

TITLE 6

BUSINESS LICENSING AND REGULATIONS

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6-01-010. Definitions.

For purposes of this Title, the following words shall have the meaning set forth herein:

(a) "Alcoholic Beverage License" means a Class 'A,' Class 'B,' or Class 'C' beer license, club license or liquor consumption license as defined in Chapter 6-04 of this Title.

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

(c) "Application" means a formal written request for the issuance of any license permitted under this Title.

(d) "Authorized Officers" means those persons authorized by the City or other entities to inspect businesses and enforce the provisions of this Title or other applicable regulations, including, but

¹ Amended Chapters 6-1 ~ 6-3, Ord. No. 2010-07, June 15, 2010

² Renumbered from 6-3 to Chapter 6-5, Ord. No. 2010-07, June 15, 2010

not limited to, peace officers, ordinance enforcement officers, and employees of the Health Department, Fire District, Community Development Department, Building Inspection Division, or the City Manager.

(e) "Business" means and includes any enterprise, trade, occupation, profession or activity engaged in or carried on within the City for the purpose of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in this definition.

(f) "Business License Official" shall mean the person responsible for the administration of this Title as more particularly designated herein.

(g) "Fee Schedule" means the schedule of fees as adopted by the Centerville City Council setting forth the various fees charged by the City, as amended.

(h) "Employee" means the operator, owner or manager of any place of business and any persons employed by such person in the operation of the place of business in any capacity, and also any sales persons, agents and representatives engaged in the operation of the place of business in any capacity.

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

(j) "Fire Department" means the South Davis Metro Fire Agency.

(k) "Health Department" means the Davis County Health Department.

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

(m) "Person" means an individual, partnership, corporation, association, receiver, assignee, trustee in bankruptcy, trust, estate, firm, joint venture, company, or other legal entity.

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

6-01-020. Business License Official.

The Community Development Director is hereby designated as the Business License Official of the City. It shall be the duty and responsibility of the Business License Official, or his or her designee, to perform the following:

- (a) Enforce the provisions of this Title;
- (b) Collect all business license fees and all alcoholic beverage license fees;
- (c) Process all applications and renewals of all licenses provided for in this Title;
- (d) Obtain any necessary approvals from the various City departments and divisions before issuing any business licenses or alcoholic beverage licenses; and
- (e) Deny, suspend or revoke licenses as provided for in this Title.

6-01-030. Business License Required.

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

6-01-040. Separate License Required.

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

6-01-050. Joint License.

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

6-01-060. Reserved.

6-01-070. Home Occupations.

Except as otherwise expressly provided, this Title shall apply to persons engaged in business, trade, service or professions in their homes as well as to those engaged in business at a separate establishment or location. Applicants for a home occupation business shall comply with the provisions of this Title and with the applicable provisions of Chapter 12-62 of the Centerville City Zoning Ordinance, as amended, regarding home occupations. License fees for home occupations shall be assessed in accordance with the Fee Schedule as adopted by the City Council.

6-01-080. License Application Requirements.

(a) Unless otherwise specifically provided in this Title, all applications for licenses and permits required by this Title shall be made in writing to the Business License Official. All applications shall be submitted on forms provided by the City. If a joint license is being applied for in accordance with Section 6-01-050, a separate application shall be filled out and submitted for each business seeking joint licensure. All applications shall be filled out completely. All applications shall be verified and contain the following:

- (1) The name of the person desiring a license;
- (2) The name of the owner or owners of the business;
- (3) The kind of license desired, stating the business, calling, trade or profession to be performed, practiced or carried on;
- (4) The class of license desired, if such licenses are divided into classes;

(5) The place where such business, calling, trade or profession is to be carried on, giving the street number, if such business, calling, trade or profession is to be carried on in any building or enclosure having such a number;

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

(7) A copy of any applicable State license(s) required for operation of the business;

(8) Business registration name, sales tax ID number, articles of incorporation, and State contractor's license number, as applicable;

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

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

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

6-01-090. False or Misleading Information.

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

6-01-100. Business License Review.

The Business License Official shall review and approve all Business License Applications. If required by separate ordinance, the Business License Official shall submit copies of all applications to other departments, divisions or agencies of the City for their review, such as, the fire, police, building and planning and zoning departments of the City and the County health department. Signed, written approvals from any required department, division or agency shall be obtained prior to approval and issuance of any business license. In any case where the State requires a business, trade, service or profession to be licensed, the State license shall be a prerequisite to receiving a City business license.

6-01-110. Business License Issuance.

Upon approval of the Business License Official, in accordance with the requirements of this Title, the certificate of license shall be signed by the Business License Official or the Business License Coordinator and shall contain the following information:

(1) The person's name to whom the certificate is issued;

(2) The business name;

(3) The type of business licensed;

(4) The date the license was issued;

(5) The business license fees paid;

(6) The expiration date of the license;

- (7) The address of the place of business licensed; and
- (8) The business license number.

6-01-120. Term of Business License.

The business license year for City business licenses is the calendar year. All business licenses shall be effective from the date of issuance and shall expire each year on December 31st.

6-01-130. Renewals.

Each year, licensees shall renew their business licenses by completing an application for a license renewal signed under penalty of law that all information contained therein is true and returning it, along with the proper annual renewal fees as set forth in Chapter 6-02, to the Business License Official by January 2nd. Renewal applications for businesses which require police checks of the licensees under the original license application shall be submitted to the Police Department to determine whether the licensee still meets the necessary qualifications. Upon receipt of the application fees, and Police Department approval, if applicable, the Business License Official shall be authorized to prepare a certificate of license as provided in this Chapter.

6-01-140. License Transfer of Name or Location.

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

(b) Any person who wishes to change his/her business name shall also make application for the change of name of such person's business license, for the sole purpose of transacting or carrying on the same business, calling, trade or profession as is therein mentioned under a new name, by filing an application with the License Official, along with the applicable name change fee.

(c) If the business in question has any other licenses which are required under this Title, or its successor, additional fees shall apply for such changes.

(d) The transfer fee shall be nonrefundable regardless of whether the application is granted or denied.

6-01-150. License Transfer to Other Persons Prohibited.

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

6-01-160. License Posting and Display.

Every certificate of license issued shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the store or place in which such licensed business, calling, trade or profession is carried on, so that the same may be easily seen. No certificate of license which is not in force and effect shall be permitted to remain posted upon the wall or any part of any room, store, office or place of business after the period of such certificate or license has expired. When such certificate of license shall have expired it shall be removed by the licensee from such place in which it has been posted. If the licensee's business is such that a license cannot be displayed due to the transient or mobile nature of the business, then the licensee shall carry the license on his or her person ready to be shown on

request by an authorized officer during all such time or times while the licensee is engaged in or pursuing the business for which a license is granted.

6-01-170. Misuse of License Certificate.

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

6-01-180. Duplicate Certificate of License.

A duplicate license may be issued under the provisions of this Title for a certificate that has been lost or destroyed upon the licensee filing an affidavit attesting to such fact and paying to the Business License Official a duplicate license fee assessed in accordance with the Fee Schedule adopted by the City Council.

6-01-190. Reciprocal Recognition of Business Licenses.

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

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

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

- (1) Such person's business is at the time of such delivery licensed by the Utah city or county in which such place of business is situated; and
- (2) The authority licensing such business grants to licensees of the City making deliveries within its jurisdiction the same privileges, upon substantially the same terms as are granted by this Section; and
- (3) Neither the property delivered nor any of the facilities by which it was manufactured, produced or processed are subject to inspection by authority of the City for compliance with health or sanitary standards prescribed by the City; and
- (4) The truck or other conveyance by which such delivery is made prominently displays at all times a license plate or symbol issued by the licensing authority to evidence such business license. Such plate or symbol shall identify the licensing authority by which it is issued, shall indicate that it evidences a license issued thereby, and shall specify the year or term for which it is effective.

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

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

6-01-200. Constructive Notice of Time Periods.

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

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

CHAPTER 6-02: LICENSE FEES

- 6-02-010. License Fees Required.**
- 6-02-020. License Fees Exemptions.**
- 6-02-030. License Fees Levied.**
- 6-02-040. Payment Dates for License Fees.**
- 6-02-050. Collection of Delinquent Fees.**
- 6-02-060. Records Maintained.**
- 6-02-070. Recordkeeping Required.**
- 6-02-080. Authority.**
- 6-02-090. Interstate Commerce.**

6-02-010. License Fees Required.

It is unlawful for any person to engage in business within the City without first paying all license fees required by this Title and any other required taxes, fees and assessments. All license fees imposed by this Title shall be in addition to any and all other license, permit, development or other applicable fees imposed by the City. All license fees shall be paid in full to the City prior to issuance of the business license.

6-02-020. License Fees Exemptions.

No license fees shall be imposed under this Title upon any person:

- (a) Engaged in business for solely religious, charitable, or other types of strictly nonprofit purpose that is tax exempt in such activities under the laws of the United States and the State of Utah;
- (b) Engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the State of Utah;
- (c) Transacting business as a trustee, receiver, or other public officer acting pursuant to judicial order or supervision; or
- (d) Not maintaining a place of business within the City who has paid a like or similar license tax or fee to some other taxing unit within the state, and which taxing unit exempts from its license tax or fee, by reciprocal agreement, businesses domiciled in the City and doing business in such taxing unit.

6-02-030. License Fees Levied.

- (a) There is hereby levied upon the business of every person engaged in business in the City at a place of business within the City, an annual business license fee as set forth in the City's Fee Schedule.
- (b) New business license applications shall be required to pay the business license fees as set forth in the City's Fee Schedule. Prorated fees may be allowed for partial calendar years in accordance with the Fee Schedule.

6-02-040. Payment Dates for License Fees.

- (a) Business license fees for new businesses shall be due and payable prior to issuance of the business license by the City. No business license shall be issued until the applicable fees are paid. Business license fees may be prorated for new businesses in accordance with the provisions of Section 6-02-030.

