

## CHAPTER 12. LICENSES AND BUSINESS REGULATIONS

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### Article 12-1. Interpretation

#### 12-1-1. Purposes.

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##### 12-1-1. Purposes.

The objective of this Chapter are to license businesses and occupations within the corporate limits of the City of Orem for the purpose of regulation and revenue, and to maintain a list of currently licensed businesses.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-97-0031, Amended, 06/24/97; Ord. No. O-98-0005, Amended, 01/27/98)

##### 12-1-2. Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meaning set forth herein:

**Antique** shall mean any older or archaic item indicative of an older culture and having special value because of its age.

**Antique dealer** shall mean any person engaged in the business of purchasing and selling antiques.

**Auction** shall mean a public sale in which property or items of merchandise are sold to the highest bidder, and shall mean the place where an auction is conducted.

**Auctioneer** shall mean a person who conducts an auction.

**Bond** shall mean a financial guarantee of cash by a business license applicant or a corporate surety bond by a bonding company licensed in the State of Utah.

**Bullion** shall mean any item of or containing gold, silver, platinum or palladium in any form or shape other than those excepted herein. It shall include, but not be limited to (1) South African krugerrands, Canadian maple leaves, Mexican gold coins, and Austrian and Hungarian coronas; (2) gold or silver coins originally minted or manufactured as legal tender in their country of origin, but which, because of their physical condition have little or no numismatic value and which are bought, sold or exchanged based on the value of the gold or silver they contain and are commonly known as

"junk silver or gold" or 90% U.S. silver coins; (3) any bar, ingot, medallion or coin which identifies the manufacturer, states the degree or percentage of purity, states the weight of the item, and has a purity of at least eighty percent (80%), i.e. the item is composed of or contains at least eighty (80) parts of gold, silver, platinum or palladium to a maximum of twenty (20) parts of any other metal(s). Bullion shall not include numismatic coins as defined herein, nor sterling silver flatware or utensils, nor jewelry containing gold, silver, platinum or palladium, nor any other item qualifying as scrap metal as defined herein.

**Business** shall mean any occupation or enterprise involved in the manufacture or sale of products or goods at retail or wholesale, or the rendering of service to or for another person for compensation. It shall not include the act of employees rendering service to employers.

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

**Dealer** shall mean any secondhand dealer, secondhand precious metal dealer, junk dealer or antique dealer as defined herein.

**Director** shall mean the Director of the Development Services Department or his designee.

**Employee** shall mean an operator, owner or manager of a place of business; any person employed in any capacity of the business, whether part-time or full-time; and any salespersons, agents or independent contractors engaged in the operation of a place of business in any capacity.

**Home Occupation** shall mean business carried out in a residential dwelling in accordance with the provisions of the Zoning Ordinance of the City.

**Junk dealer** shall mean any person who engages in buying or selling old metals, glass, rags, rubber, paper, or other junk from a fixed place of business.

**License** shall mean a certificate or document issued by the City evidencing permission or authority of its named holder to carry on a particular business.

**Licensee** shall mean the person to whom a license has been issued pursuant to the provisions of this chapter.

**Mobile vendor** shall mean any person who conducts the business of selling food products from a moving vehicle or from a vehicle which continuously moves from one location to another.

**Number of employees** shall mean the average number of employees engaged in business at the place of business each regular working day during the preceding calendar year, including full- and part-time employees.

**Numismatic coin** shall mean piece of metal money issued by any government as legal tender in the country of its origin, including commemorative coins, mint sets and proof sets, rare coins, U.S. silver dollars, and any other such coin that has value for collection purposes over and above any value it may have for its precious metal content. Numismatic coins shall not include any item defined herein as bullion or manufactured primarily for transfer as bullion.

**Pawnbroker** shall mean any person engaged in the business of lending money on deposit or pledges of personal property or other valuable thing, other than securities or printed evidence of indebtedness, or in the business of purchasing personal property or other valuable things, and selling or agreeing to sell the same back to the seller at a price other than the original price of the purchase, or who sells unredeemed pledges with or without the contemporary sales of new merchandise.

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

**Place of business** shall mean a location from which the licensee engages in business.

**Pledgor** shall mean a person pledging or delivering goods in pledge to a pawnbroker.

**Public dance** shall mean any dance to which admission can be obtained by paying a fee, or by purchasing a ticket or token in exchange for the caring for clothing or other property at such dance, or by paying a fee for music from a music record vending machine or music from any number of musicians personally present and playing in the presence of those in attendance.

**Scrap metal** shall mean metal which is purchased for refining and shall include such items as gold and silver jewelry, dental gold and sterling silver.

**Secondhand dealer** shall mean any person who keeps a store, office, or place of business for the purchase, barter or exchange or sale of any secondhand

merchandise of value, or who engages in the business of dealing in secondhand goods. For the purpose of this chapter, a "secondhand dealer" shall not be meant to include any person who deals in the purchase, barter, exchange, or sale of used motor vehicles and trailers.

**Secondhand precious metal dealer** shall mean any person who engages in the purchasing, bartering, exchanging, or selling of gold, silver, platinum or other precious metal in any form or secondhand articles containing any of such metals.

**Services** shall mean any act which is performed by one individual for or on behalf of another with payment expected for the act performed.

**Temporary business** shall mean a business that is temporarily located on a site which has been approved by the City for a specified period of time.

**Transient merchant** shall mean any person who offers for sale at wholesale or retail any goods, wares, or merchandise in or from any stall, tent, temporary structure, railroad car, motor vehicle, field, or other similar place. It shall not include mobile vendors as defined herein nor any business licensed as a temporary business nor any activity which is part of a City-approved festival, display or show.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Amended 02/12/2008; Ord. No. O-2012-0010, Amended 04/10/2012)

## Article 12-2. License Regulations

### 12-2-1. Unlawful to operate without license.

### 12-2-2. Separate license for each branch.

### 12-2-3. Extent of authority granted.

### 12-2-4. License transfers.

### 12-2-5. Duty to display.

### 12-2-6. Exemptions.

### 12-2-7. License additional to all regulatory licenses.

#### 12-2-1. Unlawful to operate without license.

Except as otherwise provided in this Article, it shall be unlawful for any person to engage in business within the City without first obtaining a license for doing so, and it shall be unlawful to continue in business without maintaining a valid license. It shall also be unlawful to continue in business once a license for such business has been suspended or revoked.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

#### 12-2-2. Separate license for each branch.

Any person conducting business in more than one location shall obtain a separate license for each branch or place of business.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

#### 12-2-3. Extent of authority granted.

A license shall authorize the licensee to conduct only that business described in the license and only at the location which is indicated thereon.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

#### 12-2-4. License transfers.

Licenses issued pursuant to the provisions of this Chapter may be transferred from one place of business to another with the following conditions:

A. The licensee at the new location is the same licensee as at the old location.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

B. The applicant has paid the transfer fee in an amount determined by resolution of the City Council.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

C. C. Change of ownership. A business license may not be transferred from one owner to a subsequent owner. A subsequent owner must obtain a new business license.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998; Ord. No. O-2013-0024, Amended 10/08/2013)

#### 12-2-5. Duty to display.

Every licensee shall display a valid license in a conspicuous place within each place of business. Any licensee not having a fixed place of business shall carry such license with him at all times while carrying on the business for which the license is issued and shall produce the license for inspection when requested to do so by any person.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-1998-0005, Amended, 01/27/1998)

#### 12-2-6. Exemptions.

A. The following businesses, ventures, or activities are exempt from the licensing and fee requirements of this Chapter:

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

2. Any activity the receipt from which is to be appropriated entirely to any church, school or religious or benevolent purpose.

3. Any activity conducted by a religious, charitable, fraternal, educational, military, or governmental organization so long as the receipts from such activity are appropriated for the purposes and objects for which such organization is formed and no individual, firm or profit corporation directly or indirectly derives a profit therefrom.

4. Operators of a Home Child Day Care, Small.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998; Ord. No. O-03-0029, Amended, 09/09/2003)

B. If a business is located in and licensed by any other community in Utah County and does not have a place of business in Orem, such business is not required to obtain a City of Orem business license as long as the community in which the business is located exempts from its licensing and fee requirements any business domiciled in Orem which does business in such other community. Solicitors, however, are not exempt under this subsection, and must obtain a license and pay the requisite fees regardless of the possession of a license issued by any other community.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998; Ord. No. O-2012-0010, Amended 04/10/2012)

C. Any person conducting a business, venture or activity which is exempted from the licensing and fee requirements pursuant to subsection (A) above

shall still be required to pay any fee required to cover the costs of necessary inspections done by the City, which shall include all inspections to determine compliance with applicable codes. The inspection fees shall be in an amount determined by resolution of the City Council.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

**12-2-7. License additional to all regulatory licenses.**

The license and fee requirements imposed by this Chapter shall be in addition to any and all other taxes or licenses imposed or required by any other provisions of the ordinances of the City, and all businesses in the City shall comply with all the requirements of the Zoning Ordinance of the City.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

**Article 12-3. Administration****12-3-1. Application.****12-3-2. Inspections of new businesses.****12-3-3. Issuance of license.****12-3-4. Appeal.****12-3-5. Duration of licenses.****12-3-6. Fees.****12-3-7. Calculation of fees.****12-3-8. Mistakes in fee calculations.****12-3-9. Fee adjustment to avoid burdening interstate commerce.****12-3-10. Refunds.****12-3-1. Application.**

A. An applicant for a business license shall submit to the Development Services Department a completed application along with all fees and any other information, including appropriate registration numbers, reasonably required by the City.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998; Ord. No. O-2012-0010, Amended 04/10/2012)

B. The application form shall be provided by the City and shall contain, but not be limited to the following information: business name, address, mailing address, and phone; owner's name, address, home phone number, and date of birth. A copy of a photo identification such as a driver's license or passport must also be included in the application. If the applicant is a corporation or a partnership, the information required herein shall be provided with respect to at least one officer of a corporation or member of a partnership. The application shall also include the name, address, and phone number of the registered agent for any corporation or licensee.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998; Ord. No. O-2012-0010, Amended 04/10/2012; Ord. No. O-2013-0024, Amended 10/08/2013)

**12-3-2. Inspections of new businesses.**

Each place of business shall be inspected by the City for compliance with building, fire, and health codes prior to opening for business. The applicant shall permit such inspections during normal working hours. An applicant shall ensure that all violations listed by City inspectors shall be corrected before commencing business at the inspected location.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

**12-3-3. Issuance of license.**

The City shall issue the business license applied for, provided the following requirements are met:

A. The applicant has completed and filed with the City the business license application provided by the City;

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

B. The applicant has paid the fee in an amount determined by resolution of the City Council;

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

C. The applicant has complied with the requirements of Article V of this Chapter, if applicable to the particular business for which the application is made;

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

D. The business is a permitted use in the zone in which the business is locating, according to Appendix A of the Orem City Code;

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998; Ord. No. O-2012-0010, Amended 04/10/2012)

E. The place of business has been inspected by the City's building and fire inspectors and complies with all applicable building, fire and health codes; and

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

F. The business is not prohibited by any federal, state or local law.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

G. The applicant has registered the name of the business with the Utah Division of Corporations and Commercial Code.

(Ord. No. O-2013-0024, Enacted 10/08/2013)

**12-3-4. Appeal.**

If a license is denied for noncompliance with the requirements set forth in Section 12-3-3, the applicant may appeal to the City Manager or his designee provided he do so in writing within ten working (10) days of the denial.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

**12-3-5. Duration of licenses.**

All licenses issued pursuant to this Chapter, shall expire on December 31st of the year for which they are issued, unless revoked pursuant to this Chapter.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

**12-3-6. Fees.**

A. Unless otherwise provided in this Chapter, a yearly business license fee shall be paid by every person required to have a business license by this Chapter, except that insurance companies shall be exempt from this fee requirement as provided by State law. The fees are imposed to cover the cost of administering and enforcing the provisions of this Chapter.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-97-0031, Amended, 06/24/1997; Ord. No. O-98-0005, Amended, 01/27/1998)

B. The fees are due the first working day following the expiration date of the license, provided the licensee intends to remain in business for any portion of the year following the expiration date.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-97-0031, Amended, 06/24/1997; Ord. No. O-98-0005, Amended, 01/27/1998)

C. The fee for a licensee, who applies for a license under this Chapter after the expiration dates listed in Section 12-3-5 above, shall be prorated for the remaining portion of the year. Such proration shall be on the basis of one-twelfth (1/12) of the total annual fee for each month remaining in the unexpired portion of the year, including the month in which the new license is issued.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-97-0031, Amended, 06/24/1997; Ord. No. O-98-0005, Amended, 01/27/1998)

D. A late penalty of ten percent (10%) of the annual fee shall be added to the annual fee required of any person who has not renewed his license within thirty (30) days following the expiration of the license.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-97-0031, Amended, 06/24/1997; Ord. No. O-98-0005, Amended, 01/27/1998)

**12-3-7. Calculation of fees.**

A. The fee for any business shall be determined by resolution of the City Council.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

B. The number of employees for any newly commenced business shall be based on the number of all employees for the type of business for which a license is sought.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

C. The City shall have the authority to conduct an audit of any business to determine the business license fee.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

**12-3-8. Mistakes in fee calculations.**

In no event shall any mistakes made by an applicant, a licensee, or the City in the calculation of a license fee prevent or prejudice the collection by the City of

amounts actually due from any person subject to licensing under this Chapter. Likewise, no such mistakes shall prevent or prejudice the refund to licensees of amounts overpaid by the reason of a mistake.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

**12-3-9. Fee adjustment to avoid burdening interstate commerce.**

None of the license fees charged pursuant to this Chapter shall be applied to cause an undue burden on interstate commerce. In any case, where a license fee is believed by a licensee or an applicant for a license to place an undue burden upon interstate commerce, such licensee or applicant may apply to the Director for an adjustment of the fee so as to relieve such burden. The licensee or applicant shall, by supporting affidavits, indicate his method of doing business and such other information as the Director may deem necessary in order to determine the extent, if any, of such undue burden. The Director shall then conduct an investigation, comparing the subject business with other businesses of like nature and shall make findings of fact from which he shall determine whether the license is discriminatory, unreasonable or unfair as to the licensee or applicant from the standpoint of its impact on interstate commerce and shall recommend to the City Council an appropriate license fee under the circumstances and the City Council shall fix the license fee in such amount. If the regular license fee has already been paid, the City Council shall order refund of the amount over and above the fee fixed, if different. In fixing the fee to be charged, the Director shall have the power to base the fee on gross receipts or employees, or may use any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature; provided, however, that the amount assessed shall in no event exceed the regular fee prescribed.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

**12-3-10. Refunds.**

Except as provided in Section 12-3-8, no refund of any part of the license fee shall be given once a license has been granted.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. O-98-0005, Amended, 01/27/1998)

## Article 12-4. Enforcement

- 12-4-1. Powers and duties of police.**
- 12-4-2. Inspections for code compliance.**
- 12-4-3. Revocation.**
- 12-4-4. Hearing.**
- 12-4-5. Penalties for violation.**
- 12-4-6. Effect of conviction; prosecution not barred.**

### 12-4-1. Powers and duties of police.

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

1. To enter free of charge upon a showing of proper identification, at any time, any place of business for which a license is required; to demand the exhibition of a current license by any person engaged or employed in the conduct of such business; and, if such person shall then and there fail to exhibit such license, such person shall be liable for the penalties provided for violation of this Chapter. Officers shall also have the authority to require any solicitor to display his license or identification card upon demand.

