

ORDINANCE 16-2016

AN ORDINANCE AMENDING CHAPTER 5.04 OF THE MONUMENT MUNICIPAL CODE CONCERNING BUSINESS LICENSE AND REGULATIONS

WHEREAS, the Board of Trustees has determined it to be reasonable and necessary to amend the Municipal Code regarding Business License Regulation; and

WHEREAS, such amendments are in the best interests of the citizens of the Town of Monument.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MONUMENT, as follows:

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Chapter 5.04 – TITLE, PURPOSE AND DEFINITIONS

Sections:

5.04.010 - Title.

This title shall be known and may be cited as the General Licensing Code of the Town of Monument, and shall be liberally construed in order that the true meaning and intent of this title may be carried out.

5.04.020 - Purpose.

The purpose of this title is to require the licensing of all business activities and enterprises physically located within the Town of Monument, or doing business within the Town of Monument, and to provide the Town with necessary information concerning:

- A. Businesses within the Town, or operating within the Town;
- B. The nature of the business operation;
- C. The location of the business;
- D. Owner information;
- E. Emergency contacts;
- F. Aspects of the operation of the business that may impact the health, safety, and welfare of the Town's inhabitants.

The general business licenses required by this title shall be in addition to any other license or permit required by this code or by federal or state law. The issuance of a general business license does not permit any conduct that is prohibited or that does not fully comply with the requirements of this code.

5.04.030 - Scope.

Unless otherwise provided in this title or by any other ordinance within this code, the rules, regulations, and requirements set forth in this title shall apply to all licenses required by this title.

5.04.040 - Definitions.

The following terms, as used in this title, shall have the meanings designated below, unless the context specifically indicates otherwise or unless such meaning is excluded by express provision:

"Applicant" means the person(s) or business submitting a business license application to the Town Clerk's office.

"Auction" means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

"Books" mean all financial business data.

"Business" means and includes all kinds of vocations, occupations, professions, enterprises, establishments and all other kinds of activities and matters, together with all devices, machines, vehicles and appurtenances, any of which are conducted for private profit or benefit, either directly or indirectly, on any premises in the Town or anywhere else within its jurisdiction.

"Casual sale" means an individual, single or incidental transaction.

"Garage sale" means a garage, yard, or similar sale conducted solely on residential premises of the person holding the sale and held no more frequently than two times per year for no longer than three days at each time.

"Home occupation" means a business which would qualify as a "home occupation" pursuant to the provisions of the zoning ordinance of the Town; provided, however, that notwithstanding any provision of the zoning ordinance, for purposes of this title, retail sales from the premises of the home occupation or the posting of any sign upon the premises related to the conduct of the home occupation shall result in such home occupation being classified as a business for purposes of this title.

"Insignia" means any tag, plate, badge, decal, emblem, sticker, or any other kind of device which may be required in connection with any license.

"License" means an official grant of permission to engage in a particular business within the Town limits, evidenced by a Town-issued form, license, insignia or tag.

"Licensee" means the person(s) or business to whom a license is granted.

"Licensing officer" means the Town Clerk or designee who shall be the licensing officer and shall perform licensing functions.

"Non-profit business" means a business which has been determined to be tax exempt pursuant to Section 501(c)(3) of the Internal Revenue Code, and shall also include a bona fide religious organization, a political campaign and a local school activity concerning grades one through twelve (12).

"Peddler" means any person, whether a resident of the Town or not, who, on a temporary basis, goes from house to house, from place-to-place, or from street to street, conveying or transporting goods, wares or merchandise, or offering or exposing the same for sale, or making sales and delivering articles to purchasers.

"Person" means any individual, corporation, limited liability company, business trust, estate, trust, partnership or association or any other legal entity.

"Premises" means and includes all lands, structures, places, equipment and appurtenances connected to or used in any business; and also any personal property which is either affixed to, or is otherwise used in connection with business conducted on premises.

"Principal" means any person(s) who possess(es) controlling authority, active management, supervision or control of the applicant, business, or license, or who employs others to act on their behalf subject to their general control and instruction.

"Records" mean and include, but is not limited to, the history of corporate or partnership status, trade name registration with the Colorado Department of Revenue, employee records, employee schedules, contracts for services and purchase orders.

"Solicitor" means any person, whether a resident of the Town or not, who, on a temporary basis, goes from house-to-house, from place-to-place, or from street-to-street, soliciting or taking or attempting to take orders from sale of goods, wares or merchandise, including magazines, books, personal property of any nature whatsoever for future delivery, or for service to be performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject or such order, or whether or not he or she is collecting advance payments on such orders. Such definition includes any person, who, for himself or herself or for another person hires, leases, uses or occupies any building, motor vehicle, trailer, structure, tent, railroad boxcar, boat, motel room, apartment, shop or other places within the Town on a temporary basis, for the primary purpose of exhibiting samples and taking orders for future delivery. A person is not a solicitor unless such person knocks on doors or otherwise attempts to contact or speak to the occupants of a private residence. The term "solicitor" shall not include persons who contact occupants of a private residence as representatives of a religion, a non-profit entity, a political campaign or a local school activity concerning grades one through twelve (12).

"Transient merchant" means any person whether as owner, agent, consignee or employee, whether a resident of the Town or not, who engages in temporary business selling and delivering goods, wares and merchandise, within the Town, and who, in furtherance of such purpose, hires, leases, uses or occupies any apartment, shop, or any street, alley, public or private parking lot or other place within the Town for the exhibition and sale of such goods, wares and merchandise, whether privately or at public auction, provided that such person, who while occupying such temporary location, does not sell from stock, but exhibits samples for the purpose of securing orders for future delivery within the provisions of this Title merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of, or in the name of any local dealer, trader, merchant or auctioneer.

Chapter 5.08 – POWERS OF TOWN CLERK

Sections:

5.08.010 – Definitions.

“Town Clerk” means the duly appointed Town Clerk, and includes any designee of the Town Clerk and, in the case of a vacancy, any acting or interim Town Clerk”

5.08.020 - Powers of Town Clerk.

Except as otherwise provided, the Town Clerk shall have full power to grant, deny, renew, investigate, request, obtain information regarding, summarily suspend, issue cease and desist orders, suspend and revoke license provided for in this title. All appeals shall be filed with the Town Manager or designee.

5.08.030 - Duties and functions.

The Town Clerk shall administer and enforce this title and shall promulgate and enforce all reasonable rules and regulations necessary to operate and enforce this title; adopt all forms necessary to operate and enforce this title; require applicants to submit any affidavits and oaths necessary to administer this title; investigate or cause to be investigated the qualifications or eligibility of any applicant for a license; examine the books and records of any applicant or licensee when necessary to verify license information or to administer or to enforce this title; issue any subpoena necessary to conduct any investigation or hearing which subpoena may be enforced by application to the Municipal Court of the Town of Monument.

5.08.040 - Records required.

The Town Clerk's office shall keep a record of all licenses issued, setting forth the name of the business; the nature of the business operation; the location of the business; owner information; emergency contacts; the residence address of the licensee and the residence address of each of the individual directors, officers or principal owners of the licensee and any other information deemed pertinent by the Town Clerk. All records maintained by the Town Clerk pursuant to this title shall be subject to the provisions of the Colorado Open Records Act.

Chapter 5.12 - LICENSE REQUIREMENTS

Sections:

5.12.010 - License required.

It is unlawful for any person, either directly or indirectly, to conduct any activity or enterprise, or to use in connection therewith any vehicle, premises, machine or device, in whole or in part, for which a license is required by this title without first obtaining a license.

5.12.020 - One act constitutes doing business.

For the purposes of this title, one act of any of the following activities within the Town limits constitutes doing business:

- A. Soliciting business, selling any goods or providing services for which a license is required;
- B. Acquiring or using any vehicle or any premises in the Town for purposes requiring a license.

5.12.030 - License subject to regulation.

Any person receiving a license pursuant to this title shall be subject to all ordinances and regulations which may be in force at the time of the issuance thereof or which may be subsequently made and adopted by the Town Board of Trustees.

5.12.040 - Exempt activities.

The provisions of this title shall not apply to:

- A. Any canvassing on behalf of a candidate for elective public office or for proponents of a measure to be placed on the ballot;
- B. Activity consisting solely of mere delivery in the Town where no intent exists or is shown to exist to evade the provisions of this chapter;
- C. The selling of newspapers on public streets or in public places in a manner otherwise in compliance with this code;
- D. Established delivery routes, persons calling by appointment, yard sales, garage sales, and events conducted by or sponsored by the Town;
- E. Any activity defined above as non-profit.

The person claiming an exemption to this chapter has the burden of proving such exemption. Determinations regarding the application of an exemption shall be made by the Town Clerk in writing.

5.12.050 - Agents responsible.

A managing agent shall be named on all business license applications. Managing agents act on behalf of the principal and may possess controlling authority, actively manage or supervise the business or license, receive process, notice or order. The managing agent is responsible with the licensee for the licensee's compliance with this code and federal and state law. The licensee shall immediately notify the Town Clerk's office of any change in its managing agent.

Chapter 5.16 - APPLICATIONS FOR LICENSE

Sections:

5.16.010 - Form of applications.

All applications for a license pursuant to this title shall be written statements upon forms provided by the Town Clerk's office. In the event any person knowingly makes any false statement or omits any pertinent information on any application, such act or omission shall be grounds for denial of such application or suspension and revocation of any license issued upon the basis of such false statement, and shall be grounds for prosecution for perjury.

5.16.020 - Contents of applications.

The application for every license required by and issued under the authority of the Town shall contain:

- A. The name of the business located within the Town or providing service within the Town, to include any DBA (doing business as) name;
- B. The nature of the business operation to include the trade or profession to be performed, practiced or carried on;
- C. The type of license desired;

- D. The location of the business or the principal place of business if other than a local street address;
- E. Owner information to include the residence address of the applicant if an individual; residence address of each of the individual principal owners if a partnership, corporation, limited liability company, business trust, estate, trust or association, or other entity, and the residence address of each of the directing officers if a corporation;
- F. Emergency contacts;
- G. The Colorado Department of Revenue Tax Identification Number if applicable; the individual tax identification number if applicable;
- H. Any other relevant information required by the provisions pertaining to the particular license sought or any other relevant information required by the Town Clerk's office.

Chapter 5.20 - LICENSE FEES

Sections:

5.20.010 - Fees.

All license applications shall be accompanied by the applicable fee(s). The Town Clerk's office shall not accept a license application unless accompanied by the required fee(s).

All fees shall be established by resolution by the Board of Trustees.

5.20.020 - Payment of license fees; refund.

