

**Mayor**

**Robert Houston**

**City Manager**

**Joseph Decker**

**Treasurer**

**RaeLene Johnson**



**KANAB**  
— UTAH —

**City Council**

**Brent Chamberlain**

**Cheryl Brown**

**Kirt Carpenter**

**Joe B. Wright**

**Kent Burggraaf**

**KANAB CITY COUNCIL**

January 13th, 2015

76 NORTH MAIN, KANAB, UTAH

**NOTICE** is hereby given that the Kanab City Council will hold its regular council meeting on the 10th day of February, 2015, at the District Courtroom at the Kane County Courthouse at 76 North Main, Kanab, Utah. The Council Meeting will convene at 6:30 p.m., and the agenda will be as follows:

6:30 P.M. Work Meeting

Business Meeting

1. Call to Order and Roll Call
2. Approval of Agenda
3. Approval of minutes of previous meeting
4. Approval of Accounts payable vouchers
5. Public Comment Period – Members of the public are invited to address the Council. Participants are asked keep their comments to 3 minutes and follow rules of civility outlined in Kanab Ordinance 3-601
6. Appoint Jenifer Andrews to the Arts Council with a term ending 12/31/2018
7. Appoint Laurali Noteman to the Arts Council with a term ending 12/31/2017
8. Appoint Amy Sorenson to the Parks and Rec Board with a term ending 12/31/2016
9. Public Hearing. Consider Changing Parking Stall Size for Off Street Parking (Chapter 6 and any related chapters of the Kanab City Land Use Ordinance).
10. Consider adopting Ordinance 2-1-15 O "An Ordinance amending Kanab City Land Use Ordinance concerning Dimensions of off-street parking spaces."
11. Public Hearing to receive input from the public with respect to the issuance of the Sales Tax Revenue Bonds and any potential economic impact to the private sector from the construction of flood prevention and storm water improvements
12. Approval of interlocal agreement with Kane County for Kanab City Building Inspections.
13. Approval of Ordinance 2-2-15 O "An Ordinance amending Kanab City General Ordinance Section 9 Business Licenses".
14. Closed Session:
  - Discuss the character, professional competence, or physical or mental health of an individual.
  - Discuss pending or reasonably imminent litigation.
  - Discuss the purchase, exchange, or lease of real property.

Times listed for each item on the agenda may be accelerated as time permits. If you are planning to attend this public meeting and due to a disability need assistance in understanding or participating in the meeting, please notify the City eight or more hours in advance of the meeting, and we will try to provide whatever assistance may be required. Please contact RaeLene Johnson at the Kanab City offices.

## **KANAB CITY COUNCIL MEETING**

**JANUARY 27, 2015**

### **KANE COUNTY COMMISSION CHAMBERS**

**PRESENT:** Mayor Robert D. Houston, Council Members Kirt Carpenter, Cheryl Brown, Kent Burggraaf, and Joe B. Wright with Brent Chamberlain present electronically, City Manager Joe Decker, Attorney Jeff Stott, Attorney Greg Hardman and City Treasurer RaeLene Johnson.

**WORK MEETING:** Mayor explained that Mr. Decker, Jeff Stott, Tressa Clark and himself had reviewed the old business license ordinance, and found changes that needed to be made. The Business License Ordinance now needs to be reviewed by the Council. Attorney Jeff Stott reviewed with the Council some of the changes to the business license ordinance. The fees are mostly the same except for non-profit special events. The ordinance was changed to assessing \$25 for permit fees for a business and/or concession stand. Council suggested charging \$5 a day up to \$25. Council Member Burggraaf would like the appeals and findings given in 30 days. Tressa Clark, Deputy Recorder/Business License Clerk, stated she was concerned with the bonding requirement for certain businesses. Mr. Stott said he would research to see if that is needed. Council Member Burggraaf expressed he would like the numbering of the ordinance to be different. Council expressed appreciation to Mr. Stott for all of his work on the ordinance.

Attorney Jeff Stott presented training to the Council on the open meeting laws that is required each year in the open and public meeting act. A public hearing is for the Council to listen to the public without responding to each statement; then after the public hearing is closed, the public listens to the Council deliberate. He discussed when a meeting can be a closed session, and what constitutes a quorum.

Mayor Houston called the regularly scheduled meeting to order and roll call was taken. Prayer was offered by Council Member Wright. The pledge of allegiance was led by Mayor Houston.

**APPROVAL OF AGENDA:** A motion was made by Council Member Wright and 2<sup>nd</sup> by Council Member Brown to approve the agenda as amended. Motion passed unanimously.

**APPROVAL OF MINUTES:** A Motion was made by Council Member Wright and 2<sup>nd</sup> by Council Member Carpenter to approve the minutes of January 13, 2015 as amended. Motion passed unanimously.

**APPROVAL OF ACCOUNTS PAYABLE VOUCHERS:** A motion was made by Council Member Brown and 2<sup>nd</sup> by Council Member Wright to approve the accounts payable vouchers and check register for January 27, 2015 in the amount of \$33,871.97. Motion passed unanimously.