2. To make arrests for the violation of any provisions of this Chapter.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

B. In addition to sworn police officers, any employee of the Department of Public Safety or the Development Services Department shall have the powers set forth in subparagraph (A)(1) above.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98; Ord. No. O-2012-0010, Amended 04/10/2012)

### 12-4-2. Inspections for code compliance.

Existing places of business licensed within the City shall be inspected periodically by the Department of Public Safety for compliance with the fire code. They may also be inspected by the Development Services Department for compliance with the building code in cases where any structural change may have been made to the business premises since a business license was last issued or renewed or where the inspection for fire code compliance reveals a possible building code violation. Written notice shall be given by the Director to a licensee upon the finding of any code infractions, which notice shall provide for a reasonable period, not to exceed sixty (60) days, in which to correct such

infractions, the failure of which may result in the revocation of the license by the City Manager and other appropriate legal proceedings. The same procedure shall be followed if a business is found to be in violation of any health code upon inspection by any governmental entity other than the City.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

### 12-4-3. Revocation.

Any license issued pursuant to the provisions of this Chapter by the Director may be suspended or revoked for the violation by the licensee of any provisions in this Chapter or any other applicable code, ordinance or law, falsification of the application, or upon the recommendation of the Department of Public Safety for good cause shown and following a full and complete hearing as described in Section 12-4-4 of this Chapter. Notification of a business license revocation shall be sent by the Director to the licensee by certified mail.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

### 12-4-4. Hearing.

A. The City Manager shall hear and determine all suspensions and revocations of licenses. No license shall be revoked or suspended until a show-cause hearing has been held. Written notice of such hearing shall be served at least ten (10) working days prior to the date thereof upon the licensee or his agent. Such notice shall state the grounds of complaint against the licensee and the time and place where the hearing shall be held. The licensee shall have the right to appear and respond to any allegations made and to present reasons why the license should not be suspended or revoked.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

B. Show-cause hearings shall be conducted informally. Witnesses may be sworn, although it is not necessary. Formal rules of evidence and court procedure shall not apply. Because the hearings are administrative in nature, hearsay is admissible, but evidence must have some probative weight and reliability to be admitted. The standard of proof shall be a preponderance of the evidence.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

### 12-4-5. Penalties for violation.

Any person violating any of the provisions of this Chapter shall be guilty of a Class B misdemeanor and shall, upon conviction therefor,

be punished by a fine in a sum not to exceed one thousand dollars (\$1,000.00) or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

**12-4-6. Effect of conviction; prosecution not barred.**

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

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)



## Article 12-5. Requirements for Specific Occupations

- 12-5-1. Auctions and auctioneers.
- 12-5-2. Christmas tree sales.
- 12-5-3. Home occupations.
- 12-5-4. Reserved.
- 12-5-5. Pawnbrokers, secondhand dealers, etc.
- 12-5-6. Private police or detectives.
- 12-5-7. Public Dances.
- 12-5-8. Solicitors.
- 12-5-9. Solid waste collectors.
- 12-5-10. Transient merchants.
- 12-5-11. Temporary businesses.
- 12-5-12. Business Requiring a Conditional Use Permit.
- 12-5-13. Towing and Parking Enforcement Companies.

### 12-5-1. Auctions and auctioneers.

A. **Application requirements.** In addition to providing the information required in Section 12-3-1 of this Chapter, any person desiring a license for the purpose of selling or offering to sell any merchandise at public auction or to keep or operate any permanent or temporary place of business for the purpose of conducting auctions therein shall also provide the following:

1. A statement that neither fraud nor deception of any kind is contemplated nor will the same be practiced, and that neither the sale, the reasons given therefore, nor the goods to be sold have been or will thereafter be fraudulently or falsely advertised or in any way whatsoever misrepresented as far as any public auction is concerned.

2. The length of time for which the license is desired.

3. A statement as to whether or not the applicant has previously engaged in a like or similar business, designating the place and date of such business.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

B. **Bond required.** Any persons engaged in the business of conducting an auction, whether as a temporary business in connection with another business house or establishment, or as an auction business more permanent in nature, shall execute a bond to the City with corporate surety, in a form acceptable to the City, for the amount determined by resolution of the City Council. The bond shall be for the purpose of ensuring the faithful observance of all laws and ordinances of the City.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

### C. List of merchandise to be provided.

Before any licensee holds an auction wherein he intends to sell any merchandise which is not part of a bankruptcy or state liquidation sale, he shall submit to the Department of Public Safety a complete and accurate inventory listing those articles and giving any identifying numbers or marks which may be upon them, indicating opposite the description of each article whether it is new or used, and listing each of the articles described in the inventory with a number. The licensee shall also submit detailed statements or representations proposed to be made or advertised regarding the goods to be sold. The inventory and statements shall be submitted at least sixteen (16) business hours (those hours between 8:00 a.m. and 5:00 p.m., Monday through Friday) before the auction is to be held.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

### D. Inspection of articles by Department of Public Safety.

The licensee shall make available for inspection by police officers all the articles which are listed in the inventory required by subsection (C) above. The articles shall be available for inspection between the hours of 8:00 a.m. and 5:00 p.m. on the days preceding the auction which correspond to the time frames set forth in subsection (C) above. If, upon inspection, a police officer has probable cause to believe an article has been stolen, he shall seize it and hold it for proper disposition.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

### E. False bidding, auctioneer or officer to be present.

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

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

F. **Conduct generally.** Auctioneers and their assistants are forbidden to conduct their sales in such a manner so as to cause people to gather in crowds on the sidewalks so as to obstruct them, or to cause any public nuisance.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

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

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

**H. Transient auction houses.** Any person or any agent, servant or employee of any person who shall sell or offer for sale at auction any goods, wares, merchandise or articles of value in or from any hotel, rooming house, dwelling house, boardinghouse, store, storeroom, stall, tent, building, structure, stand or other place indoors or outdoors, and who shall occupy said place for the purpose of conducting a temporary business therein, shall be deemed a transient auction house owner for the purposes of this section; and the person, or any agent, servant or employee thereof, so engaged shall not be relieved from the provisions of this section by reason of association temporarily with any licensed dealer, trader, merchant, or auctioneer.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

**I. Duties of auctioneer relating to owner; commission.** It shall be the duty of all licensed auctioneers or auction houses to give receipts for all articles which they receive for the purpose of selling them at auction. At the close of any sale, which must be made as the owner directs, the auctioneer shall deliver a fair account of such sale and pay the amount received for the articles to the person entitled thereto, deducting therefrom a reasonable commission.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

**J. Marking of merchandise; selling uninventoried goods.** Before any sale is made at auction, the licensee must attach to each article to be sold a card with the number of the article endorsed thereon such that the number shall correspond to the article as it is described in the inventory submitted pursuant to subsection (C) above. Where subsection (C) requires the submission of an inventory, no article shall be sold at an auction unless it is described and set forth in that inventory.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

**K. Representations as to quality; records required.** All sales and all persons participating in sales must truly and correctly represent at all times to the

public attending an auction the facts with respect to the quality of items for sale. The licensee shall keep a complete record of all sales made at the auction, showing the name and address of each purchaser, a description of each article sold, including the number thereof, which shall correspond with the numbers shown upon the inventory required above, and the date of each such sale. The record shall at all times be open to inspection by the Director or the Department of Public Safety.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

**12-5-2. Christmas tree sales.**

**A. Application.** In addition to the information required in section 12-3-1 of this Chapter, an applicant for a license to sell fir or evergreen trees or trees commonly called "Christmas trees" shall also provide the following:

1. Evidence of ownership of the trees to be sold.
2. Written evidence that the trees were cut and procured with legal authority to do so.
3. The location where the trees were cut or procured.
4. The name and address of the person from whom the trees were procured.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

**B. License valid for sixty days.** A license to sell Christmas trees shall be valid for sixty (60) days from the first day of November.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

**C. Bond.** An applicant for a license shall deposit with the City a bond in an amount determined by resolution of the City Council to ensure the removal of all unsold trees and related debris remaining on the premises at the conclusion of the license period. The deposit shall be refunded to the licensee upon written request, provided the premises are left clean and free of unsold trees and related debris.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

**12-5-3. Home Occupations.**

In addition to complying with the licensing requirements of this Chapter, any person engaging in a home occupation shall comply with all the requirements of the Zoning Ordinance of the City.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-98-0005, Amended, 01/27/98)

**12-5-4. Reserved.**

(Ord. No. 690, Enacted, 07/23/91; Ord. No. O-98-0005, Amended, 01/27/98; Ord. No. O-98-0015, Amended, 02/24/98; Ord. No. O-03-0029, Repealed & Reserved 09/09/2003)

**12-5-5. Pawnbrokers, secondhand dealers, etc.**

**A. Bond required.** Before a business license is issued to a pawnbroker or dealer as defined in Section 12-1-2 of this Chapter, the applicant therefore shall execute and deliver to the City a bond, in a form acceptable to the City, in the amount determined by resolution of the City Council, executed by a corporate surety authorized to do business in the State of Utah and conditioned upon the faithful performance by the licensee of all requirements under this section.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**B. Employees and agents.** For purposes of this section, the words "pawnbroker" and "dealer" shall be deemed to include all the employees or agents of each pawnbroker or dealer.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**C. Exempt transactions.** The purchase or receipt of the following items shall be exempt from the requirements of subsections (D), (E), (F), (G), (H), (I), and (K) of this Section:

1. Used vehicles, boats, and trailers.
2. Used clothing.
3. Used articles that are traded in for new articles of the same type.
4. Major appliances, such as refrigerators, stoves, washers, dryers, etc.
5. Articles being sold for the owner on consignment.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**D. Records required.** It shall be unlawful for any pawnbroker or dealer to fail to keep a permanent record of each loan, purchase or receipt of personal property. Such record shall be legibly written in ink and in the English language at the time of the transaction. No such record or any portion thereof shall be erased, obliterated or defaced. The record for each transaction shall contain the following information:

1. The date of the transaction.
2. The name and address of the seller or pledgor (if the property is jointly owned each joint owner must be designated).
3. An accurate description of the goods, articles or things pawned, purchased or otherwise

obtained, including the serial number of the article, if any, the name of the manufacturer, if available, and the dimensional description, if applicable.

4. The amount of money loaned or advanced thereon or paid therefore.

5. The date and time of day of the pledging, purchasing or receiving of such goods, articles or things, and in the case of pledged property, the period of time within which the pledge must be honored.

6. The serial number of the ticket or number of the computer form required in subsection (E) below.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**E. Tickets required.** In connection with each transaction, the pawnbroker or dealer shall make out a serially numbered ticket containing the information listed below, on a form previously approved by the Department of Public Safety. In lieu of the ticket, the pawnbroker or dealer may use a computer generated form with an inventory or invoice number, which contains the same information and has been approved by the Department.

1. The following information concerning the seller or pledgor:

- a. The last, first and middle name.
- b. The street address, city, state, and zip code.
- c. Phone number.
- d. Sex (male or female).
- e. Date of birth.
- f. Height and weight.
- g. Race.

2. The type and number of the identification used pursuant to subsection (G) below.

3. The name of the person accepting the property for the dealer or pawnbroker.

4. A signed statement certifying that the described property has not been obtained by any illegal means and is the seller's or pledgor's property and is free and clear of any encumbrances and that the seller or pledgor has a legal right to sell the property.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6; Ord. No. O-2012-0010, Amended 04/10/2012)

**F. Disposition of the tickets or computer generated forms.** The disposition of each ticket or computer form shall be made as follows:

1. The original shall be retained by the pawnbroker or dealer.

2. A copy shall be delivered to the Department of Public Safety. The delivery of such copies shall be made at least once every week.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**G. Identification required.** It shall be unlawful for a dealer or pawnbroker to purchase or take as a pledge any article without first securing adequate identification from the seller or pledgor. Adequate identification is defined as one of the following forms of identification:

1. A valid Utah driver's license.
2. A valid identification card issued in accordance with Section 41-2-401 *et seq.* of the Utah Code (as amended).
3. A valid driver's license, containing a picture of the person to whom the license is issued, issued by another state.
4. A military identification card with a picture of the person to whom the card is issued.
5. A valid passport.
6. A nonpictured identification document issued by a state or the federal government.

If the dealer or pawnbroker gives more than \$20.00 for an individual item, then adequate identification shall also include a clear imprint of the right thumb of the seller or pledgor placed on the ticket or computer form required in subsection (E) above.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**H. Inspection of records.** All of the above required records and information shall be open to the inspection of any police officer during regular business hours.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**I. Unlawful to issue unnumbered ticket.** It shall be unlawful for a pawnbroker or dealer to issue any ticket which is not serially numbered in sequence and shown in the ledger book referred to in subsection (D) above, to issue a computer generated form that does not contain an invoice or inventory number, or to intentionally falsify any information on either the ledger, the ticket or the computer generated form.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**J. Release of articles to police.** If requested, and upon a showing of probable cause by a police officer that an article has been stolen or did not belong to the seller or pledgor, a dealer or pawnbroker shall release the article to the Department of Public Safety. The Department shall hold the article as evidence in any criminal proceeding relating to it, return it to the rightful owner, or return it to the dealer or pawnbroker if so ordered by a court.

