event opportunities during resort off seasons;
5. Demonstrates extraordinary efforts to reduce and mitigate environmental, transportation, and residential impacts associated with the event consistent with adopted City Council priority/policy goals and the General Plan; and
6. Demonstrates that the imposition of Fees would create a financial hardship on the Applicant or would have a detrimental effect on services provided to the public.

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

#### **4A-2-10 Insurance Requirements**

Upon receipt and review of a Special Event Permit application, the Special Event Coordinator will submit the application with a recommendation for final authority by the City Attorney's Office for amount of liability insurance pursuant to the hazard matrix or more to be determined within ten business days (10) following submittal. The Special Event Coordinator will deliver written notice of such determination to the Applicant. Applicants shall provide proof of liability insurance in the determined amount no later than fourteen days (14) prior to the first set-up day of a Special Event. The City Attorney's Office shall require the Applicant to 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. Any reduction of these requirements must be approved by the City Attorney's Office prior to permit approval.

#### **4A-2-11 Permit Application Supplemental Documents**

##### A. Transportation and traffic control requirements and considerations:

1. All traffic and transportation control is the responsibility of the Applicant. A traffic and transportation control plan shall be provided to, and approved by, the Economic Development Manager or his/her designee upon recommendation by the Transportation Department by the event date. Plans are determined through collaboration with the Special Events Coordinator, and shall include determinations on transit impacts and traffic control, including pedestrian, bicycle, motorized and other methods of transport required for the event;
2. Road closures will require appropriate traffic control. Appropriate traffic control may include by uniformed state, county, or local police officers, or a private company, identified event staff, or physical devices, as determined by the Economic Development Manager or his/her designee;
3. The Economic Development Manager or his/her designee may require an alternate route, or alternative time, if the proposed Event occurs when traffic volumes are high, active road construction is present, an alternative event is already occupying the road, a safer route to accommodate the event, or the event poses a significant inconvenience to the traveling public;

4. The Applicant shall restore the road or trail segment, or impacted area to its original condition, free from litter and other material charges;
5. The Economic Development Manager or his/her designee may monitor and ensure compliance with the terms and conditions of any Special Event Permit.

B. Contingency Plan Requirements:

1. Considering the nature of the planned Special Event, the Applicant shall develop:
  - a. Contingency or emergency plans, including Emergency Medical Service, fire, and police;
  - b. Operations plan and timeline;
  - c. Weather date and/or weather conditions plan;
  - d. Residential notification and mitigation plan;
  - e. Planned rest areas, water and toilet facilities, and trash and recycling cleanup;
  - f. Plans to ensure that participants obey the conditions of the Special Event Permit and all other generally applicable traffic laws, lights, and signs;
  - g. The Economic Development Manager or his/her designee may require that the Applicant provide notice to participants, bystanders, or the public of all plans enumerated in Subsection (B)(1). The amount of and method of notice shall be dependent on the circumstances of the Special Event Permit.

C. Special Event Site Identification and Private Property Use Requirements.

- D. The Applicant shall provide a detailed map showing the proposed course and direction of the event. Locations of parking areas, signs and banners, water stations, power sources, toilet facilities and other appropriate information shall also be included on this map. The Applicant is responsible for obtaining appropriate permission to locate these facilities on private property.

**4A-2-12 Film-Making**

Film-making shall be considered Special Events unless such event does not create substantial public impact or require substantial City service. Any filming undertaken by any business or corporation must first be licensed as a business under Title 4 of this Code. Corporations falling under the provisions of this Title or who are specifically in film-making or promotions on public or private property must, as a provision of their permit, provide the following: proof of insurance, shooting schedule or schedule of events, written permission of property owners, and access to any set or site for purposes of Code enforcement.

**4A-2-13 Criminal Penalty**

Any person who willfully violates any provision of this Title shall be guilty of a Class B misdemeanor. Persons conducting Special Events without having first obtained a Special Event Permit are subject to arrest and the Special Event is subject to closure.

