

## Title 4 Business Licenses and Regulations

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### Chapter 4.1 General Provisions

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#### 4.1.1 Applicability

This Title applies to all applications for business licenses, allowable business activities, necessary approvals and obligations of applicants to obtain and maintain a license to conduct business within Payson City. Unless otherwise expressly provided through adoption of a complementary or conflicting resolution or ordinance by the Payson City Council, the provisions of this Title shall apply to all business licensing activities within Payson City. All businesses must conform to the provisions of Title 19, Zoning Ordinance of the Payson City Code. Furthermore, only uses specifically listed herein and that are consistent with the Zoning Ordinance are allow in Payson City; any other use or business operation is prohibited.

#### 4.1.2 Definitions

The following terms and definitions shall have the specific meaning indicated herein. Any word or phrase not included in this Section shall be construed to have the most common definition as found in the latest edition of the Webster's New World Dictionary.

1. Antique Dealer shall mean any person who engages in the buying, selling, bartering and exchanging of old furniture, coins, currency or other materials bought or sold as having antique value.
2. Auctioneer means a person who conducts a public competitive sale of property by outcry to the highest bona fide bidder.
3. Auction House means a building, parcel, or location from which an auction is conducted. Auction houses shall not include estate auctions conducted at the residence of the deceased, auctions for the liquidation of a business licensed under this Title if conducted on the premises of that business, or auctions to dispose of abandoned or unclaimed property if conducted on the premises of a business licensed under this Title and the property to be auctioned was initially received or stored in the regular course of the business.
4. Automated Teller Machine Facility means the area comprised of one or more automatic teller machines, and any adjacent space, which is made available to banking customers.
5. Business License means a certificate issued by Payson City that indicates approval from Payson City to commence and operate a business within the City. A business license will not be construed to provide approval of any activity that requires approval from any Federal, State, or County agency.
6. Business License Coordinator shall mean the Payson City employee charged with the administration of the provisions of this Title. The Business License Coordinator shall operate under the guidance and direction of the City Manager. (4-1-15)
7. Business Owner is defined as one of the following:
  - a. In a sole proprietorship, the sole proprietor.
  - b. In a partnership, each general partner.
  - c. In a limited liability company, each officer of the company with a Resolution of the Board.
  - d. In a corporation, each officer and director of the corporation with a Resolution of the Board.

- e. For the purposes of this Title, business owner may also be referred to as applicant, licensee, owner or other similar term to be in context with the particular regulation.
8. Check cashing business means any person duly licensed by the superintendent of banks to engage in the business of cashing checks, drafts or money orders for consideration pursuant to the provisions of the banking laws.
  9. City shall mean the Payson City Municipal Corporation, which may be referred to as City, community, or municipality.
  10. Contributions mean and include the words alms, money, subscription, property or any donations under the guise of a loan, money or property.
  11. Christmas Tree means a tree, usually fir or evergreen, but including any tree sold to be decorated and used as part of the Christmas celebration and commemoration.
  12. Handyman is defined as a person engaged in the alteration, repair, remodeling, or addition to or improvement of a building with a contracted or agreed value of less than \$1000, including both labor and materials, and including all changes or additions to the contracted or agreed upon work. Work in the plumbing and electrical trades must be performed by a licensed electrician or plumber. (6-20-07)
  13. Itinerant merchant or itinerant vendor is defined as any person, firm or corporation, whether as owner, agent, consignee or employee, whether or not a resident of Payson City, who engages in a temporary business of selling and delivering goods, wares and merchandise within the City, and who, in furtherance of such purpose, does not conduct the activity substantially within a permanent building or structure but rather hires, leases, uses or occupies a non-permanent building or structure, motor vehicle, tent, public room in any hotel, motel, lodging house, apartment, shop or any street, alley or other place within the City for the exhibition and sale of such goods, wares and merchandise, either privately or at public auction. The person, firm or corporation so engaged shall not be relieved from complying with the provisions of this Chapter merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.
  14. Junk dealer shall mean any person engaged in buying and selling, bartering and exchanging old metal, glass, rags, rubber, paper or other discarded materials.
  15. Mobile food business means a business that serves food or beverages from a self-contained unit that is a motorized vehicle or a trailer. The term "mobile food business" shall include concession carts, concession trailers, or other mobile vending unit. (4-1-15)
  16. Pawnbroker shall mean any person who loans or advances money on deposit of personal property used as collateral, or deals in the purchase, exchange or possession of personal property on condition of selling the property back to the depositor or other patrons if unredeemed.
  17. Public area means an area to which the public or a substantial group of persons has access, and includes, but is not limited to alleys, bridges, buildings, driveways, parking lots, parks, playgrounds, plazas, sidewalks, and streets open to the general public, and the doorways and entrances to buildings and dwellings, and the grounds enclosing them.
  18. Seasonal Produce Stand shall mean a temporary business established to allow the sale of fresh fruit, vegetables, flowers and other similar perishable goods.
  19. Secondhand Dealer shall mean any person who keeps a store, office, or place of business for the purpose of purchasing, bartering, exchanging or selling secondhand goods including, but not limited to, used clothing, books, musical instruments, coins, wares or similar secondhand household merchandise.
  20. Solicitor, canvasser, peddler, hawker, or huckster means any individual whether or not a resident of Payson City, traveling either by foot, motor vehicle, or other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares and merchandise or carrying, conveying, or transporting meats, fish, vegetables, fruits, farm products or provisions, whether or not payment and delivery are made simultaneously or whether payment is taken for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes, for sale a sample of the subject of such sale, or whether the individual is collecting advance payments on such sales, provided that such definition shall include any person who, for themselves, or for any other person, firm or corporation, hires, leases, uses or occupies any building structure, tent, railroad boxcar, hotel or motel room, lodging house, apartment, shop or any other place within Payson City for the sole purpose of

exhibiting samples and taking orders for future delivery.

21. Solicitation in an aggressive manner means and includes:
- a. Intentionally or recklessly making any physical contact with or touching another person in the course of the solicitation without the person's consent.
  - b. Following the person being solicited or continuing to solicit within five (5) feet of the person being solicited, if the conduct is:
    - i. Intended to or is likely to cause a reasonable person to fear imminent bodily harm or the commission of a criminal act upon property in the person's possession.
    - ii. Is intended to or is reasonably likely to intimidate the person being solicited into responding affirmatively to the solicitation.
  - c. Intentionally or recklessly blocking the safe or free passage of the person being solicited or requiring the person, or the driver of a vehicle, to take evasive action to avoid physical contact with the person making the solicitation. Acts authorized as an exercise of one's constitutional right to picket or legally protest shall not constitute obstruction of pedestrian or vehicular traffic.
  - d. Intentionally or recklessly using obscene or abusive language or gestures intended to or likely to cause fear of imminent bodily harm or the commission of a criminal act upon property in the person's possession that would likely intimidate the person into responding affirmatively to the solicitation.
  - e. Entering or attempting to enter a private residence while soliciting goods or services without being invited by the resident.

#### 4.1.3 Business License Required

A business owner, agent, or employee will not commence or operate any business, trade, calling, profession or occupation without a current and valid business license issued by Payson City. Commencement or operation of any business, trade, calling, profession or occupation without obtaining a current and valid business license from Payson City or without complying with any and all regulations of such business, trade, calling, profession or occupation shall constitute a separate violation of this Title each day that the business, trade, calling, or profession or occupation is conducted.

#### 4.1.4 Index of Business Licenses

An index containing the names of all licensees and the type of license issued to each licensee will be maintained by the Administration Department of Payson City. Copies of the index will be made available only under the provisions of the Government Records Access and Management Act and shall be subject to a fee established to offset any publication and labor costs involved with the preparation of the index for distribution. (4-1-15)

#### 4.1.5 Application for a Business License

- 4.1.5.1 Structures Containing more than One Business
- 4.1.5.2 Business with More than One Location
- 4.1.5.3 Relocation of a Business within Payson City

A business owner, as defined in Section 4.1.2 herein, will apply for a business license on a form approved by Payson City together with the payment of all applicable fees in accordance with the Payson City fee resolution. The application shall indicate all business owners and persons (excluding shareholders or their equivalent) having a legal or equitable ownership interest in the subject business, trade, profession or other activity. Applicants for a business license shall submit a properly completed application form that includes, but may not be limited to:

1. Name of applicant and/or authorized agent, address, date of birth and contact telephone numbers.
2. If the primary management is going to be performed by someone other than the applicant, the name, address, date of birth and contact telephone numbers of the primary person in charge of the overall day to day management of the business, trade, profession, occupation or activity.
3. A written description of the business, trade, profession, occupation or activity for which a license is requested, including any other business names which may be used.
4. The address of the property where the subject business, trade, profession, occupation or activity is to be conducted.
5. The State Tax and Federal Tax number of the subject business, corporation, trade, profession, occupation or activity, if applicable.
6. The "entity" number of the subject business, trade, profession, occupation or activity, if applicable.

7. Any information necessary to calculate an applicable fee in accordance with the adopted fee resolution of Payson City.
8. Any other information required by federal, state, county or Payson City statute, resolution or ordinance, or as reasonably required by the City.
9. Proof that the business is properly licensed or registered with the State of Utah, if applicable.
10. A space for the applicant or applicants authorized agent to sign under penalty of law that all the information contained in the application is accurate and true.
11. Any application materials or information specifically required in another section of this Title.
12. Any applicant subject to the provisions of this Chapter must submit a business statement that provides detail about the anticipated business activities, the expected number of employees, demonstration of zoning compliance, future expansion plans, and any other information that can be used to ensure proper review. The business statement should represent both the immediate and anticipated future business practices and will be reviewed regularly to ensure that the business complies with the business statement. Future uses may be limited to those indicated in the business statement. (6-20-07)

The information required in this Section shall be kept current. If any of the information required in this Section changes, the business owner(s) shall provide the City with the correct information within thirty (30) days from the date of the change.

A business license may be denied by the Business License Coordinator if it is determined that any of the information used to approve a business license or the calculation of the business license fee is incorrect, false or misleading.

#### *4.1.5.1 Structures Containing more than One Business*

If a structure contains more than one business such as a multi-tenant commercial building, a large retail structure with interior lease space, a strip mall, or similar building, each separate business or activity shall be required to obtain and maintain a business license.

#### *4.1.5.2 Business with More than One Location*

A separate business license must be obtained and a separate fee paid for each location of a business with more than one location.

#### *4.1.5.3 Relocation of a Business within Payson City*

A business that is relocated from one location to another location within Payson City shall obtain a new business license. The business owner shall submit an application and submit a fee in accordance with the adopted fee resolution. All necessary inspections and other applicable regulations will apply.

#### **4.1.6 Issuance of a Business License**

Prior to the issuance of a business license, the Business License Coordinator shall ensure that the following criteria are satisfied.