(b) Business license fees for renewal businesses shall be due and payable on or before January 2nd each year. If the license is not paid by January 31, a fifty percent (50%) penalty of the amount of the fee shall be added to the original amount due. If the fee is still not paid by February 28, a seventy-five percent (75%) penalty of the amount of the fee shall be added to the original amount due. If the fee is still not paid by March 31, a one hundred percent (100%) penalty of the amount of the fee shall be added to the original amount. No license shall be issued until all fees and penalties have been paid in full.

(c) Penalty fees may be appealed to the Business License Official who may, for good cause shown, refund all or part of the applicable penalty fee that has been paid. The decision of the Business License Official may be appealed to the City Manager as set forth in Chapter 6-03 of this Title.

6-02-050. Collection of Delinquent Fees.

All license fees due and unpaid under this Chapter and all penalties thereon shall constitute a debt to Centerville City, and shall be collected by court proceedings in the same manner as any other debt, which remedy shall be in addition to all other existing remedies.

6-02-060. Records Maintained.

All business license records shall be accessed and maintained by the City in accordance with the Utah Government Records Access and Management Act, as set forth in *Utah Code Ann.* §§ 63G-2-101, *et seq.*, as amended.

6-02-070. Recordkeeping Required.

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

6-02-080. Authority.

The provisions of this Chapter and the business license fees adopted herein are intended to comply with and are enacted pursuant to authority set forth in *Utah Code Ann.* § 10-1-203, as amended, and other applicable provisions of State law, authorizing municipalities to license for the purpose of regulation and revenue any business within the limits of the municipality.

6-02-090. Interstate Commerce.

None of the license fees provided for by this Chapter shall be applied so as to occasion an undue burden on interstate commerce. In any case where a license fee is believed by a licensee or applicant for license to place an undue burden upon such commerce, such person may apply to the Business License Official for an adjustment of the fee so that it shall not be discriminatory, unreasonable or unfair as to such commerce. Such application may be made within thirty (30) days after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, show the method of applicant's business, the gross volume or estimated gross volume of business, and such other information as the Business License Official may deem necessary in order to determine the extent, if any, of such undue burden on commerce. The Business License Official may designate a person to conduct an investigation, comparing the applicant's business with other businesses of like nature. The Business License Official, or his or her designee, shall make findings of facts; shall determine whether the fee fixed by this Chapter is discriminatory, unreasonable or unfair as to applicant's business; and shall determine, or if investigated by the Business License Official's designee, shall recommend to the Business License Official, a license fee for the applicant in an amount that is nondiscriminatory, reasonable and fair. If the Business License Official is satisfied that such license fee is the amount that the applicant should pay, the license fee shall

be fixed in such amount. If the regular license fee has already been paid, the Business License Official shall order a refund of the amount over and above the fee fixed by the Business License Official. In fixing the fee to be charged, the Business License Official shall have the power to use methods which will assure that the fee assessed shall be uniform with those assessed on businesses of like nature.

CHAPTER 6-03: REGULATION AND ENFORCEMENT

- 6-03-010. Inspections.**
- 6-03-020. Enforcement.**
- 6-03-030. Denial of Business License.**
- 6-03-040. Suspension or Revocation of Business License.**
- 6-03-050. Procedure for Suspension or Revocation.**
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- 6-03-090. Appeal of City Manager Decision.**
- 6-03-100. Licensing after Revocation.**
- 6-03-110. Validity of Business License during Appeal.**
- 6-03-120. Penalties.**

6-03-010. Inspections.

(a) The Business License Official may designate any division employee as an inspector and enforcement official for purposes of this Title. Any officer of the Centerville City Police Department is hereby deemed an authorized officer for purposes of inspecting or enforcing the provisions of this Title.

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

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

(d) The right of the City to inspect a place of business or other activity to ensure compliance under the terms of this Title is a condition of the issuance, continuance and renewal of a business license. The City may refuse to issue a license or may suspend or revoke a business license if an applicant or licensee fails or refuses to permit the City to inspect the business to ensure compliance with the terms of this Title.

6-03-020. Enforcement.

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

(b) The Business License Official shall have the authority to suspend or revoke a license without a hearing, for reasons provided for in this Title. However, the suspension or revocation shall not take effect until the time period for appealing the decision as set forth in this Chapter below has passed.

(c) The Business License Official may, on his/her own initiative or in response to complaints from the general public or any City department or division, investigate and gather evidence of violations of this Title or other circumstances which may give rise to a denial, suspension or revocation.

6-03-030. Denial of a Business License.

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

- (a) The applicant does not meet the qualifications for a license as provided under this Title;
- (b) For a new application, nonpayment of a returned check for the required license fees at the time the application is made. For a business license renewal application, nonpayment of the required license fees plus penalty three (3) months after it is due;
- (c) Any reviewing department, division or agency of the City provided for in this Title has disapproved the application pursuant to any applicable provision of the City Code;
- (d) False or incomplete information given on the application;
- (e) Noncompliance with any requirement or condition set by the Planning Commission under a conditional use permit or by the Board of Adjustment granting a variance or special exception;
- (f) Noncompliance with any City, State or federal statutes or any Health Department regulations governing the applicant's proposed business; or
- (g) Any other reason expressly provided for in this Title.

6-03-040. Suspension or Revocation of Business License.

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

- (a) The license does not meet the qualifications for a license as provided under this Title;
- (b) False or incomplete information given on an application;
- (c) The licensee has violated or is violating any provision of this Title or provision of the City Code, State or federal statutes or regulations or health department rules and regulations governing the licensee's business;
- (d) The licensee has obtained or aided another person to obtain a license by fraud or deceit;
- (e) The licensee has failed to pay any taxes or fees to the City when due;
- (f) The licensee has refused authorized representatives of the City access to the licensed premises for the purpose of an inspection or has interfered with such representatives while in the performance of their duty in making such inspection;
- (g) The licensee is not complying with a requirement or condition set by: the Planning Commission under a conditional use permit; by the Board of Adjustment in granting a variance or special exception; by the City Council; or by agreement;
- (h) Violation of this Title by the agents or employees of a licensee and violations of any other laws by the agents or employees committed while acting as an agent or employee of the licensee; or

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

6-03-050. Procedure for Suspension or Revocation.

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

6-03-060. Appeal Procedure.

(a) Any adversely affected applicant or licensee may appeal a decision of the Business License Official to deny, suspend or revoke a business license by filing a written notice of appeal with the City Manager within fifteen (15) days of receipt of the notice of denial, suspension or revocation.

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

(c) The appeal before the City Manager shall be considered an administrative proceeding and shall be held in accordance with the provisions of *Utah Code Ann. § 10-3-703.7* as an adjudicative hearing for a violation of a civil municipal ordinance. The City Manager is hereby appointed by the City as an administrative law judge to conduct administrative proceedings for appeals arising under this Title.

(d) An administrative proceeding may not be held for a civil violation that occurs in conjunction with another criminal violation as part of a single criminal episode that will be prosecuted in a criminal proceeding.

6-03-070. Administrative Proceeding.

(a) The administrative proceeding shall be considered a public meeting and held during regularly scheduled hours.

(b) The administrative proceeding shall provide due process for the parties, including, but not limited to, a hearing with notice and an opportunity to be heard.

(c) The administrative proceeding shall be recorded or otherwise documented so that a true and correct transcript may be made of its proceedings.

(d) The City Manager shall set the date, time and place for the administrative proceeding, which shall be scheduled as soon as reasonably possible and reasonable notice of the same shall be provided to the appellant.

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

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

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

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

(i) If the denial, suspension, or revocation appealed from is based on a finding by the Building Department or Fire District that the business was or would be in violation of any Construction Codes or on a finding by the County Health Department that the business was or would be in violation of any County Health Department regulations, then that finding shall be conclusive on the City Manager, and the City Manager's decision may be based only on whether the license was properly denied, suspended, or revoked because of the Building Department, Fire District or County Health Department finding.

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

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

6-03-080. Decision of the City Manager.

The City Manager, after hearing all the evidence, shall make a final administrative determination on the administrative proceeding. The City Manager may affirm, reverse or modify the decision of the Business License Official. The City Manager's final determination shall be issued in writing within fifteen (15) days from the date of hearing. The City Manager's final determination shall include written findings of fact and order or decision.

6-03-090. Appeal of City Manager Decision.

If the City Manager's final determination makes a finding of a violation of this Title, any person adversely affected by the determination may petition the district court for review of the administrative determination. In the petition to the district court, the petitioner may only allege that the administrative proceeding's decision was arbitrary, capricious or illegal. A petition to the district court is barred unless it is filed within thirty (30) days after the administrative determination is final. In accordance with *Utah Code Ann.* § 10-3-703.7, as amended, the City shall transmit to the reviewing district court, the record of its proceedings, including its findings, order, and a true and correct transcript of its proceedings. The district court may not accept or consider any evidence that is not included in the administrative proceeding's record unless the evidence was offered to the administrative proceedings and the district court determined that the evidence was improperly excluded by the administrative proceedings.

6-03-100. Licensing After Revocation.

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

6-03-110. Validity of Business License During Appeal.

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

6-03-120. Penalties.

Any violations of this Title shall be a Class B misdemeanor, punishable by fine, imprisonment, or both, as permitted by applicable laws of the State of Utah, or enforced through the civil enforcement procedures set forth in Chapter 1-06 of the Centerville Municipal Code, as amended. Each and every day of noncompliance with the terms and provisions of this Title shall constitute a separate violation. These penalty provisions are in addition to any of the administrative remedies set forth in this Chapter regarding denial, suspension or revocation of a business license.

CHAPTER 6-04: BEER LICENSES³

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6-04-010. Authority.

The provisions of this Chapter are enacted pursuant to authority set forth in *Utah Code Ann.* § 10-8-42, as amended, § 10-8-84, as amended, and applicable provisions of the Utah Alcoholic Beverage Control Act, as set forth in *Utah Code Ann.* §§ 32B-1-101, *et seq.*, as amended. The provisions and regulations set forth in this Chapter are an exercise of the police powers of the City for the protection of the public health, safety, welfare, and morals.