**4A-2-14 Revocation For Cause; Notice To Cure**

- A. **NOTICE TO CURE**. If the Special Events Coordinator or any sworn law enforcement officer determines that the conditions of any permit issued pursuant to this Title have been or are being violated, then notice shall be given to the Permittee, Sponsor, or designated organizer's representative of the Special Event to cure the violation.
- B. **FAILURE TO CURE**. It is unlawful for the Permittee, Sponsor, or on-site organizer's representative of an authorized Special Event to fail to take reasonable steps to promptly cure any notice of violation of this Title. 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 Permittee, Sponsor, or on-site organizer's representative to cure their violation of this Title.

- 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 Title 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, the Permittee, Sponsor, or on-site organizer's representative of the Special Event shall be promptly notified that the permit is revoked and that the Special Event must immediately cease and desist.
- D. **VIOLATION OF CEASE AND DESIST ORDER**. If a Special Event Permit 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.

### **4A-3 Public Outdoor Music Plazas**

4A-3-1 Title For Citation

4A-3-2 Purpose: Reasonable Licensing Procedures

4A-3-3 Application Of Provisions

4A-3-4 Special Event Permit; Review Procedure

4A-3-5 Public Outdoor Music Plazas

4A-3-6 General Regulations

4A-3-7 Alcohol

4A-3-8 License Holder; Program Board

4A-3-9 On-Going Compliance Evaluation

4A-3-10 Transfer Limitations

4A-3-11 Plaza Licenses In Lieu Of Administrative Permit For Outdoor Music And Outdoor Speakers

#### **4A-3-1 Title For Citation**

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

#### **4A-3-2 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, and preserve the property values and character of the surrounding neighborhoods.

#### **4A-3-3 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.

#### **4A-3-4 Special Event Permit; Review Procedure**

The public outdoor music plazas identified at Section 4A-3-5 herein may be programmed for public performances and outdoor music, subject to the regulations and conditions of this Chapter and subject to Special Event permitting review pursuant this Title. No Permittee or performer shall accrue any vested rights under this revocable license.

#### **4A-3-5 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 Special Event 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 Special Event 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 on the 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.

**4A-3-6 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. 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 Special Event Permit 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.

#### **4A-3-7 Alcohol**

It is unlawful for the Permittee 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 Title 4, Alcoholic Beverage Licenses, as applicable.

#### **4A-3-8 License Holder; Program Board**

- A. The Permittee(s) will hire a program manager who must be approved by the City; the City will not unreasonably withhold approval of the program manager. 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 Permittee(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 Permittee(s) shall at all times hold the City harmless and indemnify the City from all claims, actions, and liability arising from the Permittee(s)' use of the public outdoor music plazas. The Permittee(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.

#### **4A-3-9 On-Going Compliance Evaluation**

- A. Permittee(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 permits 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.

#### **4A-3-10 Transfer Limitations**

The Special Event Permit(s) 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 Special Event Permit without City approval as provided herein. If any transfer of the controlling interest in a public outdoor music plaza permit occurs without City approval, the permit is immediately null and void and the public outdoor music plaza shall not operate until a separate new permit 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.

**4A-3-11 Plaza Licenses In Lieu Of Administrative Permit For Outdoor Music And Outdoor Speakers**

The Special Event Permits 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 Special Event Permit.

## **4B Franchised Utilities and Taxes**

### **4B-1 Franchised Utilities And Cable Television Operator**

#### **4B-2 Telecommunications And Rights-Of-Way**

#### **4B-3 Sales And Use Tax**

#### **4B-4 Telecommunications Tax**

#### **4B-5 Municipal Energy Sales And Use Tax**

#### **4B-6 Resort Communities Sales Tax**

## **4B-1 Franchised Utilities And Cable Television Operator**

### **4B-1-1 Business License Required**

#### **4B-1-2 Franchise License**

#### **4B-1-3 Exclusions**

#### **4B-1-4 Payment Of Fee**

#### **4B-1-5 Penalty**

### **4B-1-1 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.

### **4B-1-2 Franchise License**

There is hereby imposed on all franchised utilities, except 'energy suppliers' taxed pursuant to Chapter 4B-5 of this Title, telecommunications providers taxed pursuant to Chapter 4B-4 of this Title, and cable television operators who conduct business within the City with 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.

