



The Regular Meeting of the Brian Head Town Council
Brian Head Town Hall – Council Chambers
56 North Highway 143 – Brian Head, UT 84719
www.Zoom.us (Click Here)

Via Zoom Meeting ID# 829 9581 7536

TUESDAY, AUGUST 22, 2023 @ 1:00 PM

AGENDA

- A. CALL TO ORDER**
- B. PLEDGE ALLEGIANCE**
- C. DISCLOSURES**
- D. APPROVAL OF THE MINUTES:**
 - 1. July 25, 2023 Town Council Meeting
- E. REPORTS / PUBLIC INPUT ON NON-AGENDA ITEMS.** Public input is limited to three (3) minutes on non-agenda items.
- F. AGENDA ITEMS:**
 - 1. **BRIAN HEAD RESORT MASTER DEVELOPMENT PLAN PRELIMINARY DISCUSSION.** Bret Howser, Town Manager. The Council will hold discussion on the draft Master Development Plan for Brian Head Resort.
 - 2. **ASPEN DRIVE WATER SERVICE DISCUSSION.** Bret Howser, Town Manager. The Council will hold a discussion on restricting water service to properties / subdivisions within the Town limits.
 - 3. **SKI HAVEN CHALET, UNIT B, BLOCK C 10' WALKWAY DEDICATION ORDINANCE.** Lester Ross, Building and Planning Official. The Council will consider an ordinance dedicating a walkway in the Ski Haven Chalet Unit C, Block A Subdivision.
 - 4. **COOPERATIVE AGREEMENT WITH UTAH DIVISION OF FORESTRY, FIRE AND STATE LANDS FOR WILDLAND FIRE PROTECTION.** Chief Dan Benson. The Council will consider a cooperative agreement with State Forestry, Fire and State Lands for wildland fire protection.
 - 5. **BUSINESS LICENSE AMENDMENT, CHAPTER 2A-14 TERM OF LICENSE FOR ALL OTHER BUSINESSES AND CHAPTER 2B REVOCATION AND SUSPENSION.** Nancy Leigh, Town Clerk. The Council will consider an ordinance amending the Licensing Code changing the license term for All Other Businesses, except for nightly rental businesses and Chapter 2B Revocation and Suspension.
 - 6. **FUTURE AGENDA ITEMS.** The Council will discuss potential items for future agendas.
- G. ADJOURNMENT**

Date: August 18, 2023

Available to Board Members as per Ordinance No. 11-003 authorizes public bodies, including the Town, to establish written procedures governing the calling and holding of electronic meetings at which one or more members of the public board may participate by means of electronic communications. In compliance with the Americans with Disabilities Act, persons needing auxiliary communications aids and services for this meeting should call Brian Head Town Hall @ (435) 677-2029 at least three days in advance of the meeting.



CERTIFICATE OF POSTING

I hereby certify that I have posted copies of this agenda in three conspicuous locations: the Post Office, The Mall, and the Brian Head Town Hall and have posted copies on the Utah Meeting Notice Website and the Brian Head Town website and have caused a copy of this notice to be delivered to the Daily Spectrum, a newspaper of general circulation.

Nancy Leigh, Town Clerk



STAFF REPORT TO THE TOWN COUNCIL

ITEM: RESORT MASTER DEVELOPMENT PLAN INPUT

AUTHOR: Bret Howser
DEPARTMENT: Administration
DATE: August 22, 2023
TYPE OF ITEM: Discussion

SUMMARY:

The Council will discuss and give preliminary input on the draft Master Development Plan for Brian Head Resort.

BACKGROUND/ANALYSIS:

On August 3rd, Marilyn Butler, General Manager for Brian Head Resort, sent the Town a copy of a Proposed Master Development Plan along with the following message:

We are pleased to inform you about the proposed Brian Head Resort (BHR) Master Development Plan (MDP) planning effort. The purpose of this letter is to begin discussions with you about the proposed projects being developed out of the MDP before the beginning of any National Environmental Policy Act (NEPA) process. We will still conduct formal public involvement, including public comment periods and an open house as required by NEPA, after this less formal engagement.

Brian Head Resorts proposed project description and map are attached to this letter for you to review. Any proposed actions would be conducted in compliance with all applicable federal and state laws, regulations, and guidelines. If you have concerns about any aspect of the MDP planning effort, we want to be sure we are aware of them as we refine the proposed action.

We request to inform the Council of regular updates and progress at Town Council Meetings.

We value your input and thank you for your interest in this project.

The information was passed along to the Town Council and Marilyn was invited to hold an initial discussion with the Council on August 22.

FINANCIAL IMPLICATIONS:

No direct financial implications for the Town. Of course, Resort expansion has many indirect financial implications on both the revenue and expenditure side.

BOARD/COMMISSION/STAFF RECOMMENDATION:

PROPOSED MOTION:

No motion necessary, item is discussion/informational only

ATTACHMENTS:

A – Proposed MDP

BRIAN HEAD RESORT'S PROPOSED PROJECT DESCRIPTION

Brian Head Resort (Brian Head), grounded in its vision to grow into a family-focused, year-round destination resort, has outlined in its 2023 Master Development Plan (MDP) an array of proposed projects on and adjacent to its existing special use permit (SUP) on the Dixie National Forest (DNF). The resort aims to balance the quality of place for residents and visitors' experiences, while stewarding and embracing the natural surroundings, and anticipating future growth and visitation. Brian Head aims to improve access to public lands for a growing, recreation-focused population in southern Utah and the southwest United States. The following summary includes projects on the DNF and adjacent private lands.

With a focus on maintaining the resort's existing family-friendly skiing experience, the proposed action includes a lift network consisting of 28 new lifts, this would include 19 new aerial lifts, one new gondola, four new tow ropes, and four new conveyors, designed to offer access to all potentially skiable terrain in the Brian Head area. The following proposed project acreages align with the 2023 Master Development Plan (MDP) for Brian Head. However, it should be noted that these acreages are subject to further refinement as planning progresses and more detailed designs are developed. The upgraded lift network would not only improve access to Brian Head's existing terrain but also introduce approximately 4,600 acres of expanded resort operations. With proposed lift and terrain projects, Brian Head seeks to provide an improved learning progression for guests of all levels through the development of a European-style circuit that would link all major lifts, base areas, and on-mountain hubs.

Brian Head is also proposing additional snowmaking coverage to provide consistent winter season opening dates as well as supplement seasons with below average snowfall. On par with other resorts in Utah and Colorado, which on average use 350,000 gallons of water per acre for snowmaking, Brian Head uses approximately 363,000 gallons per acre. The proposed expansion would necessitate around 75 million gallons of snowmaking water usage (a water analysis has been initiated to demonstrate sufficient legal and physical water is available to support proposed water needs).

Brian Head is proposing upgrades to existing base area facilities and the construction of two new base areas (Art Village and Upper Alpine Village), a new portal (Highway 143), and four new on-mountain restaurants. To manage the increased guest numbers, parking capacity would be expanded, and transportation strategies would be developed to promote carpooling and efficient public transit use. Art Village would be the resort's largest base area and would provide ample parking and would become the primary learning center, tubing location, and summer activities hub. The Upper Alpine Village would cater primarily to destination guests staying in adjacent development. The Highway 143 Portal is designed for local, experienced skiers, and would require less parking and facilities than the other new base areas. Brian Head plans to add parking spaces within existing and proposed new base areas aiming for a total of 3,258 existing and proposed new spaces to cover guest and employee needs.

In the summer, Brian Head proposes expanded hiking and biking trail networks, with the goal of establishing Brian Head as a national mountain biking destination. The summer trail network

expansion aims to enhance the resort's connectivity with Brian Head Town and surrounding public lands, further aligning with the resort's objective to create a unique bike-in, bike-out community. The proposed Art Village base area is envisioned to be the primary summer activity hub. This hub would feature activities that would appeal to a wide range of guests such as an alpine slide, mountain coaster, ropes course, bike park, and other summer activities.

Brian Head's proposal reflects a commitment to enhancing visitor experiences, expanding capacity in anticipation of visitation growth, and preserving its family-friendly appeal, while acting as a steward of the natural environment.

Lifts



1
NEW
GONDOLA



7
NEW
HIGH SPEED
CHAIRLIFTS



12
NEW
FIXED-GRIP
CHAIRLIFTS



4
NEW
CONVEYORS



4
NEW
TOW ROPES

Guest Services



2
NEW
BASE AREAS



4
NEW
ON-MOUNTAIN
RESTAURANTS

Mountain Operations



Increased
GUEST CAPACITY



Additional
SNOWMAKING



Increased
PARKING



4,600 acres
OF EXPANDED
RESORT
OPERATIONS



Expanded
SUMMER ACTIVITIES WHICH WOULD
TRANSFORM BRIAN HEAD INTO A PREMIER
HIKING AND BIKING HUB WITH EXPANSIVE
TRAIL NETWORKS FOR A UNIQUE BIKE-IN,
BIKE-OUT EXPERIENCE

Purpose and Need

- Expand terrain offerings for more varied and higher quality skiing within and adjacent to the existing Special Use Permit.
- Increase resort capacity and strategically located ski area portals for additional public access to public lands to meet the demands of a growing, recreational-focused region and state.
- Provide an improved learning progression for guests of all ability levels, while preserving and enhancing the existing family-friendly guest experience at Brian Head.
- Create a European-style circuit that optimizes the surrounding landscape for a unique guest experience at the resort and provides connectivity between base areas and on-mountain hubs via new lifts and terrain, resulting in a unique recreation experience in Utah.
- Provide updated amenities and guest services outside of the existing, constricted base areas.

