

**BIG WATER TOWN
ORDINANCE 05-2024**

**AN ORDINANCE OF THE TOWN OF BIG WATER, KANE COUNTY, UTAH
AMENDING THE BUSINESS LICENSE AND REGULATIONS MUNICIPAL
CODE 5 AND BUSINESS LICENSE FEES MUNICIPAL CODE 4.04.020**

WHEREAS, The Planning and Zoning Commission has devoted serious time and study to the most desirable policy for the business licenses and regulations and had formulated amendments to this ordinance in accordance therewith;

WHEREAS, The Planning and Zoning Commission recommends that Town Council amend the Municipal Code Ordinance 5 to allow the changes and was passed on January 8, 2024;

WHEREAS, Council determines that the Municipal Ordinance is in compliance with Utah State code, are in the best interest of the people of Big Water, and are consistent with current policy;

NOW THEREFORE, be it ordained by the Council of the Big Water Town, in the State of Utah, as follows:

SECTION 1: **REPEAL** “General Business License Process” of the Big Water Municipal Code is hereby *repealed* as follows:

REPEAL

~~General Business License Process~~ (*Repealed*)

SECTION 2: **REPEAL** “5.02 Purpose And Definitions” of the Big Water Municipal Code is hereby *repealed* as follows:

REPEAL

05.02.010 Purpose

To establish fees and guidelines for operating a business in Big Water.

05.02.040 Definitions

Business - Any enterprise carried on for the purpose of gain or economic profit, except the acts of employees rendering services for employers.

~~5.02 Purpose And Definitions (Repealed)~~

~~05.02.010 Purpose (Repealed)~~

~~05.02.040 Definitions (Repealed)~~

~~5.02.010 Purpose~~

SECTION 3: REPEAL “5.04 Business License Procedures” of the Big Water Municipal Code is hereby *repealed* as follows:

REPEAL

05.04.010 Licensing Requirements

All business operating in Big Water are required to obtain a business license from the town.

1. A separate license must be obtained for each branch establishment or separate location in which business is engaged in as if such branch establishment or location were a separate business. Each license authorizes the licensee to engage only in the business licensed at the location and in the manner designated in such license.
2. Where two or more persons conduct separate businesses at the same location, each such person shall obtain a separate license for each business and must pay the required license fee for such business.

05.04.020 Licensing Application Requirements

Applications for business licenses shall be made in writing to the Town Clerk, or their designee. Business license fees are due at the time of application. Each application shall state the name of the applicant, the name of the business, the location of the business, state sales tax reporting number. state contractor's license number - if applicable, state real estate broker's license number - if applicable, and shall contain such additional information as may be needed for the purpose of issuing the license. Any change in the above information furnished by the applicant shall be forwarded, in writing, withing ten (10) days of the change, to the Town Clerk or their designee.

Business License Fees

Annual Gross Income \$0.00 - \$100,000.00	\$50.00
Annual Gross Income \$100,000.01 or greater	\$100.00

05.04.030 Licensing Issuance Procedures

1. All license certificates shall be issued under the seal of the town and shall contain the following information:

- A. The name of the person to whom such certificate has been issued;
- B. The name of the business; and
- C. The term of the license with commencement and expiration dates.

2. The town shall notify the applicant of:

- A. The denial of a license and the reason for such denial (see 05.04.060); or
- B. The issuance of the license.

3. Every licensee is required to keep the business license displayed in a conspicuous place within the business while the license is in force.

4. Business licenses shall be valid through December 31 of the each year, unless revoked pursuant to this Chapter.

05.04.050 Licensing Renewal Requirements

Business licenses must be renewed by January first of each calendar year.

- 1. If the license renewal fee is not paid in full on or before January 31 of the year in which the renewal license is due, there shall be a business license fee imposed of \$25.00
- 2. If the license renewal fee is not paid in full on or before February 28 of the year in which the renewal fee is due, the business license enforcement fee shall be increased to \$50.00
- 3. If the license renewal fee is not paid in full by March 31 of the year in which the renewal fee is due, the business license enforcement fee shall be increased to \$100.00
- 4. Business licenses not renewed by April 15 of the year in which the renewal fee is due will be considered non-compliant and will be subject to

05.04.060 License Denial/Revocation Procedures

1. The Town may deny or revoke a license if the applicant:

- A. Has obtained a license by fraud or deceit;
- B. Has failed to pay personal property taxes or other required taxes or fees imposed by the town; or
- C. Has violated the laws of the State of Utah, the United States Government, or the ordinances of the town governing operation of the business for which the applicant is applying for the license.

2. A license denial may be appealed to the Big Water Town Council by filing written notice of appeal with the clerk within ten (10) days of the notice of denial.

3. Unless otherwise provided herein, no business license fee is refundable for any reason whatsoever, once the license has been issued. If a license is denied, the applicant shall be entitled to a refund of the amount paid in excess of twenty-five dollars (\$25.00), which shall be retained to offset application processing costs.

~~5.04 Business License Procedures (Repealed)~~

~~05.04.010 Licensing Requirements (Repealed)~~

~~05.04.020 Licensing Application Requirements (Repealed)~~

~~05.04.030 Licensing Issuance Procedures (Repealed)~~

~~05.04.050 Licensing Renewal Requirements (Repealed)~~

~~05.04.060 License Denial/Revocation Procedures (Repealed)~~

SECTION 4: REPEAL “5.06 Compliance” of the Big Water Municipal Code
is hereby *repealed* as follows:

REPEAL

05.06.020 Fine

A fine of \$100.00 per month will be charged to any individual engaged in business without first obtaining a business license from Big Water Municipal.

05.06.030 Investigations

1. The town may at any time inspect the business premises during normal business hours or request business documents to verify information offered in a new application or by an existing licensee.

2. Prior to the issuance of a license to engage in a business not previously licensed at that location, or a business with a change of location, the applicant shall permit inspection of the prospective place of business to ensure compliance with building, fire, and health codes. Businesses licensed within the Town may be inspected periodically for compliance with building, fire, and health codes. Failure to comply with town codes may result in revocation of the business license.

~~5.06 Compliance (Repealed)~~

~~05.06.020 Fine (Repealed)~~

~~05.06.030 Investigations (Repealed)~~

~~Unless exempted by state federal or local, is shall be unlawful for any person to engage in business within the town, whether on a temporary or permanent basis, without first procuring the license required by this chapter. All licenses issued under the provisions of this Chapter are non-transferable and expire on December 31st of each year.~~

SECTION 5: **REPEAL** “5.08 Adverse License Action” of the Big Water Municipal Code is hereby *repealed* as follows:

REPEAL

~~5.08 Adverse License Action (Repealed)~~

SECTION 6: **REPEAL** “5.12 Alcohol Beverage Control” of the Big Water Municipal Code is hereby *repealed* as follows:

REPEAL

5.12.010 License Requirements For Retail Sale Of Beer

1. No person or entity shall engage in the business of selling beer in bottles, cans, or draft form at retail without first having procured a license therefor from both the Town and the State of Utah. In addition, a business license issued by the Town is a prerequisite to sale.
2. The license shall be conspicuously displayed in the location to which it refers or for which it has been issued.

3. Licensees must purchase product from a licensed wholesaler authorized to sell beer at the licensed location.
4. Retail licenses issued hereunder shall be categorized as follows:
 - a. Class A retail licenses shall entitle the licensee to sell beer on the licensed premises in original containers solely for consumption OFF the premises subject to the following restrictions:
 - i. No license shall be granted to sell beer within 500 yards of a permanent school structure.
 - ii. No beer shall be sold by persons under the age of 21 years unless such persons are at least 16 years of age and are under the supervision of a person of 21 years of age or older who is on the premises at the time of sale.
 - iii. No kegs shall be sold.
 - iv. Beer may only be displayed in an area that is visibly separate and district from areas where non-alcoholic beverages are displayed.
 - v. If malt coolers or liquors (3.2%) are sold, a sign must be posted stating: "These beverages contain alcohol. Please read the label carefully."
 - b. Class B retail licenses shall entitle the licensee to sell beer on the licensed premises solely for consumption ON the premises subject to the following restrictions and conditions:
 - i. Beer shall not be sold before 11:30 a.m. or after 1:00 a.m.
 - ii. Beer shall not be sold "to go," that is, beer sold must be consumed or left on the premises.
 - iii. Beer shall not be sold in containers larger than two liters although the licensee may purchase kegs of beer for sale of draft beer.
 - iv. No alcoholic beverages shall be brought by customers onto the premises.
 - v. Persons under the age of 21 years shall not sell or dispense beer.
 - vi. Employees on duty shall not consume or be under the influence of alcoholic beverages.
 - vii. Employees and customers shall be clothed, including shirts and shoes at all times.
 - viii. Licensees must post a bond in the amount of \$5,000.00.
 - ix. No license shall be granted to sell beer within 500 yards of a permanent school structure.
 - x. At least 70% of the licensee's income must derive from non-beer sales.
 - xi. A person or entity issued a license by the Town for the first time shall provide to the Clerk a copy of his state license.
 - xii. An existing licensee applying for renewal of his Town license shall provide a copy of his current state license.
 - xiii. A suspension or revocation of a licensee's state license shall result in the immediately suspension or revocation of the licensee's Town license.

5.12.020 Fees And Licensing Procedures

1. In addition to the business license fee, there is hereby imposed on the business location of every person and entity engaged in the sale of beer the annual license fees as established in the most recent fee schedule.
 - a. Class A
 - b. Class B
2. Fees shall accompany the application for a beer license and shall be returned to the applicant if the application is denied.
3. All license applications shall be completed and filed with the Clerk on a form provided by the Clerk. If the applicant is a partnership or a corporation, the names and address of all partners or officer and directors shall be provided.
4. The Clerk shall refer completed applications to the Town Marshal for inspection and report. The Marshal shall determine if the applicant is of good moral character, over the age of 21 years, a U.S. citizen, and has never been convicted of a crime involving moral turpitude. The Marshal may include such other information in his report as he deems relevant. The Marshal shall recommend to the Town Council whether the applicant should be issued a license.
5. All applications for renewal of licenses shall be filed by the licensee at least 30 days prior to the expiration date of the existing license. Any licensee who fails to file such application within the time limit shall close his premises on the expiration date of the existing license.
6. Licenses are not transferable to new ownership or management of licensed premises. If a license is revoked or the business abandoned before the license's expiration date, the license fees are forfeited to the Town.

5.12.030 Inspection

1. All licensed premises shall be subject to inspection by any officer, agent, or peace officer of the Town and state health department. At the request of the health department, licensees shall furnish samples of beer that is for sale.
2. Any license may be revoked on a finding by the Town Council that the licensee has had 10 or more days' notice from the health department that the licensee is violating one or more health regulations.
3. The Town Council may direct the Town Marshal to close any licensed premise when the health department has determined that the continued operation of the business presents an imminent danger to the health of the community or patrons of the establishment.

5.12.040 Revocation

1. The Town Council may, after a hearing, revoke or suspend any license on a finding by it that the licensee or his officers, agents, or employees have violated any provision of this Ordinance or any other ordinance of the Town, whether currently in effect or hereafter enacted which in any way relates to the operation of the business or safety of the public.