6-04-020. Definitions.

The following words and phrases used in this Chapter shall have the following meanings. The definitions set forth herein are intended to follow and be consistent with similar definitions set forth in Section 32B-1-102, as amended, of the Utah Alcoholic Beverage Control Act. To the extent used in this Chapter, all other terms set forth in Section 32B-1-102, as amended, are hereby adopted by reference as if more particularly set forth herein.

(a) "Alcoholic Beverage" means "beer" or "liquor," as such terms are more particularly defined in this Section.⁴

(b) "Alcoholic Product" means a product that contains at least .5% of alcohol by volume, and is obtained by fermentation, infusion, decoction, brewing, distillation, or other process that uses liquid or combinations of liquids, whether drinkable or not, to create alcohol in an amount equal to or greater than .5% of alcohol by volume. Alcoholic product includes an "alcoholic beverage" as more particularly defined in this Section.

(c) "Beer" means a product that contains at least .5% of alcohol by volume, but not more than 4% of alcohol by volume or 3.2% by weight; and is obtained by fermentation, infusion, or decoction of

³ Amended by Ordinance. No. 2012-05, February 21, 2012

⁴ Amended by Ordinance No. 2012-10, April 10, 2012

malted grain. Beer may or may not contain hops or other vegetable products. Beer includes a product that contains alcohol in the percentages described herein and is referred to as beer, ale, porter, stout, lager, or a malt or malted beverage. Beer does not include a "flavored malt beverage" as more particularly defined in this Section.

(d) "Beer Retailer" means a business that is engaged, primarily or incidentally, in the retail sale of beer to a patron, whether for consumption on or off the premises; and to whom a license is issued for an off-premise beer retailer or for an on-premise beer retailer, in accordance with the provisions of this Chapter.

(e) "Church" means a building set apart for the purpose of worship, in which religious services are held, with which clergy is associated, and that is tax exempt under the laws of the State of Utah.

(f) "Commission" means the Utah Alcoholic Beverage Control Commission.

(g) "Community location" means a public or private school, a church, a public library, a public playground, or a public park.

(h) "Flavored malt beverage" means a beverage that contains at least .5% alcohol by volume, that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of a beer as described in 27 C.F.R. Sec. 25.55, as amended, to which is added a flavor or other ingredient containing alcohol, except for a hop extract, and for which the producer is required to file a formula for approval with the U.S. Alcohol and Tobacco Trade and Tax Bureau pursuant to 27 C.F.R. Sec. 25.55, as amended, or that is not exempt under Subdivision (f) of 27 C.F.R. Sec. 25.55, as amended. Flavored malt beverage is considered "liquor" for purposes of this Chapter.

(i) "Heavy beer" means a product that contains more than 4% alcohol by volume and is obtained by fermentation, infusion, or decoction of malted grain. Heavy beer is considered "liquor" for the purposes of this Chapter.

(j) "Licensee" means any person granted a license or a permit by the City under the provisions of this Chapter. This term shall also include staff of the Licensee as more particularly defined in this Section.

(k) "Licensed Premises" means any room, house, building, structure or place occupied by any person licensed to sell beer on any premises under this Title; provided, that in any multi-roomed establishment, an applicant for an On-Premise Beer Retailer - Restaurant license shall designate a room or portion of the building of such business for the sale of beer, which portion so specifically designated in the application and in the license issued pursuant thereto shall be the licensed premises. Multiple dining facilities located in one building and owned or leased by one licensed applicant shall be deemed to be only one licensed premises.

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

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

(n) "Premises" means a building, enclosure, or room used in connection with the storage, sale, furnishing, consumption, manufacture, or distribution, of an alcoholic product, unless otherwise defined by law or rules adopted by the Commission.

(o) "Restaurant" means a business location at which a variety of foods are prepared; at which complete meals are served to the general public; and that is engaged primarily in serving meals to the general public.

(p) "School" means a building used primarily for the general education of minors. School does not include a nursery school, an infant day care center, or a trade or technical school.

(q) "Sell" or "offer for sale" means any transaction, exchange, or barter whereby, for consideration, an alcoholic product is either directly or indirectly transferred, solicited, ordered, delivered for value, or by any means or under any pretext is promised or obtained, whether done by a person as a principal, proprietor, or as staff, unless otherwise defined in this Chapter or the rules adopted by the Commission.

(r) "Staff" means an individual who engages in activity governed by this Chapter: on behalf of a business, including a licensee, permittee, or certificate holder; at the request of the business, including a licensee, permittee, or certificate holder; or under the authority of the business, including a licensee, permittee, or certificate holder. Staff includes an officer, director, employee, personnel management, an agent of the licensee (including a managing agent), an operator, or representative.

(s) "State Store" means a facility for the sale of packaged liquor located on premises owned or leased by the state and operated by state employees. "State store" does not include a licensee, permittee, or package agency.

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

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

6-04-030. Classification of Beer Retailer Licenses.

This City is authorized to license and regulate the retail sale of beer within the City for off-premise or on-premise consumption in accordance with applicable provisions of the Utah Alcoholic Beverage Control Act. The City shall issue the following classification of beer licenses for the retail sale of beer within the City for off-premise or on-premise consumption in accordance with the terms and conditions of this Chapter. No other beer retailer licenses shall be permitted or granted by the City.

- (a) Off-Premise Beer Retailer;
- (b) On-Premise Beer Retailer - Restaurant; and
- (c) Temporary Special Event.

6-04-040. Beer License Application.

Before a person may store, sell, offer for sale, furnish or permit consumption of beer for on-premise or off-premise consumption within the City, the person shall first obtain the required classification of beer license from the City. Any person desiring a beer license from the City shall file a completed application with the Business License Official on forms provided by the City. The application shall be accompanied by the following:

- (a) The applicable nonrefundable beer license application fee in the amount specified in the City Fee Schedule for the type of license for which the person is applying;
- (b) The applicable beer license fee in the amount specified in the City Fee Schedule for the type of license for which the person is applying, which license fee is refundable if the license is not issued;
- (c) A copy of the applicant's current business license;
- (d) Evidence of proximity to any community location in accordance with applicable proximity requirements for the type of license for which the person is applying;
- (e) A floor plan, and boundary map where applicable, of the premises to be licensed, including any consumption area, and the area where the applicant proposes to keep, store, sell, offer for sale, or furnish beer;
- (f) In the case of an applicant that is an entity, partnership, corporation, or limited liability company, proper verification evidencing that the person or persons signing the license application are authorized to so act on behalf of the entity, partnership, corporation, or limited liability company;
- (g) Any other information the City may require to sufficiently evaluate the merits of the application;
- (h) If the application is for an On-Premise Beer Retailer – Restaurant license, the following shall also be required to be submitted with the application:
 - (1) Evidence that the licensee is carrying public liability insurance in an amount and form satisfactory to the City;
 - (2) Evidence that the licensee is carrying dramshop insurance coverage of at least one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate; and
 - (3) A signed consent form stating that the licensee will permit any authorized representative of the Commission, City, law enforcement or health department unrestricted right to enter the premises of the licensee; and
- (i) If the application is for a Temporary Special Event license, the following shall also be required to be submitted with the application:
 - (1) The times, dates, location, estimated attendance, nature, and purpose of the temporary special event; and
 - (2) A signed consent form stating that the licensee will permit any authorized representative of the Commission, City, law enforcement or health department unrestricted right to enter the premises during the temporary special event.

6-04-050. Applicant Qualifications.

Applicant qualification requirements for the issuance of a beer license from the City shall be the same as the applicant requirements set forth in *Utah Code Ann.* § 32B-1-304, as amended, regarding applicant requirements for the issuance of a State license. The City shall not issue a beer license to any person who has been convicted of any of the crimes enumerated therein or fails to meet the qualifications set forth therein. The provisions of Section 32B-1-304, as amended, are adopted by this reference as if fully set forth herein. Any references therein to “commission” or “director” shall refer to the “City” and “Business License Official,” respectively. The City may immediately suspend or revoke a beer license in accordance with the provisions, procedures and grounds set forth in Section 32B-1-304, as amended. All applicants for a beer license shall also meet the age restrictions set forth in *Utah Code Ann.* § 32B-1-304, as amended, prohibiting the issuance of a license to a minor.

6-04-060. Criminal Background Checks.

(a) Required. Unless otherwise provided in Subsection (e), the following individuals shall be required to submit a fingerprint card in a form acceptable to the City and consent to a criminal background check by the Utah Bureau of Criminal Investigation and the Federal Bureau of Investigation in accordance with the provisions of this Section:

- (1) An individual applying for a beer license from the City;
- (2) An individual who with regard to an entity that is applying to the City for a beer license is a partner, managing agent, manager, officer, director, 20% stockholder of a corporation, or 20% member owner of a limited liability company;
- (3) An individual employed to act in a supervisory or managerial capacity for the licensee; and
- (4) An individual who becomes involved in an entity in a capacity listed herein on or after the day on which the entity receives a beer license from the City.

(b) Procedures. Criminal background checks shall be conducted in accordance with the provisions of *Utah Code Ann.* § 32B-1-307, as amended, regarding background checks for State issued license.

(c) Use of Information. Any criminal background checks conducted by the City pursuant to this Section shall comply with the provisions and restrictions set forth in *Utah Code Ann.* § 32B-1-303, as amended, regarding authorized use of criminal history information.

(d) Cost of Background Check. The individual required to submit a fingerprint card and submit to a criminal background check as provided herein shall pay for the cost of such fingerprint card and criminal background check.

(e) State Criminal Background Check. In the event that any individual listed in Subsection (a) has been issued a State beer or alcohol license in conjunction with the application for a City-issued beer license, the State conducted criminal history background check on such individual shall be deemed sufficient for purposes of applying for a City-issued beer license; provided, such criminal history background check has been conducted on the subject individual within sixty (60) days from the date of application for the City-issued license and such criminal history background check has been deemed acceptable for purposes of being granted a State-issued beer or alcohol license in accordance with applicable provisions of *Utah Code Ann.* § 32B-1-306, as amended.