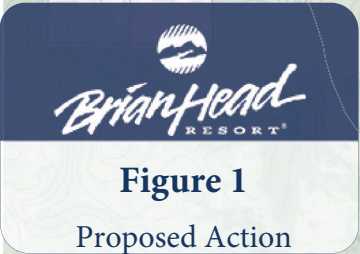
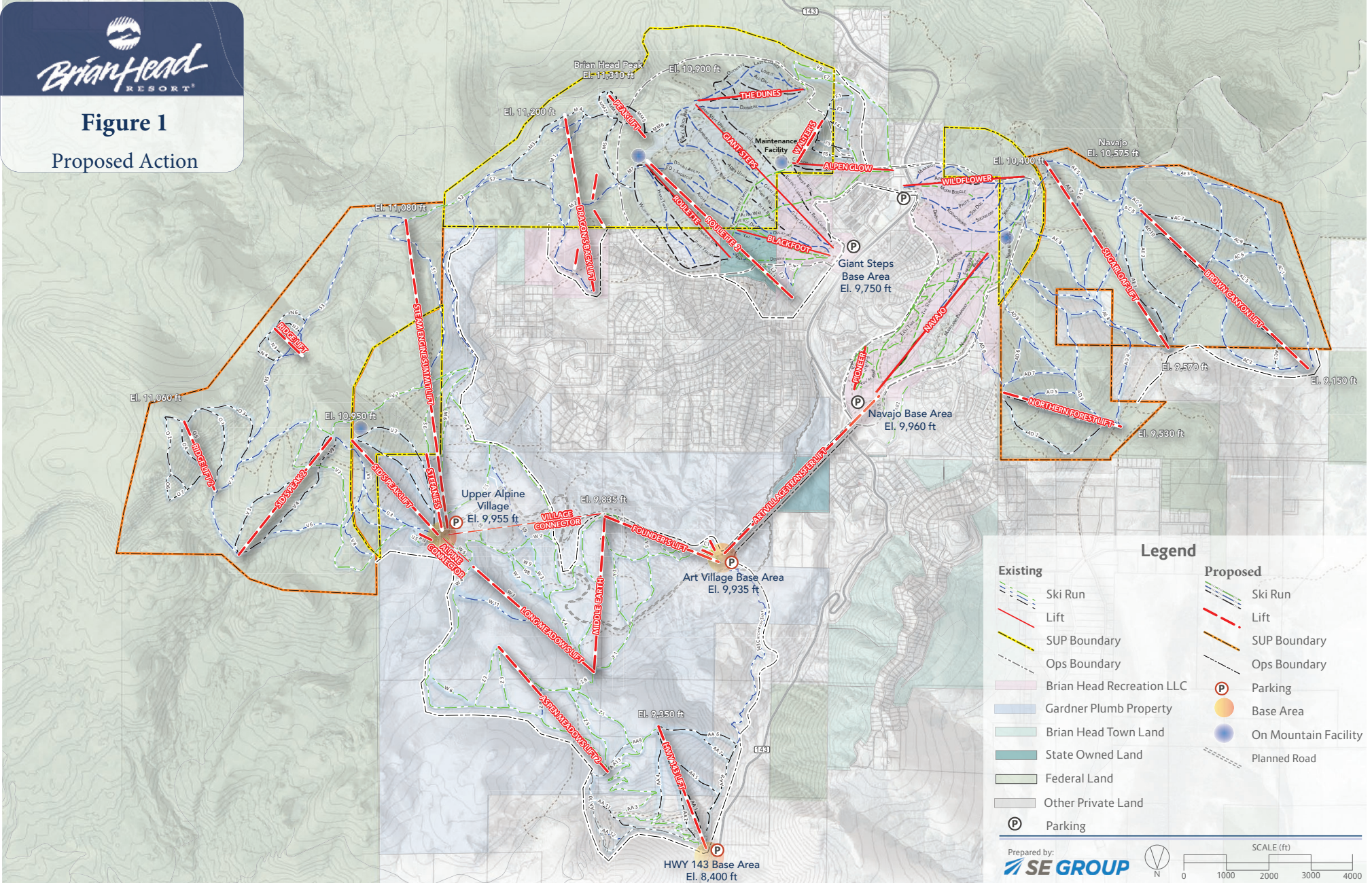


Figure 1
Proposed Action





BRIAN HEAD

STAFF REPORT TO THE TOWN COUNCIL

ITEM: ASPEN DRIVE WATER SERVICE

AUTHOR: Bret Howser
DEPARTMENT: Administration
DATE: August 22, 2023
TYPE OF ITEM: Policy Discussion

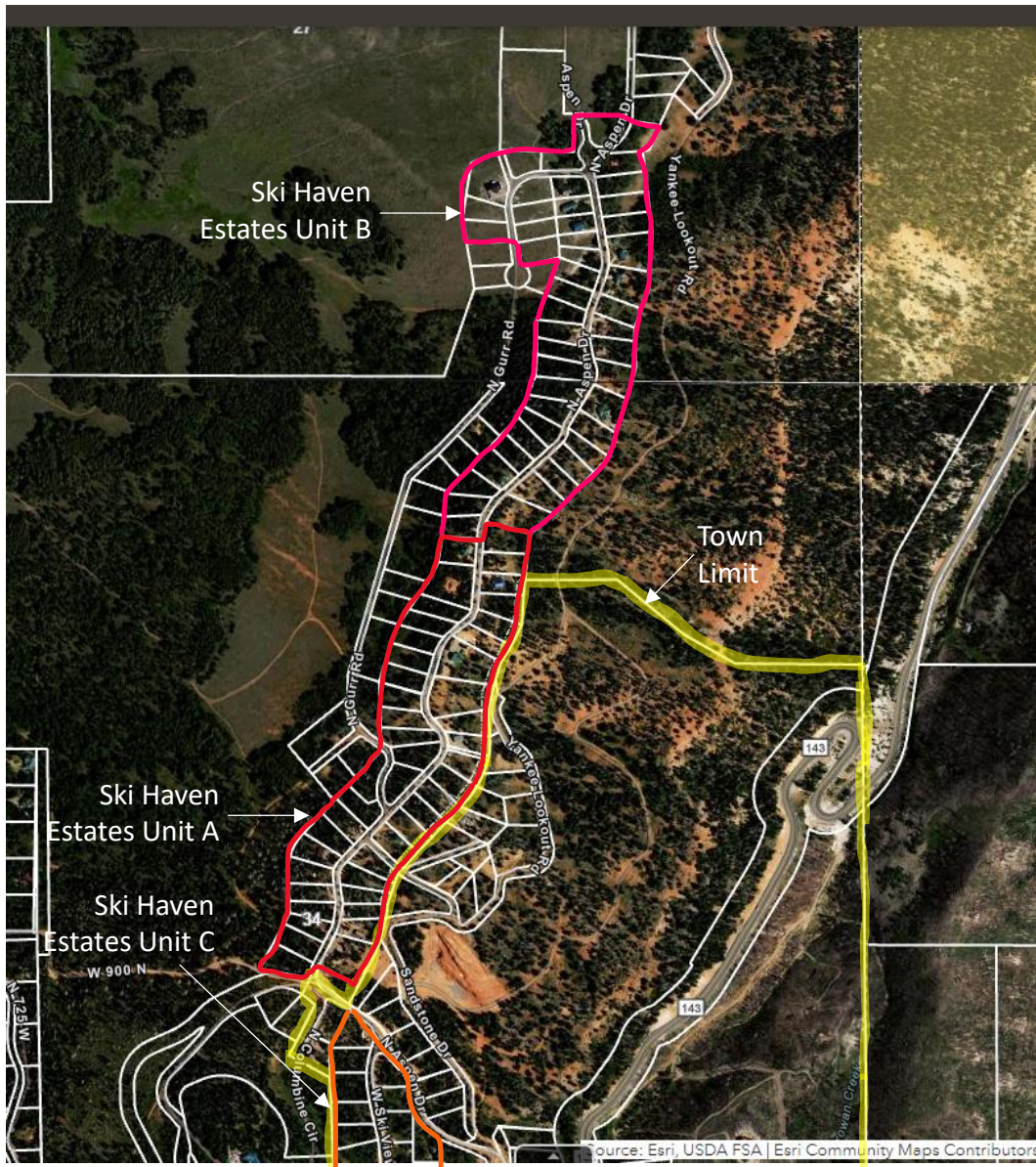
SUMMARY:

The Council will hold a discussion and potentially reconsider the current informal policy of restricting water service to properties/subdivisions within the Town limits.