2. A hearing may be requested by any person or entity
 - a. that is denied or refused a license by any officer, agent, or employee of the Town or
 - b. whose license is revoked, restricted, qualified, or limited from that for which it was first issued.
3. The request for hearing must be made in writing to the Clerk and submitted within 30 days following the date of the notice denying, refusing, revoking, qualifying, or restricting the license is mailed by the Town to the applicant or licensee at his address as it appears on the application.
4. Following receipt of a request for hearing, the Town shall inform the person requesting it of the date, time, and place the hearing is to be held. At the hearing, the aggrieved party shall have the right to hear and examine any witnesses the Town may produce to support its decision and to present his own evidence in support of his contentions.
5. The Town Council shall, within 10 days following the conclusion of the hearing (which may be recessed from time to time), in writing inform the party requesting the hearing of its decision.
6. No aggrieved party is entitled to more than one hearing on a single grievance, and this provision does not apply to criminal proceeding.

5.12.050 Temporary Event Permits

Council may at its discretion issue a temporary permit to sell beer for on-premise consumption for events not lasting longer than 30 days, providing a state permit therefor has been obtained. All local and state operational restrictions shall obtain during the event. Suspension or revocation of either the local or state permit prohibits the permit holder from selling beer at the event under the other permit.

5.12.060 Criminal Acts And Penalties

1. The following acts are hereby designated Class C misdemeanors:
 - a. The retail sale of beer without a license in good standing.
 - b. The retail sale of a container larger than two liters for off-premise consumption.
 - c. Bringing an alcoholic beverage into a licensed premise when it is open to the general public.
 - d. An officer, agent, manager, or employee of a licensed premise allowing a person to bring an alcoholic beverage into a licensed premise when it is open to the general public.
2. The following acts are hereby designated Class B misdemeanors:
 - a. The sale, offer to sell, or otherwise furnishing or supplying beer to a person under the age of 21 years.
 - b. The purchase, possession, or consumption of any beer by a person under the age of 21 years.
 - c. The misrepresentation of age by a person under the age of 21 years for the purpose of purchasing or otherwise obtaining beer for a minor.
 - d. The misrepresentation of a minor's age by any person for the purpose of

purchasing or otherwise obtaining beer for a minor.

5.12.070 Expiration

All licenses issued hereunder shall expire on the last day of February of each year.

5.12.080 General Compliance With State Law

All licensees must comply with the provisions of Section 328, Utah State Code, including provisions relating to storage, sale, offer for sale, furnishing, consumption, warehousing, and distribution of beer.

~~5.12 Alcohol Beverage Control (Repealed)~~

~~5.12.010 License Requirements For Retail Sale Of Beer (Repealed)~~

~~5.12.020 Fees And Licensing Procedures (Repealed)~~

~~5.12.030 Inspection (Repealed)~~

~~5.12.040 Revocation (Repealed)~~

~~5.12.050 Temporary Event Permits (Repealed)~~

~~5.12.060 Criminal Acts And Penalties (Repealed)~~

~~5.12.070 Expiration (Repealed)~~

~~5.12.080 General Compliance With State Law (Repealed)~~

SECTION 7: **REPEAL** “5.14 Residential Solicitation” of the Big Water Municipal Code is hereby *repealed* as follows:

REPEAL

~~5.14 Residential Solicitation (Repealed)~~

SECTION 8: **REPEAL** “5.16 Sexually Oriented Businesses” of the Big Water Municipal Code is hereby *repealed* as follows:

REPEAL

~~5.16 Sexually Oriented Businesses (Repealed)~~

SECTION 9: **REPEAL** “5.18 Non-Discrimination” of the Big Water Municipal Code is hereby *repealed* as follows:

REPEAL

~~5.18 Non-Discrimination~~ (*Repealed*)

SECTION 10: **REPEAL** “5.20 Good Landlord Program” of the Big Water Municipal Code is hereby *repealed* as follows:

REPEAL

~~5.20 Good Landlord Program~~ (*Repealed*)

SECTION 11: **AMEND IN ITS ENTIRETY** “5 Business Licenses And Regulations” of the Big Water Municipal Code is hereby *amended in its entirety* as follows:

AMEND IN ITS ENTIRETY

5 Business Licenses And Regulations

5-01 General Business License Process 5-02 General Fees & Time Periods 5-03 Solicitors 5-04 Mass Gatherings 5-05 Special Sales Events and Promotions 5-06 Non-Profit Special Events 5-07 Seasonal Businesses 5-08 Alcoholic Beverage Control 5-09 Construction Permits 5-10 Offensive Businesses and Facilities 5-11 Short Term Rental Property

SECTION 12: **ADOPTION** “5.01 General Business License Process” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01 General Business License Process(*Added*)

5.01.010 Penalty For No License 5.01.020 Business Definitions 5.01.030 Town License Officer's Powers And Duties 5.01.040 License Denial And Revocation 5.01.050 License - Application - Issuance 5.01.060 Content Of License 5.01.070 No Transfer Of License 5.01.080 Separate License For Branch Establishments 5.01.090 Hearing As To Classification 5.01.100 Exemptions 5.01.110 Qualifying For Exemptions 5.01.120 Civil Enforcement

SECTION 13: **ADOPTION** “5.02 General Fees And Time Periods” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.02 General Fees And Time Periods(*Added*)

5.02.010 General Business License Fee 5.02.020 Fee Payments And Prorations 5.02.030 Late Penalties 5.02.040 Expiration Of Licenses 5.02.050 Rebate Of Fee 5.02.060 Fee Waivers

SECTION 14: **ADOPTION** “5.03 Solicitors” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03 Solicitors(*Added*)

5.03.010 Purpose 5.03.020 No Other Town License Or Approval Required 5.03.030 Definitions 5.03.040 Exemptions From This Subsection 5.03.050 Solicitation Prohibited 5.03.060 Registration Of Solicitors 5.03.070 Application Form 5.03.080 Written Disclosures 5.03.090 When Registration Begins 5.03.100 Issuance Of Certificates 5.03.110 Certificate Form And Identification Badge 5.03.120 Maintenance Of Registry 5.03.130 Non-Transferability Of Certificates 5.30.140 Denial, Suspension Or Revocation Of A Certificate 5.03.150 Appeal 5.03.160 Deceptive Soliciting Practices Prohibited 5.03.170 "No Solicitation" Notice 5.03.180 Duties Of Solicitors 5.03.190 Time Of Day Restrictions 5.03.200 Buyer's Right To Cancel

SECTION 15: **ADOPTION** “5.04 Mass Gatherings” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.04 Mass Gatherings(*Added*)

5.04.010 Rules Governing Temporary Mass Gatherings 5.04.020 Fees For Exhibitions, Concerts And Performances

SECTION 16: **ADOPTION** “5.06 Non-Profit Special Events” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.06 Non-Profit Special Events(*Added*)

Non-profit sponsoring units of Special Events may apply for a Special Events Permit to conduct business and have concession stands in connection with the requested event. If the event and the activities comply with all local and state ordinances, law, and regulations, a permit will be issued. The sponsoring unit will be assessed a permit fee equal to \$5 per business and/or concession stand for each day that the business and/or concession stand operates. Additionally, the sponsoring unit must provide evidence from the IRS of Non-profit status and ensure that all businesses and concession stands have a temporary sales tax number and collect the appropriate sales tax. All business activities in connection with said event shall be at locations approved by both the sponsoring unit and the Town administrative officer assigned by the mayor to overview the special event. The permit issued shall entitle each individual business or concession to operate without acquiring an independent license, but the duration of the business activity shall not exceed seven calendar days. A business or concession stand that is non-profit, or that already has a Big Water Town business license, is exempt from paying the \$5 permit fee indicated above.

SECTION 17: **ADOPTION** “5.07 Seasonal Businesses” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.07 Seasonal Businesses(*Added*)

A. Definitions: Seasonal Businesses are the following: Christmas Tree Sales, Firework Sales, Shaved Ice Stands, Nurseries, Florists and Produce Stands, and other seasonal uses.

B. License required: No person shall operate a Seasonal Business without a license.

C. Application: Application must be made at least 48 hours prior to operation of the seasonal business.

D. License: The license shall state the period of operation, up to six months in any calendar year, which may be renewed yearly.

E. License Fees: The license fee shall be \$50 plus \$25 Fire Inspection fee.

F. Fireworks: Any business selling Class (c) fireworks shall obtain a permit from the Fire Department and must have commercial general liability insurance including premises and operations liability and products and completed operations liability in the amount of one million dollars per occurrence and one million dollars for products and completed operations aggregate. If the business is seasonal, then it shall pay an additional fee of \$150. If the business is not seasonal, but permanent, then it shall pay the regular fee of \$50 plus \$25 Fire Inspection fee.

G. It is unlawful to operate a seasonal business on days other than those covered by the license.

H. Seasonal Sales:

1. Shaved Ice Stands and Firework Stands must be conducted from a structure consisting of at least three walls and a roof and having no more than 1000 square feet of floor space.

2. Must be conducted in a commercial zone.

3. Must be serviced by an approved electrical hook-up if Town is to be used in connection with said operation. Extension cords from other structures will not be approved. Electrical hook-ups must conform to the currently adopted Electrical Code and must be inspected and approved by the Town Building Department prior to the conducting of any business from business premises.

4. Must not obstruct pedestrian walkways.

5. Must be operated in a manner so as not to block traffic into or out of adjacent businesses or structures.

6. Refer to BWZC 15.20.090 for signage requirements. No other means of advertising such as flashing lights, loudspeakers, or calling out are permitted.

7. Must meet all local and state health and safety requirements applicable to the type of business being carried on.

8. Must remove the temporary structure within five days after the seasonal business license expires. If the structure is not removed within the specified period of time, the licensee will be guilty of a Class B Misdemeanor and the Town will be authorized to remove the structure and charge the licensee for the cost of removal plus storage expenses. Application for a Seasonal Business License shall constitute authority to so remove the structure and an agreement to reimburse the Town for removal and storage fees.

9. Before a license is issued the applicant must: a. Provide written evidence that restroom facilities for employees will be provided by another business within 300 feet of the seasonal structure; b. Provide written evidence that the owner of the premises upon which the portable structure is to be placed has given his consent for the placement of the structure and has approved the type of business to be conducted; and c. Provide a sales tax license number.

SECTION 18: **ADOPTION** “5.08 Alcohol Beverage Control” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.08 Alcohol Beverage Control(*Added*)

[5.08.010 Definitions](#) [5.08.020 License Required](#) [5.08.030 License Classifications](#) [5.08.040 License Fee](#) [5.08.050 Licensing Requirements](#) [5.08.060 Inspection And Enforcement](#) [5.08.070 Restrictions](#) [5.08.080 Suspension And Revocation](#) [5.08.090 Appeals](#) [5.08.100 Implementation](#) [5.08.110 Penalties](#)

SECTION 19: **ADOPTION** “5.09 Construction Permits” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.09 Construction Permits(*Added*)

[5.09.010 Violations](#) [5.09.020 Permits And Inspections](#) [5.09.030 Building Official](#) [5.09.040 Review Of Building Inspection](#)

SECTION 20: **ADOPTION** “5.10 Offensive Businesses And Facilities” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.10 Offensive Businesses And Facilities(*Added*)

[5.10.010 Commencement Of Offensive Business](#) [5.10.020 Issuance Of Permits Section](#)

SECTION 21: **ADOPTION** “5.11 Short Term Rental Property” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.11 Short Term Rental Property(*Added*)

It is unlawful for any person to keep, conduct, operate or maintain a "short-term rental property" as defined in section 4 of the Big Water Land Use Ordinance within the town without a business license. The following requirements are in addition to the requirements of this section, and apply to both residential and commercial short term rental properties:

A. License Not Transferable: A short term residential rental property business license is not transferable between persons or structures. When an owner has more than one Short Term Rental, each property address must have its own business license. Any person holding such license shall give written notice within thirty (30) days to the business license official after having transferred or otherwise disposed of legal or equitable control of any short-term residential rental dwelling unit licensed under this article.