6-04-070. Review and Issuance of License.

(a) Staff Review. Upon receipt of an application for a beer retailer license, the Business License Official shall review the application and gather information regarding the application and applicant qualifications. The Business License Official shall also distribute copies of the application and all other necessary information to appropriate departments of the City for their review and comment. Upon completion of review and investigation of the application and applicant qualifications, the Business License Official shall determine whether or not to grant the requested license based on the criteria set forth in this Section and applicable requirements of this Chapter.

(b) Criteria. Before issuing a beer license under the provisions of this Chapter, the Business License Official shall determine that the applicant has complied with all qualifications and requirements for making application for the applicable license and that the application is complete. The Business License Official shall also determine that the person applying for the license is not disqualified under the provisions of *Utah Code Ann.* § 32B-1-304, as amended, and that the application complies with the specific licensing requirements specified in this Chapter for the type of license for which the person is applying.

(c) No beer license shall be issued to any person that is disqualified under the provisions of *Utah Code Ann.* § 32B-1-304, as amended, or any person who is not lawfully present in the United States.

6-04-080. Off-Premise Beer Retailer.

(a) Off-Premise Beer Retailer License. The City is authorized to license and regulate the retail sale of beer for off-premise consumption in accordance with and subject to the restrictions of the Utah Off-Premise Beer Retailer Act, as set forth in *Utah Code Ann.* §§ 32B-7-101, *et seq.*, as amended. An Off-Premise Beer Retailer license issued by the City shall authorize the licensee to sell beer on the licensed premises for consumption off-premises, in accordance with applicable provisions of this Chapter and State law.

(b) Local License Required. Before a person may store, sell, or offer for sale beer at retail for off-premise consumption, the person shall obtain an Off-Premise Beer Retailer license from the City.

(c) Operational Restrictions. An Off-Premise Beer Retailer licensee shall comply with the general operational requirements set forth in *Utah Code Ann.* § 32B-7-202, as amended, regarding, among other regulations, the purchase of beer, the sale of beer by minors, signage and display requirements, staff identification badges, and recordkeeping.

(d) Alcohol Training and Education. The following persons shall be required to have a valid record that the individual completed an alcohol training and education seminar in accordance with the provisions of *Utah Code Ann.* § 32B-5-404, as amended: any individual who directly supervises the sale of beer to a patron for consumption off the premises of the off-premise beer retailer; or any individual who sells beer to a patron for consumption off the premises of the off-premise beer retailer. The City may immediately suspend the license of an Off-Premise Beer Retailer licensee that allows staff to directly supervise the sale of beer or to sell beer to a patron without having a valid record of training as required by law.

(e) Administrative Penalties for Sale to Minors. In addition to any criminal penalty that may be imposed, an individual may be subject to administrative penalties imposed by the City in accordance with the provisions and procedures of the Off-Premise Beer Retailer Enforcement Act, as set forth in *Utah Code Ann.* §§ 32B-7-301, *et seq.*, as amended, for persons who have completed the required alcohol training and are thereafter found in violation of any law involving the sale of an alcoholic beverage to a minor. Administrative penalties may also be imposed against the licensee for such violations in accordance with the provisions and procedures of *Utah Code Ann.* § 32B-7-303, as amended.

(f) Employee Identification. Staff of an Off-Premise Beer Retailer licensee who directly supervises the sale of beer or who sells beer to a patron for consumption off-premises shall comply with the identification badge requirements set forth in *Utah Code Ann.* § 32B-7-202, as amended. Each licensee shall maintain a record of all current staff identification badges in accordance with applicable provisions of *Utah Code Ann.* § 32B-7-202, as amended. The City may impose a fine of \$250 against any Off-Premise Beer Retailer licensee that does not comply or require its staff to comply with this Subsection.

(g) On-Premises Consumption Prohibited. It shall be unlawful for an Off-Premise Beer Retailer licensee to permit the consumption of beer on any Off-Premise Beer Retailer licensed premises.

(h) Container Restrictions. An Off-Premise Beer Retailer licensee shall not possess, sell, offer for sale, or furnish beer in a container larger than two (2) liters.

(i) Sale of Beer by Minors. A minor may not sell beer on the premises of a beer retailer for off-premise consumption unless the sale is done under the supervision of a person twenty-one (21) years of age or older who is on the premises and the minor is at least sixteen (16) years of age.

(j) Hours of Sale. An Off-Premise Beer Retailer licensee may sell beer beginning at the hour of 7:00 a.m. and ending at the hour of 1:00 a.m.

(k) Sales Restrictions. Beer may not be sold, delivered, or furnished to any:

(1) Minor;

(2) Person actually, apparently, or obviously under the influence of any intoxicating beverage or controlled substance;

(3) Known habitual drunkard; or

(4) Known interdicted person.

(l) Advertising Sale. It shall be unlawful for any Off-Premise Beer Retailer licensee to advertise the sale of beer in violation of the Utah Alcoholic Beverage Control Act.

(m) Limit on Beer Sales. Each Off-Premise Beer Retailer licensee shall limit beer sales to no more than thirty percent (30%) of its total business.

(n) Records Requirements. All holders of an Off-Premise Beer Retailer license shall maintain records separately showing quarterly expenditures and sales for beer and non-beer items. Each licensee shall retain all invoices, vouchers, sales slips, receipts and other records disclosing all expenditures and purchases from all suppliers. Such records shall be available for inspection and audit by the City or its representatives and maintained for a period of three (3) years. Failure to properly maintain such records for inspection and audit shall be cause for revocation of the Off-Premise Beer Retailer license.

(o) Gross Sales Percentages. If any inspection or audit discloses that the sales of beer on the licensed premises are in excess of thirty percent (30%) for any quarterly period, the City shall immediately put the licensee on a probationary status and closely monitor the licensee's beer sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the City that the sales of beer meet or are less than thirty percent (30%) of total business sales. Failure of the licensee to provide satisfactory proof of the required beer percentage within the probationary period shall result in issuance of an order to show cause by the City to determine why the license should not be revoked by the City.

(p) Compliance. Each person granted an Off-Premise Beer Retailer license and the staff of such licensee shall abide by the conditions and requirements set forth in this Chapter and State law requirements. Failure to comply may, in addition to criminal or civil penalties, result in suspension or revocation of the license or other disciplinary action taken against individual staff.

6-04-090. On-Premise Beer Retailer - Restaurant.

(a) On-Premise Beer Retailer – Restaurant. The City is authorized to license and regulate the retail sale of beer for on-premise consumption in accordance with and subject to the restrictions of the Utah Alcoholic Beverage Control Act, including, but not limited to, *Utah Code Ann.* §§ 32B-6-704, *et seq.*, as amended. An On-Premise Beer Retailer - Restaurant license issued by the City shall authorize the licensee to sell beer on the licensed premises for on-premise consumption, in accordance with applicable provisions of this Chapter and State law. Only bona fide restaurants shall be entitled to an On-Premise Beer Retailer – Restaurant licenses.

(b) State and Local License Required. Before a restaurant may sell beer at retail for on-premises consumption, it must first obtain an On-Premise Beer Retailer - Restaurant license from the City and the required State license from the Utah Alcoholic Beverage Control Commission. Issuance of the On-Premise Beer Retailer - Restaurant license by the City shall be deemed local consent for the issuance of a State Beer-Only Restaurant License. Pursuant to *Utah Code Ann.* § 32B-6-704, as amended, the suspension or revocation of a licensee’s State license shall automatically prohibit the licensee from continuing to operate under the City license.

(c) Operational Restrictions. An On-Premise Beer Retailer - Restaurant licensee shall comply with the general provisions and restrictions set forth in *Utah Code Ann.* § 32B-6-901, *et seq.*, as amended, regarding licensing and operational requirements for beer-only restaurant licenses, and applicable provisions of *Utah Code Ann.* § 32B-5-301, *et seq.*, regarding operational requirements for on-premise retailer licensees. A person granted an On-Premise Beer Retailer - Restaurant license from the City and staff of the licensee shall comply with all of the conditions and requirements set forth herein. The provisions of State law referenced in this Section are adopted by reference as if fully set forth herein.

(d) Location Restrictions. Except as otherwise provided in Subsection (e), the premises of an on-premise beer retailer license may not be located within six hundred (600) feet of a community location as measured from the nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the property boundary of community location or within two hundred (200) feet of a community location measured in a straight line from the nearest entrance of the proposed beer retailer premises to the nearest property boundary of the community location.

(e) Variance. The City Council may approve or give written consent to the Commission to authorize a variance to reduce the proximity requirements of Subsection (d) in accordance with the procedures and criteria set forth in *Utah Code Ann.* § 32B-1-202, as amended.

(f) Alcohol Training and Education. The following persons shall be required to have a valid record that the individual completed an alcohol training and education seminar in accordance with the provisions of *Utah Code Ann.* § 32B-5-403, as amended: any individual who manages operations at the licensed premises for consumption on the licensed premises; any individual who supervises the furnishing of a beer to a patron for consumption on the licensed premises; or any individual who serves a beer to a patron for consumption on the licensed premises. The City may immediately suspend the license of an On-Premise Beer Retailer – Restaurant licensee if any of the individuals set forth herein fail to complete an alcohol training seminar as required by law.

(g) Container Restrictions. An On-Premise Beer Retailer – Restaurant licensee shall not sell, offer for sale, or furnish beer for on-premise consumption in a size of container that exceeds two (2) liters or to an individual patron in a size of container that exceeds one (1) liter.

(h) Hours of Sales. Hours for beer sales for on-premise beer retailers is governed by State law, pursuant to which the hours of sale are from 11:30 a.m. until 1:00 a.m.

(i) Total Business Sales. An On-Premise Beer Retailer – Restaurant shall maintain at least seventy percent (70%) of its total restaurant business from the sale of food, exclusive of service charge.