Within seven (7) days of releasing the article to the police, the dealer or pawnbroker may request in writing an evidentiary hearing to determine the rightful ownership of the article. A hearing shall be provided before a judicial officer either as part of a regular criminal proceeding or as a special proceeding held for the sole purpose of determining ownership of the article.

Notice of a hearing to determine ownership shall be provided to the dealer or pawnbroker and the purported true owner at least seven (7) days prior to the hearing. The City shall carry the burden of proof of ownership by a preponderance of the evidence.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**K. Retention of property for thirty days.** Except as provided herein, it shall be unlawful for any pawnbroker or dealer to sell or otherwise dispose of any pawned, secondhand, junk or antique property or precious metal for a period of thirty (30) days from the date of receiving it. This subsection shall not apply, however, in the following cases:

1. When written permission is received from the Department of Public Safety to dispose of the property before the expiration of the thirty (30) day period. This permission shall only be given when the Department is satisfied that the property has not been stolen.
2. In the case of pawned items, if the property is returned to the pledgor.
3. If the property is bullion.
4. If the pawnbroker or dealer has purchased the item for twenty dollars (\$20.00) or less.
5. When the pawnbroker or dealer obtains the same information on the purchaser or recipient of the item which is required from the original seller or pledgor in subsection (E) above.

The exceptions contained in (4) and (5) above do not apply to guns, jewelry, electronic equipment

such as TV's, VCR's, microwaves, radios, stereos, cassette recorders, CD players, etc. tools, and numismatic coins. These items must always be held for the thirty (30) day period unless written permission is received from the Department of Public Safety, or if they have been pawned, they are returned to the pledgor.

If requested, and upon showing of probable cause by a police officer that an article has been stolen or did not belong to the seller or pledgor, the dealer or pawnbroker shall release the article to the Department of Public Safety where it shall be held until such time as criminal proceedings concerning the article are fully resolved or until it can be returned to the rightful owner. (Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**L. Dealing with proscribed persons.** It shall be unlawful for any pawnbroker or dealer to purchase or receive any personal property from any person who is intoxicated or under the influence of any drug at the time of the transaction, who is known by the pawnbroker or dealer to be insane or incompetent, or who is under the age of eighteen (18) years. (Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**M. Unlawful to sell firearms, knives to minors.** It shall be unlawful for any dealer or pawnbroker to sell or trade any gun or knife with a blade in excess of four (4) inches long to any person under the age of eighteen (18) years, unless said person is accompanied by his legal guardian or parent. (Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**N. Hours.** It shall be unlawful for any dealer or pawnbroker to keep his place of business open for trade before seven o'clock a.m. or after ten o'clock p.m. (Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**O. Taking property from someone not the owner.** It shall be unlawful for a dealer or pawnbroker to purchase or otherwise receive any property from someone other than the owner thereof except with written permission of the owner. Any property taken in violation of this subsection shall be returned to the true owner upon a showing of proof of ownership of the property by the true owner. (Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**P. Separate rooms.** It shall be unlawful for any pawnbroker or dealer to contain his business in the same room, or in the same building with interconnected rooms, with any business dealing in alcoholic beverages.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

#### **12-5-6. Private police or detectives.**

**A. Application of provisions.** The provisions of this section shall apply to any person desiring to engage or engaging in the business of a private detective, merchant policeman, or investigator, or of providing for watchman, guard, or private patrolman services. They shall not apply, however, to security guards or security guard companies operating within the City and regulated by Chapter 45 of Title 58 of the Utah Code Annotated (1953, as amended); provided, however, that such security guards or security guard companies shall still be required to obtain a business license pursuant to Article II of this Chapter in order to pursue their occupation within the City.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**B. Information in addition to application for license.** The following information shall be submitted in addition to that required by Section 12-3-1:

1. Proof of United States citizenship or proof of status as a legal alien resident.
2. A statement of the experience of the applicant as a private policeman or a detective.
3. A photograph not larger than two inches by three inches (2" x 3") of the applicant.
4. A set of fingerprints of the applicant.
5. A corporate surety bond, in a form acceptable to the City, in the amount determined by resolution of the City Council, executed by a surety company authorized to do business in the State of Utah and conditional upon the person applying for the license complying with all of the laws and ordinances regulating the business of the type set forth in this section and all lawful requirements made by the City and paying all damages occasioned to any person by reason of any misrepresentation, fraud, or deceit of the licensed person, his agent or employee, or which may result from any other violation of

law or ordinance in carrying on the licensed business.

6. Proof of a policy of liability insurance in an amount not less than two hundred fifty thousand dollars (\$250,000) for personal injury or damage, issued by an insurance company authorized to do business in the State of Utah, and conditioned for the payment to any person for damages of any injury occasioned by the fault or negligence of the licensee or the licensee's employees.

If the applicant is a partnership, item Nos. 1 through 4 shall be required for each partner or member, and if a corporation, for each officer, director, and employee.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**C. Interview with Director of Public Safety.**

Each applicant for a license to engage in a business regulated by this section or his agent at the time of filing his application and each prospective employee who shall work within the City limits of the City of Orem and his immediate superior shall appear in person before the Director of Public Safety, who shall inquire of him as to his experience and qualifications and other basic requirements as herein provided to engage in such business. The Director of Public Safety shall then file his written findings and recommendations with the Director.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**D. Persons disqualified from licensing.**

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

under current investigation for such a crime, no license may be issued until a final determination of the case has been made.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**E. Badges, uniforms.** A licensee under this section or employees of a licensee shall not wear a uniform or display a badge that resembles the uniform or badge worn and displayed by the Public Safety Department or any other official law enforcement agency acting within the State of Utah. The decision of the Public Safety Director as to any similarity shall be final, and failure to comply with the decision of the Public Safety Director shall be grounds for revocation of the license.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

**F. Vehicles.** A licensee under this section or employees of a licensee shall not operate a motor vehicle in the performance of his business with a label, decal, or business name that resembles the label, decal, or name appearing on the motor vehicles of the Public Safety Department or any other official law enforcement agency acting within the State of Utah. The decision of the Public Safety Director as to any such similarity shall be final, and failure to comply with his decision shall be grounds for revocation of the license.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-5; Ord. No. O-93-0034, Amended, 12/14/93; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-6)

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

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-6; Ord. No. O-93-0029, Amended, 11/23/93; Ord. No. 0034, Amended 12/14/1993; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-7)

**12-5-7. Public Dances.**

**A. Conditional use permit.** It shall be unlawful to sponsor or hold a public dance without having a license therefor. Before being issued a business license to hold public dances, each applicant shall first apply for and receive a conditional use permit from the City Council. The conditional use permit requirement shall not apply, however, to persons or organizations sponsoring a maximum of one public dance every three (3)

months, but such persons or organizations shall still be required to obtain a license for each dance and all the remaining provisions of this section shall apply. Licenses shall only be issued for those dances to be held in a zone where public dancing is a conditional use. Dances sponsored by organizations exempt under Section 12-2-6 or held at the Orem Fitness Center shall be exempt from both the licensing and the conditional use permit requirements.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-7; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-8)

**B. Review of conditional use permit.** Any conditional use permit granted for the purpose of holding public dances shall be reviewed by the City Council on an annual basis for the purposes of determining if there have been any violations of this section and if the permit should be continued.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-7; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-8)

**C. License application; qualifications of applicant.** The application for a dance license shall be upon a form furnished by the City. The application form shall require information relative to the location of the dance premises and the applicant's age, citizenship, moral character and reputation, and felony or misdemeanor convictions, if any, involving moral turpitude. If the applicant is a partnership, association, or corporation, the same information shall be obtained with respect to each partner, association member or corporate officer and director, although the application need only be signed by a single partner, member, or officer. Each individual licensee must be over the age of twenty-one (21) years, of good moral character and a citizen of the United States. No license shall be granted to any applicant who has been convicted of a felony or misdemeanor involving moral turpitude. If the applicant is a partnership, association, or corporation, each partner, association member, or corporate officer or director shall meet all of the foregoing qualifications as if such applicant were an individual. All applications shall be referred to the Department of Public Safety for a background investigation to determine the qualification of the applicant under the provisions of this subsection.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-7; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-8)

**D. Inspection of dance location.** Before a license is issued, each location for a public dance shall be inspected by the City Fire Marshall, the Chief Building Official, and the County Board of Health for violations of the building, fire, or health codes. Any such violations shall be corrected prior to the issuance of a license. In the case of a dance to be held outdoors,

however, the location need only be inspected by an officer of the Department of Public Safety to determine if it is a reasonably safe location for a dance, taking into account traffic, lighting, and other neighborhood considerations.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-7; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-8)

**E. Denial of license.** In cases of an application for a single dance where no conditional use permit is required, the Director may deny the license upon the recommendation of the Director of Public Safety. The Director of Public Safety may only recommend denial if he:

1. Finds that the applicant does not qualify under subsection (C) above.

2. Finds, after inspection pursuant to subsection (D) above, there is reasonable cause to believe that the proposed location would be unsafe.

3. Has reasonable cause to believe that adequate security measures either could not or would not be taken by the applicant in order to insure compliance with subsection (G) below.

4. Finds, based on the proposed location and type of sound system to be used, the anticipated noise level would unreasonably interfere with the peaceful enjoyment of adjoining properties by the tenants or owners thereof. In the event that the Director denies a license pursuant to this subsection, the applicant may appeal the decision to the City Manager by filing a notice of appeal with the Director and paying a filing fee in an amount established by City Council resolution within ten (10) working days of the denial.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-7; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-8)

**F. Security at public dances.** A licensee shall have security personnel at each public dance in order to ensure that there is no violation of subsection (G) below during the conduct of the dance. The number of security guards required shall be determined by the City Council as part of the conditional use permit process if the licensee or applicant is required by this section to obtain a conditional use permit, and otherwise by the Director of Public Safety. Factors to be considered shall be the location of the proposed dance, the number of people expected at the dance, the type of premises where the dance will be held and the age group of the expected participants.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-7; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-8)

**G. Prohibited conduct.** It shall be unlawful for any person to engage or for a licensee to permit any person to engage in the following conduct during a public dance:

1. To bring, possess or consume beer or other alcoholic beverages of any kind in or upon the licensed premises.
2. To bring, possess, use or consume controlled substances, as the same are defined in the Utah Controlled Substances Act, in or upon the licensed premises.
3. To smoke in or upon the licensed premises.
4. To be intoxicated, boisterous, or disorderly in or upon the licensed premises.
5. To commit any indecent, gross, violent or vulgar act in or upon the licensed premises.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-7; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-8)

**H. Illumination.** All dance areas, including any adjacent booth, blind, stall or seating area, shall be kept illuminated so that any occupants thereof may be clearly observed. Any adjacent booths, blinds, stalls or seating areas shall be visible and open to full view from the entrance to the dance floor.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-7; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-8)

**I. Hours; age of participants.** The hours of operation and the age of participants allowed on the premises of a public dance shall be established by the City in conjunction with the granting of a conditional use permit where such permit is required. Where no conditional use permit is required, no dancing shall be permitted in or upon the licensed premises between the hours of 1:00 a.m. and 8:00 a.m. of any day except New Year's Day, when the prohibition shall be between the hours of 2:00 a.m. and 8:00 a.m. The minimum age of participants shall be sixteen (16) years, unless accompanied by an adult.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-7; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-8)

**J. Minimum On-site Parking.** The minimum number of on-site parking stalls shall be 300.

(Ord. No. O-06-0014, Enacted 7/25/2006)

## 12-5-8. Solicitors.

**A. Purpose.** The purpose of this Section is to protect city residents from unreasonable intrusions upon residential privacy, consumer fraud, and deceptive, high-pressure, factually unbalanced, or otherwise unfair consumer sales practices, in a manner consistent with

the constitutional rights of residential commercial solicitors to communicate their messages to willing residential listeners.

1. Commercial residential solicitation generally represents a greater intrusion upon residential privacy than political, religious, or other noncommercial door-to-door solicitation involving the dissemination of ideas. Commercial residential solicitation generally entails a higher incidence of consumer fraud and unfair sales practices than political, religious, or other noncommercial door-to-door solicitation involving the dissemination of ideas. Substantial numbers of city residents do not desire to listen to or otherwise receive commercial solicitations. Additionally, some residents are particularly vulnerable to consumer fraud and unfair consumer sales practices by commercial residential solicitors.

2. The Orem Department of Public Safety (hereinafter, the "Department") has investigated complaints and problems relating to residential solicitation within the City, including the following: The Department investigated fourteen complaints involving residential solicitation in 2006 and twenty-six complaints in 2007. Residents complained, among other things, about residential solicitors trespassing, surveilling residents' property, refusing to leave the complainant's property when asked, contacting residents at homes posted with a "No Solicitation" sign, selling stolen property, representing nonexistent businesses, claiming to represent a legitimate business when in fact they didn't, and using aggressive sales techniques. Based upon such investigation, the Department has concluded that commercial door-to-door solicitation within the City often involves intrusions upon residential privacy, consumer fraud, and unfair consumer sales practices.

3. The Department has found consumer fraud and deceptive, high-pressure, factually unbalanced, or otherwise unfair consumer sales practices are employed significantly less frequently in cases of charitable solicitation and solicitation occurring incident to political, religious, and other noncommercial speech entailing the dissemination of ideas.

4. The transient nature of the business of residential solicitation makes it difficult to prosecute or to obtain redress for intrusions upon residential privacy and fraudulent or otherwise unfair consumer sales practices by residential solicitors because such solicitors



are typically nonresidents of the City and often leave the City immediately upon completion of their commercial solicitation of the City. Furthermore, many companies that employ residential solicitors do not conduct accurate, thorough, and timely criminal background checks on prospective solicitors.

5. Because commercial residential solicitation (a) involves the attempt to complete an economic transaction with the hearer, and (b) may include aggressive, deceptive, factually unbalanced, or otherwise unfair tactics in an effort to complete an economic transaction, commercial residential solicitation entails a heightened risk of intrusion upon residential privacy, consumer fraud, and unfair consumer sales practices, albeit by a minority of those engaged in this business. The City wishes to reassure residents to the extent reasonably possible consistent with the First Amendment that the residential commercial solicitors who work within the City have not been the subject of criminal actions, consumer protection actions, or other legal orders or actions reasonably related to the risk of such solicitors' intruding upon residential privacy or committing consumer fraud or other unfair consumer sales practices, by instituting a residential solicitation registration procedure.

