

Title 5 - BUSINESS LICENSES AND REGULATIONS

Division I. - General Licensing Provisions

Chapter 5.01 - LICENSE OFFICE AND LICENSE OFFICIAL

5.01.010 - Definitions.

Whenever used in this title or elsewhere within any City ordinance:

"License department" means the license office of the planning and development services division.

"License official" means the director of planning and development services or a designated agent of the director.

"Mayor" means the City Mayor or a designee.

5.01.020 - Office created—Personnel.

There is hereby created a license office within the planning and development services division. The director of planning and development services shall have charge of the license office and shall direct the same subject to and in accordance with this chapter.

5.01.030 - License official—Powers and duties.

The license official shall assess each licensee in accordance with the provisions of this title and the applicable statutes of Utah, and shall receive all license fees required herein to be paid. The assessment shall be based upon the rates herein established. The license official shall also keep and maintain a suitable index.

Chapter 5.02 - PROCEDURE FOR OBTAINING LICENSE

5.02.010 - License—Required to carry on business.

Unless exempted by state or federal law, it is unlawful for any person to engage in or carry on or operate any business in the City, or to use any property for such business, without first making application for and obtaining the required license from the City. This title shall not apply to lemonade stands and similar operations run by children.

5.02.020 - Persons subject to licensing.

Whenever a license is required for the maintenance, operation or conduct of any business or establishment, or for doing business or engaging in any activity or occupation, any person or corporation shall be subject to the requirements if, by himself or through an agent, employee or partner, he holds himself forth as being engaged in the business or occupation, or solicits patronage therefore, actively or passively, or performs or attempts to perform any part of such business or occupation in the City.

5.02.030 - License—Application—Contents.

- A. Applications for licenses and permits required by ordinance shall be made in writing to the license official of the City license office in the absence of provisions to the contrary. Each application shall state the name of the business, the name of the applicant, the permit or license desired, the location to be used, if any, the time covered and the fee to be paid, the name and address of the business agent residing in the City who is authorized to receive service of process and any communication regarding applicant's license via certified mail, return receipt requested, and such additional information as may be needed for the purpose of guidance of the City officials in issuing of the permit

or license. Any change in the above information furnished by the license applicant shall be forwarded, in writing, within ten days of the change, to the license official.

- B. Forms for all license and permits, and the application therefore, shall be prepared and kept on file by the license official.

5.02.040 - License—Application—Fees and waiver.

- A. Each application for a license under this title shall be accompanied by the license fee required to be paid for the issuance of the license desired. In addition to the license fee regularly assessed, any applicant which shall have commenced doing business prior to obtaining a valid license shall be assessed a penalty fee. The penalty fee shall be equal to twenty-five percent of the regular license fee if the applicant has operated without a license for less than thirty days, and shall be equal to one hundred percent of the regular license fee if the applicant has operated without a license for more than thirty days during the year in question. Any license which has been issued pursuant to payment by means of a check shall be void and of no force or effect if such check is not honored. Applications received by the license official shall be numbered in the order of their receipt.
- B. Notwithstanding the provisions of subsection A of this section, the City license official may waive the imposition of license penalty fees for:
 - 1. New businesses which have located in the incorporated area of the City and have not obtained a City business license; and
 - 2. Existing businesses which have been licensed by the City and have been purchased, but the new owner has not reapplied for a City business license.

The license official may waive such penalty fees only upon the following conditions:

- 1. The business makes application for a City business license within five working days after being notified by the City that such a license is required; or the business voluntarily makes application for a business license prior to notification by the City; and
- 2. The business has either been located in the City for less than two years or the purchase of the business occurred less than two years prior to the business application. The license official may not, under any circumstances, waive the business license fee due the City for the current year or for prior years in which the business operated.

5.02.050 - Fees not refunded when.

No license fee, or any part thereof, shall be refunded for any reason whatsoever, once the license has been granted or issued by the City.

5.02.060 - Application fee refunds.

If a license is denied for any reason, the applicant shall be entitled to a refund equal to the amount that accompanied the application. If, prior to a license being granted or issued, the application for a license is withdrawn by the applicant for any reason, the sum of twenty-five dollars, or the total amount paid if less than twenty-five dollars, shall be retained to offset the cost of processing the application. However, the Mayor or designee may, in its discretion, refund the entire application fee if deemed appropriate under the circumstances.

5.02.070 - Investigation of applicant.

Upon receipt of an application for a license or permit, where ordinances of the City require an inspection or investigation before the issuance of such permit or license, the license official or his authorized representative or such other agency, including the planning and development services division, shall make such investigation within five days of the time the application was received by the agency or department. However, when adequate investigation requires correspondence with agencies or other sources of

information outside the planning and development services division, or the license applicant is not ready to be inspected, such investigation shall be completed within fifteen days, or as soon as the license applicant is ready to be inspected. The agency charged with the duty of making the investigation or inspection shall report the findings and recommendations of the agency to the license official within five days after making the investigation or inspection.

5.02.080 - License—Application—Referral to Mayor.

After receipt of an application for a license, such application shall be submitted to the Mayor, unless, in the opinion of the license official, or where ordinances of the City necessitate, the application is or should be referred to the local law enforcement agency, Salt Lake Valley Health Department, fire department, or other appropriate official or body for investigation.

5.02.090 - Additional investigations.

Within five days after receipt by the Mayor of an application for a new or renewed license, the Mayor, in his/her discretion, may refer the application for additional investigation to the fire department, Salt Lake Valley Health Department, local law enforcement agency, or other official or body for the purpose of investigation and inspection concerning the general reputation of the licensee, whether such business is or has been conducted in a lawful, quiet, orderly and helpful manner, and the conditions of health and safety of such premises, together with any other fact or facts that the Mayor should know in acting upon the application.

5.02.100 - Report of investigations.

Upon being requested to do so by the Mayor or the license official, the local law enforcement agency, Salt Lake Valley Health Department, fire department, or any other official or department so requested shall conduct the investigation and inspection provided for in this chapter and submit to the Mayor or license official a report on such investigation and inspection, together with recommendations as to whether the license should be granted or denied, within the time required by Section 5.02.070 of this chapter.

5.02.110 - License—Application—Action by Mayor.

After receipt of the report and recommendations of the license official, the local law enforcement agency, Salt Lake Valley Health Department, fire department or other official or body, the Mayor shall act upon the application as is just and proper in regard to granting or denying the same, and may order further information or investigation if such appears necessary.

5.02.120 - Compliance with building and zoning requirements.

No license shall be issued for the conduct of any business, and no permit shall be issued for any activity if the premises and building to be used for the purposes do not fully comply with the requirements of the City. No such license or permit shall be issued for the conduct of any business or performance of any act that would involve a violation of the building or zoning ordinances of the City.

5.02.130 - License—Application—Approval.

In the event the Mayor shall approve any application for a license, such approval shall be forwarded to the license official, who shall forthwith issue a license certificate therefore signed by the Mayor or impressed by his/her facsimile.

5.02.140 - License—Application—Denial conditions—Appeals.

A. After receiving a recommendation from the license official, the Mayor may deny a license or a license renewal if the applicant:

1. Has been convicted of a felony or any crime involving moral turpitude;

2. Has obtained a license by fraud or deceit;
 3. Has failed to pay personal property taxes, Utah state sales taxes, or other required fees; or
 4. Has violated the laws of the state, the United States Government, the ordinances of the City, or the rules and regulations of any Millcreek City or Utah state agency governing operation of the business holding the license or permit.
- B. The reason for denial shall be endorsed on the license or renewal application and the City shall return to the applicant, via certified mail, any excess fees deposited with the application. Notice shall be given to the applicant that he may, within ten days of denial, appeal such denial and appear before the Council or a license hearing examiner for the purpose of presenting reasons for setting aside such denial of a license or renewal. If the applicant makes such appearance and presents adequate justification, the Council may, in its discretion, set aside the denial and approve the application.

5.02.150 - Appeal hearings.

- A. Hearings on appeals to consider the revocation, suspension or denial of licenses shall be held by or at the direction of the Council. Notwithstanding the provisions of any other ordinance pertaining to hearings before the Council regarding business licenses, such hearings may be held either before the Council or before any hearing examiner who has been appointed by the Council to conduct such hearings.
- B. The applicant may appear in person, through an officer, agent, or attorney, to introduce evidence in the applicant's behalf, and to confront and cross-examine witnesses appearing against the applicant. Any oral or documentary evidence may be received, but all privileged, irrelevant, immaterial or unduly repetitious evidence may be excluded. An official record, which may be transcribed when necessary, shall be kept of each hearing.

5.02.160 - Hearings—Hearing examiner powers and duties.

- A. The Council may appoint one or more hearing examiners, and the Council or any hearing examiner shall have the power and authority to call, preside at and conduct hearings on appeal to consider the suspension, revocation or denial of licenses issued by the City, including the power to examine witnesses and receive evidence, compel the attendance of witnesses, and compel the production of documents.
- B. Hearing examiners, subject to the review and approval of the Council, shall have the power and authority to recommend findings of fact, conclusions of law and orders, and shall transmit to the Council recommended findings of fact, conclusions of law and orders, based upon the evidence and testimony and representations made at such hearings.

5.02.170 - Hearings—Record of proceedings.

At the conclusion of any hearing to consider the status of licenses, the entire record of proceedings shall be certified to the Council. The hearing examiner shall furnish to the Council recommended findings of fact, conclusions of law, and a recommended order, based upon and supported by the evidence presented at the hearing.

5.02.180 - Hearings—Orders by Council.

- A. After a hearing on appeal to consider the status of any license has been held by or at the direction of the Council, the Council may enter such findings of fact and conclusions of law, and may order such sanctions as it deems proper based upon the record of the hearing. In cases where the hearing is held before a hearing examiner, the Council, after review of the hearing record, may adopt and enter the recommended findings of fact, conclusions of law and order, or may enter its own findings of fact, conclusions of law and order supported by the record. All orders entered by the Council concerning the appeal of the denial, suspension or revocation of a license shall be in writing and shall be final.

- B. In the event the Council institutes a sanction of suspension, probation or revocation of a license, such sanction shall apply to the licensee, the licenses issued by the City, and to the premises in question for the full term of the imposed sanction.
- C. If judicial review of the Council's decision is taken by the licensee, the licensee shall serve a copy of the complaint seeking judicial review with both the Council and the appropriate court. The Council shall promptly certify a copy of the record of hearing to the reviewing court.

5.02.190 - License—Effect of denial.

If at any time a license or renewal is denied under the provisions of this chapter, it shall thereafter be unlawful for any person to engage in or carry on or operate or use or permit to be operated or used, any property for any business with respect to which the license or renewal has been denied, until a license or renewal shall be granted by the Mayor or the Council upon appeal.

Chapter 5.03 - BOARD OF LICENSE EQUALIZATION

5.03.010 - Council—Powers and duties.

- A. The Council is hereby constituted a board of license equalization for the equalization of license rates. The Council shall have authority to examine the assessments made by the license official, hear complaints of aggrieved parties, and make changes in any assessments the board concludes to be illegal, unequal, or unjust.
- B. Corrections made by the board shall be entered in detail in the record of license assessment kept by the license official, and the board shall approve in writing such entries before the license official shall adjust the accounts.

5.03.020 - Council meetings.

The Council shall meet as often as shall be necessary to complete the business of equalization. The date, time and place of each meeting shall be set by the majority vote of the Council during a regular session of the Council.

5.03.030 - Complaints on assessments—Deadline for presentation.

All complaints relative to an assessment made by the license official must be presented to the board within thirty days of such assessment, or be forever barred.

Chapter 5.04 - INSPECTIONS

5.04.010 - Officers authorized to examine and inspect businesses—Powers and duties.

The members of the local law enforcement agency, the license official or members of his staff, the members of the Salt Lake Valley Health Department, and the fire chief and his designated representatives, are hereby appointed ex officio license deputies who, in addition to the several duties of their respective offices or positions, are hereby authorized and empowered to examine and inspect all places of business subject to paying a license under the provisions of this code as their duty shall bring them into contact with same, and to see that businesses covered and authorized by the license issued are carried on or transacted in accordance with this title and other applicable law, and to report the license official the names of all persons doing business without a license, and instances of the conduct by any party or business other than that covered by the license issued.

5.04.020 - Inspections—Right of entry—Sampling of materials.

- A. Whenever inspections of the premises used for or in connection with the operation of a licensed business or occupation are provided for or required by ordinance, or are reasonably necessary to secure compliance with any ordinance provision, or to detect violations thereof, it shall be the duty of

the licensee, or the person in charge of the premises to be inspected, to admit thereto, for the purpose of making the inspection, any officer, employee or agent of the license office who is authorized and directed to make such inspections at any reasonable time that admission is requested.

- B. Whenever an analysis of any commodity or material is reasonably necessary to secure conformance with ordinance provisions, or to detect violations thereof, it shall be the duty of the licensee whose business is governed by such provision to give to any authorized officer or employee requesting the same sufficient samples of such material or commodity as are necessary for analysis.

5.04.030 - Complaints and citations for violations.

The license official and his/her authorized deputies shall, in the discharge and performance of their official duties, have and exercise the power to issue citations for the violation of any of the provisions of the license ordinances. The license director shall further have the duty of cooperating with the attorney to cause complaints to be filed against all persons violating any of the provisions of the license ordinances.

Chapter 5.05 - LICENSE CERTIFICATES AND REGULATIONS

5.05.010 - Business rules and regulations.

Rules and regulations covering the health, safety, morals, peace, good order, comfort and convenience of the general public with respect to any business covered under this title shall be adopted by the City Council, and copies of such rules and regulations shall be made available to and displayed by the licensee affected thereby in a conspicuous place upon the licensed premises.

5.05.020 - Businesses that require additional regulation.

The nature and operations of some business types may require additional regulation. Notification of applications to other agencies, including but not limited to the Unified Fire Authority, local law enforcement agencies, the Salt Lake Valley Health Department, Planning and Development Services, the Department of Agriculture, and the Bureau of Alcohol, Tobacco, Firearms and Explosives may be required. Additional fees may be assessed by these agencies.

5.05.030 - Posting license on premises required.

It shall be the duty of any person conducting a licensed business in the City to keep his license posted in a prominent place on the premises used for such business at all times.

5.05.040 - License certificate to be shown to officials.

It shall be the duty of each and every person to whom a certificate of license has been issued to show the same at any proper time when requested to do so by the license official, fire marshal, Salt Lake Valley Health Department, or local law enforcement officer.

5.05.050 - Unlawful uses of certificates.

It is unlawful to counterfeit a license certificate, or to deface or mutilate the same while it is required to be posted in the licensed premises or upon any vehicle required by this title to be licensed, or to remove it or attempt to remove it therefrom without destroying it, or to use, or permit the same to be used at any place other than that designated therein, or for any licensee to place or permit it to be placed or be in any place of business or upon one vehicle after it has been placed in or upon any place of business or vehicle prohibited or declared to be unlawful by this title or any other ordinance or law.

Chapter 5.06 - TRANSFERABILITY OF LICENSES

5.06.010 - License transfer limitations.

No license granted or issued under the provisions of the ordinances of the City shall be deemed to be assignable or transferable, or to authorize any person other than the person therein mentioned or named to do business, or to authorize any other business than is therein mentioned or named to be done or transacted.

Chapter 5.07 - LICENSE REVOCATION

5.07.010 - Enforcement powers.

The City license office shall be responsible for the enforcement of this title. The official may, on his own initiative, or in response to complaints referred from the general public or a City department, investigate and gather evidence of violations of the licensing provisions of this code.

5.07.020 - Grounds for license suspension or revocation.