The fee for every license issued shall be payable in advance and shall accompany the application. License fees shall be payable to the Town and are non-refundable.

5.20.030 - Partial payment; replacement licenses.

The Town Clerk's office shall not receive or permit any partial payment of an application fee or of a license fee.

Whenever a license, permit, insignia or identification card needs to be replaced, the Town Clerk's office is hereby authorized to duplicate the license, permit, insignia or identification upon payment of a replacement fee.

5.20.040 - License terms.

The license required by this title is for the privilege of pursuing the business, profession or occupation designated thereon and all licenses shall be issued as required by this code upon approval of the application, and they shall expire twelve (12) months from date of issue unless sooner revoked, cancelled or suspended.

5.20.050 - Receipts for payment of fees.

Upon request, the Town Clerk's office shall issue a receipt to the applicant for money paid in advance. No receipt shall be construed as constituting approval for the issuance of a license nor shall it entitle or authorize the applicant to open or maintain any business contrary to the provisions of the Monument Town Code.

5.20.060 - Unpaid fee constitutes debt.

The amount of any unpaid fee, the payment of which is required by this title, shall constitute a debt due the Town. In addition to other legally available remedies, the Town Clerk may request the Town Attorney to institute a civil suit in the name of the Town to recover any such unpaid fee. Such remedy shall be cumulative and in addition to all other remedies and shall not bar or abate a prosecution in Municipal Court for any violation of this title, nor bar or abate any action to suspend or revoke a license for nonpayment of the appropriate license fee.

Chapter 5.24 - ISSUANCE OR DENIAL

Sections:

5.24.010 - Issuance or denial.

Unless otherwise limited by applicable state law, the Town Clerk shall grant an application for license under this title unless it is determined that:

- A. The required fees have not been paid;
- B. The application or information supplied in the application is incomplete or contains false, misleading, or fraudulent statements. If the application or information is incomplete, the application and fee shall be returned to the applicant for completion and re-submittal;
- C. The applicant is not qualified under federal or state law or Town ordinances to engage in the activity authorized by the license;
- D. The applicant has had a similar type business license revoked or suspended in this or any other locality in the twelve (12) months immediately preceding the date of the application;
- E. The applicant has been proved to have engaged in false or misleading advertising, falsified any business records, or participated in any unlawful business practices in a similar business within the twelve (12) months immediately preceding the date of the application;
- F. The business, premises, building or land use does not comply with the requirements of the Town Codes or the codes of entities having jurisdiction over activities conducted within the Town, including, but not limited to this title, the Land Use Code of the Town of Monument as it currently exists or as it may be subsequently amended, the Zoning Code of the Town of Monument as it currently exists or as it may be subsequently amended, the Uniform Building Code and the Uniform Fire Code;
- G. Approval of the business license itself does not necessarily constitute approval for the commencement of business operations. All other applicable federal, state, and local licenses must be obtained at the time required by federal, state and local law;

H. All other specific requirements of a particular license have not been met.

In the event of a denial, the Town Clerk shall mail or deliver to the applicant a written order of denial stating the reason or reasons for the denial within ten (10) days of the denial.

5.24.020 - Appeal.

Any applicant may appeal the denial of the application by filing a written appeal, stating the grounds therefore, with the Town Manager within ten (10) days following the date of denial of the application.

In the event an appeal is filed, it shall be heard by the Town Manager or other designee of the Board of Trustees within fifteen (15) days after it is filed. If a postponement of the hearing is requested, the applicant must file a written request for continuance at the same time the appeal is filed. The Town Manager or designee shall have the discretion to grant or deny the request for continuance. At the appeal hearing, the Town Manager, or designee, shall determine whether there is competent evidence to support the decision to deny the license and shall either uphold the decision and deny the license or overturn the decision and grant the license. Failure to appeal in accordance with the provisions of this section shall be deemed a waiver of the right to appeal pursuant to Colorado Rules of Civil Procedure 106 by virtue of a failure to exhaust administrative remedies.

5.24.030 - Posting - Display of license.

- A. Every license issued by the Town shall be posted during the period such license is valid. Such license shall be posted in a conspicuous place and be visible from the principal entrance of the business. When such license expires it shall be removed.
- B. It is the duty of the licensee to exhibit the license upon the request of any peace officer, the Town Clerk's office or other official of the Town.

5.24.040 - Change or transfer of license.

Any change of principal, ownership, licensee, or location of a licensed business or activity shall require a new application, license and payment of fees according to the provisions pertaining to the particular kind of application and license.

No license shall be transferred from one person to another or from one location to another.

5.24.050 - Renewal of license.

- A. At any time within sixty (60) days prior to the expiration of the current license, a licensee may make application for a license renewal for the succeeding year and pay the required fees. Unless otherwise provided by this title, if application is so made and no action or proceeding is pending against the licensee for suspension or revocation of the current license or licenses, and upon payment of the required fee,

- the licensee may continue the business for the succeeding period unless or until the application for license renewal is denied.
- B. In the event a suspension or revocation proceeding is pending when the licensee applies for renewal, the business may continue during the pendency of the proceeding, but the renewal application shall not be acted upon until the suspension or revocation proceeding has been completed.
 - C. Every renewal application shall be evaluated in accordance with the requirements of this title applicable to the initial issuance of a license.
 - D. Whenever any renewal application and accompanying license fee payment is not received on or before the expiration date of any license issued for the current license term, and the licensee continues to engage in the business for which the license was issued, an additional penalty in an amount set by resolution of the Board of Trustees per month for each month of delinquency beyond any applicable grace period shall be imposed and collected. The Town Clerk shall be authorized to waive or adjust any and all of such penalty and additional fee whenever in the clerk's judgment the delinquency is not the fault of the licensee or when collection or payment would constitute an injustice.
 - E. The failure of a licensee to exercise the privilege of renewal granted under a license for a period of sixty (60) days beyond the expiration of the license shall be prima facie evidence that the renewed license has been abandoned.

5.24.060 - Surrender of license.

A licensee may surrender the license by delivering it to the Town Clerk's office with or without a written statement of its surrender. Surrender of a license shall not affect the civil or criminal liability of a licensee for acts committed prior to surrender, nor entitle the licensee to a refund of the license fee for any remaining portion of the licensing period. Any surrendered license shall be deemed cancelled.

Chapter 5.28 - APPROVAL OR INSPECTION OF NEW LICENSES

Sections:

5.28.010 - Approval or inspection of new licenses.

- A. Upon receipt of an application for a business license properly filed with the Town Clerk's office and upon payment of the non-refundable application fee, the Town Clerk shall immediately stamp the application as received and route the application to the Town Planning Department, Town Police Department, and applicable Fire Protection District. Each department or agency shall promptly conduct an investigation of the applicant, application, and the proposed business and premises in accordance with its responsibilities under law and as provided pursuant to this title. The investigation shall be completed within thirty (30) days of receipt of the application by the Town Clerk's office. At the conclusion of its investigation, each department or agency shall indicate on the routing slip of the application its approval or disapproval of the application, date it, sign it, and, in the case of disapproval, state the reasons therefor. The Monument Police Department shall only be required to

acknowledge receipt of the application and provide any information required during background investigations when applicable. Failure of a department or agency to respond within the required time shall be construed as an approval of the business license application for its specific department or agency, but shall not be construed as authorizing any operation in violation of the federal or state law or Town ordinances.

- B. A department or agency shall recommend disapproval of an application if it finds that the proposed business will be in violation of any provision of any statute, code, ordinance, regulation, or other law enforced by that agency and having a direct bearing on the proposed business. If a recommendation for disapproval is made it shall include a written statement of the grounds of disapproval.

5.28.020 - Approval or inspection of renewal licenses.

This section applies to any approval or inspection required for new and renewal licenses deemed necessary in the opinion of the Town Clerk or routing department or agency. The same provisions which apply to an application for a new license pursuant to Section 5.28.010 shall apply with equal force to this section.

5.28.030 - Authority of inspectors.

All persons authorized under the “authority” to inspect licensed premises and businesses shall have the authority to enter and inspect, with or without a search warrant, at all reasonable times, and in a reasonable manner. “Authority” means any police officer, Fire Marshall, Town Clerk and any designee of the Town of Monument.

- A. Those premises for which a license is required;
- B. Those premises for which a license was issued and which, at the time of inspection, are operating under such license;
- C. Those premises for which a license has been revoked or suspended;
- D. Those books and records required to be kept by this title.

Chapter 5.32 - AUTHORITY

Sections:

5.32.010 - Authority.

The Board of Trustees hereby finds that the suspension or revocation of a license may be necessary in the public interest when a licensee fails to operate the business or exercise the privileges associated with the license in accordance with the provisions of this title. The Town Clerk is authorized to initiate suspension or revocation proceedings against a licensee when cause as defined in this title exists to suspend or revoke the license. The Town Clerk is authorized to conduct suspension or revocation hearings in accord with the provisions of this title.

5.32.020 - Grounds for suspension or revocation.

In addition to any other provisions of this code or other ordinances of the Town, the Town Clerk may suspend or revoke a license or permit issued under this title if:

- A. It appears that the activity conducted pursuant to such license is a public nuisance as defined by this code or statute or violates any federal, state or local rule, regulation or law which has a reasonable relationship to the conduct of the licensed business.
- B. The applicant is not qualified under federal or state law or by experience, training, or education to engage in the activity authorized by the license.
- C. The licensee fails to file any documents, reports, or such other information required pursuant to this title or as may be reasonably required by the Town Clerk or other Town officer or agency.
- D. The business, place of business, premises, building, or land use does not comply with the requirements of the Town Codes, including but not limited to the Zoning and Land Use Code or to the codes of agencies or entities having jurisdiction over the activities conducted within the Town including, but not limited to, the Uniform Building Code, the Uniform Fire Code, the Colorado Liquor Code, and Colorado Revised Statutes directly pertaining to the activities permitted by the license.
- E. Prior or ongoing violations of law occur in connection with, on, or about the place of business.
- F. The licensee is convicted of any violation of federal, state, or municipal law having a direct bearing upon or relation to the work or services performed under the license, or the licensee's ability to perform any work or services under the license.
- G. The licensee has been convicted within the last five years of any conduct constituting fraud or misrepresentation related to the management of a business, or any offense that would create a danger to the public health, safety, or welfare of the general public if the licensee were to engage in such conduct after the license was issued.
- H. The licensee or any agent or employee of the licensee violates any provision of this title pertaining to the license or any regulation or order, relating to the license, lawfully made under the authority of this title.

5.32.030 - Fine in lieu of suspension.