B. Transient Room Tax: All short term residential rental properties shall be subject to the collection of the municipality transient room tax as allowed under Utah code.

C. The business license number shall be included, in plain view, on any booking website and at each property.

D. Local Property Manager Required: All short-term residential rental properties shall designate a local property manager that resides within one (1) hour travel time of the property. The local property manager shall be available twenty-four (24) hours per day to respond to questions or concerns. Each short term residential rental property shall have a clearly visible sign within the unit containing the following information: the name and phone number of the local property manager, and the maximum occupancy of the unit (look to Chapter 4-6 for occupancy limits).

E. Owner and Property Manager Responsible: The owner and property manager shall be jointly and severally liable for any violations of this article. Any short-term rental which is found in violation of this section, or any other requirement of this ordinance may be subject to revocation of the short-term residential rental properties business license, as well as any other remedies outlined in this Business License section.

SECTION 22: **ADOPTION** “5.01.010 Penalty For No License” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.010 Penalty For No License(*Added*)

It shall be a Class B Misdemeanor: (1) To engage in any activity or business regulated or licensed under the provisions of this Section without a valid license therefor; or (2) To otherwise violate any provision of this Section.

SECTION 23: **ADOPTION** “5.01.020 Business Definitions” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.020 Business Definitions(*Added*)

To engage in any activity or business means:

1. operating, keeping, conducting, or maintaining a vacation rental dwelling;
2. sale of tangible personal property at retail or wholesale;
3. manufacturing of goods; or
4. rendering of services to others for a consideration, and includes (as examples, and not by way of limitation): retail merchants; persons engaged in trades and crafts; professionals, including doctors, lawyers, accountants and dentists; contractors; banks; savings and loan associations; and real estate agents. The act of employees rendering services to employers shall not be included in such terms unless otherwise specifically prescribed.

SECTION 24: **ADOPTION** “5.01.030 Town License Officer's Powers And Duties” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.030 Town License Officer's Powers And Duties(*Added*)

The Planning and Zoning Administrator is the Town License Officer unless otherwise stated when the position is vacant shall default to the Planning and Zoning Board. The Town License Officer shall reviews and approves licenses in the name of the Town to all persons qualified under the provisions of this Section. The Town Clerk shall collect all license fees based upon the rate established by this Section and shall remit all license fees collected to the Town Treasurer. While the Town License Officer may disclose business names and locations as public information, all other information furnished to or secured by the Town License Officer under the authority of this Section shall be kept in strict confidence, shall not be subject to public inspection, and shall be kept in such a manner as to prevent disclosure to persons other than those charged with the administration of this Section except as otherwise provided by law. He or she shall enforce all provisions of this Section and shall cause to be filed complaints against all persons violating any of the provisions of this Section. The Town License Officer shall have the power, directly or through his or her appointed agents, to:

1. Adopt forms - Adopt all forms and prescribe the information required therein as to all matters relevant for the issuance of a license hereunder.
2. Investigation - Investigate and determine the eligibility of any applicant or licensee either at the time of issuance of a license or at any reasonable time after its issuance in such manner as may be reasonable and necessary for the proper administration and enforcement of this Section. The Town Marshal, the Fire Marshal, and their authorized officers and deputies are authorized and declared to be investigators for the Town License Officer upon request of the latter.
3. Inspection of Premises and Records - Inspect prospective or existing places of business to ensure compliance with building, zoning, safety and health codes, and request production by the applicant or licensee of documents which will verify the number of employees or other information relevant under this Section. The Officer shall utilize the investigators referred to in sub-paragraph B, above, for the purpose of the inspections provided for herein.
4. Give Notice - Notify any applicant of the acceptance or rejection of his or her application and, in the event of rejection, upon request of the applicant, state in writing the reasons for such rejection; notify a licensee of any infraction of Town zoning, building, fire or health codes disclosed by the inspection provided herein, together with notice of the revocation by the Town License Officer of the license unless correction of the infraction is effected within five days after such notification.
5. Request Enforcement - Request the Town Attorney to file a complaint against any applicant or any licensee who conducts a business in violation of this Section.
6. Good Standing of Applicant or Licensee - Determine that the applicant or licensee is not in default under the provisions of any Town ordinance, or indebted or obligated in any manner to the Town or the utilities operated by it; to not be in violation of any Town zoning regulations by reason of the condition of business premises or the use to be made thereof. (2) In the event the Town License Officer has not fulfilled his or her duties in regards to issuing the license at the time the applicant or licensee pays for a license or renewal thereof, the Town Treasurer may issue a receipt for the money paid but it shall not be construed as the approval of the Town License Officer for the issuance of the License, nor shall it entitle or authorize applicant to open or maintain

any business until such times as the license itself has been issued t

SECTION 25: **ADOPTION** “5.01.040 License Denial And Revocation” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.040 License Denial And Revocation(*Added*)

The Town may deny, suspend or revoke a license if the applicant:

1. Has obtained a license by fraud or deceit;
2. Has failed to pay personal property taxes or other required taxes or fees imposed by the Town; or
3. Has violated the laws of the State of Utah, the United States Government, or the ordinances of the Town governing operation of the business for which the applicant is applying for the license.

SECTION 26: **ADOPTION** “5.01.050 License - Application - Issuance” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.050 License - Application - Issuance(*Added*)

A. All applications for a business license, except as otherwise provided in this code, shall be made in writing to the Town License Officer.

B. All licenses shall be approved and signed by the Town License Officer or its designee. The Town License Officer shall file all applications for license with accompanying statements and bonds, and shall keep an alphabetical list of licenses issued, stating the number, name, licensing time frame, place and kind of business and the amount paid, with such remarks as may be considered necessary.

SECTION 27: **ADOPTION** “5.01.060 Content Of License” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.060 Content Of License(*Added*)

Every license issued shall specify, by name, the person to whom it is issued and shall designate the particular place at which the business is to be carried on. No license granted or issued under any of the provisions of this Section shall be in any manner assignable or transferable, or authorize any other person than is therein mentioned and named to do business, or authorize any other business than is therein mentioned or named to be done or transacted, or the business therein mentioned or named to be done or transacted at any place other than is therein mentioned or named, unless specifically authorized herein.

SECTION 28: **ADOPTION** “5.01.070 No Transfer Of License” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.070 No Transfer Of License(*Added*)

A business license issued hereunder shall not be transferrable to a new owner of any licensed business, or to a new entity owning or operating such business wherein the previous licensee is not the owner of a majority interest in the new entity. An existing license may be transferred from one location to another, where the business is operated at a fixed location, only after obtaining approval of the Town License Officer, having a new license issued indicating the new location, and paying an additional fee of \$10.00, as well as a \$25.00 fee for a fire inspection of the new premises. The Town License Officer shall not approve the transfer of a license to a new location operated by the same licensee where the basic type of business in which he shall engage is changed from his former business. Upon the termination of business, the expiration of a license year, or the revocation of a license, the previous license permit shall be destroyed.

SECTION 29: **ADOPTION** “5.01.080 Separate License For Branch Establishments” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.080 Separate License For Branch Establishments(*Added*)

A separate license must be obtained for each branch established or each separate place of business in which the business activities of a licensee are carried on, except that warehouses and distributing plants from which no retail or public trade is conducted used in connection with or incidental to a business licensed under the provisions of this Section shall not be deemed to be separate places of business or branch establishments.

SECTION 30: **ADOPTION** “5.01.090 Hearing As To Classification” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.090 Hearing As To Classification(*Added*)

In the event the Town License Officer determines that a business falls within a category that requires additional regulation, fees, or processing steps, an applicant may contest such classification by submitting with his or her application a written request for hearing as to the propriety of such classification. The Officer shall submit any request for hearing so received to the Big Water Town Council, and the Council shall notify such applicant in writing that on a day and at a time and place therein mentioned said Council shall take up for hearing the question as to whether said Classification is proper or not, and at which time and place said applicant may appear and be heard. At the time and place named in said notice, the Town Council shall take up said matter and shall determine said question upon the facts presented to it, and it shall, within 30 days, enter an order according to its judgment upon the facts so presented. Included in that order shall be findings made by the Town Council supporting its decision. If it shall be determined that the classification is improper, the Officer shall accept a new application under a general business classification or other specific classification. In the event an applicant or licensee for whom a bond is required because of any of the classifications referred to herein shall object to the size of such bond, he may request a hearing before the Big Water Town Council as to the amount of bond set by the Officer in like manner as set forth above, and the Council shall either approve the bond as set by the Officer or instruct the Officer to reconsider the amount of the bond required.

SECTION 31: **ADOPTION** “5.01.100 Exemptions” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.100 Exemptions(*Added*)

Unless otherwise provided in this Section, the provisions of this Section shall not be construed to require a business license for:

1. An activity which is conducted, managed, or carried on wholly for charitable, religious or other non-profit purposes from which profit is not derived, directly or indirectly by any person. Qualification under the federal tax laws for non-profit status shall be prima facie evidence that a person has the charitable, religious, or non-profit purposes described above.
2. Any person selling surplus household goods or furnishings at a private residence in the garage or yard, if such sales are held in accordance with the applicable requirements and frequency set in the municipal code.
3. Any individual who is under 18 years of age.

SECTION 32: **ADOPTION** “5.01.110 Qualifying For Exemptions” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.110 Qualifying For Exemptions(*Added*)

With respect to exemptions from business license requirements claimed because of charitable, religious, or other nonprofit status, the person claiming the exemption shall have the burden of establishing that exemption.

SECTION 33: **ADOPTION** “5.01.120 Civil Enforcement” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.01.120 Civil Enforcement(*Added*)

Upon receipt of a report of the violation of this Section or of any other law or ordinance of the Town, or of failure by a licensee or applicant to verify information or produce documents upon request, the Town License Officer shall issue to the licensee a notice of the alleged violation, along with the manner in which the licensee can correct the violation if applicable. If the licensee refuses to correct the violation, or if the violation automatically revokes the license, the Town License Officer shall also send a notice with a request that the licensee appear at a hearing at a date and time set forth in the notice, which date shall be not less than five (5) and not more than thirty (30) days after the date of the notice. In the event the Town License Officer receives a sworn statement outlining specific facts showing the alleged violation is a threat to the safety, health or welfare of any specific person or the public, the notice may also contain a provisional order to comply, in writing. The provisional order shall require compliance, or arrangements with the Town License Officer for such compliance, upon service of the order. The notice shall be personally served upon the person, his or her agent or employee. In the event service cannot be obtained upon the person doing business or his agent or employee, a copy of such notice shall be affixed to some structure on the premises, and a copy shall be deposited in the United States mail addressed to the address contained on the license application. Upon such hearing before the Town Council, the Town License Officer and the licensee shall have the right to call witnesses, present evidence and make statements. If the Town Council finds that violation of the license ordinance, Town ordinances, license conditions, or other laws has occurred, the Town Council shall declare the business license suspended until compliance is made or revoked because of the violation. Within 30 days of a decision, the Town Council shall put in writing its findings in support of its decision. Upon revocation of a license, the licensee shall summarily cease business and close the premises upon which the business was operated. The Town Attorney shall institute civil suit at the request of the Town License Officer to enjoin the operation of any business being operated without the license required hereunder, and he or she shall also commence suit to collect the amount of any unpaid amount, the payment of which is required hereunder, if it cannot be collected by other means. This subsection does not preclude the Town's option of pursuing criminal charges against the licensee.