In addition to any fine imposed, every license or permit issued by the Mayor or City Council may be revoked or suspended as prescribed herein. Upon recommendation of the license official, the Mayor may revoke or suspend licenses or permits, if the licensee or permittee:

- A. Has been convicted of a felony or any crime involving moral turpitude;
- B. Has obtained, or aided another to obtain, a license by fraud or deceit;
- C. Has violated the laws of the United States Government, State of Utah, the ordinances of the City, or the rules and regulations of any agency of the City, governing the operation of the business holding a license or permit;
- D. Has failed to pay personal property taxes, Utah state sales taxes, or other required fees;
- E. Has refused to permit authorized officers or employees to make an inspection or to take a sample of a commodity, or has interfered with such officer or employee while in the performance of his duty in making such inspection; or
- F. Has filed or encouraged another to file false information with the license office or the local law enforcement agency as part of the licensee's license application.

5.07.030 - License suspension or revocation—Procedure.

Any suspension or revocation of a license shall not be imposed until a hearing is first held before the Mayor. Reasonable notice of the time and place of the hearing, together with the nature of the charges against the licensee, shall be served on the licensee personally or sent to the process agent specified in the license application. The Mayor shall make a decision based upon the evidence introduced at the hearing and issue a written decision.

5.07.040 - Appeals.

The licensee may appeal to the Council within ten days any decision of the Mayor to suspend or revoke a license. Upon receiving the appeal, the Council shall hold a license hearing, reasonable notice of which shall be served on the licensee as provided in Section 5.07.030. The licensee may appear in person or through an officer, agent or attorney, to introduce evidence in the licensee's behalf, and to confront and cross-examine witnesses appearing against the licensee. Any oral or documentary evidence may be received, but the Council shall exclude all privileged, irrelevant, immaterial or unduly repetitious evidence. An official record and transcript of each hearing shall be kept by the Council.

5.07.050 - Hearing—Decision by Council.

The decision of the Council shall be in writing and shall be based only upon the evidence produced at the hearing. If judicial review of the Council's decision is taken by the licensee, the licensee shall serve a

copy of the complaint seeking judicial review with both the Council and the appropriate court. The Council shall promptly certify a copy of the record of hearing to the reviewing court.

5.07.060 - Effect of revocation.

If at any time a license is denied or revoked under the provisions of this title, it shall thereafter be unlawful for any person to engage in or carry on or operate or use, or permit to be operated or used any property for any business with respect to which the license has been revoked or denied until a license shall be granted by the Mayor or Council upon appeal.

5.07.070 - Waiting period for new license.

No person denied a license, or whose license has been revoked under the provisions of this chapter, and no person associated or connected with such person in conduct of such business, shall be granted a license for the same purpose for a period of six months after the revocation has occurred. However, the Council may, in its discretion, waive the prohibition against persons formerly associated or connected with an individual who has had his license revoked.

Chapter 5.08 - GENERAL BUSINESS LICENSE FEES

5.08.010 - Definitions.

For the purpose of this chapter, the following terms shall have the meanings herein prescribed:

"Business" means and includes all activities engaged in within the incorporated limits of the City, carried on for the purpose of gain or economic profit, and for the purposes of this title shall include nonprofit corporations, except that the acts of employees rendering service to employers shall not be included in the term "business" unless otherwise specifically prescribed.

"City" or "Millcreek City" means the incorporated area of Millcreek City, Utah.

"Employee" means the operator, owner or manager of a place of business and any persons employed by such person in the operation of that place of business, in any capacity, and also any salesman, agent or independent contractor engaged in the operation of that place of business, in any capacity.

"Engaging in business" means and includes, but is not limited to, the sale of tangible personal property at retail or wholesale, the manufacturing of goods or property, and the rendering of personal services for others for a consideration by persons engaged in any profession, trade, craft, business, occupation, or other calling, except the rendering of personal services by an employee to his employer under any contract of personal employment.

"Gross sales" shall not include:

- A. The amount of any federal tax, except excise taxes imposed upon or with respect to retail or wholesale sales, whether imposed upon the retailer, wholesaler, jobber or the consumer, and regardless of whether the amount of federal tax is stated to customers as a separate charge; and
- B. The amount of net Utah state sales tax.

"Gross sales" means and includes the amount of any manufacturer's or importer's excise tax included in the price of the property sold, even though the manufacturer or importer is also the wholesaler or retailer thereof, and whether or not the amount of such tax is stated as a separate charge.

"Number of employees" means the average number of employees engaged at the place of business each regular working day during the preceding calendar year. In computing such number, each regular full-time employee shall be counted as one employee, and each part-time employee shall be counted as that fraction that is formed by using the total number of hours regularly worked by a full-time employee as the denominator.

"Person" means any individual, receiver, assigner, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, corporation, association,

society or other group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

"Place of business" means any location maintained or operated by a licensee within the incorporated limits of the City, from which business activity is conducted or transacted.

5.08.020 - License—Required—Period of Validity—Expiration.

It is unlawful for any person to engage in business within the City without first procuring the license required by this chapter. Unless this title indicates otherwise, all licenses are valid for one year from the date issued and shall expire annually on the last day of the month in which the license was originally issued.

5.08.030 - Exemptions.

No business license fee shall be imposed under this chapter upon any business which is exempt from both property taxes and privilege taxes, or upon person engaged in business that is specifically exempt from licensure by political subdivisions under the laws of the state; nor shall any such fee be imposed upon any person doing business within the City who has paid a like or similar license tax or fee to some other governmental unit within the state, which governmental unit exempts from its license tax or fee, by written interlocal cooperation agreement, businesses domiciled in the City and doing business in such unit.

5.08.040 - License—Fee.

An annual license fee is levied upon the business of every person engaged in a business within the City. A fee per place of business, plus an additional fee for each employee, exceeding one, as defined in Section 5.08.010 of this chapter shall be established in accordance with Section 3.42.040 of these ordinances. These fees shall be set out in the consolidated fee schedule, which shall be approved by the City Council and shall be on file with the licensing official.

5.08.050 - License—Branch establishments.

A separate license must be obtained for each branch establishment or location of business engaged in business within the City as if such branch establishment or location were a separate business, and each license shall authorize the licensee to engage only in the business licensed thereby at the location or in the manner designated in such license; provided, that warehouses and distributing places used in connection with or incident to a business licensed under this title shall not be deemed to be separate places of business or branch establishments.

5.08.060 - Chapter provisions not exclusive.

The general business license required under this chapter is in addition to all other licenses and permits required by other ordinance provisions. No person shall engage in business without first procuring the necessary licenses and permits that are required by other provisions of the ordinances, in addition to the license required by this chapter.

5.08.070 - Fees and interstate commerce activities.

None of the license fees provided for by this chapter shall be applied as to occasion an undue burden on interstate commerce. In any case where a license fee is believed by a licensee or applicant to place an undue burden on interstate commerce, he may apply to the license official for an adjustment of the fee. Such application may be made before, at, or within six months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, show his method of business and the gross volume or estimated gross volume of business, and such other information as the license official may deem necessary in order to determine the extent, if any, of such undue burden on commerce. The license official shall then conduct an investigation, comparing applicant's business with other businesses of like nature, and shall make findings of fact from which he shall determine whether the fee fixed by this chapter is discriminatory, unreasonable or unfair as to applicant's business, and shall recommend to the City Council a license fee for the applicant in an amount that is nondiscriminatory, reasonable and fair. If the Council is

satisfied that such license fee is the amount that the applicant should pay, it shall fix the license fee in such amount. If the regular license fee has already been paid, the Council shall order a refund of the amount over and above the fee fixed by the Council. In fixing the fee to be charged, the license official shall have the power to base the fee upon a percentage of gross sales, or employees, or may use any other method that will assure that the fee assessed shall be uniform with that assessed on businesses of like nature; provided, however, that the amount assessed shall not exceed the fee prescribed in Section 5.08.040.

5.08.080 - Business recordkeeping requirements.

It shall be the duty of every person liable for the payment of any license fee imposed by this chapter to keep and preserve for a period of three years such books and records as will accurately reflect the number of employees, from which can be determined the amount of any license fee for which he may be liable under the provisions of this chapter.

5.08.090 - Fee payments—Constructive Notice of Time Periods—Delinquency penalties.

- A. All license fees provided for in this chapter shall be paid in advance to the license office prior to license approval. Annual renewal fees shall be paid prior to the last day of the month in which the license was originally issued, unless provided otherwise in this title.
- B. All businesses, owners, licensees, or applicants are obligated to be aware of and are deemed to have constructive notice of all time periods and deadlines for business license renewal and the effect of non-compliance with those time periods and deadlines, as set forth in these ordinances, relating to the application, issuance, renewal, expiration, appeal or other action regarding business licenses, alcohol licenses, or any other licensing matters set forth in this title. Nothing in this title shall be construed as requiring the City to take any affirmative action to notifying businesses, owners, licensees, applicants of any time periods or deadlines or the effect of non-compliance with those time periods or deadlines, as set forth in this title, relating to the application, issuance, renewal, expiration, appeal, or other action relating to business licenses, alcohol licenses, or any other licensing matters as set forth in this title.
- C. In the event renewal fees are not received at the license office within thirty days of the date the fees are due, the licensee may be required to reapply for a business license and shall pay a penalty of twenty-five percent of the fees due as part of the reissuance fee. In the event the renewal fees are not received at the license office within sixty days of the date that the fees are due, the licensee may be required to reapply for a business license and shall pay a penalty of one hundred percent of the fee due as part of the reissuance fee.
 1. The imposition of penalties for the late payment of business license fees, as established in this section, may be waived by the City Council upon the licensee's showing of good cause. "Good cause" must constitute exceptional circumstances of a material and substantial nature which are beyond the licensee's control. Good cause may be demonstrated by the following: any error by the City affecting the amount or imposition of the license fee, medical circumstances or other incapacity of the licensee; a disaster or Act of God precluding timely payment; or a good faith and reasonable dispute, not yet resolved, between the licensee and the City regarding the need for a license or the imposition or amount of a license fee.
 2. In determining whether good cause exists, the Council may assign a person with appropriate training or experience to serve as a hearing officer to review applications and appeals regarding late business license fee waivers and make a recommendation regarding a waiver to the Council.
 3. For all appeals made before December 31, 2012, the City Council may, upon the recommendation of the hearing officer and where the best human interest and the interests of the City are served, waive or reduce imposition of the penalties provided in this section. For purposes of this section, the City Council finds that it is in the best human interest and the interests of Millcreek City to waive or reduce the imposition of a penalty if:
 - a. The appellant has a history of timely payments of license fees;

- b. The appellant's due date for license fees changed as a result of a change to the City's process to collect license fees; and
 - c. The change in due date contributed to the appellant's failure to timely submit license fees.
- D. For all appeals made before December 31, 2012, an aggrieved person may file a written request for rehearing with the hearing officer to justify reconsideration of a decision. If a request for rehearing is granted by the hearing officer, the hearing officer shall conduct a hearing and determine if a waiver or reduction of the penalty is justified. If the hearing officer determines upon reconsideration that a waiver or reduction of the penalty is justified, the hearing officer shall make the recommendation to the City Council for approval. Nothing in this section prohibits the City Council from granting retroactive relief if the criteria in subsections (C)(1), (C)(2), or (C)(3) are met.

5.08.100 - Civil actions to recover fees.

- A. Where this code requires a license to be obtained from the City, the fee being fixed by ordinance, and where such fee is not paid at the time or in the manner provided in this title, a civil action may be brought in the name of the City against the person failing to pay such license fee, in any court of this state having jurisdiction of such action, to recover the same and any penalties that may attach, and/or to enjoin further operation by the licensee. Where several amounts for licenses as fixed by any City ordinance shall remain due and unpaid by any person, the amounts may be joined as separate causes of action in the same complaint in a civil action.
- B. The attorney shall prepare, bring and prosecute the civil actions contemplated by this chapter upon the written request of the Mayor.

5.08.110 - License application—Public records—Exceptions.

- A. License applications shall be public records and information contained therein shall be public except for specific items of data that the license manager designates or classifies as private, controlled or protected data consistent with the provisions of the Government Records Access and Management Act, Section 63-2-101, et seq., Utah Code.
- B. Income tax returns and sales tax returns filed with a license application made to the license manager of the City, that are or may be required by this title, shall not be made public, nor shall they be subject to the inspection of any person except the City license manager or the manager's authorized agent, or to those persons authorized to do so by order of the Mayor.
- C. It is unlawful for any person to make public or to inform any other person of the contents of any information contained therein, or permit the inspection of any income tax return or state sales tax return, except as authorized in this section.

5.08.120 - Filing false return prohibited.

It is unlawful for any person to knowingly file a license application, or an accompanying tax return, or any other information required to be submitted to the City in conjunction with a license application that is false.

Chapter 5.09 - TEMPORARY AND SEASONAL LICENSES

5.09.010 - License—Required.

It is unlawful for any person to conduct a sale or operate a business without first making application for and obtaining a license from the City pursuant to the provisions of this chapter or the provisions of Chapter 5.24 of this title.

5.09.020 - Seasonal License—Period of validity—Number issued per year.

A seasonal license will enable a seller to conduct a sale for up to one hundred eighty consecutive calendar days. Only one seasonal license will be issued per year to any seller or members of his immediate family. The seasonal license will specify the location at which the sale may be conducted, and no sales by the licensee may be conducted at a location other than that specified in the seasonal license.

5.09.030 - Temporary License—Period of validity—Number issued per year.

A temporary license will enable a seller to conduct a sale for up to ten consecutive calendar days. Only one temporary license will be issued per year to any seller or members of his immediate family. The temporary license will specify the location at which the sale may be conducted, and no sales by the licensee may be conducted at a location other than that specified in the temporary license.

5.09.040 - Inspection of merchandise.

The local law enforcement agency may inspect all merchandise to be sold under a temporary license during all normal business hours.

5.09.050 - Compliance with laws.

Seasonal and temporary license holders will comply with all applicable laws and ordinances of Millcreek City, the City, and the state governing the operation of their business.

Chapter 5.10 - SHERIFF'S REGISTRATION CARDS

5.10.010 - Definitions.

As used in this chapter:

- A. "Employed" means performing any type of work or assistance for or on behalf of any establishment covered by this chapter, at any establishment covered by this chapter, during hours such establishment is open to its members or to the public, whether or not pecuniary compensation is provided or offered therefore.
- B. "Employee" means any person, female or male, who is employed, as defined in this section, by any establishment covered by this chapter, whether the person is employed on a contractual basis, by fixed salary, or by any other means.
- C. "Employer" means any establishment, or the principals thereof, covered by this chapter.

5.10.020 - Persons and establishments which require registration cards.

The persons and establishments covered by this chapter shall be as follows: All employees of Class C and E beer establishments, Class B establishments which provide live entertainment on the premises, and Class A and B private clubs which sell, serve and dispense alcoholic beverages, including bartenders, waiters, waitresses, managers; those engaged in the security or the checking of identification; and those providing entertainment in such establishments are required to obtain a registration card.

5.10.030 - Out-of-state entertainers—Group work card.

It shall be the responsibility of a licensee of an establishment listed in Section 5.10.020 desiring an out-of-state entertainer or entertainment group to perform on the licensee's premises to ensure that the entertainer or each member of the entertainment group has either obtained a work card or to obtain a group work card for the entertainer or entertainment group. The licensee shall submit the name, date of birth and address of each entertainer or member of the entertainment group and shall verify that each entertainer or each member of the entertainment group is over the age of twenty-one. The application for a group work card shall contain all information required by the local law enforcement agency and shall be submitted to the local law enforcement agency by the licensee twenty-four hours prior to the performance of the entertainer or the entertainment group. The group work card shall be valid for only the performance of the

entertainer or entertainment group while at the licensee's premises, but in no event shall it be valid for longer than ten days.

5.10.040 - Procedure for obtaining card.

- A. Prior to commencing employment, the employee must obtain a signed registration application from the employer, and then submit himself or herself to the local law enforcement agency's office to be photographed, or provide the local law enforcement agency's office with two one-and-one-half-inch by one-and-one-half-inch photographs.
- B. Any male or female applicant between eighteen and twenty-one years of age who, by reason of his or her appearance, causes the local law enforcement agency's examiner to doubt the truth of his or her stated age, may be required to furnish satisfactory documented proof of his or her age.