### **4B-1-3 Exclusions**

This franchise license fee shall not apply to 'energy suppliers' taxed pursuant to Chapter 4B-5 of this Title, telecommunications providers taxed pursuant to Chapter 4B-4 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".

### **4B-1-4 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.

### **4B-1-5 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.

#### **4B-2 Telecommunications And Rights-Of-Way**

4B-2-1 Scope Of Ordinance

4B-2-2 Defined Terms

4B-2-3 Franchise Required

4B-2-4 Compensation And Other Payments

4B-2-5 Franchise Applications

4B-2-6 Construction And Technical Requirements

4B-2-7 Franchise And License Non-Transferable

4B-2-8 Oversight And Regulation

4B-2-9 Rights Of City

4B-2-10 Obligation To Notify

4B-2-11 General Provisions

4B-2-12 Federal, State, And City Jurisdiction

#### **4B-2-1 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 4B-2-12(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.

#### **4B-2-2 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 47 U.S.C. 521 et seq., 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, reseller, or system lessee.
- Q. **PSC**. The Public Service Commission, or any successor thereto.
- R. **RESELLER**. 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. 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.

#### **4B-2-3 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 4B-2-9 of this Code.
- 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.

#### 4B-2-4 Compensation And Other Payments

- A. **TELECOMMUNICATIONS TAX.** As provided for in Chapter 4B-4 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.

#### **4B-2-5 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 4B-2-7 of this Code, granted pursuant to this ordinance, an application must be filed with the 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 4B-2-6 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.

#### **4B-2-6 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 4B-2-11 of this Code.
  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, Trees/Landscaping.

#### **4B-2-7 Franchise And License Non-Transferable**

##### **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 certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement; or
  - b. The successor entity application in compliance with Section 4B-2-5 of this ordinance.
2. **TRANSFER OF FRANCHISE.** Upon receipt of a notification and certification in accordance with Section 4B-2-7(A)(1) of this ordinance, the City designee, as provided in Section 4B-2-9(A)(1) of this ordinance, 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 4B-2-5 of this ordinance.
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 4B-2-7(A) of this Code, 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 4B-2-5 of this ordinance.

**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 4B-2-7(A)(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.

#### **4B-2-8 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 include 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 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.

#### **4B-2-9 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. 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.

#### **4B-2-10 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.

#### **4B-2-11 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.

#### **4B-2-12 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.

#### **4B-3 Sales And Use Tax**

##### **4B-3-1 Purpose**

##### **4B-3-2 Sales And Use Tax**

#### **4B-3-1 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, Utah Code 59-12-101 et seq., as currently amended.

#### **4B-3-2 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 Utah Code 54-2-1, 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 Utah Code 59-12-101 et seq., 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 Utah Code 59-12-101 et seq., 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 Utah Code 59-12-101 et seq., 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, Utah Code 59-12-101 et seq.

#### **4B-4 Telecommunications Tax**

4B-4-1 Definitions

4B-4-2 Levy Of Tax

4B-4-3 Rate

4B-4-4 Rate Limitation And Exemption Therefrom

4B-4-5 Effective Date Of Tax Levy

4B-4-6 Changes In Rate Or Repeal Of Tax

4B-4-7 Interlocal Agreement For Collection Of Tax

4B-4-8 Procedures For Taxes Erroneously Recovered From Customers

4B-4-9 Repeal Of Inconsistent Taxes And Fees

#### **4B-4-1 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 the Sales and Use Tax Act, Utah Code 59-12-101 et seq.
- 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 the Sales and Use Tax Act, Utah Code 59-12-101 et seq; 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. 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. 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 54-8b-2.

K. "Telecommunications service" means:

1. Telephone service, as defined in Utah Code 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 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. 116 et seq.

**4B-4-2 Levy Of Tax**

There is hereby levied a municipal telecommunications license tax on the gross receipts from telecommunications service attributed to Park City.

**4B-4-3 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 10-1-407.

**4B-4-4 Rate Limitation And Exemption Therefrom**

The 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.