6. The Council finds that the potential and actual harm to citizens from residential solicitation is real, and that the provisions hereinafter set forth will to a material degree alleviate and avoid such harm. The Council has determined that the means chosen as hereinafter stated are reasonable and are closely fitted to achieve the desired objective of protecting citizens from intrusions upon residential privacy, consumer fraud, and unfair consumer sales practices, while simultaneously preserving the rights of others to engage in speech protected by the First Amendment to the United States Constitution and relevant state constitutional provisions. The regulations adopted herein are narrowly drawn and in the judgment of the Council are not more extensive than necessary to serve and protect the interests stated.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008)

B. **Definitions.** For the purposes of this Section, the following definitions shall apply:

1. **Applicant** means a person that applies for a Certificate of Registration.

2. **Application** means the form provided by the City to apply for a Certificate of Registration

or the process of applying for a Certificate of Registration.

3. **Certificate of Registration** means the written authorization to engage in commercial solicitation from the Director of the Department of Development Services or his designee (hereinafter the "Director").

4. **Home Solicitation Sale** means a sale of goods or services in which the seller or a person acting for him initiates contact and engages in a face-to-face solicitation of the sale at a residence of the resident and the resident's agreement or offer to purchase is there given to the solicitor or a person acting for him. Home solicitation sale shall not include a sale made between parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or a sale made within a residence to a third person invited therein by the resident where such sale was not initiated by unsolicited contact by a nonresident of the residence.

5. **Registered Solicitor** means any person registered pursuant to this Section who has obtained a valid Certificate of Registration (or "Certificate") from the Director.

6. **Residence** means and Residential refers to any (1) living unit contained within any building or structure that is occupied by any person as a dwelling, together with the lot or other real property on which such residence is located; (2) any apartment, hospital room, nursing home room, assisted living home room, group home, or other similar location; or (3) any building or structure that houses the residence together with the lot or other real property on which such building or structure is located.

7. **Resident** means any person living in a residence.

8. **Solicit, Solicited, Soliciting or Solicitation** means any of the following activities engaged in with a resident at his or her place of residence:

a. Seeking to obtain orders for the sale or exchange of services, goods, wares, merchandise or perishables of any kind, for any kind of remuneration or consideration, regardless of whether advance payment is sought;

b. Seeking to obtain prospective customers to apply for or to purchase insurance, financial services,

subscriptions to publications, or publications;

c. Seeking to obtain contributions of money, services, or anything of value for the benefit of any person, association, organization, corporation, or program;

d. Seeking to obtain orders or prospective customers for goods or services; or

e. Seeking to obtain appointments or other opportunities to engage in any of the activities listed in subsections B(8)(a) through (d) above.

9. **Solicitor** means a person engaged in soliciting residents at their residences.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008; Ord. No. O-2012-0010, Amended 04/10/2012)

**C. Unregistered solicitation prohibited.**

1. All persons desiring to solicit within the City who are not exempt under subsection (D) below shall, prior to the commencement of solicitation, obtain from the Director a Certificate of Registration as a solicitor. The executed original of this Certificate of Registration shall be maintained by the Director, and a legible copy shall be worn by the Registered Solicitor at all times while soliciting in the City and shall be produced for inspection upon the request of any resident being solicited or any Peace Officer.

2. Unless a person is a Registered Solicitor and is wearing a Certificate of Registration or is exempt from registration under the provisions of this Section, it is a violation of this Section for said person to be present in or at a residence within the City for the purpose of engaging in solicitation. Violations of this subsection shall be punishable as set forth in subsection (K) below.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008)

**D. Exemptions from registration.**

1. The following activities are exempt from the registration requirements of subsection (E) below:

a. Solicitation which occurs as the result of a resident’s prior and express invitation to the solicitor to come onto such resident’s property. An invited solicitation shall not include the circumstance where the resident invites back a solicitor who initiated the contact with the resident at the residence. A resident’s failure to post a “No Soliciting” notice in accordance with subsection (G)

below shall not be construed as an exemption from registration under this section, as an invitation to solicitation by such resident, or as an expression of such resident’s desire to hear or receive solicitations.

b. Solicitation which occurs incident to political, religious, or other noncommercial door-to-door canvassing, pamphleteering, or other dissemination of ideas.

c. Solicitation on behalf of a charitable organization as defined by Utah Code Ann. §13-22-2(1), or an organization listed in Utah Code Ann. §13-22-8(1).

2. Any solicitor claiming an exemption under this section shall bear the burden of proving the facts forming the basis for his claim of eligibility for, or the applicability of, the exemption claimed.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008)

**E. Application for Certificate of Registration, review, issuance, denial.**

1. **Information and Documents Required.** The Director shall provide a standard application form to be used by an applicant in applying for a Certificate of Registration that shall request the information set forth herein. The applicant shall state upon oath or affirmation that the information is truthfully provided to the best of the applicant’s knowledge and belief. The applicant shall supply the following information upon or with the application:

a. The applicant’s true, correct, and legal name, including any former names or aliases used within the last ten (10) years;

b. The name of any organization(s) for which the applicant will be soliciting;

c. The applicant’s home and business address, and the address where the applicant can be contacted locally;

d. The names and addresses of the applicant’s immediate supervisor, if any;

e. Proof that either the applicant, or the organization(s) for which the applicant will be soliciting, has registered with the Utah State Department of Commerce;

f. A sales tax number registered to the City for either the applicant or for the organization(s) for which the applicant will be soliciting;

g. The purpose for which soliciting will be done;

h. Whether the applicant is a person against whom a judgment based upon fraud, deceit, misrepresentation, false statements, or dishonesty has been entered within five years of the date of application;

i. Whether the applicant has, within five years of the date of application, been enjoined by any court, or is the subject of an administrative order issued in this or another state, if the injunction or order includes a finding or admission of fraud, material misrepresentation, or if the injunction or order was based on a finding of lack of integrity or truthfulness;

j. Whether the applicant has been convicted of any felony, or a misdemeanor involving fraud, deceit, misrepresentation, false statements, or dishonesty, within five years of the date of application;

k. Whether the applicant has been denied a Certificate of Registration under this Section within the year preceding the date of application, and whether the applicant has corrected the deficiency on which the previous application was based;

l. Whether the applicant has had a Certificate of Registration under this Section revoked within the year preceding the date of application and whether the applicant has corrected the reason for which the Certificate of Registration was revoked;

m. Whether an applicant's Certificate of Registration has been revoked within the year preceding the date of application for violation of the nontransferability provision of this Section;

n. Whether the applicant has been convicted of a violation of this Section within one year preceding the date of application;

o. The findings of a background check on the applicant conducted by the Utah Bureau of Criminal Investigations ("BCI") within the last 180 days and the results of a comparable background check from the applicant's state of permanent residency (if different) conducted within the previous 180 days. The application shall not be deemed complete until the applicant has delivered the findings of the BCI background check to the Director, and receipt

of the background check by the Director shall be a condition precedent to issuance of a Certificate of Registration;

p. An acknowledgment that solicitation will not commence until the solicitor is in full compliance with this Section.

2. **Incorrect or Incomplete Information.** If any information contained in the application becomes incorrect or incomplete after the Certificate of Registration has issued, the applicant or Registered Solicitor shall, within 30 days after the information becomes incorrect or incomplete, correct the application, or file the complete information required herein.

3. **Fees.** The applicant shall pay an application and processing fee as set by the City from time to time; provided, however, that the fee shall not exceed reasonable administrative costs incurred by the City to process an application and maintain the related records.

4. **Grounds for Denial.** A Certificate of Registration shall not be issued in any of the following circumstances:

a. When the applicant has falsified information on the application;

b. When the applicant is a person against whom a judgment based upon fraud, deceit, misrepresentation, false statements, or dishonesty has been entered within five years of the date of application;

c. When the applicant has, within the past five years, been enjoined by any court, or is the subject of an administrative order issued in this or another state, if the injunction or order includes a finding or admission of fraud, material misrepresentation, or if the injunction or order was based on a finding of lack of integrity or truthfulness;

d. When the applicant has been convicted of any felony, or a misdemeanor involving fraud, deceit, misrepresentation, false statements, or dishonesty, within five years of the date of application;

e. When the applicant is an individual who is listed as a sex offender on the U.S. Department of Justice National Sex Offender Public Website (currently found at <http://www.nsopw.gov/Core/Conditions.aspx>).

f. When the applicant has been convicted of any felony involving violence or the threat of violence within five years of the date of the application.

g. When the applicant has been denied a Certificate of Registration under this Section within the year preceding the date of application, unless the applicant has corrected the deficiency on which the previous application was based;

h. When the applicant has had a Certificate of Registration under this Section revoked within the year preceding the date of application, unless the applicant has corrected the reason for which the Certificate of Registration was revoked;

i. When an applicant's Certificate of Registration has been revoked within the year preceding the date of application for violation of the nontransferability provision of this Section;

j. When the applicant has failed to supply any of the documents or information listed herein, or has failed to pay the fee set by the City in accordance with this Section;

k. When the applicant has been convicted of a violation of this Section within one year preceding the date of application.

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

a. A valid driver license issued by any State;

b. A valid United States Uniformed Service Identification Card;

c. A valid passport issued by the United States;

d. Any other official document issued by the United States or any State thereof which contains the name and photograph of the applicant.

6. **Registration Complete upon Completion of Application.** Registration shall be deemed complete when the Director has received all of the information and documents listed above and the applicant has paid the applicable fee. The Certificate of Registration shall be issued within three (3) business days following the Director's receipt of a complete application, unless one of the

circumstances listed in subsection (E)(4) above applies. In the event that the Director determines that one or more of the circumstances listed in subsection (E)(4) above exists, the Director shall notify the applicant in writing within three (3) business days following the applicant's completion of registration that the application has been denied and the reason(s) therefore.

7. **Form of Certificate and Badge.**

a. Each Certificate of Registration issued by the Director shall be numbered, shall list the name of the individual Registered Solicitor and of any organization on whose behalf the Registered Solicitor is authorized to solicit, the date on which the Certificate of Registration expires, and shall be dated and signed by the Director or his or her authorized designee.

b. Each Registered Solicitor shall wear a badge prominently on his or her person, consisting of a copy of the Certificate of Registration issued by the City, a 1½ inch by 1½ inch (approximate) photograph of the Registered Solicitor that was taken within one year preceding the issuance of the Certificate of Registration to be supplied by the Registered Solicitor, and the name and address of any entity with which the Registered Solicitor is associated. Such badge shall be worn at all times while the Registered Solicitor is engaged in soliciting.

c. All badges are and remain the property of the City.

d. By issuing a Certificate of Registration, the City does not guarantee the accuracy of any representation contained in the application or the Certificate of Registration, nor does it warrant that any statement made by the Registered Solicitor is truthful. The City makes no certification as to the worthiness of any organization, its products, or services, on whose behalf a solicitation is made or as to the moral character of the Registered Solicitor.

e. The following statement shall appear on each Certificate of Registration: "THE CITY OF OREM MAKES NO CERTIFICATION AS TO THE WORTHINESS OF ANY ORGANIZATION, ITS PRODUCTS OR SERVICES, ON WHOSE BEHALF A

SOLICITATION IS MADE OR AS TO THE MORAL CHARACTER OF THE REGISTERED SOLICITOR.”

8. **Duration.** A Certificate of Registration shall be valid for a period of one (1) year from the date of issuance.

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

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

11. **Revocation of Certificate.** Any Certificate of Registration issued pursuant to the provisions of this Section shall be revoked by the City if, following issuance of the Certificate of Registration, the City determines that the Registered Solicitor was convicted of a violation of this Section or committed an act or became subject to a condition that would disqualify him or her from receiving a Certificate of Registration under subsection (E)(4) above. Notice of revocation shall

be immediately given to the Registered Solicitor by personal service or certified mail to the address listed on the Application and, if applicable, to the organization for which the Registered Solicitor was soliciting. The notice shall set forth the factual basis for the revocation and, if applicable, the specific provision(s) of subsection (E)(4) above that identifies and defines the disqualifying conduct. Immediately upon the giving of such notice, the Certificate of Registration shall become void and shall remain so until the revocation is rescinded. Upon receiving notice of revocation of any Certificate of Registration, the Registered Solicitor shall forthwith return the related badge to the City.

12. **Appeal.** An applicant whose application is denied by the Director or a Registered Solicitor whose Certificate of Registration is revoked by the Director shall have the right to appeal such denial or revocation to the City Manager or his designee at a meeting to be held no later than twenty (20) business days following the City's receipt of the applicant's notice of appeal. The notice of appeal shall be in writing and shall be delivered either in person upon written receipt or by certified U.S. mail to the City Recorder with a copy to the Director within ten (10) business days of the applicant's or Registered Solicitor's receipt of the decision from which the appeal is taken. Such notice of appeal shall identify the applicant or Registered Solicitor, set forth the decision of the Director that is being appealed, and state the grounds for appeal. Within ten (10) business days of the meeting at which the applicant's or Registered Solicitor's appeal is heard, the City Manager or his designee shall issue a decision either affirming or reversing the actions of the Director in denying an applicant's application or revoking the Registered Solicitor's Certificate of Registration. An applicant or Registered Solicitor aggrieved by the City Manager's decision may file for relief in any court of competent jurisdiction within thirty (30) days of the City Manager's decision.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008; Ord. No. O-2012-0010, Amended 04/10/2012; Ord. No. O-2012-0010, Amended 04/10/2012; Ord. No. O-2013-0024, Amended 10/18/2013)

**F. Deceptive soliciting practices prohibited.**

1. No Solicitor shall make any materially false or fraudulent statement in the course of soliciting. No Solicitor shall fail to state a material fact necessary to make statements made, in the context of the circumstances under which they are made, not misleading.

2. A Solicitor shall immediately disclose to the resident at the beginning of any face-to-face solicitation, either verbally or by means of a writing to be handed to the resident, (i) the name of the Solicitor; (ii) the name and address of the entity with whom the Solicitor is associated or for which the Solicitor is soliciting; and (iii) the purpose of the Solicitor’s contact with the resident.