In order to encourage compliance with the provisions of this title and to resolve compliance issues at the administrative level, the Board of Trustees hereby finds that it is prudent to permit a licensee to choose to pay a fine in lieu of suspension.

- A. A licensee who has not been the subject of an order to show cause or a suspension or revocation hearing within the previous twelve (12) months and who makes a written request to the Town Clerk is eligible, at the sole discretion of the Town, to receive a fine in lieu of suspension.
- B. A licensee may make written request to the Town Clerk for payment of a fine in lieu if, after issuance of an order to show cause and at least ten (10) days before commencement of a suspension or revocation hearing, the licensee admits the alleged violations in writing. The licensee may include in the written request any mitigating factors the Town Clerk should consider when calculating the fine. After receiving the request, the Town Clerk shall vacate the scheduled hearing and calculate the fine.

- C. A licensee may employ the same procedures contained in subsection B of this section to request a fine in lieu of suspension if, after a hearing, a suspension of not more than fifteen (15) days is imposed by the Town Clerk. In the event a fine is determined to be appropriate by the Town Clerk, the suspension shall be held in abeyance for a period of one year.
- D. The fine to be imposed may not exceed one thousand dollars (\$1,000.00). The Town Clerk in considering the appropriate fine shall consider the type of business, the length of time the licensee has held the license, the nature of the violation(s) and any mitigating or aggravating factors.
- E. By requesting a fine in lieu of suspension, the licensee expressly waives the right to an appeal on the merits.

5.32.040 - Appeal.

The decision or determination of the Town Clerk shall be subject to appeal to the Town Manager or the Manager's designee. In the event an appeal is filed, it shall be heard by the Town Manager or the Manager's designee (hearing officer) within fifteen (15) days after it is filed. If a postponement of the hearing is requested, the applicant must file a written request for continuance. The hearing officer shall have the discretion to grant or deny the request for continuance. The hearing officer shall either uphold the decision of the Town Clerk and deny the appeal or to overturn the decision of the Town Clerk and grant the appeal. Failure to appeal in accordance with this section shall be deemed a waiver of the right to appeal pursuant to Colorado Rules of Civil Procedure 106 by virtue of a failure to exhaust administrative remedies.

The hearing of an appeal shall be conducted pursuant to the following:

- A. A hearing shall be conducted upon the allegations contained in the appeal request. The Town Manager or designee shall act as hearing officer.
- B. The Town and/or the appellant may be represented by counsel or may proceed pro se. Both the Town and the appellant will be given an opportunity to be heard, present evidence, cross-examine witnesses, and offer evidence in aggravation or mitigation of any alleged violations.
- C. As a suspension, revocation or appeal hearing is an administrative hearing, the hearing officer shall not be bound by the Colorado Rules of Civil Procedure. The hearing officer may consider hearsay evidence, or any other evidence reasonably calculated to assist him or her in rendering a decision, and give it whatever weight he or she deems appropriate. Depending upon the nature or complexity of the suspension, revocation, or appeal hearing, the hearing officer may request the Town and appellant submit, prior to the hearing, any documentary or demonstrative evidence which each plans to present during the hearing.
- D. The hearing officer shall have the power to administer oaths, to issue subpoenas, to grant continuances, to limit evidence or testimony which is repetitive, and to determine the order in which evidence will be presented.
- E. All evidence presented to the hearing officer during a suspension, revocation, or appeal hearing shall be recorded electronically. He or she shall mark any documentary or demonstrative evidence received during any suspension, revocation, or appeal hearing which evidence shall not be released by him or her except for

- purposes of appeal except that the parties may be allowed to retrieve such evidence at the conclusion of the case or within a reasonable time after the time for appeal has expired.
- F. The hearing officer shall use discretion in granting continuances once the scheduled suspension, revocation, or appeal hearing has been convened.

5.32.050 - Delegation of decision-making authority to hearing officer.

- A. At the conclusion of the evidence in the appeal hearing, the hearing officer shall make written findings of fact and conclusions regarding the suspension or revocation of the license. He or she may, at the conclusion of the hearing, take the matter under advisement and issue the written findings of fact and conclusions within seven days of the conclusion of the hearing.
- B. The hearing officer may, based upon the findings and evidence, take any of the following actions:
1. Uphold the Town Clerk's denial, suspension or revocation of the license;
 2. Overturn the Town Clerk's decision;
 3. Modify the decision of the Town Clerk in which case the hearing officer has the option to suspend a license for no more than six months; issue a suspension and then order it be held in abeyance on the condition the licensee has no subsequent violations for a period of one year from the date of the suspension; or revoke the license;
 4. A revocation of the license may be made only if the findings of fact and conclusions indicate any of the following:
 - a. The licensee has no regard for the privileges and responsibilities granted by the license.
 - b. The licensee cannot operate the licensed business in a lawful manner.
 - c. The licensee's conduct rises to the level of a threat to the health, safety or welfare of the public.
 - d. A period of suspension is insufficient to correct the licensee's behavior.
- C. A suspension shall become effective immediately upon issuance of the hearing officer's decision unless the decision states otherwise.
- D. A revoked license may not be renewed. A licensee who has had a license revoked may not reapply for a new license pursuant to this chapter for a period of two years from the date of the hearing officer's decision.
- E. A denial of a license shall be upheld if any of the reasons for the denial, enumerated in Section 5.24.010, have been shown to exist.
- F. The hearing officer shall serve a copy of the findings of fact and conclusions, and any order of denial, suspension or revocation upon the appellant. Service may be accomplished by either hand-delivering it to the appellant or by mailing it via first-class return-receipt requested mail, postage prepaid, to the last address furnished to the Town Clerk's office by the appellant. If the appellant has a permanent business location, a copy of the findings of fact and conclusions may be affixed to the principal entrance of the licensed premises, which is deemed to be the principal place of

business or the main office, or may affix a copy to a prominent structure on the licensed premises.

- G. Upon the effective date of the denial being upheld, suspension or revocation of any license required for a business or activity, the licensee shall cease and desist from operation of the business or activity.

5.32.060 - Cease and desist orders.

- A. In addition to any other consistent provision in this title, a business will be deemed to be unlicensed if it possesses any of the following characteristics:
 - 1. The business directly or indirectly conducts any activity or enterprise for which a license is required without having obtained the required license;
 - 2. The business operates while any required insurance coverage has lapsed or been cancelled;
 - 3. The business operates after failing to renew a business license within thirty (30) days after the end of the license period.
- B. If a business is deemed unlicensed the Town Clerk may issue a cease and desist order which shall be in writing and shall state that the business is unlicensed and order the business immediately to cease unlicensed operation.
- C. Upon receipt of the notice and order, the unlicensed business must cease all operations immediately and cannot resume operations until properly licensing the business in accord with the provisions of this title and, if such notice and order is issued pursuant to A.2, above, until proof of required insurance coverage is provided.
- D. The Town Clerk may seek any remedy available in law or equity if the unlicensed business fails to comply with a cease and desist order within seventy-two (72) hours of the issuance of a cease and desist order.

5.32.070 - Summary suspension.

The Board of Trustees finds and determines that it is in the interest of the Town to take action against those licensees who violate any federal, state or local offenses pertaining to weapons, firearms, controlled substances, unlawful sexual behavior, or offenses relating to morals, while exercising the privileges of the license or while on the licensed premises. This type of conduct, which rises to the level of an immediate threat to the health, safety or welfare of the public, constitutes an emergency and it is appropriate for the Town Clerk to summarily suspend the licensee's license.

- A. Upon a finding that the licensee has violated the policy established in the above paragraph relative to summary suspension, the Town Clerk shall issue a notice of summary suspension and shall schedule a hearing before the Town Clerk to determine whether to suspend or revoke the license. The summary suspension hearing shall not be held more than thirty (30) days after the issuance of the notice. If the licensee waives the time limit in writing, the hearing shall be held no more than sixty (60) days after issuance of the notice. At the summary suspension hearing, the burden shall be upon the licensee to show cause why the notice of summary suspension

should not be made a final order of suspension or revocation. The Town Clerk's decision to summarily suspend or revoke the license shall be final.

- B. The notice of summary suspension shall be in writing and shall state the grounds for its issuance, cite this section as authority for issuing the notice, order the licensee to cease operations immediately, and set a date for a summary suspension hearing before the Town Clerk.
- C. The Town Clerk shall serve a written notice of summary suspension upon the licensee by posting the notice on the premises, by personally serving the notice upon the owner or manager of the business, by mailing the notice via first-class certified U.S. mail, or by a combination of these methods.

5.32.080 - Warning letter.

The Town Clerk shall have the authority to issue a warning letter to any licensee who violates any provision of this title, but the provisions hereof allowing the issuance of warning letters shall not preclude the taking of any suspension, revocation or other licensing action in any order. A warning letter may be issued if the following conditions are met:

- A. The Town Clerk, in an exercise of discretion, finds that the licensee has committed a minor violation and the licensee is likely to comply with requirements in the future;
- B. No more than sixty (60) days have passed since the Town Clerk's office first had knowledge of the minor violation;
- C. The licensee has not been the subject of suspension or revocation proceedings prior to the date of the minor violation or received another warning letter for any violation of this title within two years of the date of the minor violation.

A warning letter shall describe the minor violation and shall inform the licensee that no further administrative action will be taken against the licensee so long as the licensee has no other violations of any provision of this title prior to their renewal. If the licensee commits another violation prior to their renewal, the Town Clerk shall retain the right to initiate suspension or revocation proceedings against the licensee.

Chapter 5.36 - REFUSE HAULERS

Sections:

5.36.010 - License requirements.

