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Chapter 5.04 Business Licenses

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5.04.010 Unlawful to Transact Business without License

It is a Class C misdemeanor for any person to engage in or carry on any business, trade, profession, or calling within the City without first obtaining a business license when required by the ordinances of the City. Each separate business entity is required to have its own business license. A business license does not authorize the license holder to conduct business on City property or facilities. No business may be conducted on City owned property or facilities without entering a lease agreement with the City for that purpose and obtaining a business license.

(Ord. No. 02-17, Amended 1/03/2017)

5.04.020 **Definitions**

"Canvasser," "solicitor," "peddler," "hawker", or "huckster" means any individual whether or not a resident of the municipality, traveling either by foot, wagon, 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, personal property of any nature whatsoever, or carrying, conveying, or transporting meats, fish, vegetables, fruits, garden truck, 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 he or she is collecting advance payments on such sales, provided that such definition shall include any person who, for himself, or for another 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 the municipality for the sole purpose of exhibiting samples and taking orders for future delivery.

"Fireworks Merchant" shall mean any person, firm, corporation, or other entity whose primary and principal business is selling fireworks in accordance with the provisions of Utah Code Annotated §11-3-1 et seq.

"Home Child Day Care" means care provided to five or more unrelated children 0-13 years of age in lieu of care ordinarily provided by a parent, which care is for four or more hours per day at regularly scheduled times for direct or indirect compensation.

"Mobile Food Vendor" means any business which sells edible goods from a non-stationary location within the City. The term shall include, but not be limited to:

Mobile food trucks: a self-contained motorized vehicle selling food items;

Concession carts: mobile vending units selling food items that must be moved by non-motorized means;

Concession trailer: a vending unit selling food items which is pulled by a motorized unit and has no power to move on its own.

"Transient merchant," "itinerant merchant," or "itinerant vendor" means any person, firm or corporation, whether as owner, agent, consignee or employee, whether or not a resident of the municipality, who engages in a temporary business of selling and delivering goods, wares and merchandise within the municipality for a period of time up to 180 days, and who, in

furtherance of such purpose, does not conduct the activity substantially within a permanent building or structure but who does in furtherance of such purpose hire, lease, use or occupy a nonpermanent building or structure, motor vehicle, tent, railroad boxcar, public room in any hotel, motel, lodging house, apartment, shop or any street, alley or other place within the municipality, other than within a permanent building or structure, 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.

(Ord. No. 16-15, Amended 11/03/2015)

5.04.030 License Assessor and Collector

The Community Development Director, or designee, is designated and appointed as *ex officio* assessor of business licenses for the City. Upon receipt of any application for a business license, the Community Development Director, or designee, shall assess the amount due thereon and shall collect all business license fees based upon the rates established by ordinance.

5.04.040 Payment Dates

All licenses shall be payable before each calendar year, in advance, shall commence from the first day of January of each year and shall expire on the 31st day of December of each year.

All license fees shall be due the first day of each calendar year and shall become delinquent if not paid by January 15th of each year. The proceeds of all licenses shall be remitted by the Community Development Director to the City Treasurer.

5.04.050 Applications

- A. All applications for business licenses for businesses which shall be permanently located and conducted within Spanish Fork City on a long term basis shall specify:
1. The name of the person desiring a license;
 2. The kind of license desired, stating the business, calling, trade, or profession to be performed, practiced, or carried on;
 3. The class of license desired, if such licenses are divided into classes;
 4. The place where such business, calling, trade, or profession is to be carried on, giving the street number of where the business, calling, trade, or profession is to be carried on in any building or enclosure having such number;
 5. The application shall state such other matter or things required by ordinance or statute.

- B. Applicants for licenses to conduct business as an itinerant merchant shall provide the following information to the Community Development Director, or designee;
1. The name of the applicant, and if the applicant is an employee or agent of a corporation, the name of the corporation;
 2. The address of the applicant, and if the applicant is an agent or employee of a corporation or limited liability company, the address of the corporation or limited liability company;
 3. A brief description of the nature of the business and the goods to be sold and from whom or where the applicant obtains the goods to be sold;
 4. If the applicant is employed by or an agent of another person, the name and permanent address of such other person or persons;
 5. The length of time for which the applicant desires to engage in business within the municipality;
 6. The property address within the municipality (which is required to be located in a commercial zoning district) where the applicant proposes to carry on his or her business;
 7. A site plan detailing the location on the property where the merchant will conduct business;
 8. If the applicant is employed by another person, firm or corporation, documents showing that the person, firm or corporation for which the applicant proposes to do business is authorized to do business within the State of Utah;
 9. A current and active sales tax number, having been issued by the Utah State Tax Commission to the applicant to do business within the State of Utah;
 10. Any person or entity selling foods or food items must comply in all respects with the rules and regulations of the Utah State Board of Health and/or the Utah County Health Department.

(Ord. No. 16-15, Amended 11/03/2015)

5.04.060 Penalty for Late Payment

If any license fee is not paid within fifteen (15) days of the due date, a penalty of fifteen dollars (\$15.00) shall be added to the original amount thereof for each month the fee remains unpaid. No license shall issue until all penalties legally assessed have been paid in full. If the license has not been renewed within 30 days of the due date, the business shall be placed on an inactive list and shall be considered to be doing business without a license in violation of this chapter and is subject to the criminal penalties set forth in this chapter. Businesses placed on the inactive list must apply for a new business license and pay all fees associated with a new business license application.

5.04.070 Certificate

All certificates of license shall be signed by the Community Development Director, or designee, and shall contain the following information:

- A. The business name to whom such certificate has been issued.
- B. The amount paid to the city treasurer;
- C. The term of the license with the commencing date and the date of its expiration;
- D. The place where such business, calling, trade, or profession is to be carried on.

5.04.080 Display

- A. Every certificate of license issued under this section shall be posted by the licensee in a conspicuous place upon the wall of the building, room, or office of said place of business so that the same may be easily seen. When such certificate of license has expired, it shall be removed by the licensee from such place in which it has been posted and no certificate of license which is not in force and effect shall be permitted to remain posted upon the wall or any part of any room within the place of business. If the licensee's business is such that a license cannot be displayed due to the transient or mobile nature of said business, then the licensee shall carry the license on his person ready to be displayed upon request by an authorized officer during all such time or times while the licensee is engaged in or pursuing the business for which a license is granted.
- B. A violation of any provision of this section is punishable as a Class C misdemeanor.

5.04.090 Transferability

No license granted or issued under this section shall be in any manner assignable or transferable. It shall not be deemed to authorize any person other than the therein named to do business or to authorize any other business, calling, trade, or profession than is therein named.

5.04.100 Revocation

- A. The issuance of a license under this Title grants only a revocable privilege to engage in business and confers no vested rights of any kind upon a licensee. The licensee agrees, as a condition of license issuance, to operate the licensed business or activity in conformity with the ordinances of the City and other applicable laws.
- B. Licenses issued under the provisions of this Title may be revoked for failure upon the part of the licensee to comply with the conditions and requirements under

which said license is granted, because of illegal activities thereunder, or for the following causes:

1. The violation of any provision in this Title;
 2. The failure to pay, when due, any license fee (including renewal fee), tax, charge, or penalty provided for by City ordinance or State statute;
 3. Any fraud or misrepresentation of a material fact in the procurement of the license, including falsification of any information or supporting documentation provided by the licensee with the license application;
 4. Noncompliance with building, fire, or health codes;
 5. Any conduct at the licensed premises tending to render the premises a private or public nuisance, as defined in the Spanish Fork Municipal Code, or a menace to the health, peace, or general welfare of the City or its residents;
 6. Activities, under the guise of conducting a business, that are fraudulent, deceptive, or constituting a violation of City ordinances or other applicable law;
 7. Failure of the licensee to retain the legal qualifications necessary for the license;
 8. Violation of the zoning ordinances governing the licensed business or activity, including, but not limited to, parking and landscaping requirements;
 9. Conviction of any crime related to the licensed business, after the issuance of the license;
 10. Refusal to allow City employees to make inspection of the licensed premises during the business' operating hours.
- C. No license shall be revoked under the provisions of this Title except after notice and hearing. The hearing shall be conducted by the Community Development Director. The decision of the Director is final and non-appealable. Notice shall be given by sending a copy of the notice by certified mail, return receipt requested, to the applicant at the address shown on the applicant's last application for a business license. The notice shall specify the date, time, and place of the hearing and contain a brief description of the reasons why the license is subject to revocation. It is the applicant's duty to maintain a current address at all times with the city business license administrator. Notice is deemed received if notice is sent to the last address on file with the City and is returned unclaimed, unknown, moved, or for any other reason identified by the postal service. The hearing shall be held within twenty (20) days after mailing of the notice. The applicant may appear in person or may send a representative. The applicant has a right to be represented by counsel, but has no right to be appointed counsel.
- D. Licenses revoked shall be for a period of one year, unless they are for violations of numbers 2, 4, 7, 8, or 10 of the causes set forth in paragraph B, in which event the licensee may reapply when compliance with those provisions has been met.

- E. For purposes of revoking a business license, the licensee is responsible for the acts of their employees, agents, or others acting under the license issued.

(Ord. No. 08-14, Amended 05/06/2014)

5.04.110 Fee Schedule

- A. There is levied upon every business, location, trade, or calling of every person engaged in business in the City an annual license fee based upon the administrative cost to the City to issue a business license. The initial fee shall be forty dollars (\$40.00) and shall be subject to change based on changing costs, as estimated by the City Council in the annual budget. In addition to the business license fee, businesses requiring inspection(s) shall pay an inspection fee based on the cost for the City to conduct the inspection(s).
- B. Where the business is that of an itinerant merchant, the license fee shall be fifty dollars per day unless proceeds from the sale of any merchandise shall be returned to or used for the purpose of a charitable or otherwise non-taxed institution with permanent and substantial ties to the community. Such institutions shall include, but not be limited to, churches, scouting organizations, schools, local associations and service clubs. In the latter event, the license fee shall be five dollars (\$5.00) per day. The maximum license fee in any calendar year is three hundred dollars (\$300.00). Temporary sales or display of goods are allowed for a period not to exceed 180 calendar days. The license shall designate the dates the license is valid. An itinerant merchant license is subject to the following criteria:
1. The nature, location, and manner of operation of the activity or event may not be on public property and does not constitute a health or safety hazard to the public.
 2. The merchant has permission from the property owner where the goods are to be sold and/or displayed. A copy of the lease or letter from the property owner granting permission shall be submitted with the application for a business license.
 3. The goods or services sold and/or displayed are customarily and traditionally related to a seasonal activity, event, or holiday.
 4. The sales/display activity must be located in a commercial zoning district and the specific use must be consistent with other uses permitted in the zoning district.
 5. The use does not interfere with pedestrian access-ways, fire lanes, driveways, or traffic visibility.
 6. Parking on the property is adequate to serve any existing permanent uses and the proposed itinerant merchant use.

7. No itinerant merchant license shall be valid within 2,000 feet of the perimeter of the parcel of property of a City sanctioned event, except as allowed in §5.04.110(8), including but not limited to the following events as determined by the Community Development Director, or designee:
 - a. Fiesta Days Celebration
 - b. Champions Challenge Rodeo
 - c. Harvest Moon Hurrah
 - d. Farmer's Market
 - e. Utah County Fair
 - f. Major athletic events as determined by the Recreation Director
 8. An applicant for an itinerant merchant license that will be valid during the period of a City sanctioned event as authorized in §5.04.110(7) must:
 - a. obtain a business license and inspection at least 30 days prior to the commencement of the authorized event; and
 - b. set up the business within one week of receiving a City license and continuously operate the business through the commencement of the sanctioned event; or
 - c. be located at least 2000 feet from the perimeter of the parcel of property where a sanctioned event is taking or will take place.
- C. The amount for a business license for a canvasser or a solicitor shall be \$100.00 per calendar year, unless the proceeds from the solicitation are only used for the benefit of a charitable organization with substantial ties to the community. Such institutions shall include, but not be limited to churches, scouting organizations, schools, service clubs, and similar charitable organizations. For such charitable organizations, the license fee shall be waived. No canvasser or solicitor license shall be valid during the period of the Fiesta Days celebration.
- D. Person(s) conducting, garage sales, yard sales, or activities relating to City authorized or sponsored events shall be exempt from the licensing requirements of this section, provided that any garage or yard sale shall not operate for more than three events of forty-eight hours or less within a twelve (12) month period at the same residence or street address, and shall be conducted by bona fide residents of the premises, selling personal belongings of such resident. Goods offered for sale shall not be placed over a public sidewalk or a public right-of-way unless a permit for the same has been obtained.

- E. The business license for a fireworks merchant shall be three hundred dollars (\$300.00) per year, which amount shall not be pro-rated for a partial year.
- F. A mobile food vendor business license shall be required for each mobile food truck, concession cart, concession trailer, or other mobile vending unit. The fee shall be one hundred twenty dollars (\$120.00) per year. A mobile food vendor license is subject to the following criteria:
1. The nature, location, and manner of operation of the activity or event may not be in or on public rights-of-way and does not constitute a health or safety hazard to the public.
 2. The mobile food vendor has permission from the property owner where the foods are to be sold.
 3. Workers preparing food for immediate consumption, whether on premises, or "to go" must have a valid food handlers permit issued by the Utah County Health Department.
 4. The sales must be located in a commercial, industrial, or public facilities zoning district. Home deliveries are also allowed in any residential zone.
 5. The use does not interfere with pedestrian access-ways, fire lanes, driveways, or traffic visibility.
 6. Parking on the property is adequate to serve any existing permanent uses and the proposed mobile food vendor use.
 7. No Mobile food vendor license shall be issued or valid during the period of the Fiesta Days celebrations.
 8. Notwithstanding subparagraph (1), mobile food vendors are allowed to park in the public right-of-way along public streets between 100 South and 400 North and between 100 East and 100 West if:
 - a. It is part of an event sponsored by either the City or the Chamber of Commerce, provided that no such event may be held during Fiesta Days; and
 - b. No more than two mobile food vendors may be parked between intersections on the same side of the street; and
 - c. Food serving windows must face away from the street.
- G. Concession and booth permits for the Fiesta Days celebration shall be limited to the number established by the City Council. The cost of concession and booth permits shall be in the amounts set by the City Council. No person shall operate concessions or booths during the Fiesta Days celebration without a permit issued by the City. Any person violating the provisions of this paragraph is guilty of a class C misdemeanor.

(Ord. No. 04-13, Amended 02/19/2013)

(Ord. No. 16-15, Amended 11/03/2015)

5.04.120 Multiple Business Locations

Any person, company, firm, partnership, or corporation conducting business in more than one location shall obtain a business license and pay a fee for each location.

5.04.130 Multiple Licenses

Any person, business, corporation or other entity carrying on business within the 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/or other similar licenses.

5.04.140 Site Improvements

- A. All new businesses, or existing businesses changing locations, shall be required to install site improvements in compliance with the construction and development standards and comprehensive zoning ordinances of the City, to the extent possible given existing structures and site configurations, prior to receiving a business license. A new business license is required to show the new location. In the event of a changed location, there shall be no fee for that license.
- B. Inspections of the new location are required, together with payment of the inspection fee(s).
- C. Exceptions based on existing structures and site configurations shall be granted by the Development and Review Committee.

5.04.150 Inspections

As a condition of the issuance, continuation, or renewal of a business license, an applicant shall permit inspections of the place of business or other activity to ensure compliance with all applicable zoning, building code, fire code, health, or safety regulations.

The cost of the inspection(s) fee shall be estimated by the City Council in the annual budget to reflect the cost to the City to conduct inspection(s).

(Ord. No. 15-12, Amended 10/16/2012)

Chapter 5.08 Auctioneers

- 5.08.010 Defined - License Required**
- 5.08.020 Charitable or Church Auctions**
- 5.08.030 License - Not Transferable**
- 5.08.040 False Representations**
- 5.08.050 License - Revocation**
- 5.08.060 Violation**

5.08.010 Defined - License Required

An auctioneer as contemplated in this chapter is a person who conducts a public competitive sale of property by outcry to the highest bona fide bidder. An auctioneer's license shall cost \$50.00 per day. It is an infraction for any person to engage in the business of an auctioneer within the City without first procuring a business license to do so as provided in Chapter 5.04 of this title. Such auctioneer shall execute a bond to the City, with corporate surety in the sum of \$1,000.00, conditional for the faithful observance of all laws and ordinances of the City and the honest performance of all duties required by ordinance, and the protection of all persons dealing with such auctioneer against all fraud, deception, and imposition, said bond to be approved by the City Council and filed with the Community Development Director, or designee.

