

TOQUERVILLE CITY

ORDINANCE # 2020-____

AN ORDINANCE AMENDING AND RESTATING CHAPTER 3 OF THE TOQUERVILLE CITY CODE ESTABLISHING RULES, REGULATIONS AND CONTROLS FOR THE LICENSING OF BUSINESSES WITHIN THE CORPORATE LIMITS OF TOQUERVILLE CITY.

RECITALS

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

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

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

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

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

WHEREAS, the City 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 City;

WHEREAS, the City present regulates the operation of businesses within the City via a series of semi antiquated ordinances found in Chapter 3 of the Toquerville City Code that were adopted over 40 years ago (1977) and have remained primarily unchanged ever since.

WHEREAS, in order to provide for the health, safety and general welfare of the City and its residents by appropriately regulating businesses operating within the corporate limits of the City, the City, acting by an through the City Council, desires to amend and restate Chapter 3 of the Toquerville City Code in its entirety.

ORDINANCE

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

Chapter 1
BUSINESS LICENSE PROVISIONS

3-1-1: PURPOSE:

This title, 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 City; and b) to assist in the maintenance of a current index of all businesses within the corporate limits of the City.

3-1-2: DEFINITIONS:

As used throughout this title, the following terms or phrases shall have the following meanings:

***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 gain or economic profit or benefit, either directly or indirectly, on any premises within the City.*

***CITY CLERK/RECORDER:** Either the Toquerville City Clerk (or Deputy Clerks) or the Toquerville City Recorder (or Deputy Recorders) or a combination of both if the statutory positions are held by the same person.*

***CONDITIONAL USE PERMIT:** A permit, based upon compliance with certain conditions, issued by the City 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 in which the property is located. 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 City, 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 or BUSINESS LICENSE: The certificate or document issued by the City and signed by the License Officer evidencing permission or authority from the City to the holder named therein to carry on a particular business or occupation at a particular location.

LICENSEE: The recipient of a License.

LICENSE OFFICER: Either the City Clerk or the City Recorder or a combination of both if the statutory positions are held by the same person, including all Deputy Clerks and/or Deputy Recorders.

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 City from which business activity is conducted or transacted.

CITY: Toquerville City, a Utah municipal corporation with its fixed geographical boundaries located in Washington County, State of Utah.

3-1-3: LICENSE OFFICER; POWERS AND DUTIES:

The City Clerk/Recorder is hereby designated and appointed as ex officio City License Officer and shall issue licenses in the name of the City to all persons qualified under the provisions of this Title and shall remit to the City Treasurer all license fees collected hereunder. In addition to all other powers granted hereunder, the License Officer 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 License Officer may engage the help and services of appropriate law enforcement and public safety agencies, public utility providers or other City 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 Title; 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 City, or indebted or obligated in any manner to the City or any department thereof, or in violation of any City land use regulation (Toquerville City Code Title 10 – Toquerville Land Management Code) 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 License Officer, 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 a Business License or the renewal of a Business License, and, in the event of rejection, said notice shall state in writing the reasons for such rejection. The License Officer shall also have authority to notify the Licensee of any facts constituting a violation of any ordinance of the City.*

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

3-1-4: LICENSE REQUIRED; EXEMPTIONS:

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

B. *Any person or entity engaging in bona fide agricultural activities and selling the produce thereof shall be exempt from the requirement to obtain a Business License.*

3-1-5: APPLICATION FOR LICENSE; RENEWAL:

A. *Information Required: It shall be the responsibility of any person or entity engaging in Business within the City to voluntarily apply for an initial Business License. The application shall be submitted to the License Officer on a form provided by the City 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 License Officer*

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 Title, shall be granted the opportunity to obtain a renewal license. The License Officer 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 License Officer. Any Licensee no longer engaging in business within the City 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 License Officer.*

3-1-6: 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 City, which shall be established by resolution and which may be changed from time to time and listed in the City's uniform fee schedule. 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 City shall be required to pay a business license fee on an annual basis. Business license fees required by this Title must be paid in addition to any other fees imposed on a particular business or type of business by any other City ordinance.*

