

**TITLE 4
BUSINESS REGULATIONS**

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**CHAPTER 1
BUSINESS LICENSES**

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4-1-1: **LICENSE REQUIRED:** No person shall operate, conduct or engage in any industry, vocation, occupation, trade or other business subject to the provisions of this Title without first obtaining an appropriate license from the City. Licenses shall be issued upon payment of the fees specified in this Title, upon the applicant's compliance with the applicable provisions of this Title and upon approval of the City Council. All licenses shall be a personal privilege of the holder. Except as expressly provided in this Title, a license shall become null and void if the holder ceases to personally supervise, conduct and operate the trade or business for which the license has been issued. Unless otherwise provided in this Title, no license fee or any part thereof may be refunded even though the licensee does not operate for the period or any portion of the period for which the license was issued.

4-1-2: **ISSUANCE OF LICENSES:**

(A) The City Clerk shall prepare license forms for licenses issued under this Title. The license shall specify the holder's name, the type of business licensed, the principal place of business of the licensee and the expiration date of the license. The Clerk shall account for all licenses signed by the Mayor, shall countersign the licenses and deliver the licenses to licensees. The City Clerk shall collect all license fees and promptly deliver them to the City Treasurer. The City Treasurer shall issue a receipt for any license fees received from the Clerk.

(B) All licenses shall be issued or denied by the City Clerk, based upon the recommendation of the Chief of Police. Such recommendation shall be in writing and shall set forth the pertinent facts and reasons supporting such recommendation, including references to applicable statutes, ordinances or provisions of the City Code, if any. The City Clerk shall forthwith notify the applicant in writing of the approval or denial of the application, and if denied, shall summarily set forth the reasons for the denial in such notification.

(C) Any applicant may appeal a denial of his or her application by filing a notice of appeal with the City Clerk, within ten (10) days after the date the denial is delivered to the applicant. The notice of appeal shall be in such form as may be approved by the City Clerk and shall in summary form set forth the reasons for the appeal. Such notice of appeal shall be accompanied by a filing fee in an amount set from time to time by Resolution of the Council. Such filing fee shall be non-refundable. Upon timely delivery of a notice of appeal and payment of the filing fee, the City Clerk shall schedule a hearing before the City Council within thirty (30) days after the delivery of the notice of appeal. The City Clerk shall also deliver a written notice of hearing to the applicant not less than seven (7) days prior to the date of such hearing. A copy of the notice of hearing shall likewise be sent to the Chief of Police. At the hearing, the City Clerk shall keep a transcribable, verbatim record of the hearing, including any exhibits or documentary evidence and shall retain such transcript for a period of not less than six (6) months following the conclusion of the hearing. At the conclusion of the hearing, the City Council shall render a decision, which may be verbal or in writing. Such decision shall succinctly state the reasons for the denial or affirmation of the decision of the City Clerk. (Ord. 2964, 8-14-2014)

4-1-3: LICENSE FEES PAYABLE IN ADVANCE: License fees shall be paid in advance at the office of the City Clerk.

4-1-4: APPLICATION FOR LICENSE: Any person desiring to obtain any license provided for in this Title shall first apply in writing under oath to the Council. The application together with the license fee shall be delivered to the City Clerk. The City Clerk shall prescribe the form of the application. The application shall contain the following information.

- (A) Applicant's full name, form of doing business, (i.e. sole proprietorship, partnership or corporation) and the name under which the business is to be conducted;
- (B) Applicant's state of residence and principal place of business;
- (C) Applicant's business and residential mailing addresses and telephone numbers;
- (D) The street address within the City where each place of business is to be conducted;
- (E) The nature of the business to be licensed;
- (F) The number of years the applicant has engaged in such business;
- (G) The zoning of the property on which the business will be conducted; and

(H) Any other information required by this Title or by the Clerk in order to determine the applicant's fitness or qualifications for the license.

The City Clerk shall forward a copy of each business license application to the Chief of Police, the Fire Chief, the Director of Community Development Services and the State of Idaho Department of Health, as applicable, and other appropriate City Department Directors for their review and recommendation. (Ord. 3003, 04-23-15)

4-1-5: TEMPORARY LICENSE: Upon receipt of the affirmative recommendation of the Chief of Police, Fire Chief, Director of Community Development Services, and other City Department Directors, as appropriate, the Clerk may issue a temporary license to any applicant, except applicants who require a criminal history or background check, unless the ordinance specifically allows for a temporary license. (Ord. 2234, 5-22-97; Ord. 2762, 6-24-08; Ord. 3003, 04-15-15)

4-1-6: APPROVAL OF LICENSE: Except as otherwise provided in this Title, the City Clerk shall present all license applications to the Council not later than the second regular Council meeting after the application was delivered to the Clerk. At that meeting, the Council may grant or deny the application or refer it to the appropriate City department for further investigation and review. In any event, the Council shall grant or deny the application on or before the second regular Council meeting following its initial presentation to the Council. After due consideration of the application, the Council shall either grant the application and order the Clerk to issue the license or deny the application and return the license fee with a notice of rejection to the applicant. The Council may deny the application upon finding that the applicant does not meet any of the qualifications of this Title, that applicant's conduct of business will contravene any provision of the City's Building Code, Fire Code, Zoning Ordinance, or any other applicable regulation, ordinance or statute of the City, Bonneville County, State of Idaho or the United States, that the applicant has been convicted of a felony, or that the applicant has engaged in any fraudulent, deceptive or unlawful business practices within ten (10) years prior to the date of his or her application for a business license. (Ord. 3003, 04-23-15)

4-1-7: LICENSE NONTRANSFERABLE: Except as specifically provided by this Code or State law, licenses issued by the City shall not assigned or transferred to any person other than the named holder. Issuance of a license by the City shall not authorize any person other than the person or entity named thereon to conduct such business; nor shall it authorize any business other than that named to be done or transacted. Issuance of a license shall not permit the named business to be conducted in any place other than the location or locations described in the application without prior approval of the Council. All licenses shall state the location of the business upon the face thereof.

4-1-8: SEPARATE LICENSES REQUIRED: A separate license and license fee shall be required for each business subject to the provisions of this Title, regardless of whether two (2) or

more businesses are conducted or operated by the same person or entity or whether two (2) or more businesses are conducted within the same building or at the same location.

4-1-9: **REVOCATION OF LICENSES:** The Council may revoke any license issued under this Title at any time if the licensee does not comply with the applicable provisions of this Title or for other just cause. Before revoking any license, the City Clerk shall give written notice to the license holder of such proposed action at least ten (10) days prior to the date such proposed action is submitted to the Council. The license holder shall be given an opportunity to appear before the Council and show cause why his or her license should not be revoked.

4-1-10: **DISPLAY OF LICENSE:** All licensees shall post their licenses in a place conspicuous to the public in each business location and shall produce the license whenever required by any officer or other person having the authority to examine it. If an applicant desires to conduct business in more than one location, the Clerk may issue duplicate originals of the license for display in each place of business.

4-1-11: **EXPIRATION DATE:** No license shall be granted for a period greater than one year, and all licenses shall expire on December 31 of the calendar year for which they are issued, unless another expiration date is endorsed on the license by the Clerk.

**CHAPTER 2
LIQUOR BY THE DRINK**

SECTION:

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- 4-2-3: License Fee
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- 4-2-5: Investigation
- 4-2-6: Form of License; Display
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- 4-2-11: Sanitary Requirements
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- 4-2-17: Sales to Disqualified Persons Under Age 21
- 4-2-18: Liquor Catering Permit
- 4-2-19: Application for Liquor Catering Permit
- 4-2-20: Persons Under Specified Ages Prohibited to Be At Licensed Places
- 4-2-21: Exceptions
- 4-2-22: Possession of Open Containers Prohibited
- 4-2-23: (Repealed)

4-2-1: **DEFINITIONS:** Certain words and phrases used in this Chapter are defined as follows:

BARTENDER: Any person, whether agent, servant, employee, or person acting in any other capacity, who pours, mixes, or prepares any liquor by the drink upon any licensed premises. This shall not apply to any person who solely pours, mixes or prepares wine by the drink at retail as defined by Section 4-4-1 of this Code.

DIRECTOR: The Director of the Idaho Department of Law Enforcement.

INTERDICTED PERSON: A person to whom the sale of liquor is prohibited under the laws of the State.

LICENSE: A license issued by the Council to a qualified person, under which it shall be lawful for the licensee to sell and dispense liquor by the drink at retail.

LICENSEE: The person to whom a license to sell and dispense liquor by the drink is issued under the provisions of this Chapter.

LIQUOR: Any kind of liquor which may be sold by a State liquor store.

PREMISES: The building, room or place in which the sale of liquor by the drink at retail by a licensee is authorized under the provisions of Title 23, Chapter 9, Idaho Code, as amended, and under this Chapter.

4-2-2: LICENSE REQUIRED: No person shall sell or dispense liquor by the drink at retail on any premises in the City without first obtaining licenses as required by this Chapter and Title 23, Chapter 9, Idaho Code, as amended.

4-2-3: LICENSE FEE: Each licensee shall pay in advance an annual license fee in an amount set from time to time by Resolution of the Council. (Ord. 2964, 8-14-2014)

4-2-4: APPLICATION FOR LICENSE:

(A) Each applicant for a license shall file with the Clerk an application in writing, verified under oath, stating the following:

- (1) That the applicant lawfully holds a license issued by the Director pursuant to the provisions of Title 23, Chapter 9, Idaho Code, as amended.
- (2) A description of the premises for which the license is sought, their location and the name of the owner of the premises.
- (3) The names and addresses of all persons who will have any ownership or equity interest in any business to be carried on in the licensed premises, including without limitation interests arising from conditional sales contracts, partnerships, trusts or shares of corporate stock and the amount and nature of such interest.
- (4) The names and addresses of the applicant and all members of a partnership or association and all officers, members of the governing board and all stockholders of any corporation or any entity identified pursuant to subsection (C) above.

(5) Any other information reasonably necessary for the City Clerk to determine the applicant's qualifications or disqualifications for a license.

(B) If during the term of any license issued under this Chapter any change shall take place in any of the information stated in the application, the licensee shall deliver a verified report of the change to the Clerk no later than seven (7) working days after the change occurs.

(C) The names and addresses of the applicant and all members of a partnership or association and all officers, members of the governing board and all stockholders of any corporation or any entity identified pursuant to subsection (A) above.

(D) Any other information reasonably necessary for the City Clerk to determine the applicant's qualifications or disqualifications for a license.

If during the term of any license issued under this Chapter any change shall take place in any of the information stated in the application, the licensee shall deliver a verified report of the change to the Clerk no later than seven (7) working days after the change occurs. (Ord. 2440, 2-15-02; Ord. 2545, 4-12-04)

4-2-5: INVESTIGATION: Upon receipt of an application for a license or for a transfer of a license under this Chapter, accompanied by the necessary license or transfer fee, the Clerk and Chief of Police shall investigate all information stated in the application and report the results of the investigation to the City Council. If the Council determines that the contents of the application are true, that the applicant is qualified to receive a license, that the premises are suitable for carrying on the intended business and that the requirements of this Chapter have been met, a license shall be issued or transferred. Otherwise, the application shall be denied and the license or transfer fee refunded.

4-2-6: FORM OF LICENSE; DISPLAY: Every license issued under this Chapter shall state the name of the person or business entity to whom issued and the location by street and number or other definite designation of the premises. If issued to a partnership, the names of the persons constituting the partnership shall be stated. If issued to a corporation or association, the names of the principal officers and the members of the governing board shall be stated. The license shall be signed by the licensee and shall be posted on the licensed premises in a place conspicuous to the public. No person except the named licensee shall exercise any of the privileges granted under the license. Licenses issued under this Chapter apply only to premises for which they have been issued.

4-2-7: EXPIRATION OF LICENSES: All licenses shall expire at midnight on December 31 of the calendar year for which they are issued.

4-2-8: **MULTIPLE LICENSES PROHIBITED:** No person shall be granted more than one license in any calendar year. No partnership, association or corporation holding a license under this Chapter shall have as a member, officer or stockholder any person who has financial interest of any kind in, or is a member of, another partnership or association or an officer or shareholder of another corporation holding a license under this Chapter.

4-2-9: **TRANSFER OF LICENSES:** No license may be transferred to another person, unless the transferee first obtains approval of the City Council upon application containing substantially the same information required by Section 4-2-4 of this Chapter. If the proposed transferee is qualified for the license, the Council shall approve the transfer and the City Clerk shall reissue the license in the name of the transferee. The fee for each license transfer shall be in an amount set from time to time by Resolution of the Council. The fee shall accompany the application for transfer. (Ord. 2964, 8-14-2014)

4-2-10: **PERSONS NOT QUALIFIED TO BE LICENSED:** No license shall be issued or transferred to:

(A) Any person, or any partnership, corporation, trust, association or other legal entity, at least one of whose members, officers or governing board, within three years prior to the date of making application, has been convicted of any violation of the laws of the United States, the State of Idaho or any other state of the United States relating to the importation, transportation, manufacture or sale of liquor; or who has been convicted of, paid any fine, been placed on probation, received a deferred sentence, received a withheld judgment, or completed any sentence of confinement for, any felony within five (5) years prior to the date of making application for a license.

(B) A person who is engaged in the operation, or interested therein, of any house or place for the purpose of prostitution or who has been convicted of any crime or misdemeanor opposed to decency and morality.

(C) A person whose license issued under this Chapter has been revoked; an individual who was a member of a partnership or association which was a licensee under this Chapter and whose license has been revoked; an individual who was an officer, member of the governing board or one (1) of the ten (10) principal stockholders of a corporation which was a licensee under this Chapter and whose license has been revoked; a partnership or association one (1) of whose members was a licensee under this Chapter and whose license was revoked; a corporation one (1) of whose principal stockholders was a licensee under this Chapter and whose license has been revoked; an association or partnership, one (1) of whose members was a member of a partnership or association licensed under the provisions of this Chapter and whose license has been revoked; a partnership or association, one (1) of whose members was an officer, a member of the governing board or one (1) of the ten (10) principal stockholders of a corporation which was a

licensee under this Chapter and whose license has been revoked; a corporation, one (1) of whose officers, members of the governing board, or ten (10) principal stockholders was a member of a partnership or association licensed under this Chapter and whose license has been revoked; a corporation, one (1) of whose officers, members of the governing board or ten (10) principal stockholders was an officer, member of the governing board, or one (1) of the ten (10) principal stockholders of a corporation which was a licensee under this Chapter and whose license has been revoked.

(D) Any officer or employee of the State of Idaho or of any of its counties or municipalities.

(E) Any officer, agent or employee of any distillery, winery, brewery, or any wholesaler or jobber of liquor or malt beverages, except as provided by Section 23-912, Idaho Code.

(F) A person who does not hold a retail beer license issued by the State.

Any license, held by any person who later becomes disqualified under the provisions of this Section, shall be promptly revoked by the Council. (Ord. 2545, 4-12-04; Ord. 2646, 5-25-06)

4-2-11: SANITARY REQUIREMENTS: All licensed premises shall be maintained in a sanitary condition according to the applicable laws of the State and ordinances of the City.

4-2-12: LOCATION RESTRICTIONS:

(A) No license shall be issued for any premises in any residential zone or within three hundred (300) feet of any public school, church or any other place of worship measured in a straight line between the nearest property line of such public building or place of worship and the nearest entrance to the licensed premises. This limitation shall not apply to any duly licensed premises that at the time of first licensing did not come within the restricted area but subsequent to first licensing came therein. (Ord. 2385, 8-10-00)

(B) No license shall be issued to any person for the operation of a licensed business upon any premises which were used by any occupant whose license under this Chapter was revoked within one (1) year prior to the date of the new application for issuance or transfer of a license. (Ord. 2385, 8-10-00)

(C) The City Council may for good cause shown grant a variance to the provisions of Section (A) or (B) above. Prior to granting such variance, the City Council shall hold a public hearing after giving written notice to the owners or occupants of all properties located within three hundred (300) feet of the exterior boundaries of the proposed licensed premises, measured in the manner set forth above. Such notice shall be given at least fifteen days prior to the date of the hearing. Notice shall be deemed to have been given upon its personal delivery to

such owner or occupant or upon its deposit in the United States mail, addressed to the owner at the address last shown on the Bonneville County property tax rolls. (Ord. 2385, 8-10-00)

4-2-13: **BARTENDER'S IDENTIFICATION REQUIRED:** No person shall act as a bartender in any premises licensed within the City to sell liquor by the drink unless that person holds a valid State of Idaho Driver's License or State of Idaho Identification Card. Any person acting as a bartender must have their valid State of Idaho Driver's License or State of Idaho Identification Card in their possession at all times when they are tending bar. (Ord. 2545, 4-12-04)

4-2-14: **RIGHT OF ENTRY:** Any duly authorized police officer shall have the right at any time to enter and examine the premises of any licensee to ascertain compliance with the laws of the State and the City. It shall be unlawful to refuse any police officer admittance to the premises for such purpose. (Ord. 2545, 4-12-04)

4-2-15: **HOURS OF SALE:** No liquor shall be sold, offered for sale or given away upon any licensed premises during the following hours:

 (A) Between one o'clock (1:00) a.m. on Christmas and ten o'clock (10:00) a.m., of the following day.

 (B) Between one o'clock (1:00) a.m. and ten o'clock (10:00) a.m. of any day.
(Ord. 2385, 8-10-00; Ord. 2545, 4-12-04; Ord. 2820, 8-27-09; Ord. 2847, 10-14-10)

4-2-16: **RESTRICTION ON SALES BY LICENSEE:** No licensee or its employed agents, servants or bartenders shall sell, deliver or give away, or cause or permit to be sold, delivered, or given away, any liquor to:

 (A) Any person under the age of twenty-one (21) years, proof of which, for every resident of this State, shall be a valid driver's license, military identification card or an identification card issued by the Idaho Department of Transportation.

 (B) Any person actually or obviously intoxicated.

 (C) A habitual drunkard.

 (D) An interdicted person.

(Ord. 2545, 4-12-04)

4-2-17: **SALES TO DISQUALIFIED PERSONS UNDER AGE 21:**

 (A) Any person under the age of twenty-one (21) years who shall purchase, attempt to purchase, possess, serve, dispense, or consume beer, wine or other alcoholic liquor shall be guilty of a misdemeanor provided, however, that any person who is nineteen (19) years of age

or older may sell, serve, possess and dispense liquor, beer or wine in the course of his employment in any place as defined in Section 23-942(C), Idaho Code, or other place where liquor, beer or wine are lawfully present so long as such place is the place of employment for such person under twenty-one (21) years of age. No person under twenty-one (21) years of age may serve alcoholic beverages in an establishment that sells liquor by the drink or beer or wine to be consumed on the premises, unless that establishment is also a bona fide restaurant.

(B) Any person who knowingly misrepresents his or her age or qualifications for the purpose of obtaining liquor from a licensee shall be guilty of a misdemeanor.

(C) No person shall represent to any licensee, to any agent or employee of a licensee, or to any bartender that any other person is twenty-one (21) years or more of age, when in fact the other person is under the age of twenty-one (21) years, for the purpose of inducing such licensee, or the licensee's agent or employee, or a bartender to sell, deliver or give away any liquor to such other person.

(D) No person shall purchase liquor for the purpose of delivering the same to any person under the age of twenty-one (21) years, nor shall such person sell, give away or deliver liquor to any person under the age of twenty-one (21) years.

(E) It is unlawful for an employer to knowingly employ a person in violation of this Chapter. It shall be unlawful for any person to conspire with, or abet any person to violate any provision of this Chapter. (Ord. 2545, 4-12-04)

4-2-18: LIQUOR CATERING PERMIT: Any person holding a retail liquor license may serve and sell liquor, retail by the drink at a party or convention at a location other than at the licensed premises for a period not to exceed three (3) consecutive days, upon obtaining a liquor catering permit. Applications for such permit shall be made to the City Clerk on such form as prescribed by the Clerk, which form shall contain the following information:

(A) The name and address of the applicant and the number of his state liquor license.

(B) The dates and hours during which the permit is to be effective, not to exceed three (3) consecutive days.

(C) The names and addresses of the organizations, groups, or persons sponsoring the event.

(D) The address at which the liquor is to be served, and if a public building, the rooms in which the liquor is to be served.

The application shall be verified by the applicant and filed with the Clerk. A filing fee in an amount set from time to time by Resolution of the Council for each day the permit is to be effective shall be paid to the City Clerk. Such fee shall be nonrefundable irrespective of whether the party or convention is held. (Ord. 2964, 8-14-2014)

4-2-19: **APPROVAL OF LIQUOR CATERING PERMIT:** Upon the filing of an application for a liquor catering permit, the Council shall upon the advice and recommendation of the Chief of Police approve or disapprove the application and indicate the determination on the face of the application by endorsement signed by the Clerk. Copies of the application with signed endorsements thereon shall be mailed or delivered immediately to the Chief of Police, the Director of the Idaho Department of Law Enforcement and the applicant, and a signed copy shall be retained by the Clerk. An application approved in this manner shall constitute a permit, unless disapproved by the Director by notice served upon the applicant for the retail sale of liquor by the drink, beer and wine for the period authorized by the permit. (Ord. 2545, 4-12-04)

4-2-20: **PERSONS UNDER SPECIFIED AGES PROHIBITED TO BE AT LICENSED PLACES:** No person under the age of twenty-one (21) years shall enter, remain in or loiter in or about any premises licensed for the sale of liquor by the drink at retail, or sale of beer for consumption on the premises, nor shall any licensee of either such place, or any person in charge of a licensed premises or on duty while employed by the licensee therein, permit or allow any person under such age to remain in or loiter in or about such place. Provided, however, it is lawful for persons who are musicians and singers eighteen (18) years of age or older, to enter and to remain in any place as defined in Section 23-942, Idaho Code, but only during and in the course of their employment as musicians and singers. Provided further, that it is lawful for persons who are nineteen (19) years of age or older to sell, serve, possess or dispense liquor, beer or wine in the course of their employment in any place as defined in Section 23-942, Idaho Code, or in any other place where liquor, beer or wine are lawfully present, so long as such place is the place of employment for such person. However, the foregoing shall not permit the sale or distribution of any alcoholic beverages to any person under the ages specified for sale of alcoholic beverages. (Ord. 2545, 4-12-04)

4-2-21: **EXCEPTIONS:** Notwithstanding the preceding section, any person under the age of twenty-one (21) years may enter or be upon or within:

(A) Any railroad observation or club car or any airplane of a commercial airline, notwithstanding that such premises may also be licensed for the sale of liquor by the drink or for the sale of beer for consumption on the premises or that alcoholic beverages, or beer, or both, are prepared, mixed or dispensed and served and consumed therein.

(B) Any building, a part or portions of which are used as a licensed premises, provided such premises are separate or partitioned from the remainder of said building and access to such place through a doorway or doorways or other means of ingress can be controlled to prevent persons under twenty-one (21) years of age from entering therein.

(C) Any baseball park, sports arena or fairgrounds, notwithstanding that such premises or any portion thereof may be licensed for the sale of beer for consumption on the premises or that beer is dispensed and served and consumed therein.

(D) The premises of any licensed winery notwithstanding that such premise or any portion thereof may also be licensed for the sale of beer or wine for consumption on the premises or that wine is dispensed and served and consumed therein.

(E) The licensed premises of a wine retailer, wholly owned and operated by a licensed winery which retails exclusively the products of that winery. (Ord. 2545, 4-12-04)

4-2-22: POSSESSION OF OPEN CONTAINERS PROHIBITED:

(A) Any person who is in possession of an open container of liquor within the City of Idaho Falls shall be guilty of a misdemeanor.

(B) Notwithstanding the foregoing, nothing herein shall prohibit the possession of an open container of liquor:

- (1) Within a fully enclosed, privately-owned building or upon a private parking lot adjacent or appurtenant to such building provided such parking lot is located more than two hundred (200) feet away from the premises of any licensed liquor vendor. Such distance shall be measured at the shortest distance between the exterior boundaries of such parking lot and licensed premises.
- (2) Within any private residence or upon the yard thereabout, or within any apartment, duplex, condominium, boarding house or other structure lawfully used as a permanent residence, or within any common area or area designated exclusively for and appurtenant to such residential occupancy.
- (3) Within any area for which a liquor catering permit has been lawfully issued under the provisions of this Chapter.
- (4) Within any area included within or being a part of the premises at which a licensee is authorized to sell or dispense liquor by the drink under the provisions of this Chapter.
- (5) Within an area directly adjacent to a restaurant, at tables provided for dining, between the hours of 10:00 a.m. and 11:00 p.m.

“Restaurant” is defined as an eating establishment which offers for sale food to the public. A restaurant must also have the appropriate license to sell the type of alcohol they offer to the public, including an approved site plan as part of its State alcohol permit. If the adjacent area includes a public sidewalk, the size of the tables and seating must allow sufficient room for public ingress and egress, including being compliant with all ADA laws and regulations for sidewalk use under Idaho Falls City Code 8-8-9. All consumption of alcohol in this adjacent area must be done at the table, and the customer cannot carry the alcohol away from the table.

(Ord. 2262, 1-8-98; Ord. 2481, 2-28-03; Ord. 2545, 4-12-04; 2916, 03-28-13)

4-2-23: (Repealed): (Ord. 2385, 8-10-00; Ord. 2447, 5-9-02; Ord. 2545, 4-12-04; Ord. 2804, 3-12-09)

CHAPTER 3 BEER

SECTION:

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- 4-3-6: License for Designated Address Only
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- 4-3-17: Possession of Open Containers Prohibited
- 4-3-18: Expiration of License

4-3-1: **DEFINITIONS:** Certain words and phrases used in this Chapter are defined as follows:

BEER: Any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and/or other ingredients in drinkable water and which contains not more than four percent (4%) alcohol by weight.

DISTRIBUTOR: A person who is employed by or is an agent of a retailer to sell, serve or dispense beer.

LICENSE: A license issued by the City Council authorizing a licensee to sell beer at retail.

LICENSEE: A qualified person to whom a license for the retail sale of beer is issued under the provisions of this Chapter.

PREMISES: The building, room or place in which the retail sale of beer by a licensee is authorized under this Chapter.

RETAILER: A person to whom a beer license has been issued. (Ord. 2148, 8-4-94; Ord. 2492, 6-12-03)

4-3-2: LICENSE REQUIRED: Except as otherwise provided in this Chapter, no person shall sell or dispense beer at retail within the City without first obtaining a license from the City as required by this Chapter.

4-3-3: LICENSE FEES: An annual license fee for the retail sale of beer for consumption on or off the premises and an annual license fee for retail sale of bottled or canned beer for consumption only off the premises shall be in an amount set from time to time by Resolution of the Council. (Ord. 2964, 8-14-2014)

4-3-4: APPLICATION FOR LICENSE:

(A) Each applicant for a license for the retail sale of beer shall file with the City Clerk a written application that states the following:

- (1) The name and residential address of the applicant.
- (2) The street address of the premises where beer is to be sold.
- (3) The name of the owner of the premises for which the license is sought.
- (4) That the applicant, if an individual, is at least nineteen (19) years old.
- (5) That the applicant has not been convicted of a felony or any crime involving moral turpitude.
- (6) The names and addresses of four (4) references as to the good moral character of the applicant.
- (7) That the applicant holds a current, valid license for the retail sale of beer, issued by the County Commissioners of Bonneville County, Idaho.
- (8) That the applicant agrees to abide by the terms and conditions of this Chapter, and any laws, ordinances, rules or regulations subsequently promulgated by the State, Bonneville County or the City regarding the retail sale of beer within the City.

- (9) Any other information the Clerk requires to determine that the applicant possesses the qualifications and has none of the disqualifications for a license, as provided in this Chapter and in Sections 23-1010 and 23-1016, Idaho Code, as amended.

(B) On receipt of a written application conforming with subsection (A) of this Section and payment of the license fee, the City Clerk shall immediately forward the application to the Chief of Police for review, investigation and recommendation. If the Chief of Police recommends denial of the license application, the Chief shall notify the applicant of the recommendation and state the date, time and place of the next City Council meeting at which the recommendation will be considered. The notice shall be in writing and shall be mailed to the applicant at the address in the application no later than seven (7) days prior to the date of the City Council meeting.

(C) At the date, time and place stated in the notice, the City Council shall consider the application and hear testimony and evidence from any interested person. No license application shall be denied unless the written notice required by subsection (B) of this Section has been given and the applicant has been given an opportunity to testify and present evidence in support of the issuance of the license. All applications for a retail beer license or any transfer or renewal of a retail beer license shall be granted or denied within sixty (60) days from the date the application was delivered to the City Clerk.

(D) If the Council denies an application for a retail beer license, or any renewal or transfer of a retail beer license, the Council shall specify in writing:

- (1) The statutes, ordinances and standards used in evaluating the application;
- (2) The reasons for denial; and
- (3) The actions, if any, the applicant could take to obtain the license, transfer or renewal.

(E) The City Clerk shall keep a transcribable verbatim record of all proceedings concerning applications for beer licenses, or their transfer, renewal or revocation, pursuant to the provisions of this Chapter. If an application for a license, transfer or renewal is denied, or if a license is revoked, the transcribable verbatim record shall be kept for a period of not less than six (6) months after a final decision. Upon request and within the time provided for retention of the record, persons may have the record transcribed at their expense. (Ord. 2565, 11-9-04)

4-3-5: **PROHIBITED LICENSES:** No license for retail sale of beer shall be issued to any person holding a wholesaler's or manufacturer's license issued by the State.

4-3-6: LICENSE FOR DESIGNATED ADDRESS ONLY: A license for the retail sale of beer shall be granted only for the place designated in the application. The place of business shall not be changed or moved without the consent the Council.

4-3-7: LOCATION RESTRICTIONS:

(A) No license shall be issued for any premises that is within three hundred (300) feet of any public school, church, or any other place of worship. Such distance shall be measured in a straight line between the nearest entrance to the licensed premises and the nearest property line of such school, church or place of worship.

(B) No person shall sell or dispense beer for consumption on the premises at any place within three hundred feet of any public school, church or other place of worship, measured in a straight line between the nearest entrance to such place and the nearest property line of such school, church or place of worship. Notwithstanding the foregoing, nothing herein shall prohibit the sale or dispensing of beer for consumption on the premises at a public school, church or other place of worship pursuant to a permit issued under Section 4-3-16 of this Chapter to an applicant which owns or operates such school, church or place of worship.

(C) The provisions of subsections (A) and (B) above shall not apply to any premises that met the qualifications of such subsection at the time the premises were first licensed, but thereafter fail to meet such location restrictions because of the construction or commencement of use of such public facility or place of worship subsequent to such first licensing.

(D) The City Council may for good cause grant a variance to the provisions of Sections (A) or (B) above. Prior to granting such variance, the City Council shall hold a public hearing after giving written notice to the owners or occupants of all properties located within three hundred (300) feet of the exterior boundaries of the proposed licensed premises, measured in the manner set forth above. Such notice shall be given at least fifteen days prior to the date of the hearing. Notice shall be deemed to have been given upon its personal delivery to such owner or occupant or upon its deposit in the United States mail, addressed to the owner at the address last shown on the Bonneville County property tax rolls. (Ord. 2385, 8-10-00; Ord. 2866, 3-10-11)

4-3-8: POSTING OF LICENSE: All licenses for the sale of beer shall be posted in a place conspicuous to the public at the licensed premises at all times when the premises are open for business.

4-3-9: TRANSFER OF LICENSE; TRANSFER FEE: No license may be transferred to another person who has not obtained approval of the City Council after making an application containing the information required by Section 4-3-5. If a transferee has all of the qualifications and none of the disqualifications for a license to sell beer at retail, the City Council shall approve the transfer and the City Clerk shall re-issue the license in the name of the transferee. The fee to transfer a license for the retail sale of beer for consumption on or off the premises, and a license

for the retail sale of bottled or canned beer only for consumption off the premises shall be in an amount set from time to time by Resolution of the Council. The license for the transferring license shall be surrendered to the City Clerk before such transfer may be made. (Ord. 2964, 8-14-2014)

4-3-10: **RIGHT OF ENTRY:** Any police officer shall have the right at any time to enter and examine the premises of any licensee or of any place where beer is sold at retail to ascertain the alcoholic content of any beer kept for sale on the premises or to ascertain compliance with the laws of the State and the City. It shall be unlawful to refuse any police officer admittance to the premises for such purposes.

4-3-11: **SALE TO MINORS PROHIBITED:**

(A) No person under twenty-one (21) years of age shall sell, purchase, possess or consume any beer. This restriction shall not apply to persons at least nineteen (19) years old who sell, dispense, deliver or possess beer in the course of their employment by a licensee under this Title.

(B) No person shall give, sell or deliver beer to any person under the age of twenty-one (21).

(C) No person under the age of twenty-one (21) shall represent to any retailer or distributor or to any agent or employee of a retailer or distributor that he or she is twenty-one (21) years or more of age, when in fact he or she is under the age of twenty-one (21) years, for the purpose of inducing the retailer or distributor, or his agent or employee, to sell, serve or dispense beer to such person.

(D) No person shall represent to any retailer or distributor or to any agent or employee of a retailer or distributor that any other person is twenty-one (21) years or more of age, when in fact the other person is under the age of twenty-one (21) years, for the purpose of inducing the retailer or distributor, or his agent or employee, to sell, serve or dispense beer to such other person.

4-3-11(A): **DISPENSING TO INTOXICATED PERSON:** Any person who (1) sells, gives, or dispenses any beer to another person who is intoxicated or apparently intoxicated, or (2) who allows such sale or delivery to be made by any employee or agent under his or her control, shall be guilty of a misdemeanor and shall be subject to suspension of any license issued under Chapters two through four inclusive of this Title. (Ord. 2846, 10-14-10)

4-3-12: **CONDUCT OF BUSINESS:** Every person licensed under this Title to sell beer at retail shall at all times conduct a quiet and well-lighted, orderly place of business.

4-3-13: **COVERING WINDOWS ON STREET LEVELS UNLAWFUL:** Street level windows adjacent to any public street in premises owned or controlled by any person licensed

under this Title to sell beer at retail shall not be covered by curtains, paint or any substance that obscures or tends to obscure the view into the premises from the street. (Ord. 2385, 8-10-00; Ord. 2447, 5-9-02; Ord. 2804, 3-12-09; Ord. 2818, 7-23-09)

4-3-14: HOURS OF SALE - RETAIL SALES: It shall be unlawful for any person in any place licensed to sell beer for consumption off the premises, to sell or dispense beer or to permit the consumption of beer on the premises between the following hours:

(A) 1:00 a.m. and 7:00 a.m. of any day; and

(B) 1:00 a.m. Christmas Day and 7:00 a.m. of the day following such holiday.

4-3-15: HOURS OF SALE - BY THE DRINK:

(A) It shall be unlawful for any person in any place licensed to sell beer for consumption on the premises, whether for pleasure or profit, to sell, offer to sell or dispense beer for consumption on the premises or to permit the consumption of beer on the premises between the following hours:

(1) 1:00 a.m. and 7:00 a.m. of any day;

(2) 1:00 a.m. on Christmas and 7:00 a.m. of the day following such holidays.

(Ord. 2385, 8-10-00; Ord. 2818, 7-23-09; Ord. 2847, 10-14-10)

4-3-16 BEER SOLD OR DONATED FOR BENEVOLENT, CHARITABLE OR PUBLIC PURPOSES - PERMIT REQUIRED:

(A) Notwithstanding the provisions of Section 4-3-2 of this Chapter, nothing shall prevent any licensed dealer, wholesaler or retailer from selling or donating unbroken packages of beer or kegs of beer to a person which has not been issued any license for the sale of alcoholic beverages in this state, for benevolent, charitable or public purposes if a permit has been issued to the person or nonprofit entity as provided in subsection (B) of this Section.

(B) Upon delivery to the City Clerk of a properly completed application in accordance with the provisions of this Chapter and following receipt of an affirmative recommendation from the Chief of Police, the City Council may issue to a Qualified Organization a permit authorizing the sale or dispensing of beer at an event sponsored by such qualified organization if the City Council is satisfied that the proceeds, after deducting reasonable expenses incurred, will be donated for a benevolent, charitable or public purpose.

(C) Any permit issued to an applicant who desires to conduct a charitable event within the City shall be subject to the following conditions:

(1) Except as otherwise provided in subsections (2) and (3) of this section, all events shall be conducted within a confined area constructed and operated in accordance with the terms and provisions of this subsection. The applicant shall designate in his or her application an area not to exceed one thousand two hundred fifty (1,250) square feet in which all beer will be sold, dispensed, possessed and consumed. Such area shall be completely surrounded by a fence, barricade, or other physical barrier to pedestrian traffic, except for one (1) opening not to exceed six (6) feet in width. Such defined premises shall be at such location as may be approved by the Chief of Police or his or her designee, which location shall be specified on the permit. Such defined area shall be considered to be the "premises" for the purposes of Section 4-3-17 (B)(5) of this Code and the applicant shall not sell or dispense beer outside such area. The applicant shall also erect and maintain in a conspicuous location at all times, a sign with large letters no less than two (2) inches high bearing the following legend: "No Open Container of Beer May Be Possessed or Transported Beyond the Fenced Area," or such other legend which adequately apprises customers of the prohibitions set forth in section 4-3-17, City Code. Beer shall not be sold, conveyed or dispensed between the hours of 9:00 o'clock p.m. and 10:00 o'clock a.m. of the following day. Failure to construct or maintain such fence, barrier or sign, or failure to comply with such hours of operation, shall be grounds for summary revocation of such permit. The Chief of Police or City Council may establish additional conditions or restrictions as reasonably necessary to protect the public health and safety, or alternatively may waive or modify the conditions and restrictions herein provided such waiver or modification does not jeopardize the public health and safety.

(2) Charitable events may, with the prior approval of the Chief of Police, be conducted in or upon a public street, subject to the terms and conditions of this subsection. Beer may be dispensed at an event conducted in a public street and within an area comprised of no more than one (1) street on one (1) side of a City block, excluding any intersections thereof, provided it is dispensed only between the hours of 5:00 o'clock p.m. and 9:00 o'clock p.m. on any permitted day of the week. Beer shall not be sold on Sundays or legal holidays at such events. Such street area shall be considered to be the "premises" for the purposes of Section 4-3-17(B)(5) of this Code and the applicant shall not sell or dispense beer outside such area. The applicant shall also erect and maintain at all times in a conspicuous location at each end of such street area, a sign with large letters no less than

two (2) inches high bearing the following legend: "No Open Container of Beer May Be Possessed or Transported Beyond this Point" or such other legend which adequately apprises customers of the prohibitions set forth in section 4-3-17, City Code. Failure to construct or maintain such fence, barrier or sign shall be grounds for summary revocation of such permit.

(3) Charitable events may be conducted within the confines of (a) the public plaza located at the corner of Park and B Street, or (b) the Tautphaus Park Zoo, which plaza or Zoo shall be considered to be the "premises" for the purpose of sections 4-3-17(B)(5) and 8-3-4(C) of this Code and the applicant shall not sell or dispense beer outside such area. The applicant shall also erect and maintain in a conspicuous location within such plaza or Zoo at least two (2) signs with large letters no less than two inches (2") high bearing an appropriate legend which adequately apprises the customer of the prohibitions set forth in section 4-3-17, City Code. Failure to construct or maintain such sign shall be grounds for summary revocation of such permit. For the purposes hereof, the term "Zoo" shall consist of that area bounded by the perimeter fence of the Idaho Falls Tautphaus Park Zoo, but in no event closer than thirty (30) feet measured perpendicularly to such fence. Events conducted within the Zoo shall be subject to the further condition that all net proceeds derived from such event shall be used for the benefit of or donated to the Tautphaus Park Zoo.

(D) Permits issued under subsection (C)(1), (2) or (3) above, shall not exceed a period of greater than three (3) consecutive days. No Qualified Organization shall conduct more than two (2) events within the Green in any calendar year. Nothing herein shall authorize or allow the issuance of any permit to sell or dispense beer in any park in violation of Section 8-3-4, City Code.

(E) The form of the application shall require the following information:

- (1) The names, mailing addresses and telephone numbers of the sponsors of the event, the tax identification number of the sponsor or sponsors and satisfactory evidence that the sponsor is a Qualified Organization;
- (2) Quantities and types of beer products to be used at the event;
- (3) Names of the dealer or wholesaler from whom the beer is to be received;
- (4) The retailer, if any, designated by such person or nonprofit entity to receive, store or dispense beer on behalf of the permittee;

- (5) Dates and hours of operation for which the permit is desired.
- (6) The location of the event and a description of the premises where beer will be sold, dispensed or conveyed;
- (7) Such other information directly related to the event and the applicant that the City Clerk or Chief of Police may require.

(F) For the purposes hereof, a "Qualified Organization" shall mean any benevolent, charitable or public organization or person to whom a permit has been issued by the Director of the Idaho Department of Law Enforcement pursuant to the provisions of Idaho Code Section 23-1007(A).

(G) Within ninety (90) days after the conclusion of the event, the permittee shall submit an accurate and complete report to the City Clerk showing the disposition of funds from the event in accordance with the provisions of this Chapter.

(H) The Clerk shall collect a fee in an amount set from time to time by Resolution of the Council for each permit issued, provided however permits issued pursuant to section 4-3-16(C)(2) may be issued for multiple events conducted within a calendar year, provided that such events are separated by a period of at least six (6) days. Such multiple event permit fee shall be in an amount as set from time to time by Resolution of the Council. In the event an applicant seeks a permit to sell beer and wine at the same location, the combined permit fee shall be in an amount set from time to time by Resolution of the Council.

(I) Should the Chief of Police or City Council determine that an applicant, permittee or its representative is violating any provision of this Chapter, or has in the past violated any law pertaining to the dispensing or sale of beer by a licensed retailer relating to hours of sale, relating to restrictions concerning age provided in Section 23-1013, Idaho Code or under this Chapter, or has failed in the past to submit such information as may have been requested by the City Clerk such permit may be summarily suspended by the Chief of Police prior to hearing, or may be denied or canceled pending a hearing.

(J) A licensed retailer may, on behalf of the permittee, receive or store beer to be used at the event and may dispense such beer to attendees of the benevolent, charitable or public purpose event for which the permit was issued. (Ord. 2262, 1-8-98, Ord. 2481, 2-28-03; Ord. 2492, 6-12-03; Ord. 2650, 06-08-06; Ord. 2809, 4-23-09; Ord. 2836, 4-22-10; Ord. 2866, 3-10-11; Ord. 2964, 8-14-2014))

4-3-17: POSSESSION OF OPEN CONTAINERS PROHIBITED:

(A) Any person who is in possession of an open container of beer within the City of Idaho Falls shall be guilty of a misdemeanor.

(B) Notwithstanding the foregoing, nothing herein shall prohibit the possession of an open container of beer:

- (1) Within a fully enclosed, privately-owned building or upon a private parking lot adjacent or appurtenant to such building provided such parking lot is located more than two hundred (200) feet away from the premises of any licensed liquor vendor. Such distance shall be measured at the shortest distance between the exterior boundaries of such parking lot and licensed premises.
- (2) Within any private residence or upon the yard thereabout, or within any apartment, duplex, condominium, boarding house or other structure lawfully used as a permanent residence, or within any common area or area designated exclusively for and appurtenant to such residential occupancy.
- (3) Within any area for which a liquor catering permit has been lawfully issued under the provisions of this Chapter.
- (4) Within any area included within or being a part of the premises at which a licensee is authorized to sell or dispense beer by the drink under the provisions of this Code.
- (5) Within any building or upon any premises for which a permit has been issued under the provisions of Section 4-3-16 of this Chapter.
- (6) Within an area directly adjacent to a restaurant, at tables provided for dining, between the hours of 10:00 a.m. and 11:00 p.m. "Restaurant" is defined as an eating establishment which offers for sale food to the public. A restaurant must also have the appropriate license to sell the type of alcohol they offer to the public, including an approved site plan as part of its State alcohol permit. If the adjacent area includes a public sidewalk, the size of the tables and seating must allow sufficient room for public ingress and egress, including being compliant with all ADA laws and regulations for sidewalk use under Idaho Falls City Code 8-8-9. All consumption of alcohol in this adjacent area must be done at the table, and the customer cannot carry the alcohol away from the table.

(7) Within a Permitted Event alcohol sales and consumption area.
(Ord. 2262, 1-8-98, Ord. 2481, 2-28-03; Ord. 2900, 05-10-12; Ord. 3044, 10-12-15)

4-3-18: EXPIRATION OF LICENSE:

Licenses issued under this Chapter shall expire at midnight on December 31 of the calendar year for which they are issued. (Ord. 2438, 1-10-02)

CHAPTER 4 WINE

SECTION:

- 4-4-1: Definitions
- 4-4-2: License Required
- 4-4-3: License Fees
- 4-4-4: Application for License
- 4-4-5: Qualifications
- 4-4-6: Issuance of License
- 4-4-7: Expiration; Transfer
- 4-4-8: Consumption on Premises
- 4-4-9: Location Restrictions; Schools or Churches
- 4-4-10: Age Restriction on Sale or Purchase
- 4-4-10A: Dispensing to Intoxicated Person
- 4-4-11: Wine Sold or Donated for Benevolent, Charitable or Public Purposes - Permit Required
- 4-4-12: Possession of Open Containers Prohibited
- 4-4-13: Hours of Sale - Retail Sales
- 4-4-14: Hours of Sale - By The Drink

4-4-1: **DEFINITIONS:** Certain words and phrases used in this Chapter are defined as follows:

DIRECTOR: The director of the Idaho Department of Law Enforcement

DISTRIBUTOR: A person who is employed by or is an agent of, a retailer to sell, serve or dispense wine.

RETAILER: A person to whom a retail wine license or wine-by-the-drink license has been issued.

RETAIL WINE LICENSE: A license issued by the Director authorizing a person to sell wine at retail for consumption off the licensed premises. The term also means a license issued by the City authorizing a person to sell wine at retail for consumption off the licensed premises only.

WINE: Any alcoholic beverage containing not more than sixteen percent (16%) alcohol by volume obtained by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar whether or not other ingredients are added.

WINE-BY-THE-DRINK: A license to sell wine by the individual glass or open bottle at retail for consumption on the premises. (Ord. 2492, 6-12-03)

4-4-2: LICENSE REQUIRED: Except as otherwise provided by this Chapter, no person shall sell wine at retail for consumption off the premises or by the individual glass or open bottle for consumption on the premises within the City, without first obtaining a license under this Chapter or a liquor by the drink license issued under Chapter 2 of this Title. A person who holds a valid current wine-by-the-drink license issued by the City may sell on the licensed premises wine at retail for consumption off the premises without obtaining a retail wine license from the City.

4-4-3: LICENSE FEES: The fee for a retail wine license shall be in an amount set from time to time by Resolution of the Council. The fee for a wine-by-the-drink license shall be in an amount set from time to time by Resolution of the Council. License fees shall be paid in advance for each calendar year or any portion of a calendar year without proration. (Ord. 2964, 8-14-2014)

4-4-4: APPLICATION FOR LICENSE:

(A) Each applicant for a retail wine license or wine-by-the drink license shall submit a written application on a form furnished by the Clerk, and they shall provide the same information required in Idaho Falls City Code § 4-3-4. (Ord. 2565, 11-9-04)

(B) To determine the suitability of prospective applicants for a license, the Chief of Police shall require a first time applicant to provide information and fingerprints necessary to obtain criminal history information from the Idaho State Police and the Federal Bureau of Investigation. Pursuant to § 67-3008, Idaho Code, and congressional enactment Public Law 92-544, the Chief of Police shall submit a set of fingerprints obtained from the applicant and the required fees to the Idaho State Police, Bureau of Criminal Identification, for a criminal records check of state and national databases. The submission of fingerprints and information required by this section shall be on forms prescribed by the Idaho State Police. The Chief of Police is authorized to receive criminal history information from the Idaho State Police and from the Federal Bureau of Investigation for the purpose of evaluating the fitness of applicants for a license under this section. As required by state and federal law, further dissemination of other use of the criminal history information is prohibited. Fingerprinting shall not be required for a license renewal. (Ord. 2440, 2-15-02)

4-4-5: QUALIFICATIONS: An applicant for a retail wine license or wine-by-the-drink license shall possess all qualifications necessary to obtain a license from the Director. Licensees shall maintain qualifications throughout the period for which their license is issued. Possession of licenses regularly issued by the Director and Bonneville County shall be prima facie evidence of the applicant's qualifications to receive a license under this Chapter.

4-4-6: ISSUANCE OF LICENSE: When the applicant for a retail wine license or wine-by-the-drink license has produced evidence as required by Section 4-4-5 above and paid the required license fee, the City Clerk shall submit the application to the City Council within thirty (30) days after the application is filed. Upon approval of the Council, the Clerk shall issue the license to the applicant.

4-4-7: EXPIRATION AND TRANSFER OF LICENSE: Licenses issued under this Chapter shall expire at midnight on December 31 of the calendar year for which they are issued. The procedure for the transfer of a retail wine license or a wine-by-the-drink license shall be the same as provided in Idaho Code Section 23-1317, as amended, upon application to the City Clerk. The fee for transfer of a retail wine license or wine-by-the-drink license shall be in an amount set from time to time by Resolution of the Council. The license of the transferring licensee shall be surrendered to the City Clerk before such transfer may be made. (Ord. 2964, 8-14-2014)

4-4-8: CONSUMPTION ON PREMISES: Retailers who do not possess a valid City license for the retail sale of liquor by the drink or wine-by-the-drink shall not permit consumption of wine on the licensed premises.

4-4-9: LOCATION RESTRICTIONS:

(A) No wine-by-the drink license shall be issued to any person to operate at any place that is within three hundred (300) feet of any public school, church or any other place of worship. Such distance shall be measured in a straight line between the nearest entrance to the licensed premises and the nearest property line of such school, church or place of worship. No person shall sell or dispense wine for consumption on the premises at any place within three hundred (300) feet of any public school, church or other place of worship, similarly measured in a straight line. This restriction shall not apply to any duly licensed premises that at the time of first licensing did not come within the restricted area, but subsequent to such first licensing came therein because of the construction or commencement of use of such public facility or place of worship subsequent to such first licensing. (Ord. 2385, 8-10-00)

(B) The City Council may for good cause shown grant a variance to the provisions of this section. Prior to granting such variance, the City Council shall hold a public hearing after giving written notice to the owners or occupants of all properties located within three hundred (300) feet of the exterior boundaries of the proposed licensed premises, measured in the manner set forth above. Such notice shall be given at least fifteen days prior to the date of the hearing. Notice shall be deemed to have been given upon its personal delivery to such owner or occupant or upon its deposit in the United States mail, addressed to the owner at the address last shown on the Bonneville County property tax rolls. Notwithstanding the foregoing, nothing herein shall prohibit the sale or dispensing of wine for consumption on the premise at a public school, church or other place of worship pursuant to a permit issued under Section 4-4-11 of this Chapter to an applicant which owns or operates such school, church or place of worship. (Ord. 2385, 8-10-00; Ord. 2867, 3-10-11)

4-4-10: AGE RESTRICTION ON SALE OR PURCHASE:

(A) No person under twenty-one (21) years of age shall sell, purchase, possess or consume any wine provided, however, that any person who is nineteen (19) years of age or older may

sell, serve, possess and dispense wine in the course of employment in any place, as defined in section 23-942, Idaho Code, or other place where wine is lawfully present, so long as such place is the place of employment for such person under twenty-one (21) years of age.

- (B) No person shall give, sell or deliver wine to any person under the age of twenty-one (21) years.
- (C) No person under the age of twenty-one (21) shall represent to any retailer or distributor that he or she is twenty-one (21) years or more of age, when in fact he or she is under such age for the purpose of inducing the retailer or distributor, to sell, serve or dispense wine to such person.
- (D) No person shall represent to any retailer or distributor that any other person is twenty-one (21) years or more of age, when in fact that other person is under such age for the purpose of inducing such retailer or distributor to sell, serve or dispense wine to such other person. (Ord. 2975, 12-11-14)

4-4-10(A): DISPENSING TO INTOXICATED PERSON: Any person who (1) sells, gives, or dispenses any wine to another person who is intoxicated or apparently intoxicated, or (2) who allows such sale or delivery to be made by any employee or agent under his or her control, shall be guilty of a misdemeanor and shall be subject to suspension of any license issued under Chapters two through four inclusive of this Title. (Ord. 2846, 10-14-10)

4-4-11: WINE SOLD OR DONATED FOR BENEVOLENT, CHARITABLE OR PUBLIC PURPOSES - PERMIT REQUIRED:

(A) Notwithstanding the provisions of Section 4-4-2 of this Chapter, nothing shall prevent any licensed dealer, wholesaler or retailer from selling or donating unbroken packages of wine to a person which has not been issued any license for the sale of alcoholic beverages in this state, for benevolent, charitable or public purposes if a permit has been issued to the person or nonprofit entity as provided in subsection (B) of this Section.

(B) Upon delivery to the City Clerk of a properly completed application in accordance with the provisions of this Chapter and following receipt of an affirmative recommendation from the Chief of Police, the City Council may issue to a Qualified Organization a permit authorizing the sale or dispensing of wine at an event sponsored by such qualified organization if the City Council is satisfied that the proceeds, after deducting reasonable expenses incurred, will be donated for a benevolent, charitable or public purpose.

(C) Any permit issued to an applicant who desires to conduct a charitable event within the City shall be subject to the following conditions:

(1) Except as otherwise provided in subsections (2) and (3) of this Section, all events shall be conducted within a confined area constructed and operated in accordance with the terms and provisions of this subsection. The applicant shall designate in his or her application, an area not to exceed one thousand two hundred fifty square feet (1250 ft²) in which all wine will be sold, dispensed, possessed and consumed. Such area shall be completely surrounded by a fence, barricade, or other physical barrier to pedestrian traffic, except for one (1) opening not to exceed six feet (6') in width. Such defined premises shall be at such location as may be approved by the Chief of Police or his or her designee, which location shall be specified on the permit. Such defined area shall be considered to be the "premises" for the purposes of Section 4-4-12 (B)(5) of this Code and the applicant shall not sell or dispense wine outside such area. The applicant shall also erect and maintain in a conspicuous location at all times, a sign with large letters no less than two inches (2") high bearing the following legend: "No Open Container of Wine May Be Possessed or Transported Beyond the Fenced Area," or such other legend which adequately appraises customers of the prohibitions set forth in Section 4-4-12, City Code. Failure to construct or maintain such fence, barrier or sign shall be grounds for summary revocation of such permit. The Chief of Police or City Council may establish additional conditions or restrictions as reasonably necessary to protect the public health and safety, or alternatively may waive or modify the conditions and restrictions herein provided such waiver or modification does not jeopardize the public health and safety.

(2) Charitable events may, with the prior approval of the Chief of Police, be conducted in or upon a public street, subject to the terms and conditions of this subsection. Wine may be dispensed at an event conducted in a public street and within an area comprised of no more than one (1) street on one (1) side of a City block, excluding any intersections thereof, provided it is dispensed only between the hours of 5:00 o'clock p.m. and 9:00 o'clock p.m. on any permitted day of the week. Wine shall not be sold on Sundays or legal holidays at such events. Such street area shall be considered to be the "premises" for the purposes of Section 4-4-12(B)(5) of this Code and the applicant shall not sell or dispense wine outside such area. The applicant shall also erect and maintain at all times in a conspicuous location at each end of such street area, a sign with large letters no less than two inches (2") inches high bearing the following legend: "No Open Container of Wine May Be Possessed or Transported Beyond this Point," or such other legend which adequately appraises customers of the prohibitions set forth in Section 4-4-12, City Code. Failure to construct or maintain such fence, barrier or sign, or failure to comply with such hours of operation, shall be grounds for summary revocation of such permit.

(3) Charitable events may be conducted within the confines of i) the public plaza located at the corner of Park and B Street, or (ii) the Tautphaus Park Zoo, which

plaza or Zoo shall be considered to be the "premises" for the purpose of Sections 4-4-12(B)(5) and 8-3-4(C) of this Code and the applicant shall not sell or dispense wine outside such area. The applicant shall also erect and maintain in a conspicuous location within such plaza or Zoo at least two (2) signs with large letters no less than two inches (2") high bearing an appropriate legend which adequately apprises the customer of the prohibitions set forth in Section 4-4-12, City Code. Failure to construct or maintain such sign shall be grounds for summary revocation of such permit. For the purposes hereof, the term "Zoo" shall consist of that area bounded by the perimeter fence of the Idaho Falls Tautphaus Park Zoo, but in no event closer than thirty feet (30') measured perpendicularly to such fence. Events conducted within the Zoo shall be subject to the further condition that all net proceeds derived from such event shall be used for the benefit of or donated to the Tautphaus Park Zoo.

(D) Permits issued under subsections (C)(1), (2) or (3) above shall not exceed a period of greater than three (3) consecutive days. No Qualified Organization shall conduct more than two (2) events within the Green in any calendar year. Nothing herein shall authorize or allow the issuance of any permit to sell or dispense wine in any park in violation of Section 8-3-4, City Code.

(E) The form of the application shall require the following information:

- (1) The names, mailing addresses and telephone numbers of the sponsors of the event, the tax identification number of the sponsor or sponsors and satisfactory evidence that the sponsor is a Qualified Organization;
- (2) Quantities and types of wine products to be used at the event;
- (3) Names of the dealer or wholesaler from whom the wine is to be received;
- (4) The retailer, if any, designated by such person or nonprofit entity to receive, store or dispense wine on behalf of the permittee;
- (5) Dates and hours of operation for which the permit is desired;
- (6) The location of the event and a description of the premises where wine will be sold, dispensed or conveyed; and
- (7) Such other information directly related to the event and the applicant that the City Clerk or Chief of Police may require.

(F) For the purposes hereof, a "Qualified Organization" shall mean any benevolent, charitable or public organization or person to whom a permit has been issued by the Director of the Idaho Department of Law Enforcement pursuant to the provisions of Idaho Code Section 23-1336.

(G) Within ninety (90) days after the conclusion of the event, the permittee shall submit an accurate and complete report to the City Clerk showing the disposition of funds from the event in accordance with the provisions of this Chapter.

(H) The Clerk shall collect a fee in an amount set from time to time by Resolution of the Council for each permit issued, provided however permits issued pursuant to section 4-4-11(C)(2) may be issued for multiple events conducted within a calendar year, provided that such events are separated by a period of at least six (6) days. Such multiple event permit fee shall be in an amount set from time to time by Resolution of the Council. In the event an applicant seeks a permit to sell beer and wine at the same location, the combined permit fee be in an amount set from time to time by Resolution of the Council.

(I) Should the Chief of Police or City Council determine that an applicant, permittee or its representative is violating any provision of this Chapter, or has in the past violated any law pertaining to the dispensing or sale of wine by a licensed retailer relating to hours of sale, relating to restrictions concerning age provided in Section 23-1013, Idaho Code or under this Chapter, or has failed in the past to submit such information as may have been requested by the City Clerk such permit may be summarily suspended by the Chief of Police prior to hearing, or may be denied or canceled pending a hearing.

(J) A licensed retailer may, on behalf of the permittee, receive or store wine to be used at the event and may dispense such wine to attendees of the benevolent, charitable or public purpose event for which the permit was issued.

(Ord. 2262, 1-8-98, Ord. 2481, 2-28-03; Ord. 2492, 6-12-03; Ord. 2650, 06-08-06; Ord. 2809, 4-23-09; Ord. 2836, 4-22-10; Ord. 2867, 3-10-11; Ord. 2964, 8-14-14)

4-4-12: POSSESSION OF OPEN CONTAINERS PROHIBITED:

(A) Any person who is in possession of an open container of wine within the City of Idaho Falls shall be guilty of a misdemeanor.

(B) Notwithstanding the foregoing, nothing herein shall prohibit the possession of an open container of wine:

- (1) Within a fully enclosed, privately-owned building or upon a private parking lot adjacent or appurtenant to such building provided such

parking lot is located more than two hundred (200) feet away from the premises of any licensed liquor vendor. Such distance shall be measured at the shortest distance between the exterior boundaries of such parking lot and licensed premises.

- (2) Within any private residence or upon the yard thereabout, or within any apartment, duplex, condominium, boarding house or other structure lawfully used as a permanent residence, or within any common area or area designated exclusively for and appurtenant to such residential occupancy.
- (3) Within any area for which a liquor catering permit has been lawfully issued under the provisions of this Chapter.
- (4) Within any area included within or being a part of the premises at which a licensee is authorized to sell or dispense wine by the drink under the provisions of this Code.
- (5) Within any building or upon any premises for which a permit has been issued under the provisions of Section 4-4-11 of this Chapter.
- (6) Within an area directly adjacent to a restaurant, at tables provided for dining, between the hours of 10:00 a.m. and 11:00 p.m. "Restaurant" is defined as an eating establishment which offers for sale food to the public. A restaurant must also have the appropriate license to sell the type of alcohol they offer to the public, including an approved site plan as part of its State alcohol permit. If the adjacent area includes a public sidewalk, the size of the tables and seating must allow sufficient room for public ingress and egress, including being compliant with all ADA laws and regulations for sidewalk use under Idaho Falls City Code 8-8-9. All consumption of alcohol in this adjacent area must be done at the table, and the customer cannot carry the alcohol away from the table.

- (7) Within a Permitted Event alcohol sales and consumption area.

(Ord. 2262, 1-8-98, Ord. 2481, 2-28-03; Ord. 2916, 02-28-13; Ord. 3044, 10-12-15)

4-4-13: HOURS OF SALE - RETAIL SALES: It shall be unlawful for any person in any place licensed to sell wine for consumption off the premises, to sell or dispense wine or to permit the consumption of wine on the premises between the following hours:

- (A) 1:00 a.m. and 7:00 a.m. of any day; and

(B) 1:00 a.m. on Christmas Day and 7:00 a.m. of the day following such holiday.

4-4-14: HOURS OF SALE - BY THE DRINK:

(A) It shall be unlawful for any person in any place licensed to sell wine for consumption on the premises, whether for pleasure or profit, to sell, offer to sell or dispense wine for consumption on the premises or to permit the consumption of wine on the premises between the following hours:

(1) 1:00 a.m. and 7:00 a.m. of any day;

(2) 1:00 a.m. on Christmas and 7:00 a.m. of the day following such holidays.

(Ord. 2385, 8-10-00; Ord. 2447, 5-9-02; Ord. 2804, 3-12-09; Ord. 2818, 7-23-09; Ord. 2847, 10-14-10)

**CHAPTER 5
PUBLIC RIGHT-OF-WAY CONTRACTORS**

SECTION:

- 4-5-1: Definitions
- 4-5-2: License Required
- 4-5-3: Application for License
- 4-5-4: Term of License
- 4-5-5: License Fees
- 4-5-6: License Not Transferable
- 4-5-7: Insurance and Bonding
- 4-5-8: Duties and Responsibilities of Public Right-of-Way
- 4-5-9: Suspension and Revocation of Licenses

4-5-1: DEFINITIONS: For the purposes of this Chapter, all terms used herein shall have the same meanings ascribed in the “Public Right-of-Way Construction” Chapter. In addition, certain terms shall have the meanings ascribed below:

PUBLIC RIGHT-OF-WAY CONSTRUCTION: The construction, placement or laying of any asphalt or concrete pavement; sidewalk; driveway; curb; gutter; water line; sanitary sewer line storm drain line; telephone line; electrical line, conduit, or facilities; cable TV line, conduit, or facilities; gas line or facilities; or any other similar structure or appurtenant facilities within any street, alley, easement or other public right-of-way of the City.

PUBLIC RIGHT-OF-WAY CONTRACTOR: Any person, partnership, corporation, association, agency or other organization who engages in the business of public right-of-way construction or who contracts for and engages in removal of snow, debris, or other materials from public rights-of-way. (Ord. 2969, 11-25-14)

4-5-2: LICENSE REQUIRED:

(A) No person shall engage in, control or otherwise direct public right-of-way construction or otherwise engage in the business of a public right-of-way contractor within the City unless such person shall have first obtained a license under the provisions of this Chapter.

(B) Exceptions: No license shall be required for the following persons:

- (1) a person working under the direct supervision and bond of a licensed public right-of-way contractor;

(2) a person who solely installs, lays, forms or places concrete for any sidewalk, curb, gutter or driveway within a public right-of-way and adjacent or appurtenant to property owned by such a person;

(3) a City employee engaged in performing work for the City or an employee of the State of Idaho while engaged in performing work for the State;

(4) a utility holding a franchise granted by the City, but not including a contractor or subcontractor of such utility;

(5) a person who tills soil to a depth of less than fifteen inches (15”) for agricultural purposes; and

(6) a person who replaces highway guard rails, posts, sign posts, delineative posts, culverts, electric poles, telephone poles, traffic control signs or device supports, or other similar publicly-owned fixtures, in the same approximate location and depth within a public right-of-way. (Ord. 2969, 11-25-14)

4-5-3: APPLICATION FOR LICENSE: All applications for a Public Right-of-Way Contractor's License shall be on such forms and shall provide such information as the City Engineer deems necessary to determine the applicant's capability and responsibility to perform work within any public right-of-way. The license application shall be submitted to the Public Works Department and shall be accompanied by payment of the license fee in an amount set from time to time by Resolution of the Council. Upon receipt of a fully-completed application, the Public Works Department shall forthwith transmit the application and license fee to the Clerk. All applications shall be granted or denied by the Council within sixty (60) days following the receipt of the fully-completed application form by the Public Works Department. (Ord. 2969, 11-25-14; Ord. 3003, 04-23-15)

4-5-4: TERM OF LICENSE: Each license issued under this Chapter shall expire on December 31 of the year for which it is issued. (Ord. 2969, 11-25-14)

4-5-5: LICENSE FEES: The fee for a Public Right-of-Way Contractor's License shall be in an amount set from time to time by Resolution of the Council. Neither the license fee nor any portion thereof shall be refunded once a license has been issued. No portion of the license fee shall be prorated. (Ord. 2964, 8-14-14; Ord. 2969, 11-25-14)

4-5-6: LICENSE NOT TRANSFERABLE: Licenses issued under this Chapter shall not be transferable.

4-5-7: INSURANCE AND BONDING:

TITLE 4 – BUSINESS
REGULATIONS

Liability and Hazard Insurance: Every contractor granted a license under this Chapter shall maintain comprehensive general liability coverage including completed operations in an amount not less than five hundred thousand dollars (\$500,000) single limit liability for personal injury, death and property damage, provided however if the work to be done is limited to excavation in an easement situated entirely on private property or is for construction of a concrete sidewalk, curb or gutter located within a street right-of-way and parallel with adjoining private property, the amount of such insurance shall be not less than one hundred thousand dollars (\$100,000), single limit. Coverage for underground hazard shall also be included. Contractors engaged in work requiring the use of explosives or work that may endanger or cause the collapse of adjacent buildings or facilities shall also carry explosion and collapse hazard coverage with a minimum limit of five hundred thousand dollars (\$500,000) single limit liability for personal injury, death and property damage. This coverage may be carried on an individual "project" or "permit" basis where the need for such coverage is applicable. Each policy as required above shall carry an endorsement naming the City as an additional insured under said policy. Each policy shall also contain a clause requiring that the City Engineer be given at least thirty (30) days advance written notice in the event of anticipated cancellation of the policy or any coverage under the policy. Certificates of insurance evidencing the required coverage shall be filed with the City Engineer along with the contractor's license application.

(B) Worker's Compensation Insurance: Contractors with employees shall carry statutory worker's compensation insurance with at least five hundred thousand dollars (\$500,000) employer's liability per occurrence. A certificate of insurance evidencing such worker's compensation coverage as set forth above shall be filed with the City Engineer prior to the issuance of a license under this Chapter.

(C) Bond: Prior to performing work within any public street, alley, easement or other public right-of-way of the City, all licensees shall execute and deposit with the City Engineer either a bond in favor of the City or an equal amount in cash to ensure proper and adequate performance of all work within a public right-of-way in accordance with this Chapter and of the "Public Right-of-Way Construction" Chapter this Code. The amount of such bond shall be in an amount set from time to time by Resolution of the Council. A surety may cancel its future liability under any bond furnished hereunder by giving the City Engineer thirty (30) days advance written notice of the intention to cancel. Cancellation shall not affect any liability which may have accrued under the terms of the bond prior to cancellation. A license shall be subject to revocation whenever a bond is canceled unless a comparable bond is furnished at the time of cancellation of the original bond. (Ord. 2964, 8-14-14; Ord. 2969, 11-25-14)

4-5-8: DUTIES AND RESPONSIBILITIES OF PUBLIC RIGHT-OF-WAY CONTRACTOR:

All licensees under this Chapter shall have the following duties and responsibilities:

(A) Any contractor licensed hereunder shall be responsible for the proper performance of all work required by the contract, whether or not such work is done by him directly or by a subcontractor.

(B) Any licensee shall provide such safety measures and equipment as are required to safely protect workers and the public as prescribed by this Chapter, all other ordinances adopted by the City and all laws of the State of Idaho and the United States.

(C) The licensee shall ensure that all other applicable permits and insurance are obtained by the licensee and any subcontractors working under the contract, prior to undertaking any public right-of-way construction.

(D) The licensee shall present the license when requested to do so by the City Engineer or the City Engineer's authorized representative(s).

(E) The licensee shall faithfully construct all facilities in accordance with any drawings or specifications approved by the City.

(F) The licensee shall obtain all inspections required by this Code.

(G) The licensee shall construct or reconstruct all underground facilities in strict compliance with all applicable codes, specifications and standards adopted by ordinance of the City.

(H) The licensee shall warrant the adequacy and continued satisfactory condition and function of any street repairs or underground facilities constructed or reconstructed within any public right-of-way, for a period of one year after final approval and acceptance thereof by the City. Licensee's bond required by this Chapter shall remain in full effect for the duration of the warranty period. (Ord. 2969, 11-25-14)

4-5-9: SUSPENSION AND REVOCATION OF LICENSES:

(A) The City Engineer may suspend or revoke a license when the licensee commits one or more of the following acts or omissions:

(1) Fails to comply with any provisions set forth in this Chapter or the "Public Right-of-Way Construction" Chapter of this Code.

(2) Knowingly combines or conspires with any person to permit the license to be used by such person, except as allowed in this Chapter.

(3) Knowingly conspires with any other person to violate the provisions of this Code.

(4) Knowingly violates any ordinance adopted by the City or any standard drawings or standard specifications governing the construction, replacement or repair of any utility, street or associated facilities within the City.

(B) The procedure governing the suspension or revocation of licenses shall be as follows:

(1) The licensee shall be notified in writing, by certified mail, that good cause appears to suspend or revoke the licensee's license. The reason or reasons for each action shall be enumerated in such notice.

(2) Upon receipt of the notice, the licensee may request a hearing before the City Engineer. Such request shall be in writing and shall be delivered to the City Engineer within seven (7) days of the receipt of said notice. Such notice shall be deemed received upon its deposit in the U.S. mail, postage prepaid.

(3) If a hearing is requested by the licensee, the City Engineer shall set a time, date and place of said hearing and shall notify the licensee in writing at least ten (10) days prior to the date of the hearing.

(4) When a hearing is conducted, the licensee and other interested parties may present written or oral testimony and evidence. Upon completion of the hearing, the City Engineer shall promptly notify the licensee in writing, by certified mail, of the findings and decision regarding the suspension or revocation of the license.

(C) If the decision rendered by the City Engineer is adverse to the licensee, the licensee may appeal to the Council. Such appeal must be filed within thirty (30) days after delivery of the ruling to the licensee. Such delivery shall be presumed complete upon its deposit in the U.S. mail, postage prepaid, addressed to the last known address of the licensee. The decision rendered by the Council shall be final. (Ord. 2969, 11-25-14)

**CHAPTER 6
PRIVATE PATROL SERVICES**

SECTION:

- 4-6-1: Private Patrol Person Defined; Exceptions
- 4-6-2: Private Patrol Service Defined
- 4-6-3: License Required
- 4-6-4: License Application, Private Patrol Person
- 4-6-5: Qualifications, Private Patrol Person
- 4-6-6: License Application, Private Patrol Service
- 4-6-7: Qualifications, Private Patrol Service
- 4-6-8: License Approval and Issuance
- 4-6-9: Bond Required
- 4-6-10: Insurance Required
- 4-6-11: License Fees
- 4-6-12: License Expiration
- 4-6-13: License; Form
- 4-6-14: Unlawful Display of License
- 4-6-15: Private Patrol Service Employees
- 4-6-16: License; Authority
- 4-6-17: Grounds for License Revocation
- 4-6-18: Automatic Revocation of License

4-6-1: PRIVATE PATROL PERSON DEFINED; EXCEPTIONS:

(A) Definition: As used in this Chapter, a "private Patrol Person" is any person who contracts or is employed or hired to guard, protect or maintain peace and order in or about any structure, premises or property within the City. This definition shall apply regardless of whether or not such person wears a uniform and without regard to whether he or she performs these activities on foot or by vehicle.

(B) Exceptions: The following persons are specifically excluded from the definition of "private Patrol Person" set forth in this section:

- (1) Regularly appointed City police officers.
- (2) Regularly appointed peace officers and law enforcement agents of the United States, the State of Idaho or any political subdivision of the State.

- (3) Guards, officers and detectives employed by interstate or intrastate carriers.
- (4) Guards, officers and detectives employed by a private business to guard, protect or maintain peace and order in or about structures, premises or property owned, maintained or used by the private business, where the major portion of such employment is confined to services performed on or in such structures, premises or property.

4-6-2: PRIVATE PATROL SERVICES DEFINED: As used in this Chapter, a "private patrol service" is any business which employs two or more private patrol persons.

4-6-3: LICENSE REQUIRED: No person shall act or offer to act as a private Patrol Person and no person shall engage in the business of a private patrol service without first obtaining a license from the City.

4-6-4: LICENSE APPLICATION, PRIVATE PATROL PERSON:

(A) Applications for private Patrol Person licenses shall be made at the office of the City Clerk on a form furnished by the City. The application shall state the applicant's full name, age, residence, present and previous occupations for a period of three (3) years prior to the application and all other information necessary to show that the applicant meets the qualifications set forth in this Chapter. At the time of making application, the applicant shall have his or her fingerprints taken by the City Police Department. The application shall be accompanied by a nonrefundable license fee.

(B) To determine the suitability of prospective applicants for a license, the Chief of Police shall require a first time applicant to provide information and fingerprints necessary to obtain criminal history information from the Idaho State Police and the Federal Bureau of Investigation. Pursuant to Section 67-3008, Idaho Code, and congressional enactment Public Law 92-544, the Chief of Police shall submit a set of fingerprints obtained from the applicant and the required fees to the Idaho State Police, Bureau of Criminal Identification, for a criminal records check of state and national databases. The submission of fingerprints and information required by this section shall be on forms prescribed by the Idaho State Police. The Chief of Police is authorized to receive criminal history information from the Idaho State Police and from the Federal Bureau of Investigation for the purpose of evaluating the fitness of applicants for a license under this section. As required by state and federal law, further dissemination of other use of the criminal history information is prohibited. Fingerprinting shall not be required for a license renewal. (Ord. 2440, 2-15-02)

4-6-5: QUALIFICATIONS, PRIVATE PATROL PERSON: No person shall be issued a license as a private Patrol Person who:

(A) Is not at least twenty-one (21) years of age.

(B) Is not a citizen of the United States.

(C) Has been convicted of a felony or of any crime or offense involving violence or moral turpitude, or of any offense concerning the sale or transportation of intoxicating or alcoholic liquor.

4-6-6: LICENSE APPLICATION, PRIVATE PATROL SERVICE: Applications for private patrol service licenses shall be made at the office of the City Clerk on a form furnished by the City. The application shall state the applicant's full name, age, residential address, present and previous occupations for a period of three (3) years prior to the application, the name of the business and all other information necessary to show that the applicant meets the qualifications set forth in this Chapter. If the applicant is an individual, the application shall be signed or verified by such individual; if the applicant is a firm or partnership, the application shall be signed and verified by at least one of the individuals comprising such firm or partnership; if the applicant is a corporation, the application shall be signed and verified by the president or the secretary and treasurer thereof; or if a foreign corporation, such application shall be acceptable if accompanied by a certificate signed by the proper officers of such corporation showing the place and date of incorporation, a certified copy of its right to do business in the State, and the name and address of its duly authorized local agent in the State, its principal place of business in the City, and the application shall be signed and verified by the duly authorized local agent of such foreign corporation. The application shall be accompanied by a nonrefundable license fee.

4-6-7: QUALIFICATIONS, PRIVATE PATROL SERVICE: A private patrol service license shall not be issued to any individual, firm, partnership or corporation under any of the following conditions:

(A) If the individual, any member of the firm or partnership, or any officer of the corporation is less than twenty-one (21) years of age.

(B) If the individual, any member of the firm or partnership or any officer of the corporation is not citizen of the United States.

(C) If the individual, any member of the firm or partnership or any officer of the corporation has been convicted of a felony or of any crime or offense involving violence or moral turpitude, or of any offense concerning the sale or transportation of intoxicating or alcoholic liquor.

4-6-8: LICENSE APPROVAL AND ISSUANCE: On receipt of a completed application for any license required under this Chapter and the relevant license fee, the City Clerk shall forward the application to the Chief of Police for review and recommendation for approval or denial. The Chief of Police shall review the application and conduct whatever investigation is necessary to

determine whether the applicant is qualified for the license sought. Within thirty (30) days of receiving the application from the City Clerk, the Chief shall return the application together with the recommendation to the Clerk. The Clerk shall submit the application and the Chief's recommendation to the City Council. The Council shall have authority to approve or deny the issuance of any license required by this Chapter. If the Council approves the issuance of the license, the City Clerk shall issue the license.

4-6-9: **BOND REQUIRED:**

(A) **Bond Required:** Before any license is issued under this Chapter, the applicant shall file with the City Clerk a surety bond in favor of the City in the amount set forth in this section. This bond shall be in a form approved by the City Attorney, executed by the applicant as principal and issued by a surety licensed to engage in business in the State of Idaho. The bond shall be issued for a term coterminous with the term of the license sought. The bond shall be conditioned upon the honest and lawful conduct of the activities for which the applicant seeks a license and to hold harmless the City against any personal injury or property damage resulting from any act of the licensee.

(B) **Amount of Bond:** The amount of the bond(s) required under this Section for a private Patrol Person or for a private patrol service shall be in an amount set from time to time by Resolution of the Council.

(C) **Forfeiture:** If the City Council determines that the licensee has made any false statement on the license application or that the licensee or any employee or agent of the licensee commits any dishonest or unlawful act in the conduct of the licensee's services or business, the Council may order the entire amount of the surety bond forfeited. The Council also may order that the proceeds of the bond be paid to any person damaged by any dishonest, unlawful, willful, malicious or wrongful action of the licensee or any employee or agent of the licensee.

(D) **Return of Bond:** After expiration of the license and on written request of the licensee, the City Clerk shall return the surety bond within six (6) months of the date of the request for return, unless the Clerk has received notice that any claim or cause of action is pending against the bond, then the Clerk shall return the bond within thirty (30) days after final resolution of the claim or cause of action. (Ord. 2964, 8-14-14)

4-6-10: **INSURANCE REQUIRED:** Any person licensed under this Chapter shall obtain and maintain a policy of general public liability insurance in an amount of not less than \$500,000-single limit liability for personal injury and property damage resulting from the licensee's activities as a private Patrol Person or in conducting a private patrol service. The licensee shall be a named insured under this policy. Before any license is issued under this Chapter, the applicant shall file a certificate evidencing such insurance with the City Clerk. The certificate shall provide that the

insurance policy required by this Section shall not be canceled except upon thirty (30) days prior written notice to the City Clerk.

4-6-11: **LICENSE FEES:** Fees required for licenses for a Private Patrol Person and for a Private Patrol Service issued under this Chapter shall be in an amount set from time to time by Resolution of the Council. (Ord. 2964, 8-14-14)

If any person makes application for a license as a private Patrol Person or to operate a private patrol service within thirty (30) days after the expiration of his or her license under this Chapter, the license fee shall be one half (1/2) of the amounts set forth above.

4-6-12: **LICENSE EXPIRATION:** All licenses issued under this Chapter shall expire at 12 midnight, December 31 of the year for which the license is issued.

4-6-13: **FORM OF LICENSE:** The license for a private Patrol Person shall be an identification card containing the words "private Patrol Person" and stating the year for which the license is issued. The license for a private patrol service shall be a placard stating the name of the licensee and the year for which the license is issued. Upon the termination or expiration of any license, the license shall be returned to the City Clerk.

4-6-14: **UNLAWFUL DISPLAY OF LICENSE:** It shall be unlawful for any person to wear or display any license required by this Chapter unless the person is duly licensed therefor.

4-6-15: **PRIVATE PATROL SERVICE EMPLOYEES:** It shall be unlawful for any private patrol service to employ any person to perform the services of a private Patrol Person unless that person holds a valid private Patrol Person license issued by the City.

4-6-16: **LICENSE; AUTHORITY:** The issuance of any license under this Chapter shall not be construed as granting any power of arrest other than that granted a private person under Idaho Code and this Code. Nor shall the provisions of this Chapter be construed as authority to carry weapons contrary to the Idaho Code.

4-6-17: **GROUND FOR LICENSE REVOCATION:** Any license issued under this Chapter may be revoked by the City Council for any of the following reasons:

- (A) Any violation of any provision of this Chapter.
- (B) The conviction of the licensee in any court of any crime or offense involving violence or moral turpitude.
- (C) Obtaining the license under any false or fraudulent pretense or statement.

(D) The conviction of the licensee in any court of any felony or any offense involving or concerning the sale or transportation of intoxicating or alcoholic liquor.

4-6-18: **AUTOMATIC REVOCATION OF LICENSE:** Any license issued under this Chapter shall be revoked immediately and without notice to the licensee upon the cancellation or termination of the bond or insurance required by this Chapter unless the licensee posts a new comparable bond or obtains comparable insurance and files a certificate of such insurance with the City Clerk prior to the date on which the original bond or insurance is canceled or terminated.

**CHAPTER 7
BUILDING CONTRACTORS**

SECTION:

- 4-7-1: Purpose
- 4-7-2: Definitions
- 4-7-3: License Required; Exceptions
- 4-7-4: Proof of License
- 4-7-5: Duties of Contractors
- 4-7-6: Contractors Registration
- 4-7-7: Licenses Authorized
- 4-7-8: Application Form and Fee
- 4-7-9: Renewal or Reinstatement of License
- 4-7-10: Examinations, License Approval and Issuance
- 4-7-11: Firms/Designated Representatives
- 4-7-12: Continuing Education
- 4-7-13: Contractor Discipline
- 4-7-14: Hearing Panel Action
- 4-7-15: Non-disciplinary hearings
- 4-7-16: Safe Harbor Provisions
- 4-7-17: Hearings
- 4-7-18: License Application and Issuance
- 4-7-19: Final Appeal to Council
- 4-7-20: (Repealed)

4-7-1: **PURPOSE:** The purpose of this Chapter is to protect the health, safety and welfare of the inhabitants of the City by ensuring that all buildings within the City are constructed by qualified contractors, that such contractors comply with all applicable building, electrical, plumbing and other construction codes and that all appropriate permits and inspections are obtained. (Ord. 2681, 11-21-06; Ord. 2691, 03-09-07)

4-7-2: **DEFINITIONS:** Certain words and phrases used in this Chapter are defined as follows:

BUILDING: Any structure used or intended to support or shelter any use or occupancy as defined by the International Building Code.

BUILDING INSPECTOR: A "contractor," within the meaning of this Chapter, is any person or firm that undertakes to construct, alter, repair, or demolish any structure or any portion thereof including every general contractor, building contractor, and residential contractor. Unless provided otherwise by this Chapter, only a contractor licensed under the provisions of this Chapter may obtain a building permit.

BUILDING CONTRACTOR'S LICENSE: A license issued by the City allowing the holder to engage in the activities of a building contractor.

BUILDING OFFICIAL: An officer or employee of the City charged with the administration of this Chapter and the International Building Code.

CLASS A CONSTRUCTION: All residential, commercial and industrial building construction of any kind.

CLASS B CONSTRUCTION: The construction of hotels, apartment houses and buildings that are not more than three (3) stories above grade and are within occupancy groups A, B, E, F, H, I, M, or R, as defined by the International Building Code, including Class C construction.

CLASS C CONSTRUCTION: The construction of structures regulated by the International Residential Code.

CLASS D CONSTRUCTION: Relating to specific trades, including, but not limited to, such concrete, masonry, framing, drywall or roofing.

DIRECTOR: The Director of the Community Development Services Department of the City.

FIRM: For purposes of this Chapter, Firm means any sole proprietorship, partnership, association, limited liability company or corporation.

INTERNATIONAL BUILDING CODE: The International Building Code and International Residential Code as adopted and amended by the City.

INTERNATIONAL FIRE CODE: The International Fire Code as adopted and amended by the City.

(Ord. 2203, 5-23-96; Ord. 2520, 12-18-03; Ord. 2681, 11-21-06; Ord. 2691, 03-09-07; Ord. 2772, 08-14-08; (Ord. 3003, 04-23-15).)

4-7-3: **LICENSE REQUIRED; EXCEPTIONS:**

 (A) License Required: No person shall build, construct, alter, repair or modify any building in the City without obtaining an appropriate building contractor's license as set forth below.

 (B) Exceptions: The licensing requirement in this section shall not apply to the following:

**TITLE 4 – BUSINESS
REGULATIONS**

- (1) The installation, construction, repair or modification of any water line, sewer line, gas line, railroad line, telephone line, cable TV line, electrical line, fiber optic line or telecommunications line.
- (2) The construction, repair, alteration or demolition of any road, bridge or structure directly appurtenant to any road or bridge.
- (3) A homeowner who personally occupies or will occupy and undertakes the construction, alteration, repair, or maintenance of such homeowner's single-family residence or an accessory structure thereto. This exception is not intended to prohibit the homeowner from having assistance in the construction of the home from others provided that any persons assisting such homeowner hired as paid labor shall be deemed a sub-contractor and shall be required to be licensed as such in accordance with Section 4-7-7 of this ordinance. Notwithstanding the foregoing, for purposes of this section, any homeowner who undertakes the construction of a new residence for such homeowner's personal occupancy more than two times in any five year period shall be deemed to be a "contractor" under this Chapter. A "homeowner" is defined as any person, or spouse of that person, who owns the home or property
- (4) Any person who is a bona fide employee of a contractor holding a valid building contractor's license or a subcontractor of a licensed general contractor, and who engages in building construction while generally under the direct supervision and control of the licensed building contractor.

(Ord. 2520, 12-18-03; Ord. 2681, 11-21-06; Ord. 2772, 08-14-08; Ord. 2772, 08-14-08)

4-7-4: **PROOF OF LICENSE:** Before being issued a building permit within the City, the contractor must show proof of the appropriate contractor's license to the City of Idaho Falls Building Department. (Ord. 2681, 11-21-06; Ord. 2772, 08-14-08))

4-7-5: **DUTIES OF CONTRACTORS:** Contractors licensed under this Chapter shall have the following duties:

(A) Contractors shall comply with all provisions of the International Building Codes, Uniform Plumbing Code, International Fire Code, and any other building or construction code adopted by the City.

(B) Contractors shall obtain all permits and pay all applicable fees required by the City Code.

(C) Contractors shall obtain all inspections as required by the City Code.

(D) Contractors shall ensure that all buildings are constructed without substantial departure from any drawings and specifications filed with and approved by the City.

(E) Contractors shall obey all lawful orders of the Director, the Building Official or their authorized representatives.

(F) Upon issuance of a building permit to a contractor, such contractor shall be responsible for all work undertaken pursuant to such building permit, including work done by the contractor's employees, agents and subcontractors.

(G) Contractors are responsible for all of their employees and sub-contractors working generally under the direct supervision and control of the contractor. (Ord. 2681, 11-21-06; Ord. 2772, 08-14-08))

4-7-6: **CONTRACTORS REGISTRATION:** Every Contractor will be registered with the Idaho Bureau of Occupational Licenses as required by Idaho Code § 54-5101 et. seq. Evidence of registration shall be provided to the City or its designated agent upon initial application and each subsequent renewal.

(Ord. No. 2625, 10-27-05; Ord. 2681, 11-21-06; Ord. 2772, 08-14-08))

4-7-7: **LICENSES AUTHORIZED:** There shall be four (4) separate classes of licenses authorized for contractors as provided in this Chapter. All license fees set forth below may be amended by Resolution of the Council.

(A) A Class A License shall entitle the holder thereof to construct, remodel, repair, and demolish any structure. The annual Class A License fee shall be in an amount set from time to time by Resolution of the Council.

(B) A Class B License shall entitle the holder thereof to construct, remodel, repair, and demolish all structures not exceeding three stories in height. A Class B License shall also entitle the license holder to perform non-structural remodeling, tenant-finish, and repairs of all structures. The annual Class B License fee shall be in an amount set from time to time by Resolution of the Council.

(C) A Class C License shall entitle the holder thereof to construct, remodel, repair, and demolish single family or duplex residences and buildings accessory thereto. The annual Class C License fee shall be in an amount set from time to time by Resolution of the Council.

(D) A Class D License shall entitle the holder thereof to perform the specific trade for which they are licensed for, whether it be concrete, masonry, framing, drywall or roofing, or other specific trade. The annual Class D License fee shall be in an amount set from time to time by Resolution of the Council

(E) The original fee and renewal for any license applied for under the reciprocity provisions of Section 4-7-10(A)(3) of this Chapter shall be in an amount set from time to time by Resolution of the Council for those who hold an equivalent license from an out-of-state jurisdiction or organization. The fee shall be in an amount set from time to time by Resolution of the Council for an applicant who holds an equivalent license from an in-state jurisdiction or organization. (Ord. 2964, 8-14-14)

4-7-8: APPLICATION FORM AND FEE: The Director shall receive and process contractor license applications. An application fee of \$100 shall accompany each original application except for those applying under 4-7-10(A)(3). No application fee shall be required in connection with a license renewal. All application and license fees shall be paid without proration. No contractor license may be transferred or assigned. (Ord. 2681, 11-21-06; Ord. 2691, 03-09-07; Ord. 2772, 08-14-08))

4-7-9: RENEWAL OR REINSTATEMENT OF LICENSE:

(A) Every contractor license shall be issued on a calendar year basis to expire on December 31st of each year. The first year's fee shall be pro-rata, based upon when the license is granted. A contractor shall be entitled to renew such contractor's license upon satisfaction of the requirements of this Chapter. A license renewal application may be submitted to the City beginning on December 1st through and including the last day of January without a late fee. Thereafter, a late fee in an amount set from time to time by Resolution of the Council, shall be collected to offset administrative costs incurred as a result of such late renewal. Unless an expired license is renewed within one year of its expiration, the contractor shall be required to make a new application and satisfy all of the then-existing contractor licensing requirements. License renewal applications shall be mailed by the Director no later than November first of each year to every licensed contractor at the address provided by the contractor. The failure to receive a renewal application shall not excuse untimely license renewal.

(B) During the annual renewal period, a licensed contractor that has completed the annual requirement for continuing education may, upon the payment in an amount set from time to time by Resolution of the Council, have the contractor's license declared inactive. No building permit shall be issued to a contractor with an inactive license. The holder of an inactive license may annually renew the inactive license upon the completion of all continuing code education requirements and the payment of the annual renewal fee. The holder of an inactive license may obtain an active contractor's license at any time upon the payment of the required license fee.

(C) Any contractor whose license is suspended for any code related violation must provide satisfactory evidence to the Board established by the Director that the violation has been corrected in accordance with the applicable Code. Failure to provide such evidence may result in the revocation of the contractor's license.

(D) When a contractor's license is revoked, a new license shall not be granted until the contractor has first passed an examination as required by Section 4-7-10 and has provided the City or its designated agent with satisfactory evidence that a new license should be issued. If the contractor's license was revoked as a result of a Code-related violation, such contractor may not be re-licensed unless the City determines that the violation has been corrected.

(E) Reciprocal license holders under Section 4-7-10(A)(3), shall submit current verification of licensing with another jurisdiction or organization approved by the director. The renewal free is set forth in Section 4-7-7(E). (Ord. 2681, 11-21-06; Ord. 2691, 03-09-07; Ord. 2772, 08-14-08; Ord. 2964, 8-14-14)

4-7-10: EXAMINATIONS, LICENSE APPROVAL AND ISSUANCE:

(A) Contractor applicants shall be licensed upon their delivery to the Director of proof that the applicant or person employed by the applicant on a full-time basis meets one or more of the following qualifications:

- (1) Possession of a valid certificate of competency from a nationally-recognized testing institution; or
- (2) Possession of a bachelor's degree in engineering, architecture, or construction science from an accredited college or university;
- (3) Possession of a license from another jurisdiction or organization which the Director determines is sufficient to warrant reciprocity. The business from the other jurisdiction or organization must have an equivalent or greater continuing educational requirements.

(B) The Director is hereby authorized to administer examinations to determine the qualifications of applicants and may utilize the International Code Council examination, or other similar, nationally-recognized examination.

(C) The Director shall expeditiously process all license applications. The City shall adopt reciprocity rules and regulations to allow persons and firms from other states or municipalities within or without the state to obtain a contractor's license based upon such person's or firm's licensure in such other state or municipality.

(D) The contractor-applicant shall disclose, at the time of application, any current or previous contractor license held in Idaho or any other state and any disciplinary actions taken against such contractor-applicant. If the contractor-applicant is employed by or a principal of a firm, the application shall disclose whether the firm or the firm's employees or principals have had any contractor-related disciplinary action taken against them in Idaho or any other state. No license shall be issued to any contractor-applicant who has had a license suspended or revoked for disciplinary reasons, or who has surrendered a license during any disciplinary proceeding or investigation, within the immediately preceding five years. Any contractor-applicant denied a license under the provisions of this section may appeal such denial to the hearing panel selected by the Mayor and City Council. (Ord. 2681, 11-21-06; Ord. 2691, 03-09-07; Ord. 2772, 08-14-08))

4-7-11: FIRMS/DESIGNATED REPRESENTATIVES:

(A) Under this Chapter, a firm may obtain, in the firm's name, a contractor's license provided that such firm has at least one full-time employee who is designated by the firm as its representative and such designated representative satisfies one of the requirements of Section 4-7-10 of this Chapter. A designated representative must spend a minimum of thirty (30) hours a week carrying out the work of the firm. Whenever a building permit is issued in the name of a firm, the firm shall be subject to this ordinance.

(B) A contractor, including firms, may appoint, on forms provided by the City, one or more individuals who shall be authorized to obtain building permits on behalf of the contractor. Such individuals are not required to be a licensed contractor. (Ord. 2681, 11-21-06; Ord. 2772, 08-14-08)

4-7-12: CONTINUING EDUCATION: Every contractor shall complete at least eight (8) hours of continuing education as required by the Director each calendar year. The Director shall recognize codes-related education provided by other governmental entities, trade associations, contractor education providers and other competent educational institutions for courses and instruction directly related to those codes adopted within the state of Idaho. The licensing fee, except those who receive a license through reciprocal admission under Section 4-7-10(A)(3), shall cover tuition costs for at least eight (8) hours per year, provided by the Director. Employees of non-reciprocal licensed contractors may attend a course for the cost in an amount set from time to time by Resolution of Council. A contractor with a reciprocal license may attend a course for the cost in an amount set from time to time by Resolution of the Council. (Ord. 2964, 8-14-14)

4-7-13: CONTRACTOR DISCIPLINE: The Director shall have the authority to admonish, reprimand, and otherwise discipline any contractor who violates any requirements of this Chapter. Any discipline that does not involve a suspension or revocation of the license will not require a hearing. Any monetary fine is subject to an appeal as set forth below. If a disciplinary action

could result in a suspension or revocation of the license, a hearing shall be held following not less than ten days' notice to the affected contractor. A three person panel shall be appointed by the Mayor and approved by the City Council to hear any contractor discipline which involves a suspension or revocation of a contractor's license. This three person hearing panel shall consist of one building official and two licensed contractors. The hearing panel may suspend or revoke a contractor's license if the hearing panel concludes, following a hearing, that the contractor's action or inaction is:

(A) A serious or repeated violation of the provisions of this Chapter, any applicable Code, or the failure to comply within a reasonable time to any written order of a building code official;

(B) A knowing and intentional misrepresentation of a material fact made in connection with obtaining a contractor's license or a building permit;

(C) A fraudulent or deceitful use of a contractor's license to obtain a building permit;

(D) A failure to obtain a building permit or to obtain a required inspection of an on-going project as required by any applicable Code;

(E) A failure to exercise regular, routine control and supervision over an on-going project for which the contractor has obtained a building permit;

(F) A failure to timely obtain a certificate of occupancy for a completed structure as required by applicable building safety code.

(G) A failure to hire a State of Idaho licensed electrical, plumbing, or HVAC contractor to supervise any electrical, plumbing, or HVAC work on the job site for which the contractor obtained a building permit; or

(H) A failure by a contractor to pay the required application or licensing fees for a building permit, contractor license or inspection fee.

(I) If a contractor operating as a business entity (i.e. not as a sole proprietorship) has performed work as a building contractor at any time while the contractor does not have within its full-time employ, a person who satisfies any of the criteria of Section 4-7-10 of this Chapter. (Ord. 2681, 11-21-06; Ord. 2772, 08-14-08))

4-7-14: HEARING PANEL ACTION: A quorum of at least two hearing panel members must be present to conduct a hearing. Upon a finding by a majority of the members present at the hearing that a contractor has violated one or more of the provisions of Section 4-7-13 of this

Chapter, the hearing panel may admonish, reprimand, or take other appropriate disciplinary action against such contractor including, but not limited to:

(A) Suspension of the contractor's license for a fixed period not to exceed ninety days.

(B) Suspension of the contractor's license for a fixed period exceeding 90 days, provided, however, the contractor shall have the right to have the suspension and the terms thereof reconsidered by the hearing panel at the expiration of the first 90 days and every 90 days thereafter to determine if just cause exists to modify or terminate the suspension. Such reconsideration may, at the hearing panel's option, include a hearing.

(C) Revocation of the contractor's license for a period not less than 12 months from the date of revocation. A contractor's license shall be revoked if the contractor has been suspended five times during any 36-month period.

(D) Any decision of the hearing panel shall be made in writing and mailed to the contractor. A contractor may appeal any decision of the hearing panel to the Director by filing a notice of appeal with the Director within the 30 days following the third day after the hearing panel's written decision was mailed to the contractor as evidenced by a certificate of mailing which shall be included with the decision. When an appeal is filed, the Director shall forward the appeal to the appellate board together with the hearing panel record. The Mayor and City Council shall designate an appellate board. The appeal shall be de novo and no action shall be taken by the hearing panel during a pending appeal. The Appellate Board shall consist of the following:

- (1) Two members shall be certified building code officials within Idaho.
- (2) One member shall be licensed by the State of Idaho as an architect or civil engineer.
- (3) One member shall be a licensed general contractor or an employee of such contractor.
- (4) One member shall be a licensed building contractor or an employee of such contractor.
- (5) One member shall be a licensed residential contractor or an employee of such contractor.
- (6) One member shall be a licensed subcontractor.

To conduct any hearings, a quorum of at least five (5) members of the Appellate Board must be present. (Ord. 2681, 11-21-06; Ord. 2691, 03-09-07; Ord. 2772, 08-14-08)

4-7-15: **NON-DISCIPLINARY HEARINGS:** All non-disciplinary matters, including contested matters such as approval, issuance, reinstatement, or educational matters, shall be heard by the hearing panel. A contractor may appeal any decision of the hearing panel to the Director within thirty (30) days of the decision. The thirty (30) day appeal period shall commence three days after the date the decision is mailed to the contractor. The hearing panel shall forward the hearing panel decision to the Director together with the panel record. (Ord. 2681, 11-21-06; Ord. 2691, 03-09-07; Ord. 2772, 08-14-08)

4-7-16: **SAFE HARBOR PROVISIONS:** A contractor shall not be found in violation of this Chapter, nor disciplined for a violation of an applicable building safety code provision if the contractor performs the work in accordance with and reliance upon duly certified plans and specifications prepared or approved by an architect or engineer licensed in Idaho without knowledge by the contractor that such plans and specifications, or pertinent parts thereof, are in violation of applicable Codes. (Ord. 2681, 11-21-06; Ord. 2772, 08-14-08)

4-7-17: **HEARINGS:** All contested matters pertaining to the approval, issuance, renewal, and reinstatement of licenses, including examinations, shall be heard by the Director. (Ord. 2681, 11-21-06; Ord. 2772, 08-14-08)

4-7-18: **LICENSE APPLICATION AND ISSUANCE:** All applications for building contractors' licenses shall be filed with the City Clerk, together with the appropriate license and application fees. Application forms shall be furnished by the Director and shall solicit all information necessary to determine the applicant's qualifications for licensing. Upon receipt of a properly completed application form, the Clerk shall forward it to the Director for his review and recommendation for approval or denial. On receipt of the recommendation of the Director, the City Clerk shall present the application, together with the Director's recommendation to the City Council for its approval or denial. Licenses shall be granted or denied within sixty (60) days of the date on which the application is filed with the City Clerk. (Ord. 2681, 11-21-06; Ord. 2772, 08-14-08)

4-7-19: **FINAL APPEAL TO COUNCIL:** All matters disputed by any contractor, after following the appeal processes outlined in this Chapter, may bring a final appeal to the City Council for a final decision. The City Council shall act as the final appeal board for all matters, and will hear the matter in an appellate review manner, not de novo. Notice of the appeal must be sent to the City Clerk within thirty (30) days from the date of the decision of the Director or a hearing panel. After a final action by the City, an applicant may file for Judicial Review within twenty-eight (28) days after the decision is made. (Ord. 2681, 11-21-06; Ord. 2772, 08-14-08)

4-7-20: (Repealed): (Ord. 2681, 11-21-06; Ord. 2691, 03-09-07; Ord. 2772, 08-14-08)

**CHAPTER 8
DOOR-TO-DOOR SOLICITORS**

SECTION:

4-8-1	Purpose
4-8-2	Unlawful Door-To-Door Solicitations
4-8-3	Definitions
4-8-4	Application for Door-To-Door Solicitation Permit
4-8-5	Fingerprints and Background Check
4-8-6	Eligibility for Permit
4-8-7	Term of Permit
4-8-8	Hours of Door-To-Door Solicitation
4-8-9	Suspension and Revocation
4-8-10	Appeal Process
4-8-11	Penalty

4-8-1: **PURPOSE:** Residents of City of Idaho Falls have a substantial interest in protecting their personal safety, well-being and privacy, as well as the right to provide or receive information regarding matters of personal belief, political or charitable activities and goods and services lawfully in commerce. The City has a substantial interest in protecting the well-being, tranquility, personal safety and privacy of its residents, which includes the ability to protect citizens from unwanted intrusions upon residential property. The City also has a substantial interest in protecting residents from fraud or otherwise unfair consumer sales practices and criminal activity. The City recognizes that the substantial interests listed above must be balanced against the rights of those who are regulated by this Chapter. Based on the collective experiences of City elected officials derived from regulating business activity, protecting persons and property from criminal conduct, responding to citizen inquiries regarding door-to-door solicitation, the experience of law enforcement officers and those affected by door-to-door canvassing and solicitation, as well as judicial decisions outlining the boundaries of Constitutional protections afforded to persons seeking to engage in door-to-door solicitation, the City adopts this Chapter to promote such interests. (Ord. 2896, 03-08-12)

4-8-2: **UNLAWFUL DOOR-TO-DOOR SOLICITATIONS:** It shall be unlawful for any person to:

(A) Engage in any door-to-door solicitation without a valid door-to-door solicitation permit issued by the City Clerk;

(B) Engage in any door-to-door solicitation without prominently displaying an identification badge provided by the City Clerk;

(C) Engage in any door-to-door solicitation at a residence which has a "No Solicitors Allowed" or other similar sign conspicuously posted at or near the primary entrance of the residence where such solicitation is made;

(D) Engage in door-to-door solicitation outside the hours permitted under Section 4-8-8 of this Chapter.

(E) Deliver an application for a door-to-door solicitation permit to the City Clerk containing any substantial misrepresentation or omission of material fact; or

(F) Make any misrepresentation of material fact or commit any fraudulent act during any door-to-door solicitation. (Ord. 2896, 03-08-12)

4-8-3: DEFINITIONS: For the purposes of this Chapter, the following terms shall have the means ascribed below:

DOOR-TO-DOOR SOLICITATION: Soliciting orders or donations for the sale of goods, wares, merchandise, subscriptions or personal services, without first having secured the permission of the owner or occupant of the residential dwelling where such solicitation is undertaken. The term "door-to-door solicitation" shall not include activities in which all proceeds are paid to one or more non-profit organizations currently certified under Sections 501(c)(3), (4) and (8) of the United States Internal Revenue Code, as the same presently exists or as may be amended hereafter. The term "door-to-door solicitations" does not include solicitations for the purpose of supporting a school-sanctioned activity sponsored by a publicly owned or chartered school or other educational institution whose principal business office is located within Bonneville County. Religious proselyting and political campaigning are not considered door-to-door solicitations.

HEARING OFFICER: An objective, unbiased individual appointed by the Mayor who shall decide questions brought on appeal by applicants regarding the denial of an application or suspension of a permit under this Chapter. (Ord. 2896, 03-08-12)

4-8-4: **APPLICATION FOR DOOR-TO-DOOR SOLICITATION PERMIT:** Each individual desiring a permit to engage in door-to-door solicitations shall file his or her application with the City Clerk. The application shall be in such form as may be determined by the City Clerk and shall be accompanied by a copy of the applicant's current driver's license, military identification card or other reliable form of photo identification. Upon completion of such application, delivery of the applicant's fingerprints in accordance with Section 4-8-5 hereof and payment of a permit fee in an amount set from time to time by Resolution of the Council, each eligible applicant shall be issued a permit and an identification badge containing a photograph of the applicant. Such permit shall be issued or denied within five (5) business days after the date the fully completed application form and permit fee are submitted to the City Clerk. (Ord. 2964, 8-14-14)

4-8-5: FINGERPRINTS AND BACKGROUND CHECK: Concurrently with the application for a permit, the applicant shall provide a clear and legible set of fingerprints and shall authorize the City to obtain criminal history information from the Idaho State Police and the Federal Bureau of Investigation. Pursuant to Idaho Code Section 67-3008, and Public Law 92-544, the City may submit such fingerprints and required fees to the Idaho State Police, Bureau of Criminal Investigation along with a request for a criminal records check of state and national databases. The submission of fingerprints and information required by this section shall be on forms prescribed by the Idaho State Police. The City may receive and use criminal history information from the Idaho State Police and the United States Federal Bureau of Investigation solely for the purpose of evaluating the applicant's fitness for a door-to-door solicitation permit. No further dissemination or other use of such fingerprints or criminal history information shall be made, except as otherwise permitted by State or Federal law. (Ord. 2896, 03-08-12)

4-8-6: ELIGIBILITY FOR PERMIT: No applicant shall be issued a permit if:

(A) The applicant has been convicted or granted a withheld judgment for any felony.

(B) The applicant has been convicted or granted a withheld judgment for any misdemeanor burglary within ten years prior to the date of the application.

(C) The applicant is subject to registration as a sex offender under the provisions of Title 18, Chapter 83, Idaho Code.

(D) The applicant has been convicted or granted a withheld judgment for any misdemeanor involving battery of domestic violence within ten years prior to the date of the application.

(E) The applicant has been convicted or granted a withheld judgment for any crime involving the sale, possession, or use of a controlled substance or the unlawful use or possession of drug paraphernalia, within five years prior to the date of the application. (Ord. 2896, 03-08-12)

4-8-7: TERM OF PERMIT: Every permit issued under this Chapter shall expire on December 31 of the year after the permit is issued, which expiration date shall be endorsed on the face of the permit and the identification badge provided by the City Clerk. The permit fee required under Section 4-8-4 hereof shall be payable in full regardless of the time of year in which the permit is issued. (Ord. 2896, 03-08-12)

4-8-8: HOURS OF DOOR-TO-DOOR SOLICITATION: Door-to-door solicitation, as permitted by this Chapter, shall be allowed only between the hours of 9:00 a.m. to 8:00 p.m. of the same day. No solicitation shall occur on Sunday or any legal holiday. (Ord. 2896, 03-08-12)

4-8-9: **SUSPENSION AND REVOCATION:** A permit may be temporarily suspended by the Chief of Police or his designee if it is determined that the applicant is not eligible for the permit or has violated any of the provisions of this Chapter. In such event, the Chief of Police or his designee shall physically deliver or mail a written notice of such suspension to the address specified in the application. Delivery shall be deemed to be complete upon physical delivery of the notice to the permit holder or upon deposit of the notice in the U. S. Mail, postage prepaid, certified mail, return receipt requested, addressed to the permit holder at the address specified in the application or such other address which may be delivered in writing to the City Clerk. If the applicant does not file an appeal of the suspension with the City Clerk within five business days after delivery of the suspension notice, then the permit shall be deemed automatically revoked. (Ord. 2896, 03-08-12)

4-8-10: **APPEAL PROCESS:** An applicant may appeal a denial of the application, or the suspension of a permit, by providing written notice to the City Clerk, within seven business days after delivery of the notice of denial of the application, or notice of suspension. Once the City Clerk receives the notice of appeal, the Hearing Officer shall schedule a hearing within five business days after the appeal is delivered to the City Clerk. The Hearing Officer shall issue a written decision and deliver a copy of such decision to the permit holder within two business days of the conclusion of the hearing. The Hearing Officer shall deliver a copy of the decision to the applicant or permit holder, as the case may be, in the same manner as set forth in Section 4-8-9 above. Suspensions by the Chief of Police shall remain in full force and effect until the permit is automatically revoked or the Hearing Officer issues his or her decision. All decisions issued by the Hearing Officer shall be final and there shall be no appeal to the City Council. (Ord. 2896, 03-08-12)

4-8-11: **PENALTY:** Any person who violates any provision of this Chapter shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine of not more than five hundred dollars (\$500), by incarceration in the Bonneville county Jail for not more than thirty (30) days, or both such fine and imprisonment. (Ord. 2896, 03-08-12)

CHAPTER 9
BURGLARY AND ROBBERY ALARMS

SECTION:

- 4-9-1: Purpose
- 4-9-2: Definitions
- 4-9-3: Duties of Alarm Installation Companies and Monitoring
- 4-9-4: Responsibilities of Alarm Users
- 4-9-5: Maintaining a Public Nuisance Alarm
- 4-9-6: Prohibited Alarm Systems
- 4-9-7: Violations

4-9-1: **PURPOSE:** The purpose of this Chapter is to reduce the number of false security alarms thereby enhancing police response time for critical calls for service and reducing the costs to the City arising from the increasing number of false security alarms. Further, the intent of this Chapter is to encourage alarm businesses and alarm users to maintain the operational viability of security alarm systems and to hold owners of alarm systems accountable for the costs associated with responding to false alarms.

4-9-2: **DEFINITIONS:** For the purposes of this Chapter, the following terms, phrases, and words, and derivations thereof, shall have the meanings given in this section:

ALARM INSTALLATION COMPANY: A person who engages in the business of selling, providing, maintaining, servicing, repairing, altering, replacing, moving or installing an Alarm System in businesses or residences located within the City.

ALARM MONITORING BUSINESS: Any person who engages in the business of monitoring alarm systems located within the City and summoning police response to activations thereof. This term includes both businesses that are engaged in alarm monitoring for profit and businesses that monitor only their own alarm systems.

ALARM OFFICER: The Chief of the Idaho Falls Police Department or his or her designee.

ALARM SYSTEM: Any mechanical, electrical or other device located within the City and which is designed or used for the detection of a trespass, burglary, or robbery within a building, structure, or facility, and which emits an audible sound or which transmits a signal or message which is designed to elicit a response from the Police Department. Alarm systems include, but are not limited to, direct dial telephone devices, audible alarms and proprietor alarms. An alarm system includes all the necessary equipment designed and installed for the detection of a trespass, burglary, robbery or other hazard in a single building, structure, or facility, and for alerting public safety personnel to the commission of an unlawful act within a building, structure or facility.

ALARM USER: Any person who owns or installs and renders operable any alarm system or who contracts for the servicing or maintenance of an alarm system within any building or structure located within the City.

AUDIBLE ALARM: An alarm system which when activated generates sound or signal that is audible from the immediate vicinity of the premises where the alarm system is located.

AUTOMATIC DIALING DEVICE: An alarm system which automatically sends over a telephone line, by direct connection, internet, or otherwise, a pre-recorded voice message or coded signal indicating the existence of an emergency situation.

CALENDAR YEAR: The period between and including January 1 and December 31 of any given year.

CITY: The City of Idaho Falls, Idaho.

EMERGENCY: Any condition which requires or is expected to require a response of police or public safety personnel.

ENHANCED CALL VERIFICATION: An independent method whereby an alarm monitoring company attempts to determine that a signal from an automatic alarm system reflects a need for immediate police assistance or investigation. This verification process will be conducted by the alarm system monitoring personnel and shall consist of making two phone calls to the responsible party or parties and shall not take more than five minutes from the time the alarm signal has been accepted by the alarm system monitoring company. At least one of the two phone calls must be made to a party off the premises upon which the alarm system is installed.

FALSE ALARM: An alarm system signal, message, transmittal, or communication which results in a response by public safety personnel and for which no emergency situation exists or existed as determined by the responding police personnel. False alarms shall not include alarms caused by natural occurrences such as hurricanes, tornadoes, earthquakes, or other extraordinary circumstances determined by the alarm officer to be clearly beyond the control of the alarm user.

ONE PLUS DURESS ALARM: A security alarm system which permits the manual activation of an alarm signal by entering on a keypad a code that either adds the value of 1 to the last digit of a normal arm/disarm code (e.g., the normal arm/disarm code "1234" if entered as "1235" automatically activates the duress alarm feature) or that involves entering any incorrect final digit to a normal arm/disarm code.

PERSON: Any individual, partnership, association, corporation, limited liability company, trust, or organization of any kind, including a government entity or political subdivision thereof.

PUBLIC NUISANCE ALARM SYSTEM: Any alarm system which generates or transmits more than two (2) False Alarms within a calendar year.

SIA CONTROL PANEL STANDARD CP-01: The ANSI-American National Standard Institute approved Security Industrial Association - SIA CP-01 Control Panel Standard, as may be updated from time to time.

4-9-3: DUTIES OF ALARM INSTALLATION COMPANIES AND MONITORING:

(A) No Alarm Installation Company or Alarm Monitoring Business shall:

(1) Render any alarm system operational or transfer the control or operation thereof to the alarm system owner without first delivering to the customer written instructions regarding the proper use and operation of such alarm system including instructions regarding the procedure to deactivate the alarm system and reasonable measures that may be undertaken in order to avoid False Alarms.

(2) Fail to keep within the principal offices of the business or company a written copy of the instructions as required by the preceding section, for a period of at least three (3) years from the date of their issuance. Such instructions shall be dated and signed by the customer prior to the delivery thereof to the customer.

(3) Render an alarm system operational or transfer the ownership or control thereof to a customer without delivering to the customer a Customer Alarm Prevention Checklist in such form as may be approved by the Alarm Officer. Such checklist shall be current as of the date it is delivered to the customer and shall be signed and dated by the customer.

(4) Fail to keep at the principal offices of the business or company a copy of the signed checklist required by the preceding Section, for a period of at least three (3) years.

(5) To program an alarm system in a manner which is capable of sending One Plus Duress Alarms.

(6) To maintain, inspect or modify any alarm system capable of sending a One Plus Duress Alarm, without first rendering the One Plus Duress capability inoperable.

(7) To install any alarm system which may be activated by a single action, non-recessed button.

(8) To install any alarm system that is not compliant with SIA Control Panel Standard CP-01 or to install any alarm system which fails to include a designation clearly

visible on the control panel thereof, indicating that such control panel has been tested and found compliant with such standard by the Underwriters Laboratory (UL) or other nationally recognized testing laboratory.

(9) To install any Automatic Dialing Device within an alarm system.

(10) To notify or request a police dispatch in response to a security alarm signal without making reasonable efforts to contact the owner of the premises where the alarm system is located or another person designated by such owner to receive such telephone calls.

(11) To fail to silence an alarm signal within fifteen (15) minutes after the receipt of notification that the alarm system has been triggered or activated in a residential structure or within thirty (30) minutes after receipt of notification that an alarm system within a commercial or industrial structure has been activated.

4-9-4: RESPONSIBILITIES OF ALARM USERS:

(A) No Alarm User shall:

(1) Use, operate, maintain or install an alarm system unless the alarm user has within his or her employ or retention a person who has been trained in the appropriate procedures to deactivate an alarm system signal and who is capable of deactivating an alarm system signal within fifteen (15) minutes after receipt of notification that the alarm system signal has been triggered.

(2) To allow any alarm system signal to continue for a period of more than fifteen (15) minutes after notification of the activation of the system if protecting a residential structure or within thirty (30) minutes after such activation if the alarm system is protecting a commercial or industrial structure.

(3) To operate a Public Nuisance Alarm without having a permit therefore issued in accordance with the provisions of this Chapter.

4-9-5: MAINTAINING A PUBLIC NUISANCE ALARM:

(A) No person shall maintain, operate, use or attempt to use a Public Nuisance Alarm System without having a valid Public Nuisance Alarm System Permit.

(B) Public Nuisance Alarm System Permits may be obtained from the office of the City Clerk upon payment as set from time to time by Resolution of Council.

Each Public Nuisance Alarm System Permit shall expire on December 31st of the calendar year in which it is issued. Each Public Nuisance Alarm System Permit shall automatically become void upon the triggering of an additional False Alarm and shall remain void until the additional permit fee is paid to the City Clerk.

(C) Whenever any alarm system is deemed a Public Nuisance Alarm System, the Alarm Officer, or his or her designee shall provide a notice to the owner or person in control of the premises. Such notice shall advise the owner or operator of such alarm system that the alarm system has been determined to be a Public Nuisance and that any operation thereof without obtaining a Public Nuisance Alarm system Permit pursuant to this Chapter will constitute a violation of this Chapter. Such notice shall be deemed given upon posting a written notice of such determination upon the premises where the alarm system is located or deposit thereof in the U. S. Mail, Certified Mail, Return Receipt Requested, Postage Pre-Paid and addressed to the owner or operator of such alarm system, if known, or addressed to the owner at the address shown on the records of the Bonneville County Assessor's Office for the premises where the alarm system is located.

4-9-6: PROHIBITED ALARM SYSTEMS:

(A) No person shall use or operate an automatic dialing device or any device programmed to initiate and deliver a message or signal to any telephone number belonging to the City of Idaho Falls or to any law enforcement dispatch services.

(B) No system shall have an entry or exit delay of less than 45 seconds.

4-9-7: VIOLATIONS:

(A) Any person who violates any provision of this Chapter shall be guilty of a misdemeanor.

CHAPTER 10
(Repealed)

CHAPTER 11
LAWN SPRINKLER AND WATER CONDITIONING LICENSES

SECTION:

- 4-11-1: Definitions
- 4-11-2: License Required
- 4-11-3: License Fees
- 4-11-4: Applications for Licenses
- 4-11-5: License Expiration
- 4-11-6: License Renewal
- 4-11-7: Grounds for Revocation of License

4-11-1: **DEFINITIONS:** Certain words and phrases used in this Chapter are defined as follows:

LAWN SPRINKLER INSTALLER: A person who installs lawn sprinkler systems as an employee of a lawn sprinkler contractor.

WATER CONDITIONER INSTALLER: A person who installs water softeners, water conditioners or other devices that change the condition of the City-supplied water, and who is an employee of a water conditioner contractor.

LAWN SPRINKLER CONTRACTOR: A person engaged in the business of installing lawn sprinkler systems.

LAWN SPRINKLER SYSTEM: Any underground piping system used for outdoor irrigation purposes and connected to a potable water system.

WATER CONDITIONER CONTRACTOR: A person engaged in the business of installing water softeners, water conditioners or any device that changes the condition of the City-supplied water. (Ord. 3019, 8-27-15)

4-11-2: **LICENSE REQUIRED:**

- (A) A City license shall be required for every lawn sprinkler contractor and lawn sprinkler installer who installs, alters, or repairs a lawn sprinkler system.
- (B) A City license shall be required for every water conditioner contractor and water conditioner installer who installs, alters, or repairs water softeners, water conditioners or other devices that change the condition of City-supplied water. (Ord. 3019, 8-27-15)

- 4-11-3: LICENSE FEES: The fees for annual licenses and any renewal thereof required under this Chapter shall be in an amount set from time to time by Resolution of the Council. The fee for a license for a portion of a year shall not be prorated. No license fee or any portion of such fee shall be refundable. (Ord. 2964, 8-14-14; Ord. 3019, 8-27-15))
- 4-11-4: APPLICATIONS FOR LICENSES: The applications for a license required under this Chapter shall be in writing on a form provided by the City. Applications shall be filed with the Clerk accompanied by the applicable license fee. On receipt of a properly completed application and the applicable license fee, the Clerk shall forward the application to the Plumbing Inspector for review and recommendation for approval or denial. On receipt of the Inspector's recommendation, the Clerk shall present the application to the Council for its approval or denial. A license sought under this Chapter shall be granted or denied within sixty (60) days of the date the application is filed with the Clerk. (Ord. 3019, 8-27-15)
- 4-11-6: LICENSE EXPIRATION: A license issued under this Chapter shall expire at midnight local time on December 31 of the year for which it is issued. (Ord. 3019, 8-27-15)
- 4-11-7: LICENSE RENEWAL
- Renewal: A person holding a current, valid license under this Chapter may renew their license by filing written application for renewal with the Clerk and paying the applicable renewal fee within ninety (90) days after the expiration of their current license. A renewal application received after such date shall be accompanied by the full license fee. (Ord. 3019, 8-27-15)
- 4-11-8: GROUNDS FOR REVOCATION OF LICENSE: A person licensed under this Chapter may have their license suspended or revoked if the license was obtained by fraud, or the licensee fails to comply with any of the provisions of this Chapter. (Ord. 3019, 8-27-15)

CHAPTER 12
ITINERANT MERCHANTS, MOBILE FOOD VENDORS, DOOR-TO-DOOR
SALESMEN

SECTION:

- 4-12-1: Purposes
- 4-12-2: Garage Sale Defined
- 4-12-3: Itinerant Merchant Defined
- 4-12-4: Mobile Food Vendor Defined
- 4-12-5: Vehicle Defined
- 4-12-6: Itinerant Merchants License Required
- 4-12-7: Exceptions
- 4-12-8: License Fee
- 4-12-9: License Applications
- 4-12-10: Investigation Fee
- 4-12-11: Investigation of Applicant and Issuance of License
- 4-12-12: Bonding Requirement
- 4-12-13: Term of License
- 4-12-14: Unlawful Conduct
- 4-12-15: Display of License
- 4-12-16: License Nontransferable
- 4-12-17: Grounds for Revocation of License
- 4-12-18: Mobile Food Vendor License
- 4-12-19: License Applications
- 4-12-20: Issuance of License
- 4-12-21: License Fee
- 4-12-22: Location Restrictions
- 4-12-23: Mobile Food Vending in City Parks
- 4-12-24: Location Time Limits
- 4-12-25: Sales Vehicle Registration
- 4-12-26: Sales Vehicle Equipment
- 4-12-27: Traffic and Parking Regulations
- 4-12-28: Litter Control
- 4-12-29: Revocation of License
- 4-12-30: (Repealed)

4-12-1: **PURPOSES:** This Chapter has three purposes: (1) to protect the citizens from fraud, crime and unfair, deceptive or dishonest business practices by persons temporarily engaged in the business of selling goods, wares, merchandise and services within the City; (2) to protect the residents of the City from unwanted intrusions on the privacy of their homes; and (3) to protect the health, safety, aesthetics and general welfare of the City and its residents.

4-12-2: GARAGE SALE DEFINED: As used in this Chapter, a "garage sale" is a sale of new or used personal property, not more than three (3) days in duration and conducted not more frequently than once every six (6) months at the same location.

4-12-3: ITINERANT MERCHANT DEFINED: As used in this Chapter, an "itinerant merchant" is any person who sells or offers to sell any goods, wares, merchandise or services from any stand, vehicle, trailer, tent, rack or other shelter or structure not permanently affixed to real property or any person who sells or offers to sell any goods, wares, merchandise or services from any motel room, office, building, warehouse, shopping mall or other location with an intent to remain at that location for less than ninety (90) days. Execution or adoption of any lease agreement or other contract for the use of such location for a term of ninety (90) days or less, or with the ability to terminate or lease within such time period, shall be prima facie evidence of such intent.

4-12-4: MOBILE FOOD VENDOR DEFINED: As used in this Chapter, a "mobile food vendor" is a person who sells at retail food or beverages, to the public from any vehicle.

4-12-5: VEHICLE DEFINED: As used in this Chapter, "vehicle" shall have the same meaning as under Chapter 1, Title 49 of the Idaho Code.

4-12-6: ITINERANT MERCHANTS LICENSE REQUIRED: No person shall engage in the business of an itinerant merchant without first obtaining an itinerant merchants license from the City.

4-12-7: EXCEPTIONS: The itinerant merchant licensing and bonding requirements of this Chapter shall not apply to the following:

- (A) Sales conducted pursuant to court order;
- (B) The sale of Christmas trees;
- (C) Garage sales;
- (D) The sale of goods, wares, merchandise or services by any student group or religious, philanthropic or charitable organization exempt from taxation under 26 U.S.C. Section 501 and which has a local charter or sponsor located in the City;
- (E) The sale of any goods, wares, merchandise or services by any person or organization appropriately licensed under any other provision of the City Code; or
- (F) The sale of goods, wares or merchandise to a business establishment that intends to offer those items for resale.

4-12-8: LICENSE FEE: At the time of making application, applicants for an itinerant merchant's license shall pay to the City Clerk a license fee in an amount from time to time by Resolution of the Council, plus an investigation fee as provided in this Chapter. The license fee shall be refunded if the license is denied. The investigation fee shall be nonrefundable. (Ord. 2964, 8-14-14)

4-12-9: LICENSE APPLICATIONS: Applications for an itinerant merchants license shall be in writing on a form furnished by the City and shall be filed with the City Clerk. Applications shall contain the following information:

(A) The name, physical description and address of the applicant, and if the applicant is a corporation, or partnership, association or other business entity, then also the names and residential addresses of all persons owning ten percent (10%) or more of the shares or assets of the entity;

(B) The names and residential addresses of all persons who will sell or offer for sale any goods, wares, merchandise or services;

(C) A brief description of the nature of the business and the goods or services to be sold;

(D) The address of the principal place of business of the applicant;

(E) The inclusive dates and times of day for which the license is desired;

(F) A description and license or registration numbers of each motor vehicle that will be used in connection with making sales, and the names of all persons who will be driving such motor vehicles, their driver's license numbers and the names of the states by which the licenses were issued;

(G) A statement of whether any business-related permit or license held by the applicant or any of the applicant's agents or employees has been revoked within the past five (5) years by any jurisdiction, and if so, where, when and why the revocation occurred;

(H) The applicant's social security or taxpayer identification number and state sales tax number;

(I) A statement of whether the applicant has been convicted of any crime other than a minor traffic violation, and if so, the nature, place and date of each such offense;

(J) A two inch by two inch (2" x 2") photograph of the applicant, or if a corporation, partnership, association or other organization, a similar photograph of the person submitting the application;

(K) A statement of all locations in the City where the goods, wares, merchandise or services will be sold;

(L) The names and addresses of the manufacturers or other persons or organizations supplying the goods to be sold or offered for sale.

4-12-10: INVESTIGATION FEE: At the time of filing an application for an itinerant merchant's license, applicants shall pay an investigation fee in an amount set from time to time by Resolution of the Council, for the following:

(A) applicants who reside or have a principal place of business in Bonneville County;

(B) applicants who reside or have a principal place of business outside Bonneville County, but within the State of Idaho; and

(C) applicants who reside or have a principal place of business outside the State of Idaho.

In the event an applicant makes application for an itinerant merchants license within sixty (60) days after the expiration of his or her such license for the preceding year, and no complaints have been made against such applicant within the term of such prior license and such prior license has not been revoked or suspended, no investigation fee shall be charged at the time of application. (Ord. 2964, 8-14-14)

4-12-11: INVESTIGATION OF APPLICANT AND ISSUANCE OF LICENSE:

(A) On receipt of the application and the license and investigation fees, the City Clerk shall forward the application to the Chief of Police, who shall make an investigation to verify the information in the application. The Chief of Police shall report his findings to the City Clerk and City Council as soon as reasonably possible, but no later than thirty (30) days after the application is filed with the City Clerk.

(B) On receipt of the report of the Chief of Police, the Clerk shall forward the application and the Chief's report to the City Council for its approval or denial.

(C) The City Council shall approve issuance of a license unless the applicant or any officer, agent or employee of an applicant has:

(1) Been convicted of any felony or crime of moral turpitude, in any jurisdiction, within five (5) years prior to the date of the application;

- (2) Made a false statement on the application;
- (3) Had any business-related permit or license revoked by any jurisdiction within five (5) years prior to the date of the application.

(D) Licenses issued under this Chapter shall show the name and address of the licensee and the dates of issuance and expiration of the license.

4-12-12: BONDING REQUIREMENT: Before any itinerant merchant's license is issued, the applicant shall file with the City Clerk a surety bond in favor of the City or a cashier's check in an amount set from time to time by Resolution of the Council. The bond shall be in a form approved by the City Attorney, be executed by the applicant as principal and be issued by a surety licensed to engage in business in the State of Idaho. The bond shall be issued for a term coterminous with the term of the license. If the Council determines that the licensee has made a false statement on the license application, or if the licensee or any employee or agent of the licensee engages in any fraudulent, deceptive or unlawful business practice in connection with the conduct of the licensee's business or otherwise violates the provisions of this Chapter, then the Council may order the entire amount of the surety bond or cash bond forfeited. The Council may also order that the proceeds from the bond be paid over to any person damaged by the actions of the licensee. After the expiration of the license, the City Clerk, upon request of the licensee, shall return the surety bond or cash bond within six (6) months after the request for return, unless the Clerk has been notified of the pendency of any claim or cause of action against the bond, in which case, the Clerk shall return the bond within thirty (30) days after the final resolution of the claim or cause of action. (Ord. 2964, 8-14-14)

4-12-13: TERM OF LICENSE: The term of an itinerant merchant's license shall commence on the date of issuance and shall end not later than 12:00 o'clock midnight on December 31 of the year in which the license is issued.

4-12-14: UNLAWFUL CONDUCT: No itinerant merchant shall do any of the following:

- (A) Engage in any fraudulent, deceptive or unlawful business practice;
- (B) Make any materially false statement or representation concerning the nature, quality or durability of any goods, wares, merchandise or services sold or offered for sale, knowing the statement to be false; or
- (C) Make any materially false or misleading statement on an application for a license under this Chapter.

4-12-15: DISPLAY OF LICENSE: The itinerant merchant's license required by this Chapter shall be exhibited at all times in a place conspicuous to the public at all locations where any goods, wares, merchandise or services are sold or offered for sale.

4-12-16: LICENSE NONTRANSFERABLE: Licensees shall not allow their license to be used by any person other than their agents or employees for any purpose. Itinerant merchant's licenses shall be nontransferable and non-assignable.

4-12-17: GROUNDS FOR REVOCATION OF LICENSE: The City Council may revoke an itinerant merchant's license for any of the following reasons:

(A) The licensee or any of licensee's agents or employees engages in any fraudulent, deceptive or unlawful business practice in connection with licensee's business;

(B) False statements on the license application;

(C) The licensee or any of licensee's agents or employees violates any provision of this Chapter;

(D) Revocation by any jurisdiction of any other business related license or permit held by licensee;

(E) The licensee is convicted in any jurisdiction of any felony or crime of moral turpitude; or

(F) Cancellation or termination of the bond required by this Chapter prior to the expiration of the license;

(G) Failure to comply with the provisions of this Chapter.

4-12-18: MOBILE FOOD VENDOR LICENSE: No person shall engage in the business of a mobile food vendor without first obtaining a mobile food vendor license from the City.

4-12-19: LICENSE APPLICATIONS: Applications for mobile food vendor licenses shall be made at the office of the City Clerk on a form furnished by the City. The application shall state the applicant's full name and residential address, the business name under which the applicant will be operating and the address of the applicant's principal place of business, a brief description of the food to be sold, the applicant's social security number or taxpayer identification number and a description and the license or registration numbers of each vehicle from which sales will be made. The application shall be accompanied by the mobile food vendor license fee required by this Chapter.

4-12-20: **ISSUANCE OF LICENSE:** On receipt of a completed application for a mobile vendor license and the license fee, the City Clerk shall forward the application to the Chief of Police for review and recommendation for approval or denial. Within thirty (30) days from the date the application is filed with the City Clerk, the Chief of Police shall forward the recommendation to the Clerk. The Clerk shall forward the application and the Chief's recommendation to the City Council for its approval or denial. If the Council approves the application, the Clerk shall issue the license. If the Council denies the application, the license fee shall be refunded to the applicant.

4-12-21: **LICENSE FEE:** The fee for a mobile food vendor license shall be in an amount set from time to time by Resolution of the Council. (Ord. 2964, 8-14-14)

4-12-22: **LOCATION RESTRICTIONS:** Mobile vendors and itinerant merchants making sales from vehicles operated on the City's public streets shall stop their vehicles at curbside before making any sales. Mobile vendors shall not make sales from vehicles parked, stopped or standing on public sidewalks of the City. Sales shall not be made to persons who are on public streets, but may be made to persons on public sidewalks.

4-12-23: **MOBILE FOOD VENDING IN PUBLIC PLACES:**

 (A) Issuance of a mobile food vendor or itinerant merchant's license shall not entitle the licensee to conduct business on any street, sidewalk or other location within any park owned or maintained by the City.

 (B) No person shall conduct the business of a mobile food vendor within any park owned or maintained by the City except under a franchise contract approved by the City Council.

4-12-24: **LOCATION TIME LIMITS:** No mobile vendor or itinerant merchant shall make sales from any one location on a public street for more than two (2) consecutive hours.

4-12-25: **SALES VEHICLE REGISTRATION:** Any vehicle from which a mobile vendor or itinerant merchant makes sales shall be registered as required by State law.

4-12-26: **SALES VEHICLE EQUIPMENT:** Mobile vendors and itinerant merchants shall not operate, move, park, stop or stand any sales vehicle on the City streets unless the vehicle is equipped as required by State law.

4-12-27: **TRAFFIC AND PARKING REGULATIONS:** Mobile vendors and itinerant merchants shall comply with all State and City traffic and parking, stopping and standing laws, ordinances and regulations.

4-12-28: LITTER CONTROL: Any sales vehicles operated by a mobile food vendor shall be equipped with a suitable trash container readily accessible to the public, in which the vendor's customers may deposit any litter, trash or waste related to the vendor's sales. Prior to moving a sales vehicle from a sales location, a mobile food vendor shall pick up and remove all litter, trash and waste related to the vendor's sales within a one hundred foot (100') radius of the sales vehicle.

4-12-29: REVOCATION OF LICENSE: The City Council may revoke a mobile food vendor license if the licensee violates any provision of this Chapter.

4-12-30: (Repealed):
(Ord. 2896, 03-08-12)

CHAPTER 13
PAWN BROKERS, SECONDHAND PRECIOUS METALS DEALERS, SECONDHAND STORES

SECTION:

- 4-13-1: Garage Sale Defined
- 4-13-2: Pawnbroker Defined
- 4-13-3: Precious Metals Defined
- 4-13-4: Secondhand Goods Defined
- 4-13-5: Secondhand Precious Metals Dealer Defined; Exception
- 4-13-6: Secondhand Storekeeper Defined; Exception
- 4-13-7: License Required
- 4-13-8: License Application
- 4-13-9: License Approval and Issuance
- 4-13-10: License Fees
- 4-13-11: Records to Be Kept
- 4-13-12: Records to Be Open for Inspection
- 4-13-13: Retention of Records; Time
- 4-13-14: Retention of Property
- 4-13-15: Compliance with Law
- 4-13-16: Prohibited Purchases
- 4-13-17: Revocation of License

4-13-1: **GARAGE SALE DEFINED:** As used in this Chapter, a "garage sale" is a sale of new or used personal property, not more than three (3) consecutive days in duration and conducted not more frequently than once every six (6) months at the same location.

4-13-2: **PAWNBROKER DEFINED:** As used in this Chapter, "pawnbroker" is a person who engages in the business of lending or advancing money on the security of personal property pledged or deposited in his or her possession.

4-13-3: **PRECIOUS METALS DEFINED:** As used in this Chapter, "precious metals" means gold, silver, platinum and their alloys.

4-13-4: **SECONDHAND GOODS DEFINED:** As used in this Chapter, "secondhand goods" are articles of personal property previously possessed and used by a person other than their current possessor, "Secondhand goods" shall not include operable motor vehicles, books, magazines, or pamphlets. (Ord. 2998, 4-09-15)

4-13-5: **SECONDHAND PRECIOUS METALS DEALER DEFINED; EXCEPTIONS:**

(A) Definition: As used in this Chapter, a "secondhand precious metals dealer" is a person who engages in the business of buying, selling, exchanging or trading old or used precious metal or secondhand goods containing any precious metal.

(B) Exceptions: The following shall not be considered secondhand precious metals dealers:

(1) Persons who in the ordinary course of business buy or sell uncast precious metals primarily for use in any manufacturing or photographic developing process, jewelry manufacture or repair, or dental restoration or repair.

(2) Persons who in the ordinary course of business accept or receive secondhand goods containing precious metals as consideration for the sale of new merchandise and who subsequently dispose of such secondhand goods in the same form as they existed at the time of their receipt.

4-13-6: SECONDHAND STOREKEEPER DEFINED; EXCEPTIONS:

(A) Definition: As used in this Chapter, a "secondhand storekeeper" is a person who engages in the business of buying, selling, exchanging, or trading secondhand goods.

(B) Exceptions:

(1) A person who sponsors or conducts garage sales shall not be considered a secondhand storekeeper.

(2) Persons and businesses who do not provide compensation of any kind in exchange for receipt of secondhand goods shall not be considered a secondhand store keeper. (Ord. 2998, 4-09-15)

4-13-7: LICENSE REQUIRED: No person shall engage in the business of a pawnbroker, secondhand storekeeper or secondhand precious metals dealer without first obtaining a license issued by the City.

4-13-8: LICENSE APPLICATION:

(A) Applications for pawnbrokers, secondhand storekeepers and secondhand precious metals dealer's licenses shall be made on a form provided by the City Clerk. The application shall state the applicant's name, residential address, business name, address of place of business, type of license applied for and a general description of the goods or materials to be purchased, sold, exchanged or traded. The relevant license fee shall accompany the application.

(B) To determine the suitability of prospective applicants for a license, the Chief of Police shall require a first time applicant to provide information and fingerprints necessary to obtain criminal history information from the Idaho State Police and the Federal Bureau of Investigation. Pursuant to § 67-3008, Idaho Code, and congressional enactment Public Law 92-544, the Chief of Police shall submit a set of fingerprints obtained from the applicant and the required fees to the Idaho State Police, Bureau of Criminal Identification, for a criminal records check of state and national databases. The submission of fingerprints and information required by this section shall be on forms prescribed by the Idaho State Police. The Chief of Police is authorized to receive criminal history information from the Idaho State Police and from the Federal Bureau of Investigation for the purpose of evaluating the fitness of applicants for a license under this section. As required by state and federal law, further dissemination of other use of the criminal history information is prohibited. Fingerprinting shall not be required for a license renewal, unless fingerprints and criminal background history check have not been previously obtained or performed for the applicant. (Ord. 2440, 2-15-02)

4-13-9: LICENSE APPROVAL, DENIAL AND ISSUANCE:

Applications for licenses required under this Chapter shall be forwarded by the City Clerk to the City Council for its approval or denial. Upon approval of an application, the City Clerk shall issue the license. If a license application is denied by the City Council, the license fee shall be refunded to the applicant. A license may be denied upon proof that the licensee has violated any provision herein, has supplied any false or materially misleading information in his or her application, or has previously been convicted of any felony.

(Ord. 2920, 06-13-13)

4-13-10: LICENSE FEES: Fees for licenses issued under this Chapter shall be in an amount set from time to time by Resolution of the Council, for the following:

- Pawnbroker;
- Secondhand precious metals dealer; and
- Secondhand storekeeper

4-13-11: RECORDS TO BE KEPT:

(A) All pawnbrokers, secondhand storekeepers and secondhand precious metals dealers shall keep and file with the Idaho Falls Police Department a digital copy of the following described records. All digital records shall be filed via the internet at a web site determined by the Police Department using software as may be determined by the Police Department. Such digital

records shall be filed within seventy-two (72) hours after the time and date of the transaction. The digital records required for filing shall consist of the following records:

- (1) An accurate description of all precious metals and personal property purchased, acquired or received.
- (2) The name, residence, driver's license number or social security number of the person from whom any, precious metals or personal property is purchased, acquired or received.
- (3) The date and place of the purchase, acquisition or reception.
- (4) The date when such property is disposed of and the name and address of the person receiving the same.

(B) Notwithstanding the foregoing, records relating to the purchase or sale of used or secondhand clothing or audio or audio-visual media, computer software, gaming media or other electronic media in the form of used VCR tape recordings, CD-ROM's, DVD's or other similar electronic media need not be kept or filed with the Police Division. (Ord. 2739, 2-14-08; Ord. 2774, 8-14-08; Ord. 2898, 03-22-12; Ord. 3003, 04-23-15)

4-13-12: RECORDS TO BE OPEN FOR INSPECTION: All records required to be kept under this Chapter shall be made available for inspection by any police officer of the City during normal business hours.

4-13-13: RETENTION OF RECORDS; TIME: All records required to be kept under this Chapter shall be kept for not less than three (3) years.

4-13-14: DISPOSITION OF PROPERTY AFTER REPORTING:

Any person licensed under this Chapter may sell, trade, rent or otherwise dispose of any property acquired for the purpose of resale or other conveyance immediately after compliance with the recordkeeping and reporting requirements of this Chapter. Nothing herein shall require the retention of any firearm bearing a legible serial number, unless such serial number appears to have been altered or unless there is good cause to believe the firearm has been stolen from its lawful owner. (Ord. 2221, 1-19-97; Ord. 2920, 06-13-13)

4-13-15: COMPLIANCE WITH LAW: Persons licensed under this Chapter shall conduct their businesses in compliance with all applicable federal, state and City laws, ordinances and regulations.

4-13-16: PROHIBITED PURCHASES: No person licensed under this Chapter shall purchase, acquire, accept or receive in the ordinary course of business and for the purpose of resale

or other conveyance any precious metals or personal property from any person who is under the age of eighteen (18) years or who is under the influence of alcohol, drugs or a controlled substance.

4-13-17: **REVOCATION OF LICENSE:** Any license issued under this Chapter may be revoked by the Council upon proof that the licensee has violated any provision herein, has supplied any false or materially misleading information in his or her application or has been convicted of any felony.

CHAPTER 14 SCRAP DEALERS

SECTION:

- 4-14-1: Scrap Defined
- 4-14-2: Scrap Dealer Defined
- 4-14-3: Scrap Yard Defined
- 4-14-4: License Required
- 4-14-5: License Application
- 4-14-6: License Approval and Issuance
- 4-14-7: License Fees
- 4-14-8: Records to be Kept; Content
- 4-14-9: Records to be Open for Inspection
- 4-14-10: Retention of Records; Time
- 4-14-11: Retention of Property
- 4-14-12: Storage of Scrap; Exceptions
- 4-14-13: Compliance with Law

4-14-1: **SCRAP DEFINED:** As used in this Chapter, "scrap" consists of used or old metal cable or wire; cordage; iron, copper, brass, lead, zinc, steel, aluminum and similar metals; glass; plastic; inoperable motor vehicles; used motor vehicle parts, supplies and accessories; inoperable machinery; used machine parts, supplies and accessories; used paper products, including but not limited to, newspapers and magazines; cardboard; rags or other fibrous material; lumber or other building materials; or any other used or old articles whose value is derived primarily from reclamation of its constituent parts or materials.

4-14-2: **SCRAP DEALER DEFINED:** As used in this Chapter, a "scrap dealer" is a person who engages in the business of purchasing, selling, exchanging, trading, recycling and/or storing scrap.

4-14-3: **SCRAP YARD DEFINED; EXCEPTIONS:**

(A) **Definition:** As used in this Chapter, a "scrap yard" is a parcel of land or a portion thereof where scrap is purchased, sold, exchanged, traded, disassembled, recycled, stored, maintained or kept.

(B) **Exception:** If the activities listed in subsection (A) of this are conducted entirely within a completely enclosed building, the building shall not be considered a scrap yard.

4-14-4: **LICENSE REQUIRED:** No person shall engage in the business of a scrap dealer without first obtaining a license issued by the City.

4-14-5: LICENSE APPLICATION: Applications for scrap dealer's licenses shall be made on a form provided by the City Clerk. The application shall state the applicant's name, residential address, business name, address of place of business and a general description of the goods and/or materials to be purchased, sold, exchanged, traded, recycled or stored. The license fee shall accompany the application.

4-14-6: LICENSE APPROVAL AND ISSUANCE: Applications for licenses required under this Chapter shall be forwarded by the City Clerk to the City Council for its approval or denial. Upon approval of an application, the City Clerk shall issue the license. If a license application is denied by the City Council, the license fee shall be refunded to the applicant.

4-14-7: LICENSE FEE: Fees for licenses issued under this Chapter shall be in an amount set from time to time by Resolution of the Council. (Ord. 2964, 8-14-14)

4-14-8: RECORDS TO BE KEPT; CONTENT: All scrap dealers shall keep any records required to be kept under Idaho Code Section 54-2702.

4-14-9: RECORDS TO BE OPEN FOR INSPECTION: All records required to be kept under this Chapter shall be made available for inspection by any police officer of the City during normal business hours. No scrap dealer or any of its agents or employees shall refuse to permit any police officer of the City to inspect such records.

4-14-10: RETENTION OF RECORDS; TIME: All records required to be kept under this Chapter shall be kept for not less than three (3) years.

4-14-11: RETENTION OF PROPERTY:

(A) Retention Requirement: No person licensed under this Chapter shall sell, trade, rent, recycle, destroy or otherwise dispose of any scrap with a value in excess of \$500 and acquired for the purpose of resale or other conveyance and which is identified by a manufacturer affixed identification or serial number for a period of fifteen (15) days from the date of receiving the scrap.

4-14-12: STORAGE OF SCRAP; EXCEPTIONS:

(A) Storage Requirements: Scrap dealers shall store all scrap in their possession only in a completely enclosed building or in a scrap yard. If scrap is stored in a scrap yard, the scrap yard shall be separated from any abutting public street or public sidewalk by an opaque fence or masonry wall. Scrap stored in a scrap yard shall not be stored or stacked to a height exceeding the height of the opaque fence or masonry wall.

(B) Exceptions: An opaque fence or masonry wall as described in this section shall not be required if all scrap stored in a scrap yard is stored in fully enclosed and operable semi-

trailers as defined under the Idaho Code or where the scrap consists only of the following materials: securely baled newspapers, magazines or similar paper products; securely baled, crushed cardboard containers or similar cardboard products; crushed and containerized aluminum cans or similar aluminum products; containerized glass bottles or jars or similar glass products; or crushed and containerized plastic bottles or similar plastic products.

4-14-13: COMPLIANCE WITH LAW: Persons licensed under this Chapter shall conduct their businesses in compliance with all applicable federal, state and City laws, ordinances and regulations.

CHAPTER 15
PUBLIC TRANSPORTATION

SECTION:

- 4-15-1: Purpose
- 4-15-2: Definitions
- 4-15-3: Exemptions
- 4-15-4: Public Transportation License Required
- 4-15-5: Application
- 4-15-6: License Fees
- 4-15-7: Insurance Required
- 4-15-8: Vehicle Inspection
- 4-15-9: License Documents Subject To Inspection
- 4-15-10: Smoking Prohibited While Public Transportation Service Is Being Provided
- 4-15-11: Operator's Photo Identification To Be Prominently Displayed
- 4-15-12: Public Transportation Service Vehicles To Be Prominently Marked
- 4-15-13: Fares to be Prominently Displayed
- 4-15-14: Mandatory Drug Testing; Denial or Revocation
- 4-15-15: Investigation
- 4-15-16: Denial of License
- 4-15-17: Appeals
- 4-15-18: Penalties

4-15-1. Purpose.

The purpose of this Chapter is to regulate every person performing Public Transportation Service as herein defined. (Ord. 2982, 12-18-14)

4-15-2. Definitions.

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

- A. **Bus.** Any motor vehicle, other than a courtesy vehicle, limousine, public conveyance or taxicab, capable of seating ten (10) or more passengers, not including the operator, and used to carry passengers for hire.
- B. **Courtesy Vehicle.** Any motor vehicle, other than a bus, limousine, public conveyance or taxicab, used primarily to transport persons and baggage to or from any hotel, motel, lodge or any other similar tourist accommodations.

- C. Public Conveyance. Any vehicle, other than a bus, courtesy vehicle, limousine, or taxicab, used or offered on a regular or continuing basis, whether or not for hire, to transport persons within the City.
- D. Public Transportation Operator. A person who provides a Public Transportation Service utilizing a bus, courtesy vehicle, public conveyance or taxicab.
- E. Public Transportation Owner. A person who owns or has a financial or other property interest in a bus, courtesy vehicle, public conveyance, or taxicab.
- F. Public Transportation Service. Engaging in the business of carrying or transporting any person(s) for compensation within twenty-five (25) miles of City limits, with or by means of a bus, courtesy vehicle, public conveyance or taxicab, by prearranged appointment, at hourly, daily, or weekly rates as agreed upon between the passenger and the motor vehicle operator or motor vehicle owner, and where such is not operating on a fixed route or not operating adjunct to a fixed route (such as Dial-A-Ride or paratransit).
- G. Taxicab. Any motor vehicle, other than a bus, courtesy vehicle, or limousine, used to carry passengers for hire. (Ord. 2982, 12-18-14).

4-15-3. Exemptions.

A. Public Transportation Owner License. The Public Transportation Owner licensing provisions of this Chapter shall not apply to the following types of motor vehicles:

- (1) Motor vehicles used in interstate or foreign commerce.
- (2) Motor vehicles for which a valid license or permit has been issued under the Idaho Single State Registration System (SSRS), as issued by the State of Idaho Division of Motor Vehicles, One Stop Shop.
- (3) Motor vehicles owned and operated by a school or school district and used exclusively to transport students or teachers to and from educational institutions or to and from approved school activities.
- (4) Motor vehicles operated through or into the City incidental to the conduct of a public conveyance business located outside the City.
- (5) Motor vehicles used primarily to transport members of the motor vehicle owner's family or agents or employees of such motor vehicle's owner.
- (6) Motor vehicles owned by or under contract with a regional Public Transportation authority authorized to operate within Bonneville County, Idaho, pursuant to the provisions

of Chapter 21, Title 40, Idaho Code, such as Targhee Regional Public Transportation Authority (TRPTA), Dial-A-Ride, and the like.

(B) Public Transportation Operator License. The operator's licensing provisions of this Chapter shall not apply to the following kinds of Public Transportation Service operators:

(1) Operators of motor vehicles used in interstate or foreign commerce.

(2) Operators of motor vehicles owned and operated by a school or school district and used exclusively to transport students or teachers to and from educational institutions or to and from approved school activities

(3) Operators of motor vehicles operated through or into the City incidental to the conduct of an interstate or intrastate public conveyance business.

(4) Operators of motor vehicles used primarily to transport members of the motor vehicle owner's family or agents or employees of such motor vehicle's owner. (Ord. 2982, 12-18-14).

4-15-4. Public Transportation License Required.

Every person who performs a Public Transportation Service in the City, as defined in this Chapter, shall first obtain a Public Transportation Operator's license or a Public Transportation Owner's license, as required by this Chapter. (Ord. 2982, 12-18-14).

4-15-5. Application.

Every person, before providing Public Transportation Service, shall apply to the City for a Public Transportation Operator's license or Public Transportation Owner's license, as required by this Chapter, on the application form furnished by the City. Every applicant shall supply all information requested on the application form, which shall, among other things, include the full name, date of birth, and residential address of the applicant. The application also shall state whether the applicant holds a valid, unrevoked chauffeur's license issued by the State and the class of such chauffeur's license. The applicant shall consent to being photographed and fingerprinted as a condition for issuance of a license. Every applicant shall supply a full set of fingerprints with every application, except that fingerprints will not be required for any license renewal that occurs within three (3) years of the latest submittal of fingerprints by the applicant. It shall be applicant's responsibility to pay for the actual cost or fee of fingerprinting. The application shall be verified by the applicant before a person authorized to administer oaths. The application shall be submitted to the Clerk together with a nonrefundable application fee in an amount set from time to time by Resolution of the Council.

The City, upon receipt of a completed application form, fingerprints, payment of the proper Public Transportation Service license fees, and other required information, as specified, and upon compliance with the requirements of this Chapter, shall issue a Public Transportation Operator's license or a Public Transportation Owner's license. (Ord. No. 2461, 10-10-02; Ord. No. 2498, 07-24-03; Ord. 2982, 12-18-14)

4-15-6. License Fees.

Any person providing Public Transportation Service shall pay an annual Public Transportation Service Operator's or Owner's license fee a fee in an amount set from time to time by Resolution of the Council. A license shall be issued for a period of three (3) months or longer and shall expire before midnight on December 31st of each year.

(Ord. No. 2461, 10-10-02; Ord. No. 2498, 07-24-03; Ord. 2982, 12-18-14)

4-15-7. Insurance Required.

No person shall provide a Public Transportation Service without public liability and property damage insurance in some good and reliable insurance company for the vehicle being utilized for such public transportation service, with combined single limits of Three Hundred Thousand (\$300,000) Dollars, or with split limits of not less than One Hundred Thousand (\$100,000) Dollars for personal injuries to one (1) person, and not less than Three Hundred Thousand Dollars (\$300,000) for personal injuries caused by any one (1) accident, and not less than Fifty Thousand (\$50,000.00) Dollars for property damage caused by any one (1) accident. No person shall provide a Public Transportation Service without underinsured and uninsured motorist insurance for the vehicle being utilized in such Public Transportation Service.

The City shall not issue a license to any applicant for a Public Transportation Operator's or Public Transportation Owner's license until the applicant has furnished proof satisfactory to the Clerk that insurance of the type and in the amount required by this Chapter has been purchased for the vehicle to be utilized in such public transportation service and that the City has been made an insurance certificate holder in such insurance.

(Ord. 2494, 6-26-03; Ord. 2964, 8-14-14; Ord. 2982, 12-18-14)

4-15-8. Vehicle Inspection.

The Chief of Police or designee shall inspect every motor vehicle to be utilized to provide Public Transportation Service prior to such use and at any time there is reason to believe that motor vehicle inspection is warranted. (Ord. 2982, 12-18-14)

4-15-9. License Documents Subject To Inspection.

Any person providing a Public Transportation Service shall tender the relevant Public Transportation Services License, insurance policies, vehicle registration, driver's license, and fair information, to the administrative authority of the City, including a peace officer, for examination, upon request. (Ord. 2982, 12-18-14)

4-15-10. Smoking Prohibited While Public Transportation Service Is Being Provided.

Smoking in motor vehicles regulated by this Chapter shall be prohibited at all times any passenger is present during the provision of Public Transportation Service. (Ord. 2982, 12-18-14)

4-15-11. Operator's Photo Identification To Be Prominently Displayed.

Any person providing Public Transportation Service shall display his or her City-issued photo identification in a place where it can be seen by every passenger at all times while such service is being provided. (Ord. 2982, 12-18-14)

4-15-12. Public Transportation Service Vehicles To Be Prominently Marked.

Motor Vehicles regulated under this Chapter, shall, at all times where Public Transportation Services are provided, be prominently marked as a bus, courtesy vehicle, public conveyance, or taxicab. Marking may be accomplished by a means of a temporary sign, magnetic sign, permanent sign, overhead light, paint, etc. Such marking may be displayed inside or outside of the vehicle and shall be of a font size and type that can be seen clearly from at least twenty feet (20') from the outside of the motor vehicle used for Public Transportation Services. (Ord. 2982, 12-18-14)

4-15-13. Fares to be Prominently Displayed.

Except where pre-paid Public Transportation Services are being provided, any person providing Public Transportation Services shall, at all times, prominently display all fares for such services. All fares shall immediately be made available to any person who requests them. No person providing Public Transportation Services shall charge any fare for such services unless such fare is prominently displayed and is immediately available to a person requesting such fares to be charged. (Ord. 2982, 12-18-14)

4-15-14. Mandatory Drug Testing; Denial or Revocation.

(A) Every person licensed under this Chapter who is involved in an accident resulting in injury to or death of any person, while providing Public Transportation service, shall submit to one (1) or more tests as may be required to determine the amount of alcohol, narcotics, prescription and non-

prescription drugs are present in such licensed person. Any such required test(s) shall be at such licensed person's own expense.

(B) If a required test shows the presence of illegal drugs, alcohol in excess of the legal limit established in Idaho Code Title 18, Chapter 80, prescription drugs used other than as prescribed, or evidence of intoxicants, such person's license shall be immediately revoked. Refusal to submit to any test required shall result in the immediate revocation of the Public Transportation Operator's license. Following revocation under this subsection, no Public Transportation Operator's license shall be granted until five (5) years immediately following the last violation of this subsection. (Ord. 2982, 12-18-14)

4-15-15. Investigation.

Before any license shall be issued under this Chapter, the City shall complete a background check of every applicant.

Such background check may utilize the fingerprints submitted. Any background check requests made to the Federal Bureau of Investigation shall be conducted pursuant to applicable law, including, but not limited to, Idaho Code Section 67-3008, as amended. The background check may include the statewide criminal identification bureau; the Federal Bureau of Investigation (FBI) criminal history; the National Crime Information Center (NCIC); the statewide child abuse registry; sex offender register regional record check; and/or other inquiries as deemed necessary to carry out the intent of this Chapter.

(Ord. 2905, 06-28-13; Ord. 2964, 08-14-14; Ord. 2982, 12-18-14)

4-15-16. Denial of License.

No Public Transportation Operator license shall be issued:

(A) Where the applicant or licensee has:

1. Been found guilty of, plead guilty to, received a withheld judgment, or admitted to the elements of any of the following enumerated crimes, or admitted that sufficient evidence exists which could be likely to convince a judge or jury to find the applicant or licensee to be guilty beyond a reasonable doubt, or any substantially similar provision of foreign criminal violation, notwithstanding the form of judgment(s):

- a. Felony injury of a child, Section 18-1501, Idaho Code.
- b. The sexual abuse of a child under sixteen years of age, Section 18-1506, Idaho Code.

- c. The ritualized abuse of a child under eighteen years of age, Section 18-1506A, Idaho Code.
- d. The sexual exploitation of a child, Section 18-1507 or 18-1507A, Idaho Code.
- e. Lewd conduct with a child under the age of sixteen years, Section 18-1508, Idaho Code.
- f. The sale or barter of a child for adoption or other purposes, Section 18-1511, Idaho Code.
- g. Murder in any degree, Section 18-4001 or 18-4003, Idaho Code.
- h. Assault with intent to murder, Section 18-4015, Idaho Code.
- i. Voluntary manslaughter, Section 18-4006, Idaho Code.
- j. Rape, Section 18-6101 or 18-6108, Idaho Code.
- k. Incest, Section 18-6602, Idaho Code.
- l. Forcible sexual penetration by use of foreign object, Section 18-6608, Idaho Code.
- m. Abuse, neglect or exploitation of a vulnerable adult, Section 18-1505, Idaho Code.
- n. Aggravated, first degree, second degree and third degree arson, Sections 18-801 through 18-805, Idaho Code.
- o. Crimes against nature, Section 18-6605, Idaho Code.
- p. Kidnapping, Sections 18-4501 through 18-4503, Idaho Code.
- q. Mayhem, Section 18-5001, Idaho Code.
- r. Poisoning, Section 18-4014 or 18-5501, Idaho Code.
- s. Robbery, Section 18-6501, Idaho Code.
- t. Stalking in the first degree, Section 18-7905, Idaho Code.

- u. Video voyeurism, Section 18-6609, Idaho Code.
 - v. Enticing of children, Section 18-1509 or 18-1509A, Idaho Code.
 - w. Inducing individuals under eighteen years of age into prostitution, Section 18-5609, Idaho Code.
 - x. Inducing a person under eighteen years of age to patronize a prostitute, Section 18-5611, Idaho Code.
 - y. Any felony punishable by death or life imprisonment.
 - z. Attempt, Section 18-306, Idaho Code, conspiracy, Section 18-1701, Idaho Code, or accessory after the fact, Section 18-205, Idaho Code, to commit any of the crimes designated in this subsection.
2. Been classified as a voluntary patient or involuntary patient pursuant to Chapter 3, Title 66, Idaho Code, or similar provision in another jurisdiction, unless:
- a. Such person has been released from, and is no longer under, any form of treatment in relation to such classification, and
 - b. Such person has been examined by at least one (1) professional licensed to evaluate mental health and such professional certifies that the person is no longer mentally ill and presents no threat or danger to any child. Such examination shall not be at City expense.

(B) Where the applicant or licensee has:

1. Been found guilty of, plead guilty to, or received a withheld judgment, or admitted to the elements of any of the following enumerated crimes, or any substantially similar provision of foreign criminal violation, notwithstanding the form of judgment(s) for any offense involving neglect or any physical injury to, or other abuse of a child, or any of the following offenses or a similar provision in another jurisdiction, for a period of five (5) years immediately preceding the date of application for license or renewal:
- a. Aggravated assault, Section 18-905, Idaho Code.
 - b. Aggravated battery, Section 18-907(1), Idaho Code.
 - c. Burglary, Section 18-1401, Idaho Code.

- d. Felony theft, Sections 18-2403 and 18-2407(1), Idaho Code.
- e. Forgery of a financial transaction card, Section 18-3123, Idaho Code.
- f. Fraudulent use of a financial transaction card or number, Section 18-3124, Idaho Code.
- g. Forgery or counterfeiting, Chapter 36, Title 18, Idaho Code.
- h. Misappropriation of personal identifying information, Section 18-3126, Idaho Code.
- i. Insurance fraud, Section 41-293, Idaho Code.
- j. Damage to or destruction of insured property, Section 41-294, Idaho Code.
- k. Public assistance fraud, Section 56-227, Idaho Code.
- l. Provider fraud, Section 56-227A, Idaho Code.
- m. Attempted strangulation, Section 18-923, Idaho Code.
- n. Misdemeanor injury to a child, Section 18-1501(2), Idaho Code.
- o. Felony domestic violence, Section 18-918, Idaho Code.
- p. Any violation (felony or misdemeanor) of the Uniform Controlled Substances Act, Chapter 27, Title 37, Idaho Code.
- q. Grand theft, section 18-2407(1), Idaho Code.
- r. Disseminating obscene material to minors, as defined in Sections 18-1513 through 18-1515, Idaho Code.
- s. Arson, as defined in Sections 18-801 through 18-804, Idaho Code.
- t. Transporting a minor in a motor vehicle while under the influence, Section 18-1501(3), Idaho Code.
- u. Driving without privileges, Section 18-8001, Idaho Code.

- v. Driving under the influence of alcohol, drugs, or other intoxicating substances, Section 18-8004, Idaho Code.
- w. Persons under twenty one (21) years of age with less than point zero eight (0.08) alcohol concentration, Section 18-8004A, Idaho Code.
- x. Driving under the influence with excessive alcohol concentration, Section 18-8004C, Idaho Code.
- y. Any person who pleads guilty to or is found guilty of a violation of the provisions of Section 18-8004(1)(a), Section 18-8005, Idaho Code.
- z. Aggravated driving while under the influence of alcohol, drugs, or any other intoxicating substances, Section 18-8006, Idaho Code.
- aa. Leaving scene of accident resulting in injury or death, Section 18-8007, Idaho Code.
- bb. Reckless driving, Section 49-1401(1), Idaho Code.
- cc. Any person who is eighteen (18) years of age or older who sells, gives, or furnishes, or causes to be sold, given, or furnished, alcoholic beverages, including any distilled spirits, beer or wine, to a person under the age of twenty one (21) years, Section 23-603, Idaho Code.
- dd. Misdemeanor theft as defined in Title 18, Chapter 24 of the Idaho Code.
- ee. Any felony as defined by Idaho Code, Sections 18-111 and 18-111A, other than those listed in Subsection A.1. hereinabove.
- ff. Any crime of physical violence against persons, other than those listed in Section A.1. hereinabove.
- gg. Attempt, Section 18-306, Idaho Code, conspiracy, Section 18-1701, Idaho Code, or accessory after the fact, Section 18-205, Idaho Code, to commit any of the crimes designated in this subsection.

C. To any applicant or licensee who has supplied false or misleading information, failed or refused to provide or to disclose information required on the application form or by this Chapter, failed to disclose a suspension or revocation of a driver's license, or refused to authorize the investigation required herein. No such applicant or licensee shall be able to apply to receive a license under this Chapter for a period of less than six (6) months following the date of the denial or revocation of the Transportation Operator's license under this Subsection or for a period of six

(6) months following the date that the Clerk became aware of disqualifying information, whichever is later in time.

D. 1. To any Public Transportation licensee who has violated any of the provisions of this Chapter during Public Transportation licensure. Violation of any provision of this Chapter during Public Transportation licensure, shall result in immediate and automatic revocation of the Public Transportation Operator's license. Such revocation of the Public Transportation Operator's license shall be effective as of the date of such violation. No such person shall be qualified to apply to receive a Public Transportation license under this Chapter for a period of less than six (6) months following the date of the revocation of the Public Transportation Operator's license under this Subsection or for a period of six (6) months following the date the Clerk became aware of such information, whichever is later in time, unless otherwise provided in this Chapter.

2. Effect of Driver's License Suspension or Revocation. Suspension or revocation of the driver's license held by any licensed Public Transportation Operator shall result in the immediate and automatic revocation of such Public Transportation Operator's license, effective as of the date of such driver's license suspension or revocation. No such person shall be qualified to apply to receive a Public Transportation license under this Chapter for a period of less than six (6) months following the date of full reinstatement of the driver's license or for a period of not less than six (6) months following the date the Clerk became aware of such driver's license suspension or revocation, whichever is later in time.

E. Where an applicant or licensee does not meet the conditions of licensure in this Chapter. (Ord. 2982, 12-18-14)

4-15-17. Appeals.

A. 1. Any person aggrieved by the action of denial, suspension or revocation of the license by the Clerk for a reason other than disqualification under Subsection (A) or (B) of the "Denial of License" section of this Chapter, shall have the right of appeal to the Council pursuant to Chapter 1 of Title 4 of this Code.

2. If a license application is revoked or denied because of disqualification of the Applicant or Licensee under Subsection (A) or (B) of the "Denial of License" section of this Chapter, such disqualification shall not be waived. Review of revocation or denial of a license because of disqualification of the Applicant or Licensee under Subsection (A) of the "Denial of License" section of this Chapter shall be limited to a review of whether the information upon which such denial or revocation was based is true and accurate. (Ord. 2964, 8-14-14; Ord. 2982, 12-18-14).

5-15-18. Penalties.

A. Any person violating any provision of this Chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished pursuant to this Code and the Idaho Code.

B. Any person violating any provision of this Chapter shall have any current Public Transportation Service license revoked. Upon proof of eligibility following revocation, such person shall be issued a Public Transportation Service license, unless otherwise prohibited by this Chapter. (Ord. 2982, 12-18-14).

CHAPTER 16
ADULT BUSINESSES

SECTION:

- 4-16-1: Purpose and Intent
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4-16-1 **PURPOSE AND INTENT:** The purpose of this Chapter is to regulate Sexually Oriented Businesses which sell, display, or distribute indecent materials, or which sponsor, exhibit or engage in conduct, which is indecent, but which is not obscene such as to be prohibited by state law. It is also the purpose and intent of this Chapter to regulate Sexually Oriented Businesses to

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

4-16-2: DEFINITIONS: Certain terms used in this Chapter shall have the meaning ascribed below:

ADULT ARCADE: An establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, computers, or other similar image producing machines, for viewing by five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, DVD's, CD-ROMs, slides, computer-generated images, or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas."

ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE: A commercial establishment which has significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental for any form of consideration, of any one or more of the following:

(A) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, DVD's, CD-ROMs, or other visual representations which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas";

(B) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

(C) An establishment may have other principal business purposes that do not involve the offering for sale rental or viewing of materials depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas," and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "Specified Anatomical Areas" or

"Specified Sexual Activities." For the purpose determining whether a significant or substantial portion of the stock in trade or revenues consist of or is derived from the sale of materials which depict or describe "Specified Sexual Activities" or "Specified Anatomical Areas," the amount of such stock in trade or revenues shall be compared to the aggregate amount of revenues derived from the sale of all such materials sold or displayed and the revenues or amount of stock in trade derived from or consisting of all materials described in Section 4-16-2(A), subsections 2.a. and b. hereof, over a period of at least one month.

ADULT CABARET: A nightclub, bar, restaurant "bottle club," juice bar or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features: (a) persons who appear nude or in a state of nudity or semi-nude; (b) live performances which are characterized by the exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities," or (c) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas."

ADULT MOTEL: A motel, hotel or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, DVD's, CD-ROMs, or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, or (b) offers a sleeping room for rent for a period of time less than ten (10) hours; or (c) for any form of consideration, allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.

ADULT MOTION PICTURE THEATER: A commercial establishment where films, motion pictures, video cassettes, slides, DVD's, CD-ROMs, or similar photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities," or "Specified Anatomical Areas," are shown for any form of consideration.

ADULT THEATER: A theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of "Specified Anatomical Areas," or by "Specified Sexual Activities."

COUCH OR STRADDLE DANCE: An employee of the establishment intentionally touching or coming within ten (10) feet of any patron while engaged in the display or exposure of any "Specified Anatomical Area," or any "Specified Sexual Activity."

EMPLOYEE: A person who works or performs in and/or for a Sexually Oriented Business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

ESCORT: A person who, for any form of consideration, agrees or offers to act as a companion or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for or dance with another person.

ESCORT AGENCY: A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

ESTABLISHMENT: "Establishment" means and includes any of the following:

- (A) The opening or commencement of any such business as a new business;
- (B) The conversion of an existing business, whether or not a Sexually Oriented Business, to any of the Sexually Oriented Businesses defined in this Chapter;
- (C) The addition of any of the Sexually Oriented Businesses defined in this Chapter to any other existing Sexually Oriented Business; or
- (D) The relocation of any such Sexually Oriented Business.

LIVE ADULT ENTERTAINMENT: Any exhibition, dance, or performance for consideration by a person who appears nude or semi-nude, or a performance which is characterized by the exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities," including the performance of a "Straddle" or "Couch" dance.

MASSAGE PARLOR: Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with "Specified Sexual Activities," or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "Specified Anatomical Areas." The definition of Sexually Oriented Businesses shall not include the practice of massage in any licensed hospital, nor by any employee of a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, massage therapist, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semi-professional or professional athlete or athletic team or school athletic program.

NUDE MODEL STUDIO: Any place where a person, who regularly appears in a state of nudity or displays "Specified Anatomical Areas," is provided for money or any form of consideration to

be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

NUDITY OR STATE OF NUDITY: The appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

OPERATOR: The owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

PERMITTED OR LICENSED PREMISES: Any premises that requires a license and/or permit and that is classified as a Sexually Oriented Business.

PERMITTEE AND/OR LICENSEE: A person in whose name a permit and/or license to operate a Sexually Oriented Business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

PERSON: An individual, proprietorship, partnership, corporation, association, or other legal entity.

PUBLIC BUILDING: Any building owned, leased or held by the United States, the state, the county, the city, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used for governmental purposes.

PUBLIC PARK OR RECREATION AREA: Public land which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the city which is under the control, operation, or management of the city park and recreation authorities.

PUBLIC PLACE: All outdoor places owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public, including but not limited to places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, party rooms or halls limited to specific members, restricted to adults or to patrons invited to attend, whether or not an admission is charged. The term does not include private rooms used primarily for residential purposes, hotel rooms or other private places used for human habitation or bona fide dressing rooms or restrooms.

RELIGIOUS INSTITUTION: Any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.

RESIDENTIAL USE: A single family dwelling, duplex, townhouse, multiple family, or mobile park or subdivision and campground or other use characterized by its devotion to human habitation, excluding hotels, motels, boarding establishments or similar commercial establishments.

RESIDENTIAL DISTRICT: Any district established by the Idaho Falls Zoning Ordinance which is characterized by residential uses.

SCHOOL: Any public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities. School includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.

SEMI-NUDE: A state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUAL ENCOUNTER ESTABLISHMENT: A business or commercial establishment, that as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "Specified Sexual Activities" or the exposure of "Specified Anatomical Areas" or activities when one or more of the persons is in a state of nudity or semi-nude. The definition of Sexually Oriented Businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

SEXUALLY ORIENTED BUSINESS: An adult arcade, adult bookstore, adult cabaret, adult motel, adult motion picture theater, adult novelty shop, adult theater, adult video store, escort agency, massage parlor, nude model studio, or sexual encounter establishment.

SIGNIFICANT OR SUBSTANTIAL: At least twenty-five percent (25%).

SPECIFIED CRIMINAL ACT: Any sexual crimes against children, sexual abuse, rape or crimes connected with another Sexually Oriented Business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations.

SPECIFIED ANATOMICAL AREAS: "Specified Anatomical Areas," as used in this Chapter means and includes any of the following:

(A) Less than completely and opaquely covered human genitals, pubic region, anus, or female breasts below a point immediately above the top of the areolae; or

(B) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES: "Specified Sexual Activities," as used in this Chapter, means and includes any of the following:

(A) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts for any purpose other than for medical or therapeutic purposes by a licensed medical practitioner.

(B) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(C) Masturbation, actual or simulated; or

(D) Human genitals in a state of sexual stimulation, arousal or tumescence;

(E) Excretory functions as part of or in connection with any of the activities set forth in subdivisions (A) through (D) of this Chapter.

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS: An increase in the floor areas occupied by the business by more than fifteen percent (15%), as the floor areas exist on the effective date of the Ordinance adopting this Chapter.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS: Means and includes any of the following:

(A) The sale, lease or sublease of the business;

(B) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means;

(C) The establishment of a trust, gift or other similar legal devise which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

ZONING ORDINANCE: The Zoning Ordinance of the City of Idaho Falls, Idaho (Ordinance No. 1941) as presently constituted or as may be amended hereafter.

4-16-3: ESTABLISHMENT AND CLASSIFICATION OF BUSINESSES:

(A) The establishment and operation of a Sexually Oriented Business shall be permitted only in the I&M-1 and I&M-2 zones, and shall be subject to the restrictions set forth in this Chapter. In particular, the issuance of a license shall not be construed to allow any person or establishment to engage in conduct otherwise expressly prohibited under Sections 4-16-24 and 4-16-25 of this Chapter.

(B) No person shall cause or permit the establishment of a Sexually Oriented Business within 1,000 feet of another such business or within 2,500 feet of any religious institution, school, boys' club, girls' club, or similar existing youth organization, or public park or public building, or within 2,500 feet of any property zoned for residential use or used for residential purposes.

(C) Notwithstanding the distance requirements of subsection (B) above, the location of Sexually Oriented Businesses within retail shopping centers in such zones is permitted where such activities will have their only frontage upon enclosed malls or malls isolated from direct view from public streets, parks, schools, religious institutions, boys' clubs, girls' clubs, or similar existing youth organization, public buildings or residential districts or uses.

4-16-4: MEASUREMENT OF DISTANCE: As regarding Section 4-16-3, paragraph (B), distance between any two Sexually Oriented Businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any Sexually Oriented Business and any religious institution, public or private elementary or secondary school, boys club, girls club, or similar existing youth organization, or public park or public building or any properties zoned for residential use or used for residential purposes shall also be measured in a straight line, without regard to intervening structures or objects from the nearest point of the property line of the premises where the Sexually Oriented Business is conducted, to the nearest point of the property line of the premises of a religious institution, public or private elementary or secondary school, boys club, girls club, or similar existing youth organization, or public park or public building or any properties zoned for residential use or used for residential purposes.

4-16-5: LOCATION OF SEXUALLY ORIENTED BUSINESSES: Sexually Oriented Businesses shall be permitted only in the I&M-1 and I&M-2 zones and shall otherwise be subject to the provisions of the Zoning Ordinance applicable to such zones, together with the provisions of this Chapter. In the event of any conflict between the Zoning Ordinance and this Chapter, then the provisions of this Chapter shall control. Permits for Sexually Oriented Businesses shall be required and governed by the procedures and policies specified in Section 4-16-9 of this Chapter. In addition, any person who owns, operates or controls a Sexually Oriented Business shall be subject to the following restrictions:

(A) The person commits a misdemeanor if he operates or causes to be operated a Sexually Oriented Business except as provided in Section 4-16-3 of this Chapter.

(B) The person commits a misdemeanor if he operates or causes to be operated a Sexually Oriented Business within 2,500 feet of:

- (1) any religious institution;
- (2) any school;
- (3) the boundary of any residential zone;
- (4) a public park adjacent to any residential zone;
- (5) a property line of a lot devoted to residential use; or

(6) a boys club, girls club, or similar existing youth organization, except as provided in Section 4-16-3(C).

(C) A person commits a misdemeanor if he operates or causes to be operated a Sexually Oriented Business within 1,000 feet of another such business, which will include, any adult arcade, adult book store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor or any sexual encounter establishment, except as provided in Section 4-16-3(C).

(D) A person commits a misdemeanor if he causes or permits the operation, establishment, or maintenance of more than one Sexually Oriented Business within the same building, structure, or portion thereof, except as provided in Section 4-16-3(C), or causes the substantial enlargement of any Sexually Oriented Business in any building, structure or portion thereof containing another Sexually Oriented Business.

(E) It is a defense to prosecution under this section if a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

- (1) by a proprietary school, licensed by the State of Idaho; a college, junior college, or university supported entirely or partly by taxation;
- (2) by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;
or
- (3) in a structure:

- (a) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
- (b) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
- (c) where no more than one nude model is on the premises at any one time.

4-16-6: REGULATIONS GOVERNING EXISTING SEXUALLY ORIENTED BUSINESSES:

(A) Any Sexually Oriented Business in operation on the effective date of the Ordinance adopting this Chapter, whose operation at a location is prohibited by this Chapter, shall be deemed to be a non-conforming use. Subject to the provisions of Article III of the Zoning Ordinance, such non-conforming use may be continued at such location notwithstanding the provisions of this Chapter. Such business shall be considered to be in operation on the effective date of this Chapter if the business has been in continuous operation for a period of at least thirty (30) days prior to the date of the first reading of the Ordinance adopting this Chapter or has expended at least \$1,000 for construction of improvements to any building or structure occupied by such business prior to such date. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or more Sexually Oriented Businesses are within 1,000 feet of one another and otherwise in a permissible location, the Sexually Oriented Business which was first established and continually operating at the particular location is the conforming use and the later established business(es) is non-conforming, except as provided in Section 4-16-3(C).

(B) A Sexually Oriented Business lawfully operating as conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of a Sexually Oriented Business permit and/or license, of a church, public or private elementary or secondary school, public park, public building, residential district, or residential lot within 2,500 feet of the Sexually Oriented Business. This provision applies only to the renewal of a valid permit and/or license and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

(C) Any establishment subject to the provision of this section shall apply for the permit provided for by Section 4-16-10 within thirty (30) days of the effective date of the Ordinance adopting this Chapter. Any establishment, existing prior to such effective date, shall comply with the regulations pertaining to Sections 4-16-20 and 4-16-22 within sixty (60) days of such effective date, and all other applicable permit regulations within thirty (30) days of the effective date.

4-16-7: INJUNCTION: A person who operates or causes to be operated a Sexually Oriented Business without having a valid permit due to locational restrictions is subject to a suit for injunction as well as prosecution for the criminal violation. Such violation shall be punishable by a fine in an amount set from time to time by Resolution of Council, and/or thirty (30) days imprisonment, and if an injunction must be sought, attorney's fees and costs may be assessed by the Court against the Sexually Oriented Business. (Ord. 2964, 8-14-14)

4-16-8: SEXUALLY ORIENTED BUSINESS PERMIT: PURPOSE AND INTENT: It is the purpose of this Chapter to regulate Sexually Oriented Businesses to promote the health, safety, morals and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent deleterious effects of Sexually Oriented Businesses within the City. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent, nor effect of this Chapter, to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this Chapter to in any way condone or legitimize the distribution of obscene or harmful to minors' material.

4-16-9: PERMIT REQUIRED:

(A) No Sexually Oriented Business shall be permitted to operate without a valid Sexually Oriented Business permit issued by the City for the particular type of business. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business without said permit.

(B) The City Community Development Services Administrator or his/her designee is responsible for granting, denying, revoking, renewing, suspending, and canceling Sexually Oriented Business permits for proposed or existing Sexually Oriented Businesses. The City Community Development Services Administrator or his/her designee is also responsible for ascertaining whether a proposed Sexually Oriented Business for which a permit is being applied for complies with all locational requirements of Sections 4-16-3, 4-16-5, and 4-16-6 of this Chapter, all applicable zoning laws and/or regulations now in effect or as amended or enacted subsequent to the effective date of the Ordinance adopting this Chapter and the City Comprehensive Plan.

(C) The Idaho Falls Police Department shall be responsible for enforcing all other provisions of this Chapter. The Idaho Falls Police Department shall, upon request from the City Community Development Services Department Administrator, provide information on whether an applicant has been convicted of a Specified Criminal Act during the time period set forth.

(D) The City Community Development Services Administrator and the Idaho Falls Police Department shall be jointly responsible for inspecting a proposed, permitted or non-permitted Sexually Oriented Business in order to ascertain whether it is in compliance with this Chapter.

(E) An application for a permit must be made on a form provided by the City. Any person desiring to operate a Sexually Oriented Business shall file with the City Clerk an original and two (2) copies of a sworn permit application on the standard application form supplied by the City or designee. The completed application shall contain the following information and shall be accompanied by the following documents:

- (1) If the applicant is:
 - (a) an individual, the individual shall state his/her legal name and any aliases and submit satisfactory proof that he/she is eighteen (18) years of age;
 - (b) a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
 - (c) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of Idaho the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
- (2) If the applicant intends to operate the Sexually Oriented Business under a name other than that of the applicant; he must state
 - (a) the Sexually Oriented Business's fictitious name and
 - (b) submit documents evidencing compliance with Chapter 5, Title 53, Idaho Code.
- (3) Whether the applicant or any of the other individuals listed pursuant to Section 4-16-9 of this Chapter has, within the two (2) or five (5) year period as specified in Section 4-16-11 immediately preceding the date of the application, been convicted of a Specified Criminal Act, and, if so, the Specified Criminal Act involved, the date of conviction, and the place of conviction.

- (4) Whether the applicant or any of the other individuals listed pursuant to Section 4-16-9(F) of this Chapter has had a previous permit under this Chapter or other similar Sexually Oriented Business ordinances from another city or county denied, suspended or revoked, including the name and location of the Sexually Oriented Business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or any other individuals listed pursuant to Section 4-16-9(F) has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is permitted under this Chapter whose permit has previously been denied, suspended or revoked, including the name and location of the Sexually Oriented Business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
- (5) Whether the applicant or any other individual listed pursuant to Section 4-16-9(F) holds any other permits and/or licenses under this Chapter or other similar Sexually Oriented Business ordinance from another city or county and, if so, the names and locations of such other permitted businesses.
- (6) The single classification of permit for which the applicant is filing.
- (7) The location of the proposed Sexually Oriented Business, including a legal description of the property, street address, and telephone number(s), if any.
- (8) The mailing addresses and residential addresses of the applicant and each partner, member, officer, director and shareholder listed in Section 4-16-9(F) hereof.
- (9) A recent photograph of the applicant(s) or its manager, partner, member or president.
- (10) The driver's permit number, Social Security number, and/or State or federally issued tax identification number of the applicant or its manager, partner, member or president.
- (11) 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 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.

- (12) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by an Idaho registered land surveyor depicting the property lines and the structures containing any established existing uses regulated by this Chapter within 2,500 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within 2,500 feet of the property to be certified; and the property lines of any residentially zoned area or residential property within 2,500 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted. Sexually Oriented Businesses allowed under Section 4-16-3(C) of this Chapter are excepted from this requirement.
- (13) If a person who wishes to operate a Sexually Oriented Business is an individual, he/she must sign the application for a permit as applicant. If a person who wishes to operate a Sexually Oriented Business is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of a Sexually Oriented Business or as the entity which wishes to operate such a business, each individual having a ten percent (10%) or greater interest in the corporation must sign the application for a permit as applicant.
- (14) If a person wishes to operate a Sexually Oriented Business which shall exhibit on the premises films, video cassettes, DVD's, CD-ROMs, or other video reproductions which depict Specified Sexual Activities or Specified Anatomical Areas, then said person shall comply with the application requirements stated at Section 4-16-20 et. seq. of this Chapter.

(F) To determine the suitability of prospective applicants for a license, the Chief of Police shall require a first time applicant to provide information and fingerprints necessary to obtain criminal history information from the Idaho State Police and the Federal Bureau of Investigation. Pursuant to Section 67-3008, Idaho Code, and congressional enactment Public Law Section 92-544, the Chief of Police shall submit a set of fingerprints obtained from the applicant and the required fees to the Idaho State Police, Bureau of Criminal Identification, for a criminal records check of state and national databases. The submission of fingerprints and information required by this section shall be on forms prescribed by the Idaho State Police. The Chief of Police

is authorized to receive criminal history information from the Idaho State Police and from the Federal Bureau of Investigation for the purpose of evaluating the fitness of applicants for a license under this section. As required by state and federal law, further dissemination of other use of the criminal history information is prohibited. Fingerprinting shall not be required for a license renewal, unless fingerprints and criminal background check have not been previously obtained or performed for the applicant. For the purposes of this subsection, fingerprints shall also be taken of all individuals required to be listed pursuant to subsection E (14) of the preceding subsection.

(G) Applicants for a permit under this section shall have a continuing duty to promptly supplement application information required by this section 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, by supplementing the application on file with the City Clerk or his/her designee, shall be grounds for suspension of a permit.

(H) In the event that the City Clerk or his/her designee determines or learns at any time that the applicant has improperly completed the application for a proposed Sexually Oriented Business, he/she shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. The time period for granting or denying a permit shall be stayed during the period in which the applicant is expressly allowed an opportunity to properly complete the application.

(I) The applicant must be qualified according to the provisions of this Chapter and the premises must be inspected and found to be in compliance with all federal, state or City health, fire and building codes and laws.

(J) The applicant shall be required to pay a non-refundable application fee at the time of filing an application under this Chapter in an amount set from time to time by Resolution of the Council.

(K) Prior to obtaining any permit or license to operate any Sexually Oriented Business defined in this Chapter, and as part of any application for a permit under this section, the applicant shall obtain from the City Director of Community Development Services, or his or her designee, a certification that the proposed location of such business complies with the locational requirements of Sections 4-16-5 and 4-16-6 of this Chapter.

(L) The fact that a person possesses other types of State or City permits and/or licenses does not exempt the applicant from the requirement of obtaining a Sexually Oriented Business permit.

(M) By applying for a permit under this Chapter, the applicant shall be deemed to have consented to the provisions of this Chapter and to the exercise by the City Director of Community Development Services or his/her designee, the Idaho Falls Police Department and all

other City agencies charged with enforcing the laws, ordinances and codes applicable in the City of their respective responsibilities under this Chapter.

(N) The applicant shall be required to provide the City with the names of any and all employees who are required to be licensed pursuant to Section 4-16-19 of this Chapter. This shall be a continuing requirement even after a permit is granted or renewed. (Ord. 2440, 2-15-02; Ord. 2964, 8-14-14; Ord. 3003, 04-23-15)

4-16-10: INVESTIGATION AND APPLICATION:

(A) Upon receipt of an application properly filed with the City Clerk and upon payment of the non-refundable application fee, the City Clerk or his/her designee, shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to the Idaho Falls Police Department and any other City departments or agencies responsible for enforcement of health, fire and building codes and laws. 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 and as set forth in this Chapter. Said investigation shall be completed within twenty (20) days of receipt of the application by the City or its designee. At the conclusion of its investigation, each department, division 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 therefor. The Idaho Falls Police Department shall only be required to certify the NCIC records request check mentioned at Section 4-16-11. The Idaho Falls Police Department shall not be required to approve or disapprove applications.

(B) The City Council 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 City. (Ord. 3003, 04-23-15)

4-16-11: ISSUANCE OF PERMIT:

(A) The City Council shall grant or deny an application for a permit within sixty (60) days from the date of its proper filing. Upon the expiration of the sixtieth (60th) day, unless the applicant requests and is granted a reasonable extension of time, the applicant shall be permitted to begin operating the business for which the permit is sought, unless and until the City Director of Community Development Services Department, or his/her designee, notifies the applicant of a denial of the application and states the reasons(s) for that denial.

(B) Grant of Application for Permit

(1) The City Council shall grant the application unless one (1) or more of the criteria set forth in Section (C) below is present.

- (2) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the Sexually Oriented Business. The permit shall also indicate that the Sexually Oriented Business whether permitted or not may be subject to prohibitions against Public Nudity and Indecency pursuant to the United States Supreme Court decision in *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991). The permit shall be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business so that it can be read easily at any time.

(C) Denial of Application for Permit

- (1) The Council shall deny the application for any of the following reasons:
 - (a) An applicant is under eighteen (18) years of age.
 - (b) An applicant or an applicant's spouse is overdue on his/her payment to the City or Bonneville County of any taxes, fees, fines, or penalties assessed against him/her or imposed upon him/her in relation to a Sexually Oriented Business.
 - (c) An applicant is residing with a person who has been denied a permit by the City to operate a Sexually Oriented Business within the preceding twelve (12) months, or residing with a person whose permit to operate a Sexually Oriented Business has been revoked by any other governmental or regulatory agency within the preceding twelve (12) months.
 - (d) An applicant has failed to provide information required by this section or permit application for the issuance of the permit or has falsely answered a question or request for information on the application form.
 - (e) The premises to be used for the Sexually Oriented Business have not been approved as being in compliance with health, fire and building codes by the department, division, or agency responsible under law for investigating said compliance.
 - (f) The application or permit fees required by this Chapter have not been paid.

- (g) An applicant of the proposed business is in violation of, or is not in compliance with, any of the provisions of this Chapter including but not limited to the zoning locational requirements for a Sexually Oriented Business under Sections 4-16-3, 4-16-5, and 4-16-6 hereof.
- (h) The granting of the application would violate a statute, ordinance, or court order.
- (i) The applicant has a permit under this Chapter which has been suspended or revoked.
- (j) An applicant has been convicted of a "Specified Criminal Act" for which:
 - (1) less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the "Specified Criminal Acts" which are sexual crimes against children, sexual abuse, rape or crimes connected with another Sexually Oriented Business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations;
 - (2) less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; for the "Specified Criminal Acts" which are sexual crimes against children, sexual abuse, rape or crimes connected with another Sexually Oriented Business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations;
 - (3) less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses for "Specified Criminal Acts" which are sexual crimes against children, sexual abuse, rape or crimes connected with another Sexually Oriented Business including but not limited to distribution of obscenity or materials harmful to minors, prostitution,

pandering or tax violations; offenses occurring within any twenty-four (24) month period;

(4) the fact that a conviction is being appealed shall have no effect on disqualification of the applicant;

(5) An applicant who has been convicted of the above described "Specified Criminal Acts" may qualify for a Sexually Oriented Business permit only when the time period required above in Section 4-16-11 (j) has elapsed.

(k) An applicant knowingly has in his or her employ, an employee who does not have a valid license as required in Section 4-16-19 of this Chapter.

(2) If the City Council denies the application, the City Clerk shall notify the applicant of the denial and state the reasons(s) for the denial within ten (10) days after the date of such denial.

(3) If a person applies for a permit for a particular location within a period of twelve (12) months from the date of denial of a previous application for a permit at the location, and there has not been an intervening change in the circumstances which could reasonably be expected to lead to a different decision regarding the former reasons for denial, the application shall be denied. (Ord. 3003, 04-23-15)

4-16-12: ANNUAL PERMIT FEE: The annual fee for a Sexually Oriented Business permit shall be in an amount set from time to time by Resolution of the Council. Such fee shall accompany the application filed under Section 4-16-9 (F) hereof. (Ord. 2964, 8-14-14)

4-16-13: INSPECTION:

(A) An applicant or permittee shall permit representatives of the City Planning and Building Office, the State Health Department, and the Idaho Falls Fire Department to inspect the premises of a Sexually Oriented Business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(B) It shall be unlawful and a person who operates a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Chapter, or his/her agent or employee, if he/she refuses to permit such lawful inspection of the premises at any time that it is occupied or open for business.

4-16-14: EXPIRATION OF PERMIT:

(A) Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 4-16-11 (for renewals, filing of original survey shall be sufficient) of this Chapter. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the permit will not be affected.

(B) When the City Council denies renewal of the permit, the applicant shall not be issued a permit under this Chapter for one (1) year from the date of denial. If, subsequent to denial, the City Council finds that the basis for denial of the renewal of the permit has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date denial became final.

4-16-15. SUSPENSION OF PERMIT:

(A) The City Director of Community Development Services Department or the Chief of Police of the Police Department shall suspend a permit for a period not to exceed thirty (30) days if he/she determines that a permittee, or an employee of a permittee, has:

- (1) Violated or is not in compliance with any Section of this Chapter;
- or
- (2) Been under the influence of alcoholic beverages while working in the Sexually Oriented Business premises; or
 - (3) Refused to allow an inspection of Sexually Oriented Business premises as authorized by this Chapter; or
 - (4) Knowingly permitted gambling by any person on the Sexually Oriented Business premises; or
 - (5) 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 department, division or agency charged with enforcing said rules or laws. In the event of such statute, code, ordinance or regulation violation, the City or its designee, shall promptly notify the permittee of the violation and shall allow the permittee a seven (7) day period in which to correct the violation. If the permittee fails to correct the violation before the expiration of

the seven (7) day period, the City or its designee, shall forthwith suspend the permit and shall notify the permittee of the suspension.

- (6) Engaged in permit transfer contrary to Section 4-16-18 of this Chapter. In the event that the City Director of Community Development Services Department suspends a permit on the ground that a permittee engaged in a permit transfer contrary to Section 4-16-18 of this Chapter, the Director or his/her designee shall forthwith notify the permittee of the suspension. The suspension shall remain in effect until the applicable section of this Chapter has been satisfied.
- (7) Operated the Sexually Oriented Business in violation of the hours of operation Section 4-16-23.
- (8) Knowingly employs a person who does not have a valid license as required in Section 4-16-19 of this Chapter.

(B) The suspension shall remain in effect until the violation of the statute, code, ordinance or regulation in question has been corrected. (Ord. 3003, 04-26-15)

4-16-16: REVOCATION OF PERMIT:

(A) The City Council shall revoke a permit if a cause of suspension in Section 4-16-15 of this Chapter occurs and the permit has been suspended within the preceding twelve (12) months.

(B) The City Council shall revoke a permit upon determining that:

- (1) A permittee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a permit; or
- (2) A permittee or an employee has knowingly allowed possession, use or sale of controlled substances in or on the premises; or
- (3) A permittee or an employee has knowingly allowed prostitution on the premises; or
- (4) A permittee or an employee knowingly operated the Sexually Oriented Business during a period of time when the permittee's permit was suspended; or

- (5) A permittee has been convicted of a "Specified Criminal Act" for which the time period required in Section 4-16-11 of this Chapter has not elapsed; or
- (6) On two (2) or more occasions within a twelve (12) month period, a person or persons committed an offense, occurring in or on the permitted premises, constituting a Specified Criminal Act for which a conviction has been obtained, and the person or persons were employees of the Sexually Oriented Business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the permit; or
- (7) A permittee is convicted of tax violations for any taxes or fees related to a Sexually Oriented Business; or
- (8) A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or any other Specified Sexual Activities to occur in or on the permitted premises; or
- (9) A permittee has been operating more than one Sexually Oriented Business under a single roof except as provided in Section 4-16-3(C).

(C) When the City Council revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a Sexually Oriented Business permit for one (1) year from the date revocation became effective. If, subsequent to revocation, the City Council finds that the basis for revocation under Section 4-16-16 of this Chapter has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date revocation became effective. If the permit was revoked under Section 4-16-16 of this Chapter, an applicant may not be granted another permit until the number of years required under Section 4-16-16 have elapsed. (Ord. 3003, 04-23-15)

4-16-17: JUDICIAL REVIEW OF PERMIT DENIAL, SUSPENSION OR REVOCATION:
After denial of an application, or denial of a renewal of an application, or suspension or revocation of a permit, the applicant or permittee may seek review of such administrative action pursuant to and within the time frames established by the Idaho Administrative Procedure Act.

4-16-18: TRANSFER OF PERMIT:

(A) A permittee shall not operate a Sexually Oriented Business under the authority of a permit at any place other than the address designated in the application for permit.

(B) A permittee shall not transfer his/her permit to another person unless and until such other person satisfies the following requirements:

- (1) Obtains an amendment to the permit from the City Council which provides that he/she is now the permittee, which amendment may be obtained only if he/she has completed and properly filed an application with the City Clerk or his/her designee, setting forth the information called for under Section 4-16-11 of this Chapter in the application; and
- (2) Pays a transfer fee of twenty percent (20%) of the annual permit fee set by this Chapter.

(C) No permit may be transferred when the City Director of Community Development Services Department, the Chief of Police or the City Council have notified the permittee that suspension or revocation proceedings have been or will be brought against the permittee.

(D) A permittee shall not transfer his permit to another location.

(E) Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void and the permit shall be deemed revoked upon the date such transfer is made. (Ord. 3003, 04-23-15)

4-16-19: SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE:

(A) Each individual to be employed in a Sexually Oriented Business, as defined in Section 4-16-2 of this Chapter, who engages in the services rendered by a nude model studio, escort or escort agency, sexual encounter establishment, massage parlor, or a live performer or entertainer shall be required to obtain a Sexually Oriented Business Employee License. Each applicant shall pay a permit fee in an amount set from time to time by Resolution of the Council. Said fee is to cover reasonable administrative costs of the licensing application process.

(B) Before any applicant may be issued a Sexually Oriented Business Employee License, the applicant shall submit on a form to be provided by the City Clerk or his/her designee the following information:

1. The applicant's name or any other names (including "stage" names) or aliases used by the individual;
2. Age, date, and place of birth;

3. Height, weight, hair and eye color;
4. Present residence address and telephone number;
5. Present business address and telephone number;
6. State driver's license or identification number;
7. Social Security number;
8. Acceptable written proof that the individual is at least eighteen (18) years of age;
9. Attached to the application form as provided above, a color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Idaho Falls Police Department. Any fees for the photographs and fingerprints shall be paid by the applicant;
10. A statement detailing the license or permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate, in this or any other county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying jurisdiction, and describe in full the reasons for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application;
11. Whether the applicant has been convicted of a "Specified Criminal Act" as defined in Section 4-16-2 of this Chapter. This information shall include the date, place, nature of each conviction or plea of nolo contendere and identifying the convicting jurisdiction;
12. The City Clerk or his or her designee shall refer the Sexually Oriented Business Employee License Application to the Idaho Falls Police Department for an 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 City Clerk or his or her designee shall issue a license unless the report from the Police department finds that one (1) or more of the following findings is true:
 - a. That 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 sheriff's department or other department of the City;

- b. That the applicant is under eighteen (18) years of age;
- c. That the applicant has been convicted of a "Specified Criminal Act" as defined in Section 4-16-2 of this Chapter;
- d. That 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 Chapter; or
- e. That the applicant has had a Sexually Oriented Business Employee License revoked by the City or any other governmental or regulatory agency within two (2) years of the date of the current application.

(C) Renewal of license:

1. A license granted pursuant to this section shall be subject to annual renewal by the City Clerk or his or her designee upon the written application of the applicant and a finding by the City Clerk or his or her designee and the Idaho Falls Police Department that the applicant has not been convicted of any "Specified Criminal Act" as defined in Section 4-16-2 of this Chapter or committed any act during the existence of the previous license period which would be grounds to deny the initial permit application.
2. The renewal of the license shall be in an amount set from time to time by Resolution of the Council. (Ord. 2964, 8-14-14; Ord. 3003, 04-23-15)

4-16-20: REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS IN VIDEO BOOTHS.

(A) A person who operates or causes to be operated a Sexually Oriented Business, other than an Adult Motel and regardless of whether or not a permit has been issued to said business under this Chapter, and who exhibits on the premises in a viewing room of less than one hundred fifty square feet (150 ft²) of floor space, a film, video cassette, DVD's, CD-ROMs, or other video reproduction which depicts Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:

- (1) Upon application for a Sexually Oriented Business permit, 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, the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two square feet (32 ft²) of floor area with no dimension greater than eight feet (8'). The diagram shall also designate the place at which this permit

will be conspicuously posted, if granted. 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 dimension of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The City Director of Community Development Services Department or his/her designee, 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.

- (2) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City Director Community Development Services Department or his/her designee.
- (4) It is the duty of the owners and operator of the premises to insure 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 restrooms. Restrooms may not contain video reproduction equipment. If the premises have 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 subsection must be by direct line of sight from the manager's station.
- (6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present on the premises to insure that the view area specified in Subsection 5 remains unobstructed by any doors, walls, merchandise, display racks or other materials or person at all times and to insure that no patron is 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 Subsection a. of this section.

- (7) No viewing room may be occupied by more than one (1) person at any one time. No holes, commonly known as "glory holes," shall be allowed in the walls or partitions which separate each viewing room from an adjoining viewing room or restroom.
- (8) 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 candle as measured at the floor level.
- (9) It shall be the duty of the owners and operator 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.

(B) A person having a duty under Section 4-16-20(A)(1)-(9) of this Chapter commits a misdemeanor if he/she knowingly fails to fulfill that duty. (Ord. 2964, 8-14-14; Ord. 3003, 04-23-15)

4-16-21: PROHIBITIONS REGARDING MINORS AND SEXUALLY ORIENTED BUSINESSES: A person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Chapter, and knowingly or with reasonable cause to know, permits, suffers, or allows:

(A) Admittance of a person under eighteen (18) years of age to the business premises unless accompanied by a parent or guardian;

(B) A person under eighteen (18) years of age to remain at the business premises unless accompanied by a parent or guardian;

(C) A person under eighteen (18) years of age to purchase goods or services at the business premises without the specific consent of a parent or guardian; or

(D) A person who is under eighteen (18) years of age to work at the business premises as an employee.

4-16-22: ADVERTISING AND LIGHTING REGULATIONS:

(A) It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business, regardless of whether or not a permit has

been issued for said business under this Chapter, and advertises the presentation of any activity prohibited by any applicable State statute or local ordinance.

(B) It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Chapter, and displays or otherwise exhibits the materials and/or performances at such Sexually Oriented Business in any advertising which is visible outside the premises. This prohibition shall not extend to advertising of the existence or location of such Sexually Oriented Business.

(C) It shall be unlawful for any permittee to allow any portion of the interior premises of a Sexually Oriented Business to be visible from outside the licensed premises.

(D) All off-street parking areas and premise entries of the Sexually Oriented Business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the Sexually Oriented Business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premise.

(E) Nothing contained in this section of the Chapter shall relieve the operator(s) of a Sexually Oriented Business from complying with the requirements of the City Zoning Ordinance, as it may be amended from time to time, or any subsequently enacted City ordinances or regulations.

4-16-23: HOURS OF OPERATION:

(A) It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Chapter, and allows such business to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service on Sunday between the hours of 1:00 a.m. and 9:00 a.m. of the following Monday or between the hours of 1:00 a.m. and 9:00 a.m. of any other day.

(B) It shall be unlawful and a person commits a misdemeanor if, working as an employee of a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Chapter, said employee engages in a performance, solicits a performance, makes a sale, solicits a sale, provides a service, or solicits a service on Sunday between the hours of 1:00 a.m. and 9:00 a.m. or the following Monday or between the hours of 1:00 a.m. and 9:00 a.m. of any other day.

4-16-24: PUBLIC NUDITY PROHIBITED:

(A) The United States Supreme Court decision in *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S. Ct. 2456, 115 L. Ed.2d 504 (1991) and *Erie v. Pap's A.M.*, 120 S. Ct. 1382, 146 L. Ed.2d 265, upheld the rights of cities to prohibit public nudity at any Sexually Oriented Businesses, regardless of whether or not a permit has been issued to said businesses, including businesses where no alcoholic beverages are sold, served, or consumed at the premises. The City expressly finds that the secondary effects associated with live adult entertainment and public nudity adversely impact and threaten to impact the public health, safety and welfare by providing an atmosphere conducive to violence, sexual harassment, public intoxication, prostitution, the spread of sexually transmitted disease and other deleterious effects. Accordingly, consistent with such decisions, the City intends by this Chapter to prohibit public nudity within the City.

(B) No person shall knowingly or intentionally, in a Public Place:

- (1) engage in sexual intercourse,
- (2) appear in a state of nudity or semi-nudity,
- (3) fondle his or her genitals or the genitals another person, or
- (4) engage in Specified Sexual Activities.

(C) No person who owns, operates or otherwise controls a Sexually Oriented Business shall permit, allow, hire, sponsor or employ any other person for the purpose of appearing in a state of nudity or semi-nudity at any Public Building, Public Park or Recreation Area or Public Place.

(D) The prohibitions set forth in subsections B(2) and B(3) above shall not apply to:

- (1) any child under ten (10) years of age;
- (2) any individual exposing a breast in the process of breast feeding an infant under two (2) years of age;
- (3) any person while performing any excretory function within a public restroom; or
- (4) any person changing his or her clothing in a dressing room, the sole purpose of which is to provide personal privacy for such purposes.

- (5) Any person while receiving medical or therapeutic treatment from any physician, paramedic, nurse or other medical practitioner licensed by the State of Idaho.

4-16-25: PROHIBITION OF LIVE ADULT ENTERTAINMENT:

(A) No person shall perform, cause or allow the performance of Live Adult Entertainment in any Public Place within the City or at any private place or location where any individual admissions charge or consideration is charged to or collected from persons attending such performance.

(B) No employee of a Sexually Oriented Business shall engage in any "Specified Sexual Activity" or display or expose any "Specified Anatomical Area" while acting as a waiter, waitress, host, hostess, or bartender.

4-16-26: ADDITIONAL CRIMINAL PROHIBITIONS FOR THE OPERATION OF A SEXUALLY ORIENTED BUSINESS WITHOUT A VALID PERMIT:

(A) In addition to the criminal provisions in other sections of this Chapter, the following additional criminal provisions shall also apply to Sexually Oriented Businesses.

(B) It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Chapter, and said person knows or should know that:

- (1) The business does not have a Sexually Oriented Business permit under this Chapter for any applicable classification;
- (2) The business has a permit which is under suspension;
- (3) The business has a permit which has been revoked; or
- (4) The business has a permit which has expired.

4-16-27: EXEMPTIONS:

(A) It is a defense to prosecution for any violation of this Chapter that a person appearing in a state of nudity did so in a modeling class operated:

- (1) By a college, junior college, or university supported entirely or partly by taxation;

- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or:
- (3) In a structure:
 - (a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - (b) Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
 - (c) Where no more than one (1) nude model is on the premises at any one (1) time.

(B) It is a defense to prosecution for a violation of this Chapter that an employee of a Sexually Oriented Business, regardless of whether or not it is permitted under this Chapter, exposed any Specified Anatomical Area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

4-16-28: CRIMINAL PENALTIES AND ADDITIONAL LEGAL, EQUITABLE, AND INJUNCTIVE RELIEF:

(