SECTION 34: **ADOPTION** “5.02.010 General Business License Fee” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.02.010 General Business License Fee(*Added*)

Unless otherwise stated in this title, the license fee for all businesses shall be \$50.00 per year, \$25 fire inspection fee, and an additional \$15 per groups of 10 employees after first 9 employees (base 1-9, 10-19, 20-29, 30-39 etc).

SECTION 35: **ADOPTION** “5.02.020 Fee Payments And Prorations” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.02.020 Fee Payments And Prorations(*Added*)

All license fees shall be paid in advance at the office of the Town Treasurer. Annual license fees shall be due and payable on the first day of January of each year.

SECTION 36: **ADOPTION** “5.02.030 Late Penalties” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.02.030 Late Penalties(*Added*)

Any license fee due on January 1st that is paid later than January 31st of any license year shall be considered to be late, and a late penalty of \$10 shall be assessed for each renewal or application submitted after January 31st and before April 1st of a license year. A license renewal application due on January 1st of a license year which is not submitted until after April 1st of that year shall pay a late fee of \$25.

SECTION 37: **ADOPTION** “5.02.040 Expiration Of Licenses” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.02.040 Expiration Of Licenses(*Added*)

All licenses shall expire on December 31st of each year, except those issued pursuant to a specific indicated time period.

SECTION 38: **ADOPTION** “5.03.010 Purpose” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.010 Purpose(*Added*)

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

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

1. Respecting citizen's decisions regarding privacy in their residences;
2. Protecting persons from criminal conduct;
3. Providing equal opportunity to advocate for and against religious belief, political position, or charitable activities; and
4. Permitting truthful and non-misleading door-to-door solicitation regarding lawful goods or services in intrastate or interstate commerce. The Town finds that the procedures, rules and regulations set forth in this Section are narrowly tailored to preserve and protect the Town interests referred to herein while at the same time balancing the rights of those regulated.

SECTION 39: **ADOPTION** "5.03.020 No Other Town License Or Approval Required" of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.020 No Other Town License Or Approval Required(*Added*)

1. Registered solicitors and persons exempt from Registration need not apply for, nor obtain, any other license, permit, or registration from the Town to engage in door-to-door solicitation.
2. Any business licensed by the Town under another Town Ordinance that uses

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

SECTION 40: ADOPTION “5.03.030 Definitions” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.030 Definitions(*Added*)

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

A. Advocating means speech or conduct intended to inform, promote, or support religious belief, political position, or charitable activities.

B. Appeals Officer means the Town Council or designee of the Town responsible for receiving the information from the Town and Appellant regarding the denial or suspension of a Certificate and issuing a decision as required by this Section.

C. Appellant means the person or entity appealing the denial or suspension of a Certificate, either personally as an Applicant or registered Solicitor, or on behalf of the Applicant or registered solicitor.

D. Applicant means an individual who is at least eighteen (18) years of age and not a corporation, partnership, limited liability company, or other lawful entity, who applies for a Certificate permitting door-to-door solicitation.

E. Application Form means a standardized form provided by the Town to an Applicant to be completed and submitted as part of registration.

F. Name then B.C.I. means an original or copy, dated no older than 180 days prior to the date of the Application, of either: (1) a Utah Department of Public Safety Bureau of Criminal Identification verified criminal history report personal to the Applicant; or (2) verification by the Utah Department of Public Safety Bureau of Criminal Identification that no criminal history rising to the level of a Disqualifying Status exists for the Applicant.

G. Business means a commercial enterprise licensed by the Town as a person or Entity under this Section, having a fixed or temporary physical location within the Town.

H. Certificate means a temporary, annual, or renewal Certificate permitting door-to-door solicitation in the Town applied for or issued pursuant to the terms of this Section 5-03 Solicitors.

I. Charitable Activities means advocating by persons or Entities that either are, or support, a charitable organization.

J. Charitable Organization includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:

1. that is: a. a benevolent, educational, voluntary health, philanthropic, humane, patriotic, religious, social welfare or advocacy, public health, environmental or conservation, or civic organization; b. for the benefit of a public safety, law enforcement, or firefighter fraternal association; or c. established for any charitable purpose; and

2. that is tax exempt under applicable provisions of the Internal Revenue Code of 1986 as amended, and qualified to solicit and receive tax deductible contributions from the public for charitable purposes. Charitable organization includes a chapter, branch, area, or office, or similar affiliate or any person soliciting contributions within the state for a Charitable Organization that has its principal place of business outside the Town or State of Utah.

K. Competent Individual means a person claiming or appearing to be at least eighteen (18) years of age and of sufficiently sound mind and body to be able to engage in rational thought, conversation, and conduct.

L. Completed Application means a fully completed Application Form, a B.C.I, two copies of the original identification relied on by the Applicant to establish proof of identity, and the tendering of fees.

M. Criminally Convicted means the final entry of a conviction, whether by a plea of no contest, guilty, entry of a judicial or jury finding of guilt, which has not been set aside on appeal or pursuant to a writ of habeas corpus. The criminal conviction is that offense of which the Applicant or registered solicitor was convicted, without regard to the reduced status of the charge after completion of conditions of probation or parole, and charges dismissed under a plea in abeyance or diversion agreement.

N. Disqualifying Status means anything specifically defined in this Section (5-03 Solicitors) as requiring the denial or suspension of a Certificate, and any of the following:

1. The Applicant or registered solicitor has been Criminally convicted of: (i) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind;

2. Criminal charges currently pending against the Applicant or registered solicitor for: (i) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind;

3. The Applicant or registered solicitor has been criminally convicted of a felony within the last ten (10) years;

4. The Applicant or registered solicitor has been incarcerated in a federal or state prison within the past five (5) years;

5. The Applicant or registered solicitor has been criminally convicted of a misdemeanor within the past five (5) years involving a crime of: (i) moral turpitude, or (ii) violent or aggravated conduct involving persons or property;

6. A Final Civil Judgment been entered against the Applicant or registered solicitor within the last five (5) years indicating that: (i) the Applicant or registered solicitor had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the Applicant or registered solicitor was non-dischargeable in bankruptcy pursuant to 11 U.S.C. 523(a)(2), (a)(4), (a)(6), or (a)(19);

7. The Applicant or registered solicitor is currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;

8. The Applicant or registered solicitor has an outstanding arrest warrant from any jurisdiction; or

9. The Applicant or registered solicitor is currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.

O. Door to Door Solicitation means the practice of engaging in or attempting to engage in conversation with any person at a residence, whether or not that person is a competent individual, while making or seeking to make or facilitate a home solicitation sale, or attempting to further the sale of goods and or services.

P. Entity includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association.

Q. Fees means the cost charged to the Applicant or Registered Solicitor for the issuance of a Certificate and/or Identification Badge, which shall not exceed the reasonable costs of processing the application and issuing the Certificate and/or Identification Badge.

R. Final Civil Judgment means a civil judgment that would be recognized under state law as a judgment to which collateral estoppel would apply.

S. Goods means one or more tangible items, wares, objects of merchandise, perishables of any kind, subscriptions, or manufactured products offered, provided, or sold.

T. Home Solicitation Sale means to make or attempt to make a sale of goods or services by a solicitor at a residence by means of door-to door solicitation, regardless of

1. the means of payment or consideration used for the purchase;
2. the time of delivery of the Goods or Services; or
3. the previous or present classification of the Solicitor as a solicitor, peddler, hawker, itinerant merchant, or similar designation.

U. No Solicitation Sign means a reasonably visible and legible sign that states No Soliciting, No Solicitors, No Salespersons, No Trespassing, or words of similar import.

V. Political Position means any actually held belief, or information for, against, or in conjunction with any political, social, environmental, or humanitarian belief or practice.

W. Registered Solicitor means any person who has been issued a current Certificate by the Town.

X. Registration means the process used by the Town Licensing Officer to accept a completed application and determine whether or not a Certificate will be denied, granted, or suspended.

Y. Religious Belief means any sincerely held belief, or information for, against, or in conjunction with, any theistic, agnostic, or atheistic assumption, presumption or position, or religious doctrine, dogma, or practice regardless of whether or not the belief or information is endorsed by any other person or public or private entity.

Z. Residence means any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of the Town, together with the lot or other real property on which the living unit is located. This does not include the sidewalk, public street or public rights of way.

AA. Responsible Person or Entity means that person or entity responsible to provide the following to an applicant, registered solicitor, and the competent individual in a residence to whom a sale of goods or services is made or attempted to be made by means of a home solicitation sale:

1. maintaining a state sales tax number, a special events sales tax number, computing the sales taxes owing from any sale of goods or services, paying the sales taxes, and filing any required returns or reports;

2. facilitating and responding to requests from consumers who desire to cancel the sale pursuant to applicable contractual rights or law; and

3. refunding any monies paid or reversing credit card charges to those persons who timely rescind any sale pursuant to applicable contractual rights or law.

BB. Sale of Goods or Services means the conduct and agreement of a Solicitor and the Competent Individual in a Residence regarding a particular Good(s) or Service(s) that entitles the consumer to rescind the same within three days under any applicable federal, state, or local law.

CC. Services means those intangible goods or personal benefits offered, provided, or sold to a Competent Individual of a Residence. DD. Soliciting or Solicit or Solicitation means any of the following activities:

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

2. Seeking to obtain prospective customers to apply for or to purchase insurance, subscriptions to publications, or publications;

3. Seeking to obtain contributions of money or any other thing of value for the benefit of any person or entity;

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

5. Seeking to engage an individual in conversation at a Residence for the purpose of promoting or facilitating the receipt of information regarding Religious Belief, Political Position, Charitable Conduct, or a Home Solicitation Sale; or

6. Other activities falling within the commonly accepted definition of Soliciting, such as hawking or peddling.

EE. Solicitor or Solicitors means a person(s) engaged in Door-to-Door Solicitation.

FF. Submitted in Writing means the information for an appeal of a denial or suspension of a Certificate, submitted in any type of written statement to the Town offices by certified, registered, priority, overnight or delivery confirmation mail, facsimile, or hand delivery.

GG. Substantiated Report means an oral, written, or electronic report:

1. That is submitted to and documented by the Town by any of the following: a. A Competent Individual who is willing to provide law enforcement or other Town employees with publicly available identification of their name, address, and any other reliable means of contact; b. Town law enforcement or Licensing Officer; or c. Any other regularly established law enforcement agency at any level of government;

2. That provides any of the following information regarding a Registered Solicitor:

a. Documented verification of a previously undisclosed Disqualifying Status of a Registered Solicitor;

b. Probable cause that the Registered Solicitor has committed a Disqualifying Status which has not yet been determined to be a Disqualifying Status;

c. Documented, eye-witness accounts that the Registered Solicitor has engaged in repeated patterns of behavior that demonstrates failure by the Registered Solicitor to adhere to the requirements of this Chapter; or

d. Probable cause is that continued licensing of the Registered Solicitor creates exigent circumstances that threaten the health, safety, or welfare of any individuals or entities within the Town.

HH. Waiver means the written form provided to Applicant by the Town wherein Applicant agrees that the Town may obtain a name/date of birth BCI background check on the Applicant for licensing purposes under this Section, and which contains Applicant's notarized signature.