It is unlawful for any person to collect or haul, or cause to be collected or hauled, over the streets, alleys or other public places within the Town any refuse, except such refuse as is accumulated at the person's residence or place of business, without first having been issued a license therefore by the Town Clerk's office. In addition to the information required by chapter 5.16 of this title, an applicant for a refuse haulers license shall provide the following:

- A. Application requirements:
 - 1. Number of vehicles to be used in collection or hauling of refuse;

2. Proof that the vehicle or vehicles to be used by the applicant in the collection or hauling of refuse have first been inspected and approved as to their compliance with the provisions of this title, or any other applicable law of the Town and state or federal licensing requirements;
3. Proof that the vehicle or vehicles to be used by the applicant in the collection or hauling of refuse is/are current on their licensing, registration and insurance and will remain current throughout the time set forth on their business license;
4. Proof that the vehicle or vehicles to be used by the applicant in the collection or hauling of refuse are in sanitary condition and do not constitute or create a health hazard;
5. The applicant has motor vehicle liability insurance issued by an insurance carrier authorized to do business in the state of Colorado in the sum of not less than one hundred fifty thousand dollars (\$150,000.00) for damages from or on account of any bodily injury to, or the death of, each person as the result of any one accident; in the sum of not less than one hundred fifty thousand dollars (\$150,000.00) for damages to the property of others as the result of any one accident, and in the total sum of not less than four hundred thousand dollars (\$400,000.00) for damages for or on account of any bodily injury to or the death of all persons and for damages to the property of others;

B. Performance Standards:

1. All licensed refuse vehicles must have a tightly enclosed body to prevent refuse from spilling. Every such vehicle must also have a durable canvas or similar or secure covering, large enough to cover all of the refuse hauled, and such covering must be tied down or otherwise securely fastened in place. Complete covering of the refuse as loaded on the vehicle shall be required only in route from the Town to the disposal site after the last customer for the particular haul has been served. The name, address and telephone number of the licensed refuse hauler shall be labeled in letters not smaller than three inches in height on each side of the vehicle. The license plate issued for each vehicle shall be prominently displayed on the vehicle;
2. The applicant will transport and deposit all refuse collected within the Town at a licensed refuse disposal site;
3. The applicant has complied with all applicable provisions of this title or any other provisions of any ordinance or code of the Town now or hereafter in force relating to the collecting, hauling or depositing of refuse;
4. That adequate arrangements are made for storing the vehicles outside of the corporate limits of the Town or that they are stored in a fenced enclosure that is one thousand five hundred (1,500) feet from any residence and in compliance with the Zoning and Land Use Codes of the Town of Monument;
5. The applicant shall provide trash pickup service no less frequently than provided in the rates charged to the customer.

5.36.020 - Unlawful to spill refuse.

It is unlawful for any person or licensed refuse hauler to spill, or deposit any refuse on any street, alley or any other public or private property, or for refuse to be spilled, blown or littered by him or her upon any street, alley or any other private or public property.

Chapter 5.38 - LIQUOR LICENSE

Sections:

5.38.010 - Liquor license applications and permits.

It is unlawful for any person to operate a liquor establishment within the Town without first having been issued a business license by the Town Clerk's office. In addition to the business license requirements of this title, liquor establishments shall have and maintain all necessary liquor licenses and permits, which are issued in conjunction with the Colorado Liquor Enforcement Division and require approval from the Town Board, acting as the Local Liquor Licensing Authority pursuant to C.R.S. § 12-47-311(1), when applicable.

5.38.020 – Renewals and transfers.

The Town Board of the Town of Monument, acting as the Local Liquor Licensing Authority, hereby elects to exercise local control over the approval of liquor license renewal applications and transfer of ownership applications and authorizes the Town Clerk to approve such applications administratively in accordance with this section except where, upon reasonable investigation or evidence, the Clerk believes there may exist good cause for denial of such application pursuant to Section 12-47-103(9), C.R.S., in which case the Clerk shall refer such application to the Local Licensing Authority, and a hearing thereon shall be held.

The provision of this section notwithstanding, the Town Clerk shall report to the Colorado Liquor Enforcement Division, the name of the organization to which the renewal and/or transfer was approved, as well as all supporting documentation required by the Division.

Upon receipt of an application for a liquor license renewal application or transfer of ownership application the Town Clerk shall assemble the file of the applicant and review the file to determine whether "good cause" is present for non-renewal or transfer of ownership. Whether "good cause" is present is a fact-specific inquiry depending on the circumstances of the case, and may be based on evidence that continuation of the license would be contrary to the public interest, as well as the conduct of the licensee. If the Town Clerk's office review indicates no facts or circumstances supporting "good cause" for non-renewal or transfer of ownership, the Town Clerk shall approve the renewal application or transfer of ownership application at the local level and forward the application to the State. However, in the event the renewal application or transfer of ownership application shows good cause exists for non-renewal or non-transfer of ownership or is made by a financial institution which came into possession of the license by virtue of a deed in lieu of foreclosure, a hearing shall be held before the Board of Trustees.

5.38.030 - Distance restrictions.

No business license application shall be approved for any business that possesses, is required to possess, or intends to apply for any of the following types of liquor licenses; manufacturer's license (brewery, winery, distillery or rectifier), wholesaler's liquor license (vinuous and spirituous, and/or wholesaler's beer license (malt liquor), importer's license (malt liquor, vinuous and spirituous liquor), limited winery license, nonresident manufacturer's license (malt liquor), , if the business establishment is located within five hundred feet of any public or parochial school. The distance is to be computed by direct measurement from the nearest property line of the land used for school purposes to the nearest portion of the building in which liquor is to be sold, using a route of direct pedestrian access.

Chapter 5.40 - SEXUALLY ORIENTED BUSINESSES

Sections:

5.40.010 - Purpose and intent.

The purpose and intent of this chapter is to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this chapter have neither purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or the Colorado Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

5.40.020 – Definitions.

Words and phrases used in this chapter shall have the following meanings ascribed to them:

"Adult arcade" means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

"Adult bookstore," "adult novelty store" or "adult video store" means:

- A. A commercial establishment which: (1.) devotes a significant or substantial portion of its stock-in-trade or interior floor space to; (2.) receives a significant or substantial portion of its revenues from; or (3.) devotes a significant or substantial portion of its advertising expenditures to the promotion of: the sale, rental or viewing (for any form of consideration) of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual

representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas;

- B. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing specified sexual activities or specified anatomical areas, and still be categorized as an adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishment from being categorized as an adult bookstore, adult novelty store or adult video store so long as the provisions of subdivision 1 above are otherwise met.

"Adult cabaret" means a night club, supper club, dance club, or other such entertainment establishment whether or not such establishment has a fermented malt beverage or spirituous and venous liquor license which features: (1.) persons who appear nude or in a state of nudity or semi-nude; or (2.) live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

"Adult motel" means a motel, hotel or similar commercial establishment which: (1.) offers public accommodations, for any form of consideration, and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or (2.) offers a sleeping room for rent for a period of time less than ten (10) hours; or (3.) allows a tenant or occupant to sub rent a sleeping room for a time period of less than ten (10) hours.

"Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions depicting or describing specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

"Adult theatre" means a theater, concert hall, auditorium or similar commercial establishment which, for any form or consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of specified anatomical areas or by specified sexual activities.

"Church" means churches, synagogues, places of worship and other institutions dedicated to religious objectives.

"Employee" means a person who works or persons in and/or for a sexually oriented business, regardless of whether or not the person is paid a salary, wage or other compensation by the operator of the business.

"Establishment" of a sexually oriented business means and includes any of the following:

- A. The opening or commencement of any such business as a new business;
- B. The conversion of an existing business into a sexually oriented business;
- C. The addition of a sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of a sexually oriented business.

"Licensing officer" means the Town Clerk or designee.

"Manager" means an operator, other than licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees or in otherwise responsible for the operation of the business.

"Nudity" or "state of nudity" means: (1.) the appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or (2.) a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

"Nude model studio" means any place where a person, who appears in a state of nudity or displays specified anatomical areas is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons.

"Operator" means and includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

"Peep booth" means a viewing room of less than one hundred fifty (150) square feet of floor space.

"Permittee" and/or "licensee" means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

"Person" means an individual, sole proprietorship, partnership, corporation, limited liability company, association, or other legal entity.

"Premises" or "permitted or licensed premises" means any premises that requires a license and/or permit and that is classified as a sexually oriented business.

"Principal owner" means any person owning, directly or beneficially: (1.) ten (10) percent or more of membership interests in a limited liability company; or (2.) in the case of any other legal entity, ten (10) percent or more of the ownership interests in the entity.

"Private room" means a room in an adult motel that is not a peep booth, has a bed and a bath in the room or adjacent room, and is used primarily for lodging.

"Public park" means any park, recreation area or facility, open space area or trail which may be used by the general public, either with or without payment of a fee.

"Residential district" means any zoning district in the Town where residential uses are permitted either as a use by right or a conditional use including mobile home and modular home uses.

"Semi-nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

"Sexual encounter establishment" means a business or commercial establishment, that as one of its primary business purposes, offers, for any form of consideration, a place where two or more persons may congregate, associate or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas or activities when one or more of the persons is in a state of nudity or semi-nude. An adult motel will not be classified as sexual encounter establishment by virtue of the fact that it offers private rooms for rent.

"Sexually oriented business" means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theatre, adult theatre, sexual encounter establishment, or nude model studio. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

"Specified anatomical areas," as used in this chapter, means and includes any of the following:

- A. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or
- B. Human male genitals in a discernible turgid state, even if completely or opaquely covered.

"Specified criminal acts" means sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business, including, but not limited to, distribution of obscenity, prostitution, pandering, or tax violations.

"Specified sexual activities" means and includes any of the following:

- A. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts;
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- C. Masturbation, actual or simulated; or
- D. Human genitals in a state of sexual stimulation, arousal or tumescence;
- E. Excretory functions as part of or in connection with any of the activities set forth in subdivisions A through D of this subsection.

"Transfer of ownership or control of a sexually oriented business" means and includes any of the following:

- A. The sale, lease or sublease of the business;
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means;
- C. The establishment of a trust, management arrangement, gift or other similar legal devise which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

"Zoning ordinance" means Title 17 of this code.

5.40.030 - License requirements.

- A. It is unlawful for any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Town Clerk's office. In addition to the license requirements of this title, sexually oriented business applicants shall provide any other pertinent information requested by the Town Clerk's office for the purpose of administering the provisions of this title, to include, but not limited to the following:
 - 1. If the applicant is an individual or a partnership, the individual or each partner shall state his or her legal name and any aliases and submit satisfactory proof that he or she is twenty-one (21) years of age;

2. If the applicant is a legal entity, the person shall state its complete name, the date and place of its organization, evidence that it is in good standing under the laws of the state in which it is organized, and if it is organized under the laws of the state other than Colorado, that it is registered to do business in Colorado, the names and capacity of all officers, directors, managers and principal owners, and the name of the registered agent and the address of the registered office for service of process, if any;
3. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state the sexually oriented business' fictitious name;
4. A registered manager application and license must be on file providing the managers name, date of birth, address and other information requested by the Clerk's office;
5. Whether the applicant or any of the other individuals listed pursuant to subsections (A)(1) and (2) of this section has had a previous license/permit under this or other similar sexually oriented business ordinances from another town, city or county denied, suspended or revoked, and, if so, the name and location of the sexually oriented business for which the license/permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation;
6. Whether the applicant or any other individuals listed pursuant to subsections (A)(1) and (2) of this section has been a partner in a partnership or a principal owner of a corporation or other legal entity whose license/permit has previously been denied, suspended or revoked, and, if so, the name and location of the sexually oriented business for which the license/permit was denied, suspended or revoked as well as the date of denial, suspension or revocation;
7. Whether the applicant or any other individual listed pursuant to subsections (A)(1) and (2) of this section holds any other licenses/permits under this chapter or other similar sexually oriented business ordinance from another town, city or county and, if so, the names and locations of such other permitted businesses;
8. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any;
9. The applicant's mailing address and residential address;
10. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be oriented to the north or to some designated street or object and shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. The licensing officer may waive the foregoing diagram for renewal applications of the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. If the sexually oriented business has or will have a peep booth or booths subject to the provisions of Section 5.40.170, the sketch shall show the locations of each manager's station and designate any portion of the premises in which patrons will not be permitted;
11. A current certificate and straight-line drawing prepared within thirty (30) days prior to an initial application by a Colorado registered land surveyor depicting:
 - (a.) the property lines and the structures of the property to be certified;
 - (b.) the

property lines of any church, school, dwelling unit (single or multiple), public park or residential district within one thousand five hundred (1,500) feet of the property to be certified; and (c.) the property lines and structures of any other sexually oriented business within one thousand five hundred (1,500) feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted;

12. If a person who wishes to operate a sexually oriented business is an individual, he or she must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each principal owner of the applicant must sign the application for a license as applicant.
13. The license, if granted, shall state on its face the name of the person or persons to whom it is granted.

- B. In the event that the Town Clerk determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, the Town Clerk shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. The time period for granting or denying a license/permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.
- C. The fact that a person possesses other types of town, city, county or state licenses/permits does not exempt him or her from the requirement of obtaining a sexually oriented business license.

5.40.040 - Duty to supplement application.

Applicants for a sexually oriented business license shall have a continuing duty to promptly supplement application information required by that section in the event that the information changes in any way from what is stated on the application. The failure to comply with the continuing duty within thirty (30) days from the date of such change shall be grounds for suspension of a license.

5.40.50 - Denial of license.

In addition to applicable provision of this title, a sexually oriented business may be denied a license if an applicant is under twenty-one (21) years of age.

5.40.60 - Suspension of license.

In addition to applicable provision of this title, a sexually oriented business may be suspended for the following reasons:

- A. A licensee, or an employee of a licensee, has operated the sexually oriented business in violation of a building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state or local, such determination being based on investigation by the division, department or agency charged with enforcing such rules or laws. In the event of such a statute, code, ordinance or regulation violation, the Town Clerk shall promptly notify the licensee of the violation and shall allow the licensee a seven-day

- period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the seven-day period, the Town Clerk shall forthwith suspend the license and shall notify the licensee of the suspension;
- B. A licensee, or an employee of a licensee, has engaged in an unauthorized license transfer. In the event the Town Clerk suspends a license on the ground that a licensee engaged in an unauthorized license transfer, the Town Clerk or designee shall forthwith notify the licensee of the suspension. The suspension shall remain in effect until the provisions of the suspension have been satisfied;
 - C. A licensee, or an employee of a licensee, has operated the sexually oriented business in violation of the hours of operation provisions set forth in this chapter.

5.40.070 - Revocation of license.

In addition to applicable provision of this title, a sexually oriented business license may be revoked for the following reasons:

- A. A licensee or an employee has knowingly allowed possession, use or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) in or on the premises;
- B. A licensee or an employee has knowingly allowed prostitution or specified sexual activities in or on the premises;
- C. A licensee or an employee knowingly operated the sexually oriented business during a period of time when the license was suspended;
- D. On two or more occasions within a twelve (12) month period, a person or persons committed an offense, occurring in or on the permitted premises, constituting a specified criminal act for which a conviction has been obtained, and the person or persons were the licensee or an employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the license/permit;
- E. A licensee is delinquent in payment to the Town or state for any taxes or fees;
- F. The licensee or an employee has operated more than one sexually oriented business within the same building, structure, or portion thereof.

When the Town Clerk revokes a license/permit, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective.

5.40.080 - Judicial review.

If a license is denied, suspended or revoked, the applicant or licensee may seek judicial review of such administrative action in any court of competent jurisdiction.

5.40.090 - Inspection.

- A. A licensee or an employee of the licensee shall permit representatives of the building inspection department, the health department, the fire department and the police

department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

- B. A person who operates a sexually oriented business or his or her agent commits a misdemeanor if he or she refuses to permit such lawful inspection of the premises at any time that it is occupied or open for business.

5.40.100 - Regulation of peep booths.

A person who operates or causes to be operated a sexually oriented business, which exhibits on the premises in a peep booth a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the requirements of this section.

- A. The sexually oriented business shall have one or more manager's stations. A manager's station may not exceed thirty-two (32) feet of floor area. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town Clerk.
- B. At least one employee must be on duty and situated at each manager's station at all times that any patron is present inside the premises.
- C. 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 rest rooms. Rest rooms may not contain video display equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times, and no patron shall be permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed.
- D. No peep booth may be occupied by more than one person at any one time.
- E. No door, screen or other covering shall be placed or allowed to remain on any peep booth, and no holes or openings shall be placed or allowed to remain in the wall between any two adjacent peep booths.
- F. A person having a duty under this section commits a misdemeanor if he or she knowingly fails to fulfill that duty.

5.40.110 - Hours of operation.

It is unlawful for a sexually oriented business to be open for business or for the licensee or any employee of a licensee to allow patrons upon the licensed premises during any of the following hours:

- A. On any Tuesday through Saturday from two a.m. until seven a.m.;
- B. On any Monday other than a Monday which falls on January 1st, from twelve a.m. until seven a.m.;

- C. On any Sunday from two a.m. until eight a.m.;
- D. On any Monday which falls on January 1st, from two a.m. until seven a.m.

5.40.120 – Exemption.

This chapter shall not apply to those areas of an adult motel that are private rooms.

5.40.130 - Minimum age requirement.

- A. It is unlawful for any person under the age of twenty-one (21) years to be upon the premises of any live, nude dancing establishment, including, but not limited to any adult cabaret, adult theater or sexual encounter establishment, as defined by this chapter.
- B. It is unlawful for the licensee or any employee of the licensee to allow anyone under the age of twenty-one (21) years upon the premises of any live, nude dancing establishment, including, but not limited to any adult cabaret, adult theater or sexual encounter establishment, as defined by this chapter.
- C. It is unlawful for any person under the age of eighteen (18) to be upon the premises of any sexually oriented business.
- D. It is unlawful for the licensee or any employee of the licensee to allow anyone under the age of eighteen (18) years upon the premises of any sexually oriented business.

5.40.140 - Lighting regulations.

- A. Excluding a private room of an adult motel, the interior portion of the premises of a sexually oriented business to which patrons are permitted access shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place (including peep booths) at an illumination of not less than five-foot candle as measured at the floor level.
- B. It is the duty of the licensee and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

5.40.150 - Location of sexually oriented businesses.

- A. No license shall be issued under this chapter for any sexually oriented business within any zone district other than the planned industrial development district (PID).
- B. It is unlawful for a person to operate or cause to be operated a sexually oriented business outside of an industrial zone.
- C. It is unlawful for a person to operate or cause to be operated a sexually oriented business within one thousand five hundred (1,500) feet of:
 - 1. Any church;
 - 2. Any school meeting all requirements of the compulsory education laws of the state;
 - 3. The boundary of any residential district;
 - 4. A dwelling unit (single or multiple);

- 5. A public park adjacent to any residential district.
- D. It is unlawful for a person to operate or cause to be operated a sexually oriented business within one thousand five hundred (1,500) feet of another sexually oriented business.
- E. It is unlawful for a person to operate or cause to be operated more than one sexually oriented, business, or to maintain or cause to be maintained more than one sexually oriented business within the same building, structure or portion thereof.

5.40.160 - Measurement of distance.

- A. For purposes of this section, distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business.
- B. For purposes of this section, distance between any sexually oriented business and any church, school, public park, dwelling unit (single or multiple) or residential district shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where the sexually oriented business is conducted, to the nearest property line of the premises of a church, school, or dwelling unit (single or multiple), or the nearest boundary of an affected public park, or residential district.

5.40.170 - Stage required in adult cabaret and adult theater.

Any adult cabaret or adult theater shall have one or more separate areas designated as a stage in the diagram submitted as part of the application for the licensee. Entertainers shall perform only upon the stage. The stage shall be fixed and immovable. No seating for the audience shall be permitted within three feet of the edge of the stage. No members of the audience shall be permitted upon the stage or within three feet of the edge of the stage.

5.40.180 - Conduct in sexually oriented businesses.

- A. No licensee, manager or employee mingling with the patrons of a sexually oriented business, or serving food or drinks, shall be in a state of nudity. It is a defense to prosecution for a violation of this section that an employee of a sexually oriented business exposed any specified anatomical area during the employee's bona fide use of a rest room, or during the employee's bona fide use of a dressing room which is accessible only to employees.
- B. No licensee or employee shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the breasts, anus, or specified anatomical areas of any person.

5.40.190 - Employee tips.

- A. It is unlawful for any employee of a sexually oriented business to receive tips from patrons except as set forth in subsection B of this section.

- B. A licensee that desires to provide for tips from its patrons shall establish one or more boxes or other containers to receive tips. All tips for such employees shall be placed by the patron of the sexually oriented business into the tip box.
- C. A sexually oriented business that provides tip boxes for its patrons as provided in this section shall post one or more signs to be conspicuously visible to the patrons on the premises in letters at least one-inch high to read as follows: "All tips are to be placed in the tip box and not handed directly to employees. Any physical contact between a patron and employees is strictly prohibited."

5.40.200- Unlawful acts.

It is unlawful for the licensee or for any manager or employee to violate any of the requirements of this chapter or to knowingly permit any patron to violate the requirements of this chapter.

5.40.210 – Exemptions.

The provisions of this chapter regulating nude model studios do not apply to:

- A. A college, junior college, or university supported entirely or partly by taxation;
- B. 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; or
- C. A business located in a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and where, in order to participate in a class a student must enroll at least three days in advance of the class; and where no more than one nude model is on the premises at any one time.

5.40.220 - Violations.

- A. Nothing contained in this chapter shall prevent or restrict the Town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.
- B. All remedies and penalties provided for in this section shall be cumulative and independently available to the Town, and the Town shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.

Chapter 5.44 - MASSAGE BUSINESS

Sections:

5.44.010 – Definitions.

“Massage” means massage body of another for medical, remedial or hygienic purposes, including, but not limited to, rubbing, stroking, kneading or tapping with the hand or an instrument or both.

“Massage parlor” means an establishment providing massage, but it does not include training rooms of public or private schools accredited by the State Board of Education or approved by the division charged with the responsibility of approving private occupational schools, training rooms of recognized professional or amateur athletic teams, or licensed health care facilities. A facility which is operated for the purpose of massage therapy performed by a massage therapist is not a message parlor. For purposes of this Subsection, *massage therapist* means a person who was graduated from a massage therapy school accredited by the state educational board or division charged with the responsibility of approving private occupational schools, or from a school with comparable approval or accreditation from another state with transcripts indicating completion of at least five hundred (500) hours of training in massage therapy. For purposes of this subsection, a massage therapy school may include an equivalency program approved by the state educational board or division charged with the responsibility of approving private occupational schools.

5.44.020 - Licenses required.

It is unlawful for any person to operate a massage business without a valid massage business license issued by the Town Clerk’s office. If an inspection reveals the practice of massage without a valid license, the person shall be charged with a misdemeanor pursuant to C.R.S. 12-35.5-115.

5.44.030 – License Requirements.

All massage businesses must operate in compliance with C.R.S. 12-35.5-101 through 12-35.5-120.

Chapter 5.48 - ESCORT SERVICES

Sections:

5.48.010 - Definitions.

"Escort" means any person who, for a salary, fee, tip, commission, hire, profit, or other consideration, makes oneself available to the public for the purpose of accompanying another person for companionship, or agreeing or offering to privately model lingerie or to privately perform erotic dancing for another person.

"Escort bureau" means any business, agency, or person who, for a salary, fee, tip, commission, hire, profit or other consideration, furnishes, offers to furnish, advertises to furnish, or arranges for persons to accompany other persons for companionship, or who, for a salary, fee, tip, commission, hire, profit or other consideration, furnishes, offers to furnish, advertises to furnish or arranges for persons to privately model lingerie or privately perform erotic dancing for another person.

"Escort patron" means any person who has attained the age of eighteen (18) years or more or any person under the age of eighteen (18) for whom the parent or legal guardian consents in writing, who seeks the services of an escort, escort bureau, or escort service runner.

"Escort service runner" means any person who, for a salary, fee, tip, commission, hire, profit or other consideration, acts in the capacity of an agent for an escort bureau by contacting or meeting with escort patrons whether or not such person is employed by such escort bureau or by another business or is self-employed.

"Licensed premises" means any discrete, identifiable location at which a licensed activity is permitted and, in fact, is conducted under the authority of any one license.

"Specified anatomical areas" mean and include:

- A. Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point above the top of the areola;
- B. Human male genitals in a discernible turgid state even if completely and opaquely covered.

"Specified sexual activities" mean acts, simulated acts, exhibitions, representations, depictions or descriptions of:

- A. Human genitals in a state of sexual stimulation or arousal;
- B. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast;
- C. Intrusion, however slight, of any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body or into the body of an animal;
- D. Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals or excretory function;
- E. Flagellation, mutilation or torture for purposes of sexual arousal, gratification, or abuse.

5.48.020 - License required.

- A. In addition to the licensing requirements of this title, escort services shall also comply with the following:
- B. Escort. It is unlawful for any person to hold oneself out as an escort or employ to the public or accept compensation as an escort, or conduct escort services or activities, without first having obtained a valid photographic identity card and a license issued by the Town.
- C. Escort Bureau. It is unlawful for any person to operate, manage or to employ anyone for an escort bureau without first having obtained a valid photographic identity card and a license.
 - 1. It is unlawful to allow the provision or procurement of any escort bureau to or for any person under the age of eighteen (18) years without the written consent of such person's parent or legal guardian.
 - 2. It is unlawful to permit any person under the age of eighteen (18) years to be employed in an escort bureau.

- D. Escort Service Runner. It is unlawful for any person to represent oneself as an escort service runner or employ to the public or accept compensation as an escort service runner, or conduct escort runner services or activities, without first having obtained a valid photographic identity card and a license.
- E. Separate Licenses. Every escort or escort service runner must obtain a separate and distinct license for each escort bureau for which they are employed, including self-employment.

5.48.030 - Conformance to law required.

All licenses issued pursuant to this chapter must comply with the provisions of the Colorado Escort Services Code, Article 25.5, Title 12, Colorado Revised Statutes as well as the provisions of this code.

5.48.040 - Application and renewal requirements.

- A. It is unlawful for any person to operate a escort services business without a valid escort services business license issued by the Town Clerk's office. In addition to the license requirements of this title, escort service applicants shall provide any other pertinent information requested by the Town Clerk's office for the purpose of administering the provisions of this title. No individual shall be issued a license as an escort or as an escort service runner unless that person complies with the following:
 - 1. Has attained eighteen (18) years of age;
 - 2. Is a resident of the state of Colorado.
- B. No individual shall be issued a license as an escort bureau, and no person other than an individual shall be issued a license as an escort service runner unless that person complies with the following:
 - 1. If an individual, he or she has attained the age of eighteen (18) years;
 - 2. If a partnership or limited partnership, all partners have attained the age of eighteen (18) years;
 - 3. If a corporation, the directors and all officers thereof have attained the age of eighteen (18) years;
 - 4. If a corporation, the corporation is qualified with the Secretary of State to do business in this state or is incorporated under the laws of this state.
 - 5. No escort bureau or escort service runner shall employ the services of any person who has not obtained a valid identity card and license through the Town Clerk's office.
- C. All renewal applications for licenses issued under the provisions of this chapter must be submitted no less than thirty (30) days prior to the expiration date of the license. The Town Clerk's office is not authorized to accept any renewal applications filed after this deadline. Licensees failing to file a renewal application prior to this deadline shall be required to apply for a new license.

- D. In addition to any other criteria contained in this chapter, the applicant's or licensee's criminal history, any conviction or guilty plea to a charge based upon acts of dishonesty, fraud, deceit, violence, weapons, substance abuse or, narcotics, sexual misconduct, or prostitution-related misconduct of any kind, regardless of the jurisdiction in which the act was committed, may be considered in a decision to grant, renew, revoke or suspend a license.

5.48.050 – Inspections.

It is unlawful for any operator of an escort establishment to refuse entry and/or inspection during the hours of operation to inspect the premises to determine compliance with the provisions of this chapter. Inspection of the premises shall be limited to those areas not in actual use at the time of inspection; provided, however, this shall not preclude inspection of those areas when not in use. Nothing in this section shall be construed to preclude a Peace Officer from inspecting any area where he or she has probable cause to believe that a violation of this chapter, other Town ordinance or state or federal law, is being violated or any crime is being committed.

5.48.060 - Display of license.

Every licensed escort or escort service runner shall have in their possession their license and photographic identity card when providing escort services.

5.48.070 - Records required.

Every licensee shall keep a record of services rendered, and shall describe the address where the services were rendered, the name and address of the patron, the age of the patron, the name of the escort rendering such service, and the date and hour of such service. Such records shall be maintained for a period of one year from the date of service.

5.48.080 - Employees; records required.

- A. The manager, principal or owner of an escort bureau shall keep and maintain records for all employees, independent contractors, escorts and escort service runners. These records shall, at a minimum, contain the following: name, age, current address and telephone numbers, photograph, description of the duties and responsibilities of the person, a copy of any escort or escort service runner license held by the person and such other information reasonably required by the Town Clerk's office.
- B. It is the responsibility of the escort bureau licensee to notify the Town Clerk's office within seventy-two (72) hours of the initial employment, discharge, termination, suspension or resignation of any employee, independent contractor, escort or escort service runner. Notice shall be in writing and shall include the information required to be kept pursuant to subsection A above, and any specific reason or cause for termination or suspension. A manager, principal or owner of the escort bureau must sign the notice.
- C. It is the responsibility of any employee, independent contractor, escort or escort service runner to surrender their license to the Town Clerk's office within seventy-two (72) hours of their discharge, termination, or resignation.

- D. It is unlawful for any manager, principal or owner of an escort bureau to fail or refuse to provide the Town Clerk's office with the information required to be kept by this section.
- E. The escort bureau shall provide to each escort patron a written contract for services. The contract shall clearly state the name and address of the escort and patron, the type of services to be performed, the length of time such services shall be performed, the total charge for such services and any special terms or conditions relating to the services to be performed. The contract shall include a statement in clear and concise language that prostitution is illegal in the state of Colorado and that all parties to an act of prostitution may be punished by fine and imprisonment and that no act of prostitution shall be performed in relation to the services for which contracted. Each contract shall be numbered and utilized in numerical sequence by the escort bureau. The contract shall be signed by and a copy provided to the escort patron. The escort bureau shall retain copies of all contracts for at least one year from the date of execution of the contract, and one copy of each contract executed in any calendar month shall be transmitted by the escort bureau to the Town Clerk's office no later than ten (10) days after the last day of such month. The Town Clerk's office shall treat such contracts transmitted as open public records.

5.48.090 – Conduct

- A. Conduct of Escorts and Escort Patrons. For purposes of this chapter, it is unlawful for any escort or escort patron for the duration of the contracted escort services:
 - 1. To touch, caress or fondle the breasts, anus or specified anatomical areas of any person, or to encourage, facilitate or aid another in touching, caressing, or fondling the breasts, anus or specified anatomical areas of any person.
 - 2. To engage in specified sexual activities.
- B. Licensees.
 - 1. Each person licensed pursuant to this chapter shall conduct the licensed premises in a decent, orderly and respectable manner and shall not permit disturbances or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the licensed premises is located.
 - 2. Each person licensed pursuant to this chapter shall not violate, or permit to be violated, any local, state or federal law based on acts of dishonesty, fraud, deceit, violence, weapons, substance abuse or narcotics, sexual misconduct, or prostitution-related misconduct of any kind, whether or not the acts were committed in this state.
- C. Unlawful. It is unlawful for any escort bureau, escort service runner or escort licensed pursuant to this chapter to engage in, authorize, solicit, request, command, or knowingly tolerate the unlawful acts as provided in this section.
- D. It is unlawful to operate or maintain any escort bureau contrary to the provisions of this chapter and shall be deemed a public nuisance. The Town Clerk or designee may, in addition to all other remedies set forth in this title, commence license suspension or

revocation proceedings for the abatement, removal and enjoinder thereof, and shall take such other steps and shall apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such escort bureau and restrain and enjoin any person from operating, conducting or maintaining an escort bureau contrary to the provisions of this chapter.

Chapter 5.52 - SPECIAL EVENTS

Sections:

5.52.010 - Intent.

The intent of these regulations is to ensure that special events operate safely, are not detrimental to the public health, do not substantially interfere with traffic, pedestrian circulation, public services, and are compatible with surrounding property.

5.52.020 - Description.

- A. A special event is described as an event that is a short term activity, usually lasting one to three days. Examples of special events include, but are not limited to, concerts, parades, circuses, fairs, festivals, car shows, sports events (i.e., marathons, running events, bicycle races or tours, etc.), or motorcycle rallies. Such events require a special event permit if:
1. The event requires a street closure, or significantly interrupts the flow of traffic in public rights-of-way, or access to private commercial property.
 2. The event is estimated to have one hundred (100) or more people participating or attending and is to take place in a public park.
 3. The event is an outdoor event of any size includes the sale or consumption of alcoholic beverages to or by the public. A special event liquor permit is also required for this purpose.

5.52.030 - Permit required.

A permit is required for any activity described as a special event. If there are multiple vendors, a manager must obtain the permit and assume responsibility for all vendors.

5.52.040 - Permit process.

- A. An application for a special event permit shall be submitted to the Town Special Event Coordinator for review at least (30) business days before the event. All permit applications shall be accompanied by the applicable fee(s). The Special Event Coordinator shall not accept a permit application unless accompanied by the required fee(s).
- B. An application for a special event liquor permit should be submitted to the Town Clerk's office forty-five (45) business days before the event. All permit applications

shall be accompanied by the applicable fee(s). The Town Clerk's Office shall not accept a permit application unless accompanied by the required fee(s).

5.52.050 - Approval criteria.

An application for a special event may be approved if it conforms to the following criteria, as applicable. Approval is discretionary, and the Town is under no obligation to issue an approval.

- A. The application is in conformance with all applicable Town or other government regulations.
- B. The applicant will obtain any required permits, licenses, or approvals.
- C. 3. The event or use will not cause significant impacts, disturbance or damage to surrounding properties, Town streets, or public property, and will not compromise the public's health, safety and welfare.
- D. The site will provide sufficient parking, if applicable. Gravel surfaced parking may be approved for a special event.
- E. Adequate services will be provided, if applicable.
- F. Adequate provisions have been made for cleanup and, if applicable, restoration of public property in a timely fashion upon termination of the activity or event. The Town may require a cleanup deposit or fee if the event is expected to generate a significant amount of waste. The deposit or fee will be based upon the anticipated costs of cleanup.
- G. Each holder of a permit under this chapter shall, during the duration of the event, maintain liability insurance pursuant to this title.

Note: A special event permit is not a permit to violate any Town ordinances, rules, or regulations, such as noise, parking, or alcohol consumption. If a violation occurs, it may result in a citation being issued to the manager of the special event.

5.52.060 - Permit expiration and renewals.

No permit issued shall be assignable to another applicant. Every permit issued shall expire according to the date established by the permit. Special events shall generally not be approved for more than three consecutive days.

5.52.070 - Revocation of permit.

If, upon review, the conditions or restrictions imposed by this Code or by the permit have not been complied with, the Town Special Events Coordinator or designee may take any action deemed necessary to remedy the noncompliance, including but not limited to, revocation of the permit or pursuing the noncompliance as a Code violation. The Town reserves the right to revoke a permit at any time if there is an emergency that substantially interferes with the event or requires Town Staff and/or emergency responders or vehicles to respond. All liquor license permit violations will be addressed by the Town Clerk.

Chapter 5.53 - FARMER'S MARKETS

Sections:

5.53.010 - Permit required.

It is unlawful for any person to operate a Farmers Market without a valid Farmers Market Permit issued by the Town Clerk's office. In addition to the license requirements of this title, farmer's market applicants shall provide any other pertinent information requested by the Town Clerk's office for the purpose of administering the provisions of this title. The manager of the farmer's market must obtain the permit and assume responsibility of all vendors.

5.53.020 - Intent.

The intent of these regulations is to ensure that farmer's markets operate safely; are not detrimental to the public health; do not substantially interfere with traffic or pedestrian circulation, or public services; and are compatible with surrounding property.

5.53.030 - Description.

A. A farmer's market is a seasonal outdoor market set up with two or more qualifying vendors primarily for the sale of any of the following items:

1. Produce;
2. Handcrafted foods and beverages;
3. Dairy products;
4. Meat and seafood;
5. Honey and other products from bees;
6. Baked goods;
7. Handmade furniture;
8. Flowers and plants;
9. Kitchen goods;
10. Handmade arts and clothing;
11. Food sold from mobile food carts.

B. The following items are prohibited from sale at a farmer's market:

1. Tobacco products;
2. Sexually oriented business items;
3. Appliances;
4. Electronics;
5. Firearms.

C. Temporary use permit.

1. Mobile vendors, mobile food carts and kiosks may require a temporary use permit. Farmer's markets are permitted in non-residential districts, on school or church property, and in public parks or other publicly-owned property.

5.53.040 - Manager's responsibilities.

- A. Managers shall obtain a Farmer's Market Permit from the Town Clerk's Office. The farmer's market shall operate under one permit.
- B. Managers shall provide written permission from the landowner upon whose property the farmer's market will be held.
- C. Managers shall provide all required approvals by the El Paso County Department of Public Health and Safety for each food vendor.
- D. Managers shall report sales tax receipts to the Town Treasurer on a weekly basis.
- E. Managers shall assure that all sanitary facilities are maintained so as to prevent any health or environmental issues.
- F. Managers shall provide contact information and health department license numbers, as applicable, for every vendor, as well as a photograph of each vendor's kiosk, cart, or other form of setup.
- G. Managers shall provide a site map showing placement of all vendors, parking areas, and loading/unloading areas.
- H. Managers shall ensure that all vendors comply with all Town and County ordinances, and all relevant State Statutes.
- I. Each holder of a permit under this chapter shall, during the time of the permit, maintain liability insurance coverage acceptable to the Town Clerk.

5.53.050 - Vendor's responsibilities.

- A. Vendors shall ensure that their site is safe for customer traffic, including securing all loose objects in high wind conditions (including making sure tents/easy-ups, etc. are properly tied down), protecting the public from hazards such as extension cords and items blocking walk routes on site and public sidewalks, and keeping cooking or heating facilities away from areas open to the public.
- B. Vendors shall remit their sales tax to the Colorado Department of Revenue.

5.53.060 - Other provisions.

- A. Motorized vehicles may not be parked, stored, or driven on any unpaved areas, except for gravel surfaces and may not be parked on sidewalks or blocking any access ramps or driveways.
- B. The playing of musical instruments by individuals or small bands is pursuant to general nuisance and noise ordinances.
- C. Animals must be kept on a leash.

5.53.070 - Permit process.

An application for a farmer's market must be submitted to the Town Clerk's Office for review. All permit applications shall be accompanied by the applicable fee. All permit applications shall be accompanied by the appropriate documents applicable to this chapter. The Town Clerk's office shall not accept a permit application unless accompanied by the required fee and applicable documents.

The Town Clerk's Office may require additional information during the review period, and may send referrals to Town Staff and/or outside referral agencies for review. The Town Clerk's office may approve, approve with conditions, or deny any application based upon the approval criteria herein.

5.53.080 – Approval criteria.

An application for a farmer's market may be approved if it conforms to the following criteria, as applicable. Approval is discretionary, and the Town is under no obligation to issue an approval.

- A. The application is in conformance with all applicable Town, District, or other government regulations. The applicant will obtain any required permits or approvals, including a Town of Monument Business License.
- B. The market will not cause significant impacts, disturbance, or damage to the property, surrounding properties, and/or Town streets, and will not compromise the public health and safety.
- C. The site will provide sufficient parking. Gravel surfaced parking may be approved for a farmer's market.
- D. Adequate services will be provided.
- E. Adequate provisions have been made for cleanup and, if applicable, restoration of the site in a timely fashion upon termination of the market. A sufficient clean up/site restoration deposit has been provided if required, based upon the anticipated costs of cleanup or restoration.
- F. Each holder of a permit under this chapter shall, during the time of the permit, maintain liability insurance coverage acceptable to the Town Clerk.

5.53.090 - Permit expiration and renewals.

No permit issued shall be assignable to another applicant. Every permit issued shall expire according to the date established by the permit.

5.53.100 - Revocation of permit.

If, upon review, the conditions or restrictions imposed by this Code, county ordinance or state statute or by the permit have not been complied with, the Town Clerk may take any action deemed necessary to remedy the noncompliance, including but not limited to, revocation of the permit or pursuing the noncompliance as a Code violation. The Town reserves the right to revoke a permit at any time if there is an emergency that substantially interferes with the market.

Chapter 5.56 – SOLICITORS

Sections:

5.56.010 - Definitions.

"Foodstuffs" means fruits, vegetables, meats, eggs, fowl or any article that may be used for food purposes, except milk, cream and buttermilk.

"Solicitor" means any person, whether a resident of the Town or not, who, on a temporary basis goes from house to house, from place to place, or from street to street, soliciting or taking or attempting to take orders for sale of goods, wares or merchandise, including magazines, books or personal property of any legal nature whatsoever, including service to be performed in the future, whether or not such individual has, carries or exposes for sale a sample of the subject or such order, or whether or not he or she is collecting advance payments on such orders. Such definition includes any person who hires, leases, uses or occupies any building, motor vehicle, trailer, structure, tent, railroad boxcar, boat, motel room, apartment, shop or other place within the Town on a temporary basis, for the primary purpose of exhibiting samples and taking orders for future delivery. A person is not a solicitor unless he or she knocks on doors or otherwise attempts to contact or speak to the occupants of a private residence. The term solicitor shall not include persons who contact occupants of a private residence as representatives of a religion, a non-profit entity, a political campaign or a local school activity concerning grades one through twelve (12).

"Soliciting" means the selling, soliciting or taking or attempting to take orders for sale of goods, wares or merchandise, including magazines, books or personal property of any nature whatsoever, including service to be performed in the future by contacting occupants of private residences in door-to-door contact other than delivery from regularly established business houses.

5.56.020 - License required.

It is unlawful for any solicitor to engage in business through soliciting within the Town without a valid business license and photographic solicitors badge for each applicant wishing to solicit, issued by the Town Clerk's office. In addition to the license requirements of this title, solicitor's licensee's shall provide any other pertinent information requested by the Town Clerk's office for the purpose of administering the provisions of this title. The manager of the solicitor's license shall assume responsibility of all solicitors.

5.56.030 - Exemptions.

The requirements contained in this chapter do not include the acts of persons selling personal property at wholesale to dealers in such articles; to newspaper delivery persons; to residents of the Town under the age of eighteen (18) who offer yard-tending, pet care, babysitting or other services to residents of the Town; nor to the acts of merchants or their employees delivering goods in the regular course of business from regularly established business houses; nor to any public utility or its employees franchised to do business within the Town. For mobile vendor exemptions refer to Chapter 17.48. Nothing contained in this chapter shall be construed to prohibit any sale required by statute or by order of any court, or to prevent any person from conducting a bona fide auction sale pursuant to law.

5.56.040 – License application.

It is unlawful for any person to solicit within the Town without first having been issued a business license as well as a photographic solicitor's badge for each individual who engages in door to door solicitation from the Town Clerk's Office. In addition to the license requirements

of this title, solicitors shall provide any other pertinent information requested by the Town Clerk's office for the purpose of administering the provisions of this title, to include, but not limited to the following:

- A. Name of applicant. If a corporation, limited liability company, partnership or other entity the name of the entity as well as the name of the individual requesting the license and the individual's position in the entity.
- B. Complete permanent home and local address of the applicant, and in the case of transient merchants, the local address from which the proposed sale will be made.
- C. A brief description of the nature of the business and the goods or services to be sold.
- D. If employed, the name and address of the employer, together with documents establishing the relationship between the employer and the employee.
- E. The length of time for which the right to do business is desired.
- F. The source of supply of the goods or property proposed to be sold, or orders taken for the sale thereof, where such goods or products are located at the time the application is filed, and the proposed method of delivery.
- G. A valid driver's license or state-issued identification card for each individual solicitor which shall be photocopied by the Town Clerk's Office and made a part of the license application.
- H. An affidavit for each individual solicitor as to whether or not the applicant has been convicted of any felony, misdemeanor or violation of any municipal ordinance excluding minor traffic violations, the nature of the offense and the penalty assessed accompanied by an application for a background investigation and the required background fee.
- I. If a vehicle is to be used, a description of each such vehicle including license plate numbers.

5.56.050 - Fees.

All license applications shall be accompanied by the applicable fee(s). The Town Clerk's office shall not accept a license application unless accompanied by the required fee(s).

All fees shall be established by resolution by the Board of Trustees.

5.56.060 - Investigation and issuance of license.

Upon the receipt of an application, the Town Clerk's Office shall, institute such investigation as deemed necessary by the Town Clerk's Office based upon the information contained in the application and necessary for the protection of the public good. Based upon the results of the investigation the Town Clerk shall recommend approval or disapproval of the license within forty-eight (48) hours of receipt, excluding weekends and holidays. The Town Clerk shall notify the applicant and, if the license application is approved, the Town Clerk shall, deliver the license to the applicant upon the applicant's appearance at Town Hall. Each solicitor must secure a photographic solicitors badge in addition to any license issued to an entity and payment for each license and photographic solicitors badge must be made prior to the background investigation. No refunds are given if the license(s) is not approved. No license shall be used at any time by any person other than the one to whom it is issued. The Town Clerk shall keep a record of all licenses issued.

5.56.070 - Soliciting signs.

All persons licensed pursuant to this chapter shall not contact any resident or business owner who has posted a "No Soliciting" sign on his or her property. Violation of this provision shall be grounds for revocation of license and subject to trespass violations.

5.56.080 - Hours of soliciting.

Licensees will be allowed to engage in the activities of soliciting only between the hours of nine a.m. and seven p.m. unless otherwise stated on their license due to special circumstances relative to the product or service being solicited.

5.56.090 - License and photographic solicitation badge to be displayed.

The Town Clerk shall issue to each licensee one license and photographic solicitation badge to each individual applicant. Photographic solicitation badges shall be visibly worn by each individual applicant at all times whenever the licensee is soliciting.

5.56.100 - Enforcement.

Police officers, the Town Clerk or designee shall have the primary responsibility for enforcement of these provisions. Any violations noted by the Town shall be reported to the Town Clerk's Office who shall keep a record of reports of violations as well as of any penalty which may be assessed therefor.

5.56.110 - Denial / Revocation of license.

- A. In addition to other provisions of this title, solicitor's licenses and individual solicitor applications may be denied or revoked for the following listed causes or for other good and substantial cause which is determined by the Police Department:
1. Any misrepresentation, fraud, deception, breach of warranty or breach of contract in the Town or elsewhere.
 2. Failure to comply with this Chapter or violation of any ordinance applicable to the applicant's permitted activities.
 3. Failure to obtain a sales tax license as required by the Town or failure of the applicant, his or her supervisor or his or her employer to remit any sales tax due to the Town.
 4. Any felony or misdemeanor convictions for crimes against the person or property of another or institutionalization for mental illness which caused acts of violence against the person or property of another; provided, however, that such felony or misdemeanor convictions or institutionalization occurred within the five (5) years preceding the date of the application.
 5. Conviction of any crime committed while engaged in solicitation in the Town.
 6. Conducting business in an unlawful manner or in a manner constituting a breach of the peace, a public nuisance or creating a danger to the health, safety or welfare

of the public.

a. For purposes of this Section:

- i. Crimes or acts of violence against the person of another shall include homicide, attempted homicide, rape, attempted rape, sexual assault, assault, battery and other similar felonies involving moral turpitude by whatever name.
- ii. Crimes or acts against the property of another shall include theft, burglary, breaking and entering, larceny and other similar felonies involving moral turpitude by whatever name.

B. If the Town Clerk finds that any of the grounds for denial set forth in this chapter exist, that an applicant has made a false statement in his or her application, that an employer has failed to supervise solicitation conducted under the license so as to reasonably ensure that such solicitation is in compliance with the terms of the license and with the provisions of this Chapter, or that the licenseholder has authorized, condoned or knowingly tolerated any unlawful solicitation or any solicitation conducted in such a manner as to constitute a menace to the health, Safety or general welfare of the public, the Town Clerk shall revoke and shall not renew the license. The permittee may appeal the Town Clerk's decision to the Town Manager.

5.56.120 - Transfer of License.

Licenses and / or solicitation badges may not be transferred from person to person.

5.56.130 - Appeal.

At his or her election, an applicant may appeal any decision relating to his or her license by the Town Clerk to the Town Manager.

5.56.140 - Expiration of license.

Each license shall expire one (1) year from the date of issuance unless otherwise revoked as provided by law. Any person wishing to renew a license must apply for the renewal no less than thirty (30) days prior to the expiration of its term. Said application shall be accompanied by a criminal background check required under this Chapter for each person who is to be authorized to solicit under the license during its renewal term. Failure to apply for such renewal within said thirty-day time period shall result in the expiration of the license. The renewal fee shall be determined by the Town Clerk in an amount sufficient to defray the costs incurred by the Town in processing the renewal application. Said fee shall be nonrefundable.

5.56.150 - Distribution of handbill and commercial flyers.

In addition to the other regulations contained in this Chapter, a person attempting to distribute or distributing commercial or noncommercial flyers within the Town shall observe the following regulations:

- A. No commercial or noncommercial flyer shall be left at or attached to any sign, utility pole, transit shelter or other structure within the public right-of-way.
- B. No commercial or noncommercial flyer shall be left at or attached to any privately owned property in a manner that causes damage to such privately owned property.
- C. Any commercial solicitor observed distributing commercial flyers shall be required to identify himself or herself to the police and verify his or her registration.

5.56.160 - Exemptions.

The following classes of persons otherwise engaging in door-to-door solicitation shall not be required to obtain a license, unless otherwise required by this Chapter:

- A. Delivery persons or route persons who are engaged in the business of servicing and soliciting in connection with sales and delivery routes of newspapers, milk and bread;
- B. All companies that have a franchise agreement with the Town;
- C. Persons advocating civic, religious, charitable or political causes;
- D. Members of a nationally recognized youth organization, including, but not limited to, the Boy Scouts of America, the Girl Scouts of America and the Boys and Girls Club of America, engaging in such organization's sponsored fundraising events; and
- E. School children engaging in school-authorized or school-sponsored Fundraising activities.

5.56.170 - Violation; penalty.

- A. It is unlawful for any person to engage in door-to-door commercial solicitation without a license and identification badge as required by this Chapter. Any person who so engages in door-to-door commercial solicitation shall, upon conviction, be punished by a fine not to exceed four hundred ninety-nine dollars (\$499.00) per offense. Each day of such violation shall be deemed a separate offense.
- B. It is unlawful for any person to employ any other person to engage in door-to-door commercial solicitation for a salary, commission or other remuneration in the Town without causing such employee to comply with this Chapter, and such person shall, upon conviction, be punished by a fine of not more than four hundred ninety-nine dollars (**\$499.00**) and shall be subject to having his or her license, license application and/or identification badge revoked, suspended or denied. Each person employed without compliance with the provisions of this Chapter shall be deemed a separate offense.

Chapter 5.60 - AUCTIONS

Sections:

5.60.010 - License required for auction.

It is unlawful for any person to conduct any auction within the Town without first having been issued a business license from the Town Clerk's Office. A separate business license shall be required for each auction. In addition to the license requirements of this title, auction applicants shall provide any other pertinent information requested by the Town Clerk's office for the purpose of administering the provisions of this title and shall comply with the following:

5.60.020 - Subject to separate sale.

In a sale by auction if goods are put up in lots, each lot is subject of a separate sale. A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner.

5.60.030 - Reserve.

Such sale is with reserve unless the goods are in explicit terms put up without reserve.

5.60.040 - Accumulation at site.

Merchandise or goods of any type which are to be auctioned shall not be accumulated at the auction site more than seven days prior to the auction and must be stored in compliance with Land Use and Zoning Codes. All merchandise and goods of any type shall be removed from the auction site within seventy-two (72) hours of completion of the auction.

5.60.050 - Location.

An auction may be conducted in any zone district in the Town. No more than two auctions per year shall be allowed at any location. In the event an applicant for a business license proposes conducting an auction in a residential zone within the Town of Monument, the Town staff in determining whether a business license shall issue for such auction, shall, in addition to all other criteria, consider whether the conduct of the auction shall constitute an undue infringement upon the neighborhood taking into account factors including but not limited to the hours of the auction, the goods to be auctioned, the quantity of goods, transportation, noise and dust.

5.60.060 - Duration of auction.

No auction shall be longer than two days in duration.

BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF MONUMENT, THIS ORDINANCE WAS INTRODUCED, PASSED, APPROVED AND ADOPTED on this 6th day of September, 2016, by a vote of 5 for and 0 against.

TOWN OF MONUMENT

Jeffrey Kaiser, Mayor

APPROVED AS TO FORM

Gary Shupp, Town Attorney

ATTEST:

Cynthia Sirochman, Town Clerk, CMC