

# VIRGIN TOWN

## ORDINANCE # 2018-\_\_\_\_

AN ORDINANCE ESTABLISHING RULES, REGULATIONS AND CONTROLS FOR THE LICENSING OF BUSINESSES WITHIN THE CORPORATE LIMITS OF VIRGIN TOWN.

### RECITALS

WHEREAS, Virgin Town (“Town”) is an incorporated municipality duly organized under the laws of the State of Utah;

WHEREAS, the Town is authorized pursuant to Utah Code Annotated, Title 10, Chapter 8 to fix the amount, terms and manner of issuing licenses;

WHEREAS, the Town is authorized pursuant to Utah Code Annotated, Title 10, Chapter 1 to license for the purpose of regulation any business within the limits of the Town, regulate the business by ordinance and impose fees on businesses to recover the Town’s costs of regulation;

WHEREAS, pursuant to Utah Code Annotated, Title 10, Chapter 3b, Section 301, the Virgin Town Council (“Town Council”) is designated as the governing body of the Town;

WHEREAS, there are presently various businesses operating in the corporate limits of the Town;

WHEREAS, the Town anticipates that the growth in tourism in the area and the population growth in Washington County will cause other entrepreneurs and business owners to take interest in opening or operating a business in the corporate limits of the Town;

WHEREAS, the Town has determined that it is in the best interests of the Town and its residents to appropriately regulate businesses within the corporate limits of the Town;

WHEREAS, in order to provide for the health, safety and general welfare of the Town and its residents by appropriately regulating businesses operating within the corporate limits of the Town, the Town, acting by and through the Town Council, desires to adopt and set rules, regulations and standards for the licensing of businesses within the corporate limits of the Town and the issuance of such licenses.

### ORDINANCE

NOW THEREFORE BE IT HEREBY ORDAINED by Virgin Town, Washington County, State of Utah, acting by and through the Town Council, that in order to provide for the health, safety and general welfare of the citizens of the Town the following business and license regulations are adopted and enacted:

1. Purpose. This Ordinance, adopted pursuant to Utah Code Annotated Title 10, Chapters 1 and 8, as amended, is enacted for the following purposes: a) to license, regulate and

control businesses within the corporate limits of the Town; and b) to assist in the maintenance of a current index of all businesses within the corporate limits of the Town.

2. Definitions. As used throughout this Ordinance, the following terms or phrases shall have the following meanings as used in this Ordinance:

**BUSINESS:** Includes all kinds of vocations, occupations, professions, enterprises, establishments and all other kinds of activities and matters, whether full time or part time, together with all devices, machines, vehicles and appurtenances related thereto, any of which are conducted for private profit or benefit, either directly or indirectly, on any premises within the Town.

**CONDITIONAL USE PERMIT:** A permit, based upon compliance with certain conditions, issued by the Town Council for the use of property adjudged to be in harmony with the intent and purpose of a specified zone but not included in the list of permitted uses for the zone. A conditional use permit must be obtained prior to the issuance of a business license for any business making use of property which is not included in the list of permitted uses within a specified zone. However, a conditional use permit shall not be required for the issuance of a business license for any business making use of property which is included in the list of permitted uses within a specified zone.

**EACH SEPARATE PLACE OF BUSINESS:** Each separate establishment or place of operation, whether or not operating under the same name, within the Town, including a home or other place of lodging if the same is held out by advertisements, listings or otherwise as the establishment or place of operation of a person engaging in business.

**ENGAGING IN BUSINESS:** 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 vocation, occupation, profession, trade or other calling; provided, however, that the rendering of personal services by an employee to his employer under any contract of personal employment, express or implied, shall not constitute "engaging in business", as herein defined.

**LICENSE:** The certificate or document issued by the Town and signed by the Town Clerk/Recorder evidencing permission or authority from the Town to the holder named therein to carry on a particular business or occupation at a particular location.

**NONPROFIT ENTERPRISE:** A business, no part of the income of which is distributable to its owners, members or operators, unless such owner or operator shall be a religious or eleemosynary institution.