5.10.050 - Card numbers to be registered by employer.

All sheriffs card numbers obtained under the provisions of this chapter are to be registered by the employer personnel or payroll section, kept as a part of the record of the employee.

5.10.060 - Examination of employees' cards.

The person or persons designated by each establishment as the agent(s) responsible for hiring and/or checking employees under the provisions of this chapter, shall examine each employee's or prospective employee's sheriffs card for the purpose of determining the validity of the card for use in the particular establishment concerned, such validity to be determined by the name of the concerned establishment being stamped on the back side of the sheriffs card in red ink. If the prospective employee's card is found to be invalid as described above, he will be issued a new signed application form which must be completed and presented along with his sheriffs card to the local law enforcement agency's office for validation, prior to commencing employment.

5.10.070 - Period of validity.

Unless revoked or suspended, each sheriffs registration card issued pursuant to this chapter shall remain valid for a period of three years from date of original issuance.

5.10.080 - Possession of card required—Cards not transferable.

All persons employed by an establishment governed by this chapter must have in their possession a valid sheriff's registration card. Sheriff's registration cards are not transferable.

5.10.090 - Denial conditions—Appeals.

- A. The local law enforcement agency may deny a registration card if the applicant:
 - 1. Has been convicted of a felony or any crime involving moral turpitude;
 - 2. Has obtained a registration card by fraud or deceit;
 - 3. Has failed to pay required fees;
 - 4. Has violated the laws of the state or the ordinances of the City regulating the work of the applicant.
- B. Any person who is denied a sheriff's registration card may appeal within fifteen days from the date of denial to the City Council for a hearing regarding issuance of the registration card. The Council shall then schedule a hearing in conformance with general business license denial proceedings, as set forth in this title, as amended.

5.10.100 - Revocation conditions—Appeals.

- A. The local law enforcement agency may revoke or suspend registration cards if the holder:

1. Has been convicted of a felony or any crime involving moral turpitude;
 2. Has obtained a registration card by fraud or deceit;
 3. Has failed to pay required fees;
 4. Has violated the laws of the state or the ordinances of the City regulating the work of the permit holder; or
 5. Has procured, attempted to procure, or agreed to procure, for any person:
 - a. Another person for the purpose of sexual intercourse or any immoral act, or
 - b. A controlled substance, as defined in Section 58-37-1, et seq., Utah Code Annotated (1953), as amended;
 6. Has utilized his registration card for the purpose of obtaining credit, or as identification for cashing checks.
- B. Any person whose sheriff's registration card has been revoked or suspended by the local law enforcement agency may appeal within fifteen days from the date of the suspension or revocation to the City Council for a hearing regarding reinstatement of the registration card. The board shall then schedule a hearing in conformance with general license revocation proceedings, as set forth in this title, as amended.

5.10.110 - Violation—Penalty.

Any person in violation of this chapter or any part thereof shall be punished by a Class B misdemeanor.

Chapter 5.11 - LICENSES FOR LARGE-SCALE EVENTS OF STATE, NATIONAL OR INTERNATIONAL IMPORTANCE/RECOGNITION

5.11.010 - Definition and application of chapter.

A large-scale event of state, national or international importance or recognition is a temporary event with anticipated attendance in excess of 1,000 people. This chapter shall apply only to licenses required for use during, or in connection with, large-scale events of state, national or international importance or recognition. Large-scale event licenses shall not be subject to the provisions of Section 5.08.090(A).

5.11.020 - License—Period of validity—Number issued.

A large-scale event license will permit a vendor holding the same to conduct business operations for which the license is issued for a period beginning thirty calendar days before the officially established date for the opening of the large-scale event and end thirty calendar days following the officially established closing date of the large-scale event. Any large-scale event license shall not exceed one hundred and eighty consecutive calendar days. There shall be no limit to the number of large-scale event licenses issued to any one person; provided however, that separate license(s) shall be required for each large-scale event. A license duly issued shall authorize business activity at any and all additional locations specified therein, provided that the holder has complied with all requirements of this title.

5.11.030 - Type and location of business activity.

The business activity conducted by each person awarded a license hereunder shall be only that business for which the license is issued, and may be conducted only in such place or places specified in the license. Applicants may specify the location or locations desired; however, City licensing officials shall have the final determination as to the location or locations of the permitted business activity, taking into consideration, but not limited to, such factors as the zoning designation, traffic flow, pedestrian flow, parking, audio/visual equipment, tents, temporary structures, hours of operation, etc.

5.11.040 - Compliance with laws.

Large-scale event business license holders shall comply with each and every part of this title (Title 5) of the Millcreek City Code of Ordinances which is not pre-empted by the special provisions of this Chapter. In addition, said holders shall comply with all other applicable laws and ordinances of Millcreek City, the State of Utah, and the United States of America governing the operation of their business. Failure to comply with this section may result in the immediate revocation of the large-scale event business license(s), in addition to any penalties imposed by the provisions of the ordinance(s) or law(s) violated. Violation of such ordinance(s) or law(s) may, for the purposes of revocation of the large-scale event business license(s), be presumed upon the filing of any criminal charge or charges, or upon the filing of a complaint in the case of civil penalties, against the large-scale business license holder. The final determination whether to immediately revoke a large-scale event business license under the authority of this section shall in any event, be made by the director of the City's business licensing division.

Division II. - Specialized Businesses

Chapter 5.12 - PROFESSIONAL DANCERS

5.12.010 - Purpose of provisions.

The purpose of this chapter is to set forth activities which are permitted by professional dancers in premises which are not required to be licensed as a sexually oriented business pursuant to the sexually oriented business license ordinance.

5.12.020 - Definitions.

As used in this chapter, the following shall apply:

"Dancer" means any person, male or female, who dances, models or performs in the following: lingerie, negligees, undergarments, or swimwear for an establishment defined in this section.

"Establishment" means all Class A and Class B private clubs, and all holders of restaurant liquor licenses, Class B and C beer licenses, recreation licenses or single event licenses, which are not licensed as sexually oriented businesses.

"Pecuniary compensation" means any commission, fee, salary, tip, gratuity, hire, booking, profit, reward or any other form of consideration.

5.12.030 - License required.

A. It is unlawful:

1. For any person to perform as a professional dancer on the premises of an establishment as defined in this chapter, either gratuitously or for pecuniary compensation, without first obtaining a license therefore;
2. For any establishment, person, firm or corporation to furnish, book or otherwise engage or permit any person to dance as a professional dancer, either gratuitously or for pecuniary compensation in or for any establishment which dancer, at the time of such booking, employment or performance, was not licensed in accordance with subsection (A)(1) of this section.

5.12.040 - License—Application and issuance conditions.

- ##### A.
- The applicant for a professional dancer license shall appear in person before the local law enforcement agency's vice licensing division and complete the application form in writing. The application shall include the name and address of the applicant, any stage name or names used, the name of the agent or agency if the performer uses an agent, the criminal record, if any, and such other information as may be reasonably required by the local law enforcement agency pertaining to verifying personal identification and criminal history of the applicant.

- B. Upon receipt of the fee and application, the local law enforcement agency shall make an inquiry concerning the applicant's character and background and report its finding to the license official, whether or not in its opinion a license should be granted. The license official shall then submit the application to the Mayor for consideration. If the local law enforcement agency recommends denial of the application, the Mayor may deny a license or a license renewal if the applicant:
 - 1. Has been convicted of a felony, any crime of moral turpitude or any crime listed in Section 5.20.150 of the Millcreek City Code of Ordinances.
 - 2. Has obtained or attempts to obtain a license by fraud or deceit.
- C. If the applicant desires a hearing, the applicant shall apply to the Council for a public hearing within ten days after denial of a license. The hearing shall follow the procedures set forth in Sections 5.02.150 through 5.02.180.
- D. Any license issued pursuant to this section may be revoked by the Council if the applicant is convicted of, pled nolo contendere to, or committed a felony under the laws of the state, or any crime involving moral turpitude or any crime listed in Section 5.20.150 of the Millcreek City Code of Ordinances.

5.12.050 - License—Display required when.

Should a license be granted, the performer, when entertaining, shall carry the license in his or her possession, and a peace officer shall have the right to inspect the license during intermission or after the performance. The license shall contain its number; the name, address and stage name of the performer; a physical description and photograph of the performer; the name of the agent or agency, if applicable; the expiration date of the license, and such other information as the local law enforcement agency's vice licensing division may require.

5.12.060 - Performer location restrictions.

It is unlawful for a professional dancer to dance with or among the patrons of an establishment or upon the tables or chairs or in any part of an establishment other than on a stage, platform or dance floor which is separated on all sides from the aisles, tables, chairs, booths and the patrons of said establishment by a barrier at least two and one-half feet high and at least three feet from the stage, platform or dance floor.

5.12.070 - Dancers—Restricted activities.

It is unlawful for any professional dancer while performing in any establishment pursuant to the provisions of this chapter to touch in any manner any other person, to throw any object or clothing, to accept any money, drink or take any other object from any person or to allow another person to touch such dancer, place any money or object on such dancer or within the costume or person of such dancer, or for the performer to place anything within the costume, or adjust or move the costume while performing so as to render the performer in a state of nudity.

5.12.080 - Dancers—Age restrictions.

It is unlawful for any person under the age of twenty-one to perform, dance or entertain either gratuitously or for compensation in any premise licensed under this chapter.

5.12.090 - Entertainment at restaurants, taverns, private clubs, recreation licenses, and single events—Conditions.

- A. Dancers shall at all times be costumed during performances in a manner not to violate any City ordinance concerning disorderly or obscene conduct. Such dancers shall not perform or conduct themselves in such a manner which violates the provisions of any City ordinance.
- B. Notwithstanding the provisions of any other ordinance of the City, it is unlawful for a dancer to appear or perform before patrons in any establishment as defined in this chapter in a state of nudity or semi-nudity as defined in Chapter 5.20

- C. It is unlawful for a dancer, while on the portion of the premises of an establishment used by the patrons, to appear in less than opaque clothing which completely covers the dancer's specified anatomical areas as defined in Chapter 5.20, including the female breast.
- D. Each agency, person, firm or corporation employing, booking or using the services of a dancer required to be licensed under the provisions of this chapter shall require that such dancers comply with the provisions of this chapter. Any person, firm, corporation, business or establishment that permits a violation of this chapter, either personally or through its agents, employees, officers or assigns, shall be guilty of a misdemeanor and subject to the license revocation sanctions hereinafter provided.

5.12.100 - Patrons—Prohibited activities.

It is unlawful for any person or any patron of any establishment to touch in any manner any professional dancer, to place any money or object on or within the costume or person of any professional dancer, or to give or offer to give to any such dancer any drink, money or object while the dancer is performing. It is unlawful for any patron of any establishment to expose to public view any specified anatomical area as defined in Chapter 5.20.

5.12.110 - Alcoholic beverage consumption—Prohibited when.

It is unlawful for a business establishment licensed to provide dancers for the entertainment of its patrons to allow the consumption of alcoholic beverages upon the premises unless such establishment meets the requirements of Section 6.20.360 of this code or its successor, where applicable, and is also licensed as a restaurant, tavern, Class A or B private club, recreation license or a single event.

5.12.120 - Violation—Penalty.

Any person, performer, agency, firm, corporation or business violating the provisions of this chapter shall be guilty of a misdemeanor. Any person, performer, firm, agency, corporation or business who violates the provisions of this chapter shall be subject to the revocation or suspension by the Mayor of all licenses held by the City, after notice and hearing, consistent with due process of law.

Chapter 5.13 - CHECK CASHERS PROHIBITIONS

5.13.010 - Definitions.

"Check casher" means a person or entity engaged in the business of check cashing.

"Check cashing" means cashing a check for consideration or extending a deferred deposit loan (as defined by the Check Cashing Regulation Act of the Utah Code) but does not restrict the activities of depository institutions or persons who cash a check in a transaction that is incidental to the retail sale of goods or services for consideration that does not exceed the greater of one percent of the amount of the check or one dollar.

"Title loan" means a loan secured by the title to a motor vehicle, mobile home, or motor boat, as the defined by state statute. "Title loan" does not include a purchase money loan or loan made in connection with the sale of a motor vehicle, mobile home, or motor boat.

5.13.020 - Check casher regulation.

The Millcreek City Council finds that the regulation of check cashers is a serious matter which affects the prosperity and welfare of the residents of Millcreek City. The Council further finds that the regulation of check cashers is appropriately the responsibility of the governments of the United States and of the state of Utah. The Council also finds that current regulation and control over check cashers by the federal and state governments is inadequate to protect the welfare of the citizens of Millcreek City.

5.13.030 - Limitations.

- A. The total number of check cashers in the incorporated City shall not exceed one check casher per ten thousand population of the incorporated City.
- B. Check cashers must provide to patrons a complete written description of the services provided by the check casher, which description is approved by the Utah State Department of Financial Institutions.
- C. A business engaged in offering title loans is not subject to the provisions of this section unless it engages in a check casher business at the same location.

Chapter 5.14 - EXCAVATION OPERATIONS - Reserved

Chapter 5.15 - ALARM BUSINESSES

5.15.010 - Purpose and scope.

The purpose of this chapter is to protect the emergency services of the City from misuse. The occurrence of false alarms in the City causes significant unwarranted expense through responses to false alarms. It is the intent of the City by enacting this chapter to preserve the public interest in the expenditure of public resources while maintaining a sufficient level of law enforcement services.

5.15.020 - Definitions.

As used in this chapter:

"Alarm business" means any individual, partnership, corporation or other entity in the business of selling, leasing, maintaining, monitoring, repairing, planning or assisting in the installation of any alarm system or causing any of the above to occur, whether in or on any building, structure, facility or premises.

"Alarm coordinator" means the individual designated by the local law enforcement agency to issue permits and enforce the provisions of this chapter.

"Alarm site" means each individual home in the case of a single-family residence or each unit of a home, duplex or apartment if the structure is a multifamily dwelling, or each business or businesses within a building.

"Alarm system" means any mechanism, equipment, or device which is designed to detect an unauthorized entry into any building or onto any property, or to direct attention to a robbery, burglary, or other emergency in progress, and to signal the above occurrences either by a local or audible alarm or by a silent or remote alarm. The following devices shall not constitute alarm systems within the meaning of this subsection:

1. Devices which do not register alarms that are audible, visible, or perceptible outside the protected premises; and
2. Devices which are not installed, operated or used for the purpose of reporting an emergency to the local law enforcement agency.

"Alarm user" means the person, firm, partnership, association, corporation, company or organization thereof of any kind in control of a building, structure or facility where an alarm system is maintained, including the homeowner, for alarm systems in single-family residences, and the tenant, for alarm systems in an apartment building.

"Apartment building" means any building containing two or more residential rental units.

"Automatic dialing device" means a device which is interconnected to a telephone line and is programmed to select a predetermined telephone number and transmit by voice message or code signal any emergency message indicating a need for emergency response.

"Duress alarm" means an alarm system signaling a robbery or other physical endangerment.

"Enhanced call verification" means that an alarm business will make a second call to a responding party in an attempt to verify a business intrusion alarm drop prior to requesting a response from the local law enforcement agency.

"False alarm" means an alarm signal eliciting a response by peace officers when a situation requiring a response by them in fact does not exist. This does not include an alarm signal caused by extraordinary violent conditions of nature not reasonably subject to control.

"Holdup alarm" means a silent alarm generated by the manual activation of a device intended to signal a robbery in progress.

"Intrusion alarm" means an alarm system signaling an entry or attempted entry into an area protected by the system.

"One-plus duress alarm" means the manual activation of a silent alarm signal by entering at a keypad a code that adds one to the last digit of the normal arm/disarm code.

"Panic alarm" means an audible alarm signal generated by the manual activation of a device intended to signal a life threatening or emergency situation.

"Responsible party" means any of the three persons designated by the residential permit holder to respond in place of the permit holder if an alarm is generated at the permit holder's alarm site, or, in the case of a business, the name of the owner or designated person(s) to respond to the business in the event an alarm is generated at the permit holder's alarm site.