3. No Solicitor shall use a fictitious name, an alias, or any name other than his or her legal name.

4. No Solicitor shall represent directly or by implication that the City endorses the solicitation, or, if applicable, that the granting of a Certificate of Registration implies endorsement by the City of the Solicitor or his or her product or service.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008)

**G. “No Soliciting” notices.**

1. Any resident may give notice of his or her unwillingness to listen to solicitations or receive Solicitors by displaying at his or her residence a placard or sign stating “No Soliciting,” “No Solicitors,” “No Trespassing” or words of similar import. Such placard or sign shall be posted on or near the main entrance door or on or near the property line adjacent to the sidewalk leading to the residence.

2. The display of a “No Soliciting” or similar sign or placard at the door of the residence or at the entrance to the building or structure that houses the residence shall constitute notice to any Solicitor that the resident is unwilling to listen to solicitations.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008)

**H. Certain solicitations prohibited.**

1. It shall be a violation of this Section for any Solicitor to attempt to solicit at a residence at or on which has been posted a “No Soliciting” sign or placard in accordance with subsection (G) above. All Solicitors shall check each residence for any such sign or placard. If such sign or placard is posted, a Solicitor shall desist from any efforts to solicit at the residence and shall immediately depart there from.

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

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

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Amended 02/12/08)

**I. Time of Day.**

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

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008)

**J. Right to cancel residential solicitation sale.**

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

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008)

**K. Penalties.** Any person who engages in soliciting without complying with the requirements of this Section or violates any other terms or provisions of this Section shall be guilty of a class 'B' Misdemeanor and shall be punished by a fine of not to exceed \$1,000.00 and/or a jail term not to exceed six (6) months.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008)

**L. Conflicting ordinances void.** Any Ordinance or provision of the Orem City Code which conflict with the provisions of this Section is hereby repealed.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008)

**M. Severability.** If any provision of this Section is held by a court of competent jurisdiction to be unconstitutional or for any reason invalid, such ruling or decision shall not affect the validity of the remaining provisions, which are adopted separately and independently and shall remain in force and effect.

(Ord. No. 661, Revised, 04/10/1990; Ord. No. 690, Renumbered, 07/23/1991, 12-5-8; Ord. No. O-98-0005, Ren&Amd, 01/27/1998, 12-5-9; Ord. No. O-02-0032, Amended, 09/24/2002; Ord. No. O-08-0007, Repealed & Reenacted 02/12/2008)

#### **12-5-9. Solid waste collectors.**

In addition to the licensing requirements of this Chapter, any person desiring to engage in the business of solid waste collection shall comply with all of the requirements of the Solid Waste Ordinance of the City.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-9; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-10)

#### **12-5-10. Transient merchants.**

Transient merchants not permitted.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-9; Ord. No. 690, Renumbered, 07/23/91, 12-5-10; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-11; Ord. No. O-2012-0010, Amended 04/10/2012)

#### **12-5-11. Temporary businesses.**

In addition to the business license application required by this Chapter, an applicant who desires to use a temporary site or building shall comply with the provisions of Section 22-14-18.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-11; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-12; Ord. No. O-2013-0024, Amended 10/08/2013)

#### **12-5-12. Mobile Vendors.**

A mobile vendor may only be a food vendor, and must have all required licensing from the Utah County

Health Department. All equipment related to food preparation must be in a self-contained unit such as the vehicle itself or an attached trailer. An operating mobile vendor may not interfere with vehicular or pedestrian circulation. A mobile vendor may not be parked longer than five (5) hours at any one location (or within 500 feet of said location) per day. Property owner approval is required. A mobile vendor may not park on any public street located within one thousand feet (1000') of the City Center Park or Scera Park during the annual Summerfest celebration typically held in June of each year.

(Ord. No. 661, Revised, 04/10/90; Ord. No. 690, Renumbered, 07/23/91, 12-5-12; Ord. No. O-98-0005, Ren&Amd, 01/27/98, 12-5-13; Ord. No. O-2013-0024, Amended 10/08/2013; Ord. No. O-2015-0018, Amended 06/09/2015)

#### **12-5-13. Towing and Parking Enforcement Companies.**

##### **A. Definitions.**

**Abandoned Vehicle** means a vehicle that is left unattended on a highway for a period in excess of forty-eight (48) hours; or on any public or private property for a period in excess of seven (7) days without express or implied consent of the owner or person in lawful possession or control of the property.

**Authorized Vehicle** means a motor vehicle parked on private property for which permission has been granted to park such vehicle.

**Boot** means a device used by a towing or parking enforcement company to temporarily immobilize or disable a motor vehicle for purposes of enforcing parking restrictions.

**Nonconsensual Booting** means immobilizing or otherwise disabling vehicles without the prior consent of the owner.

**Nonconsensual Towing** means the towing of a vehicle without the prior consent of the owner of the vehicle.

**Parking Enforcement Company** means a person or business entity engaged in the practice of immobilizing ("booting"), or otherwise disabling vehicles for the purpose of enforcing parking restrictions either on public streets, private property, or public parking lots restricted as to use.

**Parking Enforcement Operations** means the business of enforcing parking regulations for compensation within the corporate limits of the City of Orem by booting motor vehicles.

**Parking Enforcement Vehicle** means any vehicle that is used by a parking enforcement company in the course of parking enforcement operations.

**Person** means an individual, a firm, a partnership, a corporation, a company, an association, or a joint stock association or any other type of business entity or association.

**Rate List** means a list of certified and licensed towing companies and the rates charged for their services, maintained by the Orem Department of Public Safety. Such list is provided to motorists who request the names of towing companies from public safety officers.

**Rotation List** means the list of certified and licensed towing companies maintained by the Orem Department of Public Safety, whom the Department will call when either there is a need for the nonconsensual towing of a vehicle or when the vehicle owner has need of the services of a towing company and the vehicle owner has no preference which company is called.

**Tow or Towing** means to utilize any automotive vehicle to pull, load, carry or otherwise transport another automotive vehicle or automotive vehicle trailer over a public highway or road. A tow begins when the tow operator exercises any control over the vehicle, by means of a crane, hoist, tow bar, tow line, chain, or dolly.

**Tow Truck** means a motor vehicle which has been altered or designed, equipped and primarily used for the purpose of towing or carrying vehicles by means of crane, hoist, tow bar, tow line, chain, or dolly.

**Towing Company** means a person or business entity engaged in the practice of towing vehicles.

**Towing Operations** means the business of towing motor vehicles for compensation within the corporate limits of the City of Orem, whether or not the towing extends beyond the city limits. Such business shall also include the storage of towed vehicles, pending their return to the owner thereof by the towing company, or parking enforcement company which towed such vehicle.

(Ord. No. O-03-0008, Enacted, 04/01/2003; Ord. No. O-2012-0009, Amended 03/27/2012; Ord No. O-2014-0037, Amended 10/28/2014)

**B. Certification Required.** It shall be unlawful for any person to engage in commercial towing operations within the corporate limits of the City of Orem unless the person has been certified by the Utah Department of Transportation as a towing company. The City may revoke or suspend the business license of any towing company that fails to obtain or maintain a valid state certification, or if licensed elsewhere, may suspend or revoke the right to conduct towing services in the City of Orem.

(Ord. No. O-03-0008, Enacted, 04/01/2003)

**C. License and Parking Required.**

1. It shall be unlawful for any person to engage in commercial towing operations or parking enforcement operations within the corporate limits of the City of Orem, unless the person operating such business has applied for and obtained a license from the City of Orem to do so. Such license shall be applied for, granted and maintained in compliance with the provisions of this Chapter.

2. A towing or parking enforcement company which maintains a current business license from Utah County or a municipality located within Utah County shall not be required to obtain a separate business license from the City of Orem. However, to conduct towing or parking enforcement activities within the City of Orem, such company shall register on forms provided by the City. All persons so registering shall comply with the provisions of this Chapter and shall keep all required information current with the City. No business license fees shall be charged persons registering pursuant to this Section. The City shall provide evidence of registration which can be carried in company vehicles as required herein.

3. Failure to comply with any provision of this Section shall constitute grounds for suspension or revocation of the business license of any company licensed in the City of Orem, or if licensed elsewhere, shall be grounds to suspend or revoke the right to conduct parking enforcement or towing services in the City of Orem.

(Ord. No. O-03-0008, Enacted, 04/01/2003; Ord. No. O-2012-0009, Amended 03/27/2012)

**D. License Application, Registration form.**

An application for a business license, or a registration form, shall be filed in writing with the Department of Administrative Services and shall specify and provide:

1. The name and address of the applicant, and if applicable, each and every officer, partner, member and registered agent of the applicant.

2. The name and location of the applicant's principal place of business;

3. A copy of the Utah Department of Transportation certification.

4. An accurate list of the names and birth dates of employees who will have access to vehicles in order that a background check may be completed to discover if any employee has been convicted of a felony or



misdemeanor of moral turpitude within the past five (5) years. Such list of employees' names and birth dates must be kept current with the Department of Administrative Services. When an applicant business adds a new employee, the applicant business must report the aforementioned information to the Department of Administrative Services before allowing that employee to engage in any towing or booting related activity;

5. Evidence of compliance with the property damage insurance and surety bond requirements of this Section;

6. A current schedule of fees;

7. Copies of any contracts entered into pursuant to Orem City Code Section 19-7-5.F; and

8. For businesses applying for a business license, proof that the principal place of business is located within the corporate limits of the City of Orem.

(Ord. No. O-03-0008, Enacted, 04/01/2003; Ord. No. O-2010-0010, 05/11/2010; Ord. No. O-2012-0009, Amended 03/27/2012)

#### **E. Requirements for conducting business.**

1. Persons conducting towing or parking enforcement services in the City shall do the following:

a. Maintain a business name that is not substantially similar to the name of any of the City of Orem's departments responsible for parking enforcement and towing services;

b. Comply with the current Utah Department of Transportation rules and regulations for tow truck operators if the company has a tow truck(s);

c. Maintain a Department of Transportation certificate for each tow truck during the term of the license;

d. Provide a certificate of insurance showing proof of valid property damage liability insurance issued by an insurance company authorized to do business in the State of Utah.

i. A certification from the insurer as to duration, kind and extent of insurance, shall be kept on file with the City of Orem business license department.

ii. The licensee or his insurance agent shall notify the City of Orem of any termination or change of policy. Failure to do so shall be grounds for suspension or revocation of any business license or registration issued under this Chapter.

e. Affix permanent readable signs on the doors of any tow truck or parking enforcement vehicle listing the applicant's business name, address and telephone number;

f. Provide a surety bond of \$1,000.00 from good and sufficient sureties to ensure continued compliance with this Chapter.

g. Provide competent evidence that the towing company stores motor vehicles in a secure fenced area, enclosed yard or building;

h. Ensure that all personnel operating tow trucks are carrying within the vehicle a current certification card issued by the Utah Department of Transportation and a valid Utah driver's license which authorizes operating a tow truck. Parking enforcement companies which do not provide towing services shall ensure that their personnel carry a valid Utah driver's license and a company identification card identifying the driver as an employee of the parking enforcement company;

i. On or before December 31st of each year, towing or parking enforcement companies must file the following with the Department of Public Safety:

i. A current copy of the towing or parking enforcement company's Utah Department of Transportation certification;

ii. A current list of names and birth dates of employees who will have access to vehicles;

iii. Current proof of insurance as required by Orem City Code 12-5-13 (E)(1)(d)

iv. Current proof of surety bond as required by Orem City Code 12-5-13 (E)(1)(f);

v. A current schedule of fees; and

vi. Copies of all written contracts entered into pursuant to Orem City Code Section 19-7-5(F).

j. Every parking enforcement and towing company licensed or registered and providing services pursuant to this Chapter shall post in a conspicuous place upon its business premises a true copy of this Section as well as Article 19-7-1 et seq. of the City Code.

2. In the event of a change in ownership, management, business name, address, telephone number, or fee schedules, the licensee or company registered shall provide such information to the Department of

Administrative Services within ten (10) days of such change.

3. When renewing a business license or reapplying to be placed on the rotation list after having been removed, parking enforcement or towing companies shall submit to the Department of Administrative Services the documents listed in Orem Code 12-5-13(E)(1)(i).

(Ord. No. O-03-0008, Enacted, 04/01/2003; Ord. No. O-2012-0009, Amended 03/27/2012)

**F. License Fees.** The license fee for a person desiring to provide towing services and/or parking enforcement services within the City of Orem shall be set by the City Council. Applicants and registrants shall be responsible for paying for the cost of the Department of Public Safety conducting a BCI background check.

(Ord. No. O-03-0008, Enacted, 04/01/2003)

**G. Duty to Display License.**

1. Every tow truck operator or parking enforcement employee shall carry upon his person while working or in the truck:

a. A valid Utah driver’s license, which allows for operation of a tow truck (if towing services are to be performed);

b. Evidence of a valid license or registration issued by the City of Orem;

c. In the case of tow truck operators only, evidence of a personal certification card issued by the Utah Department of Transportation;

d. A company identification card giving the name, address and phone number of the company and identifying the operator as an employee thereof; and

e. All other identification required by law.

(Ord. No. O-03-0008, Enacted, 04/01/2003)

**H. Investigation by Orem Department of Public Safety.**

1. The Director of Public Safety, or his designee, shall investigate each application filed pursuant to this Article to determine if the applicant and the application meet the requirements of this Article and sections 12-2-1 and 12-2-6 of the City Code. A similar background check shall be conducted for persons registering to do business under this Section.

2. Background checks may be conducted on all employees of the entity desiring to obtain a license under this section or on those desiring to conduct services within the City.

3. If a background check discloses a criminal history involving a conviction of a felony or crime

of moral turpitude, theft, fraud, etc. within the past five (5) years, or any current conduct that would threaten the health, welfare, safety or security of the public, a license or the right to conduct business may be denied or revoked by the Director of Public Safety. Any person who wishes to dispute a decision by the Director may appeal such decision to the City Manager. Any appeal must be filed in writing with the City Manager’s office within ten (10) calendar days of the denial or revocation.

4. Annually, the Director of Public Safety, or his designee, will review the submissions of all towing and parking enforcement companies to determine whether those companies are in compliance with this Section.

(Ord. No. O-03-0008, Enacted, 04/01/2003; Ord. No. O-2010-0010, Amended 05/11/2010; Ord. No. O-2012-0009, Amended 03/27/2012)

**Article 12-6. Utility License Tax****12-6-1. Utility License Tax.****12-6-2. License tax on business in competition with public utilities.****12-6-3. Review of tax.****12-6-1. Utility License Tax.**

There is hereby levied upon the business of every person or company engaged in the business in the City of Orem, Utah, of supplying cable television service as a public utility, a license tax in an amount determined by the City Council in the annual budget resolution. The tax shall be a percentage of the gross revenue derived from the sale and use of the services of said utility and use of the services of said utility for which billings or statements for such sale and use of services are mailed or in any way delivered after July 1, 1982, within the corporate limits of the City of Orem, said tax being in addition to any franchise fee.