(Ord. No. 18-09, Amended 11/03/2009)

5.08.020 Charitable or Church Auctions

The provisions of this chapter shall not apply to any auction held for charitable or benevolent purposes or for any church fair, festival or bazaar.

5.08.030 License - Not Transferable

The license granted under the provisions of Chapter 5.04 of this title shall not be transferable, nor shall the same be loaned or used by any other person.

5.08.040 False Representations

It is an infraction for any auctioneer when selling or offering for sale at public auction any goods, wares or merchandise under the provisions of this chapter, while describing said goods, 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.

5.08.050 License - Revocation

Licenses may be revoked on the failure of the licensee to comply with the conditions and requirements of said license upon a hearing as set forth in §5.04.100.

5.08.060 Violation

Every person who violates any provision of this chapter is guilty of an infraction.

Chapter 5.12 Beer

5.12.010	<u>Definitions</u>
5.12.020	<u>Permit Required</u>
5.12.030	<u>Categories of Permits</u>
5.12.040	<u>Non-Transferable</u>
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5.12.070	<u>Duties</u>
5.12.080	<u>Inspections</u>
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5.12.010 Definitions

The words and phrases used in this chapter shall have the meanings specified in the Utah Alcoholic Beverage Control Act unless a different meaning is clearly evident. Said definition are adopted and incorporated by reference. The provisions of the Alcoholic Beverage Control Act [Title 32A of the Utah Code] shall govern the selling and dispensing of alcoholic beverages within the City, except where otherwise allowed by said act and set forth herein.

5.12.020 Permit Required

It shall be unlawful for any person to sell, offer to sell, or provide to the public any type of alcoholic beverage without first obtaining a permit to do so from the City. An applicant need not have a permit issued by the Department of Alcoholic Beverage Control, but shall be qualified in all respects to obtain a State License from the Department of Alcoholic Beverage Control upon the issuance of a City license. All licensees shall comply with the Alcoholic Beverage Control Act, Utah Code Annotated §32-A-1-101 et.seq., as it may from time to time be amended, and the rules and regulations promulgated thereunder by the Department of Alcoholic Beverage Control. An alcoholic beverage permit shall be in addition to the business license required under Title 5 of the Spanish Fork City Municipal Code. The permit granted herein shall expire on the 31st day of December of each year. A new permit is required each year. A new permit must be obtained within 30 days of the expiration of any prior permit.

Applications shall be made available at the City offices and permits may be issued by the Community Development Director's office upon a showing of meeting all of the requirements set forth herein and the Alcoholic Beverage Control Act.

A permittee holding a Class A Permit (as defined in the next section) for off-premise consumption shall require any and all employees involved in the transaction of retail beer sales to obtain a beer handlers permit from the Utah County Health Department, complying with all of the ordinances, rules, and regulations promulgated by the Health Department for issuance of such permits. All employees of a permittee involved in the transaction of retail beer sales will be required to possess and wear a beer handlers

permit while on duty. This permit shall be worn in a conspicuous place such that the permit shall be clearly visible to any person.

New employees of a permittee shall obtain a beer handlers permit within 30 days of hire. During this 30 day period, the employee may sell alcoholic beverages in accordance with the Utah Alcoholic Beverage Control Act, the regulations of the Alcoholic Beverage Control Commission, and the provisions of this Chapter.

The permittee 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. Permittees shall permit law enforcement officers and Utah County Health Department employees to conduct random beer handlers permit compliance checks on permittee's premises.

An employee possessing a beer handler's permit who is convicted of any law involving the sale of an alcoholic beverage is not only subject to the penalties in section 5.12.090 of this chapter, but shall incur a suspension of the employee's beer handler's permit in accordance with the ordinances, rules, and regulations adopted by the Utah County Health Department applicable to such permit.

(Ord. No. 10-04, Amended 06/15/2004)

(Ord. No. 18-09, Amended 11/03/2009)

5.12.030 Categories of Permits

Permits shall be issued as follows:

"Class A" permits shall entitle the holder thereof to sell beer, light beer, malt liquor, or malted beverages for consumption off the premises in accordance with the Alcoholic Beverage Control Act.

"Class B" permits shall entitle the holder thereof to sell beer, light beer, malt liquor, or malted beverages for consumption on the premises in accordance with the Alcohol Beverage Control Act. Such permit will also allow consumers to consume beverages off premises in those instances where it is permitted by the Alcoholic Beverage Control Act.

"Class C" permits 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.

"Class D" permits 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.

"Class E" permits 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 in the permit. The City shall have the discretion to grant or deny such a permit, taking into account 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.

"Class F" permits shall entitle the holder thereof to manufacture, warehouse, or sell wholesale alcoholic beverages in accordance with the Alcoholic Beverage Control Act.

5.12.040 Non-Transferable

Permits issued pursuant to this chapter shall be non-transferable.

5.12.050 Fees

Prior to the issuance of any permit hereunder, the applicant shall pay an annual fee in the amount of three hundred dollars (\$300.00). Said fee must be paid each year before the permit may be renewed. An initial permit obtained during the first quarter of the calendar year shall be the full three hundred dollars (\$300.00). An initial permit obtained during the second quarter of the calendar year shall be two hundred twenty-five dollars (\$225.00), one obtained during the third quarter of the calendar year shall be one hundred fifty (\$150.00), and one obtained during the fourth quarter of the calendar year shall be seventy-five (\$75.00). A single event permit shall be one hundred (\$100.00) per permit.

5.12.060 Revocation - Hearing Examiner

- A. Any permit issued hereunder may be revoked following notice and a hearing before a Hearing Examiner. The Community Development Director is hereby appointed to act as Hearing Examiner. Appeals from the decision of the Hearing Examiner shall be filed, in writing, within ten days of the decision of the hearing examiner. A filing fee of \$150.00 shall accompany the notice of appeal. Appeals shall be heard before the City Council. Decisions by the City Council are final and non-appealable.
- B. Permits may be revoked for any violation of this Chapter, any violation of the Alcoholic Beverage Control Act, or upon losing a State issued license.
- C. Except for cases involving sales of alcohol to underage persons by offsite beer retailers, the Hearing Examiner, or City Council, shall follow the following criteria when holding revocation hearings:
 1. The City license shall be revoked if the State license has been revoked.
 2. The permit holder shall receive a warning for a first violation of this Chapter or of the Alcoholic Beverage Control Act.
 3. The permit holder shall have the permit revoked for a period of up to six months if the violation is a second violation within two years of the first violation and shall be subject to a civil penalty of up to \$250.00.
 4. The permit holder shall have the permit revoked indefinitely if the violation is a third violation within two years of two prior violations and shall be subject to a civil penalty of up to \$500.00. The permit holder will not be allowed to reapply for a permit for a period of time up to one year as designated by the Hearing Examiner or City Council. The City is not required to grant a permit upon reapplication.

- D. In cases of sales of alcohol to underage persons by offsite beer retailers, the Hearing Examiner, or City Council, shall follow the requirements set forth in Utah Code Ann. §32B-7-302(3).
- E. For purposes of revoking a permit, the permit holder is responsible for the acts of its employees, agents, or others acting under the permit issued.

(Ord. No. 02-01, Repealed, Reenacted 03/06/2001)

(Ord. No. 10-04, Amended 06/15/2004)

(Ord. No. 11-05, Amended 09/06/2005)

(Ord. No. 18-09, Amended 11/03/2009)

(Ord. No. 16-12, Amended 11/06/2012)

5.12.070 **Duties**

No permit holder shall permit beer, light beer, malt liquor, or malted beverages, or other type of alcoholic beverage to be sold from drive up windows. In addition thereto, each person or entity granted a permit under this chapter shall abide by the following:

A. A **Class A** permit holder:

1. Shall comply with all applicable provisions of the Alcoholic Beverage Control Act;
2. Who holds either a state issued restaurant liquor license or a state issued limited restaurant license may operate within either of the six hundred or the two hundred foot restrictions from public or private schools, churches, public libraries, public playgrounds, or parks if the permit holder is located in a commercial or industrial zone of the City. This shall constitute the local written consent contemplated by Utah Code Annotated Sections 32A-4-101 (4)(c)(i)(A) and 32A-4-302 (4)(c)(i)(A)(1953, as amended). The City Economic Development Director is authorized to issue to the State Liquor Control Commission a letter authorizing any such uses when an applicant is located within the applicable zones.

B. A **Class B** permit holder:

1. Shall comply with all applicable provisions of the Alcoholic Beverage Control Act;
2. Shall not permit performers or entertainers from wearing any costume or attire or to engage in any conduct prohibited by one serving alcoholic beverages as set forth in Utah Code Annotated §32A-10-206(10);
3. Shall not permit the sell of beer, light beer, malt liquors, or malted beverages to be sold on Sundays.

C. A **Class C** permit holder:

1. Shall comply with all applicable provisions of the Alcoholic Beverage Control Act;
2. Shall not allow any person under the age of 21 years on the premises;
3. Shall keep a daily register showing the names of members, visitors, and guests entering the premises on that day, together with the member or

visitor card number; and in the event of guests, the sponsoring member or visitor card number.

D. A **Class D** permit holder:

1. Shall comply with all applicable provisions of the Alcoholic Beverage Control Act;

E. A **Class E** permit holder:

1. Shall comply with all applicable provisions of the Alcoholic Beverage Control Act;
2. Shall comply with all of the restrictions imposed by his or her single event permit as granted by the City.
3. Shall not permit any person under the age of 21 years to remain in or about the club premises or facilities.

F. A **Class F** permit holder:

9. Shall comply with all applicable provisions of the Alcoholic Beverage Control Act.

(Ord. No.02-97, Amended 01/07/1997)

(Ord. No.05-97, Amended 03/18/97)

(Ord. No.14-99, Amended (1)(b); Repealed (3)(b) 08/03/1999)

(Ord. No.01-00, Enacted (3)(b)(c) 01/04/2000)

(Ord. No.13-04, Amended (1)(b), Repealed (4)(b) 10/19/2004)

(Ord. No. 01-06, Amended 02/21/2006)

5.12.080 **Inspections**

All permittees under this chapter shall allow access, at reasonable hours, to the premises and business records to verify compliance with this chapter and/or with the Alcoholic Beverage Control Act. Such access shall be allowed to any police officer of the City. Failure to allow an inspection when requested shall result in revocation of the permit in addition to any sanctions authorized by the Alcoholic Beverage Control Act.

5.12.090 **Violations**

Unless otherwise set forth in the Alcoholic Beverage Control Act, each violation of this chapter is a Class B Misdemeanor.

Chapter 5.16 Franchises and Special Privileges

- 5.16.010 Requirement of Franchise**
- 5.16.020 Application Copies**
- 5.16.030 Criteria for Grant of a Franchise**
- 5.16.040 Franchise Agreements**
- 5.16.050 Non-Assignable - Exception**
- 5.16.060 Revocation of Grant**

5.16.010 Requirement of Franchise

It shall be unlawful to install, construct, or maintain any wires, cables, fibers, poles, pipes, or other equipment for the provision of public utility service or telecommunications in, on, under, or over any street, alley, sidewalk, parkway, or other public place within the municipal limits of Spanish Fork City without having first obtained a franchise for use of the public way from Spanish Fork City.

(Ord. No. 15-95, Rep/Reenact 10/04/1995)

5.16.020 Application Copies

Whenever application is made to the City council for a franchise or grant of special privilege, or for an extension or renewal of any existing franchise or grant of special privilege, the applicant shall furnish to the City manager for the use of the City council ten (10) copies of the proposed ordinance or ordinances and pay to the City treasury a fee as established from time to time by resolution of the City council.

(Ord. No. 15-95, Rep/Reenact 10/04/1995)

5.16.030 Criteria for Grant of a Franchise

- A. No person, corporation, or other entity may receive a franchise to construct, maintain, or operate facilities to be used to provide any public utility, service, or telecommunications within the limits of the City unless the City council has determined that granting such franchise is in the public interest, as determined by:
 1. The franchise is consistent with the safety and health and will promote the prosperity, comfort, and convenience of the City and its residents; and
 2. It is consistent with the protection of property in the City.

No person, corporation, or other entity may receive a franchise to construct, maintain, or operate facilities used or to be used to provide any public utility, service, or telecommunications within the limits of the City to an area where such service is provided from the City, or an area where the City has incurred expenses in providing such service, until satisfactory provision has been made, on terms and conditions approved by the City council, for payment by the prospective franchisee to the City of the fair market value of those facilities dedicated to provide said service to the area being franchised. In the event the City and the prospective franchisee cannot agree

upon the fair market value of said facilities, the franchise may not be granted until the agreement is reached.

(Ord. No. 15-95, Rep/Reenact 10/04/1995)

5.16.040 Franchise Agreements

- A. Spanish Fork City may, by written agreement, grant one or more non-exclusive franchises for use of public streets, public easements, and public right-of-ways. Said agreements should take the form of both contract and uncodified municipal ordinance.

- B. Unless the City council shall otherwise consent by resolution, each agreement and granting of franchise shall include, but not be limited to, provisions related to the following items:
 - 1. The term of the franchise;
 - 2. The amount of any franchise fee or other fees to be paid for use of the public streets, easements, or right-of-ways;
 - 3. The rights and limitations on the use by the franchisee of City-owned or controlled streets, easements, poles, or other publicly-owned property;
 - 4. Public or governmental use, if any, of the franchised system;
 - 5. A description of the area or customers who are to be served by the franchisee, including obligations to expand service.

- C. No franchise contract shall take effect until it has been approved by the City council.

- D. Any franchise granted pursuant to this section shall remain subject to the right of the City council to adopt ordinances or other laws regulating the same, including but not limited to, the following:
 - 1. The commencement, interruption, or discontinuation of customer service;
 - 2. The quality of service received by customers;
 - 3. Customer billing practices;
 - 4. The handling of customer complaints.

(Ord. No. 15-95, Rep/Reenact, 10/04/1995)

5.16.050 Non-Assignable - Exception

All franchises and grants of special privilege shall be deemed to be non-assignable, without the express permission of the City council, whether or not such limitation is set forth in the body of the franchise or grant.

Any attempt at assignment or transfer of a franchise or a special privilege not made in accordance with the provisions of this section shall operate as a forfeiture of all the rights and grants therein given.

(Ord. No. 15-95, Rep/Reenact 10/04/1995)

5.16.060 Revocation of Grant

The grant of any franchise may be revoked by the City upon the violation of any provision of this chapter or any condition of the franchise agreement or ordinance. Notice of any violation shall be given to the franchisee at least fifteen (15) days prior to any action being taken to revoke the franchise. If the violation is not corrected within the fifteen (15) days, the City council may schedule a hearing to take evidence concerning the violation. If a violation is found, the council may impose sanctions, including fines, probation, revocation of the grant of franchise, or such other remedy that satisfies the demands of justice.

(Ord. No. 15-95, Rep/Reenact 10/04/1995)

Chapter 5.18 Cable Television Franchises

5.18.010	<u>Legislative Intent</u>
5.18.020	<u>Definitions</u>
5.18.030	<u>Unlawful Activity</u>
5.18.040	<u>Grant of Franchise</u>
5.18.050	<u>Required Extensions of Service</u>
5.18.060	<u>Two-Way Capability</u>
5.18.070	<u>Procedure for Remedying Franchise Violations</u>
5.18.080	<u>Alternative Remedies</u>
5.18.090	<u>Franchise Fee</u>
5.18.100	<u>Application</u>
5.18.110	<u>Application Fee</u>

5.18.010 Legislative Intent

The City finds that the continuation and development of cable television and communications system has great benefit and impact upon the residents of Spanish Fork City. Because of the complex and rapidly changing technology associated with cable television, the City further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such persons as the City shall designate. It is the City's intent to insure that City residents receive a high quality cable television and communications service comparable to the best offered in any community in Utah County; that any inconvenience to residents in the development, operation, and maintenance of a cable system or systems be minimized; and that the City is properly compensated for the administration of cable television and communication franchises and the use of the public facilities permitted by this Chapter. It is the intent of this Chapter to provide for the means to attain the best possible public interest in these matters, and any franchise issued pursuant to this Chapter shall be deemed to include this finding as an integral part thereof.