5.15.030 - Alarm business permit.

- A. It is unlawful for any person, partnership, corporation, business or association to own, manage, conduct or carry on the business of selling, leasing, installing, servicing, maintaining, repairing, replacing, moving or removing, or causing to be sold, leased, installed, serviced, maintained, repaired, replaced, moved or removed in or on any building or other property within the incorporated area of the City any device known as an intrusion or duress alarm system, or automatic dialing device connected to an answering service, without an alarm business permit from the local law enforcement agency's alarm coordinator.
- B. No Millcreek City alarm business permit will be issued unless the applicant has a current state license under U.C.A. § 58-55-301, as amended and is licensed by the Utah State Division of Professional Licensing.

5.15.040 - Alarm user permits.

- A. Every alarm user shall have on their premises or in their possession an alarm user permit issued by the local law enforcement agency at no charge. Such permit shall be issued upon filing with the local law enforcement agency a completed alarm permit application as provided by Section 5.15.050 of this chapter. The permit application shall be submitted to the alarm coordinator prior to the operation of the alarm system or prior to an existing system being taken over by a different alarm user or business.
- B. A separate permit shall be required for each alarm site.
- C. An alarm user permit shall continue in effect until there is a change in ownership of the alarm system, at which time the permit shall expire. Alarm permits are not transferable.
- D. An alarm business shall notify the alarm coordinator of any alarm user who has cancelled or otherwise terminated their alarm services with the business.
- E. Homeowners are required to possess an alarm user permit for alarm systems installed in single-family residences.

5.15.050 - Alarm information.

- A. An alarm user permit application shall include the following information and shall be completed by the alarm user and submitted to the local law enforcement agency alarm coordinator prior to the operation of the system.
- B. The alarm user permit application shall set forth the full name, address and telephone number of both the alarm user on whose premises the system will be installed, operated, connected, monitored or maintained, and the name of the contact person of the alarm business installing, monitoring, maintaining or servicing the system.
- C. The alarm user permit shall contain such additional information as the local law enforcement agency shall reasonably deem necessary to properly identify and locate the alarm user, the alarm business installing, servicing, monitoring or maintaining the alarm system, and the responsible parties.
- D. All alarm user permit applications and permit information relating to specific alarm sites shall be private records as defined under U.C.A. § 63G-2-302, as amended, and protected records under U.C.A. § 63G-2-3054, as amended, and shall be held in strict confidence by the local law enforcement agency and not be disclosed except as required under the Utah Government Records Access and Management Act as amended.

5.15.060 - Records of local law enforcement agency calls.

Alarm businesses which request response from the local law enforcement agency to alarm signals shall maintain a record of all local law enforcement agency calls, stating the time, date and location of the alarm and the name, address and phone number of the alarm user. Alarm businesses shall maintain these records for one year. The records shall indicate the cause of the alarm, if known. This record shall be kept current and shall be made available to the local law enforcement agency at any time during normal business hours.

5.15.070 - User instructions.

Every alarm business selling, leasing or furnishing an alarm system which is installed on premises located in the area subject to this chapter shall furnish the alarm user with written instructions and training that provide information to enable the alarm user to operate the alarm system properly and avoid false alarms. Written operating instructions and the phone number of the alarm business monitoring station shall be maintained at each alarm site. The alarm business shall notify the alarm user of the alarm permit requirements and this alarm chapter.

5.15.080 - Apartment buildings.

- A. A tenant in an apartment building shall obtain an alarm permit from the alarm coordinator before operating or causing the operation of an alarm system in the tenant's rental unit and must have three responsible parties listed on the permit application who can respond to the tenant's rental unit if the tenant is not available to respond.
- B. A tenant in an apartment building who has contracted with an alarm business to monitor an alarm system at the tenant's alarm site shall be responsible for any false alarms or fines arising from the alarm system at such alarm site.

5.15.090 - Alarm system requirements and prohibitions.

- A. All audible or visual alarm systems shall be equipped with an automatic cutoff device which will terminate the alarm signal within thirty minutes.
- B. No alarm business shall install or program alarm systems so they are capable of sending one plus duress alarms after the effective date of the ordinance codified in this chapter.
- C. It is the responsibility of the alarm business to prevent false alarms during installation, system repairs, or system service. Proper notification shall be made to the alarm business and alarm user that the system is in a test mode to avoid dispatching law enforcement.

- D. It is unlawful for any person to install or use an alarm system or device that emits or produces real or simulated smoke, fog, vapor or any like substance that obscures vision.
- E. No person shall activate any intrusion or duress alarm knowing the same to be false.
- F. An alarm business shall not request the local law enforcement agency to respond to an alarm when monitoring equipment indicates an alarm system malfunction.
- G. Alarm businesses shall make a second attempt to verify a business intrusion alarm through enhanced call verification prior to contacting the local law enforcement agency for a response.
- H. Alarm businesses shall verify a residential alarm user or responsible party is responding to an intrusion alarm prior to contacting the local law enforcement agency for a response.

5.15.100 - City liability limitations.

- A. The City shall not be liable for any defects in the operation of any alarm systems, for any alleged failure or neglect to respond appropriately upon the receipt of an alarm nor for the failure or neglect of any person or business registered or issued a permit pursuant to this section in connection with the installation, operation or maintenance of the equipment necessary to or incident to the operation of such system.
- B. In the event the City finds it necessary to order an alarm system disconnected based on repeated and uncontrolled false alarms, the City shall incur no liability for such action.

5.15.110 - False alarms and fines.

- A. The local law enforcement agency is authorized to assess a fine against the owner of a business or residence for the activation of an intrusion, duress, panic, or holdup alarm which is determined to be false. The fines shall be assessed as follows:
 - 1. No fine shall be charged for the first or second incident of a false alarm within a calendar year;
 - 2. A fine of fifty dollars shall be charged for the third incident of a false alarm within a calendar year;
 - 3. A fine of one hundred dollars shall be charged for the fourth incident of a false alarm within a calendar year, and for each additional false alarm within each calendar year.
- B. The alarm user shall be responsible for false alarms caused by any person having authorized access to the premises from the alarm user.

5.15.120 - Defenses to false alarm violation.

It shall be an affirmative defense to a false alarm violation under this chapter that:

- A. The false alarm for which the fine has been assessed did not originate at the premises of the alarm user who has been assessed the fine;
- B. The alarm for which the fine has been assessed was, in fact, not false, but was the result of actual or attempted burglary, robbery or other emergency; or
- C. Local law enforcement agency dispatch was notified by the alarm user or the alarm company that the alarm was cancelled prior to the arrival of a peace officer to the subject premises in response to the false alarm.

5.15.130 - Penalties.

- A. Knowingly providing false information to the alarm coordinator or failing to comply with the requirements of this chapter shall constitute a misdemeanor and shall be punishable by law.
- B. All fines assessed under this chapter shall be due and payable within thirty days after written notice is issued by the local law enforcement agency.

- C. Any fine not paid within thirty days will be assessed a late fee by the local law enforcement agency of ten percent of the original fine. Such late fee will be assessed each thirty-day period that the fine remains unpaid.
- D. If any fine is not paid within ninety days of the due date, the local law enforcement agency may use such lawful means as are available to collect such fines.

5.15.140 - Appeal procedure.

- A. Any alarm user shall have ten business days from the date of the local law enforcement agency's written notice of a fine assessment under this section to request in writing an appeal hearing.
- B. Any period between the filing of a written appeal as specified in this section, and the time when a final decision by the alarm coordinator is made, shall not count for the assessment of late fees for that violation.
- C. The alarm coordinator shall schedule and conduct the appeal hearing within fourteen days of the written request and shall render a written decision within seven days after the appeal hearing is concluded. Following issuance of the decision, late fees shall accrue until paid, as provided in Section 5.15.130.
- D. The alarm coordinator shall attempt to mediate and negotiate an agreement with the appellant and is authorized to reduce or dismiss fines for good cause shown, such as excusable user error. Fines may also be reduced or dismissed if an appellant agrees to attend a class or other training on the use of an alarm system.
- E. If the alarm coordinator finds that no violation of this chapter occurred, or that a violation occurred but one or more of the defenses set forth in this section is applicable, the alarm coordinator shall dismiss the fine and release the alarm user from liability.
- F. If the alarm coordinator finds that a false alarm did occur and no applicable defense exists, the alarm coordinator may, in the interest of justice, enter into an agreement for the timely periodic payment of the applicable fine and late fees.
- G. If an appellant is dissatisfied with the decision rendered by the alarm coordinator, an appeal may be filed in writing, within ten days of the alarm coordinator's decision with the local law enforcement agency's undersheriff.

5.15.150 - Authority of the local law enforcement agency to implement provisions of chapter.

The local law enforcement agency shall have the authority to adopt policies implementing the provisions of this chapter and shall establish response priorities to any alarm.

Chapter 5.16 - MASSAGE ESTABLISHMENTS

5.16.010 - Definitions.

For the purposes of this chapter:

"Massage" means anything defined as "Practice of massage therapy" as defined in Utah Code Annotated § 58-47b-102 (6).

"Massage establishment" means any place where a massage technician conducts or carries on the business of the practice of massage for a fee, gratuity or free demonstration.

"Massage technician" means a person who is licensed by the state to engage in or to teach the practice of massage for a fee, for a gratuity, or for a free demonstration.

5.16.020 - License—Required.

It is unlawful for any person to operate, conduct, carry on or maintain a massage establishment in the City without first obtaining a business license from the City.

5.16.030 - License—Fees.

The annual fee for a massage establishment shall be set in accordance with Section 3.42.040 of these ordinances. This fee is in addition to the general license fee required under Section 5.08.040 of this title.

5.16.040 - License—Application and issuance restrictions.

Each individual desiring a massage establishment license shall:

- A. Submit with the license application a certificate of the state signifying the applicant is a licensed massage therapist by the state.
- B. Submit the location, including the street, building and room number of the place where the applicant proposes to operate a massage establishment.

5.16.050 - License—Display required.

- A. Every massage establishment licensed under this chapter shall display its massage establishment license in a conspicuous place on the premises.
- B. Every massage therapist or apprentice employed by a licensed massage establishment shall maintain in his or her possession or immediate presence, his or her state massage therapist or apprentice license.

5.16.060 - Investigation of applicant and premises.

All applications for massage establishment licenses shall be referred to the planning and development services division for zoning approval, the local law enforcement agency for criminal background investigation, the fire department for inspection to determine compliance with the provisions of the fire code, and the Salt Lake Valley Health Department for investigation to determine the sanitary condition of the premises and compliance with applicable health regulations. A license shall be granted upon a recommendation from each of the foregoing departments recommending that a license be issued.

5.16.070 - Unlawful conduct and activities.

- A. It is unlawful for any person who is not licensed as a massage therapist or apprentice by the state to practice or engage in or attempt to engage in massage or to falsely advertise or represent himself to be authorized to practice or engage in massage when not licensed by the state to do so.
- B. It is unlawful to serve, store or allow to be served or allow to be consumed, any alcoholic beverages on the premises of any massage establishment.

5.16.080 - Exemptions.

The provisions of this chapter shall not apply to those individuals listed in Section 58-47b-304, Utah Code Annotated, or any successor statute.

5.16.090 - License—Revocation.

Upon a showing that a massage establishment has been operated or maintained or that any employee of a massage establishment has performed massage or contrary to state statute or City ordinance or contrary to the public health or the health of the patrons or customers of the establishment or without due regard to proper sanitation or hygiene shall be grounds for the revocation of the establishment's license in accordance with the procedures established by the City.

Chapter 5.17 - RESIDENTIAL SOLICITATION

5.17.010 - Purpose.

- A. Persons residing in the incorporated area of Millcreek City (hereafter "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 trespass upon residential property. The City also has a substantial interest in protecting citizens from fraud or otherwise unfair consumer sales practices, and from criminal activity.
- B. There must be a balance between these substantial interests of the City and its citizens, and the effect of the regulations in this chapter on the rights of those who are regulated. Based on the collective experiences of City officials derived from regulating business activity, protecting persons and property from criminal conduct, responding to the inquiries of citizens regarding door-to-door solicitation, the experience of 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 persons seeking to engage in door-to-door solicitation, the City adopts this chapter to promote the City's substantial interests in:
 - 1. Respecting citizens' decisions regarding privacy in their residences;
 - 2. Discouraging persons from criminal conduct;
 - 3. Providing equal opportunity to persons advocating in regard to religious belief, political position, or charitable activity; and
 - 4. Permitting truthful and nonmisleading door-to-door solicitation regarding lawful goods or services in intrastate or interstate commerce.
- C. The City finds that the procedures, rules and regulations set forth in this chapter are narrowly tailored to preserve and protect the City's citizens' interests referred to herein while at the same time balancing the rights of those regulated.
- D. The provisions of this chapter shall apply only to activities and persons located within the incorporated area of Millcreek City.

5.17.020 - Definitions.

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

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

"Appeals officer" means the Mayor of Millcreek City or Mayor's appointed designee responsible for receiving information from the City and appellant regarding the denial or suspension of a certificate and issuing a decision as required by this chapter.

"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.

"Applicant" means an individual who is at least sixteen years of age. It shall not mean an entity which applies for a certificate permitting door-to-door solicitation.

"Application form" means a standardized form provided by the City to an applicant to be completed and submitted as part of registration.

"BCI report" means an original or copy, dated no older than one hundred eighty 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.

"Business" means a commercial enterprise licensed by the City as a person or entity under this, or other provisions of the Millcreek City Code of Ordinances, having a fixed or temporary physical location within the City.

"Certificate" means a document permitting door-to-door solicitation in the City applied for or issued pursuant to the terms of this chapter.

"Charitable activities" means advocating by persons or entities that either are, or support, a charitable organization.

"Charitable organization" means and includes any person, joint venture, partnership, limited liability company, corporation, association, group, or other entity:

1. That is:
 - a. Voluntarily performing a benevolent, educational, health-related, philanthropic, humane, patriotic; religious or eleemosynary activity; and/or is involved with social welfare or advocacy group, public health project, environmental or conservation activity, or civic organization; or
 - b. For the benefit of a public safety, law enforcement, or firefighter fraternal association; and
 - c. Established for any charitable purpose.
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. [Current Internal Revenue Code provision for such status is found at 26 U.S.C. 501(c)(3).]
3. Charitable organization includes a chapter, branch, area, or office, or similar affiliate or any person soliciting contributions within the state of Utah for a charitable organization that has its principal place of business outside the state of Utah. Charitable organization shall be such entities as defined above, and by the Charitable Solicitation Act, Utah Code Ann. Section 13-22-2(1)(a) and (b).

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

"Completed application" means a fully completed application form, a BCI report, two copies of the original identification relied on by the applicant to establish proof of identity, and the tendering of fees.

"City" means the incorporated area of Millcreek City.

"Criminally convicted" means the final judgment of a conviction, whether by a plea of no contest, a plea of guilty, or 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, or charges dismissed under a plea in abeyance or diversion agreement.

"Disqualifying status" means anything specifically defined in this chapter 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:
 - a. Homicide or manslaughter of any type, class or degree,
 - b. Physically abusing, sexually abusing, or exploiting a minor,
 - c. The sale or distribution of controlled substances,
 - d. Sexual assault of any type, class or degree,
 - e. Theft of any type, class or degree,
 - f. Robbery,

- g. Burglary, or
 - h. Assault of any type, class or degree;
2. Criminal charges currently pending against the applicant or registered solicitor for:
 - a. Homicide or manslaughter of any type, class or degree,
 - b. Physically abusing, sexually abusing, or exploiting a minor,
 - c. The sale or distribution of controlled substances,
 - d. Sexual assault of any type, class or degree,
 - e. Theft of any type, class or degree,
 - f. Robbery,
 - g. Burglary, or
 - h. Assault of any type, class or degree;
 3. The applicant or registered solicitor has been criminally convicted of a felony within the last ten years;
 4. The applicant or registered solicitor has been confined or imprisoned in a federal or state prison within the past five years;
 5. The applicant or registered solicitor has been criminally convicted of a misdemeanor within the past five years involving a crime of:
 - a. Moral turpitude, or
 - b. Violent or aggravated conduct involving persons or property;
 6. A final civil judgment had been entered against the applicant or registered solicitor within the last five years indicating that:
 - a. The applicant or registered solicitor had either engaged in fraud, or intentional misrepresentation, or
 - b. That a debt of the applicant or registered solicitor was nondischargeable in bankruptcy pursuant to 11 U.S.C. Section 523(a)(2), (a)(4), (a)(5), (a)(6), (a)(9), 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.