**PLACE OF BUSINESS:** Each separate location maintained or operated by the licensee within the Town from which business activity is conducted or transacted.

**TOWN:** Virgin Town, a Utah municipal corporation with its fixed geographical boundaries located in Washington County, State of Utah.

3. License Officer; Powers and Duties. The Town Clerk/Recorder is hereby designated and appointed as ex officio Town license officer and shall issue licenses in the name of the Town to all persons qualified under the provisions of this Ordinance and shall remit to the Town treasurer all license fees collected hereunder. In addition to all other powers granted hereunder, the Town Clerk/Recorder or designees shall have the following powers:

A. Adopt Forms: Authority to adopt all forms necessary or desirable to facilitate orderly and systematic issuance of all business licenses and ensure the preservation of business records.

B. Investigation of Applicants: Authority to authorize investigation of any applicant or licensee, either at the time of issuance of a license, or at any reasonable time thereafter, in order to determine the eligibility of such applicant or licensee for the issuance or renewal of a business license. The Town Clerk/Recorder may engage the help and services of appropriate law enforcement agencies or other Town departments for purposes of conducting such investigations.

C. Inspection of Premises and Records: Inspect proposed or existing places of business to ensure compliance with building, safety and health codes and inspect books and records of any applicant for the administration and enforcement of this Ordinance; provided, however, that any such inspection of premises or business records shall be at reasonable times and upon prior notice to the applicant or licensee.

D. Determination of Standing of Applicant Or Licensee: Make a determination whether the applicant or licensee is in violation of any provision of any ordinance of the Town, or indebted or obligated in any manner to the Town or any department thereof, or in violation of any Town land use regulation (commonly referred to as the Virgin Uniform Land Use Ordinance or "VULU") by reason of the condition of the business premises or the use to be made thereof.

E. Require Necessary Affidavits: When considered necessary in the discretion of the Town Clerk/Recorder, require affidavits regarding the prior history of the applicant, indicating whether such person has had prior business experience, has had a prior business license revoked or suspended, or any other information with respect to the applicant's prior experience or personal integrity, including a record of prior convictions or arrests of the applicant or licensee.

F. Issuance of Notice of Acceptance or Rejection: Notify any applicant or licensee of the acceptance or rejection of the application for business license, and, in the event of rejection, said notice shall state in writing the reasons for such rejection. The Town Clerk/Recorder shall also have authority to notify the licensee of any facts constituting a violation of any Ordinance of the Town.

G. Enforcement: Be responsible for enforcement of all provisions of this Ordinance, and shall cause to be filed complaints against all persons or entities violating any of the provisions of this Ordinance.

4. License Required.

A. It shall be unlawful for any person or entity, either directly or indirectly, to engage in business within the corporate limits of the Town without having first obtained an annual business license, whether such license shall be a new license or renewal license, and without having first paid the applicable license fee in accordance with all provisions of this Ordinance.

B. Any person or entity engaging in bona fide agricultural activities and selling the produce thereof shall not be required to obtain a business license.

5. Application for License; Renewal.

A. Information Required: It shall be the responsibility of any person or entity engaging in business within the Town to voluntarily apply for an initial business license. The application shall be submitted to the Town Clerk/Recorder on a form provided by the Town which shall contain the following information: business name, general description of business to be engaged in, mailing address, phone number, date of birth, social security number, all names of individuals involved in the ownership of the business and such other information as the Town Clerk/Recorder shall deem reasonable and necessary.

B. Application Voided: A business license application that has not had all required items submitted and approved and the license issued within six (6) months of application date shall be considered void and a new application and fee will be required.

C. Renewal: Any person or entity holding an active business license, except where otherwise specified in this Ordinance, shall be granted the opportunity to obtain a renewal license. The Town Clerk/Recorder shall issue notices of renewal to eligible businesses forty five (45) days before the expiration date on such form as the licensing officer may direct. Any licensee wishing to obtain a renewal license shall verify the accuracy of the information regarding the business as requested on the renewal form and shall attest to the accuracy of said information by affixing his/her signature to the form. The signed renewal form shall be returned with the appropriate license fee to the Town Clerk/Recorder. Any licensee no longer engaging in business within the Town limits and therefore not wishing to obtain a renewal license shall indicate such intentions on the renewal form, attesting with his/her signature, and return such form to the Town Clerk/Recorder.