(Ord. No. 29-94, Enacted 12/07/1994)

5.18.020 Definitions

- A. **"Basic Cable"** is the lowest priced tier of service that includes the retransmission of local broadcast television signals.
- B. **"Cable Act"** collectively means the Cable Communications Policy Act of 1984 (Public Law No. 98-549, 47 USC 5221 (Supp.)) as amended, and the Cable Television Consumer Protection and Competition Act of 1992, as amended.
- C. **"Cable Communications System", "System", or "Systems"**, also referred to as "Cable Television System", "Cable System", "CATV System", or

- "Community Antenna TV System", shall have the meaning specified for "Cable Communication System" in the Cable Act. Unless otherwise specified it shall in this document refer to the cable communications system constructed and operated in the City under this ordinance.
- D. **"City"** means the City of Spanish Fork.
- E. **"FCC"** means Federal Communications Commission or successor governmental entity thereto.
- F. **"Franchise"** means the non-exclusive, revocable right granted to the Grantee by which the City authorizes the Grantee to erect, construct, reconstruct, operate, dismantle, test, use and maintain a Cable Communications System in the City.
- G. **"Franchising Authority"** means the City of Spanish Fork, Utah.
- H. **"Grantee"** means TCI Cablevision of Utah, Inc., or the lawful successor, transferee, or assignee thereof.
- I. **"Grantor"** means the City of Spanish Fork, Utah.
- J. **"Gross Revenues"** means all cash, credits, property of any kind or nature or other consideration received directly or indirectly by the Grantee, arising from or attributable to the operation of the Cable Television System in the City.
- K. **"Person"** means an individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee, joint stock company, trust, corporation, governmental entity, or personal representative thereof.
- L. **"Public Way"** or **"Street"** shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall

include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's System over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the System.

- M. **"Service Area"** means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means.
- N. **"Subscriber"** means a person or user of the System who lawfully receives communications and other services therefrom with the Grantee's express permission.

(Ord. No. 29-94, Enacted 12/07/1994)

5.18.030 Unlawful Activity

- A. It is unlawful to operate a Cable Communications System within the City without first obtaining from the City a Franchise to do so.
- B. No Cable Communications System shall be allowed to occupy or use the streets of the City without a franchise.
- C. In addition to the criminal and civil remedies provided by the Federal and State law, it is a misdemeanor for any person, firm or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the System without the express consent of the Grantee. It is a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the System or any means of receiving services provided thereto, without the express consent of the Grantee.

(Ord. No. 29-94, Enacted 12/07/1994)

5.18.040 Grant of Franchise

- A. Subject to the requirements of this ordinance, the City may grant to any Grantee a nonexclusive, revocable Franchise to construct, operate, maintain, and reconstruct a Cable Communications System within part or all of the City. The Franchise shall constitute both a right and an obligation to provide the services of a Cable Communications System as required by the provisions of this ordinance.
- B. The term of any new or Renewal Franchise and all rights, privileges, obligations, and restrictions pertaining thereto shall remain in effect for a period of fifteen years, unless terminated sooner as hereinafter provided.

- C. The material provisions of any franchises granted pursuant to this ordinance shall be comparable, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. The Franchising Authority shall not authorize or permit a System to operate within the Franchise area on terms or conditions more favorable or less burdensome to any one operator.

(Ord. No. 29-94, Enacted 12/07/1994)

5.18.050 Required Extensions of Service

- A. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the franchise agreement.
- B. No Subscriber shall be refused service arbitrarily.

(Ord. No. 29-94, Enacted 12/07/1994)

5.18.060 Two-Way Capability

- A. The Grantee shall design and construct the system in such a manner as to provide return response capability and so as to permit the introduction of return video and two way data signals as production technology allows and as the demand requires.
- B. Should Grantee become a provider of, and should the City elect to purchase data or other telecommunication services other than traditional Cable services from the Grantee in the service area, the City shall pay no more than an amount based on the lowest competitor's price in the service area for like services. The Grantee may offer to provide such services to the City at the lowest competitor's price in the service area for like services. The Grantee may offer to provide such services to the City at the lowest competitor's price less a competitive differential.
1. No provision contained herein shall require the Grantee to provide or prohibit the Grantee from providing telecommunication services to the City which will classify the Grantee as a common carrier or public utility, or otherwise subject it to regulatory authority outside of that for the traditional Cable services currently provided by the Grantee in the service area. To this end:
 - a. The Grantee may (i) refuse telecommunication service including but not limited to data, voice or other non-traditional Cable service to the City, or (ii) control, monitor and/or maintain any portion of the system including but not limited to the optical path and the optical/electronic interface required to provide such services.
 - b. The City shall fully disclose the type(s) of services it will transmit and receive on the Grantee's system.
 2. All applications of the system by the City under this section are intended solely for their use, and are not for resale or commercial use.

3. Should the Grantee become a provider of such services to the City, the Grantee's liability for any malfunction or failure of transmission under this section shall be limited to repair of the malfunctioning facility and restoration of transmission capability. Grantee shall have no liability for special or consequential damages of lost data or economic loss resulting for the City/County's inability to transmit signals over said facilities except to the extent the loss or damages are the consequence of Grantee's willful misconduct.

(Ord. No. 29-94, Enacted 12/07/1994)

5.18.070 Procedure for Remediating Franchise Violations

- A. In the event that City believes that Grantee has violated any provision of the Franchise, City may make a written demand on Grantee that it remedy such violation. From delivery of such notice the Grantee shall (a) within 14 days, respond to the Franchising Authority, contesting the assertion of noncompliance, or (b) have thirty (30) days to cure such default, or © in the event that, by the nature of default, such default cannot be cured within the three (3) day period, initiate reasonably steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed. If the Grantee fails to comply with §5.18.070 or the City believes the Grantee to still be not in compliance, and the alleged violation is of a significant material provision of the franchise, a meeting with the City manager shall be held to review the alleged violation. If this meeting does not result in a satisfactory resolution, and/or Grantee requests a hearing, then a hearing shall be held, and Grantee shall be provided with an opportunity to be heard upon thirty (30) days written notice to Grantee of the time and the place of the hearing and the allegation of Franchise violations.
 1. Any hearing will be conducted by the City Council.
 2. The costs incurred by the parties for attorney's fees, expert witness fees and other expenses shall be borne solely by the party incurring the costs.
 3. All witnesses testifying at any hearing held pursuant to the is section shall be sworn witnesses and shall be subject to direct and cross-examination. However, formal rules of evidence applicable to the trial of civil and criminal proceedings in the trial courts of the State of Utah shall not be applicable to the hearing. The provisions of the Administrative Procedures Act, commencing at Section 63-46b-1, et. seq. U.C.A. 1953, as amended, or any such hearing. The hearing may be continued from time to time.
 4. The City council shall upon conclusion of the hearing prepare findings of fact and conclusions. The decision shall be made filed and mailed to the Grantee not later than thirty (30) calendar days after the conclusion of the hearing.

- B. If, after the hearing, the City council determines that a non-compliance occurred or still exists, then Grantor may impose a remedy including, without limitation.
1. Making the correction itself, and charging the cost to the Grantee.
 2. Commencing an action at law for monetary damages, or seeking other equitable relief;
 3. Requiring the filing of a financial performance instrument by the Grantee to insure future performance; or
 4. In the case of a substantial default of a material provision of the Franchise, declaring the Franchise terminated.
- C. If the decision by the City council is that there are grounds for termination of the Franchise and that the Franchise shall be terminated, the City council shall adopt a resolution which terminates the Franchise and includes its findings and conclusions. A copy of the resolution shall be mailed to the Grantee.
- D. The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, for such non-compliance or alleged defaults are caused by strikes, acts of God, power outages, or other event reasonably beyond its ability to control.

(Ord. No. 29-94, Enacted 12/07/1994)

5.18.080 Alternative Remedies

No provision of this ordinance shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provisions of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this ordinance nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunction relief or mandate, or any other judicial remedy at law or in equity. No provision of this ordinance shall be deemed to bar any rights the Grantee may have under law and the right to review of any decision by the City council by a court of competent jurisdiction.

(Ord. No. 29-94, Enacted 12/07/1994)

5.18.090 Franchise Fee

- A. For the use of the streets and for the purposes of providing revenue with which to defray the costs or regulation arising out of the granting of this Franchise under this ordinance, Grantee shall pay a Franchise Fee.

- B. During the term of the Franchise, Grantee shall pay to the City an amount equal to five percent (5%) per year of the Grantee's annual Gross Revenue received.
- C. The Franchise Fee shall be paid quarterly forty-five (45) days after the end of each quarter. Each payment shall be accompanied by a report from a representative of the Grantee showing the basis for the computation.
- D. No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section.
- E. Any Franchise Fees which remain unpaid after the dates specified in Section 5.18.090(3) shall be delinquent and shall thereafter accrue interest at the maximum legal rate until paid.

(Ord. No. 29-94, Enacted 12/07/1994)

5.18.100 Application

- A. No initial license franchise shall be issued except upon written application to the City. Such forms shall contain such information as the City Council may prescribe as to the:
 - 1. Citizenship and character of the applicant.
 - 2. The financial, technical and other qualifications of the applicant to operate the system.
 - 3. Complete information as to its principals and ultimate beneficial owners, including, in the case of corporations, all stockholders both nominal and beneficial owning 1% or more of the issued and outstanding stock, and in the case of incorporated associations, all members and ultimate beneficial owners however designated.
 - 4. Description in detail of the equipment or facilities proposed to be constructed, installed and maintained.
 - 5. A statement or schedule setting forth the number of channels and all of the television or radio stations proposed to be received, transmitted, conducted, relayed or otherwise conveyed over its system.
 - 6. Such other information as the City may deem appropriate or necessary. Such application shall be signed by the applicant or a duly authorized representative.
- B. The City Council, after the last date fixed for the receipt of the application, shall cause to be published in a newspaper of general circulation within the City, a notice of a public hearing, giving the time, date, place of such hearing, and listing the names of the applicants and inviting public examination of the applicants and qualification of said applicants.

- C. A public hearing shall be conducted in accordance with the standards of due process fairness to applicants and the public and in accordance with the FCC rules and regulations and orders and policies pertinent to such hearing. Each applicant shall be notified of the time and location of his/her application to be considered.
- D. At the option of the City and upon application of the Grantee, any franchise granted under this chapter may be renewable in the same manner as required herein for obtaining an original franchise except those provisions which are by their terms expressly inapplicable. The City council may, at its option, waive compliance with any or all of the requirements of this section. Any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of the Cable Act, as amended, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of Federal or State law.

(Ord. No. 29-94, Enacted 12/07/1994)

5.18.110 Application Fee

Each initial application shall be accompanied by a non-refundable filing fee in the amount of one thousand dollars (\$1,000.00), which shall be payable to Spanish Fork City and remitted to the City Finance Director.

(Ord. No. 29-94, Enacted 12/07/1994)

(Ord. No. 18-09, Amended 11/03/2009)

Chapter 5.20 Pawnbrokers

- 5.20.010 Pawnbroker Defined**
- 5.20.020 License Required**
- 5.20.030 Display of Merchandise**
- 5.20.040 Firearms**
- 5.20.060 Bond Required**
- 5.20.070 Disclosure Provisions**
- 5.20.080 Right to Redeem Pawned Articles**
- 5.20.090 Dealing with Proscribed Persons**
- 5.20.100 Protection of Minors**
- 5.20.110 Hours**
- 5.20.120 Ownership of Pawned Property**
- 5.20.130 Unlawful Acts**
- 5.20.140 Separate Rooms**
- 5.20.150 Liability of Principal**
- 5.20.160 Violation**

5.20.010 Pawnbroker Defined

"Pawnbroker" means any person who loans money or deals in the purchase or exchange of personal property, on condition of selling the same back again to the pledgor or depositor; or who loans or advances money on personal property by taking a chattel mortgage or security thereon, and takes or receives such personal property or other indicia of title into his possession; or any person who sells unredeemed pledges with or without the contemporary sale of new merchandise to facilitate the sale of merchandise.

5.20.020 License Required

- A. It is unlawful for any person to be in the business of pawnbroker in the City, without having previously obtained a license to operate as a pawnbroker in accordance with the provisions of this title.
- B. The license fee for a pawnbroker shall be as set forth in §5.04.110(B), and each license shall expire on December 31st of each year. The license after being issued shall be displayed prominently in the place of business, and a copy of all ordinances pertaining to the conduct or transaction of pawnbroker business shall be posted in a conspicuous place in the place of business in such a way that it can be easily perused by all who do business with the pawnbroker.

5.20.030 Display of Merchandise

All merchandise displayed by a pawnbroker to be held for sale by a pawnbroker shall be held and displayed within an enclosed structure.

5.20.040 Firearms

Any pawnbroker accepting and reselling firearms must have a federal firearms permit. Any pawnbroker violating this provision shall have his license revoked. Any pawnbroker accepting or reselling firearms is required to produce the federal firearms permit upon request of any law enforcement officer of the City.

(Ord. No. 04-00, Repealed 5.20.050, 04/18/2000)

5.20.060 Bond Required

Before any license shall be issued to a pawnbroker, under the provisions of this chapter, the applicant for the license shall execute and deliver to the City a bond in the principal amount of one thousand dollars executed by a corporate surety authorized to do business in the state, and conditioned upon the faithful performance of the licensee of all requirements under this chapter.

5.20.070 Disclosure Provisions

- A. All pawnbrokers shall keep a complete ledger-type record containing an account of each and every transaction concerning the buying selling, pawning and redemption of articles, which record shall be written in the English language in legible printing at the time of the receipt, loan, purchase, sale or redemption, and shall set forth the following information:
1. The date and time;
 2. The name, date of birth, and full description of the pledgor or seller, with his street address, City and state of residence. The name, date of birth and description of the seller or pledgor shall be taken from an identification card containing his or her photograph. The type of identification card used for this purpose shall be noted on the form. If the property is jointly owned, both owners must be designated as above.
 3. An accurate description of the goods, articles or things pawned or purchased, including the serial number, model number, name of the manufacturer, and dimensional description (e.g. Zenith color TV, 23-inch, Model Number _____, Serial Number _____; or Colt pistol, 6-inch barrel, Model Number _____, Serial Number _____);
 4. The amount of money loaned or advanced thereon or paid therefore;
 5. The date and hour of the transaction, and in the case of items pawned, the period of time within which the pledge must be honored;
 6. The residence address of the pawnbroker;
 7. The number of the pawn ticket;
 8. Each ticket shall have the name of the business and shall be signed by the seller or pledgor and agent of the business.

- B. The pawnbroker shall make out, in connection with each article pawned, purchased or received pursuant to a transaction of any nature, a serially numbered pawn ticket.
- C. Each pawn ticket shall be issued in multiple copies so that one copy can be retained by the pawnbroker, one copy referred to the person delivering the article, one copy at the close of each business day mailed by the pawnbroker to the sheriff of the county, and the fourth copy delivered to the police department of the City at no greater interval than one week. It shall be a misdemeanor for the pawnbroker to issue any pawn ticket which is not serially numbered in sequence as shown in the ledger book in subsection A above, or to intentionally falsify any information on either the ledger or the four-part ticket. The copies delivered to the county sheriff and to the City police department shall be clear, legible, and shall contain all signatures. It is unlawful for any pawnbroker, whether acting for himself or acting by and through any agent or employee, to transact any business with respect to a pawn, redemption, purchase, sale, consignment, or any other transaction or gift, other than in conformance with the requirements set forth in this chapter.

5.20.080 Right to Redeem Pawned Articles

It is unlawful, in all cases in which an article pledged has been forfeited, for a sale or other disposition thereof to be made by the pawnbroker within a period of two months from the date of the pledge; provided, that if the pledgor makes payment to the pawnbroker equal to the interest for a particular month, the redemption period shall be extended an addition thirty (30) days.

5.20.090 Dealing with Proscribed Persons

It is unlawful for any pawnbroker to receive any goods, articles or things in pawn, in pledge or to loan or allow to be redeemed any article by any person who at the time of the transaction is intoxicated or who is known to be a habitual drunkard, or any person who is known to be a thief, insane or incompetent, or to any person under the age of eighteen years.

5.20.100 Protection of Minors

It is unlawful for any pawnbroker to sell or trade any gun, or knife with a blade in excess of four inches long to any person under the age of eighteen years, unless the person is accompanied by their legal guardian or parent.

5.20.110 Hours

It is unlawful for any pawnbroker to receive any goods by way of pawn or pledge, or to keep his place of business open before the hour of seven (7:00) a.m. or after seven (7:00) p.m.; provided, however, that on Saturday of each week and on days preceding

legal holidays, and the last fifteen (15) days of December of each year, it is lawful for the pawnbroker to keep his/her place of business open until eleven (11:00) p.m.