1. The Business License Coordinator shall submit copies of the application to the Fire Department, Health Department and, for certain businesses where specifically provided for herein, to the Police Department for review, unless a specific provision of this Title requires submission to fewer or additional departments, divisions or agencies. (4-1-15)
2. The Business License Coordinator shall determine if the proposed business activity is allowed in the zoning district and if any additional approvals are necessary.
3. In accordance with Section 4.1.7 herein, all inspections must be completed and all conditions of the inspections satisfied by the applicant.
4. After receiving signed, written approval from each Department identified in this Section, the Business License Coordinator shall prepare a business license for issuance. (4-1-15)
5. The business license shall be signed by the Business License Coordinator and shall contain, at a minimum, the following information:
  - a. The name of the licensee.
  - b. The business name.
  - c. The type of business licensed; including the class of the license, if such licenses are divided into classes.
  - d. The date the license was issued.
  - e. The expiration date of the license.
  - f. The place or address where the licensed business is to be conducted.
  - g. The business license number.
6. If the business is licensed to conduct more than one type of business, as defined herein, the certificate of license shall state each type of business licensed.
7. The business license fee must be submitted in accordance with the adopted fee resolution of Payson City.
8. All preschool and daycare providers are required

to complete a criminal background check. A business license will be issued prior to receiving a certificate and/or report from the Bureau of Criminal Investigation or a Utah State daycare license. (6-20-07)

#### **4.1.7 Inspections**

As a condition of the issuance, continuation or renewal of a business license, the applicant shall, upon request of the City, permit inspections of the premises and any appropriate business records, at any reasonable time. The business must be in compliance with all applicable zoning, building, fire, health and safety regulations. Furthermore, additional inspections may be required for specific business activities such as alcohol and beer licenses. Payson City may refuse to issue a license or may suspend or revoke a license if the applicant or licensee should, for any reason, fail or refuse to allow an inspection.

If an annual inspection is required, it is the responsibility of the business owner to schedule the appropriate inspection(s) and submit payment of applicable inspection fees.

#### **4.1.8 Term, Renewal and Transfer of Business License**

Unless otherwise noted herein, a business license shall be valid for one (1) year from the date of issuance. The business license must be renewed prior to the expiration date of the previous business license. Prior to issuance of a renewed business license, all applicable fees shall be paid and all necessary inspections must be completed. Although Payson City will make every attempt to provide at least a two (2) week notice to each business owner of an expiring license, the ultimate responsibility to renew the business license rests with the business owner.

If a license is not renewed prior to the expiration of a previous license, the applicant shall be subject to a late fee. The late fee assessed is dependent upon the lateness of the business license renewal as follows:

1. A license renewal fee paid after the expiration of the previous license but within fifteen (15) calendar days of the expiration date is subject to a late payment penalty of twenty-five (25) percent of the amount of the license fee.
2. A license that is not renewed within sixteen (16) calendar days, but is renewed prior to thirty (30) calendar days of the expiration date of the previous license is subject to a late payment penalty of fifty (50) percent of the amount of the license fee.

3. A license that is not renewed within thirty (30) days of the expiration date of the license is considered expired and the business owner must apply for a new business license. If any business is conducted with an expired license the business owner will be subject to a one hundred (100) percent penalty fee which shall be paid in full before a new business license is issued.
4. If the applicant chooses not to renew the business license and continues to operate a business, the matter shall be forwarded to the City Attorney for appropriate legal action.

A business license granted or issued in accordance with the provisions of this Title is not in any manner assignable or transferable. Furthermore, a business licenses shall not be transferred from one location to another location or from one business owner to another business owner.

#### **4.1.9 Failure to Obtain a Business License**

It shall be unlawful for any person to engage in any activity for which an application is necessary until any required investigation and inspections are completed and the license is approved and issued. Any person engaging a business activity without a license for which a license is required, including circumstances where a license is expired, or has been suspended or revoked, shall, in addition to applicable criminal penalties, be required to pay all applicable fees as though a license had been issued during the period of unlicensed activity.

#### **4.1.10 Compliance with Regulations**

Issuance of a business license or any other regulatory license described in this Title does not exempt an applicant from compliance with applicable zoning requirements, regulations of the adopted building and fire codes, or other applicable regulatory requirement not described in this Title.

#### **4.1.11 Exemptions**

Unless otherwise provided in this Title, the provisions of this Title shall not be construed to require a business license for an activity which is conducted, managed or operated wholly for charitable, religious or other non-profit purposes from which profit is not derived, directly or indirectly by any person. Qualification under the federal tax laws for non-profit status shall be prima facie evidence that a business satisfies the charitable, religious or non-profit purposes described above. The business owner claiming an exemption shall have the burden of proof in establishing such status.

A business license is not required for operation of any vehicle or equipment in Payson City when:

1. The vehicle or equipment is merely passing through the City.
2. The only business activity of the vehicle or equipment in Payson City is delivery of goods to existing licensed businesses.
3. The vehicle or equipment belongs to a general contractor or sub-contractor engaged in contract work in Payson City, without offices in Payson City, but with offices within Utah County in a jurisdiction which has reciprocal licensing for contractors with Payson City. The contractor or sub-contractor must have valid state and local licenses from the jurisdiction in which their office is located.

#### **4.1.12 Penalty**

It is unlawful for any business owner, agent, or employee to perform any act prohibited by this Title. Any violation of this Title is subject to a Class C misdemeanor unless otherwise prosecutable in accordance with another applicable criminal or civil statute. Each day that violation of this Title continues shall constitute a separate offense.

#### **4.1.13 Denial of a Business License**

Payson City may deny the application for a business license for any of the following reasons:

1. The applicant does not meet the qualifications for a business license as provided in this Title.
2. A returned check for the required license fees that has been received by Payson City indicating non-payment of fees.
3. Failure to submit any assessed late payment penalty fees.
4. A City Department has disapproved the application pursuant to the provisions of this Title.
5. False or incomplete information given on the application.
6. Non-compliance with any city, state or federal statutes, or any Health Department regulations governing the applicant's business.
7. Any other reason expressly provided for in this Title.

If an application for a business license is denied, the applicant will be informed in writing of the denial and the reasons why the application is denied. An appeal of the denial of a business license shall be forwarded to the City Council. (4-1-15)

#### **4.1.14 Suspension or Revocation of a Business License**

Payson City may suspend or revoke a business license,

including an alcohol or beer license or any other license regulated by this Title, for any of the following reasons:

1. The license should not have been issued.
2. The licensee no longer satisfies the qualifications for a license as provided under this Title.
3. False or incomplete information was provided on an application.
4. A violation of the provisions of this Title or any regulations of city, state or federal statutes governing the licensee's business has occurred.
5. Violation of this Title by the agents or employees of a licensee and violations of any other laws by the agents or employees committed while acting as an agent or employee of the licensee.
6. Failure to pay a required fee.
7. Any other reason expressly provided for in this Title.
8. The suspension or revocation of any other permits necessary to operate the business has occurred. (i.e. Conditional Use Permit)

It is unlawful for any business owner, agent, or employee who has had a license suspended or revoked by the City Council to reapply for or obtain a business license until the reasons for the suspension or revocation have been corrected.

#### **4.1.15 Suspension or Revocation Hearing**

Licenses issued under the provisions of this Title may be suspended or revoked by action of the City Council due to failure on the part of the licensee to comply with the conditions and requirements under which the license is granted or because of illegal activities. A license shall not be suspended or revoked under the provisions of this Title until a hearing has been conducted following appropriate notice has been provided to the licensee or applicant.

Notice of the hearing shall be given by sending a copy of the notice by certified mail, return receipt requested, to the applicant at the address shown in the applicant's last application for a business license. It is the applicant's duty to maintain, at all times, a current address with Payson City. Notice is deemed received if notice is sent to the last address on file with the City and is not returned as unclaimed, unknown, moved, or for any other reason identified by the postal service. (4-1-15)

Hearings to consider suspension or revocation of a license issued by the City shall be held by the City Council. All witnesses called at such hearings may be sworn by a person duly authorized to administer oaths, and a record of the hearing shall be created. At

the request and expense of any party, a hearing may be recorded by a court reporter.

A licensee shall have the right to appear at the hearing in person or by counsel, or both, and present evidence or argument on the licensee's or applicant's behalf, cross-examine witnesses, and in all proper ways defend the licensee's or applicant's position.

The City Council shall make a ruling and decision based upon the evidence presented at the hearing and shall issue and adopt written findings of fact and conclusions of law in appropriate cases and issue written orders or decisions. An appeal may be taken to a court of competent jurisdiction in the time and manner provided by State statute.

#### **4.1.16 Display of Business License**

Each business license shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the place of business so that it may be easily seen. When a business license has expired, it shall be removed and an expired business license, which is not in force and effect, shall not be permitted to remain posted within the place of business unless validated as a renewal. If the licensee's business is such that a license cannot be displayed due to the transient or mobile nature of the business, then the licensee shall possess the license at all times accessible for inspection by an authorized officer during all times the licensee is engaged in or pursuing the business for which a business license is granted. In the event the business license is issued for a coin-operated machine or device, the license shall be attached or displayed in the immediate vicinity of the machine for which it has been issued.

#### **4.1.17 Multiple Business Licenses**

Any business owner conducting business within Payson City who is required to have any other type of license by local, state or federal law shall be required to obtain a business license in addition to the other required license(s), including beer or alcohol license, federal firearm license, and other various licenses.

#### **4.1.18 Cooperation with the Chamber of Commerce**

In an effort to ensure the involvement of the business community, the Business License Coordinator will notify the Chamber of Commerce of all anticipated changes to this Title or the adopted fee resolution prior to the adoption of any amendments. The awareness and participation from the businesses in the community can create a positive atmosphere and better understanding of the need for the regulations herein. (4-1-15)

#### **4.1.19 Severability Clause**

If any section, subsection, or clause of this Title shall be deemed to be unconstitutional or otherwise invalid, that Section, subsection, or clause shall be severed from this Title with the remaining sections, subsections, and clauses to continue in full force and affect.

## **Chapter 4.2 Alcohol and Beer Licenses and Regulations**

- 4.2.1 Statutory Authority and Definitions
- 4.2.2 License Required
- 4.2.3 Alcohol and Beer License Categories
- 4.2.4 Duties
- 4.2.5 Beer Handler's Permit

#### **4.2.1 Statutory Authority and Definitions**

The provisions of the Alcoholic Beverage Control Act, as cited in Part 32A of the Utah Code and this Chapter shall govern the selling and dispensing of alcoholic beverages within Payson City, except where otherwise allowed by the Alcoholic Beverage Control Act and set forth herein. The words and phrases used in this Chapter shall be consistent with the meanings specified in the Utah Alcoholic Beverages Control Act and are adopted and incorporated by reference unless a different meaning is clearly evident.

The location of any business that chooses to obtain an alcohol or beer license shall satisfy the distance and location requirements of the Alcoholic Beverage Control Act.

#### **4.2.2 License Required**

It shall be unlawful for any person to sell, offer to sell, or provide to the public any type of alcoholic beverages without first obtaining the appropriate license from Payson City and the State of Utah where applicable. All licensees shall comply with the Alcoholic Beverage Control Act, as cited in §32A-1-101 et. seq. Utah Code Annotated, 1953, as amended, and the rules and regulations promulgated by the Department of Alcoholic Beverage Control.

An alcoholic beverage license shall be obtained in addition to the business license required pursuant to Chapter 4.1 of this Title. Each applicant for a license in accordance with this Chapter shall submit a complete application form together with the payment of all applicable fees in accordance with Section 4.1.6 herein.