6. License Fee.

A. Fee Imposed: There is hereby imposed and levied a license fee on the business, location, trade, calling or profession for every person engaged in a business within the Town, which shall be established by resolution and which may be changed from time to time. Except for bona fide charitable organizations holding a valid Section 501(c)(3) designation from the Internal Revenue Service, every person or entity engaged in business in the Town shall be required to pay a business license fee on an annual basis.

Business license fees required by this Ordinance must be paid in addition to any other fees imposed on a particular business or type of business by any other Town Ordinance.

B. Inspections Required: Notwithstanding the provisions of this Section, if, due to the nature or location of the person's business, state or local law or regulation require that fire and safety inspections be conducted of the premises by representatives of the local fire authority, to wit: the Hurricane Valley Fire District or the Utah State Fire Marshall, prior to allowing the person's business to be conducted thereon, then the person shall be assessed and shall pay to the Town, in advance, an inspection fee, as established by resolution, to help defray the costs of such inspection(s).

C. Rebate of Fee: No rebate or refund of any license fee or part thereof shall be made by reason of the nonuse of such license or by reason of a change of location or type. Annual license fees shall be refunded only by reason of denial by the Town Clerk/Recorder of the license application.

7. License Term and Payment Dates.

A. New (First Year) and Renewal Licenses: Except as provided in Subsection ii of this Section, the annual license shall date from January 1 of each year and shall expire on December 31 of each year.

B. Initial Applications After October 31: A business license granted by the Town to an applicant, pursuant to an application for a new business license application submitted after October 31, shall extend and be in force (without additional fee) until December 31 of the year following such application.

C. Inspections Made: Notwithstanding the provisions of Subsections A and B of this Section, no license shall be granted and validly in force until any and all required inspections have been made, all Town administrative approvals have been given, and all licensing and delinquency related fees (including any such unpaid fees from prior years) are paid by the applicant.

D. Payment Date on Renewal Licenses: Except as provided in Subsection E, of this Section, annual licensing fees shall be due and payable on or before December 31 of the year immediately prior to year for which the business license is applicable and in force; and shall become delinquent if not paid, in full, prior to February 1 of the year in which the business license is applicable and in force.

E. Payment Date on Initial Licenses: Payment for initial business licenses are due and payable at the time of application therefor; and no license shall be issued until such payment is made. There is no grace period for the payment of such fees wherein business may lawfully be transacted.

F. Delinquency Fees, Civil Penalty and Collection Costs:

i. Delinquency Related Fees: Delinquency related fees shall mean and

include any fees and costs provided for in this Subsection C.

ii. Late Fees: Any license not renewed and paid for (in full) prior to the date that it becomes delinquent, shall incur a late fee, which shall be established by resolution and which may be changed from time to time. No license may be issued until such fees are paid in full.

iii. Enforcement: The failure to pay fees provided for under this Ordinance and/or otherwise engaging in business without the required business license further subject(s) the applicant to the assessment and required repayment, by the applicant, of enforcement costs incurred by the Town or otherwise attributable to such delinquency and/or illegal conduct, including costs and a reasonable attorney fee.

8. Certificate of License.

A. Content: All certificates of license shall be signed by the Mayor, attested by the Town Clerk/Recorder, and shall contain the following information:

i. The name of the person to whom such certificate has been issued.

ii. The amount paid.

iii. The type of business.

iv. The date of expiration.

v. The place where such business, calling, trade or profession is to be conducted.

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

9. Transfer of License Prohibited. No license granted or issued under any ordinance of this Town shall be assigned or transferred to any other person or entity. It shall not be deemed to authorize any person or entity other than the person or entity named therein to do business or to authorize any other business, calling, trade or profession than is named therein. No license issued pursuant to this Ordinance be transferred to any location not named therein without the licensee first having applied for a change in business location on such form as directed by the Town

Clerk/Recorder. A new application fee shall be required to process the application. If the address change occurs at time of renewal, only the regular renewal fee shall be assessed. Upon approval of a business location change, the Town Clerk/Recorder will issue a new license showing the approved location and shall thereby nullify the previously issued license.