5.20.120 Ownership of Pawned Property

- A. It is unlawful for any pawnbroker to accept goods or articles in pawn from other than the lawful owner thereof, except with written permission of the owner. Any articles pawned by other than the owner, taken by a pawnbroker, shall be surrendered to the owner thereof upon presentation of proof of ownership of the pawned article by the owner, and failure of a pawnbroker to surrender such materials forthwith upon demand by the true owner, and after exhibition of proof of ownership, shall be a class B misdemeanor.
- B. This provision shall apply to outright purchase and all other applicable transactions of any nature.

5.20.130 Unlawful Acts

- A. A pawnbroker shall be required to adhere to the requirements of Utah Code Annotated §76-6-408 in addition to any requirement of this chapter.
- B. Every pawnbroker or person who has or operates a business dealing in or collecting used or personal property shall require the seller or person delivering the property to certify, in writing, that he has the legal rights to sell the property. The pawnbroker or person shall also require the seller or person delivering the property to obtain a legible print, preferably the right thumb, at the bottom of the certificate next to his signature, or any other positive form of identification.
- C. Every pawnbroker or person who has or operates a business dealing in or collecting used or personal property and every agent, employee or representative of the pawnbroker or person who buys merchandise or property shall retain that property for a period of thirty (30) days before selling or otherwise disposing of the property or merchandise.

5.20.140 Separate Rooms

It is unlawful for any pawnbroker to contain his pawnbroking business in the same room or in the same building with interconnecting rooms with any business dealing in alcoholic beverages.

5.20.150 Liability of Principal

The holder of a pawnbroker's license is liable for any and all acts of his employees in violation of this chapter.

5.20.160 Violation

Any person violating any of the provisions of this Chapter is guilty of a class B misdemeanor.

Chapter 5.24 Secondhand, Junk and Antique Dealers**5.24.010 Secondhand, Junk and Antique Dealers Defined****5.24.020 License Required - Fee****5.24.030 Display of Merchandise****5.24.040 Disclosure Provisions****5.24.050 Dealing with Proscribed Persons****5.24.060 Ownership of Property****5.24.070 Unlawful Acts****5.24.080 Liability of Principal****5.24.090 Exemption****5.24.010 Secondhand, Junk and Antique Dealers Defined**

- A. Antique Dealer. 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 in hereby declared to be an "antique dealer."
- B. Junk Dealer. Any person engaged in buying and selling, bartering and exchanging old metal, glass, rags, rubber, paper or other junk is hereby declared to be a "junk dealer."
- C. Secondhand Dealer.
 1. Any person who keeps a store, office or place of business or who travels through the community for the purpose of purchasing, bartering, exchanging or selling secondhand goods, (including, but not limited to, used clothing or garments of any kind, books, musical instruments, coins, wares or merchandise), or who engages in the business of dealing in secondhand goods is hereby declared to be a "secondhand dealer."
 2. An otherwise licensed business which sells new appliances or musical instruments or automobiles is exempt from the above when the used article is used as a trade-in for a new item of the same or similar description.

5.24.020 License Required - Fee

- A. It is unlawful for any person to do business as a secondhand dealer, a junk dealer or an antique dealer in the City, without having previously obtained a license for that purpose in accordance with the provisions of this chapter and Chapter 5.04 of this title.
- B. The license fee for a secondhand, junk or antique dealer shall be as set forth in §5.04.110(A). Each license shall expire on December 31st of each year.

The license, after being issued, shall be displayed prominently in the place of business.

5.24.030 Display of Merchandise

All merchandise displayed by a secondhand, junk, or antique dealer to be held for sale by such dealer shall be held and displayed within an enclosed structure.

5.24.040 Disclosure Provisions

- A. All licensees under this chapter shall keep a complete written record containing an account of each and every transaction concerning any goods taken into the business either by purchase or by trade, which record shall be written in the English language in legible printing at the time of the purchase or trade, and shall set forth the following information:
1. The date and time;
 2. The name, date of birth, and address of the customer. (If the property is jointly owned, each owner's information must be given in full.) If the property sold or traded by other than the legal owner, both names must be included.
 3. An accurate description of the goods, articles or things sold or traded, including the serial number of the article, the name of the manufacturer, if available, and a factual description of the item (e.g. Zenith color TV, 23-inch, Model Number _____, Serial Number _____);
 4. The amount of money paid for the item with each item listed separately with a value ascribed to each or in the event of an exchange, the value ascribed on the exchange;
 5. The day, time of day, month and year that the transaction occurred;
 6. The number of the sales ticket;
- B. The licensee shall make out, in connection with each article purchased or traded for, a serially numbered sales ticket.
- C. Each sales ticket shall be issued in multiple copies so that one copy can be retained by the licensee, one copy given to the customer and one copy at the close of each business week shall be mailed or delivered to the police department of the City. It is a class B misdemeanor for the licensee to take any property by either sale or trade into his business without issuing a sales ticket or to use a sales ticket which is not serially numbered in sequence as shown in the ledger book referred to in subsection A above, or to intentionally falsify any information on either the ledger or the ticket. It is unlawful for any licensee, whether acting for himself or acting by and through any agent or employee, to transact any business with respect to which a sales ticket is required in this chapter other than in conformance with the requirements set forth in this chapter.

5.24.050 Dealing with Proscribed Persons

- A. It is unlawful for any licensee hereunder to receive any goods subject to this chapter from any person who, at the time of the transaction, is intoxicated or who is known to be a habitual drunkard, or who is known to be a thief, is insane or incompetent, or any person under the age of eighteen (18) years.
- B. Any licensee hereunder who accepts property which he/she knows to have been stolen is guilty of a class B misdemeanor.

5.24.060 Ownership of Property

It is unlawful for any licensee hereunder to accept materials, by either purchase or trade, from other than the lawful owner thereof except with the written permission of the owner. Any article accepted from other than the owner, taken by a licensee hereunder, shall be surrendered to the real owner thereof upon presentation of proof of ownership of the article by the real owner. Failure of the licensee to surrender such materials forthwith upon demand by the true owner and after exhibition of proof of ownership shall be a misdemeanor.

5.24.070 Unlawful Acts

- A. A licensee hereunder shall be required to adhere to the requirements of Utah Code Annotated §76-6-408 in addition to any requirements of this chapter.
- B. Every licensee hereunder and every agent, employee or representative of the licensee, who buys, receives or obtains property pursuant to a license issued under this chapter shall require the seller or person delivering the property to certify, in writing, that he has the legal right to sell the property. The licensee or his agent shall also require the seller or person delivering the property to affix a legible print, preferably the right thumb, at the bottom of the certificate next to his signature, or to provide another positive form of identification. Such alternative identification must be the type of identification having a photograph of the customers (i.e. a driver's license with photograph attached), and if used in lieu of the thumbprint, the licensee shall affix the proper numbers from the driver's license or other identification and adequately identify the identification.

5.24.080 Liability of Principal

The holder of a license hereunder is liable for any and all acts of his employees in violation of this chapter.

5.24.090 Exemption

Purchases of recyclable cans and bottles are exempt from this chapter.
(Ord. No. 04-00, Repealed 5.24.100, 04/18/2000)

Chapter 5.28 Sexually Oriented Business and Employee Licensing Act

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5.28.020	<u>Purpose</u>
5.28.030	<u>Application</u>
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5.28.410 Severability**5.28.010 Title for Citation**

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

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.020 Purpose

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

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.030 Application

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

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.040 Definitions

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

“**Adult arcade**” means any place to which the public is permitted or invited wherein coin-operated, slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

“**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, photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides or simulated display, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas. For purposes of this definition, “principal purpose” means:

1. At least fifteen percent (15%) of the commercial establishment's displayed merchandise consists of such items,
2. At least fifteen percent (15%) of the wholesale or retail value of the commercial establishment's displayed merchandise consists of such items,
3. The commercial establishment derives at least fifteen percent (15%) of its revenues from the sale or rental, for any form of consideration, of such items;
4. The commercial establishment maintains at least fifteen percent (15%) of its interior business space for the sale or rental of such items;
5. The commercial establishments regularly features such items and prohibits access by minors to all or part of the premises; or
6. The commercial establishment offers "adult", "xxx", "x-rated", "erotic", "sexual", "sensual", "pornographic", or any other similar type of material; or advertises itself as offering "adult", "xxx", "x-rated", "erotic", "sexual", "sensual", "pornographic", or any other similar type of material on signage visible from a public right of way.
7. Maintains an adult arcade, which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas,

"Adult business" means an adult arcade, adult motion picture theater, adult bookstore, adult video store, or sexual device shop.

"Adult motel" means a motel, hotel, or similar commercial establishment that (a) offers public accommodations for any form of consideration, (b) regularly provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas, © advertises the availability of this sexually-oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, and (d) offers a sleeping room for rent for a period of time less than ten hours, or allows a tenant or occupant to sub-rent the sleeping room for a period of less than ten hours.

"Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of semi-nudity.

"Customer" means any person who patronizes any business licensed pursuant to this chapter.

“Nude entertainment business” means a commercial establishment that features live performances characterized by (i) specified sexual activities or (ii) the appearance of persons in a state of nudity.

“Nudity”, “nude” or “state of nudity” means the showing of the human male or female genitals, pubic area, anus, or anal cleft or cleavage with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any part of the nipple or areola.

“Outcall services” means services performed by a sexually oriented business employee, including an escort, model or dancer, outside of the premises of the sexually oriented business, that include any specified sexual activity or exposure of specified anatomical areas.

“Semi-nude” or “state of semi-nudity” means a state of dress, other than a state of nudity, in which (a) opaque clothing primarily covers only the genitals, pubic area, anus, anal cleft or cleavage, nipple and areola of the female breast, and portions of the body covered by supporting straps or devices, (b) the opaque clothing covering part of the female breast primarily covers only the nipple and areola and portions of the breast covered by supporting straps or devices, or (c) all or part of the buttocks are exposed.

“Semi-nude entertainment business” means a business that features persons who appear semi-nude in the presence of customers, or a business that holds itself out as such a business. This definition does not apply to any place where persons appearing in a state of semi-nudity do so as part of:

1. a modeling class operated by a college, junior college, or university supported entirely or partly by taxation;
2. a modeling class operated by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
3. a modeling class (i) in which a student must enroll at least three days in advance in order to participate, and (ii) that is operated in a building that has no sign visible from its exterior or other advertising that indicates a semi-nude person is available for viewing.

“Sexual device” means any three-dimensional object designed or marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include any device primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

“Sexual device shop” means a commercial establishment that, as its principal purpose, sells or otherwise provides sexual devices. For purposes of this definition, “principal purpose” means:

1. At least 15% of the commercial establishment’s displayed merchandise consists of such items,

2. At least 15% of the wholesale or retail value of the commercial establishment's displayed merchandise consists of such items,
3. The commercial establishment derives at least 15% of its revenues from the sale or rental, for any form of consideration, of such items;
4. The commercial establishment maintains at 15% of its interior business space for the sale or rental of such items;
5. The display of such items is visible from any location outside the store.

“Sexual Encounter Center” means a business or commercial enterprise that, as one of its business purposes, purports to offer, for any form of consideration, physical contact in the form of wrestling or tumbling when one or more of the persons is nude or semi-nude, or which purports to offer, for any form of consideration, a place where persons regularly appear in a state of semi-nudity in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity do so in a modeling class operated:

1. By a college, junior college, or university supported entirely or partly by public tax dollars;
2. By a private college or university which maintains and operates educational programs from which the credits are transferable to a college, junior college, or university supported entirely or partly by public tax dollars.

“Specified anatomical area” means:

1. Less than completely and opaquely covered buttocks, anus, anal cleft or cleavage, male or female genitals, or female breast, or
2. male genitals in a state of sexual arousal.

“Specified sexual activity” means acts of, or stimulation of, masturbation, sexual intercourse, fellatio, cunnilingus, or bestiality, or manipulation, caressing or fondling by any person of the human genitals or pubic area or the uncovered female nipple or areola.

“Sexually oriented business” means an adult business, semi-nude entertainment business, adult theater, semi-nude dancing agency, nude entertainment business, a business that provides out-call services, escort services, adult motel, semi-nude dancing bar, a business which advertises itself or otherwise hold itself out to be a sexually oriented business, or similar business.

(Ord. No. 06-06, Amended 07/18/ 2006)

(Ord. No. 20-13, Amended 12/17/2013)

5.28.050 Obscenity and Nudity

Notwithstanding anything contained in this chapter, nothing in this chapter shall be deemed to permit or allow the showing or display of any matter which is contrary to the provisions of the Spanish Fork City Code, or other applicable federal or state statute prohibiting obscenity or nudity.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.060 Location and Zoning Restrictions

It is unlawful for any sexually oriented business to do business at any location within the City not zoned for such business. Sexually oriented businesses licensed under this chapter shall only be allowed in areas zoned for their use pursuant to §§15.3.16.120(B)(2) and 15.3.24.080 of the Spanish Fork Municipal Code.

(Ord. No. 07-06, Enacted 07/18/2006)

5.28.070 Business License Required

- A. It is unlawful for any person to operate a sexually oriented business without first obtaining a sexually oriented business license. The license shall specify the type of business for which it is obtained.
- B. Sexually oriented business licenses will be limited to one for each 8,000 residents of the City of Spanish Fork.

(Ord. No. 06-06, Enacted 06/20/06)

5.28.080 Exemptions from License Requirements

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

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.090 Legitimate Artistic Modeling

- A. The City does not intend to unreasonably or improperly prohibit legitimate modeling which may occur in a state of nudity for purposes protected by the first amendment or similar State protection. The City does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling.
- B. In the event that a contract for nude modeling or appearance is signed more than forty-eight (48) hours in advance of the modeling or appearance, the individual to appear nude shall not be required to obtain a license pursuant to this chapter. During such unlicensed nude appearance, it is unlawful to:
 - 1. Appear nude or semi-nude in the presence of persons under the age of eighteen (18);
 - 2. Allow, offer or agree to any touching of the contracting party or other person by the individual appearing nude;
 - 3. Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or commit activities harmful to a minor;
 - 4. Allow, offer, commit or agree to any specified sexual activity.
 - 5. 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.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.100 Business Categories - Number of Licenses

- A. It is unlawful for any business premises to operate or be licensed for more than one category of sexually oriented business.
- B. The categories of licensed sexually oriented businesses are:
 - 1. Adult businesses;
 - 2. Semi-nude entertainment businesses;
 - 3. Adult theater
 - 4. Semi-nude dancing agency.
- C. Any sexually oriented business not listed in paragraph (B) is expressly prohibited, including, but not limited to, businesses that provide outcall services, semi-nude dancing bars, nude entertainment businesses, escort services, and adult motels.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.110 Employee Licenses

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

(Ord. No. 06-06, Enacted 06/20/06)

5.28.120 License Application - Disclosures Required

Before any applicant may be licensed to operate a sexually oriented business or as a sexually oriented business employee pursuant to this chapter, the applicant shall submit, on a form to be supplied by the business license authority, the following:

- A. The correct legal name of each applicant, corporation, partnership, limited partnership or entity doing business under an assumed name;
- B. If the applicant is a corporation, partnership or limited partnership, or individual or entity doing business under an assumed name, the information required below for individual applicants shall be submitted for each partner and each principal of the applicant, and for each officer, director and any shareholder (corporate or personal) holding more than ten percent (10%) of the stock of any applicant. Any holding company, or any entity holding more than ten percent (10%) of an applicant, shall be considered an applicant for purposes of disclosure under this Chapter;
- C. All corporations, partnerships or noncorporate entities included on the application shall also identify each individual authorized by the corporation, partnership or noncorporate entity to sign the checks for such corporation, partnership or noncorporate entity;
- D. For all applicants or individuals, the application must also state:
 - 1. Any other names or aliases used by the individual;

2. The age, date, and place of birth
 3. Height, weight, and color of hair and eyes;
 4. Present business address and telephone number;
 5. Proposed business address and telephone number;
 6. Present residence address and telephone number;
 7. State driver's license or identification number; and
 8. Social security number;
- E. Acceptable written proof that the individual is at least eighteen (18) years of age or, in the case of employees to be employed in a business where a different age is required, proof of the required age;
- F. Attached to the form as provided above, two (2) color photographs of the applicant clearly showing the individual's face, and the individual's fingerprints on a form provided by the City Police Department. For persons not residing in the City, the photographs and finger prints may be on a form from the law enforcement jurisdiction where the person resides. Any fees for the photographs and fingerprints shall be paid by the applicant.
- G. A statement describing the business, occupation or employment history of the applicant for three (3) years immediately preceding the date of the filing of the application;
- H. A statement detailing the license or permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or sought to operate, in this or any other county, City, state or country has ever had a license, permit or authorization to do business denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the date, the name of the issuing or denying jurisdiction, and describe in full the reasons for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application;
- I. List all criminal convictions and the disposition of all arrests of the applicant, individual, or other entity, subject to disclosure under this chapter, for five (5) years prior to the date of the application. This disclosure shall include identification of all ordinance violations, except minor traffic offenses (any traffic offense designated as a felony, Class A or Class B misdemeanor shall not be construed as a minor traffic offense), stating the date, place, nature of each conviction, and sentence of each conviction or other disposition; identifying the convicting jurisdiction and sentencing court and providing court identifying case numbers or docket numbers. Applications for a sexually

oriented business or sexually oriented business employee license shall constitute a waiver by the applicant of any protection the applicant may otherwise have against disclosure of any criminal conviction.