(j) Records. All holders of an On-Premise Beer Retailer - Restaurant license shall maintain records separately showing quarterly expenditures and sales for beer and food. Each licensee shall retain all invoices, vouchers, sales slips, receipts and other records disclosing all expenditures and purchases from all suppliers. Such records shall be maintained in accordance with provisions of *Utah Code Ann.* § 32B-5-302, regarding on-premise beer retailer record requirements. Such records shall be available for inspection and audit by the City or its representatives and maintained for a period of three (3) years. Failure to properly maintain such records for inspection and audit shall be cause for revocation of the On-Premise Beer Retailer - Restaurant license.

(k) Restaurant Business Percentages. If any inspection or audit discloses that the sales of food are less than seventy percent (70%) for any quarterly period, the City shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the City that the sales of food meet or exceed seventy percent (70%). Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the City to determine why the license should not be revoked by the City.

(l) Compliance. Each person granted an Off-Premise Beer Retailer - Restaurant license and the staff of such licensee shall abide by the conditions and requirements set forth in this Chapter and State law requirements. Failure to comply may, in addition to criminal or civil penalties, result in suspension or revocation of the license or other disciplinary action taken against individual staff.

6-04-100. Temporary Special Event.

(a) Temporary Special Event License. A Temporary Special Event license shall authorize the licensee to sell, offer for sale, or furnish beer at retail for on-premise consumption at a temporary event that does not last longer than thirty (30) days and shall authorize the storage, service and consumption of beer at such temporary event.

(b) State and Local License Required. Before a person may sell beer at retail for on-premises consumption at a special event, it must first obtain a Temporary Special Event license from the City and the required license or permit from the Utah Alcoholic Beverage Control Commission or its authorized designee. Pursuant to *Utah Code Ann.* § 32B-9-404, as amended, the suspension or revocation of a licensee's State license shall automatically prohibit the licensee from continuing to operate under the City license.⁵

(c) General Restrictions. A Temporary Special Event licensee shall comply with the general restrictions set forth in *Utah Code Ann.* § 32B-9-204, as amended.

(d) Operational Restrictions. A person granted a Temporary Special Event license from the City and the staff of the licensee shall comply with all of the general operations requirements set forth in *Utah Code Ann.* § 32B-9-204, as amended, for event permits, and *Utah Code Ann.* § 32B-9-406, as amended, regarding specific operational requirements for temporary event beer permits. The provisions of Section 32B-9-406, as amended, are adopted by this reference as if fully set forth herein.

⁵ Amended by Ordinance No. 2012-10, April 3, 2012

(e) Compliance. Each person granted a Temporary Special Event license and the staff of the licensee shall abide by the conditions and requirements set forth in this Chapter and all State law requirements. Failure to comply may result in suspension or revocation of the license or other disciplinary action taken against staff or the licensee.

(f) Records. All holders of a Temporary Special Event license shall maintain records which shall disclose the gross sales of beer sold for consumption during the temporary event. Each licensee shall retain all invoices, vouchers, sales slips, receipts and other records and other commodity purchases from all suppliers. Such records shall be available for inspection and audit by the City license official at any time during the temporary special event and for a period of eighteen (18) months after the end of the temporary event. Failure to properly maintain such records for such inspection and audit shall be cause for revocation of the license. Licensees shall also comply with the records requirements set forth in *Utah Code Ann.* § 32B-9-406, as amended.

(g) Restriction on Number. No person may be issued more than three (3) Temporary Special Event licenses in any calendar year.

6-04-110. General Restrictions.

(a) It is unlawful for any person to sell beer within the City without first having procured a license therefor from the City as provided in this Chapter and paying the license fee and any other applicable fees as set forth in the City Fee Schedule.

(b) It is unlawful for any person to sell beer after the revocation of a license issued pursuant to this Chapter.

(c) A separate license shall be required for each place of sale and the license shall at all times be conspicuously displayed in the place to which it shall refer or for which it shall be issued. It shall be unlawful for any licensee to violate any of the terms of his or her license.

(d) Any person granted a beer license under the provisions of this Chapter, and staff of such licensee, shall comply with the provisions of this Chapter and all applicable State statutes, rules and regulations regarding retail licensees, including, but not limited to applicable provisions of the Utah Alcoholic Beverages Control Act, as more particularly set forth in *Utah Code Ann.* §§ 32B-1-101, *et seq.*, as amended, and the rules and regulations of the Utah State Alcoholic Beverage Control Commission promulgated pursuant thereto, including, but not limited to, the rules set forth in Utah Administrative Code R81, as amended.

(e) Licensees and licensed premises shall meet and comply with applicable Zoning Ordinance regulations and restrictions and any other applicable City Ordinance requirements.

6-04-120. Reserved.

6-04-130. Fees.

Applications for beer licenses under this Chapter shall be accompanied by the applicable application and license fees set forth in the City Fee Schedule.

6-04-140. Expiration and Renewal.

(a) Expiration. All beer licenses issued or renewed pursuant to the provisions of this Chapter shall expire on December 31st of each year; provided, Temporary Special Event licenses shall expire on the date set forth in the temporary license.

(b) Application for Renewal. Each licensee desiring to renew a beer license granted pursuant to this Chapter shall by no later than December 31st of each year file with the Business License Official a completed annual renewal application for renewal of his or her license on forms provided by the City. Each application for renewal shall be complete and shall be accompanied by the applicable renewal fee as set forth herein.

(c) Fees for Renewal. The fee for renewal of a beer license shall be set forth in the City Fee Schedule.

(d) Failure to Comply. Failure to comply with the renewal requirements set forth herein shall result in an automatic forfeiture of the license effective on the date the existing license expires. Any licensee who fails to obtain a license renewal within the required time limit shall close the licensed premises on or before the expiration date of the then license and shall keep the premises closed for any and all business for the sale of beer until the date a new license is issued by the City.

(e) Additional Fees. In addition to the forfeiture provisions of Subsection (d), in the event renewal fees are not received by the City by January 31st of the year when due, the licensee must pay a penalty of fifty percent (50%) of the fees due as part of the renewal fee, in addition to any applicable beer license fees. In the event the renewal fees are not received by the City by February 28th of the year when due, the license shall be deemed forfeited and the licensee must reapply for a beer license and pay all applicable application and license fees.

6-04-150. Sale or Transfer of License.

(a) No Sale of License. A person granted a beer license under the provisions of this Chapter shall not sell, transfer, assign, exchange, barter, give or attempt in any way to dispose of the license to another person whether for monetary gain or not. A beer license issued hereunder has no monetary value for the purpose of any type of disposition.

(b) No Location Transfer. A person granted a beer license under the provisions of this Chapter shall not transfer the license issued pursuant to the provisions of this Chapter from one location to another.

(c) No Ownership Transfer. Except for corporate or company ownership changes set forth in Subsections (d)(2) and (d)(3), no ownership transfers of any license issued under the provisions of this Chapter shall be permitted.

(d) Notification of Change. In addition to the ownership transfer prohibitions of this Section, all licensees shall be required to notify the City immediately of any change in ownership of the licensee or persons associated with the licensee if the licensee is an entity. In order to ensure compliance with this Section, the City may suspend or revoke a beer license if the licensee does not immediately notify the City of any change in:

- (1) ownership of the premises of the retail license;
- (2) for a corporate owner, the:
 - (i) corporate officers or directors of the retail licensee; and
 - (ii) shareholders holding at least twenty percent (20%) of the total issued and outstanding stock of the corporation; or
- (3) for a limited liability company:

- (i) managers of the limited liability company; or
- (ii) members owning at least twenty percent (20%) of the limited liability company.

6-04-160. Local Consent - Limited.

(a) Restaurant Liquor Licenses. The issuance of an On-Premise Beer Retailer – Restaurant license under the provisions of this Chapter shall be required as a prerequisite for any restaurant seeking a State liquor license, including, but not limited to, a State-issued Beer-Only Restaurant License, Full-Service Restaurant License, or Limited-Service Restaurant License. The issuance of an On-Premise Beer Retailer – Restaurant license by the City shall be deemed local consent for purposes of the Utah Alcoholic Beverages Control Act requiring such consent for the issuance of any of the following State-issued licenses:

- (1) Beer-Only Restaurant License;
- (2) Full-Service Restaurant License; and
- (3) Limited-Service Restaurant License.

(b) Temporary Special Event. This issuance of a Temporary Special Event permit under the provisions of this Chapter shall be required as a prerequisite for any person seeking a State-issued Temporary Beer Event Permit. This issuance of a Temporary Special Event permit by the City shall be deemed local consent for purposes of the Utah Alcoholic Beverages Control Act requiring such consent for the issuance of the State-issued Temporary Beer Event Permit.

(c) Local Consent Form. The Business License Official is hereby authorized to sign and execute the Local Consent form for State licensing of restaurants complying with the provisions of Subsection (a) and temporary beer events complying with the provisions of Subsection (b).

(d) No Other Local Consent. The City shall not grant local consent for any State issued liquor licenses within the City other than those liquor licenses enumerated in Subsections (a) regarding restaurant liquor licenses, and Subsection (b) regarding temporary beer events.

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

6-04-170. State Offenses.

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

6-04-180. Violations.

Unless otherwise expressly provided in this Chapter or by State law, any violations of this Chapter be deemed a class B misdemeanor. Any violations of this Chapter shall be subject to criminal and/or civil penalties and procedures, including, but not limited to penalty provisions set forth in Section 6-03-120, as amended. In addition to the criminal penalties provided in Section 6-03-120, upon a defendant's conviction of any offense defined in this Chapter, the court may order restitution, defense costs, and other applicable

criminal penalties as set forth in *Utah Code Ann.* § 32B-4-305, as amended. In addition to criminal or civil penalties, any violations of this Chapter shall also be subject to administrative enforcement action such as suspension, probation or revocation of beer license, suspension, probation, or revocation of business license.

6-04-190. Severability.

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

CHAPTER 6-5. SEXUALLY ORIENTED BUSINESSES

6-5-010. TITLE FOR CITATION. The provisions codified in this Chapter shall be known and may be referred to as the "Sexually-Oriented Business and Employee Licensing Ordinance."