"Door-to-door solicitation" means the practice of engaging in or attempting to engage in conversation with any person at a residence, regardless of said person's competency, while making or seeking to make or facilitate a home solicitation sale, or attempting to further the sale of goods and/or services.

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

"Exigent circumstances" means those circumstances requiring immediate action or aid to prevent or alleviate harm or threats to public health, safety or welfare.

"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. Fees shall be established and updated on a yearly basis by the City's licensing official.

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

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

"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.

"Licensing official" means the City employee(s) or agent(s) responsible for receiving from an applicant or registered solicitor the completed application and/or granting, suspending, or denying the applicant's certificate. The licensing official shall be responsible for carrying out the provisions of this chapter. The licensing official shall be located within a section of the City's division of development services, department of public works.

"Moral turpitude" means so extreme a departure from ordinary standards of honesty, good morals, justice, or ethics as to be shocking to the moral sense of the community.

"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.

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

"Registered solicitor" means any person who has been issued a current certificate by the City.

"Registration" means the process used by the licensing official to accept a completed application and determine whether or not a certificate will be denied, granted, or suspended.

"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. In determining the presence of a sincerely held belief, the licensing official may consider the source of the ideas which provide the foundation of the belief, whether the professor of such belief is part of a recognized religious body or denomination, whether said body is an entity, whether said body is recognized by the Internal Revenue Service as an organization qualified under 26 U.S.C. 501(c)(3), whether the professed belief is part of a larger scheme of beliefs relied upon by the adherents of the beliefs as a pattern for their life's activities, and the lawfulness of the activities deemed to be part of the adherents' beliefs. The number of adherents to a particular belief shall not, by itself, form a basis for determination by the licensing official whether the belief is sincerely held.

"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.

"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.

"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 customer to rescind the same within three days under any applicable federal, state or local law.

"Services" means those intangible goods or personal benefits offered, provided or sold to a competent individual of a residence.

"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, publications, or subscription(s) to 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;
6. Other activities falling within the commonly accepted definition of soliciting, such as hawking or peddling.

"Solicitor" or "solicitors" means a person or persons engaged in door-to-door solicitation.

"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 licensing official by certified, registered, priority, overnight or delivery confirmation mail, facsimile, or hand delivery.

"Substantiated report" means an oral, written, or electronic report:

1. That is submitted to and documented by the City;
2. By any of the following:
 - a. A competent individual who is willing to provide law enforcement or City employees with publicly available identification of their name, address, and any other reliable means of contact,
 - b. Local law enforcement or City licensing official, or
 - c. Any other regularly established law enforcement agency at any level of government;
3. 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 event which has not yet been determined to result in a disqualifying status,
 - c. Documented, eye-witness accounts that the registered solicitor has engaged in repeated patterns of behavior that demonstrate 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 individual or entity within the City.

"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 chapter, and which contains applicant's notarized signature.

5.17.030 - Exemptions from chapter.

The following are exempt from registration under this chapter:

- 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;
- 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;
- 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; and
- F. Those persons exempt from registration are not exempt from the duties and prohibitions outlined in Sections 5.17.150 through 5.17.170 while advocating or soliciting.

5.17.040 - Solicitation prohibited.

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

5.17.050 - Registration of solicitors.

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

5.17.060 - Application form.

The licensing official shall provide a standard application form for use for the registration of solicitors. Upon request to the licensing official, 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 chapter.
- B. Contact Information.
 - 1. Applicant's true, correct and legal name, including any former names or aliases used during the last ten years;

2. Applicant's then-current telephone number, local address and home address, if different, and local mailing address and permanent mailing address, if different;
 3. If different from the applicant, the permanent name, address, and then-current telephone number of the responsible person or entity; and
 4. The address to which all notices to the applicant required under this chapter are to be sent.
- C. Proof of Identity. An in-person verification by the licensing official of the applicant's true identity by use of any of the following, which must bear a recent photograph of said applicant:
1. A valid driver's license issued by any state;
 2. A valid identification card issued by any state to its residents who are nondrivers and who are also lawful citizens of the United States;
 3. A valid passport issued by the United States;
 4. A valid identification issued by a branch of the United States Armed Forces.

If the photograph of the applicant contained within, or as part of, any of the foregoing evidences of identity, was taken prior to the immediately preceding twelve months, applicant shall also submit a photograph taken within the immediately preceding twelve months. Only a valid driver's license issued by a state shall be acceptable proof of identity. A "driver's privilege card" or the like shall not be acceptable. Upon verification of identity, the original identification submitted to establish proof of identity shall be returned to the applicant.

- D. Proof of Registration with Department of Commerce. The applicant shall provide proof that either the applicant, or the responsible person or entity, has registered with the Utah State Department of Commerce.
- E. 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.
- F. Marketing Information.
1. The goods or services offered by the applicant, including any commonly known, registered or trademarked names;
 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.
- G. BCI Background Check. The applicant shall provide:
1. An original or a copy of a Utah Bureau of Criminal Investigation (BCI) file as defined in Section 53-10-202(1), Utah Code Ann., 1953 as amended, pertaining to applicant; 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, as permitted by Section 53-10-108(3), Utah Code, as amended, for purposes of enforcement of this chapter.
- H. Responses to Questions Regarding "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:
 - a. Homicide or manslaughter of any type, class or degree,
 - b. Physically abusing, sexually abusing, or exploiting a minor,
 - c. The sale or distribution of controlled substances, as said offenses are described in Utah law,
 - d. Sexual assault of any type, class or degree,
 - e. Theft of any type, class or degree,

- f. Robbery,
 - g. Burglary, or
 - h. Assault of any type, class or degree;
- 2. Are any criminal charges currently pending against the applicant for:
 - a. Homicide or manslaughter of any type, class or degree,
 - b. Physically abusing, sexually abusing, or exploiting a minor,
 - c. The sale or distribution of controlled substances, as said offenses are described in Utah law,
 - d. Sexual assault of any type, class or degree,
 - e. Theft of any type, class or degree,
 - f. Robbery,
 - g. Burglary, or
 - h. Assault of any type, class or degree;
- 3. Has the applicant been criminally convicted of a felony within the last ten years;
- 4. Has the applicant been confined or imprisoned in a federal or state prison within the past five years;
- 5. Has the applicant been criminally convicted of a misdemeanor within the past five years involving a crime of:
 - a. Moral turpitude, or
 - b. Violent or aggravated conduct involving persons or property;
- 6. Has a final civil judgment been entered against the applicant within the last five years indicating that:
 - a. The applicant had either engaged in fraud, or intentional misrepresentation, or
 - b. That a debt of the applicant was nondischargeable in bankruptcy pursuant to 11 U.S.C. Section 523(a)(2), (a)(4), (a)(5), (a)(6), (a)(9) 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; and
- 9. Is the applicant currently subject to a protective order, based on physical or sexual abuse, issued by a court of competent jurisdiction?
- I. Fee. The applicant shall pay such fees as set forth in the consolidated fee schedule approved by the City Council and on file with the licensing official.
- J. 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.

5.17.070 - 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 but not limited to:
 - 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;
 3. The validity of the applicant's proof of identity.
- B. The City may consult any and all data 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. The fee that must be submitted by applicant with a completed application.
 - E. The applicant must submit a BCI background check report with a completed application.
 - F. To the extent permitted by state and/or federal law, the applicant's BCI background check report 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 or card. These copies will become public records available for inspection on demand at the City offices whether 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. A request for a temporary certificate will be granted or denied the same business day that a completed application is submitted.

5.17.080 - When registration begins.

The licensing official 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 official verifies the applicant's identity. A copy of the identification will be retained by the licensing official. If an original BCI background check report is submitted by the applicant, the licensing official shall make a copy of the BCI report and return the original to the applicant.

5.17.090 - Form of certificate and identification badge or card.

- A. Certificate Form. Should the licensing official determine that the applicant is entitled to a certificate, the licensing official 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, which is one year from issuance. The certificate shall be dated and signed by the license official. The certificate shall be carried by the registered solicitor at all times while soliciting in the City.
- B. Identification Badge or Card. With the certificate the City shall issue each registered solicitor an identification badge or card that shall be worn or displayed prominently while soliciting in the City. The identification badge or card shall bear the name of the City and shall contain:
 1. The name of the registered solicitor;
 2. Address and phone number of the registered solicitor, and the name, address, and phone number of the responsible person or entity, if any;
 3. A recent photograph of the registered solicitor; and
 4. The date on which the certificate expires.

5.17.100 - Maintenance of registry.

The licensing official 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 report shall remain a confidential, protected, private record not available for public inspection unless required by state law. The licensing official may furnish to the head of the City's law enforcement agency a listing of all applicants, both those denied and those issued a certificate.

5.17.110 - Nontransferability 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 nontransferable. A registered solicitor desiring to facilitate or attempt to facilitate home solicitation sales with different:

- A. Goods or services; or
- B. Responsible person or entity, from those designated in the originally submitted completed application, shall submit a written change request to the licensing official. 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 or card from the City, after payment of the fee for the identification badge or card.

5.17.120 - Denial, suspension or revocation of a certificate of registration.

- A. Denial. Upon review, the licensing official shall refuse to issue a certificate to an applicant for any of the following reasons:
 - 1. The application form is not complete or correct;
 - 2. The applicant fails to:
 - a. Establish proof of identity,
 - b. Provide a BCI report, or
 - c. Pay the fees;
 - 3. The completed application or BCI report indicates that the applicant has a disqualifying status;
 - 4. The applicant has previously been denied a certificate by the City, or has had a certificate revoked for grounds that still constitute a disqualifying status under this chapter.
 - 5. Since the submission of the completed application, the applicant has become subject to a previously undisclosed or unknown disqualifying status;
 - 6. Since the submission of the application, the City has received a substantiated report regarding the past, present, or future conduct of the applicant that discloses a disqualifying status;
 - 7. Since the submission of the application, the City or other governmental entity has either criminally convicted or obtained a civil injunction against the applicant for violating this chapter or similar federal, state, or municipal laws or ordinances in a manner rising to the level of a disqualifying status; or
 - 8. Since the submission of the application, a final civil judgment has been entered against the applicant indicating that:
 - a. The applicant had either engaged in fraud, or intentional misrepresentation, or
 - b. That a debt of the applicant was nondischargeable in bankruptcy pursuant to 11 U.S.C. Section 523(a)(2), (a)(4), (a)(5), (a)(6), (a)(9), or (a)(19).
- B. Suspension or Revocation. The City shall either suspend or revoke a certificate when any of the reasons warranting the denial of a certificate occurs.
- C. Notice of Denial or Suspension. Upon determination of the licensing official 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 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 ten business days from the receipt 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 calendar days from the date the notice is sent, unless that suspension is because of exigent circumstances defined in Section 5.17.020, 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.

5.17.130 - Appeal.

An applicant or registered solicitor whose certificate has been denied or suspended shall have the right to appeal to the Mayor of Millcreek City or his designee, who shall become the appeals officer. Any appeal must be submitted by either the applicant, the responsible person or entity, or legal counsel for either who documents the relationship with the applicant or responsible person or entity; or 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 Mayor of Millcreek City with a copy to the licensing official within ten 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 official, any additional information relied upon by the licensing official 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 appeals officer shall be simultaneously submitted to the opposing party. If desired, any party shall have three 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 calendar days from the date the appeal is taken, unless an extension of time is agreed upon by the parties. In the event that any party to the appeal submits rebuttal information as allowed in subsection C of this section, the fifteen calendar days shall be extended to include the additional three days for rebuttal.
 1. 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 official made a material mistake of law or fact in denying or suspending the applicant or registered solicitor's certificate.
 2. If the appeals officer finds that the written appeal and information submitted indicates that the licensing official 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.
 3. 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 is filed.
- E. After the ruling of the appeals officer, the applicant or solicitor is deemed to have exhausted all administrative remedies afforded by the City.
- F. 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.

5.17.140 - 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:
 - 1. The name of the solicitor;
 - 2. The name and address of the entity with whom the solicitor is associated, if any; and
 - 3. The purpose of the solicitor's contact with the consumer and/or competent individual. This requirement may be satisfied through the use of the identification badge or card and an informational flyer.
- C. Solicitors shall use their real name and shall not 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 an endorsement by the City of the solicitor's goods or services or of the individual solicitor.

5.17.150 - "No solicitation" notice.

- A. Any occupant of a residence may give notice of a desire to refuse solicitors by displaying a "No Solicitation," "No Trespassing," or similar 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.

5.17.160 - Duties of solicitors.

- A. Every registered solicitor shall check each residence for a "No Soliciting," "No Trespassing," or similar 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" or "No Trespassing" signs. If such sign or placard is posted a solicitor shall make no effort to solicit at the residence or dwelling and shall immediately depart from the property. Possession of a certificate of registration does not relieve a solicitor of this duty.
- B. It is a violation of this chapter for a registered solicitor 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," "No Trespassing" 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 chapter for a registered solicitor, through ruse, deception, or fraudulent concealment of a purpose, to solicit or to take action calculated to secure an audience with an occupant at a residence.
- D. A registered solicitor who is at any time asked by an occupant of a residence or dwelling to leave shall immediately and peacefully depart.
- E. A registered solicitor shall not intentionally or recklessly make any physical contact with, or touch another person without the person's consent.
- F. A registered solicitor shall not follow a person into a residence without the person's explicit consent.
- G. A registered 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. A registered solicitor shall not use obscene or "fighting words" language or gestures within the presence of any person to whom the solicitor is attempting to sell goods or services.

5.17.170 - Time of day restrictions.

It is unlawful for any person, to solicit at a residence before nine a.m. or after nine p.m. local time, unless the solicitor has express prior permission from the resident to do so.

5.17.180 - 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 if said right is exercised within three business days after signing an agreement to purchase. Such notice of "Buyer's right to cancel" shall be in the form required by Section 70C-5-103, Utah Code Annotated, 1953, or a current version thereof, or any state or federal law modifying or amending such provision.

5.17.190 - 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 or ordinance regarding any license, permit or certificate that a registered solicitor is otherwise required to have or maintain.

5.17.200 - Penalties.

- A. Any person who violates any term or provision of this chapter shall be guilty of a Class B misdemeanor for each violation and shall be punished by a fine not to exceed one thousand dollars and/or a jail sentence not to exceed six months for each violation.
- B. Any entity which violates any term or provision of this chapter shall be guilty of a Class B misdemeanor for each violation and shall be punished by a fine not to exceed five thousand dollars for each violation.

5.17.210 - Savings clause.

If any portion of this chapter should, after its enactment, be declared void, illegal, unconstitutional or ultra vires by the final decision of a court of competent jurisdiction, the remaining portions of the ordinance codified in this chapter shall remain in full force and effect, and enforceable.

Chapter 5.18 - TAXICABS

5.18.010 - Taxicab defined.

"Taxicab," when used in this chapter, means any motor vehicle with a seating capacity of five passengers or less, not including the driver, or a van with a passenger seating capacity of six to twelve, not including the driver, used in the on demand, for hire transportation of passengers or baggage over the public streets and not operated over a fixed route or upon a fixed schedule, but which is subject for contract hire by persons desiring special trips from one point to another.

5.18.020 - Business License—Required.