- J. In the event the applicant is not the owner of record of the real property upon which the business or proposed business is located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of business for which the applicant seeks a license for the property. In addition to the notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well a copy of the lease or rental agreement pertaining to the premises in which the service is or will be located;
- K. A description of the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees to be charged by the licensee, and any rules, regulations or employment guidelines under or by which the business intends to operate. This description shall also include:
1. The hours that the business or service will be open to the public, and the methods of promoting the health and safety of the employees and customers and preventing them from engaging in illegal activity;
 2. The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities;
 3. The methods of supervising employees and customers from charging or receiving fees for services or acts prohibited by this chapter or other statutes or ordinances;
 4. The methods of supervising employees and customers in order to promote the health and safety of employees and customers and prevent the transmission of disease, and prevent the commission of acts of prostitution or other criminal activity.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.130 License - Fees

- A. Each applicant for a sexually oriented business or sexually oriented business employee license shall be required to pay regulatory license fees pursuant to the following schedule:
1. Annual sexually oriented business regulatory license fee: \$800
 2. Annual license for sexually oriented business employee that provides semi-nude entertainment: \$300.
 3. Annual license for sexually oriented business employees that do not provide semi-nude entertainment: \$100. one hundred dollars (\$100).

- B. Any individual applying for more than one license at the same time shall pay the higher of any applicable fee, plus an additional twenty dollars (\$20) for each additional license requested.
- C. These fees shall be in addition to the other licenses and fees required to do business in the City.

(Ord. No. 06-06, Enacted 06/20/2006)

5.28.140 License - Bond

Each application for sexually oriented business license shall post with the City Finance Director a cash bond in the amount of two thousand dollars (\$2000). Any fines assessed against the business, officers or managers for violations of City Ordinances shall be taken from this bond if not paid in cash within ten days after notice of the fine, unless an appeal is filed as provided by this chapter. In the event the funds are drawn against the cash bond to pay such fines the bond shall be replenished to two thousand dollars (\$2000.00) within fifteen days of the date of notice against it. In the event the bond is not replenished within the fifteen days, the license granted by this chapter shall automatically be suspended until such time as the bond is replenished.

(Ord. No. 18-97, Enacted 10/21/1997)

(Ord. No. 18-09, Amended 11/03/2009)

5.28.150 License - Premises Location and Name

- A. It is unlawful to conduct a business under a license issued pursuant to this chapter at any location to which telephone calls are automatically forwarded and such business shall require a separate license.
- B. It is unlawful for any sexually oriented business to do business in the City under any name other than the name specified in the application.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.160 License - Issuance Conditions

The City business license official shall approve the issuance of licenses to the applicant within sixty (60) days after receipt of the application, unless the official finds one or more of the following:

- A. The applicant is under eighteen (18) years of age or any higher age if the license sought requires a higher age;
- B. The applicant is overdue in payment to the City of taxes, fees, fines or penalties assessed against the applicant or imposed on the applicant in relation to a sexually oriented business;
- C. The applicant has falsely answered a material question or request for information as authorized by this chapter;

- D. The applicant has been convicted of a violation of a provision of this chapter within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect on the denial;
- E. The premises to be used for the business has been disapproved by the County Health Department, the City Department of Public Safety, the City Building Official or the City Zoning Official as not being in compliance with applicable laws and ordinances of the City. If any of the foregoing reviewing agencies cannot complete their review within the sixty (60) day approval or denial period the agency or department may obtain from the City business license official an extension of time for their review of no more than fifteen (15) days. The total time for the City to approve or deny a license shall not exceed seventy-five (75) days from receipt of an application. Businesses located outside the corporate boundaries of the City, but requiring a license under this chapter, may be denied a license pursuant to this chapter if the business does not have a valid business license to conduct business at the business location from the appropriate jurisdiction for that location;
 - 1. Upon receipt of an application all departments required to review the application shall determine within ten (10) days whether or not the application is complete with all items necessary for processing. Incomplete applications shall be returned to the applicant with specification of the items which are incomplete.
 - 2. The time for processing applications specified in this section shall begin to run from the receipt of a complete application.
 - 3. In the event that a license has not been disapproved within sixty (60) days, or the seventy-five (75) days allowed after an extension, the City shall issue the license.
 - 4. Any license issued pursuant to subsection (3) above may be revoked by the City pursuant to the revocation procedures of section 5.28.370 through 390 if the completed review determines that the license should have been denied.
- F. The license fees required by this chapter or by other ordinances have not been paid;
- G. All applicable sales and use taxes have not been paid;
- H. An applicant for the proposed business is in violation of, or not in compliance with this chapter;
- I. An applicant has been convicted of a crime involving prostitution; exploitation of prostitution; aggravated promotion of prostitution; aggravated exploitation of prostitution; solicitation of sex acts; sex acts-for-hire compelling

prostitution; aiding prostitution; sale, distribution or display of material harmful to minors; sexual performance by minors; possession of child pornography; lewdness; public indecency; or crimes involving sexual abuse or exploitation of a minor, sexual assault or aggravated sexual assault; rape; rape of a child; object rape; object rape of a child; sodomy; sodomy on a child; sexual abuse of a child; aggravated sexual abuse of a child; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; criminal contempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving similar elements from any jurisdiction regardless of the exact title of the offense, for which:

1. Less than two (2) years have elapsed from the date of conviction if the conviction is of a misdemeanor offense, or less than five (5) years if the convictions are of two or more misdemeanors within five (5) years, or less than five (5) years has elapsed from the date of the conviction if the offense was a felony;
2. The fact that a conviction is being appealed does not prevent someone from being denied a business license for that conviction.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.170 License - Term

Sexually oriented business and employee licenses issued pursuant to this chapter shall be valid from the date of issuance through December 31st of that year. The license fees required under Section 12-7-13 above shall not be prorated for any portion of a year, but shall be paid in full for whatever portion of the year the license is applied for.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.180 License - Notice of Change of Information

Any change in the information required to be submitted under this chapter for either a sexually oriented business license or sexually oriented business employee license shall be given, in writing, to the business license authority and the police department within fourteen (14) days after such change.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.190 License - Transfer Limitations

Sexually oriented business licenses granted under this chapter shall not be transferable. It is unlawful for a license held by an individual to be transferred. It is unlawful for a license held by a corporation, partnership or other noncorporate entity to transfer any ownership part in excess of ten percent (10%) thereof, without filing a new application and obtaining prior City approval. If any transfer of the controlling interest in a business license occurs, the license is immediately null and void and the business shall not operate until a separate new license has been properly issued by the City as provided in this chapter.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.195 Moving of Business Location

It is unlawful for any sexually oriented business to relocate or otherwise move its location or area of operation. A sexually oriented business wishing to relocate must submit the appropriate application for a license as required under this chapter. Such application shall be reviewed under the terms and conditions of this chapter and applicable City ordinances.

(Ord. No. 06-06, Enacted 06/20/2006)

5.28.200 License - Display

It is unlawful for any sexually oriented business employee to:

- A. Allow persons under the age of 18 on the licensed premises, except that, in adult businesses that exclude minors from less than all the business premises, minors shall not be permitted in any area in which, or from which, it is possible to view any material depicting specified sexual activity or specified anatomical areas, but may be permitted in the other areas of the premises.
- B. Allow, offer, or agree to conduct any outcall services:
- C. Allow, offer or agree to allow any alcohol to be stored, used or consumed on or in the licensed premises;
- D. Allow the outside entry to the premises to be locked while any customer is in the premises;
- E. Allow, offer or agree to gambling on the licensed premises;
- F. Allow, offer or agree to any sexually oriented business employee touching any customer;
- G. Allow, offer or agree to illegal possession, use sale or distribution of controlled substances on the licensed premises;
- H. Allow sexually oriented business employees to possess, use, sell or distribute controlled substances while engaged in the activities of the business;
- I. Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor or committing activities harmful to a minor to occur on the licensed premises;
- J. Allow, offer or commit any specified sexual activity on the premises of a sexually oriented business;

- K. Appear, or allow a sexually oriented business employee or any other person to appear, in a state of nudity in the presence of a customer.

(Ord. No. 06-06, Enacted 06/20/2006)

5.28.210 License - Statement in Advertisements

It is unlawful for any advertisement by the sexually oriented business or employee to fail to state that the business or employee is licensed by the City, and shall include the City license number.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.220 Regulations and Unlawful Activities

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

- A. Allow persons under the age of 18 on the licensed premises, except that, in adult businesses that exclude minors from less than all of the business premises, minors shall not be permitted in any area in which, or from which, it is possible to view any material depicting specified sexual activity or specified anatomical areas, but may be permitted in the other areas of the premises.
- B. Allow, offer or agree to conduct any outcall services;
- C. Allow, offer, or agree to allow any alcohol to be stored, used or consumed on or in the licensed premises;
- D. Allow the outside entry to the premises to be locked while any customer is in the premises;
- E. Allow, offer or agree to gambling on the licensed premises;
- F. Allow, offer or agree to any sexually oriented business employee touching any customer;
- G. Allow, offer or agree to illegal possession, use, sale or distribution of controlled substances on the licensed premises;
- H. Allow sexually oriented business employees to possess, use, sell or distribute controlled substances while engaged in the activities of the business;
- I. Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor or committing activities harmful to a minor to occur on the licensed premises;
- J. Allow, offer or commit any specified sexual activity on the premises of a sexually oriented business;
- K. Appear, or allow a sexually oriented business employee or any other person to appear, in a state of nudity in the presence of a customer.
- L. Sexual devices displayed for sale cannot be displayed where they would be visible from any location outside the store.

(Ord. No. 06-06, Enacted 06/20/2006)

(Ord. No. 20-13, Amended 12/17/2013)

5.28.230 Outcall Services Prohibited

It is unlawful for any business or employee to offer or to provide outcall services in the City of Spanish Fork.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.240 Adult Business - Design of Premises

- A. In addition to the general requirements of disclosure for sexually oriented businesses, any applicant for a license as an adult business shall also submit a diagram, drawn to scale, of the premises of the license. The design and construction, prior to granting a license or opening of business, shall conform to the following:
1. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms.
 2. Restrooms may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person being allowed in the restroom per stall, and only one person in any stall at a time, and requiring that customers shall not be allowed access to manager's station areas.
 3. For businesses which exclude minors from the entire premises, all windows, doors and other apertures to the premises shall be darkened or otherwise constructed to prevent anyone outside the premises from seeing the inside of the premises. Businesses which exclude minors from less than all of the premises shall be designed and constructed so that minors may not see into the area from which they are excluded.
 4. The diagram must show marked internal dimensions, all overhead lighting fixtures, and lighting for illumination capacity.
- B. It shall be the duty of the licensee and the licensee's employees to insure that the views from the manager's station in subsection A of this section remain unobstructed by any doors, walls, merchandise, display racks or any other materials at all times when any customer is present on the premises, and to insure that no customer is permitted access to any area of the premises which has been designated as an area in which customers will not be permitted. The premises shall at all times be equipped and operated with overhead lighting fixtures of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one foot candle, measured at floor level. It shall be the duty of the licensee and the licensee's employees present on the premises to insure that the illumination described above is maintained at all times when any customer is present in the premises.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.250 Semi-nude Entertainment Business - Design of Premises

- A. 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 customers are not admitted, and except that in an adult theater such items may be on the stage as part of a performance;
 2. Allow any door on any room used for business, except for the door to an office to which customers shall not be admitted, outside doors and restroom doors, to be lockable from the inside;
 3. Provide any room in which the employee or employees and the customer or customers are alone together without separation by a solid physical barrier at least three feet high and six inches wide. The customer or customers shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier.
- B. Adult theaters shall also require that the performance area shall be separated from the customers by a minimum of three feet, which separation shall be delineated by a physical barrier at least three feet high.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.260 Semi-nude Entertainment Business - Location Restrictions

It is unlawful for any business licensed for semi-nude entertainment to be located within six hundred feet (600) of a different business which is licensed for the sale or consumption of alcohol.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.270 Semi-nude Dancing Bar Prohibited

It is unlawful for any business licensed for the sale or consumption of alcohol pursuant to City ordinances or State law to allow any person on the premises to dance, model, or perform in a state of semi-nudity.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.280 Semi-nude Dancing Performer Restriction

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

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.290 Semi-nude Dancing Agencies

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

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

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.300 Performers - Prohibited Activities

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

- A. To touch in any manner any customer;
- B. To throw any object or clothing off the stage area;
- C. To accept any money, drink or any other object directly from any person; or
- D. To allow another person to touch such performer or to place any money or object on the performer or within the costume or person of the performer; or
- E. For the performer to place anything within the costume or adjust or move the costume while performing so as to render the performer in a state of nudity.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.310 Performers - Costume Requirements

It is unlawful for performers in semi-nude entertainment business to fail to comply with the following costume requirements;

- A. Performers shall at all times be costumed during performances in a manner not to violate any City Ordinance concerning disorderly conduct or lewdness, and such performers shall not perform or conduct themselves in such a manner as to violate the provisions of any City Ordinance. No performer shall appear in any business, licensed as a semi-nude entertainment business, during a performance or appearance with less than opaque clothing which meets the definition of semi-nude, and in the case of a female performer, cover the areola and nipple of such performer in a shape and color other than the natural shape and color of the nipple and areola.
- B. While on the portion of a business licensed as a semi-nude entertainment business used by customers, performers shall be dressed in an opaque clothing covering the performer's cleft of buttocks and pubic area and, in the case of female, the nipple and areola of the breast.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.320 Stage Requirements

It is unlawful for any performer in a business licensed as a semi-nude entertainment business to appear in costume other than on a stage which shall be at least three feet from the portion of the premises on which customers are allowed,, and which shall be separated from the customers by a solid barrier or railing, the top of which shall be at least two feet from the floor.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.330 Customers - Prohibited Activities

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

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.340 Nudity - Defenses to Prosecution

It is a defense to prosecution or violation under this chapter that a person appearing in a state of nudity did so in a modeling class operated:

- A. By a proprietary school licensed by the State, or a college, junior college or university supported entirely or partly by taxation;
- B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.350 Existing Business - Compliance Time Limits

- A. The provisions of this chapter shall be applicable to all persons and businesses described herein, whether the herein-described activities were established before or after the effective date of the ordinance codified in this chapter, and regardless of whether such person and businesses are currently licensed to do business in the City.
 1. All semi-nude entertainment business and employees thereof requiring licenses and semi-nude dancing agency licenses shall have seventy-five (75) days from the effective date of the ordinance codified in this chapter, or until their licenses must be renewed, whichever is first, to comply with the provisions of this chapter.
 2. All adult businesses shall have one hundred thirty-five (135) days from the effective date of the ordinance codified in this chapter, or until their current license must be renewed, whichever is first in time, to comply with the provisions of this chapter.
- B. For the year 1997, all businesses required by this chapter to be licensed as sexually oriented businesses shall be credited against the fees required by this chapter with the regulatory license fees paid for the current 1997 license.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.360 Violation - Injunction When

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

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.370 Violation - License Suspension or Revocation

- A. The City may issue a notice suspending or revoking a sexually oriented business or employee license granted under this chapter if a licensee, or an employee of the licensee has:
1. Violated or is not in compliance with this chapter;
 2. Has refused to allow any inspection of the premises of the sexually oriented business specifically authorized by this chapter, or by any other statute or ordinance;
 3. Has failed to replenish the cost bond as provided in this chapter; such a suspension shall extend until the bond has been replenished;
 4. A licensee or employee gave materially false or misleading information in obtaining the license;
 5. A licensee or an employee knowingly operated the sexually oriented business or worked under the employee license during the period when the business licensee or employee licensee's license was suspended;
 6. A licensee has committed an offense which would be grounds for denial of a license for which the time period required has not elapsed;
 7. On two or more occasions within a twelve-month period, a person or persons committed in or on, or solicited for on the licensed premises, an offense which would be grounds for denial of a license for which a conviction has been obtained, and the person or persons were employees, whether or not licensed, of the sexually oriented business at the time the offenses were committed;
 8. A licensee is delinquent in payment to the City for ad valorem taxes, or sales taxes related to the sexually oriented business.
- B. Suspension or revocation shall take effect within ten days of the issuance of notice, unless an appeal is filed with the City as provided by this chapter. The revocation or suspension is stayed pending the outcome of the appeal with the City.
- C. The fact that a criminal conviction is being appealed shall have no effect on the revocation of a license

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.380 Effect of License Revocation

When a license issued pursuant to this chapter is revoked, the revocation shall continue indefinitely, and the licensee shall not be issued a sexually oriented business or employee license for at least one year from the date of such revocation.