6-5-020. PURPOSE OF PROVISIONS. It is the purpose and object of this Chapter that the City establish reasonable and uniform regulations governing the time, place, and manner of operation of sexually-oriented businesses and their employees in the 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.

6-5-030. APPLICATION OF PROVISIONS. This Chapter imposes regulatory standards and license requirements on certain business activities which are characterized as sexually-oriented businesses, and certain employees of those businesses characterized as sexually-oriented business employees. Except where the context or specific provisions require, this Chapter does not supersede or nullify any other related ordinances, including, but not limited to, those codified in other chapters and provisions of the Business Regulations of the City.

6-5-040. DEFINITIONS. For the purpose of this Chapter, the following words shall have the following meanings:

- (1) Adult Bookstore, Adult Novelty Store or Adult Video Store means a commercial establishment which has a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale or rental for any form of consideration, of any one or more of the following:
 - (a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas";
 - (b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others;
 - (c) An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas", and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities."
- (2) Adult Business means an adult motion picture theater, adult bookstore, or adult video store.
- (3) Adult Motion Picture Theater means a commercial establishment which:
 - (a) Excludes minors from the showing of two (2) consecutive exhibitions (repeated showings of any single presentation shall not be considered a consecutive exhibition); or

- (b) As its principal business, shows, for any form of consideration, 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.
- (4) Adult Theater means a theater, concert hall, auditorium, or similar commercial establishment which:
 - (a) Holds itself out as such a business; or
 - (b) Excludes minors from the showing of two (2) consecutive exhibitions (repeated performance of the same presentation shall not be considered a consecutive exhibition); or
 - (c) As its principal business, features persons who appear in live performances in state of semi-nudity or which are characterized by the exposure of specified anatomical areas or by specified sexual activities.
- (5) Employ means hiring an individual to work for pecuniary or any other form of compensation, whether such person is hired on the payroll of the employer, as an independent contractor, as an agent, or in any other form of employment relationship.
- (6) Escort means any person who, for pecuniary compensation, dates, socializes, visits, consorts with, or accompanies or offer to date, consort, socialize, visit, or accompany another or others to or about social affairs, entertainment, or places of amusement, or within any place of public or private resort or any business or commercial establishment or any private quarters. Escort shall not be construed to include persons who provide business or personal services, such as licensed private nurses, aides for the elderly, or handicapped, social secretaries or similar service personnel whose relationship with their patron is characterized by a bona fide contractual relationship having a duration of more than twelve hours and who provide a service not principally characterized as dating or socializing. Escort shall also not be construed to include persons providing services such as singing telegrams, birthday greetings, or similar activities characterized by appearances in a public place, contracted for by a party other than the person for whom the service is being performed and of a duration not longer than one hour.
- (7) Escort Service means an individual or entity who, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce patrons to escorts.
- (8) Escort Service Runner means any third person, not an escort, who, for pecuniary compensation, acts in the capacity of an agent or broker for an escort service, escort, or patron by contacting or meeting with escort services, escorts or patrons at any location within the City, whether or not such third person is employed by such escort service, escort, patron, or by another business, or is an independent contractor or self-employed.
- (9) Nudity means a state of dress in which the female breast, below a point immediately above the top of the areola or male or female genitals, pubic region, or anus are covered by less than the covering required in the definition of semi-nude.
- (10) Outcall Services means services of a type performed by a sexually-oriented business employee outside of the premises of the licensed sexually-oriented business, including but not limited to escorts, models, dancers and other similar employees.

- (11) Patron means any person who contracts with or employs any escort services or escort or the customer of any business licensed pursuant to this Chapter.
- (12) Pecuniary Compensation means any commission, fee, salary, tip, gratuity, hire, profit, reward, or any other form of consideration.
- (13) Person means any person, unincorporated association, corporation, partnership, or other legal entity.
- (14) Semi-nude means a state of dress in which opaque clothing covers no more than the female breast below a point immediately above the top of the areola; and the male or female genitals, pubic region, and anus shall be fully covered by an opaque covering no narrower than four inches (4") wide in the front and five inches (5") wide in the back, which shall not taper to less than one inch (1") wide at the narrowest point.
- (15) Semi-nude Dancing Agency means any person, agency, firm, corporation, partnership, or any other entity or individual which furnishes, books, or otherwise engages or offers to furnish, book, or otherwise engage the service of a professional dancer licensed pursuant to this Chapter for performance or appearance at a business licensed for adult theaters.
- (16) Semi-nude Entertainment Business means a business, including adult theater, where employees perform or appear in the presence of patrons of the business in a state of semi-nudity. A business shall also be presumed to be a semi-nude entertainment business if the business holds itself out as such a business.
- (17) Sexually-Oriented Business means semi-nude entertainment businesses, sexually-oriented outcall services, adult businesses, and semi-nude dancing agencies, as defined in this Chapter.
- (18) Sexually-Oriented Business Employees means those employees who work on the premises of a sexually-oriented business in activities related to the sexually-oriented portion of the business. This includes all managing employees, dancers, escorts, models, and other similar employees, whether or not hired as employees, agents, or as independent contractors. Employees shall not include individuals whose work is unrelated to the sexually-oriented portion of the business, such as janitors, bookkeepers, and similar employees. Sexually-oriented business employees shall not include cooks, serving persons, and similar employees, except where they may be managers or supervisors of the business. All persons making outcall meetings under this Chapter, including escorts, models, guards, escort runners, drivers, chauffeurs, and other similar employees, shall be considered sexually-oriented business employees.
- (19) Specified Anatomical Areas means 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.
- (20) Specified Sexual Activities means:
 - (a) Acts of:
 - (i) Masturbation,
 - (ii) Human sexual intercourse,
 - (iii) Sexual copulation between a person and a beast,
 - (iv) Fellatio,

- (v) Cunnilingus,
 - (vi) Bestiality,
 - (vii) Pederasty,
 - (viii) Buggery, or
 - (ix) Any anal copulation between a human male and another human male, human female, or beast;
- (b) Manipulating, caressing or fondling by any person of:
- (i) The genitals of a human,
 - (ii) The pubic area of a human,
 - (iii) The uncovered female nipple and areola;
- (c) Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.

6-5-050. OBSCENITY AND LEWDNESS - STATUTORY PROVISIONS. Notwithstanding anything contained in this Chapter, nothing in this Chapter shall be deemed to permit or allow the showing or display of any matter which is contrary to the provisions of Title 13 of this Code or other applicable federal or State statutes prohibiting obscenity.

6-5-060. LOCATION AND ZONING RESTRICTIONS. It is unlawful for any sexually-oriented business to do business at any location within the City not zoned for such business. Sexually-oriented businesses licensed as adult business or semi-nude entertainment businesses pursuant to this Chapter shall only be allowed in areas zoned for their use pursuant to Title 12 of the Centerville City Code.

6-5-070. BUSINESS LICENSE REQUIRED. It is unlawful for any person to operate a sexually-oriented business, as specified herein, without first obtaining a sexually-oriented business license. The business license shall specify the type of business for which it is obtained.

6-5-080. EXEMPTIONS FROM LICENSE REQUIREMENTS. The provisions of this Chapter shall not apply to any sex therapist or similar individual licensed by the State 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 for activities in the classroom.

6-5-090. LEGITIMATE ARTISTIC MODELING. The City does not intend to unreasonably or improperly prohibit legitimate modeling which may occur in a state of nudity for purposes protected by the First Amendment or similar State protections. The City does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling. Notwithstanding the provisions of this Chapter prohibiting nudity, a licensed outcall employee may appear in a state of nudity before a customer or patron, providing that a written contract for such appearance was entered into between the customer or patron and the employee and signed at least twenty-four (24) hours before the nude appearance. All of the other applicable provisions of this Chapter shall still apply to such nude appearance.

(1) In the event of a contract for nude modeling or appearance signed more than forty-eight (48) hours in advance of the modeling or appearance, the individual to appear nude shall not be required to obtain a license pursuant to this Chapter. During such unlicensed nude appearance, it is unlawful to:

- (a) Appear nude or semi-nude in the presence of persons under the age of eighteen (18);

- (b) Allow, offer, or agree to any touching of the contracting party or other person by individual appearing nude;
- (c) Allow, offer, or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or committing activities harmful to a minor;
- (d) Allow, offer, commit, or agree to any sex act as validly defined by City ordinances or State statute;
- (e) Allow, offer, agree, or permit the contracting party or other person to masturbate in the presence of the individual contracted to appear nude;
- (f) Allow, offer, or agree for the individual appearing nude to be within five feet (5') of any other person while performing or while nude or semi-nude.

6-5-100. BUSINESS CATEGORIES - NUMBER OF LICENSES.

- (1) It is unlawful for any business premises to operate or be licensed for more than one category of sexually- oriented business, except that a business may have a license for both outcall services and a semi-nude dancing agency on the same premises.
- (2) The categories of sexually-oriented businesses are:
 - (a) Outcall services;
 - (b) Adult businesses;
 - (c) Semi-nude entertainment businesses;
 - (d) Semi-nude dancing agency.

6-5-110. EMPLOYEE LICENSES. It is unlawful for any sexually-oriented business to employ or for any individual to be employed by a sexually- oriented business in the capacity of a sexually-oriented business employee, unless that employee first obtains a sexually-oriented business employee license.