BACKGROUND:

The Ski Haven Estates subdivisions were subdivided by the Iron County (Unit A in 1969, Unit B date unknown, and Unit C in 1972). A portion of Ski Haven Estates Unit C appears to have been annexed into Brian Head Town some years later, but all of Units A & B (also known as upper Aspen Drive) remain in unincorporated Iron County. There are approximately 20 cabins constructed on the 93 lots in Units A & B. Cabin owners in Units A & B have, at least on two occasions in the past 10 years, attempted to organize an annexation petition into the Town, failing both times. The first effort likely had enough support in Units A & B to move forward, but the Town asked them to obtain signatures from the remaining unincorporated portion of Unit C as well, which met stiff opposition. The unincorporated properties in Ski Haven Estates enjoy many of the Town's services (such as public safety, access roads to their neighborhood, parks, trails, etc.) without paying for these services via property taxes. However, certain services (such as water and sewer) remain unavailable to them.

Recent policy changes by outside entities have resulted in the inability of property owners in Ski Haven Estates to obtain a septic permit or to obtain fire insurance. As such, several property owners are again looking at potential solutions for water service. While they are not currently considering annexation (likely because this has failed in the past), they have discussed with Iron County the potential to create a Special Assessment Area for the installation of a water system. However, they are hopeful that the Town will agree to provide the water and the water service to this system.



ANALYSIS:

The Town has heretofore held to the policy (informal as far as staff can tell) that we only provide service inside of the Town boundary. State statute does allow the Town to provide service outside of the Town boundary, and does allow the Town to charge a (reasonable) differential rate for service outside of the Town boundary. We are also allowed to charge an impact fee for connecting to the system. Once we begin providing water service, however, we are not allowed to cease service merely by policy.

Staff sees the following pros and cons of this request:

- Pros
 - Town would get fire protection in an area sorely needed
 - County would bear the risk of the SAA

- Cons
 - Would remove any motivation for the neighborhood to annex in the future
 - Although this may be mitigated through agreement with the County to implement a municipal services tax (still looking at legality)
 - Might stress water resources in the future
 - Creates precedent for other unincorporated areas (such as Ski Haven Estates Unit C)

FINANCIAL IMPLICATIONS:

Cost of providing services should be offset by the water rates charged for service. The County taking on the SAA removes the financial risk from the Town (if the Town were to ever carry an SAA there, which is likely if they annex). But not annexing the properties would continue to financially impact the Town in that we provide subsidized services to these property owners. Although this last issue might be able to be mitigating via an agreement with the County.

BOARD/COMMISSION RECOMMENDATION:

Ski Haven Estates is listed in the annexation boundary in the Town's General Plan.

STAFF RECOMMENDATION:

This is a pure policy question, that basically boils down to this:

Does the benefit of fire protection outweigh the need to resolve the long-standing freeloading issue?

There is not a technical response to this question that staff can provide. However, if we do alter our policy and consider providing service outside the Town limit, staff recommends working with the County to levy a reasonable municipal services tax that is transferred to the Town for general services already provided to these residents.

PROPOSED MOTION:

I move that we direct staff to negotiate terms of an agreement with Iron County to provide water service to Ski Haven Estates Units A & B consistent with the discussion held here today.

ATTACHMENTS:

N/A



BRIAN HEAD

STAFF REPORT TO THE TOWN COUNCIL

ITEM: ORDINANCE VACATING A TEN FOOT PUBLIC WALKWAY IN SKI HAVEN CHALET UNIT B, BLOCK C SUBDIVISION, LOTS 6 AND 16.

AUTHOR: Lester Ross, Building & Planning Official
DEPARTMENT: Administration
DATE: August 22, 2023
TYPE OF ITEM: Legislative Action

SUMMARY:

The Council will consider an ordinance vacating a 10' foot wide walking path on the northeast side of lots 6 and 16 in Ski Haven Chalets, block C unit B. A new 10' foot walking path was added to the Southwest side of lots 6 and 16 as part of a plat amendment.

BACKGROUND:

On August 15, 2023, the Planning Commission reviewed and approved a plat amendment for lot line vacation for lots 6 and 16 in Ski Haven Chalets Unit B, Block C subdivision. The original plat identified the ten-foot walkway on the northeast side of the property and the applicant requested the walkway be moved to the southwest side of the property along with vacating the lot line of his two lots (6 & 16). As part of the plat amendment the applicant created a new ten-foot (10') wide walkway on the southwest side of their property where the terrain is not as steep, and the walkway also lines up with the other walkway located across the street.

ANALYSIS:

The applicant requested the ten-foot (10') public walkway on the northeast side of the property on lots 6 & 16 be vacated as it is close to where they built their cabin due to the slope of the lot. The existing easement has not been developed or used at this point and if the existing walking path were ever developed, it would create a challenge with the steepness of the terrain and would also be about 150' down the road from the other walkway easement across the road on Snowshoe Drive.

The proposed 10' public walkway easement on the southwest side of the property will allow for the walkway to be developed so that it is not as steep of a grade and would be located away from their cabin. It would also be more in alignment with the existing walkway located across the roadway on Snowshoe Drive making it an easier walkway for the Town to develop sometime in the future.

The vacating of the easement was included in the information packet that was sent to the surrounding property owners as part of the plat amendment. The Town received a 5 letter from the owners of lot 5 that opposed the moving of the walkway since moving the walkway would put it adjacent to their property. Their comment is attached.

STAFF RECOMMENDATION:

After reviewing the plat amendment, speaking with the applicant, and reviewing the site, staff recommends that the 10' walkway easement be vacated. When the walking paths are developed in this area the new layout will allow for the walking path to be in alignment and that will better serve the public.

PROPOSED MOTION:

I move to adopt ordinance No. 23-009 Vacating a 10' wide public walkway easement on the northeast side of lots 6 and 16 in Ski Haven Chalets Block C Unit B as presented.

ATTACHMENTS:

A -Ordinance Vacating 10' Public Walkway for Amended Plat for Ski Have Chalet, Unit B, Block C, lots 6 & 16

B- Letter from Stotts, Lot 5 of Ski Haven Chalet Subdivision.



STAFF REPORT TO THE TOWN COUNCIL

SUBJECT: Participation in the State Wildland Fire Protection System
AUTHOR: Dan Benson
DEPARTMENT: Public Safety
DATE: August 22, 2023
TYPE OF ITEM: Legislative Action

SUMMARY:

I am seeking the Mayors signature to again participate in the State Wildland Fire Protection System. Our current agreement is expiring.

BACKGROUND:

In 2017 our state legislator's worked with local government and created this program. We signed up for this program in February of 2017 and just a few months later the 2017 Brianhead Fire occurred. This agreement saved Brian Head over \$100,000 in suppression costs related to the Brianhead Fire.

The program works similar to an insurance policy. We are required to participate and commit funds in the amount of \$2,854. This funding can be met by using "In-Kind" dollars and need to commit to wildland fire protection. We can meet this funding by having projects funded in "Wildfire Prevention, Wildfire Preparedness, or Wildfire Mitigation". A minimum 50% of our commitment dollars needs to be in the area of Wildfire Mitigation.

The Brian Head Fire Department is already committing well over our required \$2,854 by cutting and thinning projects in town. As well as our \$5,000/ year chipping contract to assist our property owners in mitigating fuels on their private land.

This program, in my opinion a "no brainer" and has the potential to save Brian Head Town from a potential financial disaster should we have a repeat of the 2017 Brianhead Fire.

ANALYSIS:

For the already budgeted amount of over the \$2,854 commitment amount. Brian Head Town will be covered for fire suppression expenses should we need assistance from our Federal or State Wildland Firefighting partners. The only requirement left is to report on how those dollars are being spent and in what ways we are using them as they relate to wildfire efforts.

Addendum B: PARTICIPATION COMMITMENT ACTIONS For Local Governments (Suggested actions, not a conclusive or final list. Other actions will be added as appropriate)	
	