(Ord. No. 18-97, Enacted 10/21/1997)

5.28.390 Appeal Procedures

- A. If the license is denied or approved with qualifications, or if a notice of suspension, revocation or citation or a civil fine is imposed, the applicant or licensee may file an appeal with the City Manager, by filing notice with the City Recorder.
- B. The appeal must be filed within ten days of the date of service of the notice of any denial, qualified approval, suspension, revocation or civil fine. Upon receiving the notice of such appeal, the City Recorder shall schedule a hearing before the City Manager, which hearing shall be held within 20 days from the date of the appeal, unless such time shall be extended for good cause, provided, however, that such hearing shall not be held more than 35 days after the notice of appeal is filed with the City Recorder.
- C. The City Manager shall hold a hearing on the record and take such facts and evidence as necessary to determine whether the denial, qualified approval, suspension, revocation or civil fine was proper under the law.
- D. The burden of proof shall be on the City.
- E. After the hearing, the City Manager shall have seven working days, unless such period is extended for good cause, in which to render findings of fact and conclusions of law and make a decision as to the disposition of the appeal. The City shall cause notice of such decision to be filed with the City Recorder and mailed to the applicant or licensee.
- F. The applicant or licensee may appeal the decision of the City Manager by filing a notice of appeal and the reasons for such appeal, in writing, within seven days after the filing of notice of the City Manager's decision with the City Recorder and the mailing of such notice to the applicant or licensee. If the City Manager's decision upholds a suspension or revocation, the license shall be immediately suspended.
- G. If a notice of appeal is timely filed, as set forth in paragraph F, the City Council shall schedule a public hearing to consider the appeal. The standard by which the Council shall review the decision of the City Manager is whether

substantial evidence exists on the record to support the City Manager's decision.

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

(Ord. No. 06-06, Enacted 06/20/2006)

5.28.400 Violation - Penalty

In addition to revocation or suspension of a license, as provided in this chapter, each violation of this chapter shall, upon citation by the Community Development Director, or designee, require the licensee to pay a civil penalty in the amount of five hundred dollars (\$500.00). Such fines shall be deducted from the cost bond posted pursuant to this chapter, unless paid within ten (10) days of notice of the fine or the final determination after any appeal. In addition to the civil fines provided in this chapter, the violation of any provision of this chapter shall be a Class B Misdemeanor. Each day of violation shall be considered a separate offense.

(Ord. No. 18-97, Enacted 10/21/1997)

(Ord. No. 18-09, Amended 11/03/2009)

5.28.410 Severability

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

(Ord. No. 18-97, Enacted 10/21/1997)

Chapter 5.32 Telecommunications Rights-of Way

- 5.32.010 Findings Regarding Rights-of-Way
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- 5.32.030 Finding Regarding Local Concern
- 5.32.040 Finding Regarding Promotion of Telecommunications Series
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- 5.32.610 **Construction**
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- 5.32.630 **Other Applicable Ordinances**
- 5.32.640 **City Failure to Enforce**
- 5.32.650 **Construed According to Utah Law**

5.32.010 Findings Regarding Rights-of-Way

Spanish Fork City finds that the Rights-of-Way within the City:

1. are critical to the travel and transport of persons and property in the business and social life of the City;
2. are intended for public uses and must be managed and controlled consistent with that intent;
3. can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare, and general economic well-being of the City and its citizens; and
4. are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation, and maintenance in the Rights-of-Way.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.020 Finding Regarding Compensation

The City finds that the City should receive fair and reasonable compensation for use of the Rights-of-Way.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.030 Finding Regarding Local Concern

The City finds that while Telecommunications Systems are in part an extension of interstate commerce, their operations also involve Rights-of-Way, municipal franchising, and vital business and community service, which are of local concern.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.040 Finding Regarding Promotion of Telecommunications Services

The City finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of Telecommunications Services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.050 Findings Regarding Franchise Standards

The City finds that it is in the interests of the public to Franchise and to establish standards for franchising Providers in a manner that:

1. fairly and reasonably compensates the City on a competitively neutral and non-discriminatory basis as provided herein;
2. encourages competition by establishing terms and conditions under which Providers may use the Rights-of-Way to serve the public;
3. fully protects the public interests and the City from any harm that may flow from such commercial use of Rights-of-Way;
4. protects the police powers and Rights-of-Way management authority of the City, in a manner consistent with federal and state law;
5. otherwise protects the public interests in the development and use of the City infrastructure;
6. protects the public's investment in improvements in the Rights-of-Way; and
7. ensures that no barriers to entry of Telecommunications Providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting Telecommunication Services, within the meaning of the Telecommunications Act of 1996 [P.L. No. 104-104].

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.060 Power to Manage Rights-of-Way

The City adopts this Telecommunications Ordinance pursuant to its power to manage the Rights-of-Way, pursuant to common law, the Utah Constitution and statutory authority, and receive fair and reasonable, compensation for the use of Rights-of-Way by Providers as expressly set forth by Section 253 of the Act.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.070 Scope of Ordinance

This Ordinance shall provide the basic local scheme for Providers of Telecommunications Services and Systems that require the use of the Rights-of-Way, including Providers of both the System and Service, those Providers of the System only, and those Providers who do not build the System but who only provide Services. This Ordinance shall apply to all future Providers and to all Providers in the City prior to the effective date of this Ordinance, whether operating with or without a Franchise as set forth in Section 5.32.620.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.080 Excluded Activity

- A. This Ordinance shall not apply to cable television operators otherwise regulated by Chapter 5.18 of the Spanish Fork City Municipal Code (the "Cable Television Ordinance").
- B. This Ordinance shall not apply to Personal Wireless Service Facilities.
- C. Providers excused by other law that prohibits the City from requiring a Franchise shall not be required to obtain a Franchise, but all of the requirements imposed by this Ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.090 Definitions

For purposes of this Ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The word "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

- A. "**Application**" means the process by which a Provider submits a request and indicates a desire to be granted a Franchise to utilize the Rights-of-Way of all, or a part, of the City. An Application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a Provider to the City concerning: the construction of a Telecommunications System over, under, on or through the Rights-of-Way; the Telecommunications Services proposed to be provided in the City by a Provider; and any other matter pertaining to a proposed System or Service.
- B. "**City**" means Spanish Fork City, Utah.
- C. "**Completion Date**" means the date that a Provider begins providing Services to customers in the City.

- D. **"Construction Costs"** means all costs of constructing a System, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.
- E. **"Control"** or **"Controlling Interest"** means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the System or of a Provider. A rebuttable presumption of the existence of Control or a Controlling Interest shall arise from the beneficial ownership, directly or indirectly, by any Person, or group of Persons acting in concert, of more than twenty-five percent (25%) of any Provider (which Person or group of Persons is hereinafter referred to as "Controlling Person"). "Control" or "Controlling Interest" as used herein may be held simultaneously by more than one Person or group of Persons.
- F. **"FCC"** means the Federal Communications Commission, or any successor thereto.
- G. **"Franchise"** means the rights and obligation extended by the City to a Provider to own, lease, construct, maintain, use or operate a System in the Rights-of-Way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include:
1. any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;
 2. any other permit, agreement or authorization required in connection with operations on Rights-of-Way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City or a private entity, or for excavating or performing other work in or along the Rights-of-Way.
- H. **"Franchise Agreement"** means a contract entered into in accordance with the provisions of this Ordinance between the City and a Franchisee that sets forth, subject to this Ordinance, the terms and conditions under which a Franchise will be exercised.
- I. **"Gross Revenue"** includes all revenues of a Provider that may be included as gross revenue within the meaning of Chapter 26, Title 11 Utah Code annotated, 1953, as amended.

- J. **"Infrastructure Provider"** means a Person providing to another, for the purpose of providing Telecommunication Services to customers, all or part of the necessary System which uses the Rights-Of-Way.
- K. **"Open Video Service"** means any video programming services provided to any Person through the use of Rights-of-Way, by a Provider that is certified by the FCC to operate an Open Video System pursuant to sections 651, et seq., of the Telecommunications Act (to be codified at 47 U.S.C. Title VI, Part V), regardless of the System used.
- L. **"Open Video System"** means the system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing Open Video Services to or from subscribers or locations within the City.
- M. **"Operator"** means any Person who provides Service over a Telecommunications System and directly or through one or more Persons owns a Controlling Interest in such System, or who otherwise controls or is responsible for the operation of such a System.
- N. **"Ordinance"** or **"Telecommunications Ordinance"** means this Telecommunications Ordinance concerning the granting of Franchises in and by the City for the construction, ownership, operation, use or maintenance of a Telecommunications System.
- O. **"Person"** includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.
- P. **"Personal Wireless Services Facilities"** has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c), which includes what is commonly known as cellular and PCS Services that do not install any System or portion of a System in the Rights-of-Way.
- Q. **"Provider"** means an Operator, Infrastructure Provider, Resaler, or System Lessee.
- R. **"PSC"** means the Public Service Commission, or any successor thereto.
- S. **"Resaler"** refers to any Person that provides local exchange service over a System for which a separate charge is made, where that Person does not own or lease the underlying System used for the transmission.

- T. **"Rights-of-Way"** means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the City.
- U. **"Signal"** means any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.
- V. **"System Lessee"** refers to any Person that leases a System or a specific portion of a System to provide Services.
- W. **"Telecommunications"** means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video, and voice), without change in the form or content of the information sent and received.
- X. **"Telecommunications System"** or **"System"** means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased, or used by a Provider, located in the Rights-of-Way and utilized in the provision of Services, including fully digital or analog, voice, data and video imaging and other enhanced Telecommunications Services. Telecommunications System or Systems also includes an Open Video System.
- Y. **"Telecommunications Service(s)"** or **"Services"** means any telecommunications services provided by a Provider within the City that the Provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the Services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. §521, et seq.), and the Telecommunications Act of 1996. Telecommunications System or Systems also includes an Open Video System.
- Z. **"Wire"** means fiber optic Telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.100 Non-Exclusive Franchise

The City is empowered and authorized to issue non-exclusive Franchises governing the installation, construction, and maintenance of Systems in the City's Rights-of-Way,

in accordance with the provisions of this Ordinance. The Franchise is granted through a Franchise Agreement entered into between the City and Provider.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.110 Every Provider Must Obtain

Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every Provider must obtain a Franchise prior to constructing a Telecommunications System or providing Telecommunications Services using the Rights-of-Way, and every Provider must obtain a Franchise before constructing an Open Video System or providing Open Video Services via an Open Video System. Any Open Video System or Service shall be subject to the customer service and consumer protection provisions applicable to the Cable TV companies to the extent the City is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular Telecommunications Systems may be used for multiple purposes does not obviate the need to obtain a Franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide Telecommunications Services over the same System, must also obtain a Telecommunications Franchise.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.120 Nature of Grant

A Franchise shall not convey title, equitable or legal, in the Rights-of-Way. A Franchise is only the right to occupy Rights-of-Way on a non-exclusive basis for the limited purposes and for the limited period stated in the Franchise; the right may not be subdivided, assigned, or subleased. A Franchise does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its System on the property of others, including the City's property. This section shall not be construed to prohibit a Provider from leasing conduit to another Provider, so long as the Lessee has obtained a Franchise.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.130 Current Providers

Except to the extent exempted by federal or state law, any Provider acting without a Franchise on the effective date of this Ordinance shall request issuance of a Franchise from the City within 90 days of the effective date of this Ordinance. If such request is made, the Provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a Franchise is not granted, the Provider shall comply with the provisions of Section 5.32.510.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.140 Nature of Franchise

The Franchise granted by the City under the provisions of this Ordinance shall be a nonexclusive Franchise providing the right and consent to install, repair, maintain,

remove and replace its System on, over and under the Rights-of-Way in order to provide Services.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.150 Regulatory Approval Needed

Before offering or providing any Services pursuant to the Franchise, a Provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such Services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.160 Term

No Franchise issued pursuant to this Ordinance shall have a term of less than five (5) years or greater than fifteen (15) years. Each Franchise shall be granted in a nondiscriminatory manner.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.170 Compensation

As fair and reasonable compensation for any Franchise granted pursuant to this Ordinance, a Provider shall have the following obligations:

- A. Application Fee. In order to offset the cost to the City to review an Application for a Franchise and in addition to all other fees, permits or charges, a Provider shall pay to the City, at the time of Application, \$500 as a non-refundable Application fee.
- B. Franchise Fees. The Franchise fee, if any, shall be set forth in the Franchise Agreement. The obligation to pay a Franchise fee shall commence on the Completion Date. The Franchise fee is offset by any business license fee or business license tax enacted by the City.
- C. Excavation Permits. The Provider shall also pay the required fees for an excavation permit as provided for by the ordinances, resolutions, policies, or standards of the City.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.180 Timing

Unless otherwise agreed to in the Franchise Agreement, all Franchise Fees shall be paid on a monthly basis within forty-five (45) days of the close of each calendar month.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.190 Fee Statement and Certification

Unless a Franchise Agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.200 Future Costs

A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any renewal or Provider-initiated renegotiation, or amendment of this Ordinance or a Franchise, provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. Any costs associated with any work to be done by the Power and Public Works Department to provide space on City owned poles shall be borne by the Provider.
(Ord. No. 20-97, Enacted 11/24/1997)

5.32.210 Taxes and Assessments

To the extent taxes or other assessments are imposed by taxing authorities, other than the City on the use of the City property as a result of a Provider's use or occupation of the Rights-of-Way, the Provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this Ordinance.
(Ord. No. 20-97, Enacted 11/24/1997)

5.32.220 Interest of Late Payments

In the event that any payment is not actually received by the City on or before the applicable date fixed in the franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.
(Ord. No. 20-97, Enacted 11/24/1997)

5.32.230 No Accord and Satisfaction

No acceptance by the Spanish Fork City any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.
(Ord. No. 20-97, Enacted 11/24/1997)

5.32.240 Not in Lieu of Other Taxes or Fees

The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Ordinance, or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the City owned poles are not waived and remain applicable.
(Ord. No. 20-97, Enacted 11/24/1997)

5.32.250 Continuing Obligation and Holdover

In the event a Provider continues to operate all or any part of the System after the Term of the Franchise, such operator shall continue to comply with all applicable

provisions of this Ordinance and the Franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.260. Costs of Publication

A Provider shall assume any publication costs associated with its Franchise that may be required by law.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.270 Franchise Application

To obtain a Franchise to construct, own, maintain or provide Services through any System within the City, to obtain a renewal of a Franchise granted pursuant to this Ordinance, or to obtain the City approval of a transfer of a Franchise, as provided in subsection 5.32.400 (B), granted pursuant to this Ordinance, an Application must be filed with City on the form attached to this Ordinance as Exhibit A, which is hereby incorporated by reference. The Application form may be changed by the Mayor so long as such changes request information that is consistent with this Ordinance. Such Application form, as amended, is incorporated by reference.

(Ord. No. 20-97, Enacted 11/24/1997)

5.25.280 Application Criteria

In making a determination as to an Application filed pursuant to this Ordinance, the City may, but shall not be limited to, request the following from the Provider:

- A. A copy of the order from the PSC granting a Certificate of Convenience and Necessity.
- B. Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance and use of the Rights-of-Way during the Franchise term proposed by the Provider;
- C. Provider's agreement to comply with the requirements of Sections 5.32.290 through 390 of this Ordinance.
- D. Prior to making any attachments to poles, the willingness to enter into a pole attachment agreement with the City.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.290 Franchise Determination

The City, in its discretion, shall determine the award of any Franchise on the basis of these and other considerations relevant to the use of the Rights-of-Way, without competitive bidding.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.300 General Requirement

No Provider shall receive a Franchise unless it agrees to comply with each of the terms set forth in this Section governing construction and technical requirements for its System, in addition to any other reasonable requirements or procedures specified by the City or the Franchise, including requirements regarding locating and sharing in the cost of locating portions of the System with other Systems or with City utilities. A Provider shall obtain an excavation permit, pursuant to the excavation ordinance, before commencing any work in the Rights-of-Way.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.310 Quality

All work involved in the construction, maintenance, repair, upgrade and removal of the System shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the System, including, without limitation, any means used to distribute Signals over or within the System, is harmful to the public health, safety or welfare, or quality of service or reliability, then a Provider shall, at its own cost and expense, promptly correct all such conditions.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.320 Licenses and Permits

A Provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the System, including but not limited to any necessary approvals from Persons and/or the City to use private property, easements, poles and conduits. A Provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.330 Relocation of the System

The system may only be relocated if the following criteria are met:

- A. New Grades or Lines. If the grades or lines of any Rights-of-Way are changed at any time in a manner affecting the System, then a Provider shall comply with the requirements of the excavation requirements.