6-5-120. LICENSE - APPLICATION - DISCLOSURES REQUIRED. Before any applicant may be licensed to operate a sexually-oriented business or as a sexually-oriented business employee pursuant to this Chapter, the applicant shall submit, on a form to be supplied by the City license authority, the following:

- (1) The correct legal name of each applicant, corporation, partnership, limited partnership, or entity doing business under an assumed name;
- (2) 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, director, and any shareholder (corporate or personal) of more than ten percent (10%) of the stock of any applicant. 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;

- (3) The shareholder disclosure requirements above shall only be applicable for outcall service licenses; All corporations, partnerships, or noncorporate entities included on the application shall also identify each individual authorized by the corporation, partnership, or noncorporate entity to sign the checks for such corporation, partnership, or noncorporate entity;
- (4) For all applicants or individuals, the application must also state:
 - (a) Any other names or aliases used by the individual,
 - (b) The age, date, and place of birth,
 - (c) Height,
 - (d) Weight,
 - (e) Color of hair,
 - (f) Color of eyes,
 - (g) Present business address and telephone number;
 - (h) Present residence and telephone number;
 - (i) Utah drivers license or identification number, and
 - (j) Social security number;
- (5) Acceptable written proof that any individual is at least eighteen (18) years of age or, in the case of employees to be employed in businesses where a different age is required, proof of the required age;
- (6) Attached to the form, as provided above, two (2) color photographs of the applicant clearly showing the individual's face and the individual's fingerprints on a form provided by the Police Department. For persons not residing in the City, the photographs and fingerprints may 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;
- (7) For any individual applicant required to obtain a sexually-oriented business employee license as an escort or a semi-nude entertainer, a certificate from the Davis County Health Department, stating that the individual has, within thirty (30) days immediately preceding the date of the application, been examined and found to be free of any contagious or communicable diseases.
- (8) A statement of the business, occupation, or employment history of the applicant for three (3) years immediately preceding the date of the filing of the application;
- (9) 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 previously operating or seeking to operate, in this or any other county, city, state, or territory, has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or has had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the 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;
- (10) All criminal convictions or pleas of nolo contendere, except those which have been expunged, and the disposition of all such arrests for the applicant, individual, or other 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 or plea of nolo contendere, 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. Application for a sexually- oriented business or employee license shall constitute a waiver of disclosure of any criminal conviction or plea of nolo contendere for the purposes of any proceeding involving the business or employee license;

- (11) 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;
- (12) 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, any rules, regulations, or employment guidelines under or by which the business intends to operate. This description shall also include:
 - (a) 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,
 - (b) The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities,
 - (c) 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,
 - (d) 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.

6-5-130. LICENSE - FEES. Each applicant for a sexually-oriented business or employee license shall be required to pay regulatory license fees as set forth in the Consolidated Fee Schedule.

6-5-140. LICENSE - BOND. Each application for a sexually-oriented business license shall post, with the City's Community Development Director, a cash or corporate surety bond payable to Centerville City in the amount of two thousand dollars (\$2,000). Any fines assessed against the business, officers, or managers for violations of City ordinances shall be taken from this bond if not paid in cash within ten (10) days after notice of the fine, unless an appeal is filed as provided by this Chapter. In the event the funds are drawn against the cash or surety bond to pay such fines, the bond shall be replenished to two thousand dollars (\$2,000.00) within fifteen (15) days of the date of notice of any draw against it.

6-5-150. LICENSE - PREMISES LOCATION AND NAME.

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

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

6-5-160. LICENSE - ISSUANCE CONDITIONS. The Community Development Director shall approve the issuance of a license to the applicant within thirty (30) days after receipt of an application, unless the official finds one or more of the following:

- (1) The applicant is under eighteen (18) years of age, or any higher age if the license sought requires a higher age;
- (2) The applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against the applicant or imposed on 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 been convicted of a violation of a provision of this Chapter within two (2) years immediately preceding the application; however, the fact that a conviction is being appealed shall have no effect on the denial;
- (5) The premises to be used for the business have been disapproved by the Centerville City-County Health Department, the Fire Department, the Police Department, 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 from the City Community Development Director an extension of time of no more than fifteen (15) days of their review. The total time for the City to approve or deny a license shall not exceed forty-five (45) days from the receipt of an application. Businesses located outside of the corporate boundaries of the City, but requiring a license under this Chapter, may be denied a license pursuant to this Chapter if the business does not have a valid business license to conduct business at the business location from the appropriate jurisdiction for that location;
 - (a) Upon receipt of an application, all departments required to review the application shall determine within ten (10) working days whether or not the application is incomplete in items needed for processing. Incomplete applications shall immediately be returned to the applicant with a specification of the items which are incomplete;
 - (b) The time for processing applications specified in this Section shall begin to run from the receipt of a complete application;
 - (c) In the event that a license for semi-nude entertainment, semi-nude dancing agencies, adult businesses, or semi-nude entertainment businesses has not been disapproved within thirty (30) days or the forty-five (45) days allowed after an extension, the City shall issue the license pending completion of the City's review.
 - (d) Any license issued pursuant to (c) above may be revoked by the City, pursuant to the revocation procedures provided for herein, if the completed review determines that the license should have been denied.
- (6) The 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;
- (9) An applicant has been convicted or pled no contendere to a crime:
 - (a) Involving 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; possession of child pornography; lewdness; 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; 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 years (5), or
 - (ii) Less than five (5) years have elapsed from the date of conviction, if the offense is of a felony;
 - (b) The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this Section.

6-5-170. LICENSE - TERM. Sexually-oriented business and employee licenses issued pursuant to this Chapter shall be valid from the date of issuance through January 1st of each succeeding year. The license fees required under the Consolidated Fee Schedule shall not be prorated for any portion of a year, but shall be paid in full for whatever portion of the year the license is applied for.

6-5-180. LICENSE - NOTICE OF CHANGE OF INFORMATION. Any change in the information required to be submitted under this Chapter for either a sexually-oriented business license or sexually-oriented business employee license shall be given, in writing, to the Community Development Director and the Police Department within fourteen (14) days after such change.

6-5-190. LICENSE - TRANSFER LIMITATIONS. Sexually-oriented business licenses granted under this Chapter shall not be transferrable. It is unlawful for a license held by an individual to be transferred. It is unlawful for a license held by a corporation, partnership, or other noncorporate 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 business license occurs, the license is immediately null and void, and the business shall not operate until a separate new license has been properly issued by the City as provided in this Chapter.

6-5-200. LICENSE - DISPLAY. It is unlawful for any sexually-oriented business location within the boundaries of the City to fail to display the license granted pursuant to this Chapter in a prominent location within the business premises. It is unlawful for any individual licensed pursuant to this Chapter to fail to carry, at all times while engaged in licensed activities within the corporate boundaries of the City, their employee license on their person. If the individual is nude, such license shall be visible displayed within the same room 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.

6-5-210. LICENSE - STATEMENT IN ADVERTISEMENTS. It is unlawful for any advertisement by the sexually-oriented business or employee to fail to state that the business or employee is licensed by the City, and shall include the City license number.

6-5-220. REGULATIONS AND UNLAWFUL ACTIVITIES. It is unlawful for any sexually-oriented business or sexually-oriented business employee to:

- (1) Allow persons under the age of eighteen (18) years on the licensed premises, except that in adult businesses which exclude minors from less than all of the business premises, minors shall not be permitted in excluded areas;
- (2) Allow, offer, or agree to conduct any outcall business with persons under the age of eighteen (18) years;
- (3) To allow, offer, or agree to allow any alcohol to be stored, used, or consumed on or in the licensed premises;
- (4) Allow the outside door to the premises to be locked while any customer is in the premises;
- (5) Allow, offer, or agree to gambling on the licensed premises;
- (6) Allow, offer, or agree to any sexually-oriented business employee touching any patron or customer; except that outcall employees and customers may touch, except that any touching of specified anatomical area, whether clothed or unclothed, is prohibited;
- (7) Allow, offer, or agree to illegal possession, use, sale, or distribution of controlled substances on the licensed premises;
- (8) Allow sexually- oriented business employees to possess, use, sell, or distribute controlled substances while engaged in the activities of the business;
- (9) Allow, offer, or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or committing activities harmful to a minor to occur on the licensed premises or, in the event of an outcall employee or business, the outcall employee committing, offering, or agreeing to commit prostitution, attempting to commit prostitution, soliciting prostitution, soliciting a minor, or committing activities harmful to a minor;
- (10) Allow, offer, commit, or agree to any sex act as validly defined by City ordinances or State statute in the presence of any customer or patron;
- (11) Allow, offer, or agree to any outcall employee appearing before any customer or patron in a state of nudity;
- (12) Allow, offer, or agree to allow a patron or customer to masturbate in the presence of a sexually-oriented business employee or on the premises of a sexually-oriented business.
- (13) Allow, offer, or agree to commit an act of lewdness as defined in this Title.

6-5-230. OUTCALL SERVICES - OPERATION REQUIREMENTS. It is unlawful for any business or employee to provide outcall services contracted for in the City to fail to comply with the following requirements:

- (1) All businesses licensed to provide outcall services pursuant to this Chapter shall provide to each patron a written contract in receipt of pecuniary compensation for services. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount such services shall cost the patron, and any special terms or conditions relating to the services to be performed. The contract need not include the name of the patron. The business licensee shall keep and maintain a copy of each written contract entered into pursuant to this Section for a period not less than one year from the date of provision of services thereunder. The contracts shall be numbered and entered into a register listing the contract number, date, names of all employees involved in the contract, and pecuniary compensation paid.
- (2) All outcall businesses licensed pursuant to this Chapter shall maintain an open office or telephone at which the licensee or licensee's designated agent may be personally contacted during all hours outcall employees are working. The address and phone number of the license location shall appear and be included in all patron contracts and published advertisements. For outcall businesses which premises are licensed within the corporate limits of the City, private rooms or booths where the patrons may meet with the outcall employee shall not be provided at the open office or any other location by the service, nor shall patrons meet outcall employees at the business premises.
- (3) Outcall services shall not advertise in such a manner that would lead a reasonably prudent person to conclude that specified sexual activities would be performed by the outcall employee.
- (4) All employees of outcall services who provide outcall services within the City shall be licensed in accordance with this Chapter, regardless of the primary location of the business.

6-5-240. ADULT BUSINESS - DESIGN OF PREMISES.

