

CHAPTER 6

Business Licenses and Regulations

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ARTICLE 1

Adult Entertainment Establishment License

Sec. 6-1-10. Definitions.

As used in this Article, the following words shall have the following meanings, unless otherwise provided:

Adult arcade means any place to which the public is permitted or invited wherein coin-operated, slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the image is so displayed and distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

Adult bookstore, adult video store or adult novelty store means a business having as a substantial and significant portion, as defined as fifteen percent (15%) or more, of its stock and trade, revenues, space or advertising budget, resulting from the sale, rental or viewing of one (1) or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, digitally or computer-generated entertainment media, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas.

Adult cabaret means a nightclub, bar, restaurant or similar business, whether alcoholic beverages are served or not, which regularly features:

- a. Live performances which are characterized by the exposure of specified anatomical areas; or
- b. Films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult entertainment establishment or sexually oriented business means an adult arcade, adult bookstore, adult video store, adult novelty store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor, sexual encounter establishment or other similar business, and includes any of the following:

- a. The opening or commencement of any sexually oriented business as a new business.
- b. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business.
- c. The addition of any sexually oriented business to any other existing sexually oriented business.
- d. The relocation of any sexually oriented business.

The definition of *sexually oriented businesses* shall not include an establishment where a medical practitioner, psychologist, psychiatrist or other similar professional person licensed by the State engages in medically approved and recognized sexual therapy.

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

Adult motion picture theater means a business where films, motion pictures, video cassettes, slides or similar photographic or electronic reproductions are regularly shown in a room or area designed to accommodate a minimum of twenty (20) viewers and which films, motion pictures, video cassettes, slides or other photographic or electronic reproductions are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult theater means a theater, concert hall, auditorium or similar business that regularly features live performances that are characterized by the exposure of specified anatomical areas.

Church means a church or place of religious worship and institution that people regularly attend to participate in or hold religious services, meetings and other activities. The term *church* shall not carry a secular connotation and shall include buildings in which the religious services of any denomination are held.

Clothing optional club means a business where alcoholic beverages are or are not served and where the customers are allowed to be fully or partially nude.

Employee means a person who works or performs for a business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

Good moral character is defined as one who has not engaged in a specified criminal act within the times set forth in this Article.

Licensing officer. All licenses shall be granted by the Town Administrator upon the direction of and after review by the Board of Trustees.

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

Massage parlor means an establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional person licensed by the State. This definition does not include an athletic club, health club, school,

gymnasium, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

Material means any physical object, facsimile, recording transcription, pictorial representation, motion picture or reproduction, whether mechanical, electrical or chemical, which is used as a means of communicating sensation or emotion to human beings to or through the visual, aural or tactile senses.

Nudity or *state of nudity* means the appearance of more than two-thirds ($\frac{2}{3}$) of the human bare buttocks, the anus, male genitals, female genitals or the female breasts below the top of the nipple, or a state of dress which fails to opaquely cover more than two-thirds ($\frac{2}{3}$) of the human buttocks, the anus, male genitals, female genitals, pubic region or areola or the female breast below the top of the nipple.

Obscene material means that material which:

- a. Taken as a whole, appeals to the prurient interest of the average person, applying a contemporary state-wide standard;
- b. Depicts or describes hard-core sexual conduct; and
- c. Taken as a whole, lacks serious literary, artistic, political or scientific value.

Obscene performance means that performance which:

- a. Taken as a whole, appeals to the prurient interest of the average person, applying a contemporary state-wide standard;
- b. Presents or shows hard-core sexual conduct; and
- c. Taken as a whole, lacks serious literary, artistic, political or scientific value.

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

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

Performance means a presentation or exhibition, whether live or recorded, in a public place or place open to the public or to a segment thereof.

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

Principal owner means any person owning, directly or beneficially, twenty percent (20%) or more of the ownership interest in any legal entity.

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

Promote means to produce, direct, manufacture, sell, provide, distribute, present or exhibit for consideration, to offer or agree to do any of these things for consideration, or to have a financial interest in any of these things.

Sadomasochistic material or *sadomasochistic performance* means that material or performance which:

- a. Taken as a whole, appeals to the prurient interest of the average person, applying a contemporary state-wide standard;
- b. Depicts, presents, shows or describes flagellation, mutilation or torture, actual or simulated, in a sexual context; and
- c. Taken as a whole, lacks serious literary, artistic, political or scientific value.

Sexual encounter establishment means a business or commercial establishment which, as one (1) of its primary business purposes, offers a place where two (2) or more persons may congregate, associate or consort for the purpose of the exposure of specified anatomical areas, or when one (1) or more of the persons exposes any specified anatomical area.

Specified anatomical areas are defined as including:

- a. Less than completely and opaquely covered human genitals, pubic region, buttocks and female breasts below a point above the top of the nipple.
- b. Human male genitals in a discernable turgid state even if completely and/or opaquely covered.
- c. Areas included within the definition of nudity.

Specified criminal acts means acts which include sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business, including but not limited to distribution of obscenity, sale, distribution or display of harmful material to a minor, prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, sexual performance by a child, possession of child pornography, public lewdness, inducement, exposure, indecency with a child, engaging in organized criminal activity as defined by state statutes, sexual assault or aggravated sexual assault as defined by state statutes, incest, solicitation of a child or harboring a runaway child as defined by state statutes, kidnapping or aggravated kidnapping as defined in state statutes, robbery or aggravated robbery as defined in state statutes, bribery or retaliation as described in state statutes, in violation of the Colorado Controlled Substances Act or Dangerous Drugs Act punishable as a felony, class A misdemeanor or class B misdemeanor, criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses, pandering, tax violations associated with sexually oriented businesses, crimes involving the use of or trafficking narcotic drugs or violent acts against persons or property.

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

- a. Human male genitals in a discernable and evident state of sexual stimulation or arousal.
- b. Fondling or other erotic touching of human genitals, pubic region, buttocks or a female breast.
- c. Intrusion, however slight, actual or simulated, by an object, any part of an animal's body or any part of a person's body into the genital or anal openings of any person's body.
- d. Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals or excretory function, actual or simulated, buggery, coprophagy, coprophilia, necrophilia, pederasty, pedophilia, piquerism, sapphism and zooerasty.
- e. Flagellation, mutilation or torture, actual or simulated, including sadomasochism, in a sexual context.

Transfer of ownership or control of a sexually oriented business means any business arrangement, gift or other similar legal devise which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

Zoning Administrator means the Town Administrator or his designee. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-20. License required.

(a) No adult entertainment establishment, as defined in Section 6-1-10 above, shall be permitted to operate within the Town except as provided in this Article, and any said operation without a license is unlawful. It is further unlawful, and a person commits a misdemeanor offense, if he operates or causes to be operated a sexually oriented business and/or adult entertainment establishment and said person knows or reasonably should know that:

- (1) The business does not have a sexually oriented business and/or adult entertainment establishment license;
- (2) The business has a license which is under suspension;
- (3) The business has a license which has been revoked; or
- (4) The business has a license which has expired.

(b) An applicant must first obtain zoning approval prior to the issuance of a license, and the decision of the applicant's zoning request shall be processed in the same manner and course as any other zoning request. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-30. Town responsibilities.

(a) The licensing officer is responsible, after direction of the Board of Trustees, for granting, denying, revoking, renewing, suspending and canceling sexually oriented business licenses for proposed or existing sexually oriented businesses.

(b) The Zoning Administrator is responsible for ascertaining whether a proposed sexually oriented business for which a license application has been submitted complies with all location requirements and for processing the zoning application request through special review pursuant to special use permits.

(c) The Town Marshal's office is responsible for providing information on whether an applicant has been convicted of a specified criminal act during the time periods set forth in Subparagraphs 6-1-50(b)(5)a. through c. below.

(d) The Building Inspection Department is responsible for inspecting a proposed sexually oriented business in order to ascertain whether it is in compliance with applicable statutes and ordinances. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-40. Annual license renewal.

(a) The annual license fee for new adult entertainment establishments shall be one thousand dollars (\$1,000.00); for transfer of location or ownership, one thousand dollars (\$1,000.00); and for the renewal of a license, one thousand dollars (\$1,000.00).

(b) A license may be issued only for one (1) adult entertainment establishment located at a fixed and certain place. Any person who desires to operate more than one (1) adult entertainment establishment must have a license for each. (Ord. 541 §3, 2002)

Sec. 6-1-50. Application and conditions of license.

(a) Sexual offenders cannot own, operate or be employed in adult business establishments. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

(b) The completed application shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is an individual, the individual shall state his legal name and any aliases and submit satisfactory proof that he is at least eighteen (18) years of age.

(2) If the applicant is a legal entity, the application shall state its complete name; the date and place of its organization; evidence that it is in good standing under the laws of the state in which it is organized and, if it is organized under the laws of a state other than Colorado, that it is registered to do business in Colorado; the names and capacity of all officers, directors, managers and principal owners; and the name of the registered agent and the address of the registered office for service of process.

(3) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he must state the sexually oriented business's fictitious name.

(4) The applicant's driver's license number, social security number and his state-issued or federally issued tax identification number.

(5) Whether the applicant or any of the other individuals listed has been convicted of a specified criminal activity for which:

a. Less than four (4) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the latter date, if the conviction is a misdemeanor offense;

b. Less than ten (10) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the latter date, if the conviction is a felony offense; or

c. Less than ten (10) years have elapsed since the date of the last conviction and the date of release from confinement for the last conviction, whichever is the latter date, if the conviction is of one (1) or more misdemeanor offenses.

(6) Whether the applicant or any of the other individuals listed has had a previous sexually oriented business license, in the Town or from another town, city or county denied, suspended or revoked and, if so, the name and location of the sexually oriented business for which the license was denied, suspended or revoked, as well as the date of denial, suspension or revocation.

(7) Whether the applicant or any of the other individuals listed has been a principal owner of a legal entity whose license has previously been denied, suspended or revoked and, if so, the name and location of the sexually oriented business for which the license was denied, suspended or revoked, as well as the date of denial, suspension or revocation.

(8) Whether the applicant or any of the other individuals listed holds any other permits and/or licenses under this Article or similar sexually oriented business ordinance from another town or county and, if so, the names and locations of such other permitted businesses.

(9) The location of the proposed sexually oriented business, including a legal description of the property, the name of the property owner (including the information required by Paragraph (b)(2) above if the property owner is a legal entity), street address and telephone numbers, if any, and a copy of any lease agreement or document evidencing the right to use the property for its intended purpose for the term of the license requested.

(10) The single adult entertainment establishment classification of license for which the applicant is filing.

(11) The mailing address and residential address of the applicant or other individual listed pursuant to this Section.

(12) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be oriented to the north or to some designated street or object and shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an

accuracy of plus or minus six (6) inches. The licensing officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. If the sexually oriented business has or will have a peep booth or booths subject to the provisions of Section 6-1-250 of this Article, the sketch shall show the location of each manager's station and designate any portion of the premises in which patrons will not be permitted.

(13) A current certificate and straight-line drawing, prepared within thirty (30) days prior to an initial application by a state-registered land surveyor depicting:

a. The property lines and the structures of the property to be certified;

b. The property lines of any residential zone district, church, public or private school, child care center, public community center, park, fairground, recreation center, any alcoholic beverage establishment located in the Town at which alcoholic beverages are offered for sale for consumption on the premises, any area designated as an urban renewal project area pursuant to Section 31-25-107, C.R.S., within five hundred (500) feet of the property to be certified;

c. The property lines of any arterial, major or collector roadway within two hundred (200) feet of the property to be certified; and

d. The property lines and structures of any other sexually oriented business within one thousand (1,000) feet of the property to be certified.

For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(14) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than the individual, each principal owner of the applicant must sign the application for a license as applicant.

(15) In the event that the licensing officer determines or learns at any time that the applicant has improperly or inaccurately completed the application for a proposed sexually oriented business, he shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly or accurately complete the application. The time period for granting or denying a license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application. The failure to correct the application in a timely manner shall be grounds for denial.

(16) The fact that a person possesses other types of state or Town permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business license. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-60. Duty to supplement application.

Applicants for a license under this Article shall have a continuing duty to promptly supplement application information required by Section 6-1-50 above in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) days from the date of such change shall be grounds for suspension of a license. (Ord. 541 §3, 2002)

Sec. 6-1-70. Investigation of application.

(a) Upon receipt of an application for a sexually oriented business license properly filed with the licensing officer and upon payment of the nonrefundable application fee, the licensing officer shall immediately stamp the application as received and send photocopies of the application to the Zoning Department, the Town Marshal's office, the Building Inspection Department and any other agency responsible under law for investigating compliance, such as health inspection services or the Fire Department. Each department or agency shall promptly conduct an investigation of the applicant, application and the proposed sexually oriented business in accordance with its responsibilities under law. Said investigations shall be completed by the Zoning Department, the Town Marshal's office, the Building Inspection Department and any other agency within forty-five (45) days of receipt of the application by the licensing officer. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it and, in the event it disapproves, state the reasons for disapproval. The Town Marshal's office shall only be required to provide the information specified in this Section and in Section 6-1-50 above and shall not be required to approve or disapprove applications.

(b) The Building Inspection Department, Zoning Department or other agency shall disapprove an application if it finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the Town. After their indication of approval or disapproval, said departments or agencies shall immediately return the photocopy of the application to the licensing officer. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-80. Issuance of license.

The licensing officer shall grant or deny any complete application for a license within sixty (60) days from the date of its proper filing. Upon the expiration of the sixtieth day, the application shall be deemed granted unless the licensing officer notifies the applicant of a denial of the application in writing and states the reasons for that denial. (Ord. 541 §3, 2002)

Sec. 6-1-90. Grant of license.

(a) The licensing officer shall grant the license upon application therefor unless one (1) or more of the criteria set forth in Section 6-1-100 below are present.

(b) The license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date and the address of the sexually oriented business. The license shall also indicate that sexually oriented businesses are subject to prohibitions against public indecency pursuant to Sections 18-7-208 and 18-7-301, C.R.S. The license shall be posted in a conspicuous place at or near the

entrance to the sexually oriented business so that it can be easily read at any time. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-100. Denial.

(a) The licensing officer shall deny the application for any of the following reasons:

- (1) An applicant is under eighteen (18) years of age.
- (2) An applicant is overdue on his payment to the Town of taxes, fees, fines or penalties assessed against him or imposed upon him in relation to a sexually oriented business.
- (3) An applicant has failed to provide information required by this Article for the issuance of the license or has falsely answered a question or request for information on the application form.
- (4) The premises to be used for the sexually oriented business have been disapproved by an inspecting agency pursuant to the provisions of Section 6-1-70 above.
- (5) The application or license fees have not been paid.
- (6) An applicant or the proposed business is in violation of, or is not in compliance with, any of the provisions of this Article or any pertinent provisions of this Code.
- (7) The granting of the application would violate a statute, ordinance or court order.
- (8) An applicant has a license under this Article which has been suspended or revoked within the previous twelve (12) months.
- (9) An applicant has been convicted of a specified criminal act within the times set forth in Subparagraphs 6-1-50(b)(5)a. through c. of this Article.
- (10) An applicant knowingly has in his employ an employee who does not have a valid license as required in this Article.
- (11) An applicant is not of good moral character, as defined in Section 6-1-10 of this Article.
- (12) The applicant has not demonstrated a legal right to use the premises for the term of the proposed license.

(b) If the licensing officer denies the application, he shall notify the applicant of the denial and state the reasons for the denial within ten (10) working days of the denial.

(c) Whenever an application is denied, the Town Clerk shall advise the applicant in writing of the reasons for such action. The applicant must appeal any adverse decision by a licensing officer by requesting a hearing before the Board of Trustees within ten (10) days of receipt of notification of the denial if the applicant disagrees with the denial. A public hearing on said denial shall be held by the Board of Trustees within fourteen (14) days thereafter or at the next Board of Trustees meeting, whichever first occurs, unless the applicant agrees in writing to an extension of the time on said public hearing.

(d) Failure or refusal of the applicant to give any information relevant to the investigation of the application or his refusal or failure to appear at any reasonable time and place for examination under oath regarding said application, or his refusal to submit to or cooperate with any investigation required by this Article, shall constitute an admission by the applicant that he is ineligible for such license and shall be grounds for denial thereof by the licensing officer. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-110. Expiration.

(a) Each license shall expire one (1) year from the date of issuance, unless suspended or revoked, and may be reviewed only by making application as provided in this Article. For renewals, filing of the original survey may be sufficient. Application for renewal of a license shall be made at least thirty (30) days before the expiration date of the license. If a renewal application is made fewer than thirty (30) days before the expiration date of a license, the expiration of the license will not be affected.

(b) If, subsequent to denial of renewal, the licensing officer finds that the basis for denial of the renewal of the license has been corrected, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date the denial became final. (Ord. 541 §3, 2002)

Sec. 6-1-120. Suspension.

(a) The licensing officer shall suspend a license for a period not to exceed thirty (30) days if he determines that a licensee, or an employee of a licensee, has:

- (1) Violated or is not in compliance with any section of this Article;
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this Article;
- (3) Operated the sexually oriented business in violation of a building, fire, health or zoning statute, code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the division, department or agency charged with enforcing said rules or laws. In the event of such a statute, code, ordinance or regulation violation, the licensing officer shall promptly notify the licensee of the violation and shall allow the licensee a seven-day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the seven-day period, the licensing officer shall forthwith suspend the license and shall notify the licensee of the suspension;
- (4) Engaged in a license transfer contrary to Section 6-1-140 below. In the event that the licensing officer suspends a license on the ground that a licensee engaged in a license transfer contrary to Section 6-1-140, the licensing officer shall forthwith notify the licensee of the suspension. The suspension shall remain in effect until the applicable section of this Article has been satisfied;
- (5) Operated the sexually oriented business in violation of the hours of operation provisions of the Town.

(b) Where the licensing officer has reason to believe that a violation of this Article has occurred in a deliberate or willful manner or that the public health, safety and welfare require immediate action on the part of the licensing officer, the licensing officer may summarily suspend the license of an adult use establishment or an adult use employee, and said notice of suspension shall contain notice that the adult use establishment or adult use employee may request a hearing to contest the suspension. Should the adult use establishment or the adult use employee, within ten (10) days after service of the suspension notice, request in writing a hearing on the suspension, the licensing officer shall set a hearing date within fourteen (14) days or at the next Board of Trustees meeting, whichever first occurs. No suspension shall exceed thirty (30) days unless, prior to expiration of the thirty-day suspension, a revocation proceeding is commenced.

(c) The licensing officer may impose a civil penalty against the licensee for any violations meriting a suspension or revocation, as provided in Section 6-1-370 of this Article. If the licensee fails to pay the civil penalty, the licensing officer may provide that, at the end of the period of suspension, if the civil penalty remaining at the time is still unpaid, the license shall be revoked.

(d) The suspension shall remain in effect until the violation of the statute, code, ordinance or regulation in question has been corrected. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-130. Revocation.

(a) The licensing officer shall revoke a sexually oriented business license upon determining that any of the following exist:

(1) A cause of suspension in Section 6-1-120 above occurs and the license has been suspended within the preceding twelve (12) months.

(2) A licensee gave false or misleading information in the material submitted during the application process that enhanced the applicant's opportunity to obtain a license.

(3) A licensee or an employee has knowingly allowed possession, use or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises.

(4) A licensee or an employee has knowingly allowed prostitution on the premises.

(5) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended.

(6) A licensee has been convicted of a specified criminal act for which the time period set forth in Subparagraphs 6-1-50(b)(5)a. through c. of this Article has not elapsed.

(7) On two (2) or more occasions within a twelve-month period, a person committed an offense, occurring in or on the licensed premises, constituting a specified criminal act for which a conviction has been obtained, and the person was an employee of the sexually oriented business at the time the offense was committed. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(8) A licensee is delinquent in payment to the Town or State of any taxes or fees.

(9) A licensee or an employee has knowingly allowed any specified sexual activity to occur in or on the licensed premises or personally engaged in the same.

(10) The licensee has operated more than one (1) sexually oriented business within the same building, structure or portion thereof.

(b) When the licensing officer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-140. Transfer.

(a) A licensee shall not operate a sexually oriented business under the authority of a license at any place other than the address designated in the application for the license.

(b) A licensee shall not transfer his license to another person unless and until such other person satisfies the following requirements:

(1) Obtains an amendment to the license from the licensing officer which provides that he is now the licensee, which amendment may be obtained only if he has completed and properly filed an application with the licensing officer, setting forth the information called for under Section 6-1-50 of this Article in the application; and

(2) Pays a transfer fee of twenty percent (20%) of the annual license fee.

(c) No license may be transferred when the licensing officer has notified the licensee that suspension or revocation proceedings have been or will be brought against the licensee.

(d) A licensee shall not transfer his license to another location.

(e) Any attempt to transfer a license either directly or indirectly in violation of this Section is hereby declared void, and the license shall be deemed revoked. (Ord. 541 §3, 2002)

Sec. 6-1-150. Judicial review of license denial, suspension or revocation.

After denial of an application, denial of a renewal of an application or suspension or revocation of a license and a hearing before the Board of Trustees as set forth in Sections 6-1-50, 6-1-100, 6-1-120 and 6-1-130 of this Article, the applicant may seek prompt judicial review of such administrative action in any court of competent jurisdiction. (Ord. 541 §3, 2002)

Sec. 6-1-160. Employees; general requirements.

(a) Qualifications. Employees of an adult use establishment shall be not less than eighteen (18) years of age. Every employee shall be of good moral character, as defined in Section 6-1-10 of this Article.

(b) Approval for employment. Before any person may work on licensed premises, he shall first obtain a sexually oriented business employee license as set forth in Section 6-1-180 below.

(c) Prohibitions. Notwithstanding any other applicable prohibitions as set forth in Section 6-1-370 of this Article, employees shall not be permitted to mingle with patrons in a nude state and are prohibited from kissing or touching patrons. Further, it shall be unlawful for any employee of a sexually oriented business to receive tips from patrons other than through the receipt of such tips from one (1) or more tip boxes or other containers designed to receive said tips. All tips for such employee shall be placed by the patron of the sexually oriented business into the tip box.

(d) Violation of the provisions of this Code or the rules and regulations of the licensing officer shall subject an employee to suspension or revocation of his license. (Ord. 541 §3, 2002)

Sec. 6-1-170. Employee license required.

It is unlawful, and a person commits a misdemeanor, if such person works as an employee of a sexually oriented business without first obtaining an employee's license. (Ord. 541 §3, 2002)

Sec. 6-1-180. Application for employee's license.

(a) An employee shall submit an application for an employee's license on a form to be provided by the licensing officer. The application shall contain the applicant's name, address, date of birth, phone number and the information required in Section 6-1-160 above.

(b) The licensing officer shall refer the employee license application to the Town Marshal's office for investigation to be made of such information as is contained on the application. The application process shall be completed within ten (10) days from the date the completed application is filed. After the investigation, the licensing officer shall issue a license unless:

(1) The applicant has knowingly made any false, misleading or fraudulent statement of a material fact in the application for a license, or in any report or record required to be filed with the Town Marshal's office or other department of the Town;

(2) The applicant is under eighteen (18) years of age;

(3) The applicant has failed to provide the information required by this Section;

(4) The license fee has not been paid;

(5) The applicant has been convicted of a specified criminal act within the times set forth in Subparagraphs 6-1-50(b)(5)a. through c. of this Article;

(6) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by particular provisions of this Article; or

(7) The applicant has had a sexually oriented business employee license revoked by the Town within two (2) years of the date of the current application.

(c) A license granted pursuant to this Section shall be subject to annual renewal by the licensing officer upon the written application of the applicant and finding by the licensing officer and the Town Marshal's office that the applicant has not been convicted of any specified criminal act or committed

any act during the existence of the previous license period which would be grounds to deny the initial permit application.

(d) The employee license shall be subject to a fee of fifty dollars (\$50.00, and a renewal shall be subject to a fee of twenty-five dollars (\$25.00. (Ord. 541 §3, 2002)

Sec. 6-1-190. Inspection.

(a) An applicant or licensee shall permit representatives of the Town Marshal's office, the licensing officer, the Building Inspection Department, the Colorado Department of Public Health and Environment and the Fire Department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business or at other times by mutual agreement.

(b) A person who operates a sexually oriented business or his agent commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time that it is occupied or open for business. (Ord. 541 §3, 2002)

Sec. 6-1-200. Records and reports; authority to promulgate.

(a) Each licensee shall keep such records and make such reports as may be required by the licensing officer and the Fire Chief to implement this Article and carry out its purpose. By applying for a license under this Article, an individual, partnership or corporation shall be deemed to have consented to the provisions of this Article and to the exercise by the licensing officer of the powers given in this Article in the manner specified.

(b) The licensing officer is authorized to promulgate rules and regulations not inconsistent with this Article or this Code as are necessary to carry out the provisions of this Article. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-210. General requirements.

(a) In addition to the special requirements contained in Sections 6-1-220 through 6-1-250 below, each licensed premises shall:

(1) Conform to the requirements of the building code as adopted by the Town, unless a requirement in the building code conflicts with a special requirement contained within this Article;

(2) Conform to the requirements of the fire code as adopted by the Town, except to the extent that a requirement in the fire code conflicts with a special requirement contained in this Article;

(3) In all cases wherein the occupant capacity, as determined by the Fire Chief, is at least fifty (50) persons, exclusive of attendants and assistants, such structure shall have electric, battery-operated, emergency lights using reliable-type storage batteries provided with suitable maintenance in properly charged condition, provided that dry batteries shall not be used, and further provided that electric storage batteries shall be approved by the Fire Chief for their intended use and shall comply with the National Electrical Code as adopted by the Town;

(4) Conform to the requirements of Chapter 16 of this Code; and

(5) Conform to all other ordinances of the Town.

(b) For purposes of this Section, the Town staff, including any health, building or fire officials, shall render a decision regarding conformance to the general and special requirements noted in Sections 6-1-220 through 6-1-250 below, within forty-five (45) days of an application for a license. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-220. Adult bookstore, adult novelty store and adult video store requirements.

In addition to the general requirements noted in Section 6-1-210 above, an adult bookstore, adult novelty store and adult video store shall observe the following special requirements:

(1) All materials and novelties shall be so displayed that they cannot be seen by anyone other than customers who have entered the licensed premises.

(2) If recordings are offered for sale or viewing on the premises and customers may listen to them while on the licensed premises, soundproof booths or rooms (peep booths) shall be available for use by customers who desire to listen to or view such recordings, and each such booth or room on the premises is also subject to all requirements set forth in Section 6-1-250 below.

(3) It is unlawful for anyone to distribute for commercial purposes, sell or offer for sale any device, instrument or paraphernalia designed or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others. Such devices include but are not limited to phallic-shaped vibrators, dildos, muzzles, whips, chains, bather restraints, racks, nonmedical enema kits, body piercing implements (excluding earrings or other decorative jewelry) or other tools of sadomasochistic abuse. (Ord. 541 §3, 2002)

Sec. 6-1-230. Adult motion picture theater requirements.

In addition to the general requirements contained in Section 6-1-210 above, an adult motion picture theater shall observe the following special requirements, and any peep booths located on or in the premises of any adult motion picture theater are also subject to the requirements set forth in Section 6-1-250 below:

(1) An adult motion picture theater having only a hall or auditorium for the showing of film material shall be considered a "place of assembly" within the meaning of the adopted building code and shall conform to the requirements therefor.

(2) An adult motion picture theater having both adult motion picture booths and a hall or auditorium shall conform to the special requirements for both facilities provided for in this Section and Section 6-1-250 below; provided that, where the special requirements allow common elements to be utilized or constructed, it may be done with the approval of the Building Inspector.

(3) There shall be provided, within or adjacent to the common corridor, passageway or area in adult motion picture theaters having adult motion picture booths, adequate lavatories equipped with running water, hand-cleansing soap or detergent and sanitary disposable towels or hand-drying devices; common towels are prohibited. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-240. Adult cabaret, adult theater and adult motel requirements.

In addition to the general requirements contained in Section 6-1-210 above, an adult cabaret, adult theater and adult motel establishment shall observe the following special requirements:

(1) Any person employed or working in the licensed premises as a dancer shall, while dancing, perform upon a stage or similar structure specially designed for such dancing. Stages shall conform to the requirements of the adopted building code and shall be a minimum of fifty (50) square feet in size, including the requirements for appurtenant rooms if such appurtenant rooms are used by the establishment, provided that the dancers shall be provided with a dressing room or rooms that are not part of or used by the public as rest rooms.

(2) Where a dancer performs upon a platform or other small structure designed to hold a small number of persons, which is not a stage or equipped to be a stage for theatrical presentations, the platform shall be level and of sturdy construction, shall be securely fastened to the floor or wall during performances and shall be a minimum of seven (7) feet from patrons to be seated. Steps and handrails shall be provided so that the dancer may ascend to the top of the platform safely under normal operating conditions of the establishment, in all cases wherein the top of the platform is more than eight (8) inches from the surface upon which the platform rests.

(3) It is unlawful for any employee of a sexually oriented business to receive tips from patrons except as set forth in this Article. A licensee that desires to provide for tips from its patrons shall establish one (1) or more boxes or other containers to receive tips. All tips for such employees shall be placed by the patrons of the sexually oriented business into the tip box. A sexually oriented business that provides tip boxes for its patrons, as provided for in this Section, shall post one (1) or more signs to be conspicuously visible to the patrons of the premises in letters at least one (1) inch high, to read as follows:

"All tips are to be placed in the tip box and not handed directly to employees. Any physical contact between a patron and employees is strictly prohibited."

(Ord. 541 §3, 2002)

Sec. 6-1-250. Requirements pertaining to the exhibition of sexually explicit films or videos in peep booths.

In addition to the general and special requirements noted in Sections 6-1-210 through 6-1-240 above, a person who operates or causes to be operated a sexually oriented business which exhibits on the premises in a peep booth a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas shall comply with the requirements of this Article as follows:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures, and designating any portion of the premises at which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area with no dimension greater than eight (8) feet. The diagram shall also designate the place at which the license will be conspicuously posted. A

professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The licensing officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. The application shall be sworn to be true and correct by applicant.

(2) At least one (1) employee must be on duty and situated at each manager's station at all times that any patron is present inside the premises.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town.

(4) It is the duty of the owners and operators of the premises to ensure that at least one (1) employee is on duty and situated at each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video display equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this Paragraph must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times, and no patron shall be permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Section 6-1-50 of this Article.

(6) No door, screen or other covering shall be placed or allowed to remain on any peep booth, and no holes or openings shall be placed or allowed to remain in the wall between any two (2) adjacent peep booths. The doors opening into the booth or room shall be incapable of being locked or otherwise fastened so that they will freely open from either side. Partitions between peep booths shall be considered nonbearing partitions, but they shall be so constructed as to have a fire-resistance rating of not less than one (1) hour or shall have approved sprinklers.

(7) It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present on the premises, to ensure that the view area specified in Paragraph (5) of this Section remains unobstructed by any doors, walls, merchandise, display racks or other materials or persons at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area where patrons will not be permitted in the application filed pursuant to this Section.

(8) One (1) clear window, facing the major portion of the licensed premises, covering not less than one-fourth ($\frac{1}{4}$) of the wall area into which the window is set or a minimum size of two (2)

feet by two (2) feet, whichever is greater, shall not be covered or obstructed in any manner while the booth or room is in use.

(9) No peep booth may be occupied by more than one (1) person at one (1) time. No holes shall be allowed in the walls or partitions that separate each viewing room from an adjoining viewing room or rest room.

(10) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access and an illumination of not less than two (2) foot-candles as measured at the floor level. It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

(11) A person having a duty under this Section commits a misdemeanor if he knowingly fails to fulfill the duties imposed by this Section. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-260. Admission of minors unlawful.

It is unlawful for a licensee to admit or to permit the admission of minors under the age of eighteen (18) years within a licensed premises. (Ord. 541 §3, 2002)

Sec. 6-1-270. Sale to minors unlawful.

It is unlawful for any person to sell, barter, give or to offer to sell, barter or give to any minor any service, material or thing sold or offered for sale by an adult bookstore, adult motion picture theater, adult massage parlor, adult dancing establishment or other adult entertainment facility. (Ord. 541 §3, 2002)

Sec. 6-1-280. Cleaning of licensed premises requirements.

Each licensed premises shall be maintained in a clean and sanitary condition and shall be cleaned at least once daily and more frequently when necessary. This activity shall be supervised by the person in charge of the licensed premises. There shall be provided adequate facilities, equipment and supplies on the licensed premises to meet this requirement, and adequate ventilation and illumination shall be provided to permit thorough, complete cleaning of the entire licensed premises. Trash and garbage shall not be permitted to accumulate or to become a nuisance on or in the immediate vicinity of the licensed premises, but shall be disposed of as often as necessary and no less than once daily. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-290. Self-inspection of licensee to premises.

The licensee of a licensed premises, or his designated representative, shall make sanitary inspections of the licensed premises at least once a month and shall record his findings on a form supplied by the licensing officer. Each licensed premises shall post and maintain in a readily accessible place a schedule for maintaining the sanitation of the premises. (Ord. 541 §3, 2002)

Sec. 6-1-300. Sealing of unsanitary or unsafe conditions.

A licensed premises, or any part thereof, may be sealed by order of the licensing officer on his findings of a violation of this Article resulting in an unsanitary or unsafe condition. Prior to sealing, the licensing officer shall serve on the licensee, by personal service on him or by posting in a conspicuous place on the licensed premises, a notice of the violation and an order to correct it within twenty-four (24) hours after service. If the violation is not so corrected, the licensing officer may physically seal that portion of the licensed premises causing the violation and order the discontinuance of use thereof until the violation has been corrected and the seal removed by the licensing officer. The licensing officer shall affix to the sealed premises a conspicuous sign labeled "Unclean" or "Unsafe," as the case may be. (Ord. 541 §3, 2002)

Sec. 6-1-310. Abatement as sanitary nuisance.

A licensed premises, or any part thereof, may be abated as a sanitary nuisance. (Ord. 541 §3, 2002)

Sec. 6-1-320. Interference with inspectors.

No person shall interfere with or obstruct inspectors in the performance of their official duties. (Ord. 541 §3, 2002)

Sec. 6-1-330. Tampering with notice, seal or poster.

No person shall mutilate, obstruct, tear down, remove or otherwise tamper with any official notice, seal or poster unless authorized to do so by the licensing officer. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-340. False statements prohibited.

No person shall knowingly make, induce or cause to be made by another a false, untrue or misleading statement or a signature of another on a certificate, application, registration, report or other document required to be prepared pursuant to this Article. No person shall knowingly make a false, untrue or misleading oral statement to the licensing officer as to any matter investigated by the licensing officer. (Ord. 541 §3, 2002)

Sec. 6-1-350. Alterations prohibited.

No person shall reproduce, alter or cause to be reproduced or altered a license, report, certificate or other document issued by the licensing officer if the purpose of the reproduction or alteration is the evasion or violation of a provision of this Article or any other law. (Ord. 541 §3, 2002)

Sec. 6-1-360. Immunity from prosecution.

All officers and employees of the Town who are acting within the scope of their authority and duties under this Article shall be immune from prosecution, civil and criminal, for trespass upon real property. (Ord. 541 §3, 2002)

Sec. 6-1-370. Violations.

(a) It is a violation of this Article if any person knowingly and willfully:

(1) Operates, procures or acquiesces in the operation of an unlicensed premises contrary to the relevant requirements of this Code;

(2) Admits, procures or acquiesces in the admission of a minor within a licensed premises;

(3) Sells, barter, gives or offers to sell, barter or give or in an offer to sell, barter or give to any minor any service, device or thing sold or offered for sale by an adult bookstore, adult cabaret, adult motel, adult arcade, adult motion picture theater, massage parlor, adult theater or peep booth;

(4) Maintains, procures or acquiesces in the maintaining of a licensed premises in an unsanitary or unsafe condition contrary to the provisions of this Article;

(5) Having a duty to conduct the self-inspection required herein, fails or refuses, procures or acquiesces in a failure or refusal to conduct said self-inspection;

(6) Interferes with, procures or acquiesces in an interference with an inspector contrary to relevant provisions of this Code; or

(7) Maintains, procures or acquiesces in the maintenance of a nuisance on a licensed premises.

(b) For violations that are of a continuing nature, each day that the violation continues shall be a separate offense. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-380. Civil penalties.

In addition to or in lieu of the penalties that may be otherwise imposed, the licensing officer may assess the following civil penalties:

(1) A person who operates or attempts to operate an adult bookstore, adult cabaret, adult motel, adult arcade, massage parlor, adult motion picture theater, adult theater or peep booth without having first obtained a license under this Article may be assessed a civil penalty of up to one thousand dollars (\$1,000.00).

(2) An applicant for a license under this Article, and any officer, director, partner, agent or attorney of such an applicant, who knowingly makes a false statement or provides false information on any document or paper accompanying and forming a part of such application, shall be assessed a civil penalty of up to one thousand dollars (\$1,000.00) for each such false statement or false item of information.

(3) A licensee or employee who fails or refuses to renew his license within the period granted herein may be assessed a civil penalty of up to fifty dollars (\$50.00) for each day beyond said period that such refusal or failure continues, but not to exceed one thousand dollars (\$1,000.00) for each refusal or failure.

(4) A licensee, and any agent, officer, servant or employee of a licensee, who maintains a nuisance on the licensed premises or permits the licensed premises to be unsanitary or unsafe may be assessed a civil penalty of up to one thousand dollars (\$1,000.00) for each day that the nuisance or unsafe or unsanitary condition continues.

(5) A licensee who moves his licensed premises without approval by the licensing officer or who changes the name of his business without notifying the licensing officer may be assessed a civil penalty up to one thousand dollars (\$1,000.00).

(6) A licensee or employee who does not keep the records and make the reports required by any of the agencies herein may be assessed a civil penalty of up to one thousand dollars (\$1,000.00) for each violation.

(7) A licensee, any agent, officer, servant or employee of a licensee who fails to correct violations of the general and applicable special requirements for the licensed premises may be assessed a civil penalty of up to one thousand dollars (\$1,000.00) for each violation observed and not corrected within the period prescribed by the licensing officer, the Building Inspector or the Fire Chief, as the case may be.

(8) Any person who aids or participates in a violation for which a civil penalty may be assessed under this Article shall be considered a principal in the violation and may be assessed a civil penalty of up to the maximum amount prescribed for that violation.

(9) Nothing contained in this Article shall prevent or restrict the Town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such other lawful actions shall include, but not be limited to, an equitable action for injunctive relief or an action at law for damages. All remedies and penalties provided for in this Article shall be cumulative and independently available to the Town, and the Town shall be authorized to pursue any and all remedies set forth in this Section to the full extent of the law. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-390. Assessment and recovery of civil penalty.

Civil penalties shall be assessed by the licensing officer, based upon findings certified by the Building Inspector, the Town Marshal's office, health inspection services or the Fire Chief. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

Sec. 6-1-400. Criminal penalties.

If any person fails or refuses to obey or comply with or violates any of the criminal provisions contained in this Article, such person upon conviction of such offense shall be guilty of a misdemeanor and shall be punished in accordance with the provisions set forth in Section 1-4-20 of this Code. Each violation of noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation shall be considered a separate offense. (Ord. 541 §3, 2002; Ord. 595 §10, 2007; Ord. 634 §1, 2010)

Sec. 6-1-410. Prohibitions.

(a) No retail license for a premises that allows consumption of alcoholic beverages shall suffer or permit any person to appear on said licensed premises displaying anatomical areas or non-live performance or entertainment exhibiting specified sexual activities as defined in Section 6-1-10 of this Article.

(b) Any person who violates any provision of this Section shall be guilty of an offense against the Town, punishable as provided in Sections 6-1-380 and 6-1-400 above.

(c) If the owner, operator, licensee, lessor, lessee, manager, employee or any other person participating in the operation of a commercial establishment located within the Town at which alcoholic beverages are offered for sale for consumption on the premises shall be convicted of any of the offenses in this Article, then the Town Clerk shall revoke the occupational license for said establishment after giving reasonable notice thereof to the holder of said license and affording the holder an opportunity to be heard at the next Board of Trustees meeting as to why the revocation should not be issued. (Ord. 541 §3, 2002; Ord. 634 §1, 2010)

ARTICLE 2

Alcoholic Beverages

Sec. 6-2-10. Definitions.

(a) As used in this Article, unless the context otherwise requires:

Retail license means a grant to a licensee to sell fermented malt beverages pursuant to the Colorado Beer Code (Article 46 of Title 12, C.R.S.) or a grant to a licensee to sell malt, vinous or spirituous liquors pursuant to the Colorado Liquor Code (Article 47 of Title 12, C.R.S.).

Retail licensee or *licensee* means the holder of a license to sell fermented malt beverages pursuant to the Colorado Beer Code or the holder of a license to sell malt, vinous or spirituous liquors pursuant to the Colorado Liquor Code.

(b) All other terms shall be defined as set forth in the provisions of the Colorado Beer Code, the Colorado Liquor Code and Special Event Permits, as the definitions presently exist or may hereafter be amended. (Ord. 634 §1, 2010)

Sec. 6-2-20. Application of state statutes.

The Colorado Beer Code, Section 12-46-101, et seq., C.R.S., the Colorado Liquor Code, Section 12-47-101, et seq., C.R.S., and Special Event Permits, Section 12-48-101, et seq., C.R.S., as they presently exist or may hereafter be amended, shall apply to the sale of fermented malt beverages, alcoholic beverages, special malt liquors, spirituous liquors and vinous liquors in the Town. (Ord. 634 §1, 2010)

Sec. 6-2-30. Power and purpose.

The Board of Trustees finds and determines that it is empowered by Section 12-47-505, C.R.S., to fix and collect certain fees in connection with the application for issuance, transfer and renewal of certain types of beer, wine and liquor licenses. The Board of Trustees further finds that the fees established in this Article are reasonable and are in amounts sufficient to cover actual and necessary expenses incurred by the Town in connection with the handling of such licenses and applications therefor. (Ord. 634 §1, 2010)

Sec. 6-2-40. License; fees; issuance.

(a) The following fees shall be paid to the Town Clerk by the applicant at the time of filing the application or request:

- (1) For a new license, the sum of four hundred fifty dollars (\$450.00);
- (2) For a transfer of location or ownership, the sum of two hundred fifty dollars (\$250.00);
- (3) For renewal of a license, the sum of fifty dollars (\$50.00); and
- (4) For a temporary liquor license, the sum of two hundred fifty dollars (\$250.00).

(b) The following additional requirements must be met prior to issuance of new liquor licenses by the Town as the Local Licensing Authority:

(1) Two (2) architect's drawings shall be included with new malt, vinous and spirituous liquor license applications authorized to be filed pursuant to Section 12-47-309, C.R.S., one (1) for the Town's records, the other to be forwarded to the State's liquor licensing authority. The architect's drawings shall: illustrate the boundaries enclosing the licensed premises, which boundaries shall be highlighted in the color red; describe the height and structure of suitable walls or fencing of the boundaries that will contain patrons in the liquor licensed area; and illustrate the ingress and egress of the licensed premises, which ingress and egress shall be highlighted in yellow.

(2) No new license shall be issued by the Board of Trustees after approval of an application until the building in which the business is to be conducted is ready for occupancy, and then only after an inspection and approval of the premises by the Building Inspector indicating that the Building Inspector has determined that the applicant's premises is in compliance with the architect's drawings, plat plan and the detailed sketch for the interior of the building and that walls or fencing requirements and ingress and egress are in accordance with the approved application. (Ord. 602 §1, 2008; Ord. 634 §1, 2010)

Sec. 6-2-50. Suspension or revocation; fine.

(a) Whenever a decision of the Board of Trustees, acting as the Local Licensing Authority (hereinafter "Authority"), suspending a retail license for fourteen (14) days or less becomes final, whether by failure of the retail licensee to appeal the decision or by exhaustion of all appeals and judicial review, the retail licensee may, before the operative date of the suspension, petition the Authority for permission to pay a fine in lieu of having his retail license suspended for all or part of

the suspension period. Upon the receipt of the petition, the Authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

(1) That the public welfare and morals would not be impaired by permitting the retail licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

(2) That the books and records of the retail licensee are kept in such a manner that the loss of sales of alcoholic beverages which the retail licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom; and

(3) That the retail licensee has not had his license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two (2) years immediately preceding the date of the motion or complaint which has resulted in a final decision to suspend the retail license.

(b) The fine accepted shall be equivalent to twenty percent (20%) of the retail licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension; except that the fine shall be not less than two hundred dollars (\$200.00) nor more than five thousand dollars (\$5,000.00).

(c) Payment of any fine pursuant to the provisions of this Section shall be in the form of cash, certified check or cashier's check made payable to the Town Clerk and shall be deposited in the General Fund of the Town.

(d) Upon payment of the fine pursuant to this Section, the Authority shall enter its further order permanently staying the imposition of the suspension.

(e) In connection with any petition pursuant to this Section, the authority of the Authority is limited to the granting of such stays as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

(f) If the Authority does not make the findings required in Subsection (a) above and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the Authority. (Ord. 634 §1, 2010)

Sec. 6-2-60. Optional premises.

(a) An optional premises license and optional premises for a hotel and restaurant license may be issued by the Authority.

(b) The following standards shall be applicable to the issuance of a license under this Section, in addition to all other applicable standards set forth in the Colorado Liquor Code for optional premises license and optional premises for a hotel and restaurant license.

(1) Eligible facilities. Outdoor sports and recreational facilities as defined in Section 12-47-103(13.5), C.R.S., are eligible for licensing as an optional premises or an optional premises for a hotel and restaurant.

(2) Number of optional premises. There are no restrictions on the number of optional premises which any one (1) licensee may have on an outdoor sports or recreational facility.

(3) Minimum size of facility. There is no restriction on the minimum size of an outdoor sports or recreational facility which would be eligible for issuance of an optional premises license or optional premises for a hotel and restaurant license.

(c) The application for an optional premises license or optional premises for a hotel or restaurant license shall be accompanied by the following:

(1) A map or other drawing illustrating the outdoor sports or recreational facility boundaries and the approximate location of each optional premises requested;

(2) A description of the method which shall be used to identify the boundaries of the optional premises when it is in use; and

(3) A description of the provisions which have been made for storing malt, vinous and spirituous liquors in a secured area on or off the optional premises for the future use on the optional premises. (Ord. 634 §1, 2010)

Sec. 6-2-70. Sales near schools.

The five-hundred-foot restriction as called for in Section 12-47-313(III)(d)(I), C.R.S., is eliminated, and a distance of two hundred (200) feet is enacted as it applies to hotel and restaurant licenses. The two-hundred-foot restriction shall only apply to Grand Avenue east of the existing Mancos Public School. (Ord. 563, 2005)

Sec. 6-2-80. Alcohol beverage tastings authorized.

Pursuant to Section 12-47-301(10), C.R.S., the Town authorizes alcohol beverage tastings for licensed retail liquor stores and liquor-licensed drug stores within the Town. The Town shall not require a further application prior to allowing retail liquor licensees to conduct alcohol beverage tastings, and elects not to impose additional limitations on such tastings beyond those limitations set forth in Chapter 47 of Title 12, C.R.S. (Ord. 634 §1, 2010)

Sec. 6-2-90. Educational requirements.

Every hotel and restaurant licensee, registered manager and licensee's employee is encouraged to obtain a certificate of completion from an educational program of training for intervention procedures for servers of alcohol. Those registered managers obtaining a certificate of completion may file a copy of the certificate of completion with the Authority with an application of renewal of a liquor license. (Ord. 634 §1, 2010)

Sec. 6-2-100. Special event permit.

The following additional requirements must be met prior to issuance of a new special event permit by the Authority: A fully completed special event permit application, together with payment of all applicable fees, shall be submitted not less than forty-five (45) days prior to the date of the special event for which the permit is sought. (Ord. 621 §1, 2009; Ord. 634 §1, 2010)

ARTICLE 3

Billiard, Pool and Bowling Establishments

Sec. 6-3-10. Restrictions.

Any person keeping any billiard, bagatelle, pool or pigeon-hole table, pin alley, ball or bowling alley or shooting gallery, or other table or implements kept or used for a similar purpose, in any place of public resort within the corporate limits of the Town, or any agent or employee of any such person who shall allow any minor to play at or upon any such table, alley or gallery, or to frequent or loiter about the room or place where any such table, alley or gallery is kept, who shall fail to keep an orderly place, who shall allow any gambling to be carried on therein, or who shall keep or allow any such place to be kept open, or any such table, alley or gallery to be used, between the hours of 12:00 a.m. and 7:00 a.m., shall be punished in accordance with the provisions set forth in Section 1-4-20 of this Code. Upon conviction thereof, the license of the person keeping such place may be revoked by the Board of Trustees. (Ord. 84 §1, 1910; Ord. 219 §1, 1934; Ord. 595 §10, 2007; Ord. 634 §1, 2010)

Sec. 6-3-20. License issuance; compliance required.

The license issued for the keeping of any such table, alley or gallery shall be deemed to be issued for one (1) room only situated upon the ground floor and fronting upon the street mentioned in the application therefor; and such room shall be provided with front window lights of not less than one-half ($\frac{1}{2}$) of the entire front thereof, and of a height beginning not more than four (4) feet above the level of the sidewalk upon which such room fronts. Such window lights shall at all times be kept clear, and such room shall at all times be kept free from all partitions, screens, curtains or other obstructions to a clear and unobstructed view from the street front of all parts of the room and so lighted as clearly to permit such view. Any person keeping or in charge of any room or place for which any such license has been issued who fails to comply with or violates or permits to be violated any of the provisions of this Section shall be punished in accordance with the provisions set forth in Section 1-4-20 of this Code. Upon conviction thereof, such license may be revoked by the Board of Trustees. (Ord. 84 §3, 1910; Ord. 110 §1, 1913; Ord. 595 §10, 2007; Ord. 634 §1, 2010)

ARTICLE 4

Coin-Operated Musical and Amusement Devices

Sec. 6-4-10. License fee.

No person shall hereafter operate any jukeboxes, nickelodeons or other coin-operated musical device within the corporate limits of the Town without first paying to the Town Treasurer an annual license fee of ten dollars (\$10.00) for each such device. (Ord. 253 §1, 1947)

Sec. 6-4-20. Declaration of policy.

The Board of Trustees declares that it is its policy to license and regulate the operation of jukeboxes, nickelodeons and other coin-operated amusement and musical devices, including pinball machines and pin alleys, and all coin-operated amusement devices within the corporate limits of the Town. (Ord. 253 §2, 1947)

Sec. 6-4-30. Implements of amusement designated.

The Board of Trustees declares that nickelodeons, jukeboxes and other coin-operated musical devices are implements of amusement. (Ord. 253 §3, 1947)

Sec. 6-4-40. Exceptions.

The provisions of this Article shall not be deemed to apply to any such devices owned or operated exclusively by or for the sole benefit of any municipal purpose or governmental institution or to organizations operating not for pecuniary benefit. (Ord. 253 §4, 1947)

Sec. 6-4-50. Disturbance prohibited.

No person shall operate any of the devices herein specified in such a manner or in such a place and at such unusual hours as to constitute a disturbance of the public peace and quiet, irrespective of whether such device has been duly licensed. (Ord. 253 §5, 1947)

ARTICLE 5

Transient Merchants

Sec. 6-5-10. Definition.

As used in this Article *transient merchant*, which includes any person, firm or corporation, whether as owner, agent, consignee or employee, is defined as follows:

- (1) A vendor is to be considered *transient* if all the following conditions are met:
 - a. The vendor does not have a Town business street address.

b. The vendor does not have his services or products available to the public for a minimum of three (3) consecutive months.

c. The vendor attempts to sell his service or product within the corporate limits of the Town on a temporary basis (less than three [3] consecutive months), engages in a temporary business of selling and delivering goods, wares, property and merchandise within the Town and, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, trailer, tent, railroad boxcar, boat, public room in hotels, lodging houses, apartments, shops or any lot, public right-of-way or other place within the Town for the exhibition and sale of such goods, wares and merchandise; provided that such definition does not include any person who, while occupying such temporary location, does not sell from stock but exhibits samples for the purpose of securing orders for future delivery only. The person so engaged is not relieved from complying with the provisions of this Article merely by reason of associating temporarily with any local dealer, trader, merchant or auctioneer, or by conducting such transient business in connection with, as a part of or in the name of, any local dealer, trader, merchant or auctioneer.

(2) The definition for *transient merchants* shall not apply to any resident of the Town who wishes to dispose of personal property and thereby holds a sale at his residence for the disposal of the personal property, such sale being commonly known as a garage or yard sale. (Ord. 514 §1, 2001; Ord. 634 §1, 2010)

Sec. 6-5-20. License required.

(a) It is unlawful for any transient merchant to engage in any such business within the Town without first obtaining a license therefor in compliance with the provisions of this Article.

(b) The licensee shall also be required to comply with the provisions of Section 4-3-50 of this Code. (Ord. 514 §2, 2001)

Sec. 6-5-30. Exemptions from provisions.

The terms of this Article do not apply to:

- (1) Persons selling personal property at wholesale to dealers in such articles.
- (2) Acts of merchants or their employees in delivering goods in the regular course of business.
- (3) Newspaper carriers.
- (4) Colorado-licensed real estate brokers, salespersons and insurance agents.
- (5) Employees of any public utility.
- (6) Milk producers and salespersons.
- (7) Dissemination of information without solicitation of money or other consideration.
- (8) Any sale required by statute or court order.

(9) Any bona fide auction sale.

(10) Any person selling food or food products grown or raised in the State.

(11) Notwithstanding any other provision of this Code, any recognized local nonprofit organization or unincorporated association may, with the prior approval of the Board of Trustees, sponsor temporary activities upon the public streets, alleys and other public grounds of the Town, which encompass food goods grown, processed or created solely by the vendor, arts and crafts manufactured solely by the vendor and other like activities. (Ord. 514 §3, 2001; Ord. 634 §1, 2010)

Sec. 6-5-40. Application for license; investigation fee; license fee.

(a) Applicants for a license under this Article shall file with the Town Clerk a sworn application, in writing, on a form to be furnished by the Town Clerk at least thirty (30) days in advance of the first sale for which a license is required hereunder, which shall include the following information:

(1) The name and physical description of the applicant.

(2) The complete permanent home and local address of the applicant and the local address from which proposed sales will be made.

(3) A brief description of the nature of the business and the goods to be sold.

(4) If employed, the name and address of the employer, together with the credentials therefrom establishing the exact relationship.

(5) The length of time for which the right to do business is desired.

(6) The source of supply of the goods or property proposed to be sold, or orders taken for the sale thereof, where such goods or products are located at the time the application is filed, and the proposed method of delivery.

(7) The last cities or towns, not to exceed three (3), where the applicant carried on business immediately preceding the date of application and the addresses from which such business was conducted in those municipalities.

(8) Proof that the merchant has permission of any property owner to conduct business upon private property.

(9) Proof sufficient to the licensing authority that the applicant has a valid Colorado state sales tax license.

(b) At the time of filing the application, a fee of seventy-five dollars (\$75.00) shall be paid to the Town to cover the cost of investigation of the facts stated therein. The license shall be issued by the Town Clerk upon payment of a fee of ten dollars (\$10.00) per year, or ten dollars (\$10.00) per day. An annual license shall be valid for one (1) year from the date of issue. There shall be no application for renewals in the succeeding license period.

(c) The fees set forth above may be changed from time to time by resolution of the Board of Trustees. (Ord. 514 §4, 2001; Ord. 634 §1, 2010)

Sec. 6-5-50. Investigation and issuance of license.

(a) Upon receipt of such application, it shall be referred to the Town Marshal who shall immediately institute such investigation of the applicant's business and moral character as he deems necessary for the protection of the public good and shall endorse the application in the manner prescribed in this Section within thirty (30) days after it has been filed by the applicant with the Town Clerk.

(b) If, as a result of such investigation, the applicant's character or business responsibility are found to be satisfactory, the Town Marshal shall endorse on the application his approval and return the application to the Town Clerk, who shall, upon payment of the prescribed license fee, deliver to the applicant his license. Such license shall contain the signature of the issuing officer, shall show the name and the kinds of goods to be sold thereunder and shall contain the wording, "The Town of Mancos does not endorse the products of the Licensee," the amount of fee paid, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such licensed business. Each transient merchant must secure a personal license. Except as herein provided for agent licenses, no license shall be used at any time by any person other than the person to whom it is issued. The Town Clerk shall keep a permanent record of all licenses issued. (Ord. 514 §5, 2001; Ord. 634 §1, 2010)

Sec. 6-5-60. Agent license.

(a) Any person who obtains a license in his own name under the provisions of this Article may thereafter obtain numbered agent licenses authorizing another person to act on his behalf. A person may engage in the business of a transient merchant pursuant to an agent license, upon the filing of an application with the Town Clerk. Such application shall be deemed to be approved unless the licensee is notified of its denial within seven (7) days and shall remain in effect until the license expires, is revoked or suspended or a new application is submitted for transfer to another person.

(b) Any licensee who obtains agent licenses pursuant thereto shall be strictly responsible for his agent's full compliance with the laws of the Town, and any violation of this Code by an agent shall be grounds for suspension or revocation of the primary license as well as the agent license. For purposes of such suspension or revocation, it shall not be necessary to establish intent or knowledge on the part of the primary licensee.

(c) Any primary licensee may obtain agent licenses upon the payment of the license fee. Such agent licenses shall become effective only upon the submission of an application to operate thereunder and shall be transferable to another individual upon the filing of a new application signed by the primary licensee, the payment of a transfer fee of five dollars (\$5.00) and the surrender of the previous license. (Ord. 514 §6, 2001)

Sec. 6-5-70. Bond.

Every applicant for a license hereunder shall file with the Town Clerk cash or an adequate surety bond by a surety licensed to do business in the State, running to the Town in the amount of one

thousand dollars (\$1,000.00), if the license is issued for less than six (6) months, and two thousand dollars (\$2,000.00), if the license is issued for six (6) months or longer, guaranteeing that the applicant shall comply fully with all the provisions of this Code and statutes of the State. If a bond is used, such bond shall provide that any person aggrieved, including the Town, shall be entitled to recover reasonable attorneys' fees and expenses on the subject bond and the final judgment is obtained of such person or the Town. Action on such bond or the cash deposit may be brought by the person aggrieved and for whose benefit, among others, the bond is given, but the surety may, by paying, pursuant to order of the Court, the face amount of the bond to the Court Clerk in which suit is commenced be relieved without costs of all further liability. A separate bond in the above amount shall be posted for each agent license. (Ord. 514 §7, 2001; Ord. 634 §1, 2010)

Sec. 6-5-80. Expiration of license.

All annual licenses under the provisions of this Article shall expire at midnight, one (1) year after the date of issue. All licenses other than annual licenses shall expire at midnight on the date specified on the license. (Ord. 514 §8, 2001)

Sec. 6-5-90. Religious, charitable and special events permits.

(a) Any person or organization desiring to solicit donations of money or property or desiring to sell literature or merchandise from door to door or in any public place for charitable purposes shall be exempt from the provisions of Sections 6-4-30 through 6-4-70 above, provided that there is filed a sworn application, in writing, on a form to be furnished by the Town Clerk, which shall include the following information:

- (1) The name and purpose of the cause for which the permit is sought.
- (2) The names and addresses of the officers and directors of the organization.
- (3) The period during which solicitation is to be carried on.
- (4) Whether or not any commission, fees, wages or emoluments are to be expended in connection with such solicitation and the amount thereof.

(b) Upon determining that such solicitation is in furtherance of charitable purposes, the Town Clerk shall issue a permit without charge to such person or organization to solicit in the Town. The term *charitable purposes* shall mean any organization, campaign or project which:

- (1) Has as its primary purpose the furtherance of science, education, philanthropy, religion, the arts or any political campaign;
- (2) Is not conducted for personal gain; and
- (3) No portion of the net proceeds of solicitation for which inures to the benefit of any individual or shareholder.

Any organization to which contributions are deductible for federal income tax purposes shall conclusively be deemed to be within this definition.

(c) Upon a resolution by the Board of Trustees, the Town may waive the requirements of Sections 6-4-30 through 6-4-70 above for persons, corporations or organizations selling or displaying their goods, wares, property or merchandise at special events sponsored or endorsed by the Town, including but not limited to fairs and craft shows. (Ord. 514 §9, 2001; Ord. 634 §1, 2010)

Sec. 6-5-100. Compliance with statutes and ordinances.

No licensee, nor any person on his behalf, shall violate any provision of this Code or state statutes. (Ord. 514 §10, 2001; Ord. 634 §1, 2010)

Sec. 6-5-110. Use of streets.

No licensee shall have any exclusive right to any location in the public rights-of-way, be permitted a stationary location thereon or be permitted to operate in a congested area where such operation might impede or inconvenience the public use of such public rights-of-way. (Ord. 514 §11, 2001; Ord. 634 §1, 2010)

Sec. 6-5-120. Exhibition of license.

Licenses are required to exhibit their certificate of license at the time of initial introduction to any person in the Town for the purpose of consummating any transaction covered by this Article. (Ord. 514 §12, 2001)

Sec. 6-5-130. Duty of Town Marshal to enforce.

It shall be the duty of the Town Marshal to require any person peddling, soliciting or canvassing, and who is not known by such officer to be duly licensed, to produce his license and to enforce the provisions of this Article against any person found to be in violation. (Ord. 514 §13, 2001; Ord. 634 §1, 2010)

Sec. 6-5-140. Police records.

The Town Marshal shall report to the Town Clerk all convictions for violation of this Article, and the Town Clerk shall maintain a record for each license issued and record the reports of violation therein. (Ord. 514 §14, 2001)

Sec. 6-5-150. Revocation and suspension of license.

(a) Licenses and permits issued under the provisions of this Article may be revoked or suspended by the Town Administrator after notice and hearing, for any of the following causes:

- (1) Fraud, misrepresentation or incorrect statement contained in the application for the license.
- (2) Fraud, misrepresentation or incorrect statement made in the course of carrying on his business as a transient merchant.
- (3) Any violation of this Article.
- (4) Conviction of any crime or misdemeanor.

(5) Conducting the business of transient merchant in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

(6) Fraud, misrepresentation or incorrect statement in the application for a charitable solicitation permit.

(7) Fraud, misrepresentation or incorrect statement to any person from whom charitable contributions are solicited.

(b) Notice of hearing for the revocation of a license shall be given by the Town Clerk, in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five (5) days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three (3) days prior to the date set for hearing. (Ord. 514 §15, 2001)

Sec. 6-5-160. Appeals to Town Administrator.

Any person aggrieved by the action of the Town Marshal or the Town Clerk in the denial of a permit or license of this Article may appeal to the Town Administrator. Such appeal shall be taken by filing with the Town Administrator, within fourteen (14) days after notice of the action complained of, a written statement setting forth fully the grounds for an appeal. The Town Administrator shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given to the appellant. (Ord. 514 §16, 2001)

Sec. 6-5-170. Reapplication for license.

No licensee whose license has been revoked shall make further application until at least one (1) year has elapsed since the last previous revocation. (Ord. 514 §17, 2001)

Sec. 6-5-180. Violation; penalty.

The Town Marshal's office shall issue a warning citation upon first contact with anyone violating this Article. Any person who violates any of the provisions of this Article, whether he does so willfully or otherwise, shall be guilty of a misdemeanor. After the warning, any person convicted of violating any of the provisions of this Article shall be punished in accordance with the provisions set forth in Section 1-4-20 of this Code. (Ord. 514 §18, 2001; Ord. 595 §10, 2007; Ord. 634 §1, 2010)

ARTICLE 6

Red Flag Policy and Identity Theft Prevention Program

Sec. 6-6-10. Purpose.

To establish an Identity Theft Prevention Program designed to detect, prevent and mitigate identity theft in connection with the opening of a covered account or an existing covered account and to provide for continued administration of the Program in compliance with Part 681 of Title 16 of the

Code of Federal Regulations, implementing Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003. (Ord. 608 §1, 2008)

Sec. 6-6-20. Definitions.

For purposes of this Article, the following words, terms and phrases shall have the following meanings:

Covered account means an account that a financial institution or creditor offers or maintains, primarily for personal, family or household purposes, that involves or is designed to permit multiple payments or transactions, such as a credit card account, mortgage loan, automobile loan, margin account, cell phone account, utility account, checking account or savings account; and any other account that the financial institution or creditor offers or maintains for which there is a reasonably foreseeable risk to customers or to the safety and soundness of the financial institution or creditor from identity theft, including financial, operational, compliance, reputation or litigation risks.

Credit means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

Creditor means any person who regularly extends, renews or continues credit; any person who regularly arranges for the extension, renewal or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew or continue credit and includes utility companies and telecommunications companies.

Customer means a person who has a covered account with a creditor.

Identity theft means a fraud committed or attempted using identifying information of another person without authority.

Notice of address discrepancy means a notice sent to a user by a consumer reporting agency pursuant to 15 U.S.C. § 1681(c)(h)(1), that informs the user of a substantial difference between the address for the consumer that the user provided to request the consumer report and the addresses in the agency's file for the consumer.

Person means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

Personal identifying information means a person's credit card account information, debit card information, bank account information and drivers' license information and, for a natural person, includes their Social Security Number, mother's birth name and date of birth.

Red flag means a pattern, practice or specific activity that indicates the possible existence of identity theft.

Service provider means a person who provides a service directly to the Town.

Town means the Town of Mancos. (Ord. 608 §1, 2008)

Sec. 6-6-30. Findings.

(a) The Town is a creditor pursuant to 16 C.F.R. § 681.2 due to its provision or maintenance of covered accounts for which payment is made in arrears.

(b) Covered accounts offered to customers for the provision of Town services include utility accounts and development review accounts.

(c) The process of opening a new covered account and making payments on such accounts have been identified as potential processes in which identity theft could occur.

(d) The Town limits access to personal identifying information to those employees responsible for or otherwise involved in opening covered accounts or accepting payment for use of covered accounts. Information provided to such employees is entered directly into the Town's computer system and is not otherwise recorded.

(e) The Town determines that there is a low risk of identity theft occurring in the following ways:

(1) Use by an applicant of another person's personal identifying information to establish a new covered account; and

(2) Use of another person's credit card, bank account or other method of payment by a customer to pay such customer's covered account or accounts. (Ord. 608 §1, 2008)

Sec. 6-6-40. Process of establishing a covered account.

As a precondition to opening a covered account in the Town, each applicant shall provide the Town with:

(1) A valid government-issued identification card containing a photograph of the applicant. The identifying number of card shall be recorded on the application for service; or

(2) The applicant's title company shall send verification of property ownership to the Town. (Ord. 608 §1, 2008)

Sec. 6-6-50. Access to covered account information.

(a) Access to customer accounts shall be password-protected and shall be limited to authorized Town personnel.

(b) Any unauthorized access to or other breach of customer accounts is to be reported immediately to the Town Clerk and the password changed immediately.

(c) Personal identifying information included in customer accounts is considered confidential, and any request or demand for such information shall be immediately forwarded to the Town Clerk. (Ord. 608 §1, 2008)

Sec. 6-6-60. Credit card payments.

(a) In the event that credit card payments that are made over the Internet are processed through a third-party service provider, such third-party service provider shall certify that it has an adequate identity theft prevention program in place that is applicable to such payments.

(b) All credit card payments made over the telephone or the Town's website shall be entered directly into the customer's account information in the computer database.

(c) Account statements and receipts for covered accounts shall include only the last four (4) digits of the credit or debit card or the bank account used for payment of the covered account. (Ord. 608 §1, 2008)

Sec. 6-6-70. Sources and types of red flags.

All employees responsible for or involved in the process of opening a covered account or accepting payment for a covered account shall check for red flags as indicators of possible identity theft. Such red flags may include:

(1) Alerts from consumer reporting agencies, fraud detection agencies or service providers. Examples of alerts include, but are not limited to:

- a. A fraud or active duty alert that is included with a consumer report.
- b. A notice of credit freeze in response to a request for a consumer report.
- c. A notice of address discrepancy provided by a consumer reporting agency.
- d. Indications of a pattern of activity in a consumer report that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as:
 - 1. A recent and significant increase in the volume of inquiries;
 - 2. An unusual number of recently established credit relationships;
 - 3. A material change in the use of credit, especially with respect to recently established credit relationships; or
 - 4. An account that was closed for cause or identified for abuse of account privileges by a financial institution or creditor.

(2) Suspicious documents. Examples of suspicious documents include:

- a. Documents provided for identification that appear to be altered or forged;
- b. Identification on which the photograph or physical description is inconsistent with the appearance of the applicant or customer;

c. Identification on which the information is inconsistent with information provided by the applicant or customer;

d. Identification on which the information is inconsistent with readily accessible information that is on file with the creditor, such as the application for service; or

e. An application that appears to have been altered or forged, or appears to have been destroyed and reassembled.

(3) Suspicious personal identification, such as suspicious address change. Examples of suspicious identifying information include:

a. Personal identifying information that is inconsistent with external information sources used by the financial institution or creditor. For example:

1. The address does not match any address in the consumer report; or

2. The Social Security Number (SSN) has not been issued, or is listed on the Social Security Administration's Death Master File.

b. Personal identifying information provided by the customer is not consistent with other personal identifying information provided by the customer, such as a lack of correlation between the SSN range and date of birth.

c. Personal identifying information or a phone number or address is associated with known fraudulent applications or activities as indicated by internal or third-party sources used by the financial institution or creditor.

d. Other information provided, such as fictitious mailing address, mail drop addresses, jail addresses, invalid phone numbers, pager numbers or answering services, is associated with fraudulent activity.

e. The SSN provided is the same as that submitted by other applicants or customers.

f. The address or telephone number provided is the same as or similar to the account number or telephone number submitted by an unusually large number of applicants or customers.

g. The applicant or customer fails to provide all required personal identifying information on an application or in response to notification that the application is incomplete.

h. Personal identifying information is not consistent with personal identifying information that is on file with the financial institution or creditor.

i. The applicant or customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.

(4) Unusual use of or suspicious activity relating to a covered account. Examples of suspicious activity include:

a. Shortly following the notice of a change of address for an account, the Town receives a request for the addition of authorized users on the account.

b. A new revolving credit account is used in a manner commonly associated with known patterns of fraud patterns. For example: The customer fails to make the first payment or makes an initial payment but no subsequent payments.

c. An account is used in a manner that is not consistent with established patterns of activity on the account. There is, for example:

1. Nonpayment when there is no history of late or missed payments.

2. A material change in purchasing or spending patterns.

d. An account that has been inactive for a long period of time is used (taking into consideration the type of account, the expected pattern of usage and other relevant factors).

e. Mail sent to the customer is returned repeatedly as undeliverable although transactions continue to be conducted in connection with the customer's account.

f. The Town is notified that the customer is not receiving paper account statements.

g. The Town is notified of unauthorized charges or transactions in connection with a customer's account.

h. The Town is notified by a customer, law enforcement or another person that it has opened a fraudulent account for a person engaged in identity theft.

(5) Notice from customers, law enforcement, victims or other reliable sources regarding possible identity theft or phishing relating to covered accounts. (Ord. 608 §1, 2008)

Sec. 6-6-80. Prevention and mitigation of identity theft.

(a) In the event that any Town employee responsible for or involved in restoring an existing covered account or accepting payment for a covered account becomes aware of red flags indicating possible identity theft with respect to existing covered accounts, such employee shall use his discretion to determine whether such red flag or combination of red flags suggests a threat of identity theft. If, in his discretion, such employee determines that identity theft or attempted identity theft is likely or probable, such employee shall immediately report such red flags to the Town Clerk. If, in his discretion, such employee deems that identity theft is unlikely or that reliable information is available to reconcile red flags, the employee shall convey this information to the Town Clerk, who may in his discretion determine that no further action is necessary. If the Town Clerk, in his discretion, determines that further action is necessary, a Town employee shall perform one (1) or more of the following responses, as determined to be appropriate by the Town Clerk:

(1) Contact the customer;

(2) Make the following changes to the account if, after contacting the customer, it is apparent that someone other than the customer has accessed the customer's covered account:

a. Change any account numbers, passwords, security codes or other security devices that permit access to an account; or

b. Close the account;

(3) Cease attempts to collect additional charges from the customer and decline to sell the customer's account to a debt collector in the event that the customer's account has been accessed without authorization and such access has caused additional charges to accrue;

(4) Notify a debt collector within twenty-four (24) hours of the discovery of likely or probable identity theft relating to a customer account that has been sold to such debt collector in the event that a customer's account has been sold to a debt collector prior to the discovery of the likelihood or probability of identity theft relating to such account;

(5) Notify law enforcement in the event that someone other than the customer has accessed the customer's account causing additional charges to accrue or accessing personal identifying information; or

(6) Take other appropriate action to prevent or mitigate identity theft.

(b) In the event that any Town employee responsible for or involved in opening a new covered account becomes aware of red flags indicating possible identity theft with respect to an application for a new account, such employee shall use his discretion to determine whether such red flag or combination of red flags suggests a threat of identity theft. If, in his discretion, such employee determines that identity theft or attempted identity theft is likely or probable, such employee shall immediately report such red flags to the Town Clerk. If, in his discretion, such employee deems that identity theft is unlikely or that reliable information is available to reconcile red flags, the employee shall convey this information to the Town Clerk, who may, in his discretion, determine that no further action is necessary. If the Town Clerk, in his discretion, determines that further action is necessary, a Town employee shall perform one (1) or more of the following responses, as determined to be appropriate by the Town Clerk:

(1) Request additional identifying information from the applicant;

(2) Deny the application for the new account;

(3) Notify law enforcement of possible identity theft; or

(4) Take other appropriate action to prevent or mitigate identity theft. (Ord. 608 §1, 2008)

Sec. 6-6-90. Updating the Program.

The Board of Trustees shall annually review and, as deemed necessary by the Board of Trustees, update the Identity Theft Prevention Program along with any relevant red flags in order to reflect changes in risks to customers or to the safety and soundness of the Town and its covered accounts from identity theft. In so doing, the Board of Trustees shall consider the following factors and exercise its discretion in amending the Program:

(1) The Town's experiences with identity theft;

- (2) Updates in methods of identity theft;
- (3) Updates in customary methods used to detect, prevent and mitigate identity theft;
- (4) Updates in the types of accounts that the Town offers or maintains; and
- (5) Updates in service provider arrangements. (Ord. 608 §1, 2008)

Sec. 6-6-100. Program administration.

The Town Clerk is responsible for oversight of the Program and for Program implementation. The Town Administrator is responsible for reviewing reports prepared by staff regarding compliance with red flag requirements and with recommending material changes to the Program, as necessary in the opinion of the Town Administrator, to address changing identity theft risks and to identify new or discontinued types of covered accounts. Any recommended material changes to the Program shall be submitted to the Board of Trustees for consideration by the Board of Trustees.

(1) The Town Clerk will report to the Town Administrator, at least annually, on compliance with the red flag requirements. The report will address material matters related to the Program and evaluate issues such as:

- a. The effectiveness of the policies and procedures of the Town in addressing the risk of identity theft in connection with the opening of covered accounts and with respect to existing covered accounts;
- b. Service provider arrangements;
- c. Significant incidents involving identity theft and management's response; and
- d. Recommendations for material changes to the Program.

(2) The Town Clerk is responsible for providing training to all employees responsible for or involved in opening a new covered account or accepting payment for a covered account with respect to the implementation and requirements of the Program. The Town Clerk shall exercise his discretion in determining the amount and substance of training necessary. (Ord. 608 §1, 2008)

Sec. 6-6-110. Outside service providers.

In the event that the Town engages a service provider to perform an activity in connection with one (1) or more covered accounts, the Town Clerk shall exercise his discretion in reviewing such arrangements in order to ensure, to the best of his ability, that the service provider's activities are conducted in accordance with policies and procedures, agreed upon by contract, that are designed to detect any red flags that may arise in the performance of the service provider's activities, and take appropriate steps to prevent or mitigate identity theft. (Ord. 608 §1, 2008)

Sec. 6-6-120. Treatment of address discrepancies.

Pursuant to 16 C.F.R. § 681.1, this establishes a process by which the Town will be able to form a reasonable belief that a consumer report relates to the consumer about whom it has requested a

consumer credit report when the Town has received a notice of address discrepancy. In the event that the Town receives a notice of address discrepancy, the Town employee responsible for verifying consumer addresses for the purpose of providing the municipal service or account sought by the consumer shall perform one (1) or more of the following activities, as determined to be appropriate by such employee:

- (1) Compare the information in the consumer report with:
 - a. Information the Town obtains and uses to verify a consumer's identity in accordance with the requirements of the Customer Information Program rules implementing 31 U.S.C. § 5318(1);
 - b. Information the Town maintains in its own records, such as applications for service, change of address notices or other customer account records or tax records; or
 - c. Information the Town obtains from third-party sources that are deemed reliable by the relevant Town employee; or
- (2) Verify the information in the consumer report with the consumer. (Ord. 608 §1, 2008)

Sec. 6-6-130. Furnishing consumer's address to consumer reporting agency.

(a) In the event that the Town reasonably confirms that an address provided by a consumer to the Town is accurate, the Town is required to provide such address to the consumer reporting agency from which the Town received a notice of address discrepancy with respect to such consumer. This information is required to be provided to the consumer reporting agency when:

- (1) The Town is able to form a reasonable belief that the consumer report relates to the consumer about whom the Town requested the report;
- (2) The Town establishes a continuing relation with the consumer; and
- (3) The Town regularly and in the ordinary course of business provides information to the consumer reporting agency from which it received the notice of address discrepancy.

(b) Such information shall be provided to the consumer reporting agency as part of the information regularly provided by the Town to such agency for the reporting period in which the Town establishes a relationship with the customer. (Ord. 608 §1, 2008)

Sec. 6-6-140. Methods of confirming consumer addresses.

The Town employee charged with confirming consumer addresses may, in his discretion, confirm the accuracy of an address through one (1) or more of the following methods:

- (1) Verifying the address with the consumer;
- (2) Reviewing the Town's records to verify the consumer's address;
- (3) Verifying the address through third-party sources; or

(4) Using other reasonable processes. (Ord. 608 §1, 2008)