- B. The City Authority to Move System in case of an Emergency. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the System and appurtenances on, over or under the Rights-of-Way of the City, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this Section. Notice shall be given as provided in Section 5.32.590.
- C. A Provider Required to Temporarily Move System for Third Party. A Provider shall, upon prior reasonable written notice by the City or any Person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its System to permit the moving of said structure. A Provider may impose a reasonable charge on any Person other than the City for any such movement of its Systems.
- D. Rights-of-Way Change - Obligation to Move System. When the City is changing a Rights-of-Way and makes a written request, a Provider is required to move or remove its System from the Rights-of-Way, without cost to the City, to the extent provided in the excavation requirements. This obligation does not apply to Systems originally located on private property pursuant to a private easement, which property was later incorporated into the Rights-of-Way, if that private easement grants a superior vested right. This obligation exists whether or not the Provider has obtained an excavation permit.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.340 Protect Structures

In connection with the construction, maintenance, repair, upgrade or removal of the System, a Provider shall, at its own cost and expense, protect any and all existing structures belonging to the City. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the Rights-of-Way of the City required because of the presence of the System. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other Rights-of-Way of the City involved in the construction, maintenance, repair, upgrade or removal of the System that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider pursuant to the Franchise.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.350 No Obstruction

In connection with the construction, maintenance, upgrade, repair or removal of the System, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guide

way systems, railways, passenger travel, or other traffic to, from or within the City without the prior consent of the appropriate authorities.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.360 Safety Precautions

A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.370 Repair

After written reasonable notice to the Provider, unless, in the sole determination of the City, an eminent danger exists, any Rights-of-Way within the City which are disturbed or damaged during the construction, maintenance or reconstruction by a Provider of its System may be repaired by the City at the Provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a Provider an itemized statement of the cost for repairing and restoring the Rights-of-Ways intruded upon. The Provider shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.380 System Maintenance

A Provider shall:

- A. Install and maintain all parts of its System in a non-dangerous condition throughout the entire period of its Franchise.
- B. Install and maintain its System in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.
- C. At all reasonable times permit examination by any duly authorized representative of the Spanish Fork City the System and its effect on the Rights-of-Way.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.390 Trimming of Trees

A Provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over Rights-of-Way so as to prevent the branches of such trees from coming in contact with its System.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.400 Notification of Sale

- A. **Notification and Election.** When a Provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the Provider or its successor entity shall promptly notify Spanish Fork City of the nature of the transaction. The notification shall include either:
1. The successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original Provider's Franchise Agreement, or
 2. The successor entity's Application in compliance with Sections 5.32.270 and 280 of this Ordinance.
- B. **Transfer of Franchise.** Upon receipt of a notification and certification in accordance with subsection (A)(1), the City designee, as provided in section 5.32.480(A), shall send notice affirming the transfer of the Franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application for the transfer. The Application shall comply with Sections 5.32.270 and 280.
- C. **If PSC Approval No Longer Required.** If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in subsection (A), and the City has good cause to believe that the successor entity may not comply with this Ordinance or the Franchise Agreement, it may require an Application. The Application shall comply with Sections 5.32.270 and 280.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.410 Events of Sale

The following events shall be deemed to be a sale, assignment or other transfer of the Franchise requiring compliance with Section 5.32.400 the sale, assignment or other transfer of all or a majority of a Provider's assets to another Person; (ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a Provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new Controlling Interest in a Provider; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by a Provider so as to create a new Controlling Interest in such a Provider; or (iv) the entry by a Provider into an agreement with respect to the management or operation of such Provider or its System.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.420 Insurance, Indemnity, and Security

Prior to the execution of a Franchise, a Provider will deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the Franchise, and shall obtain and provide proof of the insurance coverage required by the Franchise. A Provider shall also indemnify the City as set forth in the Franchise.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.430 Oversight

The City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the System, and any part thereof, in accordance with the provisions of the Franchise and applicable law. A Provider shall establish and maintain managerial and operational records, standards, procedures and controls to enable a Provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the Term, that a Provider is in compliance with the Franchise. A Provider shall retain such records for not less than the applicable statute of limitations.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.440 Maintain Records

A Provider shall at all times maintain:

- A. On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all existing and proposed installations and the types of equipment and Systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all Rights-of-Ways where work will be undertaken. As used herein, "as-built" maps include "file construction prints". Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As-built" maps are not required of the Provider who is the incumbent local exchange carrier for the existing System to the extent they do not exist.

- B. Throughout the term of the Franchise, a Provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a Provider with respect to the System in a manner that allows the City at all times to determine whether a Provider is in compliance with the Franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a Provider shall alter the manner in which the books and/or records are maintained so that a Provider comes into compliance with this Section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally

accepted accounting principles shall be deemed to be acceptable under this Section.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.450 Confidentiality

If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a Provider, such information shall be classified as a Protected Record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), making it available only to those who must have access to perform their duties on behalf of the City, provided that a Provider notifies Spanish Fork City, and clearly labels the information which a Provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the Provider.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.460 Provider's Expense

All reports and records required under this Ordinance shall be furnished at the sole expense of a Provider, except as otherwise provided in this Ordinance or a Franchise.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.470 Right of Inspection

For the purpose of verifying the correct amount of the franchise fee, the books and records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the City shall not audit the books and records of the Provider more often than annually. The Provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the Provider has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the City may accept any amount offered by the Provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.480 Enforcement and Remedies

- A. **Enforcement - City Designee.** The City is responsible for enforcing and administering this Ordinance, and the City or its designee, as appointed by the Mayor or City, is authorized to give any notice required by law or under any Franchise Agreement.
- B. **Enforcement Provision.** Any Franchise granted pursuant to this Ordinance shall contain appropriate provisions for enforcement, compensation, and

protection of the public, consistent with the other provisions of this Ordinance, including, but not limited to, defining events of default, procedures for accessing the Bond/Security Fund, and rights of termination or revocation.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.490 Force Majeure

In the event a Provider's performance of any of the terms, conditions or obligations required by this Ordinance or a Franchise is prevented by a cause or event not within a Provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.500 Extended Operation and Continuity of Services

- A. Continuation after Expiration. Upon either expiration or revocation of a Franchise granted pursuant to this Ordinance, the City shall have discretion to permit a Provider to continue to operate its System or provide Services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A Provider shall continue to operate its System under the terms and conditions of this Ordinance and the Franchise granted pursuant to this Ordinance.
- B. Continuation by Incumbent Local Exchange Carrier. If the Provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its System and provide Services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.510 Removal or Abandonment of Franchise Property

- A. Abandoned System. In the event that (1) the use of any portion of the System is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of Provider; (2) any System has been installed in the Rights-of-Way without complying with the requirements of this Ordinance or Franchise; or (3) the provisions of Section 5.32.140 are applicable and no Franchise is granted, a Provider, except the Provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such System.
- B. Removal of Abandoned System. The City, upon such terms as it may impose, may give a Provider written permission to abandon, without removing, any System, or portion thereof, directly constructed, operated or maintained under

a Franchise. Unless such permission is granted or unless otherwise provided in this Ordinance, a Provider shall remove within a reasonable time the abandoned System and shall restore, using prudent construction standards, any affected Rights-of-Way to their former state at the time such System was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this Ordinance and any security fund provided in a Franchise shall continue in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this Section.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.520 Transfer of Abandoned System to City

Upon abandonment of any System in place, a Provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned System.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.530 Removal of Above-Ground System

At the expiration of the term for which a Franchise is granted, or upon its revocation or earlier expiration, as provided for by this Ordinance, in any such case without renewal, extension or transfer, the City shall have the right to require a Provider to remove, at its expense, all above-ground portions of a System from the Rights-of-Way within a reasonable period of time, which shall not be less than one hundred eighty (180) days. If the Provider is the incumbent local exchange carrier, it shall not be required to remove its System, but shall negotiate a renewal in good faith.

(Ord. No. 20-97 Enacted, 11/24/1997)

5.32.540 Leaving Underground System

Notwithstanding anything to the contrary set forth in this Ordinance, a Provider may abandon any underground System in place so long as it does not materially interfere with the use of the Rights-of-Way or with the use thereof by any public utility, cable operator or other Person.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.550 Publicizing Work

Before entering onto any private property, a Provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.560 Conflicts

In the event of a conflict between any provision of this Ordinance and a Franchise entered pursuant to it, the provisions of this Ordinance in effect at the time the Franchise is entered into shall control.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.570 Severability

If any provision of this Ordinance is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the Ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this Ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on the City and the Provider, provided that the City shall give the Provider thirty (30) days, or a longer period of time as may be reasonably required for a Provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.580 New Developments

It shall be the policy of the City to liberally amend this Ordinance, upon Application of a Provider, when necessary to enable the Provider to take advantage of any developments in the field of Telecommunications which will afford the Provider an opportunity to more effectively, efficiently, or economically serve itself or the public.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.590 Notices

All notices from a Provider to the City required under this Ordinance or pursuant to a Franchise granted pursuant to this Ordinance shall be directed to the officer as designated by the Mayor. A Provider shall provide in any Application for a Franchise the identity, address and phone number to receive notices from the City. A Provider shall immediately notify Spanish Fork City, of any change in its name, address, or telephone number.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.600 Exercise of Police Power

To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.610 Construction

This Ordinance shall be construed in a manner consistent with all applicable federal and state statutes.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.620 Ordinance Applicability

This Ordinance shall apply to all Franchises granted or renewed after the effective date of this Ordinance. This Ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing Franchises granted prior to the effective date of this Ordinance and to a Provider providing Services, without a Franchise, prior to the effective date of this Ordinance.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.630 Other Applicable Ordinances

A Provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A Provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all Providers shall comply with the City zoning and other land use requirements.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.640 City Failure to Enforce

A Provider shall not be relieved of its obligation to comply with any of the provisions of this Ordinance or any Franchise granted pursuant to this Ordinance by reason of any failure of the City to enforce prompt compliance.

(Ord. No. 20-97, Enacted 11/24/1997)

5.32.650 Construed According to Utah Law

This Ordinance and any Franchise granted pursuant to this Ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah.

(Ord. No. 20-97, Enacted 11/24/1997)

Chapter 5.36 Signs

5.36.010	<u>Purpose</u>
5.36.020	<u>Definitions</u>
5.36.030	<u>General Provisions</u>
5.36.040	<u>Prohibited Signs</u>
5.36.050	<u>Permitted Permanent Signs</u>
5.36.060	<u>Permitted Temporary Signs</u>
5.36.070	<u>Billboards</u>
5.36.080	<u>Nonconforming Signs</u>
5.36.090	<u>Permits and Fees</u>
5.36.100	<u>Remedies and Violations</u>

5.36.010 Purpose

The purpose of this section is to regulate the number, type, location, physical dimensions, and design of signs in order to protect the public interest and achieve community objectives as follows:

1. To balance public and private objectives by allowing adequate signage for business identification;
2. To promote the free flow of traffic and protect pedestrians and motorists from injury and property damage which may be caused by cluttered, distracting, and illegible signage;
3. To prevent property damage and personal injury resulting from signs which are improperly constructed or poorly maintained;
4. To promote the use of signs which are well designed, of appropriate scale, and integrated with surrounding buildings and landscape in order to meet the City's desire for quality development.

5.36.020 Definitions

Sign: A name, identification, description, display or illustration affixed to a surface visible to the public and used for visual communication which is intended to attract the attention of the public and is visible from the public rights-of-way or other properties. The term "sign" shall not include any flag, badge, or insignia of any governmental unit nor shall it include any item of merchandise normally displayed within a show window of a business.

Sign, A-frame: Are portable signs, usually equilateral triangular shaped, such that the short side provides a base for two sign copies facing opposite directions.

Sign, Awning: Signs which are placed on or integrated into a fabric or other material canopies which are mounted on the exterior of a building.

Sign, Banner: A sign made of fabric or other pliable material.

Sign, Billboard: A freestanding ground sign which is designed or intended to draw attention to a business, product, or service that is not sold, offered, manufactured, or existing on the property where the sign is located.

Sign, Civic Event: A government sign posted on public property or on the public right of way giving notice of an upcoming or current event, including locations of polling places, being sponsored by the government entity posting the sign.

Sign, Directional: An on-premise sign that includes information assisting in the flow of pedestrian or vehicular traffic such as enter, exit, and one-way.

Sign, Directory: A sign, other than an identification sign, listing the names, uses, or locations of the various businesses or activities conducted within a building or group of buildings, which is centrally located and intended to provide on-site directions.

Sign, Electric: any sign containing electrical wiring used to illuminate or draw attention to the sign.

Sign, Freestanding: A sign which is erected on its own self-supporting permanent structure, including a mast or pole, detached from any supporting elements of a building.

Sign, Government: a sign that is constructed, placed, or maintained by the federal, state, or a local government, including public school districts, which are traffic control signs or civic event signs.

Sign, Menu Board and Preview Menu Board: A permanently mounted sign displaying the menu and prices for a drive thru restaurant.

Sign, Monument: A freestanding sign whose sign face extends to the ground or to a base.

Sign, Nonconforming: A sign lawfully erected and maintained prior to the adoption of this ordinance which does not conform with the requirements of this ordinance.

Sign, Permanent: A sign intended and designed for permanent display in a fixed location.

Sign, Projecting: A sign attached to a building or other structure and extending in whole or in part more than fourteen (14) inches beyond the building.

Sign, Reader Panel: A sign designed to permit immediate change of copy either manually or electronically.

Sign, Temporary: A sign not intended or designed for permanent display.

Sign, Traffic Control: Traffic control devices on public property or in the public right-of-way which are erected and maintained by the United States of America, State of Utah, Utah County, or Spanish Fork City which comply with the Manual on Uniform Traffic Control Devices adopted by the State of Utah.

Sign, Wall: A sign mounted flat against and projecting less than fourteen (14) inches from, or painted on the wall of a building with the exposed face of the sign parallel to the face of the wall.

Sign, Window: Temporary or Permanent signs affixed to the interior or exterior of a window, or placed immediately next to a window pane so as to attract the attention of persons outside the building.

5.36.030 General Provisions

1. All signs shall comply with the City's Clear Vision Area requirements.
2. All signs shall be structurally designed, constructed, and maintained in accordance with all applicable provisions of the current edition of the building code adopted by the Utah Uniform Building Code Commission.
3. Signs shall not be located in a manner which interferes with pedestrian travel or poses a hazard to pedestrians.
4. Signs may be illuminated or non-illuminated, unless otherwise restricted herein. The source of the sign's illumination shall not be visible from any street, sidewalk, or adjacent property. This shall not preclude the use of neon sign elements.
5. Freestanding signs shall be incorporated within a landscaped planter area of at least twenty-five square feet, unless waived by the Development Review Committee.
6. Sign area shall be measured as follows:
 - a. Sign copy mounted or painted on a background panel or area distinctively painted, textured, or constructed as a background for the sign copy shall be measured as that area contained within the sum of the smallest rectangle(s) that will enclose both the sign copy and the background.
 - b. Sign copy mounted as individual letters or graphics against a wall, fascia, mansard, or parapet of a building or other structure that has not been painted, textured or otherwise altered to provide a distinctive background for the sign copy shall be measured as a sum of the smallest rectangle(s) that will enclose each word and each graphic in the total sign.
7. Sign height shall be measured as the vertical distance from the top of the highest element of the sign or sign structure to the base of the sign, or native grade of the site if the base of the sign extends more than one (1) foot above the native grade.