**4.2.3 Alcohol and Beer License Categories**

Alcohol and beer licenses shall be issued classified as follows:

1. **“Class A”** licenses shall entitle the holder thereof to sell beer, light beer, malt liquor, or malted beverages for consumption off premise in accordance with the Alcoholic Beverage Control Act.
2. **“Class B”** licenses shall entitle the holder thereof to sell beer, light beer, malt liquor, or malted beverages for consumption on premise in accordance with the Alcoholic Beverage Control Act. The license will also allow consumers to consume beverages off premise when permitted by the Alcoholic Beverage Control Act.
3. **“Class C”** licenses shall entitle the holder thereof to sell alcoholic beverages in conjunction with the operation of a private club in accordance with the Alcoholic Beverage Control Act.
4. **“Class D”** licenses shall entitle the holder thereof to sell alcoholic beverages in conjunction with the operation of a restaurant in accordance with the Alcoholic Beverage Control Act.
5. **“Class E”** licenses shall entitle the holder thereof to sell alcoholic beverages of the type specified in the application for a single event in accordance with the Alcoholic Beverage Control Act and with such restrictions as may be imposed on the license. Payson City shall have the discretion to grant or deny such a permit after consideration of the type of event, the type of persons expected to attend such event, the location of the event, the time of the event, the proximity to residential areas, public areas, schools, and churches.
6. **“Class F”** licenses shall entitle the holder thereof to manufacture, warehouse, or sell wholesale alcoholic beverages in accordance with the Alcoholic Beverages Control Act.

**4.2.4 Duties**

Each person or entity granted a license in accordance with the provisions of this Chapter shall abide by the following:

1. **Each Class A License Holder:**
  - a. Shall comply with all provisions of the Alcoholic Beverage Control Act.
  - b. Shall comply with all provisions of this Title.
  - c. Shall not permit beer, light beer, malt liquor, or malted beverages to be sold from drive-up windows.
  - d. Shall not permit beer, light beer, malt liquor, or malted beverages to be sold between the hours of 1:00 a.m. and 6:00 a.m.

2. **Each Class B License Holder:**

- a. Shall comply with all provisions of the Alcoholic Beverage Control Act.
- b. Shall comply with all provisions of this Title.
- c. Shall not permit performers or entertainers to wear any costume or attire or to engage in any conduct prohibited by §32A-10-206(10) Utah Code Annotated 1953, as amended.
- d. Shall not permit beer, light beer, malt liquor, or malted beverages to be sold between the hours of 1:00 a.m. and 10:00 a.m.

3. **Each Class C License Holder:**

- a. Shall comply with all provisions of the Alcoholic Beverage Control Act.
- b. Shall comply with all provisions of this Title.
- c. Shall not permit beer, light beer, malt liquor, or malted beverages to be sold between the hours of 1:00 a.m. and 10:00 a.m.

4. **Each Class D License Holder:**

- a. Shall comply with all provisions of the Alcoholic Beverage Control Act.
- b. Shall comply with all provisions of this Title.

5. **Each Class E License Holder:**

- a. Shall comply with all provisions of the Alcoholic Beverage Control Act.
- b. Shall comply with all provisions of this Title.
- c. Shall comply with all of the restrictions imposed for a single event by Payson City.

6. **Class F License Holder**

- a. Shall comply with all provisions of the Alcoholic Beverage Control Act.
- b. Shall comply with all provisions of this Title.

**4.2.5 Beer Handler’s Permit**

## 4.2.5.1 General Regulations

## 4.2.5.2 Penalties for Violation of Beer Handler’s Permit

## 4.2.5.3 Appeal Procedures

The regulations for issuance of a Beer Handler’s Permit are included in this Section. The Business License Coordinator shall ensure that all Payson City and State of Utah regulations are satisfied prior to the issuance of a permit in accordance with the regulations of this Section.



*4.2.5.1 General Regulations*

The following regulations are applicable to each Beer Handler's Permit issued by Payson City. Each applicant for a permit shall satisfy each of the provisions.

1. A licensee involved in the transaction of retail beer sales for off premise consumption (Class "A" retail sales) shall require any and all employees involved in the transaction of retail beer sales to obtain a Beer Handler's Permit from the Utah County Health Department. All employees of a licensee involved in the transaction of retail beer sales will be required to possess and wear a Beer Handler's Permit while on duty. This permit shall be worn in a conspicuous place that is clearly visible to any person.
2. New employees of a licensee shall obtain a Beer Handler's Permit within thirty (30) days of hire. During this thirty (30) day period, the employee may sell alcoholic beverages in accordance with the State Alcoholic Beverage Control Act, the regulations of the Alcoholic Beverage Control Commission, and the provisions of this Chapter.
3. The licensee is required to inform the Utah County Health Department of any employee possessing a Beer Handler's Permit whose employment is terminated for conduct that would be punishable under the statutes or ordinances regulating alcoholic beverages. Licensees shall permit law enforcement officers and Utah County Health Department employees to conduct random Beer Handler's Permit compliance checks on licensee's premises.
4. To obtain a Beer Handler's Permit, applicants must:
  - a. Fill out a Beer Handler's Permit application form available from the Utah County Health Department.
  - b. Produce acceptable photo identification showing the identity of the applicant.
  - c. Attend a Beer Handler's Permit training session administered by, or approved by, the Utah County Health Department.
  - d. Pass the Beer Handler's Permit test given by the Utah County Health Department.
5. If the regulations of condition # 4 above are satisfied, the Utah County Health Department shall issue the applicant a Beer Handler's Permit photo identification card. This permit must be possessed and conspicuously worn by the applicant while on duty so that the permit is clearly visible to any person.

6. The Utah County Health Department shall not grant a Beer Handler's Permit to any individual who has had a felony conviction within three (3) years, or a misdemeanor conviction involving alcohol or controlled substances within one (1) year.

*4.2.5.2 Penalties for Violation of Beer Handler's Permit*

If the holder of a Beer Handler's Permit fails to satisfy the provisions of this Title, the holder shall be subject to the following violations:

1. A violation of this Title or of any law involving the sale of an alcoholic beverage is a class C misdemeanor and is subject, upon conviction, to the penalties as provided by law, together with the following permit suspension provisions:
  - a. 1<sup>st</sup> Violation – Automatic suspension of the employee's Beer Handler's Permit for a period of one (1) year.
  - b. 2<sup>nd</sup> Violation – Automatic suspension of the employee's Beer Handler's Permit for an additional period of one (1) year.
  - c. Any Subsequent Violation – Automatic suspension of the employee's Beer Handler's Permit for a period of three (3) years.
2. The licensee shall report any known violation involving the sale of an alcoholic beverage to the Utah County Health Department within thirty (30) days.
3. Any violation of these provisions by a licensee or any employee of the licensee shall subject the licensee to the following penalties:
  - a. The first violation shall result in a warning.
  - b. A second violation within twenty-four (24) months of a prior violation will result in a civil fine of two hundred fifty (250) dollars.
  - c. A third violation within twenty-four (24) months will result in a civil fine of five hundred (500) dollars and the licensee shall have its license to sell beer suspended for a period of three (3) consecutive days, on a Thursday through Saturday.
  - d. A fourth violation within twenty-four (24) months will result in a civil fine of five hundred (500) dollars and the licensee shall have its license to sell beer suspended for a period of thirty (30) consecutive days. Additionally, the

licensee shall be placed on probation for a period of one (1) year. Any violation by the licensee or any employee of the licensee during the period of probation shall result in the revocation of the licensee's license to sell beer. The licensee shall not be eligible to reapply for a new license for at least six (6) months from the date of revocation.

Failure to pay any fine imposed for a violation within thirty (30) days of the imposition of such fine shall be grounds for revocation of the licensee's license to sell beer.

#### *4.2.5.3 Appeal Procedures*

The licensee shall have the right to request a hearing by the City Council to contest the existence of any violation of this Section or the imposition of any penalty under this Section. A written request for a hearing must be filed by the licensee with the Business License Coordinator and with the City Attorney within fifteen (15) days of the date of mailing of the City's notice of violation to the licensee. The request for a hearing shall include the licensee's name, address, telephone number, and a statement of the licensee's basis for disputing the existence of a violation or the imposition of a penalty. A timely request for a hearing shall stay the imposition of any penalty until the hearing is decided. The City's finding of a violation shall be considered final if the licensee fails to request a hearing within the time period set forth above.

The Business License Coordinator shall notify the licensee in writing of the date and time for the hearing. Hearings before the City Council shall be conducted informally. Formal rules of evidence and court procedure shall not apply. The hearings are administrative in nature, and hearsay is admissible, but the evidence must have some probative weight and reliability to be considered. The licensee shall be given an opportunity to be heard at the hearing, shall have the right to be represented by counsel, and may call witnesses. The City Council shall consider all of the evidence and shall take any action they deem appropriate as it relates to the licensee. The City Council's decision shall be made orally at the end of the hearing or in writing within ten (10) business days following the hearing. The decision of the City Council is the final administrative function of the City and any further appeal shall be filed in a Court of competent jurisdiction.

In addition to the revocation these procedures, revocation of a beer license may occur for violation of

this Title, any of the provisions of the Alcoholic Beverage Control Act, or the loss of a State issued license or permit.

### **Chapter 4.3 Secondhand, Junk, Antique Dealers**

- 4.3.1 Business License and Bond Required
- 4.3.2 Display of Merchandise
- 4.3.3 Record Keeping Requirements
- 4.3.4 Garage Sale Limitation
- 4.3.5 Furnishing of False Information
- 4.3.6 Liability for Acts of Employees

#### **4.3.1 Business License and Bond Required**

It is unlawful for any person to operate a secondhand, junk or antique dealer business in Payson City, without first obtaining a business license in accordance with the provisions of this Chapter and Chapter 4.1. Furthermore, before any business license is issued to a secondhand, junk or antique dealer in accordance with the provisions of this Title, the applicant for the business license shall execute and deliver to Payson City a bond in the amount of five thousand (5,000) dollars issued by a corporate surety authorized to do business in the State of Utah to be held for the duration of the operation of the business in Payson City.

#### **4.3.2 Display of Merchandise**

All merchandise held for sell by a secondhand, junk or antique dealer will be displayed in a structure approved by Payson City. Temporary sales locations, outdoor displays and other short-term business activities are not allowed in accordance with this Section.

#### **4.3.3 Record Keeping Requirements**

The holder of a business license issued for a use regulated by this Chapter shall keep a substantial record of the time and date of receiving any goods and an accurate description of all articles received. The records shall be maintained for a period of two (2) years from the date of the transaction.

All entries shall be made in a legible manner. The Police Department shall also be permitted to have access, during business hours, to all areas of the premises for inspection of the premises and records or any other information regarding a transaction that the police department may require.

**4.3.4 Garage Sale Limitations**

Garage sales shall not be used to generate regular income for a property owner. For instance, a regularly scheduled sale that would amount to a swap meet is not allowed. Therefore, it is unlawful for any person to hold or participate as a seller in more than five (5) sales of personal property at a private residence during a calendar year, or in any sale exceeding seven (7) consecutive days in length. A business license is not required for a garage sale.

**4.3.5 Furnishing of False Information**

It is unlawful for any person to willfully give the licensee or the licensee's employee(s) false or misleading information, which the licensee is required by this Chapter to obtain from such person. Likewise, it is unlawful for any licensee or an employee(s) of the licensee to document false information.

A licensee or employee(s) shall not knowingly accept any item that has had the manufacturer's serial number or an owner's personal identification mark altered, defaced mutilated or removed.

**4.3.6 Licensee Liable for Acts of Employees**

The holder of a license issued in accordance with this Chapter is strictly liable for any and all acts of their employees for any violation by them of any provisions of this Chapter.