WILDFIRE PREVENTION Activities directed at reducing the number of human-caused fires. <i>(Goal: Fire-Adapted Communities)</i> - Costs of wildfire prevention campaigns - Costs of wildfire mitigation educational materials (defensible space, firewise landscaping etc) - Costs of implementing Ready, Set, GO! program - Law enforcement patrols to enforce fire restrictions and/or burn permit violations - Volunteer hours for meetings and events that promote, plan or implement CWPPs - Costs of wildfire prevention media campaigns/ PSAs - Costs of designing, producing and installing community awareness and/or wildfire prevention boards/displays	WILDFIRE PREPAREDNESS (25% max.) Activities that lead to a safe, efficient and capable wildfire suppression response <i>(Goal: Strong Initial Attack Capability)</i> - Costs of improving wildland fire apparatus, communication or support - Costs of improving or creating additional ingress/egress into Wildland Urban Interface (WUI) areas identified in CWPPs - Costs of improving or increasing firefighter access to secondary water systems through hydrants, tanks or drafting sites - Actual costs for providing wildfire suppression training to fire department and/or emergency management personnel - Volunteer hours spent in training for wildland fire suppression - Costs of wildland-specific Personal Protective Equipment (PPE) - Costs of producing and installing road signs and address markers (including evacuation routes) as part of a CWPP - Costs of certifying bulldozer operators - Costs associated with enforcement of WUI code - Costs associated with installing/maintaining helicopter dip sites - Costs of inspecting resident defensible space work to certify for individual tax incentives - Costs of producing and/or updating city emergency response plans that address CWPPs - Costs of land-use planning that support objectives of CWPPs - Costs supporting the development of Community Wildfire Protection Plans (CWPPs) - Costs associated with gaining "Firewise Community" recognition
WILDFIRE MITIGATION (50% min) Actions taken to reduce or eliminate risks to persons, property or natural resources. <i>(Goal: Resilient Landscapes)</i> - Costs of equipment and labor (including volunteer hours) used to reduce hazardous fuels in accordance with CWPP (i.e. fuel breaks, prescribed fire, timber harvests and certain activities that support grazing) - Costs or volunteer value of equipment and labor toward ongoing maintenance of existing CWPP fuel reduction projects - Volunteer hours toward removing hazardous fuels from community common areas identified in CWPPs - Volunteer hours toward improving ingress/egress in community common areas identified in CWPPs - Costs associated with community fuel reduction events (i.e. chipper days) - Costs of vegetation management equipment	
Activities that DO NOT qualify: - Any activity funded by other state or state-administered federal funds - Any previously-matched prevention/preparedness - Costs of state or federally-provided trainings - Costs of initial attack suppression of wildfires - Costs of improving culinary water systems - Costs to improve individual structures - Costs of existing county employees or programs including weed departments	
Rev: 10/29/2015	

FINANCIAL IMPLICATIONS:

Brian Head has been given a “Medium Risk Assessment” of \$1,508, and a “High Risk Assessment” of \$1,346 for a total participation agreement of \$2,854. This means that we will need to fund projects involving Wildfire Prevention, Wildfire Mitigation and Wildfire Preparedness programs for a total cost of no less than \$2,854. Brian Head Town has already been doing this in part by allowing the Fire Department to conduct fuels mitigation projects throughout the Town.

STAFF RECOMMENDATION:

It is the staff's recommendation that we participate in this wildland fire program, afforded us by the State of Utah. It is my recommendation to authorize the Mayor to sign the agreement and that we start our participation of it as soon as possible.

PROPOSED MOTION:

I move to authorize the Mayor to sign the cooperative agreement with the Utah Division of Forestry, Fire and State Lands, allowing Brian Head Town to participate in the State Wildland Fire Protection System as presented.

ATTACHMENTS:

A – Cooperative Agreement Between the Utah Division of Forestry, Fire and State Lands and Brian Head Town.

**COOPERATIVE AGREEMENT
BETWEEN THE
UTAH DIVISION OF FORESTRY, FIRE AND STATE LANDS
AND**

Brian Head Town

This agreement shall become effective on the date of the last authorized signature and will remain in effect until December 31, 2024. This agreement may only be amended by mutual written agreement of the parties. In the event of disagreement between this agreement and any statute or regulation, the statute or regulation shall control. No waiver of any terms of this agreement will be valid unless in writing in accordance with R652-122-200 (2017).

SECTION I: RECITALS AND GLOSSARY OF TERMS

- A. Pursuant to Utah Code § 65A-8-203 (2021), this Cooperative Agreement is required for a county, municipality, or certain other eligible entity (“Participating Entity”) and the State of Utah, Division of Forestry, Fire and State Lands (“FFSL”)(collectively “parties”) to cooperatively discharge their joint responsibilities for protecting non-federal land from wildland fire.
- B. Glossary of Terms
- a. Annual Participation Commitment Report – a report prepared by the Participating Entity detailing the expenditures and activities conducted in compliance with the Participation Commitment during the past fiscal year.
 - b. Cooperative Agreement – an agreement between FFSL and an Eligible Entity wherein the Eligible Entity agrees to meet a Participation Commitment and provide Initial Attack for wildland fire in the entity’s jurisdiction, and FFSL agrees to pay for wildland fire suppression costs following a Delegation of Fire Management Authority as found in Utah Code § 65A-8-203.1 (2017), as well as all aviation asset costs charged to the incident.
 - c. Eligible Entity – as defined in Utah Code § 65A-8-203 (2021) means:
 - i. a county, a municipality, or a special service district, local district, or service area with wildland fire suppression responsibility as described in Utah Code § 11-7-1(2017); and wildland fire suppression cost responsibility and taxing authority for a specific geographic jurisdiction; or
 - ii. upon approval by the FFSL director, a political subdivision established by a county, municipality, special service district, local district, or service area that is responsible for providing wildland fire suppression services; and paying for the cost of wildland fire suppression services
 - d. Extended Attack – actions taken in response to wildland fire after Initial Attack.
 - e. Initial Attack – actions taken by the first resources to arrive at any wildland fire incident. Initial actions may be size-up, patrolling, monitoring, holding action, or aggressive suppression action. All wildland fires that are controlled by suppression forces undergo initial attack. The kind and number of resources

responding to initial attack varies depending on fire danger, fuel type, values to be protected and other factors. Generally, initial attack involves a small number of resources and the incident size is small. Regardless of fire type, location, or property/resources being threatened, firefighter and public safety is always the highest priority. (NWCG Wildland Fire Incident Management Field Guide, 2013)

- f. Participation Commitment – prevention, preparedness, and mitigation actions and expenditures undertaken by a Participating Entity to reduce the risk of wildland fire and meet the intent of Utah Code § 65A-8-202 (2017) and Utah Code § 65A-8-202.5(2017).
- g. Annual Participation Commitment Statement – a statement prepared by FFSL and sent to the Participating Entity detailing the Participation Commitment for the upcoming fiscal year.
- h. Participating Entity – an Eligible Entity with a valid Cooperative Agreement.
- i. Fiscal Year - a consecutive 12-month period for financial reporting, as determined by the Participating Entity's budget cycle.

SECTION II: CERTIFICATION OF QUALIFICATIONS

FFSL and the Participating Entity certify that the following qualifications have been met:

- A. The Participating Entity is a qualifying eligible entity.
- B. The Participating Entity agrees to adopt a Community Wildfire Preparedness Plan (CWPP) (or equivalent approved by FFSL).
 - a. If the Participating Entity has a CWPP at the time of executing this agreement, the Participating Entity agrees to maintain and implement the CWPP for the duration of this agreement.
 - b. If the Participating Entity does not have a CWPP at the time of executing this agreement, the Participating Entity agrees to make a good faith effort to develop and adopt a CWPP prior to the expiration of this agreement.
- C. The Participating Entity's fire department or fire service provider as defined in Utah Code § 65A-8-203 (2021) meets minimum standards for wildland fire training, certification, and equipment based on nationally accepted standards as specified by FFSL in R652-122-1400 (2017).
- D. FFSL agrees to provide an Annual Participation Commitment Statement and the Participating Entity agrees to review, approve, and return the signed Annual Participation Commitment Statement to FFSL before the start of the Participating Entity's fiscal year.
- E. The Participating Entity agrees to implement prevention, preparedness, and mitigation actions, which are identified in their CWPP and lead to reduction of wildfire risk, according to their Annual Participation Commitment Statement.

- F. The Participating Entity is not ineligible for a Cooperative Agreement pursuant to R652-122-200 (2017), R652-121-400 (2017), or R652-121-600 (2017)
- G. If the Participating Entity is a county or has jurisdiction over unincorporated private land, the county in question has adopted a wildland fire ordinance based on minimum standards established by FFSL in R652-122-1300 (2017).
- H. If the Participating Entity is a county or has jurisdiction over unincorporated private land, the county in question has a designated fire warden as described in Utah Code § 65A-8-209.1 (2022) and has entered into a County Warden Agreement (Addendum A).

SECTION III: PARTICIPATION COMMITMENT

FFSL and the Participating Entity agree to the following provisions:

A. Participation Commitment

- a. The Participating Entity agrees to fulfill a Participation Commitment as contained in R652-122-800 (2017) and R652-122-200(6)(c) (2017).
- b. The Participation Commitment includes prevention, preparedness, and mitigation actions identified in an FFSL-approved CWPP or equivalent wildland fire preparedness plan.

B. Participation Commitment Expenditures and Activities

- a. The Participation Commitment may be met through either direct expenditures or in-kind activities.
 - i. Direct expenditures include funds spent by the Participating Entity to implement wildland fire prevention, preparedness or mitigation actions identified in Addendum B or with the approval of the Participating Entity's respective FFSL Area Manager.
 - ii. In-kind activities include wildland fire prevention, preparedness or mitigation efforts identified in Addendum B or with the approval of the Participating Entity's respective FFSL Area Manager.
 - 1. In-kind expenditures are valued at the rate calculated by the "Independent Sector" (<https://www.independentsector.org/>), the same source used for FFSL's Fire Department Assistance Grant program.
 - iii. Participation Commitment cannot be met through direct payment to the State.
- b. FFSL staff (e.g., County Warden, WUI Coordinator, FMO, or Area Manager) may assist the Participating Entity with identifying valid Participation Commitment actions and activities based on the Participating Entity's FFSL-approved CWPP or equivalent wildfire preparedness plan.