5.36.040 Prohibited Signs

Signs placed on public property or in the public rights-of-way are prohibited, except for the following:

1. government signs and traffic control signs;
2. the City is authorized to sell off-site advertising at city ball fields, the rodeo arena, and the golf course to raise revenue to offset the subsidy to the recreation programs;
3. the Spanish Fork/Salem Area Chamber of Commerce is authorized to sell off-site advertising on bus benches at UTA authorized bus stops, in order to raise revenue to reduce the subsidy to the Chamber.

Any sign not specifically permitted by this ordinance is prohibited.

5.36.050 Permitted Permanent Signs

Permanent signs are limited to government signs and on-site commercial advertising signs, may be illuminated or non-illuminated, and must be located outside of any Clear Vision Areas. Reader Boards are permitted, and permanent signs are subject to meeting any applicable requirements found in the current edition of the building code adopted by the Utah Uniform Building Code Commission.

1. Wall Signs.

- a. A primary wall sign may not occupy more than fifteen (15) percent of the flat wall area of the primary elevation.
- b. Secondary wall signs are allowed provided they do not exceed five (5) percent of that wall area.
- c. The permitted sign area for a wall may be divided into more than one sign provided that the signs do not cumulatively exceed the allowed sign area for that particular wall.
- d. Permanent window signs shall count as wall signs for purposes of calculating maximum allowable sign area.

2. Monument Signs.

Monument Signs are permitted for churches, schools, individual businesses, and multi-tenant developments. One monument sign shall be permitted per street frontage for each development unless a freestanding pole sign is installed on that frontage. Monument signs shall be limited to the following criteria unless a Project Signage Plan is approved:

- a. Monument signs must have a one (1) foot high pedestal.
- b. The illuminated cabinet or message display area may not exceed five (5) feet in height from the top of the pedestal.
- c. The maximum copy area per side of a monument sign is forty-eight (48) square feet.

Monument signs shall be permitted for individual businesses and multi-tenant developments. One monument sign shall be permitted per street frontage for each development unless a free standing sign is installed on that frontage.

3. Free standing Signs.

Freestanding pole signs are permitted for non-residential individual businesses and multi-tenant developments that occupy sites that are one acre in size or larger. One freestanding polesign shall be permitted per street frontage for each development unless a monument sign is installed on that frontage. Freestanding signs shall be limited to the following criteria unless a Project Signage Plan is approved:

- a. Freestanding pole signs :
 - i. May be a maximum of thirty-five (35) feet in height.
 - ii. May not exceed two-hundred (200) square feet in size unless specifically authorized herein.

4. Directional Signs.

Directional signs, when required to assist the flow of traffic, may not exceed six (6) square feet in copy area or a height of three (3) feet.

5. Directory Signs.

Directory signs, when required to identify businesses or buildings in multi-tent or multi-building developments, are not to exceed six (6) feet in height and forty-eight (48) square feet of copy area.

6. Projecting Signs.

Projecting signs may extend up to six feet from a building facade, so long as the bottom of any part of the sign is at least ten (10) feet above the sidewalk grade. Projecting signs may contain thirty-six square feet of copy area on each side.

7. Menu Boards.

One (1) preview menu board and one (1) ordering menu board are allowed for each drive-thru business. Preview menu boards and ordering menu boards may not exceed six (6) feet in height or forty (40) square feet in copy area.

8. Project Signage Plans.

Application may be made to have a Project Signage Plan approved to permit taller signs with greater copy area, as well as additional signs as part of a Project Signage Plan. Qualifying projects must contain at least 5 acres in area and must have at least 50,000 square feet of building space. Developments with Project Signage Plans may have monument signs and freestanding pole signs which exceed the height and area requirements set forth in this Chapter. Applicants may also request that a greater number of signs be allowed than what this Chapter otherwise permits.

Applications for Project Signage Plans are made by submitting detailed descriptions of the proposed signs and proposed sign locations to the Community Development Department. The application will be forwarded to the Planning Commission for recommendation, and to the City Council for approval, denial, or approval with modifications.

In reviewing applications for Project Signage Plan approval, the Planning Commission and City Council shall consider the impact of the proposed signs on surrounding properties, the advantages the proposed signage may create in generating commerce in Spanish Fork City, the aesthetics of the proposed signs, and visibility from travel lanes on State or Federal highways.

Once approved, Project Signage Plans may not be modified without making new application with the City.

9. Traffic Control Signs.

10. Trespass Signs.

An owner of property may post “No Trespassing” or “No Soliciting” signs on their property in order to protect their property rights in the property. A number of signs adequate to give notice are allowed, not to exceed one sign every two hundred feet. The size of each sign may not exceed two feet by three feet.

5.36.060 Permitted Temporary Signs

Temporary signs must be located outside of any Clear Vision Areas and conform to the provisions found in this Chapter. Government entities may install temporary signs on public and private property to give notice of events and functions. Temporary signs are limited to on-site advertising unless expressly allowed for in this Chapter.

1. **Banner Signs.**

Banner signs are limited to commercial speech. Banner signs must be affixed to the building façade so as to be secure and flush to the wall surface. Banner Signs are permitted to advertise as many as four (4) thirty (30) day periods each year for each property. One roof-mounted banner sign is permitted for each residential subdivision. Roof-mounted banner signs may not extend above the roofline of the structure they are installed upon. Roof-mounted banner signs must be located on a home in the subdivision they are advertising. Banner signs may not be larger than sixteen (16) feet by forty (40) feet.

2. **Freestanding Temporary Signs.**

Freestanding temporary signs may be constructed of a variety of materials and shall be securely installed so as to be immovable without some measure of disassembly. Freestanding temporary signs may be up to eight (8) feet tall and may have up to thirty-two (32) square feet of copy area on each side.

Additional restrictions are described below:

- a. One (1) freestanding temporary sign may be installed to advertise vacant commercial parcels of land that are five (5) acres or larger unless the parcel has frontage on more than one (1) public right-of-way. Should the parcel have frontage on more than one (1) public right-of-way, then an additional freestanding temporary sign may be installed for each additional frontage.
- b. One (1) freestanding temporary sign may be installed to advertise vacant non-residential buildings unless the parcel has frontage on more than one (1) public right-of-way. Should the parcel have frontage on more than one (1) public right-of-way, then an additional freestanding temporary sign may be installed for each additional frontage.
- c. Two (2) on-site freestanding temporary signs may be installed to advertise residential subdivisions.
- d. One (1) temporary freestanding sign is allowed on a commercial construction site. The temporary freestanding sign may identify the name

of the project, the names of the developer, contractor, architect, subcontractor, and financier of the project and the projected completion date. The sign may only be installed after building permits have been issued for the project. The sign shall be removed prior to the issuance of a certificate of occupancy for the project.

- e. Five (5) temporary freestanding signs are allowed on each residential lot. Temporary freestanding signs on residential lots may be up to six (6) feet tall and may have up to six square (6) feet in copy area on each side. In addition, a total of ten (10) freestanding signs are allowed from July 15 through August 25 each year and from September 2 through November 18 each year.
 - f. Freestanding temporary signs may be used to advertise polling locations and are considered government signs. Temporary freestanding signs identifying a location as a polling place may be placed ten (10) days prior to an election. Such signs shall not support a candidate or cause, but merely identify the polling place and provide other general information about the upcoming election.
3. **A-frame Signs.**
A-frame signs may not exceed sixteen (16) square feet of overall size. One commercial A-frame sign is allowed per business and may only be placed in the front of the business. A-frame signs may be placed in the public right-of-way so long as they are not in a travel lane, parking lane, road shoulder, or obstructs pedestrian travel on a sidewalk. A-frame signs meeting the conditions of this paragraph are considered to be on-site signs. A-frame signs must be sufficiently secured so that it won't readily fall over or otherwise create a hazard to persons or property. A-frame signs may only be displayed during open business hours in commercial and industrial zoning districts. A-frame signs shall be maintained in a well-kept condition.
 4. **Window Signs.**
Window signs may be used for business identification and advertising of any service, product, person, business, place, or activity on the premises. Window signs may cover up to fifty (50) percent of the area of the window on which the sign is located.
 5. **Festive Lights.**
Lights and lighting displayed to celebrate a national or state holiday are permitted 30 days prior to the holiday until 10 days after the holiday. They may be displayed on a commercial or non-commercial lot or parcel.

5.36.70

Billboards

Billboards are permitted in the following locations and subject to the following restrictions:

1. Billboards are permitted:
 - a. Along I-15 from 3100 North to 1600 North and mile post number 259 to mile post number 258 (heading south). These billboards must be at least 500 feet from any other billboard on the same side of the interstate highway and located in an industrial zone.
 - b. Along State Road 6 from the junction with Highway 89 southeasterly for 0.84 miles. These billboards must be at least 750 feet from any other billboard on the same side of the highway and located in an industrial zone.
2. Must be within 100 feet of I-15 or US Highway 6.
3. Must be at least 400 feet from any R-1 or R-3 residential districts.
4. Cannot exceed a height of fifty (50) feet or twenty-five (25) feet above roadway grade level, whichever is less.
5. May be double-faced or back-to-back if the separation of panels does not exceed five (5) feet.
6. Each side may have a sign area not to exceed 675 square feet.
7. Footing and structure details must be furnished to the City Building Official prior to issuance of a building permit.
8. Must be monopole. The monopole and all appurtenances to the sign must be painted black.
9. Utah Department of Transportation must issue a permit for the proposed location prior to commencing construction, or prior to City conducting any inspections pursuant to its permit.

5.36.080 Nonconforming Signs

Nonconforming signs shall be removed or brought into conformance with this ordinance when:

1. More than fifty percent (50%) of the reproduction cost of the sign or sign structure has been damaged or destroyed or has deteriorated to such an extent that the cost of repairs exceeds fifty percent (50%) of the reproduction cost of the sign or sign structure.
2. The property undergoes development or redevelopment in accordance with the Design Review section of Title 15.

5.36.090 Permits and Fees

1. Building and sign permits shall be obtained prior to erecting, placing, constructing or altering any sign except window signs, freestanding temporary signs on residential lots, freestanding temporary signs that advertise polling locations, festive lights, and A-frame signs.
2. The permit fees shall be in the amount established by City Council resolution or in the annual budget.

3. An application for a sign permit shall be made on forms provided by the Community Development Department. The following information will be required on all sign permit applications:
 - a. Address of the property.
 - b. Business name of the applicant.
 - c. Business owner=s name, address, and telephone number.
 - d. Sign contractor=s name, address, and telephone number.
 - e. Valuation of the sign(s).
 - f. Inventory of all existing signs on the property showing the type, dimensions, and location of each sign.
 - g. Fully dimensioned plans and elevations showing the dimensions, design copy, and location of each proposed sign.
 - h. Plans indicating the scope and structural detail of the work to be done; including details of all connections, supports, footings, and materials.
 - i. Required information for an electrical permit for all electric signs.
 - j. Color, material, and letter samples when the sign is subject to design review.

5.36.100 Remedies and Violations

1. Signs placed on public property or in public rights-of-ways may be removed without notice.
2. Violations of this Chapter are Class C Misdemeanors.
3. If any provision of this Chapter on signs is held by a court of lawful jurisdiction to be illegal or unconstitutional, the remaining provisions shall remain in full force and effect. In the event that the entire Chapter is held to be illegal or unconstitutional, all signs are prohibited, except for government signs. In such event, existing signs shall be removed within sixty (60) days.

(Ord. No. 06-05, Enacted 06/07/2005)

(Ord. No. 07-06, Amended 07/18/2006)

(Ord. No. 06-13, Amended 05/07/2013)

(Ord. No. 17-14, Amended 11/18/2014)

(Ord. No. 07-16, Chapter 36 repealed and re-enacted 05/17/2016)

Chapter 5.40 Home Occupations

- 5.40.010 Authorized**
- 5.40.020 License Required**
- 5.40.030 Fees**
- 5.40.040 Conditions**
- 5.40.050 Penalty**

5.40.010 Authorized

Home occupations are allowed in all of the residential zones of the City, either in the residence or an accessory building, upon strict compliance with the requirements and conditions of this chapter.

(Ord. No. 16-10, Amended 08/03/2010)

5.40.020 License Required

Any person desiring to operate a home occupation must obtain a home occupation business license, paying all applicable fees. Each distinct home occupation requires a separate business license. Compliance with all local, state, and/or federal laws pertaining to the particular home occupation is required to maintain the license.

5.40.030 Fees

The base fee for a home occupation business license shall be based upon the administrative cost to the City to issue a home occupation business license. The initial fee shall be forty dollars (\$40.00) and shall be subject to change based on changing costs, as estimated by the City Council in the annual budget. In addition to the business license fee, businesses requiring inspection(s) shall pay an inspection fee based on the cost to the City to conduct the inspection(s). A safety and fire inspection are required for all businesses that have patrons entering the property. The license shall expire December 31st of each year. Licenses should be renewed by January 1st of each year. If not renewed by January 15th, a fifteen dollar (\$15.00) late fee, per month, shall also be paid in order to renew the license.

5.40.040 Conditions

A. The following conditions must be met in order to obtain and keep a home occupation business license:

1. The home occupation must clearly be incidental to or secondary to the residential use of the lot. If housed in an accessory building, the building must meet the stricter of the conditions of this chapter or the conditions and requirements for accessory buildings found in Spanish Fork Municipal Code §15.3.24.090(A).
2. The business must be conducted only by a resident or residents who reside on the site.
3. The business may occupy no more than 300 square feet if located in an accessory building, or the lesser of 300 square feet or 15% of the floor space of the residence if located in the residence. Exceptions include:
 - a. Swim lessons: if the swimming pool meets residential pool standards and is constructed primarily for the personal use of the occupants of the residence.

- b. Home Child Day Care: as permitted by the Utah Department of Health, Bureau of Child Development (rules are available online at www.rules.utah.gov).
4. No more than two nonresident patrons are permitted to be at the dwelling at any one time by reason of the home occupation. Exceptions include:
 - a. Preschools are permitted to have no more than eleven (11) patrons, including the provider's own children four years of age and younger.
 - b. Home Child Day Care in accordance with the requirements of the Utah Department of Health, Bureau of Child Development.
5. The business has no more than ten commercial delivery vehicles per week coming to the dwelling related to the home occupation, or such other number considered excessive in the sole discretion of the City Planner;
6. The business produces no offensive noise, vibrations, smoke, dust or other particulate matter, odors, heat, humidity, glare, electrical interference, or other objectionable effects beyond the boundaries of the property;
7. Vehicles or equipment may not be used for the primary purpose of advertising the business at the site of the home occupation. One name plate or identification sign no larger than 18" by 24" is allowed on site, so long as it is located within five feet of the building.
8. The business may not have exterior displays nor display goods which are visible from the outside, nor otherwise store materials, inventory, or equipment outdoors;
9. The business may not include such uses as automotive repair, commercial welding, body shop, spray painting, industrial uses, commercial stables or kennels, repair of major appliances such as: washers, refrigerators, ranges, etc., or other similar type uses which are not compatible with a residential neighborhood, as determined in the sole discretion of the Community Development Director.
10. No structural alterations to the building may be made to accommodate the business, which are not customary for a residential structure.
11. The business shall comply with all safety codes, including fire, building, plumbing, electrical, or others which may be applicable.
12. Swim lesson home occupations shall obtain approval from the Utah County Health Department for the proposed activity. Documentation from the Health Department is required prior to the issuance of a swim lesson home occupation business license.
13. Home Child Day Care occupations must obtain an appropriate State of Utah certificate or license and adhere to the rules and regulations of the Utah Department of Health, Bureau of Child Development (rules are available online at www.rules.utah.gov).
14. No process can be used which is hazardous to the public health, safety, morals, or welfare.
15. If the applicant rents or leases the property where the home occupation is intended to be conducted, the applicant must provide a letter of consent from the property owner.

16. No visitors or traffic in conjunction with the home occupation shall be permitted between the hours of 9:00 p.m. and 7:00 a.m.
17. Adequate parking must be maintained for the home occupation. The area utilized and/or designated as required residential parking may not be used in connection with a home occupation. Excess parking by patrons in front of neighboring residences, as determined by the Community Development Director, is grounds to revoke the home occupation business license.

B. An applicant may appeal the imposition or denial of any of these conditions to the City Council by filing a written notice of appeal within ten days of the imposition or denial with the Community Development Director.

(Ord. No. 16-10, Enacted 08/03/2010)

(Ord. No. 15-12, Amended 10/18/2012)

(Ord. No. 16-15, Amended 11/03/2015)

5.40.050 Penalty

Any person operating a business in a residential zone without obtaining a business license and complying with the requirements and conditions of this chapter is guilty of a Class C misdemeanor for a first offense. Subsequent offenses shall be a Class B misdemeanor. Each day of operations without a business license shall be considered a separate offense.