SECTION 41: **ADOPTION** "5.03.040 Exemptions From This Subsection" of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.040 Exemptions From This Subsection(*Added*)

The following are exempt from Registration under this Subsection:

A. Persons specifically invited to a Residence by a Competent Individual prior to the time of the person's arrival at the residence;

B. Persons whose license, permit, certificate, or registration with the State of Utah permits them to engage in door-to-door solicitation to offer goods or services to an occupant of the residence, and such state permit that specifically articulates that requiring a Town permit of license is unlawful;

C. Persons delivering goods to a residence pursuant to a previously made order, or persons providing services at a residence pursuant to a previously made request by a competent individual;

D. Persons advocating or disseminating information for, against, or in conjunction with, any Religious Belief, or Political Position regardless of whether Goods, Services, or any other consideration is offered or given, with or without any form of commitment, contribution, donation, pledge, or purchase; and

E. Persons representing a Charitable Organization. The charitable exemption shall apply to students Soliciting contributions to finance extracurricular social, athletic, artistic, scientific or cultural programs, provided that the Solicitation has been approved in writing by the school administration, and that such student Solicitors carry current picture student identification from the educational institution for which they are Soliciting. Those Persons exempt from Registration are not exempt from the duties and prohibitions outlined in Sections 5-03-160, 5-03-170, 5-03-180, and 5-03-190 while Advocating or Soliciting.

SECTION 42: **ADOPTION** “5.03.050 Solicitation Prohibited” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.050 Solicitation Prohibited(*Added*)

Solicitation prohibited unless otherwise authorized, permitted, or exempted pursuant to the terms and provisions of this Subsection, the practice of being in and upon a private Residence within the Town by Solicitors, for the purpose of Home Solicitation Sales or to provide Goods or Services, is prohibited and is punishable as set forth in this Section.

SECTION 43: **ADOPTION** “5.03.060 Registration Of Solicitors” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.060 Registration Of Solicitors(*Added*)

Unless otherwise exempt under this Subsection, all persons desiring to engage in Door-to-Door Solicitation within the Town, prior to doing so, shall submit a Completed Application to the Licensing Officer and obtain a Certificate.

SECTION 44: **ADOPTION** “5.03.070 Application Form” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.070 Application Form(*Added*)

The Licensing Officer shall provide a standard Application Form for use for the Registration of Solicitors. Upon request to the Licensing Officer, or as otherwise provided, any person or Entity may obtain in person, by mail, or facsimile, a copy of this Application Form. Each Application Form shall require disclosure and reporting by the Applicant of the following information, documentation, and fee:

A. Review of Written Disclosures. An affirmation that the Applicant has received and reviewed the disclosure information required by this Subsection.

B. Contact Information.

1. Applicant’s true, correct, and legal name, including any former names or aliases used during the last ten (10) years;

2. Applicant’s telephone number, home address and mailing address, if different;

3. If different from the Applicant, the name, address, and telephone number of the Responsible Person or Entity; and

4. The address to which all notices to the Applicant required under this Subsection are to be sent.

C. Proof of Identity. An in-person verification by the Licensing Officer of the Applicant's true identity by use of any of the following which bear a photograph of said Applicant:

1. A valid driver's license issued by any State;

2. A valid passport issued by the United States;

3. A valid identification card issued by any State; and

4. A valid identification issued by a branch of the United States military. Upon verification of identity, the original identification submitted to establish Proof of Identity shall be returned to the Applicant.

D. Special Events Sales Tax Number. The Applicant shall provide a special events sales tax number for either the Applicant, or for the Responsible Person or Entity for which the Applicant will be soliciting.

E. Marketing Information.

1. The Goods or Services offered by the Applicant, including any commonly known, registered or trademarked names; and

2. Whether the Applicant holds any other licenses, permits, registrations, or other qualifications required by federal or state law to promote, provide, or render advice regarding the offered Goods or Services.

F. BCI Background Check. The Applicant shall provide:

1. An original or a copy of a BCI background check as defined in 5-03-030 (F); and

2. A signed copy of a Waiver whereby Applicant agrees to allow the Town to obtain a name/date of birth BCI background check on Applicant for purposes of enforcement of this Subsection (5-03 Solicitors).

G. Responses to Questions Regarding a Disqualifying Status. The Applicant shall be required to affirm or deny each of the following statements on the Application Form:

1. Has the Applicant been Criminally Convicted of: (i)felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind;

2. Are any criminal charges currently pending against the Applicant for: (i) felony homicide, (ii) physically abusing, sexually abusing, or exploiting a minor, (iii) the sale or distribution of controlled substances, or (iv) sexual assault of any kind;

3. Has the Applicant been Criminally Convicted of a felony within the last ten (10) years;

4. Has the Applicant been incarcerated in a federal or state prison within the past five (5) years;

5. Has the Applicant been Criminally Convicted of a misdemeanor within the past five (5) years involving a crime of: (i) moral turpitude, or (ii) violent or aggravated conduct involving persons or property;

6. Has a Final Civil Judgment been entered against the Applicant within the last five (5) years indicating that: (i) the Applicant had either engaged in fraud, or intentional misrepresentation, or (ii) that a debt of the Applicant was non-dischargeable in bankruptcy pursuant to 11 U.S.C. ' 523(a)(2), (a)(4), (a)(6), or (a)(19);

7. Is the Applicant currently on parole or probation to any court, penal institution, or governmental entity, including being under house arrest or subject to a tracking device;

8. Does the Applicant have an outstanding arrest warrant from any jurisdiction; or

9. Is the Applicant currently subject to a protective order based on physical or sexual abuse issued by a court of competent jurisdiction.

H. Fee. The Applicant shall pay according to the following:

1) Day Permit Fee: \$25

2) Week (7 day) Permit Fee: \$50

3) Fourteen-day Permit Fee: \$75

4) Three-Month to twelve-month Permit Fee: \$150

I. Execution of Application. The Applicant shall execute the Application Form, stating upon oath or affirmation, under penalty of perjury, that based on the present knowledge and belief of the Applicant, the information provided is complete, truthful, and accurate.

SECTION 45: ADOPTION “5.03.080 Written Disclosures” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.080 Written Disclosures(*Added*)

The Application Form shall be accompanied by written disclosures notifying the Applicant of the following:

A. The Applicant's submission of the Application authorizes the Town to verify information submitted with the Completed Application including: 1. the Applicant's address; 2. the Applicant's and/or Responsible Person or Entity's state tax identification and special use tax numbers, if any; or 3. the validity of the Applicant's Proof of Identity.

B. The Town may consult any publicly available sources for information on the Applicant, including but not limited, to databases for any outstanding warrants, protective orders, or civil judgments;

C. Establishing Proof of Identity is required before Registration is allowed;

D. Identification of the fee amount that must be submitted by Applicant with a Completed Application

E. The Applicant must submit a BCI background check with a Completed Application.

F. To the extent permitted by State and/or federal law, the Applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection.

G. The Town will maintain copies of the Applicant's Application Form, Proof of Identity, and Identification Badge. These copies will become public records available for inspection on demand at the Town offices whether or not a Certificate is denied, granted, or renewed.

H. The criteria for Disqualifying Status, denial, or suspension of a Certificate under the provisions of this Chapter.

I. That a request for a Certificate will be granted or denied within one business day that a Completed Application is submitted.

SECTION 46: **ADOPTION** “5.03.090 When Registration Begins” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.090 When Registration Begins(*Added*)

The Licensing Officer shall not begin the Registration process unless the Applicant has submitted a Completed Application. The original identification submitted to establish Proof of Identity shall be returned after the Licensing Officer verifies the Applicant’s identity. A copy of the identification may be retained by the Licensing Officer. If an original B.C.I. background check is submitted by the Applicant, the Licensing Officer shall make a copy of the B.C.I. and return the original to the Applicant.

SECTION 47: **ADOPTION** “5.03.110 Certificate Form And Identification Badge” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.110 Certificate Form And Identification Badge(*Added*)

A. Certificate Form. Should the Licensing Officer determine that the applicant is entitled to a certificate, the Licensing Officer shall issue a certificate to the applicant. The certificate shall list the name of the registered solicitor and the responsible person or entity, if any, and the date on which the certificate expires. The certificate shall be dated and signed by the License Officer. The certificate shall be carried by the registered solicitor at all times while soliciting in the Town.

B. Identification Badge. The Town shall issue each registered solicitor an identification badge that shall be worn prominently on his or her person while soliciting in the Town. The identification badge shall bear the name of the Town and shall contain:

(a) the name of the registered solicitor;

(b) address and phone number of the registered solicitor, or the name, address, and phone number of the responsible person or entity is provided;

(c) a recent photograph of the registered solicitor; and

(d) the date on which the certificate expires.

SECTION 48: **ADOPTION** “5.03.120 Maintenance Of Registry” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.120 Maintenance Of Registry(*Added*)

The Licensing Officer shall maintain and make available for public inspection a copy or record of every completed application received and the certificate or written denial issued by the Town. The applicant's BCI background check shall remain a confidential, protected, private record not available for public inspection. The Licensing Officer may furnish to the head of the Town's law enforcement agency a listing of all applicants, those denied, and those issued a certificate.

SECTION 49: **ADOPTION** “5.03.130 Non-Transferability Of Certificates” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.130 Non-Transferability Of Certificates(*Added*)

Certificates shall be issued only in the name of the applicant and shall list the responsible party or entity, if any. The certificate shall be nontransferable. A registered solicitor desiring to facilitate or attempt to facilitate home solicitation sales with different: (a) goods or services; or (b) responsible person or entity, from those designated in the originally submitted completed application, shall submit a written change request to the Licensing Officer.

A new certificate based on the amended information shall issue for the balance of time remaining on the solicitor's previous certificate before the amendment was filed. Before the new certificate is given to the registered solicitor, the registered solicitor shall obtain a revised identification badge from the Town, after payment of the fee for the identification badge.

SECTION 50: **ADOPTION** “5.03.140 Denial, Suspension Or Revocation Of A Certificate” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.140 Denial, Suspension Or Revocation Of A Certificate(*Added*)

A. Suspension or Revocation. The Town shall either suspend or revoke a certificate if the information submitted by the applicant when seeking a certificate is found to be incomplete or incorrect, or if the applicant has violated any part of this Subsection.

B. Notice of Denial or Suspension. Upon determination of the Licensing Officer to deny an applicant's completed application or to suspend a registered solicitor's certificate, the Town shall cause written notice to be sent to the applicant or registered solicitor by the method indicated in the completed application. The notice shall specify the grounds for the denial or suspension, the documentation or information the Town relied on to make the decision, the availability of the documentation for review by applicant upon one (1) business day notice to the Town, and the date upon which the denial or suspension of the certificate shall take effect. It shall further state that the applicant or registered solicitor shall have fourteen (14) business days from the date of mailing from the Town of the notice of denial or suspension to appeal the same. The denial or suspension of the certificate shall be effective no sooner than two (2) calendar days from the date the notice is sent, unless that suspension is because of exigent circumstances outlined in Section 5-03-030 (GG) (2) (D), in which case, the suspension is effective immediately. The denial or suspension shall remain effective unless and until the order is rescinded, overturned on appeal, or determined by a court to be contrary to equity or law. Failure to appeal the suspension of a certificate automatically results in its revocation.

SECTION 51: **ADOPTION** "5.03.160 Deceptive Soliciting Practices Prohibited" of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.160 Deceptive Soliciting Practices Prohibited(*Added*)

A. No Solicitor shall intentionally make any materially false or fraudulent statement in the course of Soliciting.

B. A Solicitor shall immediately disclose to the consumer during face-to-face Solicitation;

(i) the name of the Solicitor;

(ii) the name and address of the entity with whom the Solicitor is associated; and

(iii) the purpose of the Solicitor's contact with the person and/or Competent Individual. This requirement may be satisfied through the use of the Badge and an informational flyer.

C. No Solicitor shall use a fictitious name, an alias, or any name other than his or her true and correct name.

D. No Solicitor shall represent directly or by implication that the granting of a Certificate of Registration implies any endorsement by the Town of the Solicitor's Goods or Services or of the individual Solicitor.