#### **4B-4-5 Effective Date Of Tax Levy**

This tax shall be levied beginning July 1, 2004.

#### **4B-4-6 Changes In Rate Or Repeal Of Tax**

This ordinance is subject to the requirements of Utah Code 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 10-1-403.

#### **4B-4-7 Interlocal Agreement For Collection Of 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 10-1-405 for the collection, enforcement, and administration of this municipal telecommunications license tax.

#### **4B-4-8 Procedures For Taxes Erroneously Recovered From Customers**

Pursuant to the provisions of Utah Code 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 10-1-408.

#### **4B-4-9 Repeal Of Inconsistent Taxes And Fees**

Any tax or fee previously enacted by Park City under authority of Utah Code 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 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 72-7-108, in this municipality.

#### **4B-5 Municipal Energy Sales And Use Tax**

4B-5-1 Definitions

4B-5-2 Tax Imposed

4B-5-3 Exemptions From The Tax

4B-5-4 No Effect On Existing Franchise Agreements; Tax Credits

4B-5-5 Tax Collection

#### **4B-5-1 Definitions**

Those definitions contained under Utah Code 10-1-303 through 310, as amended, are hereby incorporated by reference.

#### **4B-5-2 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.

#### **4B-5-3 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 Utah Code 10-1-305 or its successor sections, which are incorporated by reference herein.

#### **4B-5-4 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.

#### **4B-5-5 Tax Collection**

This ordinance incorporates by reference the tax collection provisions of the Utah Code 59- 12-101 through 129, Tax Collection, and any amendments thereto, for the purpose of levying and collecting the tax imposed by this ordinance. The Manager 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 Utah Code 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.

#### **4B-6 Impacted Communities Sales Tax**

##### **4B-6-1 Definitions**

##### **4B-6-2 Resort Communities And Additional Resort Communities Sales Tax Imposed**

##### **4B-6-3 Place Of Sale**

##### **4B-6-4 Collection And Payment Of Tax**

##### **4B-6-5 State Statutes Applicable**

##### **4B-6-6 Exclusions**

#### **4B-6-1 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 Utah Code 59-12-405, and the State Tax Commission regulations adopted under Utah Code 59-12 -401 et seq.,

#### **4B-6-2 Resort Communities And Additional 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 Utah Code 59-12-401 et seq., within Park City at the rate of one and one-tenth percent (1.1%) of the retail

selling price and under Utah Code 59-12-402 et seq., within Park City at the rate of one half of one percent (0.5%) of the retail selling price.

#### **4B-6-3 Place Of Sale**

For the purpose of this Chapter, the location of a sales transaction shall be determined in accordance with Utah Code 59-12-211 through 59-12-215.

#### **4B-6-4 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 Utah Code 59-12-101 et seq.. The procedure for collection and payment of this tax shall be identical to the procedure prescribed by Utah Code 59-12-101 et seq. and the State Tax Commission Regulations adopted under that Chapter.

#### **4B-6-5 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 Utah Code 59-12-101 et seq. 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 Utah Code 59-12-101 et seq., 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 Utah Code 59-12-101 et seq., an additional license shall not be required by reason of this section.

#### **4B-6-6 Exclusions**

As provided in Utah Code 59-12-401 et seq., the resort communities and additional 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;
- G. The sales and uses described in Utah Code 59-12-104 to the extent the sales and uses are exempt from taxation under that section;

H. Food and food ingredients, except the amounts paid or charged for food and food ingredients shall not be exempt from taxation under Utah Code 59-12-401et seq. if the food and food ingredients are sold as part of a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients



## **4C Freedom From Discrimination**

### **4C-1 Employment Discrimination**

#### **4C-2 Housing Discrimination**

## **4C-1 Employment Discrimination**

### **4C-1-1 Purpose**

### **4C-1-2 Administration**

### **4C-1-3 No Private Rights Of Action; No Special Rights**

### **4C-1-4 Severability**

### **4C-1-5 Definitions**

### **4C-1-6 Exemptions**

### **4C-1-7 Unlawful Employment Practices**

### **4C-1-8 Unlawful Intimidation, Retaliation, And Coercion**

### **4C-1-9 Procedures For Filing Complaints**

### **4C-1-10 Investigation**

### **4C-1-11 Conciliation**

### **4C-1-12 Disposition Of A Complaint**

### **4C-1-13 Offenses And Penalties**

### **4C-1-1 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 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.