## Chapter 4.4 Sexually Oriented Businesses

- 4.4.1 Purpose of Provisions
- 4.4.2 Application of Provisions
- 4.4.3 Definitions
- 4.4.4 Obscenity and Lewdness – Statutory Provisions
- 4.4.5 Location and Zoning Restrictions
- 4.4.6 Business License Required
- 4.4.7 Exemptions from License Requirements
- 4.4.8 Legitimate Artistic Modeling
- 4.4.9 Employee Licenses
- 4.4.10 Application Information
- 4.4.11 Premise Location and Name
- 4.4.12 Conditions of Issuance
- 4.4.13 Advertising
- 4.4.14 Regulations and Unlawful Activities
- 4.4.15 Outcall Services
- 4.4.16 Design of Adult Business Premises
- 4.4.17 Design of Semi-Nude Entertainment Premises
- 4.4.18 Location Restrictions
- 4.4.19 Semi-Nude Dancing Agencies

## 4.4.20 Defenses to Prosecution

## 4.4.21 Compliance Time Limits for Existing Businesses

**4.4.1 Purpose of Provisions**

It is the purpose and object of this Chapter to establish reasonable and uniform regulations governing the time, place, and manner for the operation of sexually oriented businesses and their employees in Payson City. This Chapter shall be construed to protect the governmental interests recognized by this Chapter in a manner consistent with constitutional protections provided by the United States and Utah Constitutions.

**4.4.2 Application of Provisions**

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

**4.4.3 Definitions**

Because the definitions of sexual oriented businesses are unique and apply specifically to this Chapter, for the purpose of this Chapter the following words shall have the following meanings:

1. Adult bookstore or adult video store means a commercial establishment 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; or photographs, films, motion pictures, video cassettes, or video reproductions slides, or other visual representations, the central theme of which depicts or describes "specified sexual activities" or "specified anatomical areas", or instruments, devices, or paraphernalia which are designated for use in connection with "specified sexual activities", except for legitimate medically recognized contraceptives.
2. Adult business means an adult motion picture theater, adult bookstore, or adult video store.
3. Adult motion picture theater means a commercial establishment which, as its principal business, shows, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions which are primarily characterized by the depiction or description of

- “specified sexual activities” or “specified anatomical areas.”
4. Adult theater means a theater, concert hall, auditorium, or similar commercial establishment which, as its principal business, features persons who appear in live performances in a state of semi-nudity or which are characterized by the exposure of “specified sexual activities” or by “specified anatomical areas.”
  5. Employ means hiring an individual to work for pecuniary or any other form of compensation, whether such person is hired on the payroll of the employer, as an independent contractor, as an agent, or in any other form of employment relationship.
  6. Escort means any person who, for pecuniary compensation, dates, socializes, visits, consorts with, or accompanies or 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. Escort shall not be construed to include persons who provide business or personal services, such as licensed private nurses, aides for the elderly, or handicapped, social secretaries or similar service personnel whose relationship with their patron is characterized by a bona fide contractual relationship. 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.
  7. Escort service means an individual or entity that, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce patrons to escorts.
  8. Escort Service Runner means any third person, not an escort, who, for pecuniary compensation, acts in the capacity of an agent or broker for an escort service, escort, or patron by contacting or meeting with escort services, escorts, or patrons at any location within the city, whether or not such third person is employed by the escort service, escort, patron, or by another business, or is an independent contractor or self-employed.
  9. Nudity means a state of dress in which the areola of the female breast, or male or female genitals, pubic region, or anus are covered by less than the covering required in the definition of semi-nude.
  10. Operator means the manager or other person principally in charge of a sexually-oriented business.
  11. Outcall Services means services 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.
  12. Patron means any person who contracts with or employs any escort services or escort or the customer of any business licensed pursuant to this Chapter.
  13. Pecuniary Compensation means any commission, fee, salary tip, gratuity, hire, profit, reward, or any other form of consideration.
  14. Person means any person, unincorporated association, corporation, partnership, or other legal entity.
  15. Semi-nude means a state of dress in which opaque clothing covers no more than the areola of the female breast; and the male or female genitals, pubic region, and anus shall be fully covered by an opaque covering no narrower than four inches wide in the front and five inches wide in the back, which shall not taper to less than one inch wide at the narrowest point.
  16. Semi-nude dancing agency means any person, agency, firm, corporation, partnership, or any other entity or individual which furnishes, or offers to furnish, books, or otherwise engages the service of a professional dancer licensed pursuant to this Chapter for performance or appearance at a business licensed for adult theaters.
  17. Semi-nude entertainment business means a business, including adult theater, where employees perform or appear in the presence of patrons of the business in a state of semi-nudity. A business shall also be presumed to be a semi-nude entertainment business if the business holds itself out as such a business.
  18. Sexually oriented business means semi-nude entertainment businesses, sexually oriented outcall services, adult businesses, escort services, and semi-nude dancing agencies, as defined by this Chapter.
  19. Sexually oriented business employees means employees who work on the premises of a sexually oriented business in activities related to the sexually oriented portion of the business. This includes all managing employees, persons making outcall meetings, dancers, escorts, models, guards, escort runners, drivers, chauffeurs, and other similar employees, whether or not hired as employees, agents, or as independent contractors. Employees shall not include individuals whose work is unrelated to the sexually oriented portion of the business,

such as janitors, bookkeepers, cooks, serving persons, and similar employees, except where they may be managers or supervisors of the business.

20. Specified anatomical areas means the human male or female pubic area or anus with less than a full opaque covering, male genitals in a discernibly turgid state (even if completely and opaquely covered), or the human female breast below a point immediately above the top of the areola, with less than full opaque covering.
21. Specified sexual activities means:
  - a. Acts of:
    - i. Masturbation
    - ii. Human sexual intercourse
    - iii. Sexual copulation between a person and a beast
    - iv. Fellatio
    - v. Cunnilingus
    - vi. Bestiality
    - vii. Pederasty
    - viii. Buggery
    - ix. Any anal copulation between a human male and another human male, human female, or beast
  - b. Manipulating, caressing or fondling by any person of:
    - i. The genitals of a human
    - ii. The pubic area of a human
    - iii. The breast or breasts of a human female
  - c. Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.

#### **4.4.4 Obscenity and Lewdness - Statutory Provisions**

Notwithstanding anything contained in this Chapter, nothing in this Chapter shall be deemed to permit or allow the showing or display of any matter which is contrary to applicable Federal or State statutes prohibiting obscenity. Furthermore, nothing in this Chapter shall be deemed to permit or allow conduct, or the showing or display of any matter which is contrary to the provisions of §76-9-702 or §76-9-703 Utah Code Annotated. For the purpose of sexually oriented businesses the definition of “private parts” in the Utah Code Annotated shall be construed to mean “nudity” as defined in this Chapter.

#### **4.4.5 Location and Zoning Restrictions**

It is unlawful for any sexually oriented business to conduct business at any location within Payson City not zoned to allow such business.

#### **4.4.6 Business License Required**

It is unlawful for any person to operate a sexually oriented business, as specified herein, without first obtaining a business license to operate as a sexually oriented business in accordance with this Chapter and Chapter 4.01. Furthermore, it is unlawful for any business premises to operate or be licensed for more than one category of sexually-oriented business, except that a business may have a license for both outcall services and a semi-nude dancing agency on the same premises.

#### **4.4.7 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.

#### **4.4.8 Legitimate Artistic Modeling**

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

In the event of a contract for nude modeling or appearance signed more than forty-eight 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 semi-nude in the presence of persons under the age of eighteen.
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 committing activities harmful to a minor.
4. Allow, offer, commit or agree to any sex act as 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 semi-nude.

#### 4.4.9 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.

#### 4.4.10 Application Information

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 comply with the provisions of chapter 4.01 and in addition, shall comply with the following:

1. The application for all applicants or individuals must include:
  - a. Any other names or aliases used by the individual.
  - b. The age, date, and place of birth of the employee(s).
  - c. Height, weight, color of hair, and color of eyes.
  - d. Present business address and telephone number.
  - e. Present residence and telephone number.
  - f. Utah driver's license or identification number.
  - g. Social security number.
  - h. Acceptable written proof that any individual is at least eighteen years of age.
2. Two (2) color photographs of the applicant clearly showing the individual's face and the individual's fingerprints on a form provided by the Police Department shall accompany the application for a business license. For persons not residing in Payson City, the photographs and fingerprints may be on a form from the law enforcement jurisdiction where the person resides. Fees for the photographs and fingerprints shall be paid by the applicant directly to the issuing agency.
3. Any individual applicant required to obtain a sexually oriented business employee license as an escort or a semi-nude entertainer, shall provide a certificate from the Utah County Health Department stating that the individual has, within thirty (30) days immediately preceding the date of the original or renewal application, been examined and found to be free of any contagious or communicable diseases.
4. A statement detailing the license or permit history of the applicant for the five (5) year period immediately preceding the date of the filing of the application, including whether the applicant

previously operated or is seeking to operate, in this or any other county, city, or state has ever had a license, permit, or authorization to conduct business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, the applicant shall state the date, the name of the issuing or denying jurisdiction, and state in full the reasons for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

5. The applicant shall include all criminal convictions or pleas of no contest, except those which have been expunged, and the disposition of all such arrests for the applicant, individual, or other entity subject to disclosure under this Chapter, for five (5) years prior to the date of the application. This disclosure shall include identification of all ordinance violations, excepting minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense), stating the date, place, nature of each conviction or plea of no contest, and sentence of each conviction or other disposition, identifying the convicting jurisdiction and sentencing court, and providing the court identifying case numbers or docket numbers. Application for a sexually oriented business or employee license shall constitute a waiver of disclosure of any criminal conviction or pleas of no contest for the purpose of any proceeding involving the business or employee license.
6. In the event the applicant is not the owner of record of the real property upon which the business or proposed business is or is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of interest in the property specifically acknowledging the type of business for which the applicant seeks a license. In addition to furnishing such notarized statement, the applicant shall furnish the name, address, and phone number of the owner of record of the property, as well as the copy of the lease or rental agreement pertaining to the premises in which the service is or will be located.
7. The applicant shall provide a description of the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees for services to be charged by the licensee, and any rules, regulations, or employment guidelines

under or by which the business intends to operate. This description shall also include:

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

#### **4.4.11 Premises Location and Name**

It is unlawful to conduct business under a license issued pursuant to this Chapter at any location other than the licensed premises. Any location to which telephone calls are automatically forwarded by such business shall require a separate license. A sexually oriented business shall not conduct business in Payson City under any name other than the business name specified in the application.

#### **4.4.12 Conditions of Issuance**

The Business License Coordinator shall act upon the application for a business license regulated by this Chapter within thirty (30) days after receipt of a completed application, unless the provisions of Chapter 4.01 have not been satisfied and/or any one of the following: (4-1-15)

1. The applicant is under eighteen years of age.
2. The applicant is overdue in payment of any federal, state, county or city taxes, fees, fines, or penalties assessed against the applicant or imposed on the applicant in relation to a sexually oriented business.
3. The premises to be used for the business has been disapproved by the Utah County Health Department, the Fire Department, the Police Department, the Building Official, or the zoning officials as not being in compliance with applicable laws and ordinances of Payson 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 Business License Coordinator an extension of time of no more than fifteen (15) days for their

review. If an extension is granted, the City shall issue a temporary license rendering completion of the City's review. The total time for the City to approve or deny a business license shall not exceed forty-five (45) days from the receipt of a completed application and payment of all fees. Businesses located outside of the corporate boundaries of the City, but requiring a license under this Chapter, may be denied a license pursuant to this Chapter if the business does not have a valid business license to conduct business at a different location from the appropriate jurisdiction for that location. (4-1-15)

4. The required business license fees have not been paid.
5. All applicable sales and use taxes have not been paid.
6. An applicant for the proposed business is in violation of or not in compliance with this Chapter or similar provisions found in statutes or ordinances from any jurisdiction.