C. Participation Commitment Accounting and Reporting

- a. The Participating Entity is responsible for accounting for its respective Participation Commitment activities and expenditures.
 - i. The value of Participation Commitment expenditures and activities may, in certain instances, “carry-over” to the next fiscal year with the approval of the respective FFSL Area Manager.
 - 1. The value of capital improvement projects--typically, large “preparedness-type” projects--can carry-over for five years, with no single project’s value accounting for more than 25% of the Participating Entity’s total Participation Commitment for any of those years. This is the same 25% annual maximum that applies to all preparedness activities as noted on Addendum B.
 - 2. All other non-capital improvement actions (e.g., a large fuels reduction project) can carry over for three years. No maximum value applies to mitigation actions as described in Addendum
 - 3. It is the responsibility of the Participating Entity to receive approval from their respective FFSL Area Manager in advance of pursuing a carry-over
 - 4. It is the responsibility of the Participating Entity to account for, track and report in their annual Participation Commitment Report the carry-over from year to year.
- b. The Participating Entity agrees to provide an Annual Participation Commitment Report detailing the Participation Commitment activities and expenditures to their local FFSL Area Office at the conclusion of the Participating Entity’s fiscal year (via the County Fire Warden) for annual review and approval by FFSL.
 - i. FFSL shall have the right to review and verify records related to the Participation Commitment. FFSL shall also have the right to deny unverifiable or incorrect records.

D. Annual Participation Commitment Statement

- a. In advance of a Participating Entity’s fiscal year, FFSL will send the Participating Entity an Annual Participation Commitment Statement.
- b. In order to continue participation for the Participating Entity’s upcoming fiscal year, the Participating Entity’s executive officer must approve, sign, and return the Annual Participation Commitment Statement to FFSL by the due date contained in the Statement. Failure to do so will terminate this agreement at the conclusion of the Participating Entity’s current fiscal year.
- c. The Annual Participation Commitment Statement is based on the Participating Entity’s fiscal year, and the corresponding Participation Commitment must be met throughout the Participating Entity’s next fiscal year.

E. Participation Commitment Calculation

- a. The Participation Commitment is based on two elements, a wildfire risk assessment by acres (“Risk Assessment”) conducted by FFSL, and the historic fire cost average (“Fire Cost Average”) in each Participating Entity’s jurisdiction.
 - i. The Risk Assessment is determined by FFSL’s “Utah Wildfire Risk

Assessment Portal” (UWRAP), which will be updated as data sources, technology, and funding allow.

- ii. The Fire Cost Average is based on historic suppression costs accrued by a Participating Entity. Only wildland fire suppression costs accrued and paid by the State on behalf of a Participating Entity are counted toward that entity’s historic fire cost average. This includes State-paid costs after a Delegation of Fire Management Authority and Transfer of Fiscal Responsibility has occurred.
 1. The Fire Cost Average is calculated on a rolling ten-year average, dropping the highest and lowest cost years and adjusting for inflation (using the Consumer Price Index); therefore, each ten-year average will have eight data points.
 2. The Fire Cost Average will only include State-paid suppression costs for areas for which the Participating Entity has fire suppression responsibility and taxing authority.
- b. FFSL will calculate the Participation Commitment for the Participating Entity according to the formula found in R652-122-300 (2017), R652-122-400 (2017) and R652-122-500 (2017).

F. Participation Commitment Appeals

- a. Decisions related to the Participation Commitment may be informally appealed to the State Forester.

**SECTION IV: INITIAL ATTACK, DELEGATION OF FIRE MANAGEMENT
AUTHORITY, TRANSFER OF FISCAL RESPONSIBILITY,
and EXTENDED ATTACK**

A. Initial Attack

- a. The Participating Entity agrees to primary responsibility for Initial Attack (“IA”). IA is defined as actions taken by the first resources to arrive at any wildland fire incident. Initial actions may be size-up, patrolling, monitoring, holding action, or aggressive suppression action. All wildland fires that are controlled by suppression forces undergo initial attack. The kind and number of resources responding to initial attack varies depending on fire danger, fuel type, values to be protected and other factors. Generally, initial attack involves a small number of resources and the incident size is small. Regardless of fire type, location, or property/resources being threatened, firefighter and public safety is always the highest priority (NWCG Wildland Fire Incident Management Field Guide, 2013).
- b. Effective wildland fire IA will be determined by FFSL based on the definition above and pursuant to Utah Code § 65A-8-202 (2017), defined as what is reasonable for the entity.
- c. The Participating Entity agrees to financial responsibility for all IA costs except aviation assets, which are the responsibility of the State.
- d. FFSL agrees to financial responsibility for all costs of aviation assets, including both IA and extended incidents.

- i. Aviation assets on initial run cards as established by the State will not:
 - 1. be counted towards a Participating Entity's historic fire cost average for purposes of annually calculating the Participating Entity's Participation Commitment; and,
 - 2. cause the Delegation of Fire Management Authority or Transfer of Fiscal Responsibility.
- B. Delegation of Fire Management Authority and Transfer of Fiscal Responsibility
 - a. Delegation of Fire Management Authority and Transfer of Fiscal Responsibility ("Delegation") occur simultaneously with one of the following events:
 - i. State or federally owned lands are involved in the incident; or,
 - ii. firefighting resources are ordered through an Interagency Fire Center (beyond "pre-planned dispatch"); or,
 - iii. at the request of the Participating Entity having jurisdiction by the local fire official on scene; or,
 - iv. by decision of the State Forester after consultation with local authorities.
 - b. Delegation to FFSL means FFSL or its designee becomes the primary incident commander, in a unified command environment with the agency having jurisdiction.
- C. Extended Attack
 - a. Upon Delegation a timestamp will be recorded via radio with the Interagency Fire Center servicing the incident.
 - b. Delegation documentation will be signed by all parties on the incident organizer and resource needs will be reevaluated in the transition from initial to extended attack.
 - c. This timestamp will also be reflected on the Crew Time Reports (CTR)/Shift Ticket of all resources that are not covered by a no-cost local agreement, such as an automatic aid system or other inter-local agreement.
 - d. At the time of the Delegation, a new CTR/Shift Ticket will be started for all resources to be used in the extended attack effort.
 - e. FFSL agrees to be financially responsible for the wildland fire suppression costs beyond IA if a Delegation occurs and the Participating Entity meets the terms of Code, Rule, and this Agreement.

SECTION V: WILDLAND FIRE RESPONSE TRAINING, CERTIFICATION AND EQUIPMENT STANDARDS

- A. Wildland Fire Response Training and Certification
 - a. FFSL prefers certification by the Utah Fire Certification Council as Wildland Firefighter I, as certified by the Utah Fire and Rescue Academy (UFRA).
 - b. At a minimum, the Participating Entity will ensure that firefighters providing Initial Attack to wildland fire within the Participating Entity's jurisdiction will be trained in NWCG S130 Firefighter Training and S190 Introduction to Wildland Fire Behavior. FFSL also recommends S215 Wildland Urban Interface Firefighting Operations.

- i. This includes firefighters who are directly involved in the suppression of a wildland fire; firefighters on scene who have supervisory responsibility or decision-making authority over those involved in the suppression of a wildland fire; or individuals who have fire suppression responsibilities within close proximity of the fire perimeter.
 - ii. This does not include a person used as a courier, driver of a vehicle not used for fire suppression, or a person used in a non-tactical support or other peripheral function not in close proximity to a wildland fire.
 - iii. Upon the Delegation of Fire Management Authority, Firefighters not certified by the Utah Fire Certification Council as Wildland Firefighter I will be released from Initial Attack or reassigned to other firefighting duties.
 - iv. FFSL reserves the right to reevaluate these requirements.
- c. The Participating Entity will ensure that firefighters providing Initial Attack to wildland fire within the Participating Entity's jurisdiction will complete RT130 Annual Fireline Safety Refresher Training prior to each statutory "closed fire season" as found in Utah Code § 65A-8-211(2017).
- d. In order to be eligible for state reimbursement for wildland fire suppression response outside of its jurisdiction,
 - i. a Participating Entity's firefighters and fire departments must follow the qualifications outlined in the FFSL Memorandum of Understanding; or
 - ii. the County or participating entity fire departments for qualified resources used under this agreement on federal, state or out-of-county (or out-of-entity) fires pursuant to the terms and conditions outlined in the fire department MOU and rate agreement

B. Wildland Fire Response Equipment Standards

- a. The Participating Entity will ensure that engines, water tenders, hand tools, and water handling equipment used for response to wildland fire on non-federal land within the Participating Entity's jurisdiction will meet the standard for the type of equipment as determined by the National Wildfire Coordinating Group and/or as indicated in FFSL's annual Fire Department Manual.

SECTION VI: WILDLAND FIRE COST RECOVERY LEGAL ACTIONS

- A. Pursuant to Utah Code § 65A-3-4 (2020), the Participating Entity agrees to initiate a civil action to recover suppression costs incurred by the Participating Entity and the State of Utah on non-federal land within the Participating Entity's jurisdiction for wildland fire caused negligently, recklessly, or intentionally.
- B. Counsel for FFSL will provide assistance with these actions.
- C. Any costs recovered may reduce the Participating Entity's Historic Fire Cost Average and Participation Commitment.

