

TITLE 9.
LICENSING, CONTROL AND
REGULATION OF BUSINESS AND
CONSTRUCTION.

CHAPTER 9-100. LICENSING,
CONTROL AND REGULATION OF
BUSINESSES.

Part 9-110. General Provisions.

9-111. Definitions. As used in Chapters 9-200, 9-300 and 9-400:

(1) "Business" means and includes all activities engaged in within this City carried on for the purpose of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in the term "business" unless otherwise specifically provided.

(2) "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 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.

(3) "Place of Business" means each separate location maintained or operated by the licensee within this City from which business activity is conducted or transacted.

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

(5) "Wholesaler" means a person doing a regularly organized wholesale jobbing business and selling to retail merchants, jobbers, dealers or other wholesalers, for the purpose of resale.

(6) "Wholesale" means a sale of tangible personal property by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale, and does not include a sale by wholesalers or retailers to users or consumers not for resale, except as otherwise specified.

(7) "Each Separate Place of Business" shall mean 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 establish-

ment or place of operation of a person engaging in the business of selling tangible, personal property at either retail or wholesale, or both, in the City.

9-112. Business License Required. It shall be a violation of this ordinance for any person to transact, engage in or carry on any business, trade, profession, calling or to operate a vending, or coin-operated machine without first receiving the class or type of license required by the City. Any person found in violation of this ordinance shall be subject to the fine amount and severity of punishment contained in the City's Consolidated Bail Schedule, adopted by Resolution of the City Council.

9-113. License Assessor and Collector. The Recorder is designated and appointed as ex officio assessor of license fees for this City. On receipt of any application for a license, the Recorder shall assess the amount due thereon and shall collect all license fees based upon the rate established by ordinance. He/she shall enforce all provisions of this Title, and shall cause to be filed complaints against all persons violating any of the provisions of this title.

9-114. Payment Dates. All license fees shall be due and payable as follows, except as may be otherwise provided in the applicable ordinance:

(1) Annual fees shall be payable before each calendar year in advance. The annual license shall date from the first day of January of each year and shall expire on December 31 of each year.

(2) Annual fees shall be due on the first day of each calendar year and shall become delinquent if not paid by the last day of February each year.

(3) One-half of the annual fee shall be payable for all licenses issued by the City pursuant to applications made after July 1 of each year and licenses issued after July 1 shall expire on the last day of the following December. Payment shall be due upon the date of application approval.

9-115. Penalty for Late Payment. If any license fee is not paid by the due date, a penalty in the amount contained in the City's Consolidated Fee Schedule, adopted by Resolution of the City Council, shall be assessed and collected before a new license is issued. No license shall be issued until all penalties legally assessed have been paid in full.

9-116. Applications for License.

- (1) All applications for license shall include:
 - (a) The name of the person desiring a license.
 - (b) The kind of license desired, stating the business, calling, trade or profession to be

performed, practiced or carried on.

(c) The class of license desired, if such licenses are divided into classes.

(d) The place where such business, calling, trade or profession is to be carried on, giving the street number if the business calling, trade or profession is to be carried on in any building or enclosure having such number.

(e) The period of time for which such license is desired to be issued.

(2) In the event that the license application relates to a coin-operated machine or device, the application shall identify the machine or device to which it applies and the location thereof.

(3) In the event the license application is for a food service establishment, the applicant must first obtain a valid Bear River Health Department Food Service Permit. (Ord. No. 99-03)

9-117. Certificate. All Certificates of License shall be signed by the Mayor, attested by the Recorder, and shall contain the following information:

(1) The name of the business to whom such certificate has been issued.

(2) The amount paid.

(3) The type of license and the class of such license, if licenses are divided into classes.

(4) The term of the license with the commencing date and the date of its expiration.

(5) The place where such business, calling, trade or profession is to be conducted.

9-118. Display.

(1) Every certificate of license 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 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 during all such time or times while the licensee is engaged in or pursuing the business for which a license is granted.

(2) In the event the license is for a coin-operated machine or device, the certificate shall be attached or displayed in the immediate vicinity of the machine for which it has been issued. Cigarette machines are to be controlled so as to prevent use by minors.