#### **4.4.13 Advertising**

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.

#### **4.4.14 Regulations and Unlawful Activities**

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

1. Allow minors in excluded areas.
2. Allow, offer, or agree to conduct any outcall business with persons under the age of eighteen years.
3. Allow, offer, or agree to allow any alcohol to be stored, used, sold or consumed on or in the licensed premises.
4. Allow the outside door to the premises to be locked while any customer is in the premises.
5. Allow, offer, or agree to gambling on the licensed premises.
6. Allow, offer, or agree to any sexually oriented business employee touching or being touched by any patron or customer including the placement of any money or object on the performer or within the costume of the performer.
7. Touching of specified anatomical areas, whether clothed or unclothed, is prohibited.
8. Allow, offer, or agree to illegal possession, use, sale, or distribution of controlled substances on the licensed premises.
9. Allow sexually oriented business employees to possess, use, sell, or distribute controlled

substances while engaging in the activities of the business.

10. 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.
11. Allow, offer, commit, or agree to any specified sexual activity as validly defined by City ordinance or State statute in the presence of any customer or patron.
12. Allow, offer, or agree to any outcall employee appearing before any customer or patron in a state of nudity.
13. Allow, offer, or agree to allow a patron or customer, or employee to masturbate in the presence of the sexually oriented business employee or on the premises of a sexually oriented business.
14. Allow, offer, or agree to commit an act of lewdness as defined in this Title.
15. Place anything within the costume, or adjust or move the costume while performing, so as to render the performer in a state of nudity.

#### **4.4.15 Outcall Services**

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

1. All businesses licensed to provide outcall services pursuant to this Chapter shall provide to each patron a written contract in receipt of pecuniary compensation for services. The contract shall clearly state the type of services to be performed, the length of time such services will be performed, the total amount such services shall cost the patron, and any special terms or conditions relating to the services to be performed. The contract need not include the name of the patron. The business licensee shall keep and maintain a copy of each written contract entered into pursuant to this Section for a period not less than one (1) year from the date of provision of services. The contracts shall be numbered and entered into a register listing the contract number, date, names of all employees involved in the contract, and pecuniary compensation paid.
2. All outcall businesses licensed pursuant to this Chapter shall maintain an open office or telephone at which the licensee's designated agent may be personally contacted during all hours outcall

employees are working. The address and phone number of the license location shall appear and be included in all patron contracts and published advertisements. For outcall businesses which premises are licensed within the City, private rooms or booths where the patrons may meet with the outcall employee shall not be provided on the premises, nor shall patrons meet outcall employees at the business premises.

3. Outcall services shall not advertise in such a manner that would lead a reasonably prudent person to conclude that specified sexual activities would be performed by the outcall employee.
4. All employees of outcall services who provide outcall services within Payson City shall be licensed in accordance with this Chapter, regardless of the primary location of the business.

#### **4.4.16 Design of Adult Business Premises**

In addition to the general requirements of disclosure for a sexually oriented business, any applicant for a business license as an adult business shall also submit a diagram, drawn to scale, of the premises. The design and construction, prior to granting a business license or conducting 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 business merchandise. Signs shall be posted requiring only one person being allowed in the restroom per stall, and only one person in any stall at a time, and requiring that patrons shall not be allowed access to manager's station areas.
3. For businesses which exclude minors from the entire premises, all windows, doors and other apertures to the premises shall be darkened or otherwise constructed to prevent anyone outside the premises from seeing the inside 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. The premises shall at all times be equipped and operated with overhead lighting fixtures of



sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) candle foot measured at floor level.

#### **4.4.17 Design of Semi-Nude Entertainment Premises**

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

1. Permit a bed, sofa, mattress, or similar item in any room on the premises, except that a sofa may be placed in a reception room open to the public or in any office to which patrons are not admitted, and except that in an adult theater such items may be on the stage as part of a performance.
2. Allow any door on any room used for the business, except for the door to an office to which patrons shall not be admitted, outside doors, and restroom doors to be lockable from the inside.
3. Provide any room in which the employee or employees and the patron or patrons are alone together without a separation by a solid physical barrier at least three feet high and six inches wide. The patron or patrons shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier.

Adult theaters shall require that the performance areas shall be separated from the patrons by a minimum of three feet, which separation shall be delineated by a physical barrier at least three (3) feet high.

#### **4.4.18 Location Restrictions**

It is unlawful for any business licensed for semi-nude entertainment to be located within one thousand (1,000) feet of a business licensed for the sale or consumption of alcohol.

#### **4.4.19 Semi-Nude Dancing Agencies**

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

#### **4.4.20 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 by a proprietary school licensed by the State, or a college, junior college, or university supported entirely or partly by taxation or 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.

#### **4.4.21 Compliance Time Limits for Existing Businesses**

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

### **Chapter 4.5**

#### **Residential Solicitation** (11-15-06)

- 4.5.1 Purpose
- 4.5.2 No Other City License or Approval Required
- 4.5.3 Definitions
- 4.5.4 Exemptions from Chapter
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- 4.5.17 No Soliciting – Notice
- 4.5.18 Duties of Solicitors
- 4.5.19 Time of Day Restrictions
- 4.5.20 Buyer's Right to Cancel
- 4.5.21 Penalties

#### **4.5.1 Purpose**

Residents of the City have an inalienable interest in their personal safety, well-being, and privacy in their residences, as well as their ability to provide or receive information regarding matters of personal belief, political or charitable activities, and goods and services lawfully in commerce. The City has a substantial interest in protecting the well-being, tranquility, personal safety, and privacy of its citizens, which includes the ability to protect citizens from unwanted intrusions upon residential property. The city also has a substantial interest in protecting

citizens from fraud or otherwise unfair consumer sales practices as well as criminal activity.

There must be a balance between these substantial interests of the City and its citizens, and the effect of the regulations in this Chapter on the rights of those who are regulated. Based on the collective experiences of City officials derived from regulating business activity, protecting persons and property from criminal conduct, responding to the inquiries of citizens regarding door-to-door solicitation, the experience of its law enforcement officers and those affected by door-to-door canvassing and solicitation, as well as judicial decisions outlining the boundaries of constitutional protections afforded and denied persons seeking to engage in door-to-door solicitation, the City adopts this Chapter to promote the City's substantial interests in:

1. Respecting citizen's decisions regarding privacy in their residences;
2. Protecting persons from criminal conduct;
3. Providing equal opportunity to Advocate for and against religious belief, political position, or charitable activities; and
4. Permitting truthful and non-misleading door-to-door solicitation regarding lawful goods or services in intrastate or interstate commerce.

The City finds that the procedures, rules and regulations set forth in this Chapter are narrowly tailored to preserve and protect the City interests referred to herein while at the same time balancing the rights of those regulated.

#### 4.5.2 No Other City License or Approval Required

1. Registered Solicitors and persons exempt from registration need not apply for, nor obtain, any other license, permit, or registration from the City to engage in door-to-door solicitation.
2. Any business licensed by the City under another City ordinance that uses employees, independent contractors, or agents for door-to-door solicitation in an effort to provide any tangible or intangible benefit to the business shall be required to have such solicitors obtain a certificate, unless otherwise exempt from registration.
3. Those responsible persons or entities associated with registered solicitors need not apply for, nor obtain, any other license, permit, or registration from the City, provided they do not establish a temporary or fixed place of business in the City.
4. Nothing herein is intended to interfere with or supplant any other requirement of federal, state or other local government law regarding any license, permit or certificate that a registered solicitor is otherwise required to have or maintain.

#### 4.5.3 Definitions

For the purposes of this Chapter, the following definitions shall apply:

1. **Advocating** means speech or conduct intended to inform, promote, or support religious belief, political position, or charitable activities.
2. **Appeals Officer** means the City Council or designee of the city responsible for receiving the information from the City and appellant regarding the denial or suspension of a certificate and issuing a decision as required by this Chapter.
3. **Appellant** means the person or entity appealing the denial or suspension of a certificate, either personally as an applicant or registered solicitor, or on behalf of the applicant or registered solicitor.
4. **Applicant** means an individual who is at least sixteen (16) years of age and not a corporation, partnership, limited liability company, or other lawful entity who applies for a certificate permitting door-to-door solicitation.
5. **Application Form** means a standardized form provided by the City to an applicant to be completed and submitted as part of registration.
6. **B.C.I.** means an original or copy, dated no older than 180 days prior to the date of the application, of either: (1) a Utah Department of Public Safety Bureau of Criminal Identification verified criminal history report personal to the applicant; or (2) verification by the Utah Department of Public Safety Bureau of Criminal Identification that no criminal history rising to the level of a disqualifying status exists for the applicant.
7. **Business** means a commercial enterprise licensed by the City as a person or entity under this Title, having a fixed or temporary physical location within the City.
8. **Certificate** means a temporary, annual, or renewal certificate permitting door-to-door solicitation in the City applied for or issued pursuant to the terms of this Chapter.
9. **Charitable Activities** means advocating by persons or entities that either are, or support, a charitable organization.
10. **Charitable Organization** includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:
  - a. That is:
    - i. A benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious or eleemosynary, social welfare

- or advocacy, public health, environmental or conservation, or civic organization;
  - ii. For the benefit of a public safety, law enforcement, or firefighter fraternal association; or
  - iii. Established for any charitable purpose; and
- b. That is tax exempt under applicable provisions of the Internal Revenue Code of 1986 as amended, and qualified to solicit and receive tax-deductible contributions from the public for charitable purposes.
- c. Charitable organization includes a chapter, branch, area, or office, or similar affiliate or any person soliciting contributions within the state for a charitable organization that has its principal place of business outside the City or State of Utah.
11. **Competent Individual** means a person claiming or appearing to be at least eighteen (18) years of age and of sufficiently sound mind and body to be able to engage in rational thought, conversation, and conduct.
12. **Completed Application** means a fully completed application form, a B.C.I., two copies of the original identification relied on by the Applicant to establish proof of identity, and the tendering of fees.
13. **Criminally Convicted** means the final entry of a conviction, whether by a plea of no contest, guilty, entry of a judicial or jury finding of guilt, which has not been set aside on appeal or pursuant to a writ of habeas corpus. The criminal conviction is that offense of which the applicant or registered solicitor was convicted, without regard to the reduced status of the charge after completion of conditions of probation or parole, and charges dismissed under a plea in abeyance or diversion agreement.
14. **Disqualifying Status** means anything specifically defined in this Chapter as requiring the denial or suspension of a certificate, and any of the following:
- a. The applicant or registered solicitor has been criminally convicted of:
    - i. Felony homicide;
    - ii. Physically abusing, sexually abusing, or exploiting a minor;
    - iii. The sale or distribution of controlled substances; or
    - iv. Sexual assault of any kind.
  - b. Criminal charges currently pending against the applicant or registered solicitor for:
    - i. Felony homicide;
    - ii. Physically abusing, sexually abusing, or exploiting a minor;
    - iii. The sale or distribution of controlled substances; or
    - iv. Sexual assault of any kind.
  - c. The applicant or registered solicitor has been criminally convicted of a felony within the last ten (10) years.
  - d. The applicant or registered solicitor has been incarcerated in a federal or state prison within the past five (5) years.
  - e. The applicant or registered solicitor has been criminally convicted of a misdemeanor within the past five (5) years involving a crime of: (i) moral turpitude, or (ii) violent or aggravated conduct involving persons or property.
  - f. A final civil judgment been entered against the applicant or registered solicitor within the last five (5) years indicating that: (i) the applicant or registered solicitor had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the applicant or registered solicitor was non-dischargeable in bankruptcy pursuant to 11 U.S.C. 523(a)(2), (a)(4), (a)(6), or (a)(19).
  - g. The applicant or registered solicitor currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device.
  - h. The applicant or registered solicitor has an outstanding arrest warrant from any jurisdiction.
  - i. The applicant or registered solicitor is currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.
15. **Door to Door Solicitation** means the practice of engaging in or attempting to engage in conversation with any person at a residence, whether or not that person is a competent individual, while making or seeking to make or facilitate a home solicitation sale, or attempting to further the sale of goods and or services.
16. **Entity** includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association.
17. **Fees** means the cost charged to the applicant or registered solicitor for the issuance of a certificate and/or identification badge, which shall not exceed the reasonable costs of processing the application and issuing the Certificate and/or Identification Badge.
18. **Final Civil Judgment** means a civil judgment that would be recognized under state law as a