SECTION VII: BREACH AND TERMINATION

- A. If, at the end of a fiscal year, FFSL determines that the Participating Entity has not complied with the terms of this agreement, including but not limited to, failing to comply with the Participation Commitment or failing to comply with the terms stated in Utah Code § 65A-8-203(4) (2021), the entity will be placed on Probation Status by FFSL and given notice of this decision, the reasons for this decision, and actions required to remove Probation Status.
- B. A decision to place the Participating Entity on Probation Status may be appealed to the State Forester. The State Forester may conduct an investigation, hold an informal hearing, and/or request further information from the Participating Entity and/or FFSL.
- C. During Probation Status, the Participating Entity may continue to receive assistance as provided in this Cooperative Agreement, but the Participating Entity must come into compliance with the Cooperative Agreement by the end of the fiscal year.
- D. If the Participating Entity comes into compliance with the Cooperative Agreement by the end of the first Probation Status fiscal year, the Probation Status shall be lifted.
 - a. If the reason for the Probation Status is that the Participating Entity has failed to fulfill its Participation Commitment during the previous fiscal year, the Participating Entity must fulfill the Participation Commitment for the previous year, as well as the Participation Commitment for the current fiscal year by the end of the fiscal year in order to have its probation status lifted.
 - i. If during the first Probation Status year, the Participating Entity fulfills its Participation Commitment for the previous fiscal year, but not for the first Probation Status year, the Probation Status may be extended for a second fiscal year.
 - ii. If during the second Probation Status year, the Participating Entity fails to fulfill the Participation Commitment for both the first and second Probation Status years, the Cooperative Agreement shall be revoked as specified in subsection VII(E) herein below
 - b. Participation Commitment expenditures and actions shall be credited towards the outstanding obligation before being credited to the current obligation.
- E. If the Participating Entity does not come into compliance with the terms of this Cooperative Agreement by the end of the first Probation Status fiscal year (or second Probation Status fiscal year if the non-compliance is failure to meet the Participation Commitment), this Cooperative Agreement shall be revoked pursuant to Utah Code § 65A-8-203 (2021) and the entity shall not be eligible for assistance from the Wildland Fire Suppression Fund and shall be responsible for wildland fire suppression costs within its jurisdiction pursuant to Utah Code § 65A-8-203.2 (2017)
- F. If the Participating Entity is on probation or otherwise non-compliant with the terms of this or a prior agreement with FFSL, and enters into a new cooperative agreement with FFSL, the

prior obligations and status remain in effect until rectified according to the terms of this agreement.

- G. Either party may terminate this agreement by providing the other party with written notice 30 days prior to the termination date.
- H. If either party terminates this agreement, the Participating Entity shall only be allowed to enter into a new cooperative agreement pursuant to R652-121-600 (2017).

UTAH DIVISION OF FORESTRY, FIRE, AND STATE LANDS:

Authorized Signature

Date

Title

PARTICIPATING ENTITY:

Authorized Signature

Date

Brian Head Town Mayor

Title

APPROVED AS TO FORM: Tony Clinger, Assistant Attorney General, March 29, 2023



BRIAN HEAD

STAFF REPORT TO THE TOWN COUNCIL

ITEM: BUSINESS LICENSE CODE AMENDMENT CHANGING THE RENEWAL TERMS FOR ALL OTHER BUSINESSES & CLEANING UP SUSPENSION & REVOCATION CHAPTER.

AUTHOR: Nancy Leigh, Town Clerk
DEPARTMENT: Administration
DATE: August 22, 2023
TYPE OF ITEM: Legislative Action

SUMMARY:

The Council will consider an ordinance amending Title 3, Chapter 2A, Licensing in General changing the renewal period for All Other Businesses (except Nightly Rentals) and Chapter 2B Suspension & Revocation clarifying the Suspension/Revocation process of the Business License Code along with a couple of minor changes.

BACKGROUND:

The business license ordinance was adopted originally in 1984 and amended in 2008 when short term rentals started making an impact on Brian Head with the Vrbo and Airbnb's. Since 2008, there have been some changes in the License Code such as the mobile vendors.

The 2008 code was pulled primarily from the Park City Business License Code since we were in discussions with their licensing officials, and we felt they had the most experience with short-term rentals and they were ahead of the short-term rental market. Since that time, Brian Head has made some of its own changes to the nightly rental section of the licensing code that put accountability onto the nightly rental property owner for the actions of their guests along with ensuring adequate parking was provided. This amendment made it to where a nightly rental property owner could have their license suspended and/or revoked if they received three or more written violations. As of the current date, the most a nightly rental owner has received is two written violations, in which they have addressed.

Chapter 2B is Suspension and Revocation and there are a couple of clarification and housecleaning items that needed to take place.

ANALYSIS:

Term of License:

Under Chapter 2A; staff is looking to change the licensing renewal period for All Other Businesses to run from January 1st through December 31st. This change excludes the nightly rental businesses which would remain with the current renewal period of October 1st through September 30th.

The reasoning behind this is due to the amount of time it takes to review and issue a renewal for a nightly rental license is longer than any other business license and we typically see new nightly rental applications start to come in around October trying to get licensed before the winter season begins. The amount of time to walk the owners through the process and complete the fire inspections takes time away from the other businesses that are waiting to renew their license.

With the change in the licensing year, the other businesses would be granted an additional three months of licensing and would be issued a license that would expire December 31, 2023. The

process would allow them to begin the renewal process in mid-November with issuing the licenses by the end of December, giving a three month difference between the nightly rental renewal period which begins in mid-August and giving staff time to process the nightly rental licensing renewals.

Penalties:

Penalties have been modified to eliminate specific dates and also reduce the amount of time in which a business has to submit a renewal application, this falls in line with the change of renewal dates.

Another change is if an application is 30 days delinquent, a 50% of the license fee penalty is charged; if they are 60 days delinquent, then it is 100% of the license fee penalty. After 75 days, the license is closed down and the owner is notified. The reason behind this change is that we are seeing people are selling their cabins/condos or are no longer conducting business but are neglecting to contact the Town, leaving their account open and new short term owners purchasing but not licensing because they believe they can continue to operate because the last owner was licensed.

There is a separate section that addresses penalties: 3-2B-4: Staff is looking to remove the Class B misdemeanor classification and incorporate the Administrative Fines. It is difficult to charge a business with a Class B misdemeanor which can carry a jail sentence up to six months and a \$1,000 fine, but in the end it is up to the Judge, hearing the case, as to what the penalty will be. Brian Head would only receive a portion of the fines due to the interlocal agreement with the Justice Court.

With administrative fines imposed, the initial fine is \$100 and then it proceeds to \$50 per day up to 14 days and then increases to \$100 per day afterwards. We believe this is a more effective approach to solving the issue. There is still a triple fee penalty imposed for conducting business without a license and there have been several businesses forced to pay this fee.

Chapter 2B Suspension & Revocation:

This is more for clarification and cleanup purposes. Staff reviewed several resort communities and cities' licensing codes relating to suspension and revocation: Spingdale, Garden City, Moab, Park City, Provo, Salt Lake City, and Syracuse. Our existing code was pulled from Park City in 2008 and in reviewing Park City's Code, their section on this hasn't changed. They have a Licensed Hearing Examiner identified instead of a Hearing Officer.

Currently, our code identifies the Town Manager is the person who initiates the investigation, but he is also the Hearing Officer, leaving a conflict.

- In almost all of the other cities code, the Licensing Official typically makes the initial decision on whether a license is in violation of the licensing code and would be the first step in the suspension/revocation process.

The Town Manager/Hearing Officer has the ability to hear the case or pass it along to the Town Council, with the exception of a nightly rental that has three written warnings, the Town Manager hears the case. The Town Manager/Hearing Officer also submits the Facts of Findings to the Council, who can accept or reject the findings or enter their own findings of fact.

- The majority of other cities have the Council as the Administrative or Hearing Board, but there are a couple of cities that have a Hearing Officer or Hearing Examiner that can also hear a case.

The Order to Show Cause: This was more of an extreme legal document for this procedure and in reviewing other cities, staff felt that for clarification purposes, it would better serve to change to a “Notice of Hearing” which would give the licensee the information for the Administrative Hearing date, a response period, and the Town’s revocation/suspension process since the licensee already had the opportunity to settle the issue prior to this step.

FINANCIAL IMPLICATIONS:

N/A

BOARD/COMMISSION RECOMMENDATION:

STAFF RECOMMENDATION:

Staff recommends the adoption of the ordinance amendment for the licensing code.

PROPOSED MOTION:

I move to adopt resolution No. 23-010, amending the Town Code, Title 3, chapter 2A and Chapter 2B as presented (or with modifications, please be specific on modifications).