SECTION 52: **ADOPTION** “5.03.170 "No Solicitation" Notice” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.170 "No Solicitation" Notice(*Added*)

A. Any occupant of a Residence may give notice of a desire to refuse Solicitors by displaying a "No Solicitation" sign which shall be posted near the main entrance door or on or near the property line adjacent to the sidewalk leading to the Residence.

B. The display of such sign or placard shall be deemed to constitute notice to any Solicitor that the inhabitant of the Residence does not desire to receive and/or does not invite Solicitors.

C. It shall be the responsibility of the Solicitor to check each Residence for the presence of any such Notice.

D. The provisions of this Section shall apply also to Solicitors who are exempt from Registration pursuant to the provisions of this Subsection.

SECTION 53: **ADOPTION** “5.03.150 Appeal” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.150 Appeal(*Added*)

An applicant or registered solicitor whose certificate has been denied or suspended shall have the right to appeal to the Town Council or its designee. Any appeal must be submitted by either the applicant, the responsible person or entity, or legal counsel for either who: (a) documents the relationship with the applicant or responsible person or entity; or (b) is licensed or authorized by the State of Utah to do so and makes the assertion of an agency relationship. The following procedures and requirements shall apply:

A. Any appeal must be submitted in writing to the Town Recorder with a copy to the License Officer within ten (10) business days of the decision from which the appeal is taken. Such appeal shall describe in detail the nature of the appeal, the action complained of and the grounds for appeal.

B. Upon request of the applicant or registered solicitor, within one business day, the Town will make available any information upon which it relied in making the determination to either deny or suspend the Certificate.

C. The Appeals Officer shall review, de novo, all written information submitted by the applicant or registered solicitor to the Licensing Officer, any additional information relied upon by the Licensing Officer as the basis for denial, suspension or revocation, and any additional information supplied by the Town, applicant, or registered solicitor. Any additional information submitted by any party to the appeal to the Appeals Officer shall be simultaneously submitted to the opposing party. If desired, any party shall have three (3) business days to submit rebuttal documentation to the Appeals Officer regarding the additional information submitted by the opposing party.

D. The Appeals Officer will render a decision no later than fifteen (15) calendar days from the date the appeal was received by the Town unless an extension of time is agreed upon by the parties. Included in that decision shall be written findings regarding the decision. In the event that any party to the appeal submits rebuttal information as allowed in Section 5-03-150(C) the fifteen (15) calendar days shall be extended to include the additional three (3) days for rebuttal

E. The denial or suspension of the certificate shall be reversed by the Appeals Officer if upon review of the written appeal and information submitted, the Appeals Officer finds that the Licensing Officer made a material mistake of law or fact in denying or suspending the applicant or registered solicitor's certificate.

F. If the written appeal and information submitted indicates that the Licensing Officer properly denied or suspended the certificate of the applicant or registered solicitor, the denial or suspension of the Certificate shall be affirmed and constitute a determination that the suspended certificate is revoked.

G. The decision of the Appeals Officer shall be delivered to the applicant or registered solicitor by the means designated in the completed Application, or as otherwise agreed upon when the Appeal was filed.

H. After the ruling of the Appeals Officer, the applicant or solicitor is deemed to have exhausted all administrative remedies with the Town.

I. Nothing herein shall impede or interfere with the applicant's, solicitor's, or Town's right to seek relief in a court of competent jurisdiction.

SECTION 54: **ADOPTION** "5.03.180 Duties Of Solicitors" of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.180 Duties Of Solicitors(*Added*)

A. Every person soliciting or advocating shall check each residence for any "No Soliciting" sign or placard or any other notice or sign notifying a solicitor not to solicit on the premises, such as, but not limited to, "No Solicitation" signs. If such sign or placard is posted such solicitor shall desist from any efforts to solicit at the residence or dwelling and shall immediately depart from such property. Possession of a certificate of registration does not in any way relieve any solicitor of this duty.

B. It is a violation of this Subsection for any person soliciting or advocating to knock on the door, ring the doorbell, or in any other manner attempt to attract the attention of an occupant of a residence that bears a "No Solicitation" sign or similar sign or placard for the purpose of engaging in or attempting to engage in advocating, a home solicitation sale, door-to-door soliciting, or soliciting.

C. It is a violation of this Subsection for any solicitor through ruse, deception, or fraudulent concealment of a purpose to solicit, to take action calculated to secure an audience with an occupant at a residence.

D. Any solicitor who is at any time asked by an occupant of a residence or dwelling to leave shall immediately and peacefully depart.

E. The solicitor shall not intentionally or recklessly make any physical contact with, or touch another person without the person's consent;

F. The solicitor shall not follow a person into a residence without their explicit consent;

G. The solicitor shall not continue repeated soliciting after a person and/or competent individual has communicated clearly and unequivocally their lack of interest in the subject, goods or services of the solicitor;

H. The solicitor shall not use obscene language or gestures.

SECTION 55: **ADOPTION** “5.03.190 Time Of Day Restrictions” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.190 Time Of Day Restrictions(*Added*)

It shall be unlawful for any person, whether licensed or not, to solicit at a residence before 9:00 a.m. or after 9:00 p.m. Mountain Time, unless the solicitor has express prior permission from the resident to do so.

SECTION 56: **ADOPTION** “5.03.200 Buyer's Right To Cancel” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.200 Buyer's Right To Cancel(*Added*)

In any home solicitation sale, unless the buyer requests the solicitor to provide goods or services without delay in an emergency, the seller or solicitor shall present to the buyer and obtain buyer's signature to a written statement which informs the buyer of the right to cancel within the third business day after signing an agreement to purchase. Such notice of "Buyer's right to cancel" shall be in the form required by §70C-5-103, Utah Code Annotated, 1953, or a current version thereof or any State or Federal law modifying or amending such provision.

SECTION 57: **ADOPTION** “5.04.010 Rules Governing Temporary Mass Gatherings” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.04.010 Rules Governing Temporary Mass Gatherings(*Added*)

A. "Temporary Mass Gathering" means an actual or reasonably anticipated assembly of 500 or more people, which continues or can reasonably be expected to continue for two or more hours per day, at a site for a purpose different from the designed use and usual type of occupancy. A temporary mass gathering does not include an assembly of people at a location with permanent facilities designed for that specific assembly, unless the designed occupancy levels are exceeded.

B. All mass gatherings taking place within the incorporated area of Big Water Town shall comply with the Utah Department of Health, Temporary Mass Gathering Sanitation Rule as adopted by the Southwest Public Health Department.

C. No permit or license to so gather shall be issued unless the gathering has been approved by the Southwest Public Health Department; nor shall any "Owner" or "Operator" (as defined by the existing Southwest Public Health Department rule governing temporary mass gatherings) permit a "Temporary Mass Gathering" as defined by such rule to take place within the Town or any part thereof, unless the gathering is in compliance with the rules or rules adopted by the Southwest Public Health Department.

D. A license pursuant to this section shall not be issued until arrangements are made to conduct such activity on private property, and until liability insurance acceptable to the Town in accordance with AM Best Rating is provided in the sum of \$1,000,000 dollars per occurrence, \$500,000 per person, and \$250,000 for property damage, which shows on its face the condition to protect and indemnify Big Water Town against any loss or liability arising from such activity.

SECTION 58: **ADOPTION** “5.04.020 Fees For Exhibitions, Concerts And Performances” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.04.020 Fees For Exhibitions, Concerts And Performances(*Added*)

Individuals or groups putting on performances, exhibitions, concerts, or other entertainment activities for which a fee is charged, either to the public or to the hiring entity, shall pay a license fee of \$100.00 for each 24-hour period during which they present a public performance, concert or exhibition. If the group to be entertained consists of more than 300 persons, based upon seating capacity, number of tickets sold, or any other reasonable criteria, the license fee shall be \$250.00 for each 24-hour period in which exhibitions, concerts, or performances are presented. This license shall be required of all performers and groups engaging in business within the Town of Big Water, including musical aggregations, circuses, carnivals, rodeos, fight promoters, racing promoters, displays and exhibitions, live shows, and entertainers of any kind. No fee shall be required for the license issued to any person or group in this category which is non-profit, or which is raising funds exclusively for religious or charitable purposes.

SECTION 59: ADOPTION “5.08.010 Definitions” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.08.010 Definitions(*Added*)

In addition to the definitions set forth in Utah Code Annotated §32B 1 102, 1953, as amended, or its successor statute, adopted and incorporated herein by this reference, the following definitions apply:

1. "Alcohol or alcoholic beverage" means both "beer," "wine," and "liquor" collective when referenced in this chapter, unless otherwise distinguished.
2. "Alcoholic Beverage Control Act" means Title 32B of the Utah Code Annotated, or its successor statute.
3. "Annual" means a calendar year.
4. "Enforcement officer" means any law enforcement officer or any other person designated by the Town to enforce this chapter.
5. "Food" means an appetizer, entrée, or meal of substantive food customarily served to a patron at a dine-in restaurant.
6. "Local authority" means Big Water Town.
7. "Licensing authority" means the Town official designated by the Town administrator to issue a license under this chapter.

SECTION 60: **ADOPTION** “5.08.020 License Required” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.08.020 License Required(*Added*)

In accordance with Utah Code Annotated §11-10-1, no person may operate an association, restaurant, club, business, or similar establishment that allows a person to purchase, possess, or consume an alcoholic product on the premises of said association, restaurant, club, business, or similar establishment without a valid alcohol license as provided in this chapter. In addition to the requirements of this chapter, an association, restaurant, club, business, or similar establishment shall comply with the requirements of Utah Code Annotated §32B entitled the “Alcoholic Beverage Control Act” and other applicable laws and regulations.

SECTION 61: **ADOPTION** “5.08.030 License Classifications” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.08.030 License Classifications(*Added*)

An applicant within the Town may apply for the following six (6) classes of license subject to availability as provided in this part:

1. Class "A" retail licenses. This license is issued by the licensing authority subject to compliance with this Subsection and shall:

- a. Entitle the licensee to sell beer on the premises licensed in original containers for consumption off-premises in accordance with the Utah Alcoholic Beverage Control Act.
- b. This class of license is appropriate for grocery and convenience store type establishments.
- c. There is no limit on the number of this class of license that may be issued.

2. Class "B" retail licenses. This license is issued by the licensing authority subject to compliance with this Subsection and shall:

- a. Entitle the licensee to sell a patron beer in original containers and/or wine served on-premises for consumption by a legal patron on-premises in conjunction with the sale of food in accordance with the Alcoholic Beverage Control Act.
- b. This class of license is appropriate for dine-in restaurant establishments.
- c. There is no limit on the number of this class of license that may be issued.

3. Class "C" retail license. This license is issued by the licensing authority subject to compliance with this Subsection and shall:

- a. Entitle the licensee to sell draft beer for consumption on- or off premises and to sell beer, wine, and/or alcohol in accordance with the Alcoholic Beverage Control Act.
- b. This class of license is appropriate for restaurant establishments that make specialty beer (micro-brewery with food service).
- c. There is a maximum limit of three (3) licenses for this class available for issuance.

4. Class "D" retail license. This license is issued by the licensing authority subject to compliance with this Subsection and shall:

- a. Entitle the licensee to sell alcohol for consumption on-premises in accordance with the Alcoholic Beverage Control Act.
- b. This class of license is appropriate for bars or clubs.
- c. There is a maximum limit of three (3) licenses for this class available for issuance.