9-119. Transfer of License Prohibited -

Exception. No license granted or issued under any ordinance of this City shall be assigned or transferred to any other person. It shall not be deemed to authorize any person other than therein named to do business or to authorize any other business, calling, trade or profession than is therein named. In the event of a change in ownership, a new license will be required and the owner shall notify the City Recorder of the ownership change at least ten (10) days before the change is made. Changes in ownership involving alcohol sales must comply with all requirements herein provided and as set forth by ordinance. A transfer shall be permitted where only a change in location or address for the business occurs and the owner, type of business, and all other matters set forth in the existing license remain the same. In such event, the owner shall notify the City Recorder of the change of location and the new address at least ten (10) days before it is made and shall comply with all zoning, building code, and other requirements of statutes, ordinances, and regulations applicable to the new location. The City Recorder shall note the change on City records and notify the proper City officials. Failure by the owner to so notify the City may result in action pursuant to Section 9-120, herein.

9-120. Revocation or Denial of an Application to Renew a Previously Issued Business License.

(1) Any business license issued pursuant to the provisions of this Code or of any ordinance of this City or State of Utah may be revoked and any application denied to renew a previously issued business license by the City Council for violation of which includes but is not limited to:

(a) The failure of the licensee or applicant to comply with conditions and requirements of this Code or any ordinance of the City or State of Utah.

(b) Unlawful activities, by virtue of City or State laws, conducted or permitted on the premises where the business is conducted.

(c) The failure of the licensee or applicant of a food service establishment to maintain a valid Bear River Health Department Food Service Permit for that establishment. (Ord. No. 99-03)

(d) The failure of the licensee or applicant to maintain any State license which is required in conjunction with the business.

(e) Unlawful expansion of a business activity that is a non-conforming use as defined by the City's zoning ordinance.

(2) When administering the City's Codes or ordinance or when allegations of violation exists, the City Recorder and or designee shall conduct an investigation to determine if violations may exist for

revoking of a business license or denial of a business license application. At the sole discretion of the City Recorder and or designee the investigation may include an informal opportunity for the licensee or applicant to discuss the circumstances or allegations under investigation.

(3) After conducting an investigation, if the City Recorder and or designee preliminarily finds that violations exists, based upon preponderance of the evidence, the City Recorder and or designee may schedule a hearing wherein the City Council may formally consider the revocation of a license or denial of an application to renew business license at a regularly scheduled or special City Council meeting.

(4) Prior to the hearing wherein the City Council may consider revocation of a license or denial of an application to renew business license, the licensee or applicant shall be given a written notice which shall be at least three (3) days before the hearing and not more than thirty (30) days after the date of the notice being sent. The notice may be hand delivered or mailed to the address contained on the business license application. The notice shall state in substance the following:

(a) That the City Council intends to conduct a hearing wherein the matter of revoking the business license or denial of the application to renew his or her business license;

(b) The date, time and place of the hearing and that the licensee or applicant has the right to appear at the hearing, but even should the licensee or applicant chooses not to attend, the hearing shall still take place;

(c) The preliminary findings of the City Recorder and or designee's investigation, which shall include, at a minimum, a description of the violation under which the City Council is considering revoking or denial of a business license.

(d) That the licensee or applicant has a right to be represented by counsel at the hearing, to hear the evidence against him or her, to cross-examine witnesses and to present evidence as to why the license should not be revoked or the application to renew a previously issued business license denied.

(5) The Mayor shall call the hearing to order at the appointed date, time, and place and shall be conducted in a quasi-judicial manner. The City Recorder, designee or City Attorney may present to the City Council the evidence to support the finding of violation, which may include, but is not limited to witnesses, records, documents, etc.

The licensee or applicant has a right to be represented by counsel, to cross-examine witnesses and to present evidence as to why the license should not be revoked or the application to renew a

previously issued business license denied. After hearing the evidence the City Council shall determine if violation exists, based upon a preponderance of the evidence and shall thereafter determine if the business license shall be revoked or denied. Any revocation or denial of a business license shall be effective immediately and unless specifically stated to the contrary by the City Council the licensee or applicant shall be ineligible to apply for similar or like business, in the sole determination of the City Recorder or designee, for a period of two (2) years.

(6) The City Council shall, within fifteen (15) days following the conclusion of the hearing, approve and thereafter provide a written record of the City Council's findings and decision of hearing to the licensee or applicant. The written record may be hand delivered or mailed to the address contained on the business license application.

(7) The City Council's decision shall be final upon approval of the written record of the City Council's findings and decision. Licensee or applicant shall not be afforded more than one hearing before the City Council.

(8) In accordance with U.C.A. § 78A-5-102, the licensee or applicant may appeal the City Council's decision to the District Court within thirty (30) days of the written record of the City Council's findings and decision. The District Court's review shall be limited to a review of the record.