10. Branch Establishments. A separate license must be obtained for each separate place of business in the Town 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 Ordinance shall not be deemed to be separate places of business or branch establishments.

11. Reciprocal Recognition; Delivery of Goods.

A. No license shall be required for operation of any vehicle or equipment in the Town when:

- i. Such vehicle is merely passing through the Town.
- ii. Such vehicle is used exclusively in intercity or interstate commerce.

B. No license shall be required by this Ordinance of any person whose only business activity in the Town is the mere delivery in the Town of property sold by him at a regular place of business maintained by him outside the Town where:

- i. Such person's business is at the time of such delivery licensed by the Utah municipality or county in which such place of business is situated; and
- ii. The authority licensing such business grants to licensees of the Town making deliveries within its jurisdiction the same privileges, upon substantially the same terms, as are granted by this Section; and
- iii. Neither the property delivered nor any of the facilities by which it was manufactured, produced or processed are subject to inspection by authority of the Town for compliance with health or sanitary standards prescribed by the Town.

C. The Town Clerk/Recorder shall, at the request of any person, certify a copy of this Section to any municipality or county of the state to which a copy has not previously been certified.

12. Revocation or Denial of License.

A. Conditions: Any license issued pursuant to the provisions of this Ordinance or of any other ordinance of the Town may be revoked and any application denied by the Town because of:

- i. The failure of the licensee or applicant to comply with the conditions and requirements of this Ordinance or any other ordinance of the Town.

ii. Unlawful activities conducted or permitted on the premises where the business is conducted.

iii. Fraud, misrepresentation or a false statement contained in the application for the license.

iv. Fraud, misrepresentation or false statement made in the course of carrying on the business.

v. Conviction of any crime or misdemeanor involving moral turpitude

B. Notice To Licensee: Prior to the revocation of a license, denial of a new application, or denial of an application to renew business license, the licensee or applicant shall be given written notice which shall state in substance that the Town Council intends to revoke the business license, deny the new application, or deny the application to renew, together with the reason or reasons therefor, at a regular or special meeting of the Town Council, and that the licensee or applicant has a right to appear, to be represented by counsel, to hear the evidence against him, to cross examine witnesses and to present evidence as to why the license should not be revoked or the application denied. The regular or special meeting of the Town Council shall be at least ten (10) days and not more than thirty (30) days from the date such notice is sent. This Subsection shall not apply to applications for licenses for businesses which have not previously been licensed by the Town, and such applicants need only be informed that their application has been denied.

13. Penalty. Any person failing or refusing to comply with any requirements of this Ordinance, or violating any of the provisions of this Ordinance, or knowingly misrepresenting to the Town Clerk/Recorder or authorized agent any material fact in procuring any business license or renewal thereof, or who fails or refuses to comply with or violates any of the conditions or restrictions of any license issued hereunder, shall be guilty of a class B misdemeanor for each day such violation shall continue and subject to the penalty provisions provided in the ordinances of the Town.

14. Severability. If any section, clause or portion of this Ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

15. Conflicts/Repealer. This Ordinance repeals the provisions of any prior ordinance in conflict herewith.

16. Effective Date. This Ordinance shall become effective immediately upon the signing of the Virgin Town Council.

ADOPTED AND APPROVED BY THE VIRGIN TOWN COUNCIL this \_\_\_\_\_ day of February, 2018 based upon the following vote:

Council Member:

Dan Snyder	AYE__	NAE__
LeRoy Thompson	AYE__	NAE__
Kevin Stout	AYE__	NAE__
Jay Lee	AYE__	NAE__
Matthew Spendlove, Mayor	AYE__	NAE__

VIRGIN TOWN  
a Utah municipal corporation

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Matthew Spendlove, Mayor

ATTEST:

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Monica Bowcutt, Town Clerk