*Adopted by Ord. 10-13 on 4/15/2010*

### **4C-1-2 Administration**

The City Manager is responsible for administering and implementing this Chapter.

*Adopted by Ord. 10-13 on 4/15/2010*

### **4C-1-3 No Private Rights 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.

*Adopted by Ord. 10-13 on 4/15/2010*

### **4C-1-4 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.

*Adopted by Ord. 10-13 on 4/15/2010*

#### **4C-1-5 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.

*Adopted by Ord. 10-13 on 4/15/2010*

**4C-1-6 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.

*Adopted by Ord. 10-13 on 4/15/2010.*

**4C-1-7 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 Identity.

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.

*Adopted by Ord. 10-13 on 4/15/2010*

#### **4C-1-8 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.

*Adopted by Ord. 10-13 on 4/15/2010*

#### **4C-1-9 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 complaint 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.

*Adopted by Ord. 10-13 on 4/15/2010*

#### **4C-1-10 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 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 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.

*Adopted by Ord. 10-13 on 4/15/2010*

#### **4C-1-11 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 enters into a Conciliation Agreement, the Administrator shall immediately dismiss the complaint.

*Adopted by Ord. 10-13 on 4/15/2010*

#### **4C-1-12 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.

*Adopted by Ord. 10-13 on 4/15/2010*

#### **4C-1-13 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 five hundred dollars (\$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 one thousand dollars (\$1,000.00).

*Adopted by Ord. 10-13 on 4/15/2010*

#### **4C-2 Housing Discrimination**

4C-2-1 Purpose

4C-2-2 Administration

4C-2-3 No Private Rights Of Action; No Special Rights

4C-2-4 Severability

4C-2-5 Definitions

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4C-2-7 Unlawful Housing Practices

4C-2-8 Unlawful Intimidation, Retaliation, And Coercion

4C-2-9 Procedures For Filing Complaints

4C-2-10 Investigation

4C-2-11 Conciliation

4C-2-12 Disposition Of A Complaint

4C-2-13 Offenses And Penalties

#### **4C-2-1 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 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.

*Adopted by Ord. 10-12 on 4/15/2010*

#### **4C-2-2 Administration**

The City Manager is responsible for administering and implementing this Chapter.

*Adopted by Ord. 10-12 on 4/15/2010*

#### **4C-2-3 No Private Rights 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.

*Adopted by Ord. 10-12 on 4/15/2010*

#### **4C-2-4 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.

*Adopted by Ord. 10-12 on 4/15/2010*

#### **4C-2-5 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 Identity.
- 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 61-2f-102 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.

*Adopted by Ord. 10-12 on 4/15/2010*

**4C-2-6 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 religion, 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; 2) the government of the State of Utah or any of its departments, agencies, or political subdivisions, except for the City; and 3) Land Use Applications under the Land Management Code.

*Adopted by Ord. 10-12 on 4/15/2010*

#### **4C-2-7 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:
  - a. 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;
  - b. 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
  - c. 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.

*Adopted by Ord. 10-12 on 4/15/2010*

**4C-2-8 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.

*Adopted by Ord. 10-12 on 4/15/2010*

**4C-2-9 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.

*Adopted by Ord. 10-12 on 4/15/2010*

**4C-2-10 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 that the City Attorney 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.

*Adopted by Ord. 10-12 on 4/15/2010*

#### **4C-2-11 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 enters into a Conciliation Agreement, the Administrator shall immediately dismiss the complaint.

*Adopted by Ord. 10-12 on 4/15/2010*

#### **4C-2-12 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.

*Adopted by Ord. 10-12 on 4/15/2010.*

**4C-2-13 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 five hundred dollars (\$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 one thousand dollars (\$1,000.00).

*Adopted by Ord. 10-12 on 4/15/2010*