The term "gross revenue", as used herein, shall be construed to mean the revenue derived from the sale and use of public utility services within the City of Orem, provided that "gross revenue" as applied to the telephone utility shall be construed to mean basic local exchange services revenue received from subscribers located within the City of Orem.

"Local exchange service revenues" shall mean revenues received from the furnishing of telecommunications within a specified geographical area (exchange) and access to the telecommunications network to either a flat rate or measured basis, by means of an access line. Basic local exchange service revenues shall not include revenues obtained by the telephone public utility company from the provision of terminal telephone equipment services (such as basic telephone sets, private branch exchanges and key telephone systems), or from other telephone equipment which is obtainable from either the telephone company or other suppliers.

"Public utility services" shall mean the sale and use of local exchange telephone and cable television service. Public utility services as used in this Article shall not include "energy suppliers" as that term is defined in Orem City Code Section 18-2-2.

Within forty-five days after the close of each month in a calendar year, any public utility taxed hereunder shall file with the City Treasurer of the City of Orem a report of its gross revenue derived from the sale and use of public utility service in the City of Orem as defined herein, together with a computation of the tax levied hereunder against the utility. Coincidental with the filing of such report, the utility shall pay to the City Treasurer the amount of the tax.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-97-0029, Amended, 06/10/97; Ord. No. O-04-0022, Amended, 6/8/2004)

**12-6-2. License tax on business in competition with public utilities.**

There is hereby levied upon the businesses of every person or company engaged in the business in the City of Orem, Utah of supplying cable television service, in competition with public utilities, an annual license tax in an amount determined by the City Council in the annual budget resolution. The tax shall be a percentage of the gross revenue derived from the sale and use of such competitive services for which billings or statements for such sale and use of services are made after July 1, 1982, within the corporate limits of the City of Orem.

"In competition with public utilities" shall mean to trade in products or services within the same market as a public utility taxed under Section 12-6-1 of this Article.

Within forty-five days after the close of each month in a calendar year, any business taxed hereunder shall file with the City Treasurer of the City of Orem a report of its gross revenue derived from the sale and use of services specified hereunder rendered in competition with public utilities in the City of Orem, together with a computation of the tax levied hereunder against such business. Coincidental with the filing of such report, the business shall pay to the City Treasurer the amount of the tax.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-97-0029, Amended, 06/10/97; Ord. No. O-04-0022, Amended, 6/8/2004)

**12-6-3. Review of tax.**

The amount and conditions of the utility license tax described in this Article shall be reviewed annually by the City Council during the process of preparing the annual City budget. The utility license tax shall continue indefinitely unless modified by the City Council.

(Ord. No. 661, Revised, 04/10/90; Ord. No. O-97-0029, Amended, 06/10/97)

**Article 12-7. Sexually Oriented Businesses**

- 12-7-1. Title for citation.
- 12-7-2. Purpose.
- 12-7-3. Application.
- 12-7-4. Definitions.
- 12-7-5. Obscenity and Nudity.
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- 12-7-10. Business categories - Number of licenses.
- 12-7-11. Employee licenses.
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- 12-7-13. License - Fees.
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- 12-7-15. License - Premises location and name.
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- 12-7-17. License - Term.
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- 12-7-19. License - Transfer limitations.
- 12-7-20. License - Display.
- 12-7-21. License - Statement in advertisements.
- 12-7-22. Regulations and unlawful activities.
- 12-7-23. Outcall services - Operation requirements.
- 12-7-24. Adult business - Design of premise.
- 12-7-25. Seminude entertainment business - Design of premises.
- 12-7-26. Seminude entertainment business - Location restriction.
- 12-7-27. Seminude dancing bar - Operation prerequisites.
- 12-7-28. Seminude dancing bar - Performer restrictions.
- 12-7-29. Seminude dancing agencies.
- 12-7-30. Performers - Prohibited activities.
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- 12-7-34. Nudity - Defenses to prosecution.
- 12-7-35. Existing Business - Compliance time limits.
- 12-7-36. Violation - Injunction when.
- 12-7-37. Violation - License suspension or revocation.
- 12-7-38. Effect of license revocation.
- 12-7-39. Appeal procedures.
- 12-7-40. Violation - Penalty.
- 12-7-41. Severability.

**12-7-1. Title for citation.**

The ordinance codified in this article shall be known, and may be referred to, as the "Sexually Oriented Businesses and Employee Licensing Ordinance."

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-2. Purpose.**

The purpose and object of this Article is to establish reasonable and uniform regulations governing the time, place, and manner of the operation of sexually oriented businesses and their employees in the City. This ordinance by its terms is designed to prevent crime, protect the City's retail trade, maintain property values, and generally protect and preserve the quality of the City's neighborhoods, commercial districts, and the quality of urban life. The provisions of this ordinance have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials or speech protected by the First Amendment. This Article shall be construed to protect the governmental interests recognized by this Article in a manner consistent with constitutional provisions provided by the United States and Utah Constitutions.

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-3. Application.**

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 when the context or specific provisions require, this chapter does not supersede or nullify any other related ordinances.

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-4. Definitions.**

For purposes of this chapter, the following words shall have the following meanings:

A. **Adult bookstore** or **Adult video store** means a commercial establishment:

1. Which excludes minors from more than fifteen percent (15%) of the retail floor or shelf space of the premises; or

2. Which, as one of its principal purposes, offers for sale or rental, for any form of consideration, any one or more of the following: Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations, the central theme of which depicts or describes "specified sexual activities" or "specified anatomical areas;" or instruments, devices or paraphernalia which are designated for use in connection with "specified sexual activities," except for legitimate medically recognized contraceptives.

(Ord. No. O-92-009, Enacted, 05/26/92)

**B. Adult business** means an adult motion picture theater, adult bookstore, or adult video store.

(Ord. No. O-92-009, Enacted, 05/26/92)

**C. Adult motion picture theater** means a commercial establishment which regularly 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."

(Ord. No. O-92-009, Enacted, 05/26/92)

**D. Adult theater** means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of seminudity."

(Ord. No. O-92-009, Enacted, 05/26/92)

**E. Business license authority** means the City's business license supervisor or designee.

(Ord. No. O-92-009, Enacted, 05/26/92)

**F. Customer** means any person who contracts with or employs any escort services or escort, or the patron of any business licensed pursuant to this chapter.

(Ord. No. O-92-009, Enacted, 05/26/92)

**G. 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

**H. Escort** means a person who, for pecuniary compensation, dates, socializes, visits, consorts with or accompanies, or offers 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 or who agrees or offers to privately model lingerie or to privately perform a striptease for another person. Escort shall not be construed to include persons who provide business or personal services such as licensed private nurses, aids for the elderly or handicapped, social secretaries or similar service personnel whose relationship with their patron is characterized by a bonafide contractual relationship having a duration of more than twelve (12) 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 (1) hour.

(Ord. No. O-92-009, Enacted, 05/26/92)

**I. Escort service** means an individual or entity who, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce customers to escorts.

(Ord. No. O-92-009, Enacted, 05/26/92)

**J. 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 customer by contacting or meeting with escort services, escorts or customers at any location within the city, whether or not such third person is employed by such escort service, escort, customer, or by another business, or is an independent contractor or self-employed.

(Ord. No. O-92-009, Enacted, 05/26/92)

**K. Nudity or State of nudity** means the appearance of a human bare buttock, cleft of buttocks, anus, pubic region, male genitals, female genitals, or full female breast.

(Ord. No. O-92-009, Enacted, 05/26/92)

**L. 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

**M. Pecuniary compensation** means any commission, fee, salary, tip, gratuity, hire, profit, reward, or any other form of consideration.

(Ord. No. O-92-009, Enacted, 05/26/92)

**N. Person** means any person, unincorporated association, corporation, partnership or other legal entity.

(Ord. No. O-92-009, Enacted, 05/26/92)

**O. Seminude** means a state of dress in which opaque clothing covers no more than the genitals, pubic region, anus, cleft of the buttocks, the areola and nipple of the female breast as well as portions of the body covered by supporting straps or devices.

(Ord. No. O-92-009, Enacted, 05/26/92)

P. **Seminude 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 seminude entertainment, seminude dancing bars, or adult theaters.

(Ord. No. O-92-009, Enacted, 05/26/92)

Q. **Seminude dancing bars** means any business which sells or allows the consumption of any alcoholic beverage on its premises that permits dancing, modeling, or other performance or appearance however characterized, in a state of seminudity.

(Ord. No. O-92-009, Enacted, 05/26/92)

R. **Seminude entertainment business** means a business, including adult theater, where employees perform or appear in the presence of customers of the business in a state of seminudity. A business shall also be presumed to be a seminude entertainment business if the business holds itself out as such a business.

(Ord. No. O-92-009, Enacted, 05/26/92)

S. **Sexually oriented businesses** means seminude entertainment businesses, sexually oriented out-call services, adult businesses, seminude dancing bars and seminude dancing agencies, as defined by this chapter.

(Ord. No. O-92-009, Enacted, 05/26/92)

T. **Sexually oriented business employees** means those employees who work on the premises of the 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 independent contractors. Employees shall not include individuals whose work is unrelated to the sexually oriented portion of the business, such as janitors, bookkeepers, cooks, serving persons, bartenders, and similar employees, except when 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

U. **Specified anatomical areas** means the human male or female pubic area or anus with less than full opaque covering, or the human female breast including the areola, papilla or nipple with less than full opaque covering.

(Ord. No. O-92-009, Enacted, 05/26/92)

V. **Specified sexual activities** means:

1. Acts of masturbation, human sexual intercourse, sexual copulation between a person and a beast, fellatio, cunnilingus, bestiality, pederasty, buggery, or any anal copulation between a human male and another human male, human female or beast;

2. Manipulation, caressing or fondling by any person of the genitals of a human, the pubic area of a human, the uncovered female nipple and areola; or

3. Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or in the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-5. Obscenity and Nudity.**

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 the Orem City Code, or other applicable federal or state statute prohibiting obscenity or nudity.

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-6. 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 businesses, seminude entertainment businesses or seminude dancing bars pursuant to this chapter shall only be allowed in areas zoned for their use pursuant to Article 20 of Chapter 22 of this code. Businesses licensed as seminude dancing agencies and outcall services are not limited to locations permitted by Chapter 20.

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-7. Business license required.**

It is unlawful for any person to operate a sexually oriented business, as specified below, without first obtaining a sexually oriented business license. The license shall specify the type of business for which it is obtained.

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-8. 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-9. Legitimate artistic modeling.**

A. 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 subsection K of Section 12-7-22, a licensed outcall employee may appear in a state of nudity before a customer provided that a written contract for such appearance was entered into between the customer and the employee and was signed by all parties to the contract at least twenty-four (24) hours before the nude appearance. All of the other provisions of this chapter shall still apply to such nude appearance.

(Ord. No. O-92-009, Enacted, 05/26/92)

B. In the event that a contract for nude modeling or appearance is 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:

1. Appear nude or seminude in the presence of persons under the age of eighteen (18);
2. Allow, offer, or agree to any touching of the contracting party or other person by the individual appearing nude;
3. Allow, offer, or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or commit activities harmful to a minor;
4. Allow, offer, commit, or agree to any sex act as validly defined by City ordinances or State statute;
5. Allow, offer, agree, or permit the contracting party or other person to masturbate in the presence of the individual contracted to appear nude;
6. Allow, offer or agree for the individual appearing nude to be within five (5) feet of any other person while performing or while nude or seminude.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-10. Business categories - Number of licenses.**

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

(Ord. No. O-92-009, Enacted, 05/26/92)

B. The categories of sexually oriented businesses are:

1. Outcall services;
2. Adult businesses;
3. Seminude entertainment businesses;
4. Seminude dancing bars; and
5. Seminude dancing agency.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-11. 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-12. 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 business license authority, the following:

A. The correct legal name of each applicant, corporation, partnership, limited partnership, or entity doing business under an assumed name;

(Ord. No. O-92-009, Enacted, 05/26/92)

B. If the applicant is a corporation, partnership or limited partnership, or individual or entity doing business under an assumed name, the information required below for individual applicants shall be submitted for each partner and each principle of the applicant, and for each officer, director and any shareholder (corporate or personal) holding 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 article;

1. The shareholder disclosure requirements above shall only be applicable for outcall service licenses.

(Ord. No. O-92-009, Enacted, 05/26/92)

C. 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;

(Ord. No. O-92-009, Enacted, 05/26/92)

D. For all applicants or individuals, the application must also state:

1. Any other names or aliases used by the individual;
2. The age, date, and place of birth;
3. Height, weight, and color of hair and eyes;
4. Present business address and telephone number;
5. Proposed business address and telephone number;
6. Present residence address and telephone number;
7. State drivers license or identification number; and
8. Social security number;

(Ord. No. O-92-009, Enacted, 05/26/92)

E. Acceptable written proof that the individual is at least eighteen (18) years of age or, in the case of employees to be employed in a business where a different age is required, proof of the required age;

(Ord. No. O-92-009, Enacted, 05/26/92)

F. 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 City Police Department. For persons not residing in the City, the photographs may be on a form from the law enforcement jurisdiction where the person resides. Any fees for the photographs and fingerprints shall be paid by the applicant;

(Ord. No. O-92-009, Enacted, 05/26/92)

G. For any individual applicant required to obtain a sexually oriented business employee license as an escort or as a seminude entertainer, a certificate from the Utah County Health Department, stating that the individual has, within thirty (30) days immediately preceding the date of application, been examined and found to be free of any contagious or communicable diseases;

(Ord. No. O-92-009, Enacted, 05/26/92)

H. A statement describing the business, occupation or employment history of the applicant for three (3) years immediately preceding the date of the filing of the application;

(Ord. No. O-92-009, Enacted, 05/26/92)

I. A statement detailing the license or permit history of the applicant for the five (5) years 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 country has ever had a

license, permit or authorization to do business denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying jurisdiction, and describe 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;

(Ord. No. O-92-009, Enacted, 05/26/92)