ATTACHMENTS:

A –Ordinance Amending the Business License Code Chapter 2A & 2B



ORDINANCE NO. 23-__

AN ORDINANCE AMENDING BRIAN HEAD TOWN CODE, TITLE 3, BUSINESS LICENSE REGULATIONS, CHAPTER 2A-5 FEE PROVISIOS; 2A-14 TERM OF LICENSE; 2A-21-1 CLASSIFICATION STANDARDS FOR SPECIFIC BUSINSSES (CONTRACTORS); AND CHAPTER 2B SUSPENSION AND REVOCATION; REGULATING BUSINESSES WITHIN THE TOWN OF BRIAN HEAD AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Brian Head Town has identified a need to amend the Brian Head Business License in order to regulate businesses within the Town limits of Brian Head, Utah; and,

WHEREAS, the Council determined that a need for to review the renewal terms for All Other Businesses and clarify the suspension and revocation process within the licensing code; and

WHEREAS, it is in the best interests of Brian Head Town and the health, safety, and general welfare of its citizens to adopt this Ordinance:

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF BRIAN HEAD, UTAH, COUNTY OF IRON, STATE OF UTAH, AS FOLLOWS:

Section 1. The Brian Head Business License Code, Chapter 2A-5 Fee Provisions; 2A-14 Term of License; 2A-21-1 Classification Standards for Specific Businesses (Contractors, and Chapter 2B Suspension and Revocation of the Brian Head Town Code, Attachment “A”, to regulate businesses within the Town of Brian Head, Utah. All businesses within the Town of Brian Head shall comply with the Brian Head Business License Code; and

Section 2. **Effective Date.** This Ordinance shall take effect upon its passage by a majority vote of the Brian Head Town Council. Upon this Ordinance being adopted by the Brian Head Town Council, all provisions of this Ordinance shall be incorporated into Title 3 of the Brian Head Town Code.

Section 3. **Conflict.** To the extent of any conflict between other Town, County, State, or Federal laws, ordinances or regulations and this Ordinance, the State Code shall supersede.

Section 4. **Severability Clause.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portions shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

1 **Section 5. Repealer.** All provisions of the Brian Head Town Code that are inconsistent
2 with the expressed terms of this Ordinance and all prior Business License Codes previously
3 adopted shall be repealed.
4
5

6 **PASSED AND ADOPTED BY THE BRIAN HEAD TOWN COUNCIL** this ____ day of
7 **August 2023 with the following vote.**
8
9

10	Mayor Clayton Calloway	Aye____	Nay____
11	Council Member Martin Tidwell	Aye____	Nay____
12	Council Member Kelly Marshall	Aye____	Nay____
13	Council Member Larry Freeberg	Aye____	Nay____
14	Council Member Shaun Kelly	Aye____	Nay____

15
16

17 ***BRIAN HEAD TOWN COUNCIL***
18
19

20
21 By: _____
22 Clayton Calloway, Mayor

23 **ATTEST:**
24
25
26 _____

27 Nancy Leigh, Town Clerk

(SEAL)

28
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37 **CERTIFICATE OF PASSAGE AND POSTING**

38
39 I hereby certify that the above Ordinance is a true and accurate copy, including all attachments, of the Ordinance passed
40 by the Town Council on the ____ August 2023, and have posted a complete copy of the ordinance in a conspicuous place
41 within the Town of Brian Head, to-wit: Town Hall and have posted a copy on the Public Meeting Notice Website and on
42 the Town website: brianheadtown.utah.gov as required by UCA 63-30-102
43

44 _____
45 Nancy Leigh, Town Clerk
46

Attachment A

CHAPTER 2 BUSINESS LICENSING

ARTICLE A- LICENSING IN GENERAL

3-2A-5: FEE PROVISIONS:

- A. Fee For License To Accompany Application: Each license application shall be accompanied by the business license fee required to be paid for the issuance of the license desired. The applicable license fees are listed in the Consolidated Fee Schedule.
- B. Regulatory Fees Imposed: There is hereby imposed and levied an annual business license or permit fee based on the type of businesses described below. Fees are identified in the consolidated fee schedule on file with the Town Licensing Officer.
- ~~C. Fees Declared Debt; Collection: Any license fee due and unpaid under this title, and all penalties thereon, shall constitute a debt to the Town and may be collected by court proceedings in the same manner as any other debt, or may be turned over to a collection agency, which remedy shall be in addition to all other existing remedies.~~
- C. Delinquency: In the event a fee, or any portion thereof, is not paid when due, a penalty shall be added. This provision shall not imply the right of a licensee to continue a licensed activity without the payment of required fees. In addition to any criminal action brought to enforce the provisions of this Title, the Town may bring a civil action to collect the amount of any delinquent and unpaid fee or refer the matter to collections. In the event legal action is filed to collect delinquent and unpaid fees, the debtor shall pay a reasonable attorney's fee and costs. If a civil action is to be brought, or the matter is to be referred to collections, the Town will notify the licensee no less than ten (10) days prior to filing of the action or referral to collections. Any person, group, or entity having a delinquent license will be prohibited from obtaining any new or additional licenses without first resolving debt owed to the Town under this Title.
- D. Fee Payments; Renewal And Penalty:
1. The annual business license fee provided in this section shall be due and payable to the Town on or before the renewal date ~~October 1~~ of each year for ~~the~~ renewal of ~~licenses for~~ the business(es) which were licensed for the previous license year. Business licenses for previously unlicensed businesses shall be issued for the unexpired portion of the license year in which it is issued, upon payment of the annual license fee.
 2. If the renewal license fee is not paid ~~within 30 days of the renewal date by October 31~~ of the year in which the renewal license is due, in addition to the regular renewal fee required, there shall be a business license enforcement fee imposed of ~~twenty-five~~

fifty percent (25~~50~~%) of the license fee imposed by this article, ~~or fifteen dollars (\$15.00), whichever is greater.~~

3.

a. If the renewal license fee is not paid in full ~~within sixty (60) days on or before November 30~~ of the year in which the renewal fee is due, the business license enforcement fee shall be increased to ~~fifty one hundred percent (50 100%)~~ of the license fee imposed by this chapter.

b. ~~If the renewal license fee is not paid in full within seventy-five days on or before December 15 of the year in which the renewal fee is due, the business license enforcement fee shall be increased to one hundred percent (100%) of the license fee imposed by this article.~~

c. ~~If the renewal license is not paid in full after seventy-five days of the year in which the renewal fee is due, the business license will automatically be closed, and the business will be considered no longer in business. A notice will be submitted to the owner of the business notifying them of the action taken by the Town.~~

4. Upon a proper showing that the business is of such a seasonal nature that business has not been conducted to date, the Licensing Officer or designee may waive the business license enforcement fee of said renewal.

5. Any ~~previously~~ licensed business cited for engaging in business in violation of this title shall have ten (10) days from the date of citation to come into compliance with this title. Failure of the licensee to reach compliance within ten (10) days of the date of citation will subject the business to closure and the licensee to all applicable civil ~~and criminal~~ penalties.

E. Renewal Billing Procedure: ~~One month prior to the renewal period On or before August 1~~ of each year, the Licensing Officer shall send a license renewal application to each current licensee within the Town at the last known address of the licensee as registered with the Town. (Ord. 08-017, 8-26-2008)

3-2A-14: TERM OF LICENSE:

Nightly Rental Businesses: For Nightly Rental Businesses, ~~T~~the business license period will be from October 1 through September 30 of the following year. Renewed license certificate shall be valid through the next following September 30, unless revoked pursuant to this title. New license certificates issued between August 1 and September 30 shall be valid through September 30 of the following year, unless revoked. (Ord. 08-017, 8-26-2008).

All Other Businesses: For all other businesses, the business license period will be from January 1 through December 31 of the same year. Renewed license certificate shall be valid through December 31 unless revoked pursuant to this title. New license certificates issued between November 1 and December 31 shall be valid through December 31 of the following

1 year unless revoked.

3-2A-21: CLASSIFICATION STANDARDS OF SPECIFIC BUSINESSES:

3-2A-21-1: CONTRACTORS AND BUILDERS:

- A. Fee Assessed: All general contractors and subcontractors, including, but not limited to, builders, electricians, plumbers, and backflow device technicians, with their principal place of business within the Town, shall be assessed a license fee each year as set forth in the Consolidated Fee Schedule, which shall be paid and a business license issued prior to engaging in any construction within the town, unless exempted from licensure under state law.
- B. State Licensing Requirements: No contractor shall be issued a business license under this section unless and until they have provided a copy of a valid state contractor's license which validates that the contractor is currently licensed with the state department of commerce, including the state license number and date of expiration. If said state license expires prior to ~~September 30 of the year the~~ **renewal date**, each contractor must provide proof of renewal within ten (10) days of renewal or shall forfeit the town business license for the balance of the year. (Ord. 08-017, 8-26-2008)

Chapter 2 – BUSINESS LICENSING

Article B – SUSPENSION & REVOCATION OF TOWN ISSUED LICENSES

3-2B-1: GROUNDS FOR REVOCATION OR SUSPENSION:

Licenses issued under this title may be suspended or revoked by the Licensing Officer, Hearing Officer, or Town Council for **any of** the following reasons:

- A. Licensee has filed false or fraudulent information on the license application.
- B. Licensee has been convicted of or pled guilty to, or paid fines or settlements in criminal or civil actions brought by the State Tax Commission for the collection of, or arising from the nonpayment of, taxes imposed by or collection by the state;
- C. Licensee has permitted its employees, agents, or patrons to engage in illegal activities on the licensed premises;
- D. The business has been the subject of a number of consumer complaints that it has the effect of tarnishing the reputation of other businesses within the Town; and