- judgment to which collateral estoppel would apply.
19. **Goods** means one or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.
  20. **Home Solicitation Sale** means to make or attempt to make a Sale of Goods or Services by a Solicitor at a residence by means of door-to-door solicitation, regardless of:
    - a. The means of payment or consideration used for the purchase;
    - b. The time of delivery of the goods or services; or
    - c. The previous or present classification of the solicitor as a solicitor, peddler, hawker, itinerant merchant, or similar designation.
  21. **Licensing Officer** means the City employee(s) or agent(s) responsible for receiving from an applicant or registered solicitor the completed application and either granting, suspending, or denying the applicant's certificate.
  22. **No Solicitation Sign** means a reasonably visible and legible sign that states "No Soliciting", "No Salesperson", "No Trespassing", or words of similar import.
  23. **Political Position** means any actually held belief, or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.
  24. **Registered Solicitor** means any person who has been issued a current certificate by the City.
  25. **Registration** means the process used by the City Licensing Officer to accept a completed application and determine whether or not a certificate will be denied, granted, or suspended.
  26. **Religious Belief** means any sincerely held belief, or information for, against, or in conjunction with, any theistic, agnostic, or atheistic assumption, presumption or position, or religious doctrine, dogma, or practice regardless of whether or not the belief or information is endorsed by any other person or public or private entity.
  27. **Residence** means any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of the City, together with the lot or other real property on which the living unit is located. This does not include the sidewalk, a public street, or public rights-of-way.
  28. **Responsible Person or Entity** means that person or entity responsible to provide the following to an applicant, registered solicitor, and the competent individual in a residence to whom a sale of goods or services is made or attempted to be made by means of a home solicitation sale:
    - a. Maintaining a state sales tax number, a special events sales tax number, computing the sales taxes owing from any sale of goods or services, paying the sales taxes, and filing any required returns or reports;
    - b. Facilitating and responding to requests from consumers who desire to cancel the sale pursuant to applicable contractual rights or law; and
    - c. Refunding any monies paid or reversing credit card charges to those persons who timely rescind any sale pursuant to applicable contractual rights or law.
  29. **Sale of Goods or Services** means the conduct and agreement of a solicitor and the competent individual in a residence regarding a particular good(s) or service(s) that entitles the consumer to rescind the same within three days under any applicable federal, state, or local law.
  30. **Services** means those intangible goods or personal benefits offered, provided, or sold to a competent individual of a residence.
  31. **Soliciting** or "Solicit" or Solicitation" means any of the following activities:
    - a. Seeking to obtain sales or orders for the exchange of 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, subscriptions to publications, or publications.
    - c. Seeking to obtain contributions of money or any other thing of value for the benefit of any person or entity;
    - d. Seeking to obtain orders or prospective customers for goods or services;
    - e. Seeking to engage an individual in conversation at a residence for the purpose of promoting or facilitating the receipt of information regarding religious belief, political position, charitable conduct, or a home solicitation sale.
    - f. Other activities falling within the commonly accepted definition of "soliciting", such as hawking or peddling.
  32. **Solicitor or Solicitors** means a person(s) engaged in door-to-door solicitation.
  33. **Submitted in Writing** means the information for an appeal of a denial or suspension of a Certificate, submitted in any type of written statement to the City offices by certified, registered, priority, overnight or delivery confirmation mail, facsimile, or hand delivery.

34. **Substantiated Report** means an oral, written, or electronic report:
- a. That is submitted to and documented by the City;
  - b. Submission by any of the following:
    - i. A competent individual who is willing to provide law enforcement or other City employees with publicly available identification of their name, address, and any other reliable means of contact;
    - ii. City law enforcement or Licensing Officer; or
    - iii. Any other regularly established law enforcement agency at any level of government;
  - c. That provides any of the following information regarding a registered solicitor:
    - i. Documented verification of a previously undisclosed disqualifying status of a registered solicitor;
    - ii. Probable cause that the registered solicitor has committed a disqualifying status which has not yet been determined to be a disqualifying status;
    - iii. Documented, eye-witness accounts that the registered solicitor has engaged in repeated patterns of behavior that demonstrates failure by the registered solicitor to adhere to the requirements of the Chapter; or
    - iv. Probable cause that continued licensing of the registered solicitor creates exigent circumstances that threaten the health, safety, or welfare of any individuals or entities within the City.
35. **Waiver** means the written form provided to Applicant by the City wherein Applicant agrees that the City may obtain a name/date of birth B.C.I. background check on the Applicant for licensing purposes under this Chapter, and which contains Applicant's notarized signature.

#### 4.5.4 Exemptions from Chapter

The following are exempt from registration under this Chapter:

1. Persons specifically invited to a residence by a competent individual prior to the time of the person's arrival at the Residence.
2. Persons whose license, permit, certificate or registration with the State of Utah permits them to engage in door to door solicitation to offer goods or services to an occupant of the residence.
3. Persons delivering goods to a residence pursuant to a previously made order, or persons providing services at a residence pursuant to a previously made request by a competent individual.

4. Persons advocating or disseminating information for, against, or in conjunction with, any religious belief, or political position regardless of whether goods, services, or any other consideration is offered or given, with or without any form of commitment, contribution, donation, pledge, or purchase.
5. Persons representing a charitable organization. The charitable exemptions shall apply to students soliciting contributions to finance extracurricular social, athletic, artistic, scientific or cultural programs, provided that the solicitation has been approved in writing by the school administration, and that such student Solicitors carry current picture student identification from the educational institution for which they are soliciting.

Those persons exempt from registration are not exempt from the duties and prohibitions outlined in Sections 4.5.17, 4.5.18 and 4.5.19 while advocating or soliciting.

#### 4.5.5 Solicitation Prohibited

Unless otherwise authorized, permitted, or exempted pursuant to the terms and provisions of this Chapter, the practice of being in and upon a private residence within the City by solicitors, for the purpose of home solicitation sales or to provide goods or services, is prohibited and is punishable as set forth in this Chapter.

#### 4.5.6 Registration of Solicitors

Unless otherwise exempt under this Chapter, all persons desiring to engage in door-to-door solicitation within the City, prior to doing so, shall submit a completed application to the Licensing Officer and obtain a certificate.

#### 4.5.7 Application Form

The Licensing Officer shall provide a standard application form for use for the registration of solicitors. Upon a request to the Licensing Officer, or as otherwise provided herein, any person or entity may obtain in person, by mail, or facsimile, a copy of an application form. Each application form shall require disclosure and reporting by the applicant of the following information, documentation, and fee:

1. **Review of Written Disclosures.** An affirmation that the Applicant has received and reviewed the disclosure information required by this Chapter.
2. **Contact Information:**
  - a. Applicant's true, correct and legal name, including any former names or aliases used during the last ten (10) years;

- b. Applicant's telephone number, home address and mailing address, if different;
  - c. If different from the Applicant, the name, address, and telephone number of the responsible person or entity; and
  - d. The address by which all notices to the Applicant required under this Chapter are to be sent.
3. **Proof of Identity.** An in-person verification by the Licensing Officer of the Applicant's true identity by use of any of the following which bear a photograph of said Applicant:
- a. A valid drivers license issued by any State;
  - b. A valid passport issued by the United States;
  - c. A valid identification card issued by any State; or
  - d. A valid identification issued by a branch of the United States military.
- Upon verification of identity, the original identification submitted to establish proof of identity shall be returned to the Applicant.
4. **Proof of Registration with Department of Commerce.** The Applicant shall provide proof that either the Applicant, or the responsible person or entity, has registered with the Utah State Department of Commerce;
5. **Special Events Sales Tax Number.** The applicant shall provide a special events sales tax number for either the Applicant, or for the responsible person or entity for which the Applicant will be soliciting;
6. **Marketing Information.**
- a. The goods or services offered by the Applicant, including any commonly known, registered or trademarked names.
  - b. Whether the Applicant holds any other licenses, permits, registrations, or other qualifications required by federal or state law to promote, provide, or render advice regarding the offered Goods or Services.
7. **B.C.I. Background Check.** The Applicant shall provide:
- a. An original or a copy of a B.C.I. background check as defined in 4.5.3; and
  - b. A signed copy of a waiver whereby applicant agrees to allow the City to obtain a name/date of birth B.C.I. background check on Applicant for purposes of enforcement of the Chapter.
8. **Responses to Questions Regarding "Disqualifying Status".** The Applicant shall be required to affirm or deny each of the following statements on the application form:
- a. Has the Applicant been criminally convicted of:
    - i. Felony homicide;
    - ii. Physically abusing, sexually abusing, or exploiting a minor'
    - iii. The sale or distribution of controlled substances; or
    - iv. Sexual assault of any kind.
  - b. Are any criminal charges currently pending against the Applicant for:
    - i. Felony homicide;
    - ii. Physically abusing, sexually abusing, or exploiting a minor;
    - iii. The sale or distribution of controlled substances; or
    - iv. Sexual assault of any kind.
  - c. Has the Applicant been criminally convicted of a felony within the last ten (10) years;
  - d. Has the Applicant been incarcerated in a federal or state prison within the past five (5) years;
  - e. Has the Applicant been criminally convicted of a misdemeanor within the past five (5) years involving a crime of:
    - i. Moral turpitude or violent or aggravated conduct involving persons or property.
  - f. Has a final civil judgment been entered against the Applicant within the past five (5) years indicating that the Applicant had either engaged in fraud, or intentional misrepresentation, or that a debt of the Applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. 523(a)(2), (a)(4), (a)(6), or (a)(19);
  - g. If the Applicant currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;
  - h. Does the Applicant have an outstanding arrest warrant from any jurisdiction; or
  - i. Is the Applicant currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.
9. **Fee.** The Applicant shall pay such fees as determined applicable by the City, which shall not exceed the reasonable cost of processing the application and issuing the certificate and/or identification badge.
10. **Execution of Application.** The Applicant shall execute the application form, stating upon oath or affirmation, under penalty of perjury, that based on the present knowledge and belief of the applicant, the information provided is complete, truthful and accurate.