**PUBLIC COMMENT PERIOD:** Mr. Jim Page addressed the Council. He wanted to know if the General Plan was going to be 87 pages. He also would like the motto and vision statement left in the General Plan. He felt that was what defines us as a city.

**PUBLIC HEARING CONCERNING THE GENERAL PLAN UPDATE:** A motion was made by Council Member Wright and 2<sup>nd</sup> by Council Member Brown to go in and out of public hearing at the discretion of the Mayor. Motion passed unanimously. No comments were received. Mayor closed public hearing. Mayor explained that the General Plan was reviewed and revised by Ken Young, a public planner; the Planning Commission had reviewed it and recommends the Council approve it. Mr. Levi Roberts with Five Counties Association of Governments addressed the Council. He presented the Planning Commission's recommended changes in each chapter. Council Member Carpenter felt that the plan wasn't ready for adoption. It needed to have grammar changes, and it need to flow better. Council Member Brown would like the motto and vision statement left in the plan. She wanted to know why Chapter 2: Land Use was removed. She was also concerned about Chapter 3: Community Design having most of that page taken out of the Plan. She would like it to remain in the Plan. Council Member Wright agreed with Council Member Brown about leaving the motto and vision statement in the Plan. He felt the goals should be put at the first of the chapter. Mayor would like a cover letter with the finished General Plan. Council Member Burggraaf suggested having Levi Roberts take out all the crossed off areas and fix the grammar and etc. and bring the final document back to the Council for adoption.

**ADOPTION OF ORDINANCE 1-2-15 O/AN ORDINANCE ADOPTING KANAB CITY GENERAL PLAN:** A motion was made by Council Member Wright to postpone the adoption of the General Plan until the February 24<sup>th</sup> meeting. Motion 2<sup>nd</sup> by Council Member Brown. Motion passed unanimously.

A motion to go into closed session to discuss litigation on the swimming pool was made by Council Member Wright and 2<sup>nd</sup> by Council Member Carpenter. Motion passed unanimously. Council Member Chamberlain absent.

Out of closed session. A motion to adjourn was made by Council Member Wright and 2<sup>nd</sup> by Council Member Brown. Motion passed unanimously. Council Member Chamberlain absent.

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MAYOR     ROBERT D. HOUSTON

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RECORDER     JOE DECKER



**ORDINANCE NO. 2-1-15 O**

**AN ORDINANCE AMENDING KANAB CITY LAND USE ORDINANCE CONCERNING  
DIMENSIONS OF OFF-STREET PARKING SPACES**

**WHEREAS**, the Kanab City Planning Commission and staff have evaluated current land use requirements and procedures and has found a need for clarification; and

**WHEREAS**, The Kanab City Planning Commission conducted the required Public Hearing on February 3rd and recommended to the City Council that the Land Use Ordinance be amended;

**NOW, THEREFORE, BE IT ORDAINED** by the Kanab City Council that the Kanab City Land Use Ordinance is hereby amended as reflected in the attached 1 page.

All former codes or parts thereof conflicting or inconsistent with the provisions of this Ordinance or of the Code hereby adopted are hereby repealed.

The provisions of the Code shall be severable, and, if any provision thereof or any application of such provision is held invalid, it shall not affect any other provisions of this code or the application in a different circumstance.

This ordinance shall be effective upon the required posting.

**PASSED AND ORDERED POSTED** this 10th day of, February 2015.

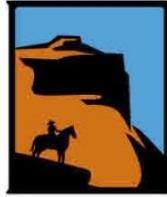
KANAB CITY

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
RECORDER

Mayor  
Robert Houston  
City Manager  
Joe Decker  
Treasurer  
RaeLene Johnson



City Council  
Kent Burggraaf  
Cheryl Brown  
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Joe B. Wright

**KANAB**  
— UTAH —

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KANAB CITY COUNCIL STAFF REPORT- February 10, 2015

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I. **RECOMMENDATION:** Amendment to Section 6-2 of the Land Use Ordinance regarding dimensions of off-street parking spaces

II. **STAFF ANALYSIS**

It has come to the attention of Staff and the Planning Commission that the minimum dimension requirements for parking may be excessively large and that a consideration should be given to reduce the requirement to better accommodate development and be in line with industry standards. This request arose when the developer of the Hampton Inn submitted a site plan that included 9 ft X 18 ft. parking spaces, which did not meet the standards set forth in the *Kanab City Land Use Ordinance*. The applicant indicated that space on the site was limited and that increasing the length of the spaces was not feasible. Section 6-2 of the ordinance states “the dimensions of each off-street parking space shall be at least nine (9) feet by twenty (20) feet for diagonal or ninety-degree spaces.