J. List all criminal convictions or pleas of nolo contendere, except those which have been expunged, and the disposition of all arrests of 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, except minor traffic offenses (any traffic offense designated as a felony, Class A or Class B 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 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;

(Ord. No. O-92-009, Enacted, 05/26/92)

K. In the event the applicant is not the owner of record of the real property upon which the business or proposed business is 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 the notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well a copy of the lease or rental agreement pertaining to the premises in which the service is or will be located;

(Ord. No. O-92-009, Enacted, 05/26/92)

L. 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 to be



charged by the licensee, and any rules, regulations or employment guidelines under or by which the business intends to operate. This description shall also include:

1. The hours that the business or service will be open to the public, and the methods of promoting the health and safety of the employees and customers and preventing them from engaging in illegal activity;
2. The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities;
3. The methods of supervising employees and customers from charging or receiving fees for services or acts prohibited by this chapter or other statutes or ordinances;
4. The methods of screening employees and customers in order to promote the health and safety of employees and customers and prevent the transmission of disease, and prevent the commission of acts of prostitution or other criminal activity.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-13. License - Fees.**

A. Each applicant for a sexually oriented business or employee license shall be required to pay regulatory license fees pursuant to the following schedule:

1. Yearly business regulatory license fees:
  - a. Adult business and seminude dancing bars, one hundred dollars (\$100);
  - b. Outcall business, two hundred dollars (\$200);
  - c. Seminude dancing agencies and seminude entertainment businesses, one hundred fifty dollars (\$150);
2. For each business applicant, an initial investigation fee of one hundred dollars (\$100) is required for each applicant directed to submit a separate disclosure application;
3. Yearly sexually oriented business employee license fees:
  - a. Any employee providing outcall business services away from the premises of the business, one hundred fifty dollars (\$150);
  - b. Adult business employees, outcall business employees requiring a license but not performing any services outside the licensed premises, seminude entertainment business employees requiring a license but not individually providing seminude entertainment services to customers, seminude dancing bar employees requiring a license but who are not performers, and employees of seminude dancing agencies requiring licenses but who are not performers, fifty dollars (\$50);

c. Employees of seminude entertainment business personally providing seminude entertainment to patrons, one hundred fifty dollars (\$100);

d. Professional dancers performing in seminude dancing bars, one hundred dollars (\$100).

(Ord. No. O-92-009, Enacted, 05/26/92)

B. Any individual applying for more than one license at the same time shall pay the higher of any applicable fee, plus an additional twenty dollars (\$20) for each additional license requested.

(Ord. No. O-92-009, Enacted, 05/26/92)

C. These fees shall be in addition to the other licenses and fees required to do business in the City.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-14. License - Bond.**

Each application for a sexually oriented business license shall post with the City's Director of Business Licenses a cash or corporate security bond payable to the City of Orem in the amount of two thousand dollars (\$2000). 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 (\$2000) within fifteen days of the date of notice of any draw against it. In the event the bond is not replenished within the fifteen days, the license granted by this chapter shall automatically be suspended until such time as the bond is replenished.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-15. License - Premises location and name.**

A. It is unlawful to conduct a 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

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

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-16. License - Issuance conditions.**

The City business license official shall approve the issuance of a license to the applicant within thirty (30) days after receipt of the application, unless the official finds one or more of the following:

A. The applicant is under eighteen (18) years of age or any higher age if the license sought requires a higher age;  
(Ord. No. O-92-009, Enacted, 05/26/92)

B. 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;  
(Ord. No. O-92-009, Enacted, 05/26/92)

C. The applicant has falsely answered a material question or request for information as authorized by this chapter;  
(Ord. No. O-92-009, Enacted, 05/26/92)

D. The applicant has been convicted of a violation of a provision of this chapter within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect on the denial;  
(Ord. No. O-92-009, Enacted, 05/26/92)

E. The premises to be used for the business has been disapproved by the County Health Department, the City Department of Public Safety, the City building officials or the City 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 business license official an extension of time for their review of no more than fifteen (15) days. The total time for the City to approve or deny a license shall not exceed forty-five (45) from receipt of an application. Businesses located outside 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;

1. Upon receipt of an application all departments required to review the application shall determine within seven (7) days whether or not the application is complete with all items necessary for processing. Incomplete applications shall be returned to the applicant with specification of the items which are incomplete.

2. The time for processing applications specified in this section shall begin to run from the receipt of a complete application.

3. In the event that a license has not been disapproved within thirty (30) days, or the forty-five (45) days allowed after an extension, the City shall issue the license.

4. Any license issued pursuant to subsection 3 above may be revoked by the City pursuant to the revocation procedures of section 12-7-37 through 39 if the completed review determines that the license should have been denied.  
(Ord. No. O-92-009, Enacted, 05/26/92)

F. The license fees required by this chapter or by other ordinances have not been paid;  
(Ord. No. O-92-009, Enacted, 05/26/92)

G. All applicable sales and use taxes have not been paid;  
(Ord. No. O-92-009, Enacted, 05/26/92)

H. An applicant for the proposed business is in violation of, or not in compliance with, this chapter;  
(Ord. No. O-92-009, Enacted, 05/26/92)

I. An applicant has been convicted or pled nolo contendere to a crime 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; public indecency; any crime involving sexual abuse or exploitation of a minor; sexual assault or aggravated sexual assault; rape; rape of a child; object rape; object rape of a child; sodomy; sodomy on a child; sexual abuse of a child; aggravated sexual abuse of a child; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; criminal contempt, 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:

1. 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 or more misdemeanors within five (5) years, or less than five (5) years has elapsed from the date of the conviction if the offense was a felony;

2. The fact that a conviction is being appealed does not prevent someone from being denied a business license for that conviction.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-17. 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 the next year. The license fees required under Section 12-7-13 above 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-18. 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 business license authority and the police department within fourteen (14) days after such change.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-19. License - Transfer limitations.**

Sexually oriented business licenses granted under this chapter shall not be transferable. 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-20. 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, at all times while engaged in licensed activities within the corporate boundaries of the City, to carry their employee license on their person. If the individual is nude or seminude, such license shall be visibly displayed within the same room where the employee is performing. When requested by the 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-21. 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-22. Regulations and unlawful activities.**

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

A. Allow persons under the age of eighteen (18) years, or the age of twenty-one (21) years if required by applicable liquor ordinance or statutes, 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;

(Ord. No. O-92-009, Enacted, 05/26/92)

B. Allow, offer, or agree to conduct any outcall business with persons under the age of eighteen (18) years;

(Ord. No. O-92-009, Enacted, 05/26/92)

C. Except for seminude dancing bars, to allow, offer or agree to allow any alcohol being stored, used or consumed on or in the licensed premises;

(Ord. No. O-92-009, Enacted, 05/26/92)

D. Allow the outside door to the premises to be locked while any customer is in the premises;

(Ord. No. O-92-009, Enacted, 05/26/92)

E. Allow, offer, or agree to gambling on the licensed premises;

(Ord. No. O-92-009, Enacted, 05/26/92)

F. Allow, offer, or agree to any sexually oriented business employee touching any customer; except that outcall employees and customers may touch except that any touching of specified anatomical areas, whether clothed or unclothed, is prohibited;

(Ord. No. O-92-009, Enacted, 05/26/92)

G. Allow, offer, or agree to illegal possession, use, sale, or distribution of controlled substances on the licensed premises;

(Ord. No. O-92-009, Enacted, 05/26/92)

H. Allow sexually oriented business employees to possess, use, sell, or distribute

controlled substances while engaged in the activities of the business;

(Ord. No. O-92-009, Enacted, 05/26/92)

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

(Ord. No. O-92-009, Enacted, 05/26/92)

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

(Ord. No. O-92-009, Enacted, 05/26/92)

K. Allow, offer, or agree to any outcall employee appearing before any customer in a state of nudity;

(Ord. No. O-92-009, Enacted, 05/26/92)

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

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-23. Outcall services - Operation requirements.**

It is unlawful for any business or employee providing outcall services contracted for in the City of Orem, to fail to comply with the following requirements:

A. All businesses licensed to provide outcall services pursuant to this chapter shall provide to each customer 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 customer, and any special terms or conditions relating to the services to be performed. The contract need not include the name of the customer. 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 contract 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

B. All outcall businesses licensed pursuant to this chapter shall maintain an open office or telephone at

which the licensee or licensee's designated agent may be personally contacted during all hours outcall employees are working. The address and phone number of the license location shall appear and be included in all customer contracts and published advertisements. For outcall businesses which premises are licensed within the corporate limits of the City, private rooms or booths where the customer may meet with the outcall employee shall not be provided at the open office or any other location by the service, nor shall customers meet outcall employees at the business premises.

(Ord. No. O-92-009, Enacted, 05/26/92)

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

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-24. Adult business - Design of premise.**

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

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

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

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

4. The diagram required shall not necessarily be a professional engineer's or architect's blueprint; however, the diagram

must show marked internal dimensions, all overhead lighting fixtures, and ratings for illumination capacity.

(Ord. No. O-92-009, Enacted, 05/26/92)

B. It shall be the duty of the licensee and the licensee's employees to insure that the views from the manager's station in subsection A of this section remain unobstructed by any doors, walls, merchandise, display racks or any other materials, at all times when any customer is present in the premises, and to insure that no customer is permitted access to any area of the premises which has been designated as an area in which customers will not be permitted.

(Ord. No. O-92-009, Enacted, 05/26/92)

C. The premises shall at all times be equipped and operated with overhead lighting fixtures of sufficient intensity to illuminate every place to which customers 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 when any customer is present in the premises.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-25. Seminude entertainment business - Design of premises.**

A. It is unlawful for business premises licensed for seminude entertainment to:

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

2. Allow any door on any room used for the business, except for the door to an office to which customers shall not be admitted, outside doors and restroom doors, to be lockable from the inside;

3. Provide any room in which the employee or employees and the customer or customers are alone together without separation by a solid physical barrier at least three feet high and six inches wide. The customer or customers shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier.

(Ord. No. O-92-009, Enacted, 05/26/92)

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

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-26. Seminude entertainment business - Location restriction.**

It is unlawful for any business licensed for seminude entertainment to be located within three hundred thirty feet (330') of a different business which is licensed for the sale or consumption of alcohol.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-27. Seminude dancing bar - Operation prerequisites.**

It is unlawful for any business licensed for the sale or consumption of alcohol pursuant to City ordinances or State law to allow any person on the premises to dance, model, or perform in a state of seminudity without first obtaining a license pursuant to this chapter. In establishments where alcohol is sold or consumed, seminude dancing shall only be allowed in private clubs licensed by the State and on-premise beer retailer establishments licensed by the State.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-28. Seminude dancing bar - Performer restrictions.**

It is unlawful for any person to perform or appear in a state of seminudity as a professional dancer, model, performer, or otherwise on the premises of a business licensed as a seminude dancing bar, either gratuitously or for compensation, unless that person is licensed as a sexually oriented business employee.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-29. Seminude dancing agencies.**

A. It is unlawful for any individual or entity to furnish, book or otherwise engage the services of a professional dancer, model or performer to appear in a state of seminudity for pecuniary compensation in, or for, any seminude entertainment business, adult theater or seminude dancing bar licensed pursuant to this chapter unless such agency is licensed pursuant to this chapter.

(Ord. No. O-92-009, Enacted, 05/26/92)

B. It is unlawful for any individual or entity to furnish, book or otherwise engage or permit any person to perform as a professional dancer, model or performer in a state of seminudity either gratuitously or for compensation, in, or for, any business licensed pursuant to this chapter, unless such person is licensed pursuant to this chapter.

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-30. Performers - Prohibited activities.**

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

A. To touch in any manner any other person;  
(Ord. No. O-92-009, Enacted, 05/26/92)

B. To throw any object or clothing off the stage area;  
(Ord. No. O-92-009, Enacted, 05/26/92)

C. To accept any money, drink or any other object directly from any person; or  
(Ord. No. O-92-009, Enacted, 05/26/92)

D. To 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  
(Ord. No. O-92-009, Enacted, 05/26/92)

E. For the performer to place anything within the costume or adjust or move the costume while performing so as to render the performer in a state of nudity.  
(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-31. Performers - Costume requirements.**

It is unlawful for performers in seminude dancing bars to fail to comply with the following costume requirements:

A. Performers shall at all times be costumed during performances in a manner not to violate any city ordinance concerning disorderly conduct or lewdness, and such performers shall not perform or conduct themselves in such a manner as to violate the provisions of any City ordinance. No performer shall appear in any business, licensed as a seminude dancing bar, during a performance or appearance with less than opaque clothing which meets the definition of seminude, and in the case of a female performer, covers the areola and nipple of such performer in a shape and color other than the natural shape and color of the nipple and areola.  
(Ord. No. O-92-009, Enacted, 05/26/92)

B. While on the portion of a business licensed as a seminude dancing bar used by customers, performers shall be dressed in opaque clothing covering the performer's cleft of buttocks and pubic area and, in the case of a female, the nipple and areola of the breast.  
(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-32. Stage requirements.**

It is unlawful for any performer in a business licensed as a seminude dancing bar to appear in costume other than on a stage which shall be at least

three feet from the portion of the premises on which customers are allowed, and which shall be separated from the customers by a solid barrier or railing the top of which shall be at least two feet from the floor.

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-33. Customers - Prohibited activities.**

It is unlawful for any person, or any customer 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 to 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-34. 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:

A. By a proprietary school licensed by the State, or a college, junior college or university supported entirely or partly by taxation;  
(Ord. No. O-92-009, Enacted, 05/26/92)

B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

(Ord. No. O-92-009, Enacted, 05/26/92)

**12-7-35. Existing Business - Compliance time limits.**

A. 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 ordinance codified in this chapter, and regardless of whether such persons and businesses are currently licensed to do business in the City.

1. 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 provision of this chapter.

2. All seminude dancing bars and employees thereof requiring licenses and seminude 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.

3. All seminude entertainment businesses shall have one hundred five (105) 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.

4. All adult 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 in time, to comply with the provisions of this chapter.