**4.5.8 Written Disclosures**

The application form shall be accompanied by written disclosures notifying the applicant of the following:

1. The Applicant's submission of the application authorizes the City to verify information submitted with the completed application including:
  - a. The Applicant's address;
  - b. The Applicant's and/or responsible person or entity's state tax identification and special use tax numbers, if any; and
  - c. The validity of the Applicant's proof of identity.
2. The City may consult any publicly available sources for information on the Applicant, including but not limited, to databases for any outstanding warrants, protective orders, or civil judgments.
3. Establishing proof of identity is required before registration is allowed.
4. Identification of the fee amount that must be submitted by Applicant with a completed application.
5. The Applicant must submit a B.C.I. background check with a completed application.
6. To the extent permitted by State and/or Federal law, the Applicant's B.C.I. background check shall remain a confidential, protected, private record not available for public inspection.
7. The City will maintain copies of the Applicant's application form, proof of identity, and identification badge. These copies will become public records available for inspection on demand at the City offices whether or not a certificate is denied, granted, or renewed.
8. The criteria for disqualifying status, denial, or suspension of a certificate under the provisions of this Chapter.
9. That a request for a temporary certificate will be granted or denied the same business day that a Completed Application is submitted.

**4.5.9 When Registration Begins**

The Licensing Officer shall not begin the registration process unless the Applicant has submitted a completed application. The original identification submitted to establish proof of identity shall be returned after the Licensing Officer verifies the Applicant's identity. A copy of the identification may be retained by the Licensing Officer. If an original B.C.I. background check is submitted by the Applicant, the Licensing Officer shall make a copy of the B.C.I. background check and return the original to the Applicant.

**4.5.10 Issuance of Certificates**

The Licensing Officer shall review the completed application submitted by the Applicant and issue a certificate in accordance with the following:

1. **Temporary Certificate.** A temporary Certificate may be issued allowing the Applicant to immediately begin door-to-door solicitation upon the following conditions:
  - a. Applicant's submission of a completed application;
  - b. Applicant's submission of the required fee;
  - c. The provision of proof of identity;
  - d. The Applicant's representations on the application form do not affirmatively show a disqualifying status;
  - e. The B.C.I. does not affirmatively show a disqualifying status; and
  - f. The applicant has not previously been denied a Certificate by the City, or had a Certificate revoked for grounds that still constitute a Disqualifying Status under this Chapter.
  - g. A temporary certificate will automatically expire after twenty-five (25) calendar days from issuance, or upon grant or denial of an annual certificate, whichever period is shorter.
2. **Annual Certificate.** Within twenty-five (25) calendar days of the issuance of a temporary Certificate the City shall:
  - a. Take any and all actions it deems appropriate to verify the truthfulness and completeness of the information submitted by the Applicant, including, but not limited to those disclosed with the application form.
  - b. Issue written notice to the Applicant and the responsible person or entity, if any, that the Applicant either will be issued an annual certificate, eligible for renewal one year from the date of issuance of the temporary Certificate or will not be issued an annual certificate for reasons cited in Section 4.5.14 of this Chapter.
3. **Renewal Certificate.** An annual certificate shall be valid for one year from the date of issuance of the temporary certificate and shall expire at midnight on the anniversary date of issuance. Any annual certificate that is not suspended, revoked, or expired may be renewed upon the request of the registered solicitor and the submission of a new completed application and payment of the fee, unless any of the conditions for the denial, suspension or revocation of a certificate are present as set forth in section 4.5.14, or a disqualifying status is present.

## Chapter 4.6 Itinerant Merchant or Itinerant Vendor

- 4.6.1 License Application
- 4.6.2 Classifications
- 4.6.3 Denial of License
- 4.6.4 License Expiration
- 4.6.5 License Exhibition and Sales Tax Permit
- 4.6.6 License Revocation and Suspension
- 4.6.7 Claims of Exemption
- 4.6.8 Special Considerations

### 4.6.1 License Application

Itinerant merchants and itinerant vendors are allowed to conduct business in the commercial and industrial zoning districts of the city upon satisfaction of the regulations of this Title and the applicable sections of Title 19, Zoning Ordinance. The applicant must submit an application in accordance with Chapter 4.1 herein and obtain a business license for the business activities proposed. All business activities must be consistent with the uses identified in Title 19, Zoning Ordinance or the uses listed in this Chapter. Furthermore, the temporary uses listed in Chapter 19.11 of the Zoning Ordinance are subject to the provisions of this Title and the regulations of the Zoning Ordinance. In addition to the information required in Chapter 4.1 and other applicable regulations, the following information is required:

1. A detailed site plan that indicates the location of the business on the site, vehicular and pedestrian access to the business, the size of the display, the parking area available and any other information that will allow the Business License Coordinator to effectively process the application.
2. The anticipated hours of operation and location for which the right to sell is desired.
3. A statement of whether or not the applicant has been convicted of a felony, misdemeanor or ordinance violation (other than traffic violations), the nature of the offense or violation, the penalty or punishment imposed, the date and place where such an offense occurred, and other pertinent details.
4. A copy of the registration of the vehicle(s) being used in conducting the business for which the license is issued for, if applicable.
5. A written statement giving permission to the applicant to use the owner's property for the business.

### 4.6.2 Classifications

- 4.6.2.1 Auctions and Auctioneers
- 4.6.2.2 Christmas Tree, Seasonal Fruit, Vegetable, and Flower Sales
- 4.6.2.3 Fireworks Licensing
- 4.6.2.4 Mobile Food Businesses (4-1-15)

Due to unique circumstances or characteristics of a specific itinerant business, the following specific regulations have been established to ensure that the business activity is conducted in a manner consistent with local, state and federal standards.

#### 4.6.2.1 Auctions and Auctioneers

In addition to compliance with all regulations of this Title, all auctions and auctioneers shall satisfy the following, unless the auction is held for charitable or benevolent purposes, any religious activity, the sale of household goods or effects by the owner thereof at the place of residence; or to the sale of live animals or poultry at any stockyards, stock show or fair.

1. An auctioneer shall not sell or offer for sale at public auction any goods, wares or merchandise while describing the good, wares or merchandise with respect to character, quality, kind, or value or otherwise, to make any fraudulent, untruthful or unwarranted statements tending in any way to mislead bidders, or to substitute an article sold for another.
2. An auctioneer, or other person concerned or interested in any auction sale, shall not conduct an auction sale in a manner or place that may cause people to gather in crowds upon the sidewalks or public streets of Payson City and obstruct the sidewalk or street. It is unlawful for any person to make or cause to be made any noisy announcements of an auction sale. It is unlawful for any person to employ any noise-making device to attract the attention of passersby.

#### 4.6.2.2 Christmas Tree, Seasonal Fruit, Vegetable, and Flower Sales

Prior to the issuance of a license, each applicant shall file with the Payson City a cash deposit in an amount set by resolution of the City Council. The deposit shall ensure compliance with provisions of this Chapter, including, but not limited to, the removal of the goods to be sold and the cleaning of the site upon which the business was located. In the event the licensee does not comply with the provisions of this Chapter the City may complete the work or cause the



work to be done and a reasonable cost shall be charged against the licensee and the deposit, and the balance, if any, shall be returned to the licensee no later than ten (10) days after inspection. (4-1-15)

#### 4.6.2.3 Fireworks Licensing\*

\*For statutory provisions, see U.C.A. 1953 Sections 53-7-225 et. seq. and 11-3-1 et. seq.

Fireworks shall not be offered for sale without having first applied for and received a business license from Payson City and a permit from the Payson City Fire Department. A license may be issued for the sale of fireworks only for the periods on or between June 20 and July 24 of each year, on or before December 20 and January 2 of each year, and 15 days before and on the Chinese New Year. However, due to climatic concerns, sale restrictions may be imposed by the Fire Department.

Specific regulations that relate to fireworks stands include:

1. Applications for a license to sell fireworks shall be made in writing to the Business License Coordinator at least three (3) days prior to the time the applicant wishes to begin selling fireworks, and shall include:
  - a. The payment of the business license fee and all inspection fees.
  - b. The proposed location or locations of the fireworks stand and type of structure (temporary stand or in permanent building).
  - c. Submission to Payson City, insurance certificates evidencing public liability insurance coverage in the amount of \$100,000 and property damage insurance coverage in the amount of \$200,000.
  - d. Evidence of a sales tax permit from the State of Utah.
  - e. A list of fireworks for review by the Fire Chief. (4-1-15)
2. Upon receipt of the application, the Business License Coordinator shall forward the application to the Fire Department which shall inspect the proposed premises for compliance with applicable regulations and direct the Business License Coordinator to issue or deny the permit. (4-1-15)
3. Fireworks stands shall not be located within twenty five (25) feet of a building, structure or other fireworks stand.
4. Fireworks stands shall not be located within fifty (50) feet of any gasoline pump, gasoline dispensing service, or liquid propane gas tank or dispensing device.
5. Fireworks stands shall comply with all zoning provisions, building codes and fire codes. All stands shall be erected in a manner that will ensure the safety of tenants and patrons.
6. A stand that measures less than twenty four (24) feet in length must have at least two (2) exits. Each stand in excess of twenty four (24) feet in length must have at least three (3) exits.
7. Each stand shall maintain a two and one-half (2½) gallon water pressure type fire extinguisher or an ABC fire extinguisher near each required exit and maintained in good working order.
8. All weeds and combustible material shall be cleared from the location of the stand, including a distance of at least twenty five (25) feet surrounding the stand.
9. The following signs must be posted conspicuously on or near the site:
  - a. Two (2) signs bearing the message "NO SMOKING WITHIN TWENTY FIVE (25) FEET OF THIS STAND" in letters at least three inches tall shall be displayed on each side of a fireworks stand.
  - b. A sign bearing the message "DISCHARGE OF FIREWORKS PROHIBITED WITHIN ONE HUNDRED (100) FEET OF THIS STAND" in letters at least three inches tall shall be displayed on each side of the fireworks stand.
  - c. A sign bearing the message "FIREWORKS MAY BE DISCHARGED THREE DAYS PRIOR, ON THE DAY OF, AND THREE DAYS FOLLOWING JULY 4, JULY 24, JANUARY 1, AND THE CHINESE NEW YEAR" in letters at least three inches tall shall be displayed on the inside of the fireworks stand.
  - d. A sign bearing any specific requirements imposed by the Fire Department, if any.
10. There shall be at least one supervisor, 18 years of age or older, on duty at the stand at all times when the sale of fireworks is in progress. All fireworks shall be effectively kept away from any kind of self-service by the public and shall be placed in a location which is unavailable and inaccessible to members of the public.
11. Fireworks stands shall be removed within five (5) days after retail sales are required to cease.
12. Prior to the issuance of a license, each applicant shall file with the Business License Coordinator a cash deposit in an amount set by resolution of the City Council for each fireworks stand to be operated by the applicant. The deposit shall assure compliance with provisions of this Chapter, including, but not limited to, the

removal of the stand and the cleaning of the site upon which it was located. In the event the licensee does not comply with the provisions of this Chapter or remove the stand or clean the site, the City may complete the work or cause the work to be done and a reasonable cost shall be charged against the licensee and the deposit and the balance, if any, shall be returned to the licensee no later than ten (10) days after inspection. (4-1-15)

13. Overnight occupancy or any other habitation of a fireworks stand is not allowed.
14. Fireworks stands may only be approved on property in a commercial zone.

#### 4.6.2.4 Mobile Food Businesses (4-1-15)

Payson City expressly finds that mobile food businesses within the city limits present special challenges to the public health, safety and welfare of Payson City residents. It is the purpose and intent of the City Council to provide responsible companies and individuals who engage in the operation of mobile food businesses with clear and concise regulations to prevent hazards to safety, traffic or health, as well as preserve the peace, safety and welfare of the community.