It is unlawful for any person, firm or corporation ("owner") to engage in the business of operating a taxicab within incorporated Millcreek City without first obtaining a business license. If the owner has

obtained a current business license from elsewhere within the state, the City will honor that license. If the owner has a business office within incorporated Millcreek City, the owner shall obtain a business license in accordance with Chapter 5.04 of this title. Owners shall not be required to obtain taxicab licenses for vehicles in their fleet.

5.18.030 - License—Insurance or bond requirements.

- A. After approval of the application-and prior to the issuance of a business license, the applicant shall submit to the license official a policy of insurance in such amounts as the Mayor shall from time to time determine appropriate, executed by an insurance company qualified to do business in the state, and approved by the Mayor, insuring any person against loss or damage to person or property resulting to him or his heirs from the negligent operation of any taxicab operated by or on behalf of the owner thereof.
- B. However, in lieu of a policy of insurance, taxicab owners may file surety bonds with the licensing official in such amounts as the Mayor shall from time to time determine appropriate, keeping the same in full force and effect during the entire period for which such taxicab is covered by the license issued hereunder. Bonds shall be in such form as the Mayor may deem proper, executed by a responsible and solvent surety company authorized to do business under the laws of the state, and so conditioned that the taxicab owner will pay all final judgments rendered against him for damages.

5.18.040 - License—Financial responsibility—Millcreek City taxicabs.

In event the taxicab is licensed as such by Millcreek City, there may be submitted, in lieu of the actual policies and/or bonds, an affidavit that they are in effect in the amounts prescribed and are on file in Millcreek City and, in such case, the applicant shall keep the same in full force and effect during the whole period for which such taxicab is covered by a license issued hereunder.

5.18.050 - Driver's license—Requirements.

Owner may not obtain a business license until owner provides a list of all drivers of owner's vehicles, together with evidence that each driver has a current motor vehicle chauffeur's permit issued by the state, authorizing the transportation of passengers. Additionally, prior to issuing a business license, the licensing official must verify through the local law enforcement agency that no driver of owner's vehicles has any outstanding arrest warrants. After a business license has been issued, owner shall ensure that all drivers of owner's vehicles are free of arrest warrants and have current motor vehicle chauffeur's permits.

5.18.060 - Business licenses—Suspension or revocation conditions.

In addition to the grounds for suspension or revocation of business licenses provided in Millcreek City Code Section 5.07.020, an owner's business license may be suspended or revoked for failure to comply with the requirements of this chapter. The procedure for doing so shall be as prescribed in Millcreek City Code Section 5.07.030 et seq.

5.18.070 - Rate schedule—Filing—Compliance.

- A. It shall be the duty of every owner to file with the licensing official a schedule of the rates to be charged by him in the operation of taxicabs, and the method upon which such rates shall be computed. Prior to any change in either the rates of fare or the method of computing the same, such owner must file the same with the licensing official
- B. No owner shall charge or attempt to charge any passenger a rate of fare other or different than that which he has heretofore filed with the licensing official in accordance with the provisions of this chapter.

5.18.080 - Rate schedule—Posting in taxicab.

The driver of each taxicab shall display in a conspicuous place in the inside of the vehicle that he is operating, where same may be easily read by every person riding therein, a schedule of the rates or, if the rates are based on zones, the zone map determining the charges to be assessed.

5.18.090 - Taximeters.

If the rates to be charged are to be computed by taximeters, it shall be the duty of every owner to keep the taximeter thereon in good and workable condition, and at the beginning of every employment to set such taximeter in the usual way so that it will register and compute on a mileage basis while said vehicle is running, and on a time basis while waiting; and such taximeter shall be so placed that the face thereof where the fare is registered will be plainly visible to passengers within the vehicle.

5.18.100 - Operation—Most direct route required.

Any driver employed carrying passengers to a definite point shall take the most direct route possible that will carry the passenger safely and expeditiously to his destination.

5.18.110 - Duty to transport passengers.

It is unlawful for any taxicab driver, while engaged in operating a taxicab, except as permitted herein, to refuse to convey any person for any lawful purpose, with or without baggage, upon demand and tender of the lawful fare, or, having undertaken to convey such person, thereafter willfully to refuse or neglect so to do; provided, there shall be no duty hereunder for any taxicab driver to transport any person who is acting in a loud, boisterous or unruly manner.

5.18.120 - Additional passengers—Restrictions.

Whenever a taxicab driver is transporting a passenger or passengers, such passenger or passengers shall have the exclusive right to full and free use of the passenger compartment, and it is unlawful for the taxicab driver to solicit or carry an additional passenger or passengers therein, except with the consent of the passenger or passengers then being transported.

5.18.130 - Right to demand fare in advance.

The owner or driver of any licensed taxicab shall have the right to demand in advance the minimum fare of any person employing him, and may refuse to convey any person who shall not comply with such demand.

5.18.140 - Refusal to pay fare prohibited.

- A. It is unlawful for any person, having hired any licensed taxicab and having ridden therein, to refuse to pay his fare, not exceeding the rates prescribed in the schedule or zone maps permitted under this chapter.
- B. It is unlawful for any taxicab driver to charge rates different from those prescribed.

5.18.150 - Driver's duty to disclose information.

It is unlawful for the owner of any particular taxicab or for any taxicab driver, upon being requested so to do by a passenger or law enforcement officer, to refuse to give the name of the taxicab driver.

5.18.160 - Operation—Driver to remain near vehicle.

It is unlawful for any person, while engaged as taxicab driver, to leave his vehicle for a distance of more than ten feet, except for the purpose of securing, when requested, the baggage of his patrons.

5.18.170 - Alcoholic beverages prohibited.

It is unlawful for any person, while engaged in operating a taxicab, to drink intoxicating liquors or alcoholic beverages of any kind, including beer, regardless of the limit of its alcoholic content.

5.18.180 - Fraud and misrepresentation prohibited.

It is unlawful for the driver of any taxicab, or for any person soliciting patronage for any taxicab, to practice any deceit, fraud or misrepresentation in any manner whatever relative to matters pertaining to his business.

Chapter 5.19 - SHORT-TERM RENTALS

5.19.010 - Short-term rental defined.

"Short-term rental" means any dwelling or condominium or portion thereof that is available for use or is used for accommodations or lodging of guests, paying a fee or other compensation for a period of less than thirty consecutive days.

5.19.020 - License—Required.

It is unlawful to conduct or operate a short-term rental without having obtained a license therefore.

5.19.030 - License—Application—Contents.

Applications shall contain such information as the license official shall from time to time require, including the location of the short-term rental, number of rooms therein contained, the number of persons the short-term rental will accommodate, the name of a property manager, a sales tax collection and accounting number, and the name, address and telephone number of a local responsible party who is available by telephone twenty-four hours per day. The application shall include a statement by the applicant affirming that the applicant is currently in compliance with all legal requirements and has paid all applicable taxes, fees and other charges, including but not limited to the transient room tax.

5.19.040 - License—Application—Investigation.

Applications shall be referred by the license official to the fire department and Salt Lake Valley Health Department or such other agency as the license official may deem appropriate to make or cause to be made an investigation of the short-term rental premises, the applicant and other relevant matters. Departmental recommendation as to the issuance or denial of the license, based on the above inspections, shall then be referred to the license official for transmittal to the Mayor.

5.19.050 - License—Fee.

The annual fee for a license under this chapter shall be the same as the general business license fee, as defined in Section 5.08.040 of this title. A license with applicable fee is required for each separate short-term rental property.

5.19.060 - Inspections for compliance.

- A. After a license has been granted, the license official may make periodic inspections of a short-term rental to ensure compliance with this chapter and all other applicable law.
- B. The fire department shall perform at least one inspection annually to ensure compliance with applicable codes.

5.19.070 - Maintenance—Structures and grounds—Other requirements and limitations.

- A. A short-term rental shall be maintained to the following minimum standards:

1. Periodic housekeeping service shall be provided by the owner, including removal of trash to the nearest collection point, on at least a weekly basis.
 2. Short-term rentals may not be used for commercial purposes not otherwise permitted in the zone nor be used to distribute retail products or personal services to invitees for marketing or similar purposes. The outdoor displays of goods and merchandise for sale is prohibited.
- B. The access to the short-term rental unit and the layout of the short-term rental shall be designed so that noise and physical trespass from the short-term rental unit is not likely to be a substantial intrusion on adjoining properties. If the short-term rental unit is a single family home, duplex, condominium or other dwelling place and shares an access, hallway, common wall, or driveway with another dwelling, written consent of the owner of the other dwelling is required.
- C. The licensee must designate a responsible party who is an individual or property management company residing or maintaining an office in Millcreek City. The responsible party is personally liable for failure to properly manage the short-term rental. The responsible party must be available by telephone, or otherwise, twenty-four hours per day and must be able to respond to telephone inquiries within twenty minutes of receipt of an inquiry.
- D. The licensee must have a sales tax collection and sales tax accounting number for the rental operation and the sales tax number must be included on the short-term rental application. All applicable taxes, charges and fees, including the transient room tax, must be paid in full during the period of licensure.

5.19.080 - Responsible individual.

One nameplate sign not to exceed three inches by five inches made of a durable weather-resistant material containing the name and telephone number of at least one responsible individual located within the City that can be contacted twenty-four hours a day, and the occupant load of the building as allowed by the Uniform Building Code shall be permanently attached to the building in a conspicuous location near the front entrance of the short-term rental. Such nameplate shall not contain any advertising.

5.19.090 - Separate violations.

For purposes of prosecution of violations of this chapter, each day that any violation occurs, that short-term rental property subject to this chapter is rented without a license, or that applicable taxes and fees are unpaid, is deemed to constitute a separate violation.

Chapter 5.20 - SEXUALLY ORIENTED BUSINESSES AND EMPLOYEE LICENSING

5.20.010 - Title for citation.

The ordinance codified in this chapter shall be known and may be referred to as the "Sexually Oriented Businesses and Employee Licensing Ordinance."

5.20.020 - Purposes of provisions.

It is the purpose and intent of this chapter to establish reasonable and uniform regulations governing the time, place and manner of operation of sexually oriented businesses and their employees in the incorporated area of Millcreek City that will reduce the adverse secondary effect that such businesses have upon communities, including the City, and to protect the health, safety and general welfare of the residents of the City. This chapter shall be construed to protect the governmental interests recognized by this chapter in a manner consistent with constitutional protections provided by the constitutions of the United States and the state of Utah.

5.20.030 - Application of provisions.

This chapter imposes regulatory standards and license requirements on certain business activities, which are characterized as sexually oriented businesses, and certain employees of those businesses

characterized as sexually oriented business employees. Except where the context or specific provisions require, this chapter does not supersede or nullify any other related ordinances, including but not limited to those codified in Chapter 5.02, Title 10, and Title 19 of this code.

5.20.040 - Definitions.

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

"Adult bookstore" or "adult video store" means a commercial establishment which sells or offers adult material for sale or rent or any other form of consideration unless the individual items of adult material comprise less than ten percent of the individual items as stock in trade and less than ten percent of gross sales, are not publicly displayed, and are not accessible to minors at the establishment.

"Adult business" means an adult theater, adult motion picture theater, adult bookstore, adult video store or any other business which has as one of its principal purposes the offering of a product or service which is intended to provide sexual stimulation or sexual gratification to patrons and is characterized by an emphasis on nudity, seminudity or specified anatomical areas. This definition shall not apply to private clubs or Class C retail beer establishments which are not required to have a seminude dancing bar license.

"Adult material" means any one or more of the following, regardless of whether it is new or used:

1. Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, slides or other visual representations, recordings or audio matter, the central theme of which depicts or describes specified sexual activities or specified anatomical areas; or
2. Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities, except for legitimate, medically recognized contraception.

"Adult motion picture theater" means a commercial establishment which regularly features films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas." "Adult arcades" and "adult booths" are included within this definition.

"Adult theater" means a theater, concert hall, auditorium or portion thereof or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas.

"Business license authority" means the City's business license manager or designee.

"City" means for purposes of this chapter the incorporated area of the City.

"Employ" means hiring an individual to work for pecuniary compensation, whether such person is hired on the payroll of the employer, as an independent contractor, as an agent or in any other form of employment relationship.

"Escort" means any person who, for pecuniary compensation, dates, socializes, visits, consorts with or accompanies or offers to date, consort, socialize, visit or accompany another or others to or about social affairs, entertainment or places of amusement or within any place of public or private resort or any business or commercial establishment or any private quarters. "Escort" shall not be construed to include persons who provide business or personal services such as licensed private nurses, aides for the elderly or handicapped, social secretaries or similar service personnel whose relationship with their patron is characterized by a bona fide contractual relationship having a duration of more than twelve hours and who provide a service not principally characterized as dating or socializing.

"Escort service" means an individual or entity who, for pecuniary compensation, furnishes or offers to furnish escorts or provides or offers to introduce patrons to escorts.

"Escort service runner" means any third person, not an escort, who, regardless of pecuniary compensation, acts in the capacity of an agent or broker for an escort service, escort or patron by contacting or meeting with escort services, escorts or patrons at any location within the City, whether or not such third person is employed by such escort service, escort or patron, or by another business or is an independent contractor or self-employed.

"Nude and seminude dancing agency" means any person, agency, firm, corporation, partnership or any other entity or individual which furnishes, books or otherwise engages or offers to furnish, book or otherwise engage the service of a model, dancer or similar person licensed pursuant to this chapter for performance or appearance at a nude entertainment business or seminude dancing bars.

"Nude entertainment business" means a business, including adult theater, where employees perform or appear in the presence of patrons of the business in a state of nudity or seminudity. A business shall also be presumed to be a nude entertainment business if the business holds itself out as such a business.

"Nudity" or "state of nudity" means a state of dress in which the nipple and areola of the female breast or male or female genitals, pubic region, buttocks or anus are covered by less than the covering required in the definition of seminude or the displaying of any identified anatomical area.

"Outcall services" means escorts and businesses which provide, as any portion of their business, nude or seminude services outside of the premises in any place of private resort or private quarters by models, dancers or other similar employees.

"Patron" means any person who contracts with or employs any outcall services or the customer of any business licensed pursuant to this chapter.

"Pecuniary compensation" means any commission, fee, salary, tip, gratuity, hire, profit, reward or any other form of consideration.

"Person" means any person, incorporated association, corporation, partnership or other legal entity.

"Seminude" means a state of dress in which opaque clothing covers no more than the genitals, pubic region, anus and the nipple and areola of the female breast. In accordance with the above, at a minimum, the genitals, pubic region and anus shall be fully covered by an opaque covering no narrower than four inches wide in the front and five inches wide in the back which shall not taper to less than one inch wide at the narrowest point.

"Seminude dancing bars" means any business licensed as a private club or which holds a Class C retail beer license and offers its customers live entertainment involving seminudity, or live entertainment which is distinguished by or characterized by an emphasis on the displaying of any portion of human buttocks or the female breast with less than a fully opaque covering.

"Sexually oriented business" means nude entertainment businesses, outcall services, adult businesses, seminude dancing bars and nude and seminude dancing agencies as defined by this chapter.

"Sexually oriented business employees" means those employees who work on the premises of the sexually oriented business in activities related to the sexually oriented portion of the business. This includes all managing employees, dancers, escorts, models, and other similar employees whether or not hired as employees, agents or independent contractors. Employees shall not include individuals whose work is unrelated to the sexually oriented portion of the business, such as janitors, bookkeepers and similar employees. Sexually oriented business employees shall not include cooks, serving persons, bartenders and similar employees except where they may be managers or supervisors of the business. All persons employed by an outcall service making outcall meetings under this chapter, including dancers, escorts, models, guards, escort runners, drivers and other similar employees, regardless of the employee's state of dress, shall be considered sexually oriented business employees.

"Specified anatomical areas" means less than completely and opaquely covered:

1. Human male and female genitals, pubic area and anus, or
2. The human female breast from the beginning of the areola, papilla or nipple to the end thereof, or
3. The cleavage of the human buttocks, or
4. Human male genitals in a discernibly turgid state.