5. Class "E" retail or wholesale license. This license is issued by the licensing authority subject to compliance with this Subsection and shall:

- a. Entitle the licensee to manufacture, warehouse, store, and sell an alcoholic beverage for off-premises consumption in accordance with the Alcoholic Beverage Control Act.
- b. This class of license is appropriate for beer manufacturing and beer distribution facilities.
- c. There is no limit on the number of this class of license that may be issued.

6. Class "F" temporary license. This license is issued by the licensing authority subject to compliance with this Subsection and shall:

- a. Entitle the licensee to sell beer for on-premises consumption for a period of time not to exceed thirty (30) days. This class of license is non-renewable during a calendar year.

b. This class of license is appropriate for special events.

c. There is no limit on the number of this class of license that may be issued.

SECTION 62: **ADOPTION** “5.08.040 License Fee” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.08.040 License Fee(*Added*)

In accordance with Utah Code Annotated §11-10-3, in addition to the general business license fee, an annual alcohol license fee is hereby imposed in the following amounts: Class “A”:
\$125.00 Class "B": \$125.00 Class "C": \$300.00 Class "D": \$300.00 Class “E”:
\$125.00 Class “F”:
\$25 per day

SECTION 63: **ADOPTION** “5.08.050 Licensing Requirements” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.08.050 Licensing Requirements(*Added*)

The local authority shall only issue a license for the sale or distribution of alcohol based upon the license classifications authorized in this Section.

1. State requirements. Applicant complies with the provisions of Utah Code Annotated §11-10-2, as amended.

2. License required. It is unlawful for any person to engage in the business of selling an alcoholic beverage within the Town without first obtaining the licenses required by this Subsection.

3. Administration. The licensing authority shall administer this subsection under the direction of the Town administrator.

4. Application and fee. Any person seeking a license to sell an alcoholic beverage shall submit a written application to the Town License Officer as provided for in this Section which shall be accompanied by the appropriate application/license fee required. The application/license fee is not refundable in the event that the application is denied. However, the applicant is given thirty (30) days after notice from the Town of a deficiency to cure a denied or defective application without the requirement of repayment of the application/license fee.

5. Information required. All applications for a license to sell an alcoholic beverage shall be made in writing upon the form provided by the Town recorder. The application shall state:

a. The name of the person desiring a license to sell an alcoholic beverage.

b. The name of the business.

c. The location where business is to be conducted.

d. The names of all partners holding more than a twenty percent (20%) interest in the business.

e. The class of license sought.

f. Other information specified on the application as determined by the Town administrator, or any other information required by ordinance or statute.

6. Review and approval. An application that complies with this Section shall be issued by the Town Recorder after review and approval by the licensing authority. An application that does not meet the requirements of this Section shall be denied by the licensing authority.

7. License owner. A license for the sale of alcohol is issued in the name of the business operator or owner rather than the name of the business. In the event of a change of the business operator or ownership, a new application and license is required along with the application fee.

8. Nontransferable. Licenses issued under this Section are not transferable.

9. Renewal. A license issued under this Subsection shall be renewed annually in conjunction with the renewal schedule for business licenses.

10. Display. The holder of a license issued under this Subsection shall display in a conspicuous location the license issued by the licensing authority along with any license issued by the governing state agency for the sale of any alcoholic beverage.

11. Time limit on operation. If a holder of a license issued under this Subsection fails to open or to conduct business within the jurisdiction of the local authority for a period of one (1) year after issuance of the license, then said license is void and a new application and fee must be submitted and approved by the licensing authority.

SECTION 64: **ADOPTION** “5.08.060 Inspection And Enforcement” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.08.060 Inspection And Enforcement(*Added*)

The licensing official or enforcement official may conduct an inspection regarding any license issued under this Subsection to assure compliance with applicable law. The holder of a license issued under this chapter, by accepting said license, irrevocably consents to allow the inspection and search of the licensed premises by any licensing officer and/or the enforcement officer for any alcoholic beverage or for any other goods illegally possessed or kept, or for any evidence of any alleged alcohol related crime under investigation by law enforcement. The licensee further consents to the seizure of alcohol that exceeds that classification limits set upon the license holder or alcohol related property in violation of this Subsection.

SECTION 65: **ADOPTION** “5.08.070 Restrictions” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.08.070 Restrictions(*Added*)

The following restrictions in this section apply to all license classes and persons.

1. State law. It is unlawful to sell alcohol in violation of the Utah Alcoholic Beverage Control Act, or its successor.
2. Compliance. It is unlawful for an applicant or licensee to violate Utah Code Annotated §11-10-1, this Subsection, the municipal code, or any terms under which a license was issued.
3. Limits on hours. It is unlawful for a person or any class of licensee to sell or otherwise furnish a patron or other person with an alcoholic beverage during the hours from one o'clock (1:00) A.M. to six o'clock (6:00) A.M.
4. Exceed license. It is unlawful to sell an alcoholic beverage except in the manner for which he has been so licensed pursuant to the provisions of this Subsection.

5. Licensed premises. It is unlawful for any licensee to sell an alcoholic beverage anywhere within the Town, except upon or within the premises licensed for such sale.

6. Advertising and promotions limitations. It is unlawful to advertise the sale of an alcoholic beverage, except in full compliance with the Alcoholic Beverage Control Act and regulations duly made thereunder by the state. It is unlawful for any licensee to give away or offer a free lunch, free food, or similar promotion in connection with the sale of an alcoholic beverage.

7. Intoxicated person. It is unlawful to sell an alcoholic beverage to a person who appears to be intoxicated by drugs or alcohol, or who is under the influence of any intoxicating beverage.

8. Underage. It is unlawful to sell an alcoholic beverage to any person under the age of 21 or allow a person under the age of 21 years to sell the same.

9. Unlawful product. It is unlawful for any licensee to purchase or acquire or allow to be kept upon the licensed premises any alcoholic beverage not lawfully acquired from a brewer or wholesaler licensed under the provisions of the Alcoholic Beverage Control Act, or as part of a duly approved micro-brewery. It is unlawful for any licensee to keep any liquor product on the licensed premises that exceeds the scope of the license class or violates the Alcoholic Beverage Control Act.

10. Access. It is unlawful for any serving area, door, or entryway to be locked or barricaded in any way so as to interfere with the free entrance to the licensed premises by any enforcement officer at any time while the premises is occupied or open to the public. However, licensee may maintain upon the premises a locked storeroom for the keeping of goods and supplies used in the business.

11. Lookouts and warning devices. It is unlawful for any person commonly known as a "A Lookout" to be stationed or maintained to give warning of an approach of any enforcement officer. It is unlawful to maintain or operate any device which is used or capable of being used to give warning to persons of the approach of an enforcement officer.

12. Respondeat superior. The licensee shall be responsible under this Subsection for all of the activities of his employees and hereunder, the licensee unconditionally guarantees to the Town that neither he nor his employees will violate the terms of this Subsection, and for breach of such guarantee, the license may be revoked. It is unlawful for the owner or any licensee to: a. Fail to maintain full control of the conduct of the business upon the licensed premises. b. Fail to inform employees of the requirements of law relating to the sale of alcohol in the state of Utah. c. Fail to maintain control of employees.

13. Adverse action. It is unlawful for any person to sell an alcoholic beverage after the revocation or suspension of any license issued to said person.

14.Setbacks. It is unlawful to operate a business where an alcoholic beverage is sold at retail for off premise consumption within the setback distance of a “community location” as defined in Utah Code Annotated §32B-1-102(21), according to the specified set-back distances for each class of license set forth in Utah Code Annotated §32B-1-202, or otherwise in state law, unless the establishment preexisted this Subsection.

15.Restricted activities. It is unlawful to sell an alcoholic beverage at:

- a. A dance or dance hall not classified or defined as a club.
- b. On public property.
- c. A sexually oriented business.
- d. A theater or cinema.

SECTION 66: **ADOPTION** “5.08.080 Suspension And Revocation” of the Big Water Municipal Code is hereby *added* as follows:

A D O P T I O N

5.08.080 Suspension And Revocation(*Added*)

In accordance with Utah Code Annotated §11-10-1(4), an enforcement officer may suspend or revoke a license issued under this Subsection as follows:

1. Suspension. If a licensee has been issued a warning or citation for a violation of this Subsection and a second violation occurs within a one (1) year period, then the enforcement officer may suspend a license for up to thirty (30) days. In lieu of a suspension, the enforcement officer may issue a civil penalty not to exceed \$1,000.00 for a violation of this chapter.

2. Revocation. An enforcement officer may revoke a license issued under this Subsection if a license has another violation of this Subsection where a suspension has been made within a one (1) year period prior to the violation. Any revocation made under this Subsection shall continue for a period of one (1) year after which an applicant may resubmit an application under this Subsection.

3. Educational requirement. An enforcement officer may issue a suspension to any licensee for a violation of educational requirements set forth in Utah Code Annotated §32B-5-401, et seq. In lieu of suspension, and, based upon the facts and circumstances, the enforcement officer may impose a fine of up to \$250.00 for a violation of this part.

4. Operational requirements. It is cause for immediate revocation or suspension for a licensee who violates the operational requirements set forth in Title 32B of the Utah Code Annotated, depending upon the severity of a violation(s).

SECTION 67: **ADOPTION** “5.08.090 Appeals” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.08.090 Appeals(*Added*)

1. Time for written appeal. Any person may appeal a decision made under this Subsection to the administrative hearing officer or appeal authority by filing a written appeal with the finance director within ten (10) days of any final adverse decision.

2. Appeal authority. Unless otherwise designated by executive order or rule, the appeal authority shall consist of an administrative hearing officer designated by the Town administrator.

3. The appeal authority shall:

a. Hear and decide all appeals under this chapter.

b. Act in a quasi-judicial manner and serve as the final arbiter of issues involving the interpretation or application of applicable law.

c. Exercise other powers and duties prescribed by law or assignment.

d. Include as part of its decision written findings.

4. Appeal generally. No person may challenge in district court any decision of the town or its enforcement officer(s) until that person has complied with the appeal procedure of this Subsection and has exhausted all administrative remedies pertaining to such appeal. No adversely affected party shall present a theory of relief in district court that was not first presented to the appeal authority. Adversely affected parties are precluded from pursuing duplicate or successive appeals before the appeal authority as a condition of the adversely affected party's duty to exhaust administrative remedies.

SECTION 68: **ADOPTION** “5.08.100 Implementation” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.08.100 Implementation(*Added*)

The town administrator may establish rules of procedure consistent with this Subsection for the effective implementation of this Subsection.

SECTION 69: **ADOPTION** “5.08.110 Penalties” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.08.110 Penalties(*Added*)

The following penalties apply and are not mutually exclusive:

1. Civil. Each violation of this Subsection constitutes a civil fine not to exceed \$1,000. Each day a violation continues constitutes a separate offense. The town may seek any civil remedy provided by law including abatement and injunctive relief for a violation of this Subsection or for situations that constitute a public nuisance relating to alcoholic beverages.
2. Criminal. Each violation of this Subsection is a class B misdemeanor.

SECTION 70: **ADOPTION** “5.09.010 Violations” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.09.010 Violations(*Added*)

It shall be unlawful for any person, firm, or corporation, whether as owner, lessee, sublessee, or occupant, to erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy, or maintain any building or premises, or cause or permit the same to be done, contrary to or in violation of any of the construction or fire codes adopted by State law or any order issued by the building official pursuant thereto.

SECTION 71: **ADOPTION** “5.09.020 Permits And Inspections” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.09.020 Permits And Inspections(*Added*)

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, or demolish any building or structure, cause or allow the same to be done, without first obtaining a separate building permit for each such building or structure from the building official in the manner and according to the applicable conditions prescribed by State law regarding Construction and Fire codes.

SECTION 72: **ADOPTION** “5.09.030 Building Official” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.09.030 Building Official(*Added*)

There is hereby created the position of Municipal building official. When appointed by the Major can be the Municipal Building Official and/or the Building Inspector.

SECTION 73: **ADOPTION** “5.09.040 Review Of Building Inspection” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.09.040 Review Of Building Inspection(*Added*)

1. In accordance with Utah Code Section §15A-1-210, the Town and/or Administrator provides for a review of an inspection conducted by the town's building inspector for a single-family residential building permit.

2. Upon request by a person seeking a single-family residential building permit, a chief executive officer of the municipality or county issuing the single-family residential building permit, or the chief executive officer's designee, shall, with reasonable diligence, review an inspection described in Subsection (1) to determine whether the inspection constitutes a fair administration of the State Construction Code.

3. A review described in this section: a. is separate and unrelated to an appeal under the International Residential Code; b. may not be used to review a matter that may be brought by appeal under the International Residential Code; c. may not result in the waiver or modification of an International Residential Code requirement or standard; d. may not conflict with an appeal, or the result of an appeal, under the International Residential Code; and e. does not prohibit a person from bringing an appeal under the International Residential Code.

4. A person who seeks a review described in this section may not be prohibited by preclusion, estoppel, or otherwise from raising an issue or bringing a claim in an appeal under the International Residential Code on the grounds that the person raised the issue or brought the claim in the review described in this section.

5. As used in this section, "International Residential Code" means the International Residential Code as adopted under the State/County Construction Code.

SECTION 74: **ADOPTION** “5.10.010 Commencement Of Offensive Business” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.10.010 Commencement Of Offensive Business(*Added*)

A. No person shall commence or change the location of any offensive business or establishment in or within one mile of the limits of this municipality without first filing an application for a permit to do so with the recorder/clerk.

B. Offensive businesses, within the meaning of this part, shall include but not be limited to, packing houses, dairies, tanneries, canneries, renderers, junk or salvage yards, bone factories, slaughterhouses, butcher shops, soap factories, foundries, breweries, distilleries, livery stables, blacksmith shops, or any other enterprise or establishment which creates excessive odors, fumes, smoke gases, or noises.

C. The application for a permit shall specify the location at which the business or establishment is to be operated and maintained or the new location to which it is to be moved. The application shall describe the type of activity which will be conducted and describe the manner in which the business or establishment shall eliminate, control, or modify the emission by the business of the undesirable odors, fumes, noises, and other noisome features and the manner in which it shall be screened from public view, if its appearance is offensive.

SECTION 75: ADOPTION “5.10.020 Issuance Of Permits Section” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.10.020 Issuance Of Permits Section(*Added*)

A. The Town License Officer shall cause a study to be made of the proposed business or relocation of any offensive business or establishment by the board of health and personnel engaged in the inspection of buildings and other facilities. A report and recommendation shall be made to the governing body. The governing body, after review, may grant the applicant an opportunity to be heard and present additional facts. Thereafter the governing body may: 1. Deny the application. 2. Recommend a modification thereof. 3. Grant a limited permit to enter into the business or make the change of location subject to the requirement that the business or facility conform to standards established by the governing body with reference to controlling the offensive features of the business.

B. In the event a permit is granted, it shall be subject to revocation either upon failure of the operator or owner to conduct his business in the manner specified by the governing body at the time of the granting of the permit, or because a change of circumstances makes the continued operation or maintenance of the business or facility a public nuisance.

C. The governing body shall have power to revoke or modify the permission to operate and maintain the business in such a manner as it deems necessary for the public good.

SECTION 76: **ADOPTION** “5.05 Special Sales Events And Promotions” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.05 Special Sales Events And Promotions(*Added*)

A. Definitions: A Special Sales Event or Promotion, hereby referred to as a Sales Event, is a commercial activity conducted by businesses currently operating within Big Water Town. They may be conducted on or off-premise, on the public sidewalk, or on private or publicly owned parking lots.

B. Permit Required: No person shall operate a Sales Event without the required permit.

C. Application: Application must be made at least 48 hours prior to the Sales. Application is submitted to Planning and Zoning Administrator, which grants the permit.

D. Permit: The license shall state the dates of the event sale. The Sales Event shall not extend for more than 3 consecutive working days nor more than 4 times a year.

E. License Fee: None.

F. Sales Event:

1. Must be conducted in a commercial zone.

2. If extension cords are utilized, they must be outdoor rated and placed in a manner to not create a hazard.

3. Must be operated in a manner so as not to block traffic into or out of adjacent businesses or structures. Trucks and trailers may be used for storage of merchandise or inventory but may not be entered by the customer.

4. Refer to BWZC 15.20.090 for signage requirements. No other means of advertising such as flashing lights, loudspeakers, or calling out, are permitted. Permanent signs on trucks or semi-truck trailers are not considered part of the signage.

5. Before a license is issued the applicant must: If the event is off-premises from the original business location the applicant must provide written evidence that restroom facilities for employees will be provided by another business within 300 feet and provide evidence that the owner of the premises upon which the event will be conducted has given approval to do so.

SECTION 77: **ADOPTION** “5.02.050 Rebate Of Fee” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.02.050 Rebate Of Fee(*Added*)

No rebate or refund of any license fee or part thereof shall be made by reason of the non-use of such license or by reason of a change of location or type of business rendering the use of such license ineffective, except in the following instances: i. When a license fee is collected in error; ii. When a licensee has been prevented from enjoying the full license term due to death or physical incapacity to engage in business; iii. When a licensee is rendered unable to conduct business because he has entered the armed services of the United States; or iv. When the licensed business is destroyed by fire or other casualty through no fault of licensee. In the event of the applicability of an exception, the rebate shall be prorated according to the number of days remaining in the license year after occurrence of the event relied upon for a rebate.

SECTION 78: **ADOPTION** “5.02.060 Fee Waivers” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.02.060 Fee Waivers(*Added*)

Fee waivers do not change the requirements for businesses to have a business license and to comply with other applicable federal, state, and local laws and regulations. Businesses are eligible for a fee waiver if all business activities fall under the following criteria: i. The business is a producer of unprocessed food grown on the producer’s property, located within Big Water Town limits or within fifty (50) miles of the Town’s limits, and generating less than \$5,200 dollars per year in gross revenues. Unprocessed food includes fruits, vegetables, herbs, mushrooms, and flowers. This section does not apply to any producer who sells products that have been processed or altered in any way. ii. Any person with a Cottage Food Establishment permitted by the State of Utah generating less than \$5,200 dollars per year in gross revenues. iii. Home occupation businesses that do not create an additional offsite impact. Examples of offsite impact include regular deliveries, client meetings, signage, utilization of off-street parking, storage of materials, and employment of people not living in the home.

SECTION 79: **ADOPTION** “5.03.100 Issuance Of Certificates” of the Big Water Municipal Code is hereby *added* as follows:

ADOPTION

5.03.100 Issuance Of Certificates(*Added*)

The Licensing Officer shall review the completed application submitted by the applicant and issue a certificate if the following requirements have been met: a. applicant’s submission of a completed application; b. applicant’s submission of the required fee; c. applicant establishes proof of identity; d. the applicant’s representations on the application form do not affirmatively show a disqualifying status; e. the B.C.I. does not affirmatively show a disqualifying status; and f. the applicant has not previously been denied a certificate by the Town, or had a certificate revoked for grounds that still constitute a disqualifying status under this Subsection.

SECTION 80: **AMENDMENT** “4.04.040 Building Department” of the Big Water Municipal Code is hereby *amended* as follows:

AMENDMENT

4.04.040 Building Department

Description	Fee
Building Permit Application	\$100
Plan Review	\$100 (additional reviews \$50 each)
Plan Review 10 lots or more	\$2,200 + \$85 per Lot
Commercial Plan Review	Building Permit Base (with 45% for engineering costs; additional as required)
Sign Permit	\$150 (Application Fee Plan Review, and Inspection Included)
Re-Inspection or Additional Inspections	\$56.40/each and up
Solar Permit- Residential	\$200 (Application Fee, Plan Review Fee, and Inspection Fee included)
Solar Permit- Commercial	\$300 (Application Fee, Plan Review Fee, and Inspection Fee Included)

Building Permit Fee	Determined by the most recently Utah State adopted publication of the ICC Building Code
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SECTION 81: AMENDMENT “4.04.020 Permits/Licenses” of the Big Water Municipal Code is hereby *amended* as follows:

AMENDMENT

4.04.020 Permits/Licenses

Description	Fee
Dog License	\$10
Solicitor/Vendor License	\$25/Day \$50/Week
Alcohol License (Class A)	\$300
Alcohol License (Class B)	\$500
Temporary Use Permit	\$50
Law Enforcement	\$75
Emergency Presence	Negotiated for Event
Business License (Up to \$100,000 Gross Annual Revenue)	\$50 + \$15 for every 10 employees
<u>Business License Fire Inspection</u>	<u>\$25</u>
<u>Business Address Change</u>	<u>\$10</u>
Business License (Over \$100,000 Gross Annual Revenue)	\$100
Business License (Non-Profit)	\$25
Home Business/Occupation Permit	\$25

SECTION 82: AMENDMENT “4.04.010 Municipal Rates And Fees” of the Big Water Municipal Code is hereby *amended* as follows:

AMENDMENT

4.04.010 Municipal Rates And Fees

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Description	Fee
Water Service (GCSSD)	\$28 up to 10,000 gallons
Trash (Republic)	\$28.37± per residential trash can
Transfer Station	* All loads are subject to inspection --- Costs may vary
Green Waste (ie. Brush, weeds, yard debris, tree limbs etc.)	\$0
Truck Bed	\$20/load*
Trailer	\$40/load*
XL Loads (larger than a trailer)	*Fee determined upon inspection*
Mattress	\$20
Couch	\$40
Refrigerator	\$40
Appliances (washer, dryer, stove, water heater etc.)	\$20
Fax and Copies	0.25/Page
Map printouts	0.25/Page
Town Documents (printed out)	0.25/Page (unless specified below)
General Plan	\$10
Zoning Ordinance	\$10
Policies & Procedures	\$10
Grama Request	
First 15 Minutes	Free
First 2 Hours	\$21.60/hour
After 2 Hours	\$21.60/hour
Marshal Paper service	\$25
Demolition Cleanup	\$300/per man hour
Use of Town Hall	\$50 up to Four Hrs + \$100 Deposit \$100 up to Eight Hrs + \$100 Deposit
Clerk Research	\$20/hour
Backhoe with Operator	\$100/hour

SECTION 83: REPEALER CLAUSE All ordinances or resolutions or parts thereof, which are in conflict herewith, are hereby repealed.

SECTION 84: SEVERABILITY CLAUSE Should any part or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinances a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

EFFECTIVE DATE This Ordinance shall be in full force and effect from February 21, 2024 and after the required approval and publication according to law.

PASSED AND ADOPTED BY THE BIG WATER TOWN COUNCIL

_____.

	AYE	NAY	ABSENT	ABSTAIN
Council member Jim Lybarger	_____	_____	_____	_____
Mayor David Schmuker	_____	_____	_____	_____
Council member Levi Banfill	_____	_____	_____	_____
Council member Luke McConville	_____	_____	_____	_____
Council member Keith Crowley	_____	_____	_____	_____

Presiding Officer

Attest

David W. Schmuker, Mayor, Big Water Town

Katie Joseph, Clerk, Big Water Town