- (1) In addition to the general requirements of disclosure for a sexually-oriented business, any applicant for a license as an adult business shall also submit a diagram, drawn to scale, of the premises of the license. The design and construction, prior to granting a license or opening for business, shall conform to the following:
 - (a) The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms.
 - (b) Restrooms may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person being allowed in the restroom per stall, and only one person in any stall at a time, and requiring that patrons shall not be allowed access to manager's station areas.
 - (c) 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.
 - (d) The diagram required shall not necessarily be a professional engineer's or architect's blueprint; however, the diagram must show marked internal dimensions, all overhead lighting fixtures, and ratings for illumination capacity.

- (2) It shall be the duty of the licensee and the licensee's employees to insure that the views from the manager's station in subsection (1) of this Section remain unobstructed by any doors, walls, merchandise, display racks, or any other materials at all times that any patron is present 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.
- (3) The premises shall at all times be equipped and operated with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle, measured at floor level. It shall be the duty of the licensee and the licensee's employees present on the premises to insure that the illumination described above is maintained at all times that any patron is present in the premises.

6-5-250. SEMI-NUDE ENTERTAINMENT BUSINESS - DESIGN OF PREMISES.

- (1) 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.
- (2) Adult theaters shall also 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.

6-5-260. SEMI-NUDE ENTERTAINMENT BUSINESS - LOCATION RESTRICTION. It is unlawful for any business licensed for semi-nude entertainment to be located within five hundred feet (500') of a business licensed for the sale or consumption of alcohol.

6-5-270. SEMI-NUDE DANCING AGENCIES.

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

6-5-280. PERFORMERS - PROHIBITED ACTIVITIES. It is unlawful for any professional dancer, model, or performer, while performing in any business licensed pursuant to this Chapter, to:

- (1) Touch in any manner any other person;
- (2) Throw any object or clothing off the stage area;
- (3) Accept any money, drink, or any other object directly from any person; or
- (4) Allow another person to touch such performer or to place any money or object on the performer or within the costume or person of the performer; or
- (5) Place anything within the costume or adjust or move the costume while performing so as to render the performer in a state of nudity.

6-5-290. PATRONS - PROHIBITED ACTIVITIES. It is unlawful for any person or any patron of any business to touch in any manner any performer; to place any money or object on or within the costume or person of any performer; or to give or offer to give any such performer any drinks, money, or object while such performer is performing; except that money may be placed on the stage, which shall not be picked up by the performer except by hand.

6-5-300. NUDITY - DEFENSES TO PROSECUTION. It is a defense to prosecution or violation under this Chapter that a person appearing in a state of nudity did so in a modeling class operated:

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

6-5-310. EXISTING BUSINESSES - COMPLIANCE TIME LIMITS.

- (1) The provisions of this Chapter shall be applicable to all persons and businesses described herein, whether the herein-described activities were established before or after the effective date of the provisions codified in this Chapter and regardless of whether such persons and businesses are currently licensed to do business in the City.
 - (a) All such persons and businesses requiring outcall service licenses shall have forty-five (45) days from the effective date of the ordinance codified in this Chapter, or until their current license expires, whichever is first in time, to comply with the provisions of this Chapter.
 - (b) All semi-nude dancing agency licenses shall have seventy-five (75) days from the effective date of the ordinance codified in this Chapter, or until their license must be renewed, whichever is first, to comply with the provisions of this Chapter.
 - (c) All adult businesses and semi-nude entertainment businesses shall have one hundred thirty-five (135) days from the effective date of the ordinance codified in this Chapter, or until their current license must be renewed, whichever is first, to comply with the provisions of this Chapter.

6-5-320. VIOLATION - INJUNCTION WHEN. An entity or individual who operates or causes a sexually-oriented business to be operated without a valid license, or who employs or is employed as an employee of a sexually-oriented business, or who operates such a business or functions as such an employee in violation of the provisions of this Chapter is subject to a suit for injunction in addition to the civil and criminal violations provided herein, and any other remedy available at law or in equity.

6-5-330. VIOLATION - LICENSE SUSPENSION OR REVOCATION.

- (1) The City may issue a notice suspending or revoking a sexually-oriented business or employee license granted under this Chapter if a licensee or an employee of the licensee has:
 - (a) Violated or is not in compliance with this Chapter;
 - (b) Refused to allow any inspection of the premises of the sexually-oriented business specifically authorized by this Chapter or by any other statute or ordinance;
 - (c) Failed to replenish the cost bond as provided in this Chapter (such a suspension shall extend until the bond has been replenished);
 - (d) Given materially false or misleading information in obtaining the license;
 - (e) Knowingly operated the sexually- oriented business or worked under the employee license during the period when the business license or employee licensee's license was suspended;
 - (f) A licensee has committed an offense which would be grounds for denial of a license for which the time period required has not elapsed;
 - (g) On two or more occasions within a twelve-month period, a person or persons committed in or on, or solicited for on the licensed premises, or an outcall employee solicited or committed on or off the premises, an offense which would be grounds for denial of a license for which a conviction has been obtained, and the person or persons were employees, whether or not licensed, of the sexually-oriented business at the time the offenses were committed;
 - (h) A licensee is delinquent in payment to the City for ad valorem taxes, or sales taxes related to the sexually-oriented business.
- (2) Suspension or revocation shall take effect within fifteen (15) days of the issuance of notice, unless an appeal is filed as provided by this Chapter.
- (3) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

6-5-340. EFFECT OF LICENSE REVOCATION. When a license issued pursuant to this Chapter is revoked, the revocation shall continue for one year from its effective date, and the licensee shall not be issued a sexually-oriented business or employee license for one year from the date of such revocation.

6-5-350. REVOCATION AND DENIAL OF LICENSE. The denial, suspension, or revocation of any license issued pursuant to this Chapter shall be in accordance with the general provisions for business licenses set forth in this Title.

6-5-360. VIOLATION - PENALTY. In addition to revocation or suspension of a license, as provided in this Chapter, each violation of this Chapter shall, upon citation by the City Community Development Director, require the licensee to pay a civil penalty in the amount of five hundred dollars (\$500). Such fines shall be deducted from the cost bond posted pursuant to this Chapter, unless paid within ten (10) days of notice of the fine or the final determination after any appeal. In addition to the civil fines provided in this Chapter, the violation of any provision of this Chapter shall be a class "B" misdemeanor. Each day of a violation shall be considered a separate offense.

CHAPTER 6-6. Repealed by Ordinance No. 2007-01, February 6, 2007

CHAPTER 6-7. TOBACCO PRODUCTS

- 6-7-010. DEFINITIONS.**
- 6-7-020. REGULATING THE SALE OF TOBACCO PRODUCTS.**
- 6-7-030. VIOLATION AND PENALTIES.**
- 6-7-040. EXEMPTION FROM THIS CHAPTER.**

6-7-010. DEFINITIONS.

- (a) "Minor" means any individual who is less than twenty-one (21) years old.
- (b) "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (c) "Repeat Offender" shall mean any person who has been convicted more than twice of violating one or more provisions of this Chapter.
- (d) "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.
- (e) "Retailer" means a person who owns, manages or is otherwise responsible for supervising the day-to-day operation of a business where tobacco products are displayed or otherwise offered for sale.
- (f) "Self-Service Merchandising" means the open display of Tobacco Products and point-of-sale tobacco promotional products to which the public has access without the intervention or assistance of an employee.
- (g) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.
- (h) "Tobacco Product" means and includes any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff, and/or any other form of tobacco that may be utilized for smoking, chewing, inhaling, or other manner of ingestion.
- (i) "Vendor-Assisted Merchandising" means:
 - (1) the Retailer restricts or ensures the restriction of access to Tobacco Products by placing or displaying the products in a manner so that only the owner, manager or an employee of the business has access to the Tobacco Products; and
 - (2) customers do not have direct access to the Tobacco Products, and business owners, managers, and/or employees must assist customers by supplying the Tobacco Product to the customers; and
 - (3) customers do not take possession of the Tobacco Product until it is purchased.

6-7-020. REGULATING THE SALE OF TOBACCO PRODUCTS.

It shall be unlawful for any Person, business, or Retail Tobacco Store to display, sell, permit to be sold, or offer for sale, any Tobacco Product by means of Self-Service Merchandising or by any means other than Vendor-Assisted Merchandising.

6-7-030. VIOLATION AND PENALTIES.

(a) Each day, or any portion thereof, that a Person, business, or Retail Tobacco Store is in violation of Section 6.7.020 shall constitute a separate violation.

(b) Violation of this ordinance is a Class C misdemeanor, punishable upon conviction by a term of up to ninety (90) days in jail and/or a fine of not less than One Hundred Dollars (\$100.00) on the first conviction, Two Hundred Fifty Dollars (\$250.00) on the second and third convictions, and Five Hundred Dollars (\$500.00) on any subsequent conviction.

(c) Notwithstanding the provisions of Subsection B above, where a business is a Repeat Offender of the provisions of this Chapter, as defined in subsection D of Section 6.7.010, the City may, in addition to any criminal penalties which may be assessed by a court under said subsection B, commence and pursue revocation proceedings to revoke the business license of such business, in accordance with and pursuant to the provisions of this Title, provided, that no business license shall be revoked hereunder unless it is determined that the public interest is best served by the revocation of the business license of said business.

6-7-040. EXEMPTION FROM THIS CHAPTER.

(a) Standard ten-pack cartons of Cigarettes and multi-packages of smokeless tobacco are exempt from the requirements and provisions of this Chapter, but only so long as these Tobacco Products are under the constant direct-sight surveillance of a store owner, manager, and/or employee.

(b) The Tobacco Products described in subsection A herein shall be deemed to be under constant, direct-sight surveillance of a store owner, manager, and/or employee only if the Tobacco Products themselves (and not just the displays, racks, shelves, kiosks, etc., where the products are displayed) are in plain and full view of the store manager, owner, and/or employee.

(c) The requirements and provisions of this Chapter shall not be applicable to businesses that prohibit the entry or presence of Minors.

CHAPTER 6-8 PEDDLERS - Enacted by Ordinance No. 2004-21, September 21, 2004; Repealed by Ordinance No. 2006-18, October 17, 2006