(9) Prior to approving an application for a new business license, the City shall perform a criminal background review of the business license applicant. Following such review, any prior criminal convictions in the applicant's background, which are not more than ten (10) years prior to the business license application date, shall be considered by the City in its decision on approval or denial of the license.

(10) Applications for licenses for businesses which have not previously been licensed by the City need only be informed that their application has been denied. (Section 9-120 was re-written and adopted by Ord. No. 14-04)

9-121. Branch Establishments. A separate license must be obtained for each separate place of business in the City 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 part shall not be deemed to be separate places of business or branch establishments.

9-122. Joint License. Whenever a person is engaged in two or more businesses at the same location within the City, such person shall not be

required to obtain separate licenses for conducting each of such businesses, but shall be issued one license which shall specify on its face all such businesses. The license tax to be paid shall be computed at the highest license fee applicable to any of the businesses being conducted at such location. The sale of beer or any other product or service requiring an additional license shall be subject to such additional licensing requirement. Where two or more persons conduct separate businesses at the same location, each such person shall obtain a license for such business and pay the required license tax for such business.

9-123. Reciprocal Recognition of Licenses.

(1) No license shall be required for operation of any vehicle or equipment in this City when:

- (a) Such vehicle is merely passing through the City.
- (b) Such vehicle is used exclusively in inter-city or interstate commerce.

(2) No license shall be required by Chapters 9-200, 9-300 or 9-400 of any person whose only business activity in this City is the mere delivery in the City of property sold by him at a regular place of business maintained by him outside the City where:

- (a) 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,
- (b) The authority licensing such business grants to licensees of this City making deliveries within its jurisdiction the same privileges, upon substantially the same terms, as are granted by this section, and,
- (c) Neither the property delivered nor any of the facilities by which it was manufactured, produced or processed are subject to inspection by authority of this City for compliance with health or sanitary standards prescribed by this City, and,
- (d) The truck or other conveyance by which such delivery is made prominently displays at all times a license plate or symbol used by the said licensing authority to evidence such business license. Such plate or symbol shall identify the licensing authority by which it is issued, shall indicate that it evidences a license issued thereby, and shall specify the year or term for which it is effective.

(3) The Recorder shall, at the request of any person, certify a copy of this section to any municipality or county of the State of Utah to which a copy has not previously been certified.

9-124. Exemptions to License.

(1) No license fee shall be imposed under

resolution on any person engaged in business for solely religious, charitable, eleemosynary or any other types of strictly non-profit purpose which is tax exempt in such activities under the laws of the United States and the State of Utah, nor shall any license fee be imposed on any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the State of Utah; nor shall any license fee be imposed upon any person not maintaining a place of business within this City who has paid a like or similar license tax or fee to some other taxing unit within the State of Utah and which taxing unit exempts from its license tax or fee, by reciprocal agreement or otherwise, businesses domiciled in this City and doing business in such taxing unit.

(2) The license assessor and collector may, with approval of the City Council, enter into reciprocal agreements with the proper officials of other taxing units, as may be deemed equitable and proper in effecting the exemption provided for in subsection A of this section.

(3) No license fee shall be imposed under Resolution on any person engaged in the business of private instruction in the arts in the home on a part time basis.

9-125. Fee Not to Constitute Undue Burden on Interstate Commerce.

None of the license taxes provided for by Resolution shall be applied as to occasion an undue burden on interstate commerce. In any case, where a license tax is believed by a licensee or applicant for license to place an undue burden upon such commerce, he may apply to the license assessor and collector for an adjustment of the tax so that it shall not be discriminatory, unreasonable or unfair as to such commerce. Such application may be made before, at or within six (6) months after payment of the prescribed license tax. 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 assessor and collector may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The license assessor and collector shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of facts from which he shall determine whether the tax fixed by resolution is discriminatory, unreasonable or unfair as to applicant's business and shall recommend to the City Council a license tax for the applicant in an amount that is nondiscriminatory, reasonable and fair, and if the City Council is satisfied that such license tax is the amount that the applicant should pay, it shall fix the license tax in such amount. If the regular license tax has already

been paid, the City Council shall order a refund of the amount over and above the tax fixed by the City Council. In fixing the fee to be charged, the license assessor and collector shall have the power to base the fee upon a percentage of gross sales, or employees, or may use any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature.

REV 02-17.1