

# CLEARFIELD CITY ORDINANCE 2025-24

## AN ORDINANCE AMENDING TITLE 4 OF THE CLEARFIELD CITY CODE

**PREAMBLE:** This Ordinance amends Title 4 – Business and License Regulations, Chapter 1– General Business and License Provisions; Title 4 Business and License Regulations, Chapter 5– Consumer Fireworks Sales; Title 4 – Business and License Regulations, Chapter 7– Rental Dwellings; Title 4 – Business and License Regulations, Chapter 10 – Retail Tobacco Specialty Licenses; Title 4 – Business and License Regulations, Chapter 12 – Massage Businesses and, enacts Title 4 Business and License Regulations, Chapter 14 – Mobile Food Vendors in the Clearfield City Code.

**BE IT ORDAINED BY THE CLEARFIELD CITY COUNCIL:**

### **Section 1. Enactment:**

*Title 4 – Business and License Regulations, Chapter 1– General Business and License Provisions is hereby amended to read as follows:*

#### Chapter 1 General Business and License Provision

#### SECTION:

- [4-1-1](#): Definitions
- [4-1-2](#): Classifications; Privileges
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#### 4-1-1: DEFINITIONS:

For the purposes of this title, the following terms shall have the meanings herein prescribed:

**APPLICANT:** Any person applying for any license provided for in this title. If the person is a partnership or corporation, then each partner, officer or director is considered an applicant and must qualify accordingly.

**BASE FEE:** The fee determined as the cost to prepare, process and administer the business license.

**BUSINESS:** Includes all activities together with any devices, machines or vehicles used therein for the purpose of gain or economic profit.

**CLASS OF BUSINESS:** A group of businesses doing similar types of things.

**DISPROPORTIONATE COST:** The additional cost assessed to businesses that require a greater level of basic service.

**EMPLOY:** Hiring an individual to work for pecuniary compensation or any other form of compensation, whether such person is hired on the payroll of the employer, as an independent contractor, as an agent or in any other form of employment relationship.

**ENGAGING IN BUSINESS:** One act constitutes engaging in business, and includes, but is not limited to, the sale of tangible personal or real property and the rendering of personal service for others for a consideration by persons engaged in craft, business, occupation, hobbies or other calling. Engaging in business shall also include, but not be limited to, one act of selling of any goods or services or soliciting business, or offering goods or services for hire. Engaging in business shall include the occupancy of any office or other space in which business transactions are carried out. Engaging in business shall also include the renting by a lessor of space, whether enclosed or not, to be used as office space for any use or endeavor, including, but not limited to, commercial, medical, dental, or other professional activities. Engaging in business shall also include the renting by a lessor of ~~three (3)~~ **one (1)** or more rental units, buildings, apartments, or houses for the purpose of profit, whether the units are enclosed within one structure or combination thereof.

**ENTITY:** Includes a corporation, partnership, limited liability company, or other lawful entity, organization, society or association.

**HAZARDOUS MATERIAL:** Those chemicals or substances which are physical hazards or health hazards in usable or waste condition according to the city's currently adopted fire code.

**HOME OCCUPATION:** Any income producing use conducted entirely within a dwelling unit and carried on only by persons residing in that dwelling unit, which use is clearly incidental, secondary and compatible to the residential use of the building. In general, a home occupation is an accessory use so located and conducted, that the average neighbor, under normal conditions, would be unaware of its existence.

**LICENSEE:** Any person who is issued a license under the provisions of this title.

**MINOR:** Any person less than eighteen (18) years of age.

**MOBILE FOOD VENDOR:** A person or entity engaged in selling food from a temporary location or mobile structure for a temporary period of time.

**NEW BUSINESS:** Any activity which results in gain or economic profit which has not been conducted previously by another licensee on that premises.

**NONPROFIT ORGANIZATION:** Any organization which was organized and is operating for charitable purposes and which meets the requirements of the internal revenue service of the U.S. department of treasury that exempt the organization from income taxation under the provisions of the internal revenue code.

**PAWNBROKER:** Shall have the meaning set forth in Utah Code Annotated title 13, chapter 32a for pawn and secondhand businesses.

**PERSON:** An individual, individuals, tenants in common, joint tenants, a corporation, partnership, firm, limited partnership, or any other association of individuals, however comprised or designated.

**RENTAL DWELLING UNIT:** Any individual dwelling unit, parcel of land, or portion thereof that is rented, loaned, let or hired out to be used or occupied as a home or residence. Rental dwelling unit includes any single-family home, duplex, townhome, condominium, mobile home, manufactured home, modular home, or apartment when used for such purposes.

**TEMPORARY OR SEASONAL MERCHANT:** A person who sells any nonfood product (i.e., flowers, Christmas trees, handcrafted items, etc.) at a temporary location for a temporary period of time.

#### **4-1-2: CLASSIFICATIONS; PRIVILEGES:**

A. Classifications: Licenses issued under the provisions of this chapter shall be of the following classes:

1. General business.
2. Temporary or seasonal merchant.
3. Beer.
4. Sexually oriented business.
5. Sexually oriented business employee.
6. Consumer fireworks sales.
7. Pawnbroker.
8. Rental dwelling.

9. Solicitor.
10. Mobile food vendor.
11. Retail tobacco specialty business.

~~12. Tattoo or body piercing establishment.~~

B. Privileges:

1. General Business License: A general business license shall allow the licensee to conduct business within the city as prescribed by this title, including the operation of a home occupation. Additional regulations for home occupations are set forth in title 11, chapter 16 of this code.

2. Temporary Or Seasonal Merchant License: A temporary or seasonal merchant license shall allow the licensee to engage in the business of selling nonfood products for a temporary period of time at a temporary location within the city pursuant to additional regulations for temporary or seasonal merchant licenses as set forth in this chapter, chapter 9 of this title, and title 11 of this code. A temporary or seasonal merchant's license shall not be required for merchants participating in a city sponsored event or activity.

3. Beer License: A beer license shall allow the licensee to engage in the business of selling beer within the city pursuant to additional privileges and regulations for beer licenses as set forth in this chapter and chapter 2 of this title. A valid general business license is required prior to the issuance of a beer license.

4. Sexually Oriented Business License: A sexually oriented business license shall allow the licensee to conduct a sexually oriented business within the city pursuant to additional regulations for sexually oriented business licenses as set forth in this chapter ~~and~~ chapter 4 of this title, and title 11 of this code.

5. Sexually Oriented Business Employee License: A sexually oriented business employee license shall allow the licensee to be employed by a sexually oriented business within the city pursuant to additional regulations for sexually oriented business employee licenses as set forth in this chapter and chapter 4 of this title.

6. Consumer Fireworks Sales License: A consumer fireworks sales license shall allow the licensee to engage in the business of selling consumer (class C) fireworks within the city pursuant to additional regulations for fireworks stand licenses as set forth in this chapter, ~~and~~ chapter 5, chapter 7 of this title, and title 11 of this code.

7. Pawnbroker License: A pawnbroker license shall allow the licensee to engage in the business of pawnbroker within the city pursuant to additional regulations for pawnbroker licenses as set forth in this chapter, ~~and~~ chapter 6 of this title, and title 11 of this code.

8. Rental Dwelling License: A rental dwelling license shall allow the licensee to own and/or operate a rental dwelling unit within the city pursuant to additional regulations for rental dwelling licenses as set forth in this chapter and chapter 7 of this title.

9. Solicitor's License: A solicitor's license shall allow the licensee to solicit within the city pursuant to additional regulations for solicitors' licenses set forth in chapter 8 of this title.

10. Mobile Food Vendor's License: A mobile food vendor's license shall allow the licensee to sell food within the city pursuant to additional regulations for mobile food vendor licenses set forth in chapter 14 of this title ~~for a temporary period of time from a temporary location or mobile structure~~. A mobile food vendor's license shall not be required for vendors participating in a city sponsored event or activity.

11. Retail Tobacco Specialty License: A retail tobacco specialty license shall allow the licensee to conduct business as a retail tobacco specialty business within the city pursuant to additional regulations set forth in this chapter, chapter 10 of this title, and title 11 of this code.

~~12. Tattoo Or Body Piercing Establishment License: A tattoo or body piercing license shall allow the licensee to conduct business as a tattoo or body piercing business within the city pursuant to additional regulations set forth in this chapter, chapter 11 of this title, and title 11 of this code.~~

#### 4-1-3: BUSINESS LICENSE OFFICIAL:

The city shall designate a business license official whose duties shall include the following:

- A. Process Applications: To process all applications for business licenses.
- B. Collect Fees: To be responsible for collection of all license fees and any accrued penalties.
- C. Issue Licenses: To issue licenses in the name of the city to all persons qualified under the provisions of this chapter.
- D. Enforce Rules And Regulations: To enforce all reasonable rules and regulations necessary to the operation and enforcement of this chapter.
- E. Secure Confidential Information: Subject to state and federal law, to keep all information furnished or secured under the authority of this chapter in strict confidence. Such information shall not be subject to public inspection and shall be kept so that the contents thereof shall not be known except to persons charged with the administration of this chapter. (Ord. 2008-04, 7-22-2008)

#### 4-1-4: LICENSE REQUIRED; EXCEPTIONS:

- A. Generally: It is unlawful for any person to engage in business within the city without first obtaining a license as required by this chapter.
- B. Contractors And Subcontractors: General contractors and subcontractors who live in the city or have an office in the city either in an office building or in their home, shall obtain a city business license and shall pay the base fee required by this chapter.
- C. Separate License: A separate license must be obtained for each branch established, or each separate place of business in which the business of the licensee is engaged. A separate license

must be obtained for each business conducted under the same roof unless conducted through the same books.

D. Deliveries Only: A business license will not be required of any company whose employees enter the city limits only for delivery of goods, such as flower delivery, parcel delivery, etc.

E. Home Occupations: All home occupations shall be required to obtain a general business license in accordance with the provisions of this chapter. Additional regulations for home occupations are set forth in title 11, chapter 16 of this code. The following activities are exempt from the requirement for a general business license:

1. Childcare for children of relatives.
2. Newspaper carriers.
3. Yard sales/garage sales.
4. Youth (minor) neighborhood seasonal work. (Ord. 2009-15, 11-24-2009)

#### 4-1-5: APPLICATION FOR LICENSE:

A. Information Required For Application For License: All applications for a license shall be made in writing upon the form(s) provided by the city. The application shall show:

1. The name of the business and the date of application.
2. The name(s) and signature(s) of the owner(s) of the business and the applicant requesting said license.
3. All vital statistics for the owner(s) of the business and the applicant as requested on application and required for police background checks.
4. The location where business is to be conducted and the mailing address of the premises of the business. (Ord. 2009-15, 11-24-2009)
5. Proof of business registration through the Utah department of commerce or Utah division of occupational and professional licensing shall be required for the following types of businesses: general businesses, home occupations, alcoholic beverages, sexually oriented businesses, fireworks sales, pawnbrokers, temporary or seasonal merchants, **retail tobacco specialty, solicitors**, and mobile food vendors. Childcare providers may obtain a license from the Utah bureau of child health and safety in lieu of registration with the Utah department of commerce. (Ord. 2011-04, 2-22-2011)
6. A Utah sales tax identification number, where applicable.
7. A federal employer identification number, where applicable.
8. Verification of approval by the Davis County health department, if applicable.
9. Any other information required by ordinance or the city.

B. Additional Information Required:

1. An application for a beer license shall show the information required by chapter 2 of this title.
2. An application for a temporary or seasonal merchant's license or ~~mobile food vendor's license~~ shall show the information required by chapter 9 of this title.
3. An application for a sexually oriented business or employee license shall show the information required by chapter 4 of this title.
4. An application for a fireworks stand license shall show the information required by chapter 5 of this title.
5. An application for a pawnbroker license shall show the information required by chapter 6 of this title.
6. An application for a rental dwelling license shall show the information required by chapter 7 of this title.
67. An application for a solicitor's license shall show the information required by chapter 8 of this title.
- 78. An application for a retail tobacco specialty license shall show the information required by chapter 10 of this title.
9. An application for a massage business license shall show the information required by chapter 12 of this title.
10. An application for a mobile food vendor license shall show the information required by chapter 14 of this title.

4-1-6: REVIEW AND APPROVAL PROCEDURES:

A. Application Review: Upon receiving a complete application for a license, the business license official shall, upon determining that the applicant and proposed business are in compliance with all applicable city ordinances and regulations, make a decision to either approve or deny the license. In making the decision, the business license official may consider recommendations from any or all of the following city staff, or their designees, if necessary:

1. The chief of police.
2. The planning and zoning administrator.
3. The building official.
4. The city attorney.

B. Notification To Applicant: The applicant shall be notified of the decision in writing by the business license official.

C. Regulations Specific To Sexually Oriented Business And Employee Licenses: Chapter 4, "Sexually Oriented Businesses And Employees", of this title, contains additional regulations that shall apply to the review and approval procedures for an application for a sexually oriented business or employee license. (Ord. 2009-15, 11-24-2009)

#### 4-1-7: DENIAL OR REVOCATION:

A. General Provisions: The business license official may deny an application for license or revoke a license for any of the following reasons:

1. Fraud or misrepresentation in its procurement.
2. Violation of this title by failure to comply with any or all of the provisions of this title.
3. Failure to pay any license fee levied when due.
4. Failure to comply with any of the requirements imposed by this code.
5. Violation of any city ordinance or state or federal statute concerning pornographic or harmful materials or performances at the licensed premises.
6. Conduct or acts of the licensee or employees, or any act permitted by them on the premises where such business is conducted, which render the premises a public nuisance or menace to the health, peace, safety or general welfare of the city.
7. A violation of city ordinance or federal or state statute relating to the business or activity which is licensed and resulting from the conduct of such business activity.
8. For any other good cause shown.

#### B. ~~Provisions Specific To Beer Licenses And Sexually Oriented Business And Employee Licenses~~ Additional Provisions Based on Specific License:

1. Chapter 2, "Alcoholic Beverage Control", of this title, contains additional criteria which may be cause for denial or revocation of a beer license by the business license official.
2. Chapter 4, "Sexually Oriented Businesses And Employees", of this title, contains additional criteria which may be cause for denial or revocation of a sexually oriented business or employee license by the business license official.
3. Chapter 8, "Soliciting," of this title, contains additional criteria which may be cause for denial or revocation of a soliciting license by the business license official.
4. Chapter 10, "Retail Tobacco Specialty Licenses," of this title, contains additional criteria which may be cause for denial or revocation of a retail tobacco specialty license by the business license official.
5. Chapter 12, "Massage Business License," of this title, contains additional criteria which may be cause for denial or revocation of a massage business license by the business license official.

C. Temporary Suspension: Under the direction of the chief of police, every peace officer is authorized to temporarily suspend and confiscate any license issued under this chapter for any violation of this chapter or of the alcoholic beverage control act. Such temporary suspension shall be reported in writing to the business license official within seventy two (72) hours, together with a statement of the reasons thereof. This report, along with the license, shall be delivered to the business license official who shall then take action with respect to the revocation of such license, or the restoration thereof. (Ord. 2009-15, 11-24-2009)

#### 4-1-8: APPEAL OF BUSINESS LICENSE OFFICIAL'S DECISION:

A. Written Appeal: Aggrieved applicants may appeal the decision of the business license official within ten (10) days of receipt or delivery of said decision. Appeals shall be filed by a written statement submitted to the city recorder detailing the grounds upon which the aggrieved applicant is appealing the business license official's decision. Upon receipt of such an appeal, it shall be scheduled for a hearing before the designated hearing officer within twenty (20) days, unless such time is extended for good cause.

B. Hearing Required: The hearing officer shall afford the appellant an opportunity, in a hearing, to show cause as to why the license should not be denied or revoked.

1. Notice: The date, time and place of the hearing shall be fixed by the city recorder and personal service of the appellant for the notice thereof shall be attempted. The city recorder must make reasonable steps to ensure the appellant gets actual notice. The notice shall indicate the purpose of the hearing and the action contemplated.

2. Procedure: At the hearing, the appellant shall have the right to appear personally or by counsel, to cross examine witnesses, and to produce evidence and witnesses on his behalf.

3. Burden Of Proof: The appellant has the burden of proof.

4. Standard Of Review: Legislative decisions shall be valid if "reasonably debatable" and not illegal. Administrative or quasi- judicial decisions shall be valid if supported by "substantial evidence" and not illegal.

5. Final Decision On Appeal And Notice Of Action Taken: After such hearing, the hearing officer will have seven (7) business days, unless extended for good cause, to issue written "findings, conclusions and recommendation" to the city council, which will also be provided to the appellant. After due deliberation upon the hearing officer's findings, conclusions and recommendation, which may (at the council's discretion) include taking additional evidence, the city council shall render a final decision on the appeal by adopting the hearing officer's findings, conclusions and recommendation, or taking some other action. The city recorder will notify the appellant in writing of final decision reached by the council. (Ord. 2012-05, 6-26-2012, eff. 7-1-2012)

#### 4-1-9: FEE FOR LICENSE:

A. Administration Fee Levied: For the purpose of regulating costs to the city and to regulate businesses for compliance to the land use, building and police codes, there is levied upon every

company or person engaging in business in the city, an administrative base fee, unless covered under exemptions, as follows:

1. The base fee shall be levied upon every new business for the first year.
2. In the event that a business is sold or transferred to another person, a new license and base fee shall be required.
3. For each calendar year thereafter, an administrative annual renewal fee shall be levied on every licensed business. (Ord. 2012-08, 9-28-2012)

B. Disproportionate Service Fee Levied:

1. An additional regulatory fee shall be assessed to any business that requires an enhanced level of service or creates a disproportionate cost to the city.

C. Discounts Or Exemptions Granted Provisionally; Disallowance And Collection:

1. Any discount or exemption to the full payment of licensing fees authorized under this title is granted conditioned upon the licensee's initial and continued compliance with the provisions of such discount or exemption. If the discount or exemption was improperly granted in reliance upon false, inaccurate or misleading information provided by the licensee, or if the licensee has become otherwise unqualified to receive such discount or exemption during the licensing year, the business license official is authorized and directed to:

- a. Determine the discounted portion of the business license fee that was improperly granted or for which the licensee is unqualified;
- b. Notify the licensee by first class mail, postage prepaid, that the discount or exemption has been disallowed and the reasons therefor; and

c. Proceed to collect the amount representing the disallowed discount or exemption.

2. The amount of such discount shall be considered to be delinquent if not paid within sixty (60) days after notification that the discount or exemption has been disallowed, or before renewal of the license, whichever occurs first. Failure to make payment for the full amount of the disallowed discount or exemption shall be grounds for revocation of the license.

3. The business license official's determination is subject to appeal pursuant to the provisions of this chapter.

D. Enumerated: The fees required by this title are set forth in the consolidated fee schedule adopted by the city council.

E. Exemptions:

1. Insurance Companies: Insurance companies shall obtain a license according to the provisions of this chapter but shall not pay a fee, pursuant to provisions of Utah code title 31A, chapter 9, as amended.

2. Nonprofit Organizations; Tax Exempt: No license fee shall be imposed under this chapter upon any person engaged in business solely for religious, charitable or other strictly nonprofit purposes if that person's activities are tax exempt under the laws of the United States and state of Utah; nor shall any license fee be imposed on any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or state of Utah. All such nonprofit organizations and organizations claiming to be tax exempt should fill out a no fee business license application form and submit a copy of said business tax exempt number, which will be placed on file with the no fee application.

F. Fee Additional To All Other Fees: The license fee imposed by this chapter shall be in addition to any and all other permits, taxes or licenses imposed by any other provisions of the ordinances of the city.

G. Declared Debt: Any license fee due and unpaid under this chapter and all penalties therein shall constitute a debt to the city and may be collected by court proceedings in the same manner as any other debt in like amount. This remedy shall be in addition to all other existing remedies.

#### 4-1-10: LICENSE PERIOD:

A. Twelve Months: Except as set forth in subsection C of this section, all licenses shall be valid for a period of twelve (12) months from the date of issuance, and must be renewed on an annual basis to remain valid. **Consumer Fireworks Sales, Mobile Food Vendor Licenses and Temporary or Seasonal Merchants are non-renewable.** Annual renewal fees must be paid in full to the city not more than forty five (45) days after the first day of the twelfth month or the license is deemed expired.

B. Renewal: At the time of annual renewal, an inspection may occur to ensure compliance with the ordinances of the city. If any changes have been made to the business, a new license may be required.

C. Temporary, **or** Seasonal Merchant **Or Mobile Food Vendor License**: A temporary or seasonal merchant's license **or mobile food vendor's license** shall be valid for a period of one hundred eighty (180) consecutive days.

#### 4-1-11: DELINQUENT DATE AND LATE FEE:

A. Due Date And Late Fee: To maintain a valid business license, all licensing fees that are imposed by this chapter (except the initial license fee for a new business, out of city contracted services, **consumer fireworks**, temporary and seasonal merchant licenses, or mobile food vendor's licenses) shall be remitted to the city not more than forty five (45) days after the expiration date of the license. In the event the fee is not paid within the forty five (45) days, a late fee shall be imposed and shall become a part of the license fee levied by this chapter.

B. Final Notice: A final notice shall be sent to all licensees whose annual license fee remains unpaid one month after expiration. This notice shall state that unless the license fee is paid within the forty five (45) day renewal period a late fee shall be imposed and legal action may be initiated by the city for engaging in business without a valid business license. The notice shall

also set forth the amount of the penalty fee. Should it be necessary to take this matter to court, the business shall become responsible to reimburse the city for all attorney fees, court costs and any other expenses incurred by the city to clear up the account.

C. Engaging Without License: Should any person be found in the act of engaging in business without a license, the late fee specified by the consolidated fee schedule shall be added as a civil penalty to the base fee upon required application.

D. Failure To Renew: For purposes under this section, new business licenses will not be issued to applicants who have an outstanding account balance.

#### 4-1-12: RULES AND REGULATIONS OF LICENSE AND LICENSEE:

A. Change In Business Location Or Name: In the event of a change in business name an amended license shall be required. The processing fee set forth in the consolidated fee schedule shall be required. In the event of a change in business location, a new license may be required.

B. Nontransferable: Licenses issued under this chapter shall not be transferable; in the event that a license is revoked, suspended, or otherwise invalidated under the provisions of this title, the fee paid by the licensee to the city shall be forfeited.

C. Duplicate License; Fee: The business license official shall require the fee specified by the consolidated fee schedule for each duplicate license issued to replace any license issued under the provisions of this chapter when the same has been lost or destroyed.

D. Refund: No portion of a license fee shall be refunded for any reason after the license has been issued.

E. Display Required: It is the duty of every licensee to keep this license displayed and exhibited while said business is current and valid. Every licensee not having a fixed place of business shall carry such license with him at all times while engaging in business for which the license is issued and shall produce said license for inspection when requested to do so by any person. The licensee shall not allow any license, special permit or insignia to remain displayed or used after the period for which it was issued has expired; or when it has been suspended or revoked, or for any other reason becomes ineffective. The licensee shall not loan, sell, give or assign to any other person, or allow any other person to use or display, or to destroy, damage or remove, or to have in his possession, except as authorized by the business license official, any license or insignia which has been issued to said licensee.

#### 4-1-13: INSPECTIONS OF PREMISES:

A. Every licensee shall allow inspection of the licensed premises by any peace officer or other authorized city official during regular business hours. Further, it is unlawful for any door or other means of ingress or egress for the licensed premises to be locked or to prevent access by any peace officer or other authorized city official while the premises are occupied or open to the public. In addition to any other civil or criminal penalties associated with violations of this section, such violations shall also constitute grounds for revocation of any license issued under this chapter.

B. The business license official, all police officers and all other city officials having duties to perform regarding licenses and businesses shall be designated license inspectors and shall have and exercise the following powers and duties:

1. To enter free of charge at any reasonable time, any place of business and to demand the exhibition of said business license for current term from any person engaged or employed in the transaction of such business.

2. To examine all places of business where a license is required and to determine that at such place of business, no business other than the business described in and covered by the license is transacted.

3. To report to the business license official all persons doing business without a proper and valid license for such business.

#### 4-1-14: FALSE INFORMATION PROHIBITED:

It is unlawful for any person to knowingly submit information which is false. (Ord. 2008-04, 7-22-2008)

#### 4-1-15: PENALTY:

In addition to any late fees or civil penalties, any person who violates any provision of this chapter shall be guilty of a class B misdemeanor which is punishable as set forth in section [1-4-1](#) of this code. Each separate day a person violates any provision of this chapter shall be a separate violation.

*Title 4 – Business and License Regulations, Chapter 5– Consumer Firework Sales is hereby amended to read as follows:*

### Chapter 5 Consumer Fireworks Sales

#### SECTION:

[4-5-1](#): Applicability

[4-5-2](#): License Required

[4-5-3](#): Definitions

[4-5-4](#): Enforcement

[4-5-5](#): Application For License

[4-5-6](#): Class C Fireworks

[4-5-7](#): Public Displays

[4-5-8](#): Rules And Regulations

[4-5-9](#): Unlawful Acts

[4-5-10](#): Excluded Businesses

[4-5-11](#): Penalty

#### 4-5-1: APPLICABILITY:

In addition to all rules and regulations set forth in chapter 1 of this title, the regulations contained in this chapter will apply to fireworks stand licenses.

#### 4-5-2: LICENSE REQUIRED:

It shall be unlawful for any person to engage in the business of selling consumer (class C, 1.4G) fireworks within the city without first obtaining the license required by this title.

#### 4-5-3: DEFINITIONS:

In addition to the definitions set forth in other sections of this code, the following words and phrases used in this chapter shall have the meanings herein prescribed:

**COMBINATION FIREWORKS DEVICE:** Any device containing combinations of two (2) or more of the effects described in the definition of "ground or handheld sparkling device" or "ground audible device", as defined in this section.

**FIREWORK:** Any composition or device manufactured or used for the purpose of producing a visible or audible effect by combustion, deflagration or detonation, but does not include model rockets, toy pistol caps, emergency signal flares, snakes or flow worms, party poppers, wire sparklers under thirty six inches (36") in length, matches or class A and B explosives.

**GROUND AUDIBLE DEVICE:** Any paper or cardboard tube containing not more than fifty milligrams (50 mg) of pyrotechnic material that travels along the ground (chaser) upon ignition and often produces a whistling and/or popping effect.

**GROUND OR HANDHELD SPARKLING DEVICE:** A. Any cylindrical tube (cylindrical fountain) not exceeding three-fourths inch ( $\frac{3}{4}$ ") inside diameter and containing not more than seventy five grams (75 g) of pyrotechnic composition which produces a shower of color and sparks upon ignition and may whistle or pop;

B. Any cardboard or heavy paper cone (cone fountain) containing up to fifty grams (50 g) of pyrotechnic composition which produces a shower of color and sparks upon ignition and may whistle or pop;

C. Any cylindrical tube (illuminating torch) containing up to one hundred grams (100 g) of pyrotechnic composition which produces colored fire upon ignition;

D. Any pyrotechnic device (wheel) capable of being attached to a post or tree containing up to six (6) (driver) units or tubes not exceeding one-half inch ( $\frac{1}{2}$ ") in inside diameter that each contain not more than sixty grams (60 g) of pyrotechnic composition per driver unit which revolves upon ignition producing a shower of color and sparks and sometimes a whistling effect;

E. Any device similar in design and effect to a "wheel" capable of being placed on the ground (ground spinner) and ignited; and

F. Any narrow paper fuseless tube (flitter sparkler) filled with pyrotechnic composition that produces color and sparks when the popper at one end of the tube is ignited.

TRICK NOISEMAKER: A. Any tube or sphere containing pyrotechnic composition that upon ignition produces white or colored smoke (smoke device) as its primary effect; and

B. Any device that produces a small report intended to surprise the user, including:

1. A "booby trap" which is a small tube with a string, protruding from both ends that ignites the friction sensitive composition in the tube when the string is pulled;

2. A "snapper" which is a small paper wrapped device containing a minute quantity of explosive composition coated on bits of sand which explodes producing a small report;

3. A "trick match" which is a kitchen or book match coated with a small quantity of explosive or pyrotechnic composition that produces a small shower of sparks when ignited;

4. A "cigarette load" which is a small wooden peg coated with a small quantity of explosive composition that produces a small report when the cigarette is ignited; and

5. An "auto burglar alarm" which is a tube which contains pyrotechnic composition that produces a loud whistle and smoke when ignited. A small quantity of explosive, not exceeding fifty milligrams (50 mg), may also be used to produce a small report. A squib is used to ignite the device.

#### 4-5-4: ENFORCEMENT:

A. Authority: Every county or municipal officer charged with the enforcement of state and municipal laws, including all fire enforcement officials, are charged with the responsibility to enforce this chapter.

B. Seizure And Destruction: Fireworks sold or offered for sale in violation of this chapter may be seized and destroyed and any license of the person selling or offering fireworks for sale may be revoked.

#### 4-5-5: APPLICATION FOR LICENSE:

All applications for a consumer fireworks sales license shall be made in writing upon the form provided by the city and shall show the information required by chapter 1 of this title. The following shall also be provided:

A. Fee; ~~Cleaning Deposit~~: The license fee ~~and cleaning deposit~~ specified by the consolidated fee schedule. ~~The deposit may be refunded upon site cleaning to the satisfaction of the city.~~

B. Location: Set forth the proposed location of the temporary stand or indoor sales location.

C. Insurance Certificates: Include for delivery to the city recorder, insurance certificates evidencing public liability coverage in favor of the applicant in the amount as established by the consolidated fee schedule; and property damage coverage in favor of the applicant in the amount

as established by the consolidated fee schedule. Said insurance certificate shall include a minimum of ~~one~~ **three** million dollars (\$~~1~~**3**,000,000.00) product liability coverage.

D. Agreement To Comply: Include a statement that the licensee agrees to comply strictly with the terms of any license granted and to furnish any additional information upon request.

E. Sales Tax Permit: Include a **temporary** sales tax permit.

F. Written Permission From Property Owner: A copy of a valid lease or written permission from the property owner allowing the temporary or seasonal merchant or mobile food vendor to conduct business on the property.

G. Access To Restroom Facility: Written permission granting use of an existing restroom facility on or nearby the property within three hundred feet (300') of the business location, which shall be available during all hours of operation.

H. Site Plan: A site plan, drawn to scale, showing the property and its existing features (i.e., buildings, parking stalls, drive aisles, sidewalks, fire hydrants); the exact location of the vendor in relation to buildings, sidewalks, roadways, driveways, fire hydrants and other important features on the property; all components of the business with sizes/dimensions (i.e., temporary structure, storage bin, trash receptacle, required parking stalls); and photographs and/or illustrations showing all components of the business (i.e., temporary structure, storage bin, trash receptacle, signage). The site plan and photographs/illustrations shall include all information necessary to show compliance with the applicable zoning requirements set forth in title 11 of this code.

I. Electrical Plan: If power is required for the business, an electrical plan showing the power source, how it is connected to the temporary structure, how it is protected from the elements, wire size and location. If it is a new power source, an electrical permit must be obtained from the city.

#### 4-5-6: CLASS C FIREWORKS:

A. Hazard Not Created: No amount of retail storage or retail sales of class C fireworks shall, by its presence, create a distinct hazard to the life, safety of the customer, employee or property.

B. Indoor Sales: Properly licensed, retail class C fireworks sales may be conducted indoors inside permanent structures. These structures must be a nonmovable building, securely attached to a foundation, housing a business licensed to sell merchandise in addition to fireworks. In all retail sales locations in permanent structures, the area where fireworks are displayed or stored shall be at least fifty feet (50') from any flammable liquid or gas, or other highly combustible material. Fireworks shall not be stored (including stock for sale) near exit doorways, stairways or in locations that would impede egress.

C. Temporary Stands And Trailers: Properly licensed retail, class C fireworks sales may be conducted from a temporary stand or trailer which is a nonpermanent structure used exclusively for the sale of fireworks. Such sales must be subject to the following requirements:

1. Exit Doors: Each stand or trailer shall have a minimum of two (2) approved exit doors which swing out at opposite ends of the stand. Door locking devices, if any, shall be easily released from the inside without special knowledge, key or effort.

2. Aisle: Each stand or trailer shall have a minimum three foot (3') wide unobstructed aisle, running the length of the stand or trailer, inside and behind the counter.

3. Prevention Of Customer Touching Or Handling: The pass-through openings for sales of fireworks in stands or trailers shall be arranged to permit the customer to view the merchandise for sale but prevent the touching or handling of nonprepackaged fireworks by the customer.

4. Zoning: Temporary stands or trailers for the sale of fireworks shall be located in properly zoned areas, at least twenty five feet (25') from other fireworks stands or trailers, LPG, flammable liquid or gas storage and dispensing units.

5. Locking Devices: If the stand or trailer is used for the overnight storage of fireworks, it shall be equipped with suitable locking devices to prevent unauthorized entry.

6. Illumination Or Heating: Stands or trailers shall not be illuminated or heated by any device requiring an open flame or exposed heating elements. All heaters and lighting devices shall be approved by the authority having jurisdiction.

7. Entrance By General Public: The general public shall not be allowed to enter a temporary stand or trailer.

8. Location And Removal Of Stand: Temporary stands and trailers shall be located on site no earlier than fourteen (14) days before the first date of authorized sale, and shall be removed no later than five (5) days after the final date of authorized sale.

~~9. Deposit Or Bond: Prior to the issuance of a license, each licensee for a temporary stand or trailer shall file with the business license official a cash deposit, certificate of deposit or surety bond made payable to the city, in the amount specified by the consolidated fee schedule to assure compliance with the provisions of this section, including, but not limited to, the removal of the stand and the cleaning of the site. In the event the licensee does not comply or remove the stand or clean the site, the city may do so, or cause the same to be done by other persons and the reasonable cost shall be a charge against the licensee and his deposit or surety bond.~~

#### 4-5-7: PUBLIC DISPLAYS:

A. Permit Required: The city may, upon application in writing, upon the posting of a suitable bond, grant a permit for the public display of fireworks by religious, fraternal or civic organizations, fair associations, amusement parks or other organizations. The city council is authorized to grant such permission by resolution when such display is handled by a competent operator, who shall be approved by the chief of police. The chief of police may consult with the fire marshal in making his or her decision. Such display shall be of such a character and so located, discharged or fired as in the opinion of the chief of police and the fire marshal, after proper inspection, shall not be hazardous to property or endanger any person or persons. After

such permit shall have been granted, sales, possession, use and distribution of fireworks for such display shall be lawful for that purpose only.

B. Application For Permit: All such applications for permits shall set forth the date, the hour and place of making such display and the place of storing fireworks prior to the display; and further, the name of the person making the display; and the name of the person in charge of the igniting, firing, setting off, exploding or causing to be exploded such fireworks. The location of the storage place shall be subject to the approval of the chief of police, who may consult with the fire marshal. No permit granted hereunder shall be transferable.

C. ~~Bond Or~~ Liability Insurance: Any application for a permit as herein provided shall be accompanied by a certificate of insurance naming Clearfield City as an additional insured. Such insurance shall be in a sum not less than \$3,000,000 per occurrence and aggregate for bodily injury, property damage, personal & advertising injury and products & completed operations liability. No city officer or licensing agent or other representative of the city shall in any event issue any permit hereinabove referred to until such certificate of insurance has been furnished and passed upon by the city attorney or designee as to form and sufficiency.

~~Any application for permit as herein provided shall be accompanied by a certificate of insurance insuring the licensee and naming the city as an additional insured, conditioned for the payment of all damages which may be caused either to a person or to property by reason of the display so licensed and arising from any acts of the licensee, his agents or employees. Such insurance shall be in a sum not less than one hundred thousand dollars (\$100,000.00) per person and three hundred thousand dollars (\$300,000.00) per occurrence for bodily injury, and fifty thousand dollars (\$50,000.00) per person and one hundred thousand dollars (\$100,000.00) per occurrence for property damage and no city officer or licensing agent or other representative of the city shall in any event issue any permit hereinabove referred to until such certificate of insurance has been furnished and passed upon by the city manager and the city attorney as to form and sufficiency.~~

#### 4-5-8: RULES AND REGULATIONS:

All retail sales of consumer fireworks authorized by this chapter shall be subject to the following rules and regulations:

A. Authority: The city council may adopt rules establishing minimum safety standards, reasonable under the circumstances, for the retail storage, retail handling and retail sale of common fireworks.

B. Sign Posted: ~~Dates Authorized:~~

1. ~~Sales: Fireworks may be sold on or between June 20 and July 25; or between December 20 and January 2; and fifteen (15) days before and on the Chinese New Year.~~

~~2. Discharge: Fireworks may be discharged three (3) days prior to, on the day of and three (3) days following July 4, July 24, January 1 and the Chinese New Year.~~

~~3. Sign Posted:~~ A sign, clearly visible to the general public, shall be posted at all fireworks sales locations indicating the legal dates for discharge of fireworks.

C. Supervision: All fireworks retail sales locations shall be under the direct supervision of a responsible person who is sixteen (16) years of age or older. A salesperson shall remain at the sales location at all times, unless suitable locking devices are provided to prevent the unauthorized access to the merchandise by others, or the merchandise shall be removed.

D. Sales To Minors: Fireworks shall not be sold to any person under the age of sixteen (16) years, unless accompanied by an adult.

E. Building Construction: Buildings and temporary stands or trailers for the retail sales of fireworks shall be constructed in compliance with local regulations or if none, in accordance with nationally recognized good practice.

F. Combustible Materials Cleared: All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least twenty five feet (25') in all directions.

G. Storage Within Residential Areas: Storage of fireworks for sale shall not be located in residential areas.

H. Smoking: Smoking shall not be permitted within fifty feet (50') of any fireworks, either on display for retail sale or being stored. "Smoking Prohibited Within 50 Feet" (or similar wording) signs shall be conspicuously posted at all sales and storage locations.

I. Fire Extinguisher: All retail sales locations shall be equipped with an approved, portable fire extinguisher having a combined rating of at least 2A:10BC, or as required by the authority having jurisdiction.

#### 4-5-9: UNLAWFUL ACTS:

A. Sales, Possession Or Discharge Of Specific Fireworks: It is unlawful for any person to sell or offer for retail sale, or to possess or to discharge any fireworks in the city other than those defined as "ground or handheld sparkling device", "ground audible device", "combination fireworks device" or "trick noisemaker", as defined in section [4-5-3](#) of this chapter.

B. Sparklers Within Specific Distance: It shall be unlawful for any person to ignite, explode, project or otherwise fire or use, or permit the ignition, explosion or projection of any sparkler upon, over or onto the property of another.

C. Possession Or Discharge Of Fireworks On Public Property: It is unlawful for any person to possess or to discharge any fireworks on any public property. Public property includes, but is not limited to, schools, city parks, the Clearfield City building, any other property owned by the city or any other public entity. This subsection shall not apply to events provided by or authorized by Clearfield City.

#### 4-5-10: EXCLUDED BUSINESSES:

This chapter does not apply to the product inventories of fireworks manufacturers, importers, distributors or wholesalers designated for shipment directly out of the city. Nothing in this chapter shall supersede the provisions of section 23-13-7, Utah Code Annotated.

#### 4-5-11: PENALTY:

Any person violating any of the provisions of this chapter shall be deemed guilty of a class B misdemeanor and subject to penalty as provided in section 1-4-1 of this code.

*Title 4 – Business and License Regulations, Chapter 7– Rental Dwellings is hereby amended to read as follows:*

### Chapter 7 Rental Dwellings

4-7-1: Applicability

4-7-2: License Required

4-7-3: Application For License

4-7-4: Review And Approval Procedures

4-7-5: Rules And Regulations

4-7-6: Inspections

4-7-7: Fees

4-7-8: ~~Good Landlord Incentive Program~~

4-7-9: Penalty

#### 4-7-1: APPLICABILITY:

In addition to all rules and regulations set forth in chapter 1 of this title, the regulations contained in this chapter shall apply to rental dwelling licenses.

#### 4-7-2: LICENSE REQUIRED:

It shall be unlawful for any person, as owner, lessee or agent thereof, to keep, conduct, operate or maintain any rental dwelling within the city without first obtaining the license required by this chapter.

#### 4-7-3: APPLICATION FOR LICENSE:

A. All applications for a rental dwelling license shall be made in writing upon the forms provided by the city. In addition to the information required by chapter 1 of this title, an application for a rental dwelling license shall also show:

1. A record, including the address, of each rental dwelling unit owned by the applicant.
2. A valid e-mail address for the owner ~~or and~~ property manager of each rental dwelling ~~unit~~ license.
3. A signed statement certifying the rental dwelling unit's compliance with applicable safety and building code, ~~zoning ordinances, property maintenance regulations, fit premises regulations, property maintenance code, housing codes, health codes etc. and the premises must be kept free of any public nuisance as defined by city ordinance or state law.~~

~~B. Applicants who desire to participate in the city's good landlord program shall also complete and submit the good landlord program agreement, which shall be provided by the city.~~

#### 4-7-4: REVIEW AND APPROVAL PROCEDURES:

The process for review and approval of an application for a rental dwelling license shall be in accordance with chapter 1 of this title.

#### 4-7-5: RULES AND REGULATIONS:

A. One License: Only one rental dwelling license shall be required for each person or entity owning rental dwelling units within the city.

B. Amendment To License: Any licensee who acquires or sells any rental dwelling unit within the city after licensure but before renewal shall amend the license within thirty (30) days of acquisition or sale of the rental dwelling unit ~~and shall pay the fees required by this title.~~

#### 4-7-6: INSPECTIONS:

A. The business license official or their designee shall be permitted to make an inspection of any rental dwelling unit to enforce any of this title or any other applicable statute or ordinance, and may enter the building or may enter upon the premises during regular business hours; or, if there are no regular business hours, the business license official or their designee shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If the property owner or other responsible person refuses to allow an inspection, the business license official or their designee may obtain and execute a search warrant.

B. No owner, occupant, or any other person having charge, care, or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to properly permit entry therein by the business license official or their designee for the purpose of inspection and examination to ensure compliance with this title.

#### 4-7-7: FEES:

A. The fees for a rental dwelling license shall be in accordance with the city's current consolidated fee schedule as approved by the city council.

~~B. A disproportionate service fee shall be paid for each rental dwelling unit in accordance with the current consolidated fee schedule. A disproportionate service fee shall not be charged for an owner occupied unit in a multi-unit building.~~

~~C. Members of the city's good landlord incentive program shall be eligible for a discount on the disproportionate service fee.~~

#### ~~4-7-8: GOOD LANDLORD INCENTIVE PROGRAM:~~

~~A. The city shall establish a good landlord incentive program that provides discounts toward the payment of certain business licensing fees to owners of rental dwelling units who actively implement those aspects of the program determined by the city to be related to the control and~~

prevention of illegal activity on rental dwelling units, and who keep their properties free of code violations that affect the quality of life within the city. All applicants for a rental dwelling license shall be informed of the availability of the program.

~~—B. No discount shall be provided to any landlord unless and until the city certifies that the requirements of this section and all other requirements of the good landlord incentive program have been met.~~

~~—C. No landlord shall qualify for discounts under the good landlord incentive program unless all of the following minimum requirements are met at the time of application for a rental dwelling license:~~

~~—1. The landlord, or the landlord's bona fide agent for all aspects of property management, and all managers of the landlord responsible for the day to day management of the rental dwelling units, shall attend and complete an acceptable landlord training program once every two (2) years.~~

~~—a. First time applicants to the good landlord incentive program shall be required to complete the training within six (6) months of the date of application.~~

~~—b. Failure to complete the program within the time frame specified in subsection C1a of this section shall be grounds for disqualification from the program.~~

~~—c. Any landlord previously disqualified from the good landlord incentive program shall be required to show evidence of completion of the training program and compliance with the provisions of this code at the time of reapplication to the good landlord incentive program.~~

~~—2. The landlord shall implement and maintain those aspects of property management determined by the city to be related to the control and prevention of illegal activity on rental property.~~

~~—3. The rental dwellings and the surrounding premises must be owned and maintained in compliance with city ordinances affecting the use, care or maintenance of real property (zoning ordinances, property maintenance regulations, fit premises regulations, property maintenance code, housing codes, health codes, etc.), and the premises kept free of any public nuisance as defined by city ordinance or state law; provided, however, that a landlord will be considered to be in compliance with this requirement if violations are corrected in the time frame required under any notice of violation.~~

~~—4. The landlord shall have paid any outstanding civil penalty assessed against the landlord for failing to correct a notice of violation applicable to the landlord's rental dwelling.~~

~~—D. The annual discount allowed under the program against the payment of business licensing fees attributable to rental dwellings shall be in accordance with the city's current consolidated fee schedule.~~

~~—E. The discount provided herein is conditioned upon the landlord's compliance with the requirements of the program during the term of the licensing year for which the discount is granted.~~

~~—1. If it is determined that a landlord, or any of a landlord's rental dwelling units, is not in compliance with the requirements of the good landlord incentive program during any portion of the licensing period for which a discount was provided, the landlord, together with all his or her rental dwelling units, shall be disqualified from the program, and the discount shall be disallowed in accordance with the provisions of chapter 1 of this title for the entirety of the term of such license. The landlord shall be required to pay the full fee for every rental dwelling unit listed on their license application for that year.~~

~~—2. After disqualification, the landlord may qualify for the program in the next licensing year only if the landlord has corrected the problems leading to the disqualification and paid all amounts disallowed in the prior year.~~

#### 4-7-9: PENALTY:

Any person violating any of the provisions of this chapter shall be guilty of a class B misdemeanor and subject to penalty as provided in section 1-4-1 of this code. Each separate day a person violates any provision of this chapter shall be a separate violation.

*Title 4 – Business and License Regulations, Chapter 10– Retail Tobacco Specialty Licenses is hereby amended to read as follows:*

### Chapter 10 Retail Tobacco Specialty Licenses

#### SECTION:

4-10-1: Applicability

4-10-2: License Required

4-10-3: Definitions

4-10-4: Review And Approval Procedures

4-10-5: Rules And Regulations

4-10-6: Denial Or Revocation

4-10-7: Penalty

#### 4-10-1: APPLICABILITY:

In addition to all rules and regulations set forth in chapter 1 of this title, the regulations contained in this chapter shall apply to retail tobacco specialty businesses.

#### 4-10-2: LICENSE REQUIRED:

It is unlawful for any person to engage in the business of conducting a retail tobacco specialty business within the city without first obtaining the licenses required by this chapter and chapter 1 of this title. ~~Except as provided in subsection A of this section, and beginning July 1, 2012, a business entity that conducts a retail tobacco specialty business within the city shall be licensed.~~

A. Pursuant to Utah Code Annotated section 10-8-41.6 (as amended), a retail tobacco specialty business that has a business license and is operating lawfully in a municipality on or before May 8, 2012, is not subject to additional zoning requirements exclusively applicable to retail tobacco specialty businesses as set forth in section 11-13-30 of this code.

B. A retail tobacco specialty business may maintain an exemption under subsection A of this section only if:

1. The business license is renewed continuously without relapse or permanent revocation;
2. The retail tobacco specialty license is not closed for business or otherwise suspends the sale of tobacco products for more than sixty (60) consecutive days;
3. The retail tobacco specialty business does not substantially change the business premises or its business operation; and
4. The retail tobacco specialty business maintains the right to operate under the terms of other applicable laws, including zoning ordinances, building codes, and the original business license issued prior to May 8, 2012.

#### 4-10-3: DEFINITIONS:

In addition to the definitions set forth in other sections of this code, the following words and phrases used in this chapter shall have the meanings herein prescribed:

COMMUNITY LOCATION: A public or private kindergarten, elementary, middle, junior high, or high school, a licensed childcare facility or preschool, a trade or technical school, a church, a public library, a public playground, a public park, a youth center or other space used primarily for youth oriented activities, a public recreational facility, ~~or~~ a public arcade, ~~or a homeless shelter.~~

RETAIL TOBACCO SPECIALTY BUSINESS: A commercial establishment in which:

- A. ~~Sales of tobacco products, electronic cigarette products, and nicotine products account for more than 35% of the total quarterly gross receipts for the establishment;~~
- B. ~~20% or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;~~
- C. ~~20% or more of the total shelf space is allocated to the offer, display, or storage of tobacco products, electronic cigarette products, or nicotine products;~~
- D. ~~If the commercial establishment holds itself out as a retail tobacco specialty business and causes a reasonable person to believe the commercial establishment is a retail tobacco specialty~~

business or the retail space features a self-service display for tobacco products, electronic cigarette products, or nicotine products.

TOBACCO PARAPHERNALIA: Any equipment, product, or material of any kind which is used, intended to use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar, cigarette, or tobacco in any form into the human body, including:

- A. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- B. Water pipes;
- C. Carburetion tubes and devices;
- D. Smoking and carburetion masks;
- E. Roach clips: meaning objects used to hold burning material, such as a cigarette, that has become too small or too short to be held in the hand;
- F. Chamber pipes;
- G. Carburetor pipes;
- H. Electric pipes;
- I. Air driven pipes;
- J. Chillums;
- K. Bongs; and
- L. Ice pipes or chillers,

but not including matches or lighters.

TOBACCO PRODUCT: Any cigar, cigarette, ~~or electronic cigarette as defined in Utah Code Annotated 76-10-101; or a tobacco product as defined in Utah Code Annotated 59-14-102, including: tobacco in any form including~~ chewing tobacco; or any substitute for a tobacco product, including flavoring or additives to tobacco; ~~and tobacco paraphernalia as defined in Utah Code Annotated 76-10-104.1.~~

#### 4-10-4: REVIEW AND APPROVAL PROCEDURES:

The process for review and approval of an application for a retail tobacco specialty business license shall be in accordance with chapter 1 of this title. The following shall also be provided:

- A. A site plan, drawn to scale, shall include all information necessary to show compliance with the applicable zoning requirements set forth in title 11 of this code, including the following:
  - 1. Location of the proposed business that includes adjacent properties within one thousand five hundred feet (1,500') of business.

2. All adjacent properties shall be labeled with the existing business name and/or use.
3. If a community location, agricultural or residential use, or other retail tobacco specialty businesses are located within one thousand feet (1,000') or less, then dimensions on the site plan shall be provided.
  - a. The measurements will be taken from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of the community location, agricultural or residential use, or other retail tobacco specialty business, without regard to intervening structures or zoning districts.
4. A valid permit for a retail tobacco specialty business issued by the local health department.
5. A valid license issued by the State Tax Commission to sell either tobacco products, electronic cigarette products or nicotine products as defined in Utah Code Annotated 10-8-41.6(9) as amended.

#### 4-10-5: RULES AND REGULATIONS:

- A. Compliance With Zoning Regulations: Each retail tobacco specialty license shall comply with the applicable zoning requirements set forth in title 11 of this code.
- B. Providing Tobacco Products To Minors: It is unlawful for any person to knowingly, intentionally, recklessly, or with criminal negligence provide any tobacco product to any person under ~~nineteen (19)~~ **twenty-one (21)** years of age. Any person who violates this subsection is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A misdemeanor on subsequent offenses.
- C. Providing Tobacco Paraphernalia To Minors: It is unlawful for a person to, knowingly, intentionally, recklessly, or with criminal negligence provide any tobacco paraphernalia to any person under ~~nineteen (19)~~ **twenty-one (21)** years of age. Any person who violates this subsection is guilty of a class C misdemeanor on the first offense and a class B misdemeanor on subsequent offenses.

#### 4-10-6: DENIAL OR REVOCATION:

In addition to the reasons set forth in chapter 1 of this title for denial or revocation of a license, the business license official may deny or revoke a retail tobacco specialty license:

- A. If a licensee engages in a pattern of unlawful activity under Utah code, title 76, chapter 10, part 16, pattern of unlawful activity ~~aet.~~
- B. If a licensee violates the regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents issued by the United States food and drug administration, 21 CFR part 1140; or
- C. Under other provisions of state law, **county** or city ordinance.

#### 4-10-7: PENALTY:

Unless otherwise specified, any person violating any of the provisions of this chapter shall be guilty of a class B misdemeanor and subject to penalty as provided in section [1-4-1](#) of this code. Each separate day a person violates any provision of this chapter shall be a separate violation.

*Title 4 – Business and License Regulations, Chapter 12– Massage Businesses is hereby amended to read as follows:*

## Chapter 12 Massage Businesses

### Article I. General Provisions

#### SECTION:

[4-12-1](#): Findings And Purpose

[4-12-2](#): Administration And Enforcement

[4-12-3](#): Definitions

[4-12-4](#): Transfer Of License; Sale Of Massage Business

~~[4-12-5](#): Summary Criminal History Information Repealed.~~

### Article II. Massage Business License

[4-12-6](#): Massage Business License Required; Exemptions

[4-12-7](#): Application For Massage Establishment, Sole Massage Therapist Establishment, Or Outcall Massage Service License

[4-12-8](#): Requirements For Massage Facilities

[4-12-9](#): Referral Of Massage Establishment And Sole Massage Therapist Establishment License Applications To Other Departments; Police Department Notification

[4-12-10](#): Issuance Of Massage Establishment, Sole Massage Therapist Establishment, Or Outcall Massage Service License

[4-12-11](#): Operating Requirements

[4-12-12](#): Inspection

[4-12-13](#): Suspension Or Revocation Of Massage Establishment, Sole Massage Therapist Establishment, Or Outcall Massage Service License

### Article III. Fees

[4-12-14](#): Massage Establishments, Sole Massage Therapist Establishment, And Outcall Massage Service Fees; Reinspection Fees

## Article IV. Enforcement And Penalties

[4-12-15](#): Notice Of Business License Violation

[4-12-16](#): Business License Violation; Hearing And Appeal

[4-12-17](#): Appeal Of Final Determination Of Business License Violation

[4-12-18](#): Violations And Administrative Penalties

[4-12-19](#): Enforcement

[4-12-20](#): Cooperative Efforts With Law Enforcement

[4-12-21](#): Undertaking For The General Welfare

[4-12-22](#): Severability

[4-12-23](#): No Conflict With State Or Federal Law

### **4-12-1: FINDINGS AND PURPOSE:**

A. Massage professionals and businesses providing massage therapy promote public health and well-being with therapeutic practices that temper aches and pains, ease stress, reduce blood pressure, and provide other valuable health benefits.

B. In communities across the United States, illicit massage businesses are known venues for human trafficking. Traffickers in these venues commonly operate by opening establishments that are disguised as legitimate massage or bodywork businesses. In the process, they secure legally required licenses and licensure to conceal their actual activities: sex trafficking and/or forced labor. As a result, these human trafficking venues are blending in with and operating next to other legitimate businesses in urban business districts, suburban strip malls, and rural towns throughout the U.S.

C. The city does not conflate these illicit businesses with legitimate massage businesses and massage practitioners. This chapter seeks to exercise the city's authority to regulate both massage practitioners and massage businesses in such a way as to support and encourage legitimate massage practitioners and massage businesses, while discouraging illicit massage businesses and removing all illicit massage business from the city.

### **4-12-2: ADMINISTRATION AND ENFORCEMENT:**

This chapter shall be administered through the business license official for Clearfield city. Enforcement may include all available administrative, civil, and/or criminal remedies available pursuant to local, state, or federal laws.

### **4-12-3: DEFINITIONS:**

For the purposes of this chapter:

**ADMINISTRATIVE HEARING OFFICER:** The person appointed by the city manager to preside and conduct a business license violation appeal hearing under this chapter.

The hearing officer may be a department head, other than the supervisor of the business license official, or a non-city employed person with requisite skill and experience.

**BUSINESS LICENSE OFFICIAL:** The business license official of Clearfield city, or any individual designated by the business license official to act on his or her behalf.

**CITY:** Clearfield city.

**CITY MASSAGE THERAPIST IDENTIFICATION BADGE:** That badge which is issued by the city to a licensed massage therapist that will provide massage services in a massage establishment.

**COMPENSATION:** A payment, loan, advance, donation, contribution, deposit, forgiveness of debt, or gift of money or anything of value.

**CONVICTED:** Having pled guilty or having received a verdict of guilty, including a verdict following a plea of nolo contendere or no contest to a crime, as well as entering into a plea held in abeyance or in a diversion, or any other similar type of plea agreement.

**DEPARTMENT:** The city's licensing division.

**DOPL:** The Utah Division of Occupational and Professional Licensing, which is located within the Department of Commerce and is legislatively charged to administer and enforce specific laws related to the licensing and regulations of certain occupations and professions, including massage.

**INSPECTOR:** A department employee responsible for conducting inspections on behalf of the department.

**LICENSED MASSAGE THERAPIST:** An individual who administers massage for compensation and holds a valid and active license to practice massage issued by DOPL, including those individuals that have a DOPL license as a massage apprentice.

**MASSAGE:** Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external soft pads of the body with the hands or with the aid of any apparatus or appliance.

**MASSAGE BUSINESS:** Massage establishment, outcall massage service, and sole massage therapist establishment, collectively.

**MASSAGE ESTABLISHMENT:** A fixed place of business where more than one individual administers massage for compensation, excluding those locations where massage is provided only on an outcall basis.

**OUTCALL MASSAGE SERVICE:** Any business other than a massage establishment or sole massage therapist establishment that provides massage for compensation at a location designated by the client rather than on its premises.

OWNER: Any individual, partnership, firm, association, corporation, or combination of individuals of whatever form or character with an ownership interest in a business that provides massage services.

SOLE MESSAGE THERAPIST ESTABLISHMENT: A fixed place of business solely owned by a massage therapist, which individual is the only person who provides massage for compensation.

SOLE PRACTITIONER: A licensed massage therapist who provides massage for compensation without any partners, associates, or employees, and absent any business relationship with a massage establishment.

#### 4-12-4: TRANSFER OF LICENSE; SALE OF MESSAGE BUSINESS:

A. No license issued by the city under this chapter shall be transferable under any circumstances, including but not limited to the sale of the massage business.

B. Upon the effective date of the sale of a massage business, the license for the massage business shall expire. If a licensee sells a massage business, the licensee shall promptly surrender the license to the business license official no later than the effective date of the sale. This obligation is not dependent on the business license official's requesting the surrender, but arises as a result of the sale of the massage business. If the licensee fails to surrender the license to the business license official as required by this subsection, the business license official may, after giving the licensee notice by mail or electronically of the proposed action and an opportunity to respond, establish that the license has expired and hence is not a valid license, and that it must be surrendered.

#### ~~4-12-5: SUMMARY CRIMINAL HISTORY INFORMATION:~~

~~The business license official may require the submission of local, state, and federal level summary criminal history information for licensing, and/or certification of massage businesses and massage practitioners, and for the suspension or revocation of licenses, and/or certification of massage businesses and massage practitioners, and may not disseminate the information to a private entity. The business license official may not accept a summary report that is greater than three (3) months old prior to submission, and may require a summary report to be updated at any given time. Repealed.~~

## Article II. Massage Business License

#### 4-12-6: MESSAGE BUSINESS LICENSE REQUIRED; EXEMPTIONS:

A. License Required: It shall be unlawful for any owner of a massage establishment, sole massage therapist establishment, or outcall massage service to operate that massage business at any location in the city without first obtaining a license for such massage business from the business license official. In the event that a business owner or operator disclaims that the

business is a massage business, the business license official may hold a hearing to determine whether a license under this chapter is required.

B. Exemptions: The following businesses may provide massage services without obtaining a massage business license:

1. Businesses providing massage services performed solely by physicians, surgeons, chiropractors, osteopaths, nurses, or any physical therapists, who are duly licensed to practice their respective professions in the state of Utah and persons working directly under the supervision of or at the direction of such licensed persons, working at the same location as the licensed person, and administering massage services subject to review or oversight by the licensed person.

2. Businesses providing massage services performed solely by barbers or cosmetologists who are duly licensed under the laws of the state of Utah, while engaging in practices within the scope of their licenses, and limited to the massaging of the neck, face, scalp, hands, or feet of the clients.

3. Hospitals, nursing homes, mental health facilities, or any other health facilities duly licensed by the state of Utah, providing massage services performed solely by their employees acting within the scope of their employment. (Ord. 2019-24, 9-10-2019)

4. An individual performing massage services who holds a valid license, permit, certificate, or registration, for massage services issued by any other jurisdiction of the United States or by a foreign country; or holds a certification from a nationally recognized massage therapy organization if the nonresident individual is from a jurisdiction of the United States that does not regulate massage and is temporarily performing massage services in this state for a period that does not exceed 30 days for the purpose of:

a. presenting educational or clinical programs, lectures, seminars, or workshops;

b. providing massage services during an emergency as part of a disaster response team;  
or

c. consulting with a licensed individual regarding massage services.

#### 4-12-7: APPLICATION FOR MASSAGE ESTABLISHMENT, SOLE MASSAGE THERAPIST ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE LICENSE:

A. Application Requirements: To apply for a massage establishment, sole massage therapist establishment, or outcall massage service license, the owner shall:

1. File an application with the business license official upon a form provided by the business license official;

~~2. Provide a complete set of fingerprints in the manner required by the business license official from any person with an ownership interest in the massage business for the purpose of undergoing a criminal background check;~~

~~32~~. Pay a non-refundable application fee, as set forth in the city's consolidated fee schedule; and

~~43~~. License inspection of any massage facilities proposed to be operated under the license by all relevant city departments, including but not limited to the department of building inspection, the planning department, and the fire department.

B. Applicant Information: The application form shall require the applicant to provide, under penalty of perjury, the following information:

1. The name(s), address(es), and any other identifying information regarding the owner(s) as requested by the business license official;

2. A description of all services to be rendered by the massage business;

3. The address of any facilities proposed to be operated under a massage establishment or sole massage therapist establishment license, and a copy of the rental agreement or lease showing the names of the landlord and all of the tenants or lessees who are parties to the rental agreement; or, if the owner owns the premises, a copy of the deed and a disclosure of any other person or entity with a shared ownership interest in the premises;

4. The number of individuals to be employed by the massage business, and, except in the case of a sole massage therapist establishment, the names and licenses of any massage therapists who shall operate under that license;

5. All licenses, certificates, or licenses related to the practice of massage or the operation of a massage establishment or massage service, currently or formerly held by an owner, issued in Clearfield city or elsewhere, including any discipline imposed by the issuing authority and a statement whether the license holder is currently the subject of a disciplinary process;

6. All felony or misdemeanor convictions for each person with an ownership interest in the massage business;

7. A floor plan of the proposed massage establishment, indicating the location of all massage treatment rooms, massage tables, massage chairs, and employee areas;

8. A certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the Utah Labor Code; and

9. Any additional information as required by the business license official.

C. Organizational Owners: If the owner of the massage establishment or outcall massage service is or includes a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation together with the names and residence addresses of each of the officers, directors, and each stockholder holding more than ten percent (10%) of the stock of the corporation. If the owner is or includes a partnership, the application shall set forth the name and the residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to corporate applicants applies. The applicant shall provide the information required in subsections ~~A2~~, B1, B5, and B6

of this section for each officer, director, and stockholder holding more than ten percent (10%) of the stock of the corporation, or for each partner, including limited partners.

D. **Proof Of DOPL Certification For Sole Practitioners:** In addition to the information required under subsection B of this section, an applicant for a sole massage therapist establishment license shall provide proof that he or she holds a current, valid DOPL certificate.

E. **Deadline For Submission Of Supporting Documentation:** After reviewing a massage business license application, the business license official shall notify the applicant in writing that the application is complete and accepted for further review, or incomplete. If the business license official deems the application to be incomplete, the applicant shall supply the information or documentation that is required for the application to be deemed complete. The applicant shall have thirty (30) calendar days from the date that the business license official provides notification that the application is incomplete to provide all required information and/or documentation. If the applicant does not provide such information within thirty (30) calendar days, the application will be deemed abandoned and will not receive further consideration. (Ord. 2019-24, 9-10-2019)

#### 4-12-8: REQUIREMENTS FOR MASSAGE FACILITIES:

All proposed massage facilities must comply with the following requirements, and with any rules and regulations adopted by the business license official pursuant to section 4-12-2:

A. **Toilet Rooms And Other Rooms:** Toilet rooms shall be provided for clients in convenient locations.

1. Construction of rooms used for toilets, laundry, and mop sinks, as well as rooms used for tubs, wet tables, steam baths, saunas, and shower stalls, shall be made of waterproof, non-absorbent materials that are easily cleaned and shall be installed in accordance with the city's building regulations found in title 10, as well as all other applicable state or federal building regulations.

2. Plumbing fixtures in toilet rooms as well as rooms used for tubs, steam baths, and showers shall be installed in accordance with the International Plumbing Code, as adopted by the city in title 10, city's building regulations.

3. Urinals may be substituted for toilets after one toilet has been provided.

4. Doors to toilet rooms shall open inward.

B. **Handwashing Facilities:** Handwashing facilities shall be provided within or adjacent to the toilet rooms and shall be equipped with an adequate supply of hot and cold running water under pressure.

1. Handwashing facilities must provide liquid hand soap in a pump or a wall-mounted dispenser and sanitary wall mounted disposable paper towels.

2. Handwashing facilities shall be readily accessible to massage practitioners.

C. Light And Ventilation: All portions of the massage establishment shall be provided with adequate light by means of windows, skylights, or with an approved artificial light. Adequate ventilation shall be provided by means of windows or a mechanical operating ventilating system.

1. Toilet, dressing, and massage rooms shall be provided with at least one hundred eight (108) lux (ten (10) foot candles) of light.

2. All electrical equipment shall be installed in accordance with the requirements of the National Electric Code, as adopted by the city in title 10, city's building regulations. (Ord. 2019-24, 9-10-2019)

**4-12-9: REFERRAL OF MASSAGE ESTABLISHMENT AND SOLE MASSAGE THERAPIST ESTABLISHMENT LICENSE APPLICATIONS TO OTHER DEPARTMENTS; POLICE DEPARTMENT NOTIFICATION:**

A. Code Review: The business license official, within fourteen (14) calendar days of receiving an application for a license to operate a massage establishment or sole massage therapist establishment shall refer the application to the city department of building inspection and the city police, fire, and planning departments. Said departments shall inspect the facilities proposed to be operated as a massage establishment or a sole massage therapist establishment and shall make written findings to the business license official concerning compliance with codes that they administer.

B. Law Enforcement: The business license official shall notify the police department of all approved and denied massage business license applications. (Ord. 2019-24, 9-10-2019)

**4-12-10: ISSUANCE OF MASSAGE ESTABLISHMENT, SOLE MASSAGE THERAPIST ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE LICENSE:**

A. Within sixty (60) calendar business days following receipt of a completed application for a massage business license, or, for applications subject to referral under section 4-12-9, within thirty (30) calendar days of receiving all written findings, whichever is later, the business license official shall either issue the license or mail a written statement of his or her reasons for denial thereof to the applicant. If the business license official takes neither action, the license shall be deemed issued.

B. No massage establishment, sole massage therapist establishment, or outcall massage service license shall be issued if the business license official finds:

1. The applicant has provided materially false information, documents, or testimony in support of the application or in any other matter before the business license official; or

2. The facilities as proposed by the applicant would not comply with all applicable laws including, but not limited to, the facilities requirements set forth in section 4-12-8, the city building, planning, housing, and fire codes, or any rule or regulation related to massage facilities adopted by the business license official pursuant to this chapter; or

3. Within thirty six (36) months prior to the application, the applicant has had any license or license of any kind suspended or revoked by the business license official; or

4. Prior to the date of application, the applicant has had any license, certificate, or license related to the practice of massage or operation of a massage establishment or massage service revoked; or

5. The applicant has been convicted of any of the following offenses, at any time prior to making application:

- a. Any offense involving the use of coercion, force, or violence upon another person; or
- b. Any misdemeanor sexual battery; or
- c. Any offense involving sexual misconduct with children; or
- d. Any offense involving pimping or pandering; or
- e. Any offense related to human trafficking; or
- f. Any offense requiring registration pursuant to title 77, chapter 41 of the Utah Code Annotated; or

6. Sanitation violations pursuant to section 4-12-11A.

7. The business license official revoked permission to operate a massage business at the same location within the prior thirty six (36) months; or

8. The business license official finds that the premises or the massage business will be or is being managed, conducted, or maintained in such a manner as to endanger the health and safety of the employees or clients, or to coerce any employee to engage in illegal conduct; or

9. The applicant has not fully complied with the provisions of this chapter; or

10. The applicant has not demonstrated eligibility for a license under this chapter.

C. Right To Request For Reconsideration Of Denial By Business License Official: If an application for a massage establishment, sole practitioner massage establishment, or an outcall massage service permit is denied, the applicant may make a request for reconsideration to the business license official within fourteen (14) calendar days of the date listed on the notice of denial by notifying the business license official in writing and explaining the ground or grounds for reconsideration. Within ten (10) calendar days of receipt of the request for reconsideration, the business license official shall review the records, and at the discretion of the business license official, may hold a hearing to consider the request for reconsideration, before issuing a final written decision.

D. Right To Appeal Business License Official's Final Written Decision: If an application for a massage establishment, sole massage therapist establishment, or an outcall massage service license is denied after a business license official's request for reconsideration pursuant to division C, the applicant may appeal the denial to the city manager within fourteen (14) calendar days of

the date listed on the notice of denial by submitting a written notice of appeal to the city recorder. This appeal shall be a review of the written basis for appeal, any written response from the city, and the record. No testimony will be provided. The written appeal shall include the following:

1. A brief basis for appeal, no more than two (2) pages.

- a. The format for the written appeal shall be twelve (12) point font, double-spaced, on standard sized (eight and a half by eleven inch (8.5" x 11")) paper, with one inch margins;

2. A complete and accurate copy of all documents provided by the applicant to be considered during the business license official hearing; and

3. A complete and accurate copy of the business license official's final written decision from the request for reconsideration.

E. The city may or may not submit a written response within seven (7) calendar days to the "brief basis for appeal" under the length and formatting requirements set forth in division D1a.

F. The city manager shall make a written final determination. The city manager shall make this final determination not less than seven (7) calendar days, but no more than fourteen (14) calendar days from the date of a timely made appeal.

G. The failure of the city manager to provide a timely final determination as outlined above shall be considered an upholding of the business license official's final written decision. (Ord. 2019-24, 9-10-2019)

#### 4-12-11: OPERATING REQUIREMENTS:

Massage establishments, sole massage therapist establishments, and outcall massage services must comply with the following operating requirements to the extent applicable:

A. Cleanliness And Hygiene: Massage facilities, including all appliances and apparatuses, shall be kept clean and operated in a sanitary condition.

1. Adequate and suitable space shall be provided for storage of clean linens, including, but not limited to, sheets, towels, and apparel.

2. Clean sheets and towels shall be provided, laundered after each use, and stored in a sanitary manner.

3. No towels or sheets shall be laundered or dried on the premises in the absence of suitable laundry facilities.

4. Smooth, cleanable, and appropriately labeled receptacles for the storage of soiled linens and towels shall be provided.

5. Soiled refuse shall be appropriately bagged and disposed of.

6. Wet and dry heat rooms, shower compartments, and toilet rooms shall be thoroughly cleaned each business day.

7. Bathtubs shall be thoroughly cleaned and sanitized after each use.

8. The facility shall be free of vermin, including, but not limited to, cockroaches, mice, rats, and other pests that carry disease.

B. Changing Area: A room, enclosure, or designated area shall be provided where clients can change and store their clothes.

C. Employee Area: A room, enclosure, or designated area that is separate from the toilet, massage room(s), steam room, or other common areas shared by the clients shall be made available to employees at all times. The employee area(s) shall be furnished with individual lockers and adequate storage space for employees' personal belongings. Members of the public may not have access to the employee area.

D. Employment Of Minors Prohibited: It shall be unlawful to employ any individual who is not at least eighteen (18) years of age.

E. Register Of Practitioners: Every massage establishment or outcall massage service that hires or contracts with individuals to provide massage services shall ensure at all times that each such individual holds a valid and current DOPL certificate, as well as a city massage therapist identification badge. The massage establishment or outcall massage service shall maintain a register of practitioners that includes each practitioner's DOPL certificate number and a copy of the city massage therapist identification badge, which shall be provided to the city, as well as available for inspection by the department at all times.

F. Therapist Conduct: Massage establishments shall be responsible for the conduct of all individuals providing massage for compensation on their business premises and shall ensure that such individuals properly display their city massage therapist identification badge at all times while on the premises of a massage establishment, as well as ensure that they do not wear improper attire or engage in lewd conduct, which is generally defined as, but not limited to, the following:

1. Required Attire: Massage practitioners shall remain fully clothed while administering massage or otherwise present in a part of the massage establishment to which the public has access (e.g., massage rooms, reception areas, publicly accessible restrooms), including premises designated by the client through an outcall massage service. The massage practitioner's attire shall not include: (1) attire that is transparent, see-through, or that substantially exposes the practitioner's undergarments; (2) swim attire, unless the massage therapist is providing a water-based massage modality that has been approved by DOPL; or (3) attire that exposes the individual's areolas, breasts, buttocks, or genitals.

2. Lewd Conduct Prohibited: Massage practitioners shall not engage in lewd conduct on business premises, including locations designated by the client through an outcall massage service. Lewd acts include, but are not limited to: the performance of acts or simulated acts of

sexual intercourse, masturbation, bestiality, copulation (oral, anal or vaginal), or flagellation; the actual or simulated caressing or fondling by one adult human being of the anus, genitals or breasts, of another adult human being; the actual or simulated displaying of the pubic hair, anus, vagina, penis, vulva, buttocks, areola, or any other external genitalia of the human body. The existence of clothing, a towel, or any other such matter material on or covering either or both the massage practitioner or client does not alleviate the above restricted conduct, nor is it a defense to prohibited conduct.

G. Locks: Doors that permit entry into any treatment room may not be equipped with locks or any device designed to prevent, impede, or delay entry into a room. Massage establishment exterior doors may be equipped with locks, but shall remain unlocked while the massage establishment is open. Exterior doors may remain locked while the massage establishment is open only if there is no more than one employee or independent contractor on the premises of the establishment, exclusive of the establishment owner.

H. No Alcohol Or Illegal Drugs Permitted On Premises: No alcoholic beverages or drugs may be sold, served, used, or possessed on business premises during business hours.

I. Human Trafficking Information Notices: Massage establishments must post in a conspicuous place near the public entrance of the establishment or in another conspicuous location in clear view of the public and employees, the following notice, which is provided by the city:

"If you or someone you know is being forced to engage in any activity and cannot leave-whether it is commercial sex, housework, farm work, construction, factory, retail, or restaurant work, or any other activity-text 233733 (Be Free) or call the National Human Trafficking Hotline at 1-888-373-7888 or the Utah Human Trafficking Tipline at 801-200-3443 to access help and services.

J. Residential Use: Massage facility premises shall not be used as a sleeping room or for any other residential purpose. A massage establishment shall be presumed to be used for residential purposes if any of the following items are maintained on the premises:

1. Beds or mattresses, other than professional massage tables;
2. Bedding, such as pillows, blankets, and sheets, other than those used for professional massage tables;
3. Sleepwear, including but not limited to, pajamas, nightgowns, and lingerie;
4. Groceries that require cooking, such as raw meats, poultry, fish, and grains; or
5. Clothing that exceeds one change of clothing for each employee or independent contractor who is present on the premises.

K. Establishment License To Be Displayed: Every license to operate a massage establishment or sole massage therapist establishment shall be displayed in a conspicuous place within the establishment such that the license may be readily seen by individuals entering the premises.

L. Outcall Massage Service License Subject To Inspection: Every license to operate an outcall massage service must be made available for inspection by the department at all times while providing massage services.

M. Hours Of Operation: No massage business shall operate or provide massage services, and no customer or person not employed or contracted by the massage business may be on the premises of a massage establishment, during the hours between ten o'clock (10:00) P.M. and seven o'clock (7:00) A.M.

N. Advertising: No massage business shall publish or distribute, or cause to be published or distributed, including on the internet, any advertising for services that would violate this chapter.

O. Operation Of Massage School Prohibited: No massage business shall operate a massage school or otherwise provide instruction in massage on the premises of a massage establishment. (Ord. 2019-24, 9-10-2019)

#### 4-12-12: INSPECTION:

Any member of the department may inspect any massage establishment or sole massage therapist establishment to determine whether the establishment is operating in compliance with the provisions of local, state, or federal laws, or for the purpose of providing educational materials to employees of the establishment in culturally and linguistically appropriate languages regarding employee rights and information on a variety of resources, including linkage to health care services, victim services, and emergency numbers and hotlines to call for information and assistance. Nothing in this section shall be construed to limit or restrict the lawful authority of a police officer or other city employee to enter premises licensed under this chapter. (Ord. 2019-24, 9-10-2019)

#### 4-12-13: SUSPENSION OR REVOCATION OF MASSAGE ESTABLISHMENT, SOLE MASSAGE THERAPIST ESTABLISHMENT, OR OUTCALL MASSAGE SERVICE LICENSE:

A. Grounds For Suspension Or Revocation: The business license official may revoke or suspend any massage establishment, sole massage therapist establishment, or outcall massage service license, if the business license official finds:

1. Facts sufficient to support the denial of such license on any ground set forth in section 4-12-10; or
2. The licensee or the licensee's agent, employee, or independent contractor has refused to permit a lawful inspection of its business premises or its operations, or has interfered with city staff in the performance of an inspection such as by threatening them, touching them, or intentionally delaying their entry to the premises of the massage business; or
3. The licensee or the licensee's agent, employee, or independent contractor has engaged in any conduct in connection with the operation of the business that violates the operating requirements set forth in this chapter, any rules or regulations related to massage business

operations, or any local, state or federal laws relating to the practice of massage or the operation of a massage business; or

4. The business license official determines that such massage business is being managed, conducted, or maintained without regard for public health or the health of clients or employees, or without due regard for proper sanitation and hygiene.

B. The business license official may not suspend or revoke a massage business license under this chapter until the business license official has issued a notice of business license violation and provided the massage business and the owner of the property upon which the massage business is located an opportunity to be heard and respond as provided in section 4-12-16.

C. Notwithstanding subsection B, the business license official may suspend summarily any massage business license issued under this chapter when, in the judgment of the business license official, a public health hazard requires such summary suspension, or the business license official deems the summary suspension to be in the best interest of the public. The business license official shall provide written notice of such summary suspension to the license holder pursuant to the service defined in section 1-16B-3. No more than three calendar days after written notice of such summary suspension is given, the (3) business license official shall issue a notice of business license violation identifying the alleged acts or failures to act that constitute the basis for the summary suspension, and provide the massage business an opportunity to be heard and respond as provided in section 4-12-16, as to why the summary suspension should end. However, the time for hearing and decision shall be accelerated as follows:

1. Upon a timely request for a hearing, the business license official shall set any requested hearing within fourteen (14) calendar days, unless time is extended by mutual agreement of the affected parties; and

2. The business license official, or designee, who shall have the same authority as the business license official to hear and decide the case, and make any orders consistent with this chapter, shall issue a decision on the summary suspension within seven (7) calendar days after hearing.

D. If the licensee appeals a decision by the business license official or designee upholding a summary suspension, the summary suspension shall remain in effect pending a final decision of the appeal. Where a license is revoked after a summary suspension, the revocation shall be effective immediately and, if the licensee further appeals, shall remain in effect pending a final decision of the appeal.

### Article III. Fees

#### 4-12-14: MASSAGE ESTABLISHMENTS, SOLE MASSAGE THERAPIST ESTABLISHMENT, AND OUTCALL MASSAGE SERVICE FEES; REINSPECTION FEES:

A. Massage Establishments: The application fee for a massage establishment license shall be set forth in the city's consolidated fee schedule. The annual license fee for a massage

establishment shall be set forth in the city's consolidated fee schedule. The fee shall be due annually.

B. Sole Massage Therapist Establishments: The application fee for a sole massage therapist establishment license shall be set forth in the city's consolidated fee schedule. The annual license fee for a sole massage therapist establishment shall be set forth in the city's consolidated fee schedule. The fee shall be due annually.

C. Outcall Massage Services: The application fee for an outcall massage service license shall be set forth in the city's consolidated fee schedule. The annual license fee for an outcall massage service shall be set forth in the city's consolidated fee schedule. The fee shall be due annually.

D. Exception: A licensed massage therapist holding a sole massage therapist establishment license shall not be required to pay any additional application or annual license fee for an outcall massage service license.

E. Reinspection Fees: If an inspection discloses a violation of any provision of this code or of any state law for which the city is responsible for enforcement, the city shall determine a period of time that is reasonable to correct the violation and shall thereafter reinspect the property to verify such correction. The term "reinspection" shall refer to any inspection by the department to verify whether an owner has corrected a violation. The massage business shall pay a fee as set forth in the city's consolidated fee schedule, to compensate the department for its costs in performing the reinspection. Reinspections that require more than one hour to complete shall be subject to an additional fee, as set forth in the city's consolidated fee schedule. If more than one reinspection is necessary to secure correction of a violation, the massage business shall pay a fee in the amount set forth herein for each reinspection. In the event that the massage business fails to pay any reinspection fee due under this section within thirty (30) days of the due date, the massage business must pay a late payment penalty, as set forth in the city's consolidated fee schedule and the city may collect the reinspection fee through the placement of a lien in the amount of the fee and any late payment penalty owed or delinquent, plus interest of one and a half percent (1.5%) per month, against the real property pursuant to the procedures set forth in section 1-16B-21, recovery of fees and costs.

#### Article IV.

##### 4-12-15: NOTICE OF BUSINESS LICENSE VIOLATION:

A. If the business license official determines that a massage business is operating in violation of this chapter, (which is deemed in the entirety of this section to include a violation of a license condition and/or a violation of the rules and regulations adopted pursuant to this chapter), the business license official may issue a notice of business license violation to the massage business, the owner of real property where the violation occurred, and/or any other persons the business license official deems responsible for causing the violation.

B. The notice of business license violation shall include the following information:

1. That the business license official has made a determination the massage business has operated in violation of this chapter;
2. The alleged acts or failures to act that constitute the basis for the business license official's determination;
3. That the business license official intends to take enforcement action against the massage business, owner of real property, and/or any other person deemed responsible for causing the violation(s), and the nature of that action, including the administrative penalty and enforcement costs to be imposed, and/or the suspension or revocation of the massage establishment license(s);
4. That the massage business, owner of real property, and/or any other person deemed responsible for causing the violation(s) has the right to request a hearing before the administrative hearing officer for the city, and that said request for a hearing must be made in writing within ten (10) calendar days after the notice of business license violation is served. Service shall be in accordance with section 1-16B-3.

5. A sole practitioner renting or leasing to a sole practitioner is not liable for the actions of the sole practitioner to which the sole practitioner rents or leases so long as the sole practitioner:

- a. verifies that the sole practitioner who is renting or leasing is a licensed massage therapist and in good standing in the state of Utah at the time of the rental or lease;
- b. obtains a signed attestation from the sole practitioner who is renting or leasing that the sole practitioner has no business arrangement with the licensed individual other than a rental or lease; and
- c. produces copies of the following if requested by the city:
  - d. the sole practitioner's state massage license;
  - e. the sole practitioner's signed attestation described in subsection (2); and
  - f. the rental agreement.

C. If no request for a hearing is filed with the business license official within the appropriate period, the right to request a hearing shall be deemed waived, and the business license official's determination shall become final and effective ten (10) calendar days after the notice of business license violation is served. The business license official shall issue an order imposing the enforcement action, and shall send the order to the persons served with the notice of business license violation. In subsequent civil proceedings, such violations shall be deemed not to have been corrected. Where no hearing is timely requested, an order suspending or revoking a license is final. The failure of the person on whom the notice of business license violation is served to request a hearing shall constitute a failure to exhaust administrative remedies and shall preclude the person from obtaining judicial review of the validity of the enforcement action. (Ord. 2019-24, 9-10-2019)

4-12-16: BUSINESS LICENSE VIOLATION; HEARING AND APPEAL:

A. Purpose: The city finds that there is a need to establish uniform procedures for business license hearings conducted pursuant to this chapter. It is the purpose and intent of the city to afford due process of law to any person who is directly affected by a business license violation. Due process of law includes notice, an explanation of the accusations, and an opportunity to be heard prior to imposition of a penalty. These procedures are also intended to establish a forum to efficiently, expeditiously, and fairly review and resolve issues raised in any notice of business license violation.

B. Request For Business License Violation Appeal Hearing:

1. An owner of a massage business has the right to request a business license violation appeal hearing by filing a written request and paying the required filing fee, if the request is filed within ten (10) calendar days after the notice of business license violation is served.

2. As soon as practicable after receiving a request for hearing, the city manager or his or her designee shall arrange for and appoint an administrative hearing officer, and the administrative hearing officer will schedule a date, time, and place for the hearing, and will serve written notice of the same to all known owners.

3. Failure to timely request a hearing as provided shall constitute a waiver of the right to a hearing and a waiver of the right to challenge the city's action set out in the notice of violation. Such a failure to request a hearing will result in a default judgment being entered upholding the notice of violation and assessing accrued fees, penalties and costs.

C. Procedures At Business License Violation Appeal Hearings:

1. Informal In Nature: Business license violation appeal hearings are intended to be informal in nature. The formal Utah Rules of Evidence and Discovery do not apply; however, an informal exchange of relevant documents and other evidence may be required at the discretion of the administrative hearing officer.

2. Discovery Requests: Discovery requests must be in writing directed to the opposing party. Failure to timely request discovery shall preclude a continuance to enable additional discovery or investigation.

3. Personal Information Protected: A complainant's personal identifying information is protected and shall not be released unless the complainant is a witness at the hearing.

4. Burden Of Proof:

a. The city bears the burden of proof at a business license violation appeal hearing requested to substantively challenge a notice of business violation.

b. At a hearing challenging the suspension or revocation of a massage business license, the owner of the massage business will bear the burden of proof and persuasion with respect to the claim that a violation did not occur.

5. **Standard Of Proof:** The standard of proof to be used by the administrative hearing officer in deciding any issue at a business license violation appeal hearing is the preponderance of the evidence. A preponderance of the evidence shows what is more likely than not.

6. **Activities Allowed To Support Case:** Each party shall have the opportunity to cross examine witnesses and present evidence in support of his or her case. If approved in advance by the administrative hearing officer, testimony may be given by telephone or other electronic means.

7. **Hearings Open To Public:** All hearings are open to the public. Hearings shall be recorded to enable verbatim transcripts to be prepared as needed.

8. **Representation By Attorney:** The owner of a massage business may be represented by an attorney. If an attorney will be representing the owner at the hearing, notice of the attorney's name, address, and telephone number must be given to the city's business license official at least seventy two (72) hours prior to the hearing. If timely notice is not given, and an attorney appears for an owner, the hearing will be continued at the city's request, and any costs of the continuance will be assessed to the owner.

9. **Fee Refund If Violation Dismissed:** If the administrative hearing officer dismisses the notice of business license violation entirely, the hearing fee shall be refunded to the owner who paid it.

D. **Failure To Attend A Business License Appeal Hearing:** Any owner named in a business license notice of violation who fails to appear at a duly noticed hearing is deemed to waive the right to a hearing, which will result in a default judgment entered for the city as to that owner and massage business. (Ord. 2019-24, 9-10-2019)

#### 4-12-17: APPEAL OF FINAL DETERMINATION OF BUSINESS LICENSE VIOLATION:

A. **Judicial Review:** Any person adversely affected by any final business license violation determination issued following a business license violation appeal hearing, may file a petition for review of the final business license violation appeal determination in the District Court within thirty (30) days after the date of the final business license violation appeal determination.

B. **Exhaustion Of Administrative Remedies:** No person may challenge in District Court a final business license violation appeal determination until that person has exhausted his or her administrative remedies.

C. **Obtaining The Administrative Record For Judicial Review:** Within thirty (30) days after submitting a petition for review in the District Court, the party petitioning for judicial review shall request a copy of the record of the business license violation appeal hearing, including transcripts if required by the District Court. The city shall not submit copies of files or transcripts to the reviewing court until the party petitioning for judicial review has paid all required copying and transcription costs. The petitioning party's failure to properly arrange for copies of the record, or to pay the full costs for the record, within sixty (60) days after the petition for review was filed shall be grounds for dismissal of the petition. The city shall have an additional sixty

(60) business days from the date of request to prepare and submit the requested file and/or transcript.

D. Possible Remand Back To City: If a transcript of a hearing cannot be prepared because the tape recording is incomplete or unintelligible, and there is no other reliable record of the business license violation appeal hearing otherwise available, the District Court may, in its discretion, remand the matter back to the city for a supplemental proceeding to create a usable record.

E. District Court Review On The Record: The District Court's review is limited to the evidence in the record of the business license violation appeal determination that is being reviewed, and not a new trial or hearing on the facts or evidence. The court shall not accept nor consider any evidence that is not part of the city's record.

F. Scope Of District Court Review; Burden Of Proof: The District Court shall:

1. Presume that the business license violation appeal determination on review is valid; and
2. Review the record to determine whether or not the evidence available to the administrative hearing officer shows that the order was arbitrary, capricious, or illegal.
3. The petitioner for review has the burden of proof before the District Court. (Ord. 2019-24, 9-10-2019)

#### 4-12-18: VIOLATIONS AND ADMINISTRATIVE PENALTIES:

A. Any person who violates any provision of this chapter or any rule or regulation adopted pursuant to section 4-12-2 may, after being provided notice and an opportunity to be heard, be subject to the following monetary and license penalties. The business license official or administrative hearing officer may impose administrative fines and/or license penalties that exceed those listed below where the business license official or administrative hearing officer finds that such higher fines and/or penalties are necessary or appropriate to protect and promote the health and well-being of a massage business' employees, customers, and/or neighbors.

1. Massage Business Operating Without A Massage Business License:
  - a. Administrative Fine: Up to one thousand dollars (\$1,000.00) per day of operating without a license; and
  - b. License Penalty: Business location and owner of massage business ineligible for a massage business license for one hundred eighty (180) days.
  - c. Repeat Violations: Same penalties as A1a and A1b.
2. Massage Business Employing Any Person Under Eighteen (18) Years of Age:
  - a. Administrative Fine: None.
  - b. License Penalty: Mandatory revocation of massage business license. Massage business licensee ineligible for a subsequent license for one hundred eighty (180) days.

3. Solicitation Citations, Charges, Or Convictions, As Defined By Utah Code Annotated, For Anyone Working At Massage Establishment:

a. Administrative Fine: Five thousand dollars (\$5,000.00) to be paid by massage establishment licensee; and

b. License Penalty: Mandatory sixty (60) to one hundred twenty (120) days suspension of massage establishment license.

c. Repeat Violations; Revocation: Licensee ineligible for a subsequent massage establishment license at any location for a period of two (2) years.

4. Trafficking Charges Or Convictions, As Defined By Utah Code Annotated, For Anyone Working At Massage Establishment:

a. Administrative Fine: None.

b. License Penalty; Revocation: Licensee ineligible for a subsequent massage establishment license at any location.

c. Repeat Violations: Same penalty as A4b.

5. Massage Establishment Or Outcall Massage Service Employing Individual Without DOPL Certification To Administer Massage:

a. Administrative Fine: One thousand dollars (\$1,000.00) to be paid by massage business licensee.

b. License Penalty: None.

c. Repeat Violations: Fifteen (15) to thirty (30) day suspension of massage business license and up to two thousand five hundred dollar (\$2,500.00) fine for second occurrence; thirty (30) to sixty (60) day suspension or revocation of massage business license, and up to five thousand dollars (\$5,000.00) fine for third occurrence.

6. Massage Facilities Used For Residential Sleeping Purposes:

a. Administrative Fine: Up to one thousand dollars (\$1,000.00).

b. License Penalty: None.

c. Repeat Violations: Fifteen (15) to thirty (30) day suspension of massage business license and up to two thousand five hundred dollars (\$2,500.00) fine for second occurrence; thirty (30) to sixty (60) day suspension of massage business license and up to five thousand dollar (\$5,000.00) fine for third occurrence.

7. Presence Of Beds Instead Of Or In Addition To Massage Tables:

a. Administrative Fine: One thousand dollars (\$1,000.00).

b. License Penalty: None.

c. Repeat Violations: Fifteen (15) to thirty (30) day suspension of massage business license and up to two thousand five hundred dollar (\$2,500.00) fine for second occurrence; thirty (30) to sixty (60) day suspension of massage business license and up to five thousand dollar (\$5,000.00) fine for third occurrence.

8. Any Massage Service Provider Improperly Attired In Violation Of Section 4-12-11F:

a. Administrative Fine: Up to five hundred dollars (\$500.00) per person found to be improperly attired, to be paid by massage business licensee.

b. License Penalty: Sixty (60) day suspension of massage business license for each person found to be improperly attired.

c. Repeat Violations: Up to one thousand five hundred dollars (\$1,500.00) fine per person to be paid by massage business licensee for second and each subsequent occurrence; one hundred eighty (180) day suspension of massage therapist license and revocation of massage business license.

9. Sanitation Violations Pursuant To Section 4-12-11A:

a. Administrative Fine: None on first offense.

b. License Penalty: None on first offense.

c. Repeat Violations: Up to two hundred fifty dollars (\$250.00) fine and sixty (60) day suspension of massage business license.

10. Massage Business Operating Between The Hours Of Ten O'Clock (10:00) P.M. And Seven O'Clock (7:00) A.M.:

a. Administrative Fine: Up to one thousand dollars (\$1,000.00).

b. License Penalty: Fifteen (15) to thirty (30) day suspension of massage business license.

c. Repeat Violations: Thirty (30) to sixty (60) day suspension and up to two thousand five hundred dollars (\$2,500.00) for second occurrence; sixty (60) to ninety (90) day suspension and up to five thousand dollars (\$5,000.00) fine for third and each subsequent occurrence.

11. Anyone Engaged In Lewd Conduct Or Performing Sex Acts As Defined In Section 4-12-11F On Massage Business Premises:

a. Administrative Fine: Two thousand five hundred dollars (\$2,500.00) to be paid by massage business licensee; and

b. License Penalty: Revocation of massage business license.

c. Additional: License holder ineligible for subsequent massage business license for a period of five (5) years from the date of license revocation.

12. Failure To Post Notices As Required By Section 4-12-11I:

a. Administrative Fine: Written warning for first violation, two hundred fifty dollars (\$250.00) for second and each subsequent violation within twelve (12) months.

b. License Penalty: Thirty (30) day suspension of massage business license for third and subsequent violations.

13. Failure To Properly Display A Valid Massage Therapist Identification Badge, As Required By Section 4-12-11F:

a. Administrative Fine: Two hundred fifty dollars (\$250.00) to be paid by massage business; and

b. License Penalty: None.

c. Repeat Violations: Thirty (30) to sixty (60) day suspension and up to two thousand five hundred dollars (\$2,500.00) for second occurrence; sixty (60) to ninety (90) day suspension and up to five thousand dollars (\$5,000.00) fine for third and each subsequent occurrence.

14. Publishing Advertising In Violation Of Section 4-12-11M:

a. Administrative Fine: One thousand dollars (\$1,000.00) fine.

b. License Penalty: Thirty (30) day suspension of massage business license for second and subsequent violations.

15. Interfering With City Staff In Their Performance Of An Inspection, As Prohibited By Section 4-12-13A2:

a. Administrative Fine: One thousand dollars (\$1,000.00) fine to be paid by massage business licensee.

b. Repeat Violations: Two thousand five hundred dollar (\$2,500.00) fine and thirty (30) day suspension of massage business license for second occurrence; revocation of massage business license for third occurrence.

16. Equipping Interior Doors With Locks Or Locking Devices, Or Locking Exterior Doors, In Violation Of Section 4-12-11G:

a. Administrative Fine: Up to one thousand dollars (\$1,000.00).

b. License Penalty: Fifteen (15) to thirty (30) day suspension of massage business license.

c. Repeat Violations: Thirty (30) to sixty (60) day suspension and up to two thousand five hundred dollars (\$2,500.00) for second occurrence; sixty (60) to ninety (90) day suspension and up to five thousand dollar (\$5,000.00) fine for third and each subsequent occurrence.

17. All Other Violations Of State Or County Health Codes, And This Chapter's Massage Business Regulations:

a. Administrative Fine: Up to one thousand dollar (\$1,000.00) fine.

b. License Penalty: Possible suspension or revocation.

c. Repeat Violations: Up to two thousand five hundred dollar (\$2,500.00) fine for the second violation and possible license suspension or revocation; up to five thousand dollars (\$5,000.00) for the third and subsequent violations, and license suspension or revocation.

B. Notice To Property Owner: Written notice of each notice of violation that proposes to suspend or revoke a massage business license shall be served on the owner(s) of the property upon which the massage business is located, at the same time and in the same manner as required by section 4-12-15.

C. Payment And Collection Of Administrative Penalty And Enforcement Costs: Any administrative penalty and/or enforcement costs assessed under this chapter is a debt to the city and shall be paid to the city. Any amount paid late pursuant to section 4-1-11, shall be subject to an additional late fine of ten percent (10%) on the unpaid amount. The sum of the unpaid amount and the ten percent (10%) late fine shall accrue interest at the rate of one percent (1%) per month (or fraction thereof) until fully paid; any partial payments made shall first be applied to accrued interest. The city may file a civil action or pursue any other legal remedy to collect such unpaid amount, fine, and interest. In any civil action for collection, the city shall be entitled to obtain a judgment for the unpaid amounts, fine, and interest, and for the costs and attorneys' fees incurred by the city in bringing such civil action.

D. Lien For Administrative Penalty: Where an activity or condition on real property within the city has caused, contributed to, or been a substantial factor in causing the violation, the business license official may initiate proceedings to make any unpaid administrative penalty, enforcement costs, fine, and interest, and all additional authorized costs and attorneys' fees, a lien on the property. Such liens shall be imposed in accordance with section 1-16B-21, Utah state law, or any successor provisions. Before initiating lien proceedings, the business license official shall send a request for payment and clearly indicate the intent to initial lien proceedings.

E. No Bar To Criminal Prosecution: Nothing in this chapter shall preclude the prosecution of anyone under any other county or state health codes, or any other laws of the state of Utah, or the laws of the United States of America. (Ord. 2019-24, 9-10-2019)

#### 4-12-19: ENFORCEMENT:

A. The city may at any time institute civil proceedings for injunctive and monetary relief including civil penalties, against any person for violations of this chapter, without regard to whether the business license official has issued a notice of violation, instituted abatement proceedings, scheduled or held a hearing on a notice of violation, or issued a final decision.

B At any time, the business license official may refer a case for civil enforcement, but a referral is not required for the city to bring a civil action under subsection A.

C. Action For Injunction And Civil Penalty: Any person that violates any provision of this chapter shall be enjoined and shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000.00) for each day such violation is committed or permitted to continue,

which penalty shall be assessed and recovered in a civil action brought by the city in any court of competent jurisdiction. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including but not limited to, the following: the nature and seriousness of the misconduct giving rise to the violation, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

D. Attorneys' Fees: The prevailing party in any court case or special proceeding to enforce this chapter shall recover reasonable attorneys' fees if the city elects, at the initiation of the action, to seek recovery of attorneys' fees and provides notice of such intention to the adverse party or parties. In no court case or special proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the city.

E. Remedies: Remedies under this chapter are non-exclusive and cumulative to all other remedies available at law or equity. (Ord. 2019-24, 9-10-2019)

#### 4-12-20: COOPERATIVE EFFORTS WITH LAW ENFORCEMENT:

The business license official shall work with the chief of police on issues of common concern affecting the massage industry, such as protections against violence in massage establishments, crimes against massage practitioners, forced labor, or trafficking. (Ord. 2019-24, 9-10-2019)

#### 4-12-21: UNDERTAKING FOR THE GENERAL WELFARE:

In regulating massage businesses and massage services as provided in this chapter, the city is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Ord. 2019-24, 9-10-2019)

#### 4-12-22: SEVERABILITY:

If any of the provisions of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this chapter are severable. (Ord. 2019-24, 9-10-2019)

#### 4-12-23: NO CONFLICT WITH STATE OR FEDERAL LAW:

Nothing in this chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

*Title 4 – Business and License Regulations, is hereby amended by enacting Chapter 14 – Mobile Food Vendors to read as follows:*

## Chapter 14 Mobile Food Vendors

### SECTION:

- 4-14-1 : Applicability
- 4-14-2 : License Required
- 4-14-3 : Definitions
- 4-14-4 : Permitted Locations
- 4-14-5 : Insurance Requirements
- 4-14-6 : Prohibited Acts

#### 4-14-1 : APPLICABILITY:

In addition to all rules and regulations set forth in Chapter 1 of this title, the regulations contained in this chapter shall apply to mobile food vendor businesses.

#### 4-14-2 : LICENSE REQUIRED:

It is unlawful for any person to operate, conduct, carry on, or maintain mobile food vending without a business license. All mobile food vendors must be able to produce a valid business license, health department food truck permit, and evidence of a successful fire safety inspection upon request by a City official.

A. Separate License Required: A separate business license shall be required for each mobile food vending unit.

B. Health Department Permit and Fire Safety Inspection: Prior to issuance of a city license, vendors must obtain a health department permit from the local health department that has jurisdiction over the area in which a majority of the food truck's operations occur. Such permit must remain in force during the license period. A vendor must also pass a fire safety inspection performed by the North Davis Fire District, or show that it passed a fire safety inspection by another political subdivision within the current calendar year.

C. Fees: The license fees for a mobile food vendor shall be set by resolution of the City Council and published in the City fee schedule.

1. A mobile food vendor currently licensed in another political subdivision within the state will be issued a Clearfield license matching the expiration date.

2. A mobile food vendor who does not submit an active license certificate from another political subdivision will be issued a license for 12 months.

#### 4-14-3 : DEFINITIONS:

In addition to the definitions set forth in other sections of this code, the following words and phrases used in this chapter shall have the meanings herein prescribed:

**CITY OWNED PROPERTY:** City property shall include all parks, open space, parcels containing City operations, buildings, rights of way, and all other such properties. City owned property includes all parking lots on these properties.

**MOBILE FOOD VENDOR UNIT:** An enclosed truck, trailer, or similar vehicle mounted unit that is:

1. A licensed motor vehicle or is capable of being moved by a licensed motor vehicle;
2. Independent with respect to water, wastewater, and power utilities; and
3. Used for the preparation, sale, or donation of food products and beverages.

The definition of mobile food vendor unit shall not include vending carts or ice cream trucks. 4-14-4: PERMITTED LOCATIONS:

**Mobile Food Vending on Private Property:** Vendors may only operate on private property with the express prior written permission of a person with authority to act on behalf of the property owner.

**Mobile Food Vending on City Owned Property in City Rights of Ways:** Mobile food vending is allowed on designated city owned property, not including city rights of way, only in the following circumstances:

1. City parks: As part of an approved pavilion or field rental or by invitation of the individual that rented the pavilion.
2. City sponsored events on City owned property: In an assigned locations and by invitation of the city.

#### 4-14-5: INSURANCE REQUIREMENTS:

Any application for a permit as herein provided shall be accompanied by a certificate of insurance naming Clearfield City as an additional insured. Such commercial general liability insurance shall be in a sum no less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, property damage, personal & advertising injury, and products & completed operations liability. In addition, automobile insurance shall be in a sum not less than \$1,000,000 per occurrence. No city officer or licensing agent or other representative of the city shall in any event issue any permit hereinabove referred to until such certificate of insurance has been furnished and passed upon by the city attorney or designee to form and sufficiency.

**Section 2. Repealer:** Any provision or ordinances that are in conflict with this ordinance are hereby repealed.

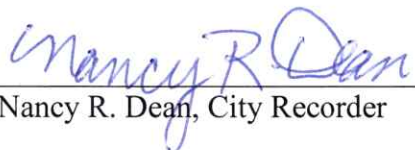
**Section 3. Effective Date:** This Ordinance shall become effective immediately upon its posting in three public places within Clearfield City.

DATED this 25<sup>th</sup> day of November, 2025, at the regularly scheduled meeting of the Clearfield City Council.

CLEARFIELD CITY CORPORATION

  
Mark R. Shepherd, Mayor

ATTEST

  
Nancy R. Dean, City Recorder



VOTE OF THE COUNCIL

AYE: Councilmembers Peterson, Ratchford, Roper, Thompson, Wurth

NAY: None