- 1 E. Any of the grounds for denial of a license application as set forth in section 3-2A-8
2 of this Title.
- 3 F. Failure to meet the standards identified in 3-2A-21, Classification Standards of
4 Specific Businesses.
- 5 G. For nightly rental business licenses, failure to meet any of the standards identified
6 in 3-2A-21-3 on three or more occasion at a single nightly rental unit may result in
7 revocation or suspension of the ability for that unit to be operated as a nightly
8 rental. A single egregious instance of the minimum standards identified in 3-2A-
9 21-3 (such as violations of Fire Codes or building safety issues) will result in
10 suspension of the ability for that unit to be operated as a nightly rental.
- 11 1. Violations of 3-2A-21-3(E) in which the licensee or representative of the
12 licensee attempted to resolve the noise, nuisance, or other violation by
13 contacting Brian Head Public Safety will not be considered an instance of
14 violation under §3-2B-1(G).
- 15 2. A unit which has been barred from operating as a nightly rental under
16 §3-2B-1(G) may be allowed to operate as a nightly rental after a period of
17 twelve (12) months following the suspension of operations of that unit.
- 18

19 **3-2B-2: ACTION OF TOWN MANAGER, LICENSING OFFICIAL OR DESIGNEE:**
20

- 21 A. Investigation: Upon receiving a written complaint from any person alleging a
22 violation of any provision of this title by the licensee or an agent of the licensee,
23 the Licensing Official or designee ~~Town, or anyone designated by the Town~~
24 ~~Manager~~ with the assistance of such other departments of the Town as the Town
25 Manager may direct, shall conduct an investigation of the allegations of the
26 complaint. The Town will not investigate consumer or product liability complaints.
27 Upon completion of the investigation, the ~~Town Manager~~ Licensing Official may
28 dismiss the matter as being without merit, settle the matter based upon the
29 negotiations the Licensing Official ~~Town Manager~~ or designee may have
30 undertaken with the licensee. ~~or cause an order to show cause to be issued to the~~
31 ~~licensee requiring the licensee to come forward and answer the allegations of the~~
32 ~~order to show cause.~~
- 33
- 34 B. ~~Order To Show Cause: The order to show cause may be based upon an affidavit~~
35 ~~filed by the Town Manager, Town Attorney, or anyone else the Town Manager~~
36 ~~has designated to file such action and said order to show cause~~ The Licensing
37 Officer shall cause a written Notice of Hearing to be given to the licensee at the
38 licensee's business address and shall specifically set forth the ordinance sections
39 alleged to have been violated and generally describe the acts in violation and the
40 procedure for a written response to the allegations and Administrative Hearing
41 process.
42

- 1 C. Hearing; Written Response To Allegations: ~~In the event an order to show cause is~~
2 ~~issued to the licensee, t~~The Town Manager shall determine whether to refer the
3 matter to the Town Council, or to hear the matter directly himself. The **Notice of**
4 **Hearing** ~~order to show cause~~ shall be issued at least fourteen (14) calendar days
5 prior to the date set for the administrative hearing, but the hearing shall be
6 commenced, in any event, within six (6) months of the service of the ~~order to~~
7 ~~show cause~~ **Notice of Hearing** upon the licensee, unless otherwise agreed by the
8 parties. Within ten (10) days from the date of the service of the ~~order to show~~
9 ~~cause~~ **Notice of Hearing**, the licensee shall file with the Town a written response
10 to the allegations contained therein. For non-egregious infractions of the nightly
11 rental minimum standards contained in 3-2A-21-3(D), the first and second offense
12 at any single unit shall not proceed past the written response. Only after a third
13 offense shall the matter be heard by the Town Manager, following a written
14 response, and all three offenses will be considered simultaneously at a hearing.
15 (amd. Ord. 19-009, 7-8-2019).
16
- 17 D. Hearing By Town Council: If the matter is to be heard by the Town Council, the
18 Town Council may elect one of its members to act as presiding officer for the
19 hearing. The presiding officer shall rule on all matters of controversy which arise
20 during the hearing. The Town Council may designate one or more of its members
21 to act as a hearing panel, in which event the hearing panel shall follow the same
22 procedural requirements as the Town Manager is required by this article to follow.
23 (Ord. 08-017, 8-26-2008)
24
25
26

27 **3-2B-3: HEARING ON REVOCATION OR SUSPENSION:**

28
29 In all administrative license revocation or suspension proceedings, a hearing shall be
30 conducted as follows:
31

- 32 A. Generally: The Hearing Officer or presiding officer shall regulate the course of the
33 hearing to obtain full disclosure of relevant facts and afford all parties the
34 reasonable opportunity to present their positions. The Hearing Officer or presiding
35 officer may determine the length of the hearing and may prevent the calling of
36 witnesses or admission of documentary evidence where such witnesses or
37 evidence are irrelevant, immaterial, unduly repetitious, or unnecessary due to the
38 receipt of other evidence.
39
- 40 B. Rules Of Evidence: Technical rules of evidence required in court proceedings
41 shall not apply, and the presiding officer or Hearing Officer shall not exclude
42 evidence solely because it is hearsay. The presiding officer or Hearing Officer
43 may afford to all parties the opportunity to present evidence, argue, respond,
44 conduct cross examination, and submit rebuttal evidence within the time frame of
45 the hearing established by said officer.
46
- 47 C. Testimony; Record Maintained: All testimony presented at the hearing shall be
48 given under oath administered by a person duly authorized to administer oaths.

1 The hearing shall be recorded by electronic means or by means of a certified
2 shorthand reporter. The record thus created shall be preserved by the Town
3 Council until such time as it is clear that no court proceedings or further
4 administrative proceedings will be held concerning the matters which are the
5 subject of the hearing, but a minimum of one year. The recording may be
6 transcribed at the request of any party, at the expense of the requesting party.
7

8 D. Witnesses; Evidence: The licensee shall have the right to appear at the hearing in
9 person or by counsel, or both. Subpoenas and other orders to secure the
10 attendance of witnesses or the production of evidence shall be issued by the
11 Hearing Officer when requested by any party or may be issued by the presiding
12 officer or hearing examiner on his or her own motion. The mere issuance of
13 subpoenas shall not operate to require the admissibility of evidence or testimony
14 subpoenaed.
15

16 E. Discovery: Upon request, both the Town and the licensee shall be entitled to
17 discovery of the other's list of witnesses to be called at the hearing, including the
18 names and addresses of such witnesses. The parties shall be entitled to have
19 copies of or have access to any documents to be used by either side during the
20 course of the hearing. No other formal discovery shall be required. The standard
21 of proof required for any action adverse to the licensee shall be that of proof by a
22 preponderance of the evidence.
23

24 F. Findings: The presiding officer, if the Town Council hears the matter itself, or the
25 Hearing Officer, shall prepare written findings of fact. In the case of the Hearing
26 Officer, the Hearing Officer shall submit said findings to the Town Council. The
27 Town Council shall either accept or reject the findings of fact, or enter its own
28 findings, and shall state the basis from the record upon which the divergence from
29 the Town Manager's recommended findings. The Town Council shall prepare
30 written conclusions of law and an order.
31

32 G. Formal Order: The order formally entered by the Town Council may be to:
33

- 34 1. Dismiss the action against the licensee;
- 35
- 36 2. Suspend the license for a specified period;
- 37
- 38 3. Place the licensee on probation upon such conditions as the Town Council
- 39 may order;
- 40
- 41 4. Permanently revoke the license in question; or
- 42
- 43 5. Revoke or suspend the licensee's privilege to operate a certain nightly rental
- 44 unit; or.
- 45
- 46 6. Any combination of the above.
- 47

1 H. Appeal: Any licensee aggrieved by an order of the Town Council entered pursuant
2 to this section may maintain an action for relief therefrom in any court of
3 competent jurisdiction, where said court deems itself the appropriate forum for the
4 appeal from the Town Council action. The licensee shall be required to follow
5 orders and procedures of the appropriate court with regard to time for filing.
6

7 I. Prior Conviction Not Required: Nothing herein shall be construed to require a
8 showing that the licensee shall have been first convicted in a court of laws of any
9 violation of any law, rule, or regulation.
10

11 J. Notice Requirements: All notices required by this section may be made by
12 personal service or by certified mail, mailed to the licensee's address as it
13 appears in the business regulation records of the Town, postage prepaid,
14 certified, return receipt requested. (Ord. 08-017, 8-26-2008)
15
16

17 **3-2B-4: CRIMINAL PENALTIES:**

18

19 Any person who willfully violates any provision of this title shall ~~be guilty of a class-B~~
20 ~~misdemeanor~~, subject to penalty as provided in section [1-4-1](#) of this code and
21 ~~Administrative Fines identified in the Consolidated Fee Schedule~~. Persons conducting
22 business without having first obtained a business license are subject to the business
23 being closed. (Ord. 08-017, 8-26-2008; amd. 2010 Code)
24

25 end