"Specified sexual activities" means:

1. Acts of:

- a. Masturbation,
 - b. Human sexual intercourse,
 - c. Sexual copulation between a person and a beast,
 - d. Fellatio,
 - e. Cunnilingus,
 - f. Bestiality,
 - g. Pederasty,
 - h. Buggery, or
 - i. Any anal copulation between a human male and another human male, human female or beast;
2. Simulated acts of those activities set forth in subsection 1 performed while in a state of nudity or seminudity.
 3. Manipulating, caressing or fondling by any person of the human genitals, pubic area, anus, buttocks or the female breast for the purpose of arousing or gratifying the sexual desire of a person.
 4. Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.

5.20.050 - Obscenity—Statutory provisions.

Notwithstanding anything contained in this chapter, nothing in this chapter shall be deemed to permit or allow the showing or display of any matter which is contrary to the provisions of Chapter 10.28 of this code or other applicable federal or state statutes prohibiting obscenity.

5.20.060 - Location and zoning restrictions.

It is unlawful for any sexually oriented business to do business at any location within the incorporated City not zoned for such business. Sexually oriented businesses shall only be allowed in areas zoned for their use pursuant to Title 19 of this code.

5.20.070 - License required.

It is unlawful for any person to operate a sexually oriented business, as specified below, in the incorporated area of the City without first obtaining a sexually oriented business regulatory license. The license shall specify the type of business for which it is obtained.

5.20.080 - Exemptions from license requirements.

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

5.20.090 - Legitimate artistic modeling.

The City does not intend to unreasonably or improperly prohibit legitimate modeling which may occur in a state of nudity for purposes protected by the First Amendment or similar state protections. The City does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling. Notwithstanding the provisions of subsection K of Section 5.20.210, a licensed outcall employee may appear in a state of nudity before a customer or patron proving that a written contract for such appearance

was entered into between the customer or patron and the employee at least twenty-four hours before the nude appearance in accordance with the provisions of Section 5.20.220. All of the other applicable provisions of this chapter shall still apply to such nude appearance.

5.20.100 - Business categories—Number of licenses.

- A. It is unlawful for any business premises to operate or be licensed for more than one category of sexually oriented business, except that a nude and seminude dance agency may be located on the same premises of a seminude dancing bar or the same premises of an outcall services business.
- B. The categories of sexually oriented businesses are:
 - 1. Outcall services;
 - 2. Adult businesses;
 - 3. Nude entertainment businesses;
 - 4. Seminude dancing bars;
 - 5. Nude and seminude dancing agency.

5.20.110 - Employee licenses.

- A. It is unlawful for any sexually oriented business to employ or for any individual to be employed by a sexually oriented business in the capacity of a sexually oriented business employee in the incorporated area of the City unless that employee first obtains a sexually oriented business employee license from the City.
- B. It is unlawful for any person performing outcall services or any person performing in a state of nudity or seminudity to work or perform in the City unless such person is employed by an outcall service business, nude or seminude dancing agency licensed by the City or said person is licensed by the City as an outcall service business or a nude or seminude dancing agency.

5.20.120 - License—Application—Disclosures required.

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

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

4. Weight,
 5. Color of hair,
 6. Color of eyes,
 7. Present business address and telephone number,
 8. Present residence and telephone number,
 9. Utah driver's license or identification number, and
 10. Social security number;
- E. Acceptable written proof that any individual is at least eighteen years of age or, in the case of employees to be employed in businesses where a different age is required, proof of the required age;
 - F. Attached to the form as provided above, two color photographs of the applicant clearly showing the individual's face, and the individual's fingerprints on a form provided by the local law enforcement agency. For persons not residing in the City, the photographs and fingerprints shall be on a form from the law enforcement jurisdiction where the person resides. Fees for the photographs and fingerprints shall be paid by the applicant directly to the issuing agency;
 - G. For any individual applicant required to obtain a sexually oriented business employee license for outcall services as a model, dancer or other similar employee or escort, or as a nude or seminude entertainer employed by any other sexually oriented business, a certificate from the Salt Lake Valley Health Department, stating that the individual has, within thirty days immediately preceding the date of the application, been examined and found to be free of the following contagious diseases: gonorrhea, syphilis, and chlamydia, and is negative for the AIDS antibody.

Said certificate shall be updated quarterly during the license term by the applicant and submitted to the City license manager. Said certificate shall also be required for the renewal of such license;

- H. A statement of the business, occupation or employment history of the applicant for five years immediately preceding the date of the filing of the application;
- I. A statement detailing the license or permit history of the applicant for the five-year period immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate in this or any other City, city, state or territory has ever had a license, permit or authorization to do business denied, revoked or suspended, or has had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the date, the name of the acting jurisdiction, and state in full the reasons for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application;
- J. All criminal convictions or pleas of nolo contendere, except those which have been expunged, and the disposition of all such arrests for the applicant, individual or other entity subject to disclosure under this chapter, for five years prior to the date of the application. This disclosure shall include identification of all ordinance violations, excepting minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense), stating the date, place, nature of each conviction or plea of nolo contendere and sentence of each conviction or other disposition; identifying the convicting jurisdiction and sentencing court and providing the court identifying case numbers or docket numbers. Application for a sexually oriented business or employee license shall constitute a waiver of disclosure of any criminal conviction or plea of nolo contendere for the purposes of any proceeding involving the business or employee license;
- K. In the event the applicant is not the owner of record of the real property upon which the business or proposed business is or is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of business for which the applicant seeks a license for the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, address and phone

number of the owner of record of the property as well as the copy of the lease or rental agreement pertaining to the premises in which the service is or will be located;

- L. A description of the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees for services to be charged by the licensee, and any rules, regulations or employment guidelines under or by which the business intends to operate. This description shall also include:
 - 1. The hours that the business or service will be open to the public, and the methods of promoting the health and safety of the employees and patrons and preventing them from engaging in illegal activity,
 - 2. The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities,
 - 3. The methods of supervising employees and patrons to prevent employees and patrons from charging or receiving fees for services or acts prohibited by this chapter or other statutes or ordinances,
 - 4. The methods of screening employees and customers in order to promote the health and safety of employees and customers, prevent the transmission of disease and prevent the commission of acts of prostitution or other criminal activity.

5.20.130 - License—Fees.

Each applicant for a sexually oriented business shall be required to pay regulatory license fees in accordance with the consolidated fee schedule, which shall be approved by the City Council and shall be on file with the licensing official.

5.20.140 - License—Premises location and name.

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

5.20.150 - License—Issuance conditions.

- A. The City business license manager shall submit to the Mayor for approval the issuance of a license to the applicant within thirty days after receipt of a complete application unless the official finds one or more of the following:
 - 1. The applicant is under eighteen years of age or any higher age if the license sought requires a higher age;
 - 2. The applicant is overdue in payment to the City of taxes, fees, fines or penalties assessed against the applicant or imposed on the applicant in relation to a sexually oriented business;
 - 3. The applicant has falsely answered a material question or request for information as authorized by this chapter;
 - 4. The applicant has been convicted of a violation of a provision of this chapter within two years immediately preceding the application (the fact that a conviction is being appealed shall have no effect on the denial);
 - 5. The premises to be used for the business have been disapproved by the Salt Lake Valley Health Department, the City fire department, the local law enforcement agency, the City building official or the City zoning officials as not being in compliance with applicable laws and ordinances of the City;

6. The license fees required by this chapter or by other ordinances have not been paid;
 7. All applicable sales and use taxes have not been paid;
 8. An applicant for the proposed business is in violation of or not in compliance with this chapter;
 9. An applicant has:
 - a. Been convicted of, pled nolo contendere to, or committed a felony under the laws of the state of Utah or any crime involving moral turpitude,
 - b. Been convicted of, pled nolo contendere or committed any of the following crimes, whether or not any of the following listed crimes constitutes a felony or a crime of moral turpitude: prostitution; exploitation of prostitution; aggregated promotion of prostitution; aggravated exploitation of prostitution; solicitation of sex acts; sex acts for hire; compelling prostitution; aiding prostitution; sale; distribution or display of material harmful to minors; sexual performance by minors; possession of child pornography; public lewdness; indecent exposure; any crime involving sexual abuse or exploitation of a child; sexual assault or aggravated sexual assault; rape; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving similar elements from any jurisdiction regardless of the exact title of the offense for which:
 - i. Less than two years have elapsed from the date of conviction if the conviction is of a misdemeanor offense or less than five years if the convictions are of two or more misdemeanors within the five years, or
 - ii. Less than five years have elapsed from the date of conviction, if the offense is of a felony;
 - c. The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section.
- B. If any of the reviewing departments of the City specified above cannot complete their review of an application for a sexually oriented business within the thirty-day period, the agency or department may obtain from the City business license manager an extension of time for their review of no more than fifteen days. The total time for the City departments to recommend the issuance or denial of a license for a sexually oriented business shall not exceed forty-five days from the receipt of a completed application. Businesses located outside of the incorporated boundaries of the City but requiring a regulatory license under this chapter may be denied a license pursuant to this chapter if the business does not have a valid business license to conduct business at the business location from the appropriate jurisdiction for that location.
1. Upon receipt of an application all departments required to review the application shall determine within seven days whether or not the application is incomplete in items needed for processing. Incomplete applications shall immediately be returned to the applicant specifying which items are incomplete.
 2. The time for processing applications specified in this section shall begin to run from the receipt of a complete application.
 3. In the event that a license for a sexually oriented business or an employee of a sexually oriented business has not been disapproved based on a complete application within thirty days, or forty-five days if an extension has been granted for the review of an application for a sexually oriented business, the City shall issue the license pending completion of the City's review.
 4. Any license issued pursuant to subsection (B)(3) of this section may be revoked by the City pursuant to the revocation procedures of Sections 5.20.370 through 5.20.390 if the completed review determines that the license application should have been denied.

- C. Every sexually oriented business requiring conditional use approval shall be required to obtain such approval before a sexually oriented business license application will be accepted or processed by the business licensing authority.

5.20.160 - License—Term.

Sexually oriented business and employee licenses issued pursuant to this chapter shall be valid from the date of issuance through January 1st of the next calendar year.

5.20.170 - License—Notice of change of information.

Any change in the information required to be submitted under this chapter for either a sexually oriented business license or sexually oriented business employee license shall be given, in writing, to the business license authority and the local law enforcement agency within fourteen days after such change.

5.20.180 - License—Transfer limitations.

- A. Sexually oriented business licenses granted under this chapter shall not be transferable to a new location or to a new owner. It is unlawful for a corporation, partnership or other noncorporate business entity holding a sexually oriented business regulatory license to transfer any part of its business interest or ownership in excess of ten percent thereof without filing a new license application and obtaining a new sexually oriented business regulatory license from the City. If any transfer of the controlling interest in a business licensee occurs, the license is immediately null and void and the business shall not operate until a separate new license application has been submitted with all applicable fees and a new regulatory license has been issued by the City as provided in this chapter.
- B. It is unlawful for a sexually oriented business employee to transfer such license to another. Any such transfer or attempted transfer shall render the license null and void.
- C. Outcall services employees and nude and seminude dancers may transfer their employee license from one outcall service business or from a nude or seminude dancing agency to another upon submitting a letter of employment from the new business or agency and upon payment of a twenty-five dollar transfer fee.
- D. It is unlawful for the holder of a sexually oriented business license to sell, transfer the business ownership or location, or otherwise cease operating the business without notifying the City licensing manager and surrendering the licensee's sexually oriented business license.

5.20.190 - License—Display.

It is unlawful for any sexually oriented business located within the incorporated boundaries of the City to fail to display the license granted pursuant to this chapter in a prominent location within the business premises. It is unlawful for any individual licensed pursuant to this chapter to fail to carry their employee license on their person, at all times while engaged in licensed activities within the incorporated boundaries of the City. If the individual is nude, such license shall be visibly displayed within the same room as the employee is performing. It is unlawful to fail to carry or show the appropriate licenses while engaged in licensed activities within the incorporated boundaries of the City upon request of the local law enforcement agency, City licensing or other enforcement agency.

5.20.200 - License—Statement in advertisements.

It is unlawful for any advertisement by the sexually oriented business or employee to fail to include the City license number.

5.20.210 - Regulations and unlawful activities.

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

- A. Allow persons under the age of eighteen years, or the age of twenty-one years if required by applicable liquor ordinance, on the licensed premises, except that in adult businesses which exclude minors from less than all of the business premises, minors shall not be permitted in excluded areas;
- B. Allow, offer or agree to conduct any outcall business with persons under the age of eighteen years;
- C. Except for seminude dancing bars, to allow, offer or agree to allow any alcohol being stored, used or consumed on or in the licensed premises;
- D. Allow the outside door to the premises to be locked while any customer is in the premises;
- E. Allow, offer or agree to gambling on the licensed premises;
- F. Allow, offer or agree to any touching between a sexually oriented business employee and any patron or customer during a performance, except that employees of outcall services and patrons may touch provided that such touching does not violate the provisions of Section 5.20.220(D) of this chapter. It is further provided that specified sexual activities between patrons and employees are also prohibited;
- G. Allow, offer or agree to or engage in the illegal possession, use, sale or distribution of controlled substances on the licensed premises;
- H. Allow sexually oriented business employees to possess, use, sell or distribute controlled substances while engaged in the activities of the business;
- I. Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor or committing activities harmful to a minor to occur on the licensed premises or, in the event of an outcall employee or business, the outcall employee committing, offering or agreeing to commit prostitution, attempting to commit prostitution, soliciting prostitution, soliciting a minor or committing activities harmful to a minor;
- J. Allow, offer, commit or agree to any specified sexual activity or sex act as validly defined by City ordinances or state statute;
- K. Allow, offer or agree to any outcall services employee appearing before any customer or patron in a state of nudity without first complying with the provision of Section 5.20.090.

5.20.220 - Outcall services—Operation requirements.

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

- A. All businesses licensed to provide outcall services pursuant to this chapter shall provide to each patron a written contract in receipt of pecuniary compensation for services. The contract shall clearly state the address where the services are to be performed, the type of services to be performed, the length of time such services shall be performed, the total amount such services shall cost the patron, and any special terms or conditions relating to the services to be performed.

The contract need not include the name of the patron. However, the contract shall clearly provide the patron the opportunity to give the patron's name and address to the business for purposes of contact tracing by the Salt Lake Valley Health Department, if the patron so desires, in the event the outcall services employee contracted for subsequently tests positive for a sexually transmitted disease on a quarterly test required pursuant to the provisions of Section 5.20.120(G). The contract shall clearly state whether the patron accepted or declined said opportunity.

The business licensee shall keep and maintain a copy of each written contract entered into pursuant to this section for a period not less than one year from the date of provision of services thereunder. The contracts shall be numbered and entered into a register, which shall also be kept for one year, listing the contract number, date, names of all employees involved in the contract, and pecuniary compensation paid. The

register shall be made available to the local law enforcement agency and Salt Lake Valley Health Department for inspection during normal operating hours.

- B. All outcall businesses licensed pursuant to this chapter shall maintain an open office at which the licensee or licensee's designated agent may be personally contacted during all hours outcall employees are working. The address and phone number of the license location shall appear and be included in all patron contracts and published advertisements. Outcall businesses with premises licensed and located within the City shall not provide or allow private rooms or booths where the patrons may meet with outcall employees either at the licensed premises or at any other location, nor shall patrons meet outcall employees at the business premises.
- C. Outcall services shall not advertise in such a manner that would lead a reasonably prudent person to conclude that specified sexual activities would be performed by the outcall employee.
- D. During an outcall appearance, it is unlawful:
 - 1. To appear nude or seminude in the presence of persons under the age of eighteen;
 - 2. To allow, offer or agree to any touching of the outcall employee appearing nude or seminude by the patron or other persons present to view said performance;
 - 3. To allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor or committing activities harmful to a minor;
 - 4. To allow, offer, commit, permit or agree to any specified sexual activity or any other sex act as validly defined by court ordinances or state statute or to remain in the presence of or continue an outcall performance if a patron or other person engages in any specified sexual activity or sex act;
 - 5. For an outcall employee to be within five feet of any other person while nude or seminude.