(Ord. No. O-92-009, Enacted, 05/26/92)

B. For the year 1992, all businesses required by this chapter to be licensed as sexually oriented businesses shall be credited against the fees required by this chapter with the regulatory license fees paid for the current 1992 license.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-36. Violation - Injunction when.**

An entity or individual who operates or causes to be operated a sexually oriented business, 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-37. Violation - License suspension or revocation.**

A. 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:

1. Violated or is not in compliance with this chapter;
2. Has 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;
3. Has failed to replenish the cost bond as provided in this chapter; such a suspension shall extend until the bond has been replenished;
4. A licensee or employee gave materially false or misleading information in obtaining the license;

5. A licensee or an employee knowingly operated the sexually oriented business or worked under the employee license during the period when the business licensee or employee licensee's license was suspended;

6. A licensee has committed an offense which would be grounds for denial of a license for which the time period required has not elapsed;

7. 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;

8. A licensee is delinquent in payment to the City for ad valorem taxes, or sales taxes related to the sexually oriented business.

(Ord. No. O-92-009, Enacted, 05/26/92)

B. Suspension or revocation shall take effect within ten days of the issuance of notice, unless an appeal is filed with the City as provided by this chapter. The revocation or suspension is stayed pending the outcome of the appeal with the City.

(Ord. No. O-92-009, Enacted, 05/26/92)

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

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-38. 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.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-39. Appeal procedures.**

A. If the license is denied or approved with qualifications, or if a notice of suspension, revocation or citation of a civil fine is imposed, the applicant or licensee may file an appeal with the business licensing authority.

(Ord. No. O-92-009, Enacted, 05/26/92)

B. Filing of an appeal must be within ten (10) days of the date of service of the notice of any

denial, qualified approval, suspension, revocation, or civil fine. Upon receiving the notice of such appeal, the business licensing authority shall schedule a hearing before the Director of Development Services within twenty (20) days from the date of the appeal unless such time shall be extended for good cause.

(Ord. No. O-92-009, Enacted, 05/26/92)

C. The Director of Development Services shall hold a public hearing on the record, and take such facts and evidence as necessary to determine whether the denial, qualified approval, suspension, revocation, or civil fine was proper under the law.

(Ord. No. O-92-009, Enacted, 05/26/92)

D. The burden of proof shall be on the City.

(Ord. No. O-92-009, Enacted, 05/26/92)

E. After the hearing, the Director of Development Services shall have seven (7) working days, unless extended for good cause, in which to render findings of fact, conclusions of law, and make a recommendation to the City Manager.

(Ord. No. O-92-009, Enacted, 05/26/92)

F. Either party may object to the recommendation of the hearing officer by filing the party's objection and reason, in writing, to the City Manager within seven days following the recommendation. In the event the Director of Development Services recommends upholding a suspension or revocation, the license shall be immediately suspended, and shall remain suspended until any subsequent appeal is decided. If no objections are received within the seven days, the City Manager may immediately adopt the recommendation of the Director of Development Services.

(Ord. No. O-92-009, Enacted, 05/26/92)

G. If objections are received, the City Manager shall have ten (10) working days to consider such objections before issuing the City Manager's final decision. The City Manager may, in the City Manager's discretion, take additional evidence or require written memorandum on issues of fact or law. The standard by which the City Manager shall review the decision of the hearing officer is whether substantial evidence exists in the record to support the hearing officer's recommendation.

(Ord. No. O-92-009, Enacted, 05/26/92)

H. An applicant aggrieved by the City Manager's decision shall have judicial review of such decision pursuant to Rule 65(B), Utah Rules of Civil Procedure, or any other applicable ordinance, statute or rule providing for such review.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-40. 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 business license authority, 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 violation shall be considered a separate offense.

(Ord. No. O-92-009, Enacted, 05/26/92)

#### **12-7-41. Severability.**

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

(Ord. No. O-92-009, Enacted, 05/26/92)



**Article 12-8. Race Permits****12-8-1. Definitions.****12-8-2. Permit Required.****12-8-3. Application for permit.****12-8-4. Traffic control and other public safety services.****12-8-5. Permit issuance or denial.****12-8-6. Race Requirements/Duties of permittee or race coordinator.****12-8-7. Time for action on application and notice denial.****12-8-8. Permit fees.****12-8-9. Insurance.****12-8-10. Revocation of permit.****12-8-11. Severability.****12-8-1. Definitions.**

For purposes of this Article, the following terms shall have the meaning set forth herein:

**Director of Public Safety** means the Orem Director of Public Safety or his/her designee.

**Race** shall mean any organized event involving the traversing of a given distance along a planned route by running, walking, biking, rollerblading, and/or other means, on any public street or sidewalk which obstructs, delays, or interferes with the normal flow of vehicular or pedestrian traffic, or does not comply with traffic laws or controls. The definition of race includes but is not limited to bicycle races, foot races, race walking, wheelchair racing, rollerblading, marathons, triathlons, walk-a-thons, and bike-a-thons.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**12-8-2. Permit required.**

No person shall conduct or participate in any race unless a permit therefor shall have been issued by the Director of Public Safety.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**12-8-3. Application for permit.**

A person seeking a race permit shall file a completed application with the Director of Public Safety on a form provided by the Department of Public Safety. Completed permit applications will be processed in order of their receipt.

A **Time for application.** An application for a race permit must be filed not less than thirty (30) calendar days before the date on which the race is proposed to take place. Failure to timely file shall be grounds for denial of the permit.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

B. **Content of application.** The application for a race permit shall include the following:

1. The name, address and telephone number of the applicant and the name, address and telephone numbers of the person who will be the race coordinator and who will be responsible for its conduct.

2. The date the applicant desires to hold the race.

3. The time(s) that the applicant desires to assemble, start, and terminate the race.

4. The approximate number of persons that will participate in the race.

5. The details of the proposed route of the race including the starting and termination points. The applicant shall include a description of any part of the proposed route that would occupy all or a portion of any street (including street crossings).

6. Where the race would cross or otherwise use private land (toilet facilities, aid stations, etc.), written permission from the owners or lessees of such land allowing the use proposed by the applicant.

7. A plan for providing toilets at the assembly and termination points as well as intervals along the race route. Toilets at such locations may be required by the City when the number of race participants exceeds fifty (50).

8. Proof of insurance as required by Section 12-8-9.

9. A signed waiver and indemnification form in which the applicant agrees to indemnify and hold the City, and the City's employees, agents, officers and representatives harmless from all liability, damages, costs, claims, judgments or causes of action, of whatsoever nature or character, arising out of or by reason of any act or omission of the permittee and/or any employee, agent, representative, volunteer of the permittee and/or any participant (not including spectators) in the race, and excepting any claims that arise solely out of the negligent acts or omissions of the City, its officers, employees or agents.

10. The applicable fees as described in Section 12-8-8.

11. A statement that the applicant and the applicant's employees, representatives and race participants agree to comply with the requirements of this Article in the conduct of the race.

12. A statement as to the amount of the fee (if any) that participants will be required to pay or donate in order to participate in the

race, whether proceeds from the event will be used for private profit and the nature of any advertising of goods or services that will be conducted during the event.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**12-8-4. Traffic control and other public safety services.**

**A. Traffic control plan.** Upon receipt of the applicant’s proposed route, the Director of Public Safety shall prepare a traffic control plan for the safe conduct of the proposed race. The traffic control plan may require the use of public safety personnel, barricades, traffic cones, or other traffic control methods. The use of public safety personnel will be required at crossings of arterial and collector streets. Private individuals may be allowed to control crossings of local streets.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**B. Traffic control fees.** The applicant shall be responsible for the cost of any traffic control, crowd control and any other additional police, fire, or emergency medical services (hereinafter referred to as “public safety services”) that are provided by the City in connection with the race. The applicant shall be required to prepay the estimated costs of providing public safety services prior to the issuance of the permit. The estimated cost of the public safety services shall include the cost of providing public safety personnel and all necessary vehicles and equipment. The cost of public safety personnel will be computed by determining the number of public safety officers who will be required for traffic control and other public safety services, the estimated number of hours the officers will be performing traffic control and public safety services, and the City’s costs of providing the officers on an hourly basis (including overtime rates). Where public safety volunteers are used in place of or in addition to regular public safety personnel, a fee may be charged for the time of such volunteers which shall be used for the training and/or equipping of such volunteers. Such fee shall not exceed the hourly rate of providing a regular public safety employee.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**C. Refunds or overruns.** If the actual cost for traffic control services provided by public safety personnel is less than the estimated cost, the applicant will be refunded the difference by the City within thirty days. If the actual cost is greater than the estimated cost, the applicant shall be required to pay the difference within thirty days.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**D. Responsibility for traffic control devices.** The applicant shall be solely responsible for renting, placing and removing any required barricades or traffic control devices.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**E. Limitation of use of street.** The Director of Public Safety may prohibit or limit the use of any street whenever necessary in the interest of public safety and/or traffic flow. In making this determination, the Director of Public Safety shall consider the nature of the street (e.g., arterial, collector, or local), anticipated traffic volumes, the anticipated duration of the race, the number of race participants, the time of day and day of the week on which the race is held, and any other factors that may affect the proposed race’s impact on traffic. In determining whether a race should be prohibited from using all or part of any street right-of-way, the interest in traffic flow shall take priority over the interests of the race.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**12-8-5. Permit issuance or denial.**

A timely and complete application for a race permit shall be approved upon the applicant’s written acceptance of the permit terms and conditions of this Article unless the Director of Public Safety finds any of the following:

**A. Interruption of traffic.** The conduct of the race will substantially interrupt the safe and orderly movement of traffic contiguous to its route or will significantly impair the performance of major street maintenance or reconstruction that had been scheduled before the application was received.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**B. Interference with emergency services.** The conduct of the race will significantly interfere with the ability of the City to provide fire, police protection, or ambulance service to any part of the City due to the proposed route, length, or duration of the race.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**C. Defective information.** Information in the application is found to be false, misleading, or incomplete in any material detail.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**D. Failure to pay fees or comply with other requirements.** The applicant fails to pay all required fees, to obtain all required insurance, or to comply with any other requirement of this Article.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**E. Interference with another race.** The proposed race would interfere with another race for which a permit has previously been issued or for which a completed application has been received prior to the applicant's application.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**F Failure to comply with prior permit.** The applicant has failed to comply with all requirements with respect to a race previously held in the City.

In the event that a permit is denied for one of the reasons listed above, the Director of Public Safety or the applicant may recommend amendments to the application. If such amendments are accepted in writing by the applicant, the application shall be amended in conformance therewith and without affecting the timeliness of the application.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

#### **12-8-6. Race Requirements/Duties of permittee or race coordinator**

The following requirements shall be applicable to all races.

**A. Expeditious movement.** The race is required to move from its point of origin to its point of termination expeditiously and without unreasonable delays en route.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**B. Route and traffic control plan.** The race must comply with its proposed route and the traffic control plan prepared by the City.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**C. Adequate toilet facilities.** The permittee or race coordinator shall be required to provide at least one toilet at both the assembly and termination points. One additional toilet shall be provided at both the assembly and termination points for every fifty race participants. Portable toilets shall also be provided at intervals along the race route for all races longer than ten kilometers. The number of portable toilets to be provided and the number of intervals at which they must be provided shall be determined by the Director of Public Safety based on the need for such facilities experienced at other races.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**D. Noise ordinances.** A race shall comply with all noise ordinances.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**E. Permit conditions.** A permittee hereunder shall comply with all permit directions and conditions and with all applicable laws and ordinances. The race

coordinator, permittee or other person designated as heading or leading such activity shall carry the race permit upon his or her person during the conduct of the race.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**F. Clean up.** The permittee or race coordinator shall clean up, remove, and dispose of all litter or material of any kind which is placed or left on any public or private property by race participants. Cleanup shall be completed within two hours after the end of a race. Should the permittee or race coordinator fail to complete the required cleanup within the time required, the permittee and race coordinator shall be jointly and severally liable for all costs incurred by the City to perform the clean up.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

#### **12-8-7. Time for action on application and notice of denial.**

**A. Time for approval.** The Director of Public Safety shall grant or deny an application for a race permit within ten days after receipt of a complete application. If no action is taken on an application within the time periods specified herein, the application shall be deemed denied.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**B. Notice of denial.** If the Director of Public Safety denies the application, the Director of Public Safety shall deliver to the applicant, within the time for action specified in subsection (A) above, a written notice of the action stating the reasons for the denial of the permit. The decision of the Director of Public Safety shall be final and the applicant may immediately seek such judicial review as may be permitted by law.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

#### **12-8-8. Permit Fees**

An applicant shall pay the following fees prior to the issuance of a race permit:

**A. Base fee.** The base fee for a race permit shall be fifty dollars (\$50.00).

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**B. Clean-up deposit.** A clean-up deposit in the amount of two hundred dollars (\$200.00). The deposit shall be returned after the race if the applicant cleans and restores the area used for the race to the same condition as existed prior to the event within the time required. If the property used for the event has not been properly cleaned or restored within the time required, the clean-up

deposit shall be applied toward the City's costs in cleaning up the area used for the event.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**C. Traffic control and public safety service fees.** The fees for traffic control and other public safety services as required by section 12-8-4.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

#### **12-8-9. Insurance.**

**A. Commercial general liability.** An applicant for a race permit shall be required to obtain Commercial General Liability Insurance with limits of at least \$2,000,000.00 general aggregate, and \$1,000,000.00 each occurrence. The policy shall be on an "occurrence" basis and the City shall be named as an additional insured. The policy shall provide for payment by the insurance company of all sums which the insureds shall be obligated to pay for injuries or damages arising out of the activities of the insureds and their participants in connection with the race.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

**B. Other insurance requirements.** Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the permittee. Any policy deductibles or retentions shall be the responsibility of the race permittee. The permittee shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the permittee's interests or provide adequate coverage. Evidence of coverage is to be provided on a certificate of insurance acceptable to the City. A thirty (30) day written notice is required if the policy is canceled, not renewed or materially changed. The permittee shall require any of its subcontractors to comply with these provisions.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

#### **12-8-10. Revocation of permit.**

A race permit may be revoked if the Director of Public Safety determines that any of the conditions enumerated in Section 12-8-5 exist, the applicant is found to be in violation of any of the conditions attached to the permit, or if the race is conducted in a manner substantially different from that indicated in the application. Upon revocation of a permit, the race shall be immediately terminated. This provision will be invoked when the permittee either violates the terms of the permit or refuses to conform to the terms of the permit after being advised to do so by public safety personnel.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)

#### **12-8-11. Severability**

In the event that any provision or part of this Article is held invalid or unconstitutional by any court of competent jurisdiction, such provision or part shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Article.

(Ord. No. O-2010-0029, Enacted, 11/09/2010)