B. *Inspections Required: Notwithstanding the provisions of this Section, if, due to the nature or location of the 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 City, in advance, an inspection fee, as established by those public safety agencies, to cover the costs of said 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 a Business License or by reason of a change of location or type. Annual license fees shall be refunded only by reason of denial by the License Officer of the initial application or renewal application.*

3-1-7: LICENSE TERM AND PAYMENT DATES:

A. *Initial Applications and Renewal Applications: Except as provided in Subsection B of this Section, a Business License commence 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 City to an applicant, pursuant to an application for a new Business License 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 City 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 business 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 March 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 Section 7.*

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 and set forth in the City's uniform fee schedule. No license may be issued until such fees are paid in full.*

iii. *Enforcement: The failure to pay fees provided for under this Title 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 City or otherwise attributable to such delinquency and/or illegal conduct, including all costs and reasonable attorney's fees incurred by the City.*

3-1-8: BUSINESS LICENSE CERTIFICATES:

A. *Content: All Business License Certificates shall be signed by the License Officer and shall contain the following information:*

- i. *The name of the person to whom such Business License 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 Business License certificate issued under this Title 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 the Business License certificate 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 Place of Business is such that a Business License certificate 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.*

3-1-9: TRANSFER OF LICENSE PROHIBITED:

No Business License granted or issued under this Title 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 Business License issued pursuant to this Title may 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 License Officer. 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 License Officer will issue a new Business License certificate showing the approved location and shall thereby nullify the previously issued License.

3-1-10: BRANCH ESTABLISHMENTS:

A separate License must be obtained for each separate Place of Business in the City and each Business License shall authorize the Licensee to engage only in the Business licensed thereby at the location or in the manner designated in the

Business License certificate; 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.

3-1-11: RECIPROCAL RECOGNITION; DELIVERY OF GOODS:

A. *No Business License shall be required for operation of any vehicle or equipment in the City when:*

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

B. *No Business License shall be required by this Title of any person whose only business activity in the City is the mere delivery in the City of property sold by him/her/it at a regular Place of Business maintained outside the City 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 City 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 City for compliance with health or sanitary standards prescribed by the City.*

C. *The License Officer 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.*

3-1-12: REVOCATION OR DENIAL OF LICENSE:

A. *Conditions: Any Business License issued pursuant to the provisions of this Title or of any other ordinance of the City may be revoked and any application denied by the City because of:*

- i. *The failure of the Licensee or applicant to comply with the conditions and requirements of this Title or any other ordinance of the City.*
- 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 Business license, denial of a new application, or denial of an application to renew a Business License, the Licensee or applicant shall be given written notice which shall state in substance that the City Council intends to consider revocation of 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 City 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 renewal application denied. The regular or special meeting of the City 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 City, and such applicants need only be informed that their application has been denied and the reason(s) therefore.

3-1-13: VIOLATIONS CRIMINAL; CIVIL PENALTIES:

Any person failing or refusing to comply with any requirements of this Title, or violating any of the provisions of this Title, or knowingly misrepresenting to the License Officer 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 Business License issued hereunder, shall be guilty of a class B misdemeanor for each day such violation shall continue and shall also be subject to all civil penalty provisions provided in the ordinances of the City.

1. 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.

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

3. Effective Date. This Ordinance shall become effective immediately upon the signing of the Toquerville City Council.

ADOPTED AND APPROVED BY THE TOQUERVILLE CITY COUNCIL this _____ day of July, 2020 based upon the following vote:

Council Member:

John 'Chuck' Williams
Keen Ellsworth
Justin Sip
Gary Chaves
Ty Bringhurst

Aye ___ Nay ___
Aye ___ Nay ___
Aye ___ Nay ___
Aye ___ Nay ___
Aye ___ Nay ___

TOQUERVILLE CITY
a Utah municipal corporation

Lynn Chamberlain, Mayor

ATTEST:

Ruth Evans, City Recorder

DRAFT