5.20.230 - Adult business—Design of premises.

- A. In addition to the general requirements of disclosure for a sexually oriented business, any applicant for a license as an adult business shall also submit a diagram, drawn to scale, of the premises of the license. The design and construction, prior to granting a license or opening for business, shall comply with all applicable building code requirements including the obtaining of applicable building permit and shall conform to the following:
 - 1. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms.
 - 2. Restrooms may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person being allowed in the restroom per stall and only one person in any stall at a time and requiring that patrons shall not be allowed access to manager's station areas.
 - 3. For businesses which exclude minors from the entire premises, all windows, doors and other apertures to the premises shall be darkened or otherwise constructed to prevent anyone outside the premises from seeing the inside of the premises. Businesses which exclude minors from less than all of the premises shall be designed and constructed so that minors may not see into the area from which they are excluded.
 - 4. The diagram required shall not necessarily be a professional engineer's or architect's blueprint; however, the diagram must show marked internal dimensions, all overhead lighting fixtures, and ratings for illumination capacity.
- B. It shall be the duty of the licensee and the licensee's employees to ensure that the manager's station is manned during all operating hours and ensure that the views from the manager's station in subsection A of this section remain unobstructed by any doors, walls, merchandise, display racks or any other materials, at all times that any patron is present in the premises and to ensure that no patron

is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

- C. The premises shall at all times be equipped and operated with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle, measured at floor level. It shall be the duty of the licensee and the licensee's employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

5.20.240 - Nude entertainment business—Design of premises.

- A. It is unlawful for business premises licensed for nude entertainment to:
 - 1. Permit a bed, sofa, mattress or similar item in any room on the premises, except that a sofa may be placed in a reception room open to the public or in any office to which patrons are not admitted, and except that in an adult theater such items may be on the stage as part of a performance;
 - 2. Allow any door on any room used for the business, except for the door to an office to which patrons shall not be admitted, outside doors and restroom doors to be lockable from the inside;
 - 3. Provide any room in which the employee or employees and the patron or patrons are alone together without a separation by a solid physical barrier at least three feet high and eighteen inches wide. The patron or patrons shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier.
- B. Adult theaters shall also require that the performance area shall be separated from the patrons by a minimum of five feet, which separation shall be delineated by a physical barrier at least three feet high.

5.20.250 - Nude entertainment business—Location restriction.

It is unlawful for any business licensed for nude entertainment to be located within three hundred thirty feet of a business licensed for the sale or consumption of alcohol.

5.20.260 - Seminude dancing bar—Operation prerequisites.

It is unlawful for any business licensed for the sale or consumption of alcohol pursuant to City ordinances to:

- A. Allow any person on the premises to dance, model or be or perform in a state of seminudity without first obtaining a license pursuant to this chapter;
- B. Allow any person on the premises to dance, model or be or perform in a state of nudity or expose any specified anatomical area.

In establishments licensed to sell, store or consume alcoholic beverages, seminude dancing shall be allowed only in Class C private clubs and Class C taverns.

5.20.270 - Seminude dancing bar—Performer restrictions.

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

5.20.280 - Nude and seminude dancing agencies.

- A. It is unlawful for any person to furnish, book or otherwise engage the services of a dancer, model or performer to appear in a state of seminudity or nudity for pecuniary compensation in, or for, any nude entertainment business, adult theater or seminude dancing bar licensed pursuant to this chapter unless such person is licensed as a nude and seminude dancing agency pursuant to this chapter.

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

5.20.290 - Performers—Prohibited activities.

It is unlawful for any dancer, model or performer during a performance in any establishment requiring a license as a seminude dancing bar pursuant to this chapter:

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

5.20.300 - Performers—Costume requirements.

It is unlawful for performers in seminude dancing bars to fail to comply with the following costume requirements:

- A. Performers shall at all times be costumed during performances in a manner not to violate any City ordinance concerning disorderly or obscene conduct, and such performers shall not perform or conduct themselves in such a manner as to violate the provision of any City ordinance. No performer shall appear in any business required to be licensed as a seminude dancing bar during a performance or appearance in a state of nudity and, in the case of a female performer, the areola and nipple of such performer shall be completely covered with opaque clothing in a shape and color other than the natural shape and color of the nipple and areola.
- B. While on the portion of a business licensed as a seminude dancing bar used by patrons, performers shall be dressed in opaque clothing covering the performer's buttocks and pubic area and, in the case of a female, the breast and nipples.

5.20.310 - Stage requirements.

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

5.20.320 - Patrons—Prohibited activities.

It is unlawful for any person or any patron of any seminude dancing bar or nude entertainment business during a performance to touch in any manner a model, dancer or performer; to place any money or object on or within the costume or person of any performer; or to give or offer to give to any such performer any drinks, money or object, except that money may be placed on the barrier which shall not be picked up by the performer except by hand after the performance.

5.20.330 - Nudity—Defenses to prosecution.

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

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

5.20.340 - Existing businesses—Compliance time limits.

- A. The provisions of this chapter shall be applicable to all persons and businesses described herein whether the herein-described activities were established before or after the effective date of the ordinance codified in this chapter and regardless of whether such persons and businesses are currently licensed to do business in the City.
 - 1. All such persons and businesses requiring outcall service licenses shall have thirty days from the effective date of the ordinance codified in this chapter or until their current license expires, whichever is first in time, to comply with the provisions of this chapter.
 - 2. All seminude dancing bars and employees thereof requiring licenses and nude and seminude dancing agency licenses shall have sixty days from the effective date of the ordinance codified in this chapter or until their license must be renewed, whichever is first, to comply with the provisions of the chapter.
 - 3. All nude entertainment businesses shall have sixty days from the effective date of the ordinance codified in this chapter, or until their current license must be renewed, whichever is first, to comply with the provisions of this chapter.
 - 4. All adult businesses shall have sixty days from the effective date of the ordinance codified in this chapter or until their current license must be renewed, whichever is first in time, to comply with the provisions of this chapter.
- B. For the year 1990, each business required by this chapter to be licensed as a sexually oriented business shall be credited against the fees required by this chapter with the regulatory license fees paid for the current 1990 license.

5.20.350 - Hours of operation.

- A. It is unlawful for the premises of an adult business, nude entertainment business, outcall services or nude and seminude dancing agency to remain open to make a sale, or to solicit a sale, a performance, or a service, or where otherwise allowed, permit patrons on the premises, between the hours of one a.m. and eight a.m. of any day. The operating hours for seminude dancing bars shall be governed by the provisions of Chapter 6.20 of this code.
- B. It is unlawful for any employee of a nude entertainment business, adult theater, seminude dancing bar or nude and seminude dancing agency to engage in a performance between the hours of one a.m. and ten a.m. of any day.

5.20.360 - Violation—Injunction when.

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

5.20.370 - Violation—License suspension or revocation.

- A. In the event a licensed sexually oriented business is operating in violation of a building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state or local, the City shall notify the licensee of the violation and shall allow the licensee ten calendar days to correct that violation. If the

licensee fails to correct the violation within ten calendar days, the City shall schedule a license hearing. If it is determined that a licensed establishment is in violation of a building, fire, health or zoning statute, code, ordinance or regulation, whether federal, state or local, the City shall forthwith suspend the license and shall notify the licensee of the suspension. The suspension shall remain in effect until the department or division responsible for enforcing the applicable ordinance giving rise to the suspension notifies the license manager in writing that the violation of the provision in question has been corrected.

- B. The City may issue a notice suspending, placing on probation or revoking a sexually oriented business or employee license granted under this chapter if a licensee or an employee of a licensee has:
 - 1. Violated or is not in compliance with the provisions of this chapter;
 - 2. Refused to allow any inspection of the premises of the sexually oriented business specifically authorized by this chapter or by any other statute or ordinance;
 - 3. Failed to replenish the cost bond as provided in this chapter (such a suspension shall extend until the bond has been replenished);
 - 4. Given materially false or misleading information in obtaining the license;
 - 5. Knowingly operated the sexually oriented business or worked under the employee license during the period when the business or employee license was suspended;
 - 6. Committed an offense which would be grounds for denial of a license for which the period of civil disability has not elapsed;
 - 7. Become delinquent in payment to the City for ad valorem taxes or sales taxes related to the sexually oriented business.
- C. Suspension or revocation shall take effect within ten days of the issuance of notice, unless an appeal is filed as provided by this chapter.
- D. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- E. Upon violation of any provision of subsection (B), a sexually oriented business license, if not revoked, shall be suspended for a minimum of sixty days. Upon a second violation of any of the provisions of subsection (B) within twenty-four months of the initial violation, the license, if not revoked, shall be suspended for a minimum period of ninety days. Upon a third violation within thirty-six months of the original violation of subsection (B), the sexually oriented business license shall be revoked for a period of one year. Notwithstanding the foregoing, nothing in this section requires that a sexually oriented business license be suspended before it can be revoked by the City.

5.20.380 - Effect of license revocation.

- A. If a license issued pursuant to this chapter is suspended, all operations within the licensed establishment shall cease for the period of the suspension, and no other person shall be allowed to operate at that location during the suspension period.
- B. When a license issued pursuant to this chapter is revoked, the revocation shall continue for one year from its effective date, and the licensee shall not be issued a sexually oriented business or employee license for one year from the date of such revocation. The premises may be re-licensed for a business activity during the one-year revocation, but no other sexually oriented business license shall be issued for the premises during the period of revocation.

5.20.390 - Appeal procedures.

- A. If the Mayor denies an application for a sexually oriented business license or a sexually oriented business employee license or recommends issuance of such a license with qualifications, the Mayor shall state the reason(s) for denial or for placing qualifications on the issuance of a license and the applicant may appeal the decision of the Mayor to the Council within ten days from the date of the decision. Upon receiving the appeal, the Council shall refer the matter to a hearing officer who shall hold a hearing within twenty days of the appeal to take evidence as to whether the decision of the

Mayor should be upheld. The hearing officer and Council shall follow the process set forth in subsections (F) through (J) of this section in reviewing the decision of the Mayor.

- B. If a notice of suspension or revocation is issued together with an order to show cause, the licensee shall appear before a designated hearing officer within twenty days of the date of the notice and order unless such time shall either be shortened or extended at the request of the licensee for good cause.
- C. If a citation of a civil fine is issued, the licensee may file an appeal with the business licensing authority within ten days of the date of service of the notice of the fine. Upon receiving a notice of appeal of a civil fine, the business licensing authority shall schedule a hearing before a designated hearing officer within twenty days from the date of the appeal unless such time shall be shortened or extended at the request of the licensee for good cause.
- D. The hearing officer shall hold a hearing on the record and take such facts and evidence as necessary to determine whether grounds exist to suspend, revoke or place on probation the license of the licensee or to impose a civil fine under the provisions of this chapter.
- E. The burden of proof shall be on the City.
- F. After the hearing, the hearing officer shall have seven working days in which to render findings of fact, conclusions of law and a recommended decision to the City Council.
- G. Either party may object to the recommendation of the hearing officer by filing the party's objections and reasons, in writing, to the Council within five days following the recommendation. If no objections are received within the five days, the Council may immediately adopt the recommendation of the hearing officer.
- H. If objections are received, the Council shall have ten working days to consider such objections before issuing its final decision, or the Council may, in its sole discretion, take additional evidence or require written memoranda on issues of fact or law. The standard by which the Council shall review the decision of the hearing officer is whether substantial evidence exists in the record to support the hearing officer's recommendation.
- I. The Council, after conducting a review of the proceedings, shall adopt findings of fact and conclusions of law and an order supported by the record. All orders entered by the Council shall be in writing and shall take effect ten calendar days after the date the order is signed. A licensee aggrieved by a decision of the Council shall have judicial review of such decision pursuant to Rule 65(B), Utah Rules of Civil Procedure, or any other applicable ordinance, statute or rule providing for such review.
- J. The status quo shall be maintained regarding all applications, fines and licenses until final administrative action is taken by the Council.

5.20.400 - Violation—Penalty.

- A. In addition to revocation or suspension of a license as provided in this chapter, each violation of this chapter shall, upon citation by the City, require the licensee to pay a civil penalty in the amount of five hundred dollars. In addition to the civil fines provided in this chapter, the violation of any provision of this chapter shall be a Class B misdemeanor. Each day of a violation shall be considered a separate offense.
- B. Any person or business operating as a sexually oriented business, or any individual performing or rendering services as a sexually oriented business employee without a license therefore, shall, upon citation by the City for any violation of this chapter, be required to pay a civil penalty of five hundred dollars, which shall be in addition to any other administrative sanctions or criminal penalties.

5.20.410 - Severability.

If any provision or clause of this chapter or the application thereof to any person or circumstances is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other sections, provisions, clauses or applications hereof which can be implemented without the

invalid provision, clause or application hereof. To this end, the provisions and clauses of this chapter are declared to be severable.

Chapter 5.21 - TOBACCO SPECIALTY BUSINESSES

5.21.010 - Definitions.

For the purposes of this chapter,

A. "Tobacco specialty business" means a commercial establishment in which:

1. The sale of tobacco products accounts for more than thirty-five percent of the total annual gross receipts for the establishment;
2. Food and beverage products, excluding gasoline sales, is less than forty-five percent of the total annual gross receipts for the establishment; and
3. The establishment is not licensed as a pharmacy under Title 58, Chapter 17b, Pharmacy Practice Act.

B. "Tobacco product" means:

1. Any cigar, cigarette, or electronic cigarette as defined in Utah Code Annotated § 76-10-101;
2. A tobacco product as defined in Utah Code Annotated § 59-14-102, including:
 - a. Chewing tobacco; or
 - b. Any substance for a tobacco product, including flavoring or additives to tobacco.
3. Tobacco paraphernalia as defined in Utah Code Annotated § 76-10-104.1.

5.21.020 - License required.

- A. It is unlawful for any person to operate, conduct, carry on or maintain a tobacco specialty business without first obtaining from the City a license to operate a tobacco specialty business.
- B. A tobacco specialty business that is operating lawfully in the City pursuant to a valid business license may continue to operate under such license until its stated expiration date; after which time, the tobacco specialty business must obtain a tobacco specialty business license in order to continue its operations.

5.21.030 - License—Fees.

The annual fee for a tobacco specialty business shall be set in accordance with Section 3.42.040 of this Code.

5.21.040 - Application and issuance restrictions.

Each individual applying for a tobacco specialty business license shall:

- A. Submit the location, including the street, building and room number of the place where the applicant proposes to operate a tobacco specialty business.
- B. Submit with the license application an affidavit ensuring that the tobacco specialty business complies with the proximity requirements of Utah law as of the date of the application.
- C. The City license office shall review the application to determine compliance with City zoning ordinances and the proximity requirements set forth in Utah Code Annotated § 17-50-333(5). The City license office shall not issue a business license or tobacco specialty business license to any applicant who does not meet the proximity requirements.

5.21.050 - License—Display required.

Every tobacco specialty business licensed under this chapter shall display its tobacco specialty business license in a conspicuous place on the premises.

5.21.060 - Unlawful conduct and activities.

- A. In addition to the restrictions and limitations contained in this title, and as set forth under state law, a licensee under this chapter may not:
 - 1. Engage in a pattern of unlawful activity as set forth under Utah state law;
 - 2. Violate the regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140; or
 - 3. Engage in any act prohibited by the provisions of the Utah Controlled Substances Act, the Imitation Controlled Substances Act, the Utah Controlled Substance Precursor Act, the Clandestine Drug Lab Act, or any other provision of law, whether federal, state or local, providing for the prohibition or regulation of activities related to the sale or consumption of controlled substances or imitation controlled substances.
- B. The City license section shall work with local law enforcement to enforce the provisions of this section.

5.21.070 - Revocation and suspension.

In addition to the grounds for suspension or revocation set forth in Chapter 5.07, every business license and tobacco specialty business license issued by the City may be revoked or suspended for any violation of this chapter.