##### 4.6.2.4.1 General Requirements

1. With the exception of special events as described in Section 4.6.2.4.6 herein, no person or entity shall operate a mobile food business without first having obtained a business license from Payson City in accordance with this Title.
2. Mobile food businesses are allowed to vend on private property, with prior consent from the private property owner, within the CC-1, GC-1, S-1, and I-1 zones with the following exception:
  - a. Mobile food businesses shall not be allowed to park or operate in Payson during the period of the following celebrations:
    - i. Payson City Scottish Festival
    - ii. Payson City Salmon Supper
    - iii. Payson City Golden Onion Days
    - iv. Other city recognized festivals as determined by the City Council
3. Mobile food businesses are allowed to operate adjacent to non-highway roads in designated zones. Prohibited highway roads in Payson are Main Street (SR 115); 100 North (SR 198); 100 West (SR 198); and 800 South (SR 178).
4. It shall be unlawful for any mobile food business to operate within one hundred (100) feet of a restaurant without the prior written consent of all restaurants within the required distance.

##### 4.6.2.4.2 Application

An application for a business license to conduct a mobile food business shall be filed with the Business License Coordinator as set forth in this Title, prior to the commencement of operation.

##### 4.6.2.4.3 Business Activity to be Temporary

All business activity related to mobile food businesses shall be of a temporary nature. The duration of the business activity shall not extend for more than twelve (12) hours within a twenty-four (24) hour period at any one (1) location, or for more than three (3) consecutive days within a seven (7) day period on either public or private property. All vehicles must be removed from the public right-of-way at the close of each business day.

##### 4.6.2.4.4 Public Right-of-Way

Each mobile food business offering food within or adjacent to the public right-of-way shall abide by the following conditions and requirements:

1. Mobile food businesses shall obey all parking and traffic regulations of the Payson City Municipal Code.
2. The use shall not interfere with pedestrian access-ways, fire lanes, driveways, clear view areas, or traffic visibility.
3. Parking on a park strip or otherwise landscaped area is not allowed.
4. Mobile food businesses utilizing parking space within the public right-of-way shall park only in parallel parking spaces. Mobile food businesses must be parked so that neither the vehicle nor the customers interfere with public access to adjacent parking stalls or to driveways or entrances of existing buildings or uses.
5. The operator shall locate the vending window facing the sidewalk or on private property unless the roadway has been closed to vehicular traffic for a public event.
6. No sales shall be made to any person standing in the roadway unless the roadway has been closed to vehicular traffic for a public event.

##### 4.6.2.4.5 Design and Operation Guidelines

Mobile food businesses shall comply with the following design and operation requirements:

1. Mobile food businesses shall be designed and operated in a manner so as to meet all applicable Utah County Health Department requirements relating to the handling and distribution of food and beverages.
2. The mobile food business shall not have or operate as a drive-through.

3. All grounds utilized by a mobile food business shall at all times be maintained in a clean and attractive condition.
4. Business vehicles must be maintained in compliance with all other applicable laws or ordinances regulating motor vehicles.

#### 4.6.2.4.6 Special and Private Events

Payson City may authorize mobile food businesses without a business license to conduct vending operations within the city as part of a city approved special or private event. An individual or entity may only hold three (3) special or private events not to exceed a total of ten (10) days within a calendar year that include non-licensed mobile food businesses. If the City is closing a public right-of-way to general access, either partially or fully, in order to accommodate a special event or approved private event, a mobile food business may not access the right-of-way unless specifically authorized by Payson City.

#### 4.6.3 Denial of License

Upon the review of the application, the City may refuse to approve a business license to the applicant under this Chapter for any of the following reasons:

1. The applicant does not satisfy the provisions of this Title or Title 19, Zoning Ordinance.
2. The location and time of such itinerant activities would endanger the safety and welfare of the applicant, employees or patrons.
3. The applicant has been convicted of a felony, misdemeanor or ordinance violation involving a sex offense, trafficking in controlling substances or any violent acts against persons or property within the five (5) years preceding the date of application.
4. The applicant is a person against whom a judgment based upon, or conviction for, fraud, deceit or misrepresentation has been entered within the five (5) years preceding the date of application.
5. The applicant has been denied a license under this Title within the past year, unless the applicant can and does show to the satisfaction of the Business License Coordinator that the reasons for the earlier denial no longer exist. (4-1-15)

The reasons for disapproval from the City shall be noted on the application, and the applicant shall be notified that the application is disapproved and that no license will be issued. Notice shall be mailed to the applicant at the address shown on the application form.

#### 4.6.4 License Expiration

All licenses issued in accordance with the provisions of this Chapter shall bear an expiration date consistent with the regulations of this Chapter. In no case shall an

itinerant merchant license be issued for a period to exceed ninety (90) days.

#### 4.6.5 License Exhibition and Sales Tax Permit

Every person required to obtain a license under the provisions of this Chapter shall exhibit the license in a conspicuous location in view of prospective customers and City employees. Additionally, the sales tax permit used by the licensee shall be displayed in a prominent place in view of patrons.

#### 4.6.6 License Suspension and Revocation

Any permit issued under this Chapter may be suspended or revoked by the City for any of the following reasons, in addition to Chapter 4.1 of this Title:

1. Fraud, misrepresentation or false statement made by the applicant of conducting business activities.
2. Conducting business activities contrary to the provisions of this Title and any conditions of approval.
3. Conviction for any crime involving moral turpitude.
4. Conducting business activities in a manner that creates a public nuisance, constitutes a breach of the peace or endangers the health, safety, or general welfare of the public.
5. Any habitation or overnight occupancy of any place of business by an itinerant merchant.

#### 4.6.7 Claims of Exemption

Any person claiming to be legally exempt from the regulations set forth in this Chapter, or from the payment of a fee, shall cite to the Business License Coordinator the statute or other legal authority under which exemption is claimed and shall present proof of qualification for such exemption.

#### 4.6.8 Special Considerations

The following special considerations apply to issuance of a business license for specific activities:

1. A business license is required for any soliciting, vending, itinerant activities, during any City sponsored celebration, event, gathering or other public event including, but not limited to Onion Days, Salmon Supper, Scottish Festival, or any other event designated by the City Council. To provide an opportunity for vendors to be successful, the number of business licenses will be strictly limited by Payson City and additional business licenses will not be issued. Any person operating any type of temporary business during

these events is in violation of this Title and subject to any legal remedies available to Payson City.

2. Any gathering expected to be attended by more than three hundred (300) persons will require a mass gathering permit issued by the Utah County/City Health Department. Furthermore, a complete list of all merchants and vendors shall be provided to Payson City and a business license obtained for each merchant or vendor.

## **Chapter 4.7 Community Events**

Community events are allowed only if they are related to a particular cultural, traditional, or community activity or event for a period not to exceed thirty (30) calendar days. In making a determination to approve the event, the Business License Coordinator shall consider the following criteria:

1. The nature, location, and manner of operation of the activity or event shall not constitute a health or safety hazard to the public.
2. The goods or services displayed are customarily and traditionally related to a widely celebrated or observed activity, event, or holiday.
3. The activity or event is consistent with other uses permitted in the zoning district.
4. The use does not interfere with pedestrian facilities, fire lanes, driveways, or traffic visibility.
5. Parking on the property is adequate to serve any existing permanent businesses and/or community event use.
6. The community event possesses a valid Payson City business license.

The sponsor of the community event must submit to the Business License Coordinator, at least fifteen (15) days prior to an event, the following information:

1. A list of all participants, including their names and addresses.
2. Location of the event.
3. Dates of commencement and termination of the event.
4. Temporary sales tax numbers.

If the sponsor desires to add additional participants after the above information has been submitted to the Business License Coordinator, the sponsor must notify the Business License Coordinator and update the list of participants. (4-1-15)

## **Chapter 4.8 Home Occupations**

Each applicant for a home occupation shall satisfy the application requirements of Chapter 4.1 herein and all applicable regulations of Title 19, Zoning Ordinance. Prior to the issuance of a business license for a home occupation, the Business License Coordinator shall review the regulations of the Zoning Ordinance to ensure that the proposed use is allowed and that all requirements of the zone have been satisfied. If there is a conflict between this Title and Title 19, Zoning Ordinance, Title 19 shall take precedent.

Notwithstanding any other provision of this Chapter or any other ordinance of Payson City, any home occupation which becomes non-conforming upon the adoption of this Chapter shall not be renewed when discontinued for any period of time by the present licensee. Home Occupation licenses shall not be transferred from one person to another or from one location to another.

The home occupation shall satisfy all other requirement procedures such as payment of fees, late penalties, renewal, revocation, denial, and suspension of license.

## **Chapter 4.9 Agricultural Support Services**

- 4.9.1 Permitted Agricultural Support Services
- 4.9.2 License Required
- 4.9.3 Location for Operations

### **4.9.1 Permitted Agricultural Support Services**

Agricultural support services include the sale of agricultural products or services including, but not necessarily limited to the following:

1. Sale of agricultural products
2. Tree sales
3. Kennels
4. Fur farms
5. Boarding of animals

### **4.9.2 License Required**

It is unlawful for any person, firm, or corporation to engage in business without first obtaining a business license from the City, as required in Chapter 4.1 herein.

**4.9.3 Location for Operations**

It is unlawful for any agricultural business to operate or remain in any area unless it is specifically allowed in Title 19, Zoning Ordinance.

## **Chapter 4.10 Supplementary Provisions**

**4.10.1 Vending Machines and Similar Ancillary Uses****4.10.2 Space Rental and Subleasing**

In certain circumstances there are attributes of business operations that are impractical to address in the main body of this Title. In order to address these specific instances, this Chapter has been established as supplementary provisions to the contents of this Title. These requirements are intended to be in addition to all other applicable regulations of this Title or any other ordinance or resolution of Payson City.

**4.10.1 Vending Machines and Similar Ancillary Uses**

The dispensing of products through a vending machine must be approved by the Business License Coordinator consistent with the provisions of this Section. The Business License Coordinator may deny the placement of vending machines or similar ancillary uses if the requirements of this Section cannot be satisfied. (4-1-15)

1. The operator of the vending machine shall provide written acknowledgement from the property owner for placement of the vending machine.
2. A detailed Site Plan indicating the location, dimensions, and general appearance of the vending machine together with a written explanation of the business activity shall be submitted for review by staff. The Business License Coordinator must determine that the vending machine does not cause any obvious impacts on the host business or surrounding primary businesses. (4-1-15)
3. The operator of the vending machine must obtain a business license consistent with the requirements of Chapter 4.1 herein.
4. The vending machine will not be placed in any public right-of-way, on any public sidewalk or pedestrian facility, or within the clear view area defined in Title 19, Zoning Ordinance.
5. The vending machine shall not be attached or chained to any street light pole, power pole, publicly owned fence, or bus bench or facility.
6. If it is determined that off-street parking will be required to operate the vending machine, the applicant must demonstrate that there is ample

parking on site to accommodate the primary business and the parking necessary to operate the vending machine. If any existing parking stalls are intended to be removed to accommodate the vending machine, the Business License Coordinator may approve the removal considering access, appearance, traffic circulation and safety concerns. (4-1-15)

7. Additional signage on the commercial site to promote the vending operation is not allowed.
8. The contents of the vending machine shall not violate any federal, state or local laws pertaining to the distribution of the products in the vending machine.
9. A vending machine located inside of a conforming commercial business is exempt from the regulations of this Section.

**4.10.2 Space Rental and Subleasing**

The owner of a conforming commercial business may rent space or sublease a structure only if the activities of the lessee are consistent with the regulations of this Title and any other applicable ordinance or resolution of Payson City. A separate business license is required for each lessee in accordance with the provisions of this Title.