Currently, there is no officially adopted national standard for parking stall dimension requirements, with the exception for the Americans with Disabilities Act (ADA), which has a 8 feet minimum width requirement for accessible spaces, with no standard for length and a 5 feet X 20 feet passenger loading zone requirement. Ultimately, the space needed for parking space depends upon the expected fleet of vehicles that will be using the space. *The Architect’s Handbook of Professional Practice* suggests:

*The width needed for parking spaces varies with the size of passenger vehicles in the overall passenger vehicle fleet. In the 1980s, when gasoline prices increased drastically, automobile manufacturer downsized overall vehicle sizes both in length and width and the accepted one-size-fits-all space was feet, 6 inches wide. Since then, however, the increase in wider sports utility vehicles and pickup trucks has caused some parking planners to increase the typical parking space width to 9 feet. In 2005 the 85th percentile passenger vehicle was the Ford Expedition, which is 5 feet, 7 inches wide by 17 feet, 1 inch long.*

Staff has taken a survey of the parking stall dimension requirements in a number of cities, including several in this region, and in various parts of the country. Seven out of the eight cities surveyed have a minimum parking stall length of 18 feet and seven out of eight have a minimum parking stall width of 9 feet. The chart below summarizes the minimum parking stall requirements for 90 degree and diagonal parking spaces each City surveyed.

– A Western Classic –

<b>City</b>	<b>minimum parking stall width</b>	<b>minimum parking stall length</b>
<b>St George, UT</b>	9 feet	18 feet
<b>Hurricane, UT</b>	9 feet	18 feet
<b>Washington, UT</b>	9 feet	19 feet
<b>Cedar City, UT</b>	9 feet	18 feet
<b>Fort Worth, TX</b>	9 feet	18 feet
<b>Lancaster, PA</b>	8 ½ feet	18 feet
<b>Bakersfield, CA</b>	9 feet	18 feet
<b>Pocatello, ID</b>	9 feet	18 feet

Staff does not foresee any negative impact, related to safety, by amending the Land Use Ordinance to allow for 9 feet X 18 feet parking spaces. Given the precedence set forth by a variety of cities, Staff believes that amending the ordinance and reducing the minimum parking stall length from 20 feet to 18 feet would be appropriate.

### III. FINDINGS

1. The current dimension requirement for parking stalls is overly stringent and may unnecessarily inhibit future development.
2. A survey of eight cities reveals that an 18 feet parking stall length is common.
3. There are no significant safety concerns associated with reducing the minimum parking stall length to 18 feet.

### IV. STAFF RECOMMENDATION:

That the Kanab City Planning Commission recommend to the Kanab City Council, an amendment to Section 6-2 of the Kanab City Land Use Ordinance, reducing the minimum length for diagonal and ninety-degree off-street parking spaces from 20 feet to 18 feet.

### V. PLANNING COMMISSION RECOMMENDATION:

That the Kanab City Council amends Section 6-2 of the Kanab City Land Use Ordinance, reducing the minimum length for diagonal and ninety-degree off-street parking spaces from 20 feet to 18 feet, based upon the following finding:

- A minimum parking stall length of 18 feet is standard in comparison to other cities.

### Chapter 6

#### PARKING REQUIREMENTS

**This ordinance establishes requirements for parking spaces for automobiles adjacent to the building, structure or use.**

Adopted January 22, 2008  
Revised April 08, 2014

#### Sections

- 6-1 Off-Street Parking Required**
- 6-2 Size**
- 6-3 Access to Individual Parking Space**
- 6-4 Number of Parking Spaces**
- 6-5 Access Requirements**
- 6-6 Location of Gasoline Pumps**
- 6-7 Maintenance of Parking Lots**
- 6-8 Lighting of Parking Lots**
- 6-9 Parking Space Reductions**
- 6-10 Handicapped Accessible Parking**

#### Section 6-1 Off-Street Parking Required

At the time any building or structure is erected or enlarged, and that new building or enlargement is greater than 30% of the square footage of any existing buildings on site, there shall be provided off-street parking spaces for automobiles adjacent to the building, structure or use in accordance with the following requirements.

#### Section 6-2 Size

The dimensions of each off-street parking space shall be at least nine (9) feet by ~~twenty-eight~~ (2018) feet for diagonal or ninety-degree spaces; or nine (9) by twenty-two (22) feet for parallel spaces, exclusive of access drives or aisles, provided that in parking lots of not less than twenty (20) parking spaces the Planning Commission may approve a design allowing not more than twenty (20) percent of such spaces to be not less than seven and one-half (7½) feet by fifteen (15) feet to be marked and used for compact automobiles only.

Type of Space	Minimum Width	Minimum Length
Diagonal	9 feet	<del>20-18</del> feet
90° Angle	9 feet	<del>20-18</del> feet
Parallel	9 feet	22 feet
Compact (approved 20%)	7½ feet	15 feet

**KANAB CITY – KANE COUNTY  
INTERLOCAL AGREEMENT FOR KANAB CITY BUILDING INSPECTIONS**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between Kanab City, a municipal corporation, 76 North Main, Kanab, Utah 84741, hereinafter referred to as the “City,” and Kane County, a body politic of the state of Utah, 76 North Main, Kanab, Utah 84741, together with the Kane County Building Department, hereinafter together referred to as the “County.”

RECITALS

WHEREAS, the Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended, (the “Act”) permits local governmental units including cities and counties to make the most efficient use of their powers by enabling them to cooperate with other public agencies on the basis of mutual advantage and to create a legal entity to more efficiently provide governmental facilities, services and improvements to the general public; and

WHEREAS, all parties are public agencies within the meaning of § 11-13-103(13) of the Act; and

WHEREAS, pursuant to §11-13-202 of the Act, the parties are empowered to engage in joint or cooperative action; provide services that they are each authorized by statute to provide; or to do anything else that they are each authorized by statute to do; and

WHEREAS, this agreement does not: include an out-of-state public agency as a party; provide for either public agency to acquire or construct any new facility or improvement to real property; provide for the acquisition or transfer of title to any real property by either party; require either party to issue bonds; create an interlocal entity; and

WHEREAS, the City desires to employ the services of the Kane County Building Department through the County, to perform building inspections and plan reviews on development in the City upon the terms and conditions set forth herein and the County desires to provide building inspections and plan reviews for the City upon the terms and conditions set forth herein; and

WHEREAS, the parties desire to create this Interlocal Agreement and to reduce their agreement regarding services to be provided to the City by the County to writing;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the adequacy of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. No Interlocal Entity Created. This agreement shall not create an Interlocal Entity within the meaning of the Act. The Kanab City Manager shall act as Administrator of this agreement.

2. Termination. This Agreement may be terminated by the City or the County for any or no reason, thirty (30) days after written notice of termination is delivered to the other party. In the event of termination, the City will be obligated to compensate the County at a daily pro rata rate up to the date of termination of the Agreement.
  
3. Duration. This agreement shall begin as of the 1<sup>st</sup> day of January, 2015 and shall continue for a period of one year. At the conclusion of the first year it will extend automatically for additional one (1) year periods upon the same terms and conditions herein provided, unless either party provides written notice of termination in accordance with section 2. In any event, this agreement shall not extend past fifty (50) years.
  
4. Building Inspection Services.
  - a. The County, through the County Building Department, shall provide one or more duly licensed building inspectors to conduct residential building inspections, commercial building inspections and building permit plan reviews. The inspections and plan reviews completed by the County shall be conducted in accordance with State law, local ordinances and other applicable regulations.
  - b. A plan review will be conducted upon request from the City and after the City has provided all the necessary documentation for the review. The County may take up to five (5) business days to complete a plan review and deliver a copy of the review to the City. If additional information or documentation is necessary to complete the review the County may go beyond five (5) days.
  - c. A building inspection, residential or commercial will be conducted after the City provides a copy of the building permit and associated plans and documents, and after the builder, contractor, or applicant or applicant's agent contacts the County and schedules an inspection. The County reserves the right not to schedule an inspection within a minimum of twenty four (24) hours after receiving a request for an inspection. The County will schedule an inspection at the earliest available time after the twenty four (24) hours between the hours of 8 a.m. and 5 p.m., Monday through Friday, excluding State and Federal Holidays. The

County will deliver a copy of each individual building inspection to the City before the end of business on the next business day following the day of the inspection.

- d. The City will provide appropriate forms to the County for the inspections and plan reviews. All other equipment or supplies necessary to complete the inspections and plan reviews will be provided by the County.
  - e. The City will retain the responsibility of providing applications, issuing permits, collecting any applicable fees and retaining any necessary documentation. The County will retain copies of necessary documentation regarding an inspection or plan review up until the time that a final inspection or a final plan review is completed. After completion of each individual project the County will deliver all documents to the City and shall not be required to retain any records except for records that relate to the time that was incurred for each project for purposes of billing.
  - f. The City will continue to be the Kanab City Building Official in all relevant and legal respects. Nothing in this agreement shall be construed or interpreted as to mean that the County is in any way the Building Official of the City or that the County retains any of the duties of the Building Official of the City except to perform building inspections as set forth herein.
  - g. The City will retain the responsibility to enforce any applicable building code within the jurisdiction of the City. The County will not engage in any enforcement activity. In the event that a violation of state or local law is observed or detected during a building inspection the County will forward that information to the City. The County has no further obligation past notification of the violation.
5. Compensation. The City shall pay the County for services provided under this agreement according to the following rates: \$56.40 per hour for residential inspections; \$112 per hour for commercial inspections; \$20 per hour for plan reviews. When computing time for both inspections and plan reviews the county shall 1) charge a minimum of one hour and 2) after the first actual hour, round up to the nearest quarter of an hour. When conducting inspections, the time will begin to accrue when the inspector arrives at the inspection site and end when the inspector is finished and leaves the site. When conducting plan reviews all actual time involved in the project shall be counted. The County shall bill the City once per month for the services

provided the previous month. The City agrees to deliver payment to the Kane County Clerk within thirty (30) days after receiving a bill. Payments not delivered within thirty (30) days after a bill is delivered will begin to accrue interest of 10% per annum and the County may immediately suspend all work under this agreement until payment is made in full.

6. Indemnification. The City and the County agree to indemnify the other party in the event and to the extent that liability arises for one party due to the negligent act or negligent failure to act of the other party.
7. Ownership of Materials. It is agreed that the City shall own all documents which the County prepares pursuant to performance of services under this Contract. The County shall turn over to the City all such documents upon termination of services. However, the County shall be permitted to keep copies of said materials for its own office files for any use which does not deviate from the County's internal record keeping policies or the Utah Government Records Access and Management Act ("GRAMA") and other state laws governing the archiving of public records. The County shall not be obligated to retain any records past the date of a final inspection or final plan review.
8. Non-Assignability. The parties have entered into this agreement on the basis of the qualifications of the County and the particular nature of the services to be rendered by the County. Unless otherwise provided herein, neither party may assign any right or delegate any duty arising under this Contract.
9. Entire Contract. This Agreement constitutes the entire contract between the parties pertaining to the subject matter contained in this Agreement. Except as provided herein, all prior and contemporaneous contracts, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Contract shall be binding unless it is reduced to writing and executed by both parties.
10. Severability. If any section, clause, sentence or portion of this Agreement is declared for any reason to be invalid or unenforceable, the invalidity or unenforceability of such portion shall not

affect the validity of any of the remaining portions and the same shall be deemed to continue in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

11. Other. A copy of this agreement shall be kept on file with the City Clerk and the County Clerk. Both parties agree to publish this agreement in accordance with Utah Code § 11-13-219.

SIGNATURES

IN WITNESS WHEREOF, the parties sign the foregoing Interlocal Agreement through appropriate and authorized representatives on the date first noted above.

**For the City:**

ATTEST:

\_\_\_\_\_  
Kanab City Mayor

\_\_\_\_\_  
Kanab City Recorder

Approved as to Form and Legal Content:

\_\_\_\_\_  
Kanab City Attorney

**For the County:**

ATTEST:

\_\_\_\_\_  
Kane County Commission Chair

\_\_\_\_\_  
Kane County Clerk

\_\_\_\_\_  
Kane County Building Official

Approved as to Form and Legal Content:

\_\_\_\_\_  
Kane County Attorney

**ORDINANCE NO. 2-2-15 O**

**AN ORDINANCE AMENDING KANAB CITY GENERAL ORDINANCE SECTION 9  
BUSINESS LICENSES**

**WHEREAS**, the City Council of Kanab desires to amend and clarify section 9 of the Kanab City General Ordinance pertaining to business licenses.

**WHEREAS**, The Kanab City Council and staff have evaluated current ordinance requirements and has found the need for clarification.

**NOW, THEREFORE, BE IT ORDAINED** by the Kanab City Council that the Kanab City General Ordinance is hereby amended as reflected in the following 30 pages.

All former codes or parts thereof conflicting or inconsistent with the provisions of this Ordinance or of the Code hereby adopted are hereby repealed.

The provisions of the Code shall be severable, and, if any provision thereof or any application of such provision is held invalid, it shall not affect any other provisions of this code or the application in a different circumstance.

This ordinance shall be effective upon the required posting.

**PASSED AND ORDERED POSTED** this 10th day of, February 2014.

KANAB CITY

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MAYOR

ATTEST:

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RECORDER

## **9 Business Licenses And Regulations**

- **9-01 General Business License Process**
- **9-02 General Fees & Time Periods**
- **9-03 Solicitors**
- **9-04 Mass Gatherings**
- **9-05 Special Sales Events And Promotions**
- **9-06 Non-Profit Special Events**
- **9-07 Seasonal Businesses**
- **9-08 Alcoholic Beverage Control**
- **9-09 Construction Permits**

### **9-01 General Business License Process**

- **9-01-010 Penalty for No License**
- **9-01-020 Business Definition**
- **9-01-030 City License Officer's Powers and Duties**
- **9-01-040 License Denial Or Revocation**
- **9-01-050 License - Application - Issuance**
- **9-01-060 Content Of License**
- **9-01-070 No Transfer of License**
- **9-01-080 Separate License for Branch Establishments**
- **9-01-090 Hearing as to Classification**
- **9-01-100 Exemptions**
- **9-01-110 Qualifying for Exemptions**
- **9-01-120 Civil Enforcement**

#### **9-01-010 Penalty for No License**

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.

#### **9-01-020 Business Definition**

To engage in any activity or business means:

(a) operating, keeping, conducting, or maintaining a vacation rental dwelling;

(b) sale of tangible personal property at retail or wholesale;

(c) manufacturing of goods; or

(d) 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.

**9-01-030 City License Officer's Powers and Duties**

(1) The City Recorder is the City License Officer. The City License Officer shall issue licenses in the name of the City to all persons qualified under the provisions of this Section, shall collect all license fees based upon the rate established by this Section and shall remit all license fees collected to the City Treasurer. While the City License Officer may disclose business names and locations as public information, all other information furnished to or secured by the City 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 title, and shall cause to be filed complaints against all persons violating any of the provisions of this Section. The City License Officer shall have the power, directly or through his or her appointed agents, to:

- A. Adopt forms - Adopt all forms and prescribe the information required therein as to all matters relevant for the issuance of a license hereunder.
- B. 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 Chief of Police, the Fire Marshall, and their authorized officers and deputies are authorized and declared to be investigators for the City License Officer upon request of the latter.
- C. 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.
- D. 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 City zoning, building, fire or health codes disclosed by the inspection provided herein, together with notice of the revocation by the City License Officer of the license unless correction of the infraction is effected within five days after such notification.

- E. Request Enforcement - Request the City Attorney to file a complaint against any applicant or any licensee who conducts a business in violation of this Section.
- F. Good Standing of Applicant or Licensee - Determine that the applicant or licensee is not in default under the provisions of any City ordinance, or indebted or obligated in any manner to the City or the utilities operated by it; to not be in violation of any City zoning regulations by reason of the condition of business premises or the use to be made thereof.

(2) In the event the City 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 City Treasurer may issue a receipt for the money paid but it shall not be construed as the approval of the City License Officer for the issuance of the License, nor shall it entitle or authorize the applicant to open or maintain any business until such times as the license itself has been issued to him.

#### **9-01-040 License Denial Or Revocation**

The City 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 City;  
or
3. Has violated the laws of the State of Utah, the United States Government, or the ordinances of the City governing operation of the business for which the applicant is applying for the license.

#### **9-01-050 License - Application - Issuance**

- A. All applications for a business license, except as otherwise provided in this code, shall be made in writing to the City License Officer.
- B. All licenses shall be approved and signed by the City License Officer or its designee. The City 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.

#### **9-01-060 Content Of License**

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.

### **9-01-070 No Transfer of License**

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 City 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 City 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.

### **9-01-080 Separate License for Branch Establishments**

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.

### **9-01-090 Hearing as To Classification**

In the event the City 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 Kanab City 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 City 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 City 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 Kanab City 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.

### **9-01-100 Exemptions**

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 minor operating a parental supervised home business grossing under \$100.00 per year.

### **9-01-110 Qualifying for Exemptions**

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.

### **9-01-120 Civil Enforcement**

Upon receipt of a report of the violation of this Section or of any other law or ordinance of the City, or of failure by a licensee or applicant to verify information or produce documents upon request, the City 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 City 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 City 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 City 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 City Council, the City License Officer and the licensee shall have the right to call witnesses, present evidence and make statements. If the City Council finds that violation of the license ordinance, City ordinances, license conditions, or other laws has occurred, the City Council shall declare the business license suspended until compliance is made or revoked because of the violation. Within 30 days of a decision, the City 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 City Attorney shall institute civil suit at the request of the City 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 City's option of pursuing criminal charges against the licensee.

## **9-02 General Fees & Time Periods**

- **9-02-010 General Business License Fee**
- **9-02-020 Fee Payments and Prorations**
- **9-02-030 Late Penalties**
- **9-02-040 Expiration of Licenses**
- **9-02-050 Year-End Fee Adjustment**
- **9-02-060 Rebate of Fee**

### **9-02-010 General Business License Fee**

Unless otherwise stated in this title, the license fee for all businesses shall be \$50.00 per year together with \$10.00 per year for each person more than one employed by or engaged in such business, not to exceed, however, \$500.00 annually. The number of employees shall be verified by an applicant or licensee through submission of payroll records to the City License Officer upon reasonable request.

“Number of Employees” shall be the average number of employees engaging in the furtherance of licensee's business from a base within the city during each regular working day of the preceding calendar year. In the computing of such number, a part-time or seasonal employee shall be counted as that fraction formed by using the total amount of hours regularly worked by the part-time employee in the year as the numerator and the number 2016 as the denominator. The fractional numbers for such part time or seasonal employees shall be cumulated for determination of total number of employees. Any fractional balance after such accumulation shall be considered an additional employee.

### **9-02-020 Fee Payments and Prorations**

All license fees shall be paid in advance at the office of the City Treasurer. Annual license fees shall be due and payable on the first day of April of each year. The license fee of any business commenced after the beginning of the license period shall be prorated for the balance of the year remaining.

**9-02-030 Late Penalties**

Any license fee due on April 1st that is paid later than April 30th 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 April 30th and before June 1st of a license year. A license renewal application due on April 1st of a license year which is not submitted until after June 1st of that year shall pay a late fee of \$25.

**9-02-040 Expiration of Licenses**

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

**9-02-050 Year-End Fee Adjustment**

If an applicant or licensee discovers by the end of any license year that the number of employees utilized by him or her at the beginning of that license year to determine the amount of license fee payable was an improper estimate, and the business did in fact during the year employ more or less persons than the number used as a basis for that fee, an amended application for that year shall be filed on or before April 30th of the following year setting forth the actual number of employees during the license year just completed, and the license fee for the coming year shall be adjusted in accordance with the amended application. The City License Officer shall have the right to verify through inspection of the business's payroll and personnel records the accuracy of any amended application. This Section shall apply also to businesses starting up after the commencement of the license year, but on a prorated basis.

**9-02-060 Rebate of Fee**

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.

## **9-03 Solicitors**

- **9-03-010 Purpose**
- **9-03-020 No Other City License Or Approval Required**
- **9-03-030 Definitions**
- **9-03-040 Exemptions From This Subsection**
- **9-03-050 Solicitation Prohibited**
- **9-03-060 Registration of Solicitors**
- **9-03-070 Application Form**
- **9-03-080 Written Disclosures**
- **9-03-090 When Registration Begins**
- **9-03-100 Issuance of Certificates**
- **9-03-110 Certificate Form and Identification Badge**
- **9-03-120 Maintenance of Registry**
- **9-03-130 Non-Transferability of Certificates**
- **9-03-140 Denial, Suspension or Revocation of a Certificate**
- **9-03-150 Appeal**
- **9-03-160 Deceptive Soliciting Practices Prohibited**
- **9-03-170 "No Solicitation" Notice**
- **9-03-180 Duties of Solicitors**
- **9-03-190 Time of Day Restrictions**
- **9-03-200 Buyer's Right To Cancel**

### **9-03-010 Purpose**

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

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

- A. respecting citizen's decisions regarding privacy in their residences;
- B. protecting persons from criminal conduct;
- C. providing equal opportunity to advocate for and against religious belief, political position, or charitable activities; and

- D. permitting truthful and non-misleading door-to-door solicitation regarding lawful goods or services in intrastate or interstate commerce.

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

### **9-03-020 No Other City License or Approval Required**

- A. Registered solicitors and persons exempt from Registration need not apply for, nor obtain, any other license, permit, or registration from the City to engage in door-to-door solicitation.
- B. Any business licensed by the City under another City Ordinance that uses employees, independent contractors, or agents for door-to-door solicitation in an effort to provide any tangible or intangible benefit to the Business, shall be required to have such solicitors obtain a Certificate, unless otherwise exempt from registration.
- C. Those responsible persons or entities associated with registered solicitors need not apply for, nor obtain, any other license, permit, or registration from the City, provided they do not establish a temporary or fixed place of business in the City.
- D. 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.

### **9-03-030 Definitions**

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 City Council or designee of the City responsible for receiving the information from the City and Appellant regarding the denial or suspension of a Certificate and issuing a decision as required by this 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 sixteen (16) years of age and not a corporation, partnership, limited liability company, or other lawful entity, who applies for a Certificate permitting door-to-door solicitation.
- E. **Application Form** means a standardized form provided by the City to an Applicant to be completed and submitted as part of registration.
- F. **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 City as a person or Entity under this Section, having a fixed or temporary physical location within the City.
- H. **Certificate** means a temporary, annual, or renewal Certificate permitting door-to-door solicitation in the City applied for or issued pursuant to the terms of this Section.

- 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 City 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 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 City.
- X. **Registration** means the process used by the City Licensing Officer to accept a completed application and determine whether or not a Certificate will be denied, granted, or suspended.
- 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 City, 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 City 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 City by any of the following:
    - a. A Competent Individual who is willing to provide law enforcement or other City employees with publicly available identification of their name, address, and any other reliable means of contact;
    - b. City 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 that continued licensing of the Registered Solicitor creates exigent circumstances that threaten the health, safety, or welfare of any individuals or entities within the City.
- HH. **Waiver** means the written form provided to Applicant by the City wherein Applicant agrees that the City 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.

### **9-03-040 Exemptions From This Subsection**

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 City 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 9-03-160, 9-03-170, 9-03-180, and 9-03-190 while Advocating or Soliciting.

### **9-03-050 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 City by Solicitors, for the purpose of Home Solicitation Sales or to provide Goods or Services, is prohibited and is punishable as set forth in this Section.

### **9-03-060 Registration Of Solicitors**

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

### **9-03-070 Application Form**

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 by 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 9-03-030 (F); and
2. A signed copy of a Waiver whereby Applicant agrees to allow the City to obtain a name/date of birth BCI background check on Applicant for purposes of enforcement of this Subsection.

**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.

### **9-03-080 Written Disclosures**

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 City 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 City may consult any publicly available sources for information on the Applicant, including but not limited, to databases for any outstanding warrants, protective orders, or civil judgments;
- 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 City will maintain copies of the Applicant's Application Form, Proof of Identity, and Identification Badge. These copies will become public records available for inspection on demand at the City offices whether or not a Certificate is denied, granted, or renewed.
- 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.

### **9-03-090 When Registration Begins**

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

Applicant, the Licensing Officer shall make a copy of the B.C.I. and return the original to the Applicant.

### **9-03-100 Issuance of Certificates**

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 City, or had a Certificate revoked for grounds that still constitute a Disqualifying Status under this Subsection.

### **9-03-110 Certificate Form and Identification Badge**

- 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 City.
- B. **Identification Badge.** The City shall issue each Registered Solicitor an Identification Badge that shall be worn prominently on his or her person while Soliciting in the City. The Identification Badge shall bear the name of the City 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.

### **9-03-120 Maintenance of Registry**

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 City. 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 City's law enforcement agency a listing of all Applicants, those denied, and those issued a Certificate.

### **9-03-130 Non-Transferability of Certificates**

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 non-transferable. 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 City, after payment of the Fee for the Identification Badge.

### **9-03-140 Denial, Suspension or Revocation of a Certificate**

- A. **Suspension or Revocation.** The City 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 City 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 City relied on to make the decision, the availability of the documentation for review by Applicant upon one (1) business day notice to the City, 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 City 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 9-03-030 (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.

### **9-03-150 Appeal**

An Applicant or Registered Solicitor whose Certificate has been denied or suspended shall have the right to appeal to the City 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 City 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 City 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 City, 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 City, 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 9-03-150(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 City.
- I. Nothing herein shall impede or interfere with the Applicant's, Solicitor's, or City's right to seek relief in a court of competent jurisdiction.

#### **9-03-160 Deceptive Soliciting Practices Prohibited**

- 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 City of the Solicitor's Goods or Services or of the individual Solicitor.

#### **9-03-170 "No Solicitation" Notice**

- 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 on or 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.

#### **9-03-180 Duties of Solicitors**

- 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.

### **9-03-190 Time of Day Restrictions**

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.

### **9-03-200 Buyer's Right To Cancel**

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.

## **9-04 Mass Gatherings**

- **9-04-010 Rules Governing Temporary Mass Gatherings**
- **9-04-020 Fees for Exhibitions, Concerts and Performances**

### **9-04-010 Rules Governing Temporary Mass Gatherings**

- 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 Kanab City 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 City 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 City 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 Kanab City against any loss or liability arising from such activity.

#### **9-04-020 Fees for Exhibitions, Concerts and Performances**

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 City of Kanab, 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.

#### **9-05 Special Sales Events And Promotions**

- 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 Kanab City. 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 Kanab City Police Department, 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. Are limited to use of one sign of 15 square feet or less. No other means of advertising such as flashing lights, loud speakers, 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-premise 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.

### **9-06 Non-Profit Special Events**

Non-profit sponsoring units of Special Events may apply for a Special Events Permit to conduct business and have concession stands in connection with 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 city 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 Kanab City business license, is exempt from paying the \$5 permit fee indicated above.

### **9-07 Seasonal Businesses**

- 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 electricity 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 City Building Department prior to the conducting of any business from business premises.
4. Must not obstruct pedestrian walkways. Seasonal businesses are not allowed in areas where curb and gutter do not exist.
5. Must be operated in a manner so as not to block traffic into or out of adjacent businesses or structures.
6. Are limited to use of one sign of 15 square feet or less. No other means of advertising such as flashing lights, loud speakers, 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 City 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 City 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.

### **9-08 Alcoholic Beverage Control**

- **9-08-010 Definitions**
- **9-08-020 License Required**
- **9-08-030 License Classifications**
- **9-08-040 License Fee**
- **9-08-050 Licensing Requirements**
- **9-08-060 Inspection and Enforcement**
- **9-08-070 Restrictions**
- **9-08-080 Suspension and Revocation**
- **9-08-090 Appeals**
- **9-08-100 Implementation**
- **9-08-110 Penalties**

#### **9-08-010 Definitions**

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 city 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 Kanab City.
7. "Licensing authority" means the city official designated by the city administrator to issue a license under this chapter.

### **9-08-020 License Required**

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.

### **9-08-030 License Classifications**

An applicant within the City 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-premise 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-premise for consumption by a legal patron on-premise 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-premise 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-premise 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.

**9-08-040 License Fee**

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

**9-08-050 Licensing Requirements**

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 city without first obtaining the licenses required by this Subsection.
3. **Administration.** The licensing authority shall administer this subsection under the direction of the city administrator.
4. **Application and fee.** Any person seeking a license to sell an alcoholic beverage shall submit a written application to the City 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 city 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 city 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 city 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 City 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 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.

### **9-08-060 Inspection And Enforcement**

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.

### **9-08-070 Restrictions**

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 city, 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. **Under age.** 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. **Respondent 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 city 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. **Set-backs.** It is unlawful to operate a business where an alcoholic beverage is sold at retail for off premise consumption within the set-back 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 pre-existed 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.

### **9-08-080 Suspension and Revocation**

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).

### **9-08-090 Appeals**

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 city 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 city 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.

### **9-08-100 Implementation**

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

### **9-08-110 Penalties**

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 city 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.

## **9-09 Construction Permits**

- **9-09-010 Violations**
- **9-09-020 Permits and Inspections**
- **9-09-030 Building Official**
- **9-09-040 Review of building inspection**

### **9-09-010 Violations**

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.

### **9-09-020 Permits and Inspections**

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.

### **9-09-030 Building Official**

There is hereby created the position of building official who shall also be known as the municipal building inspector.

### **9-09-040 Review of building inspection**

1. In accordance with Utah Code Section §15A-1-210, the City provides for review of an inspection conducted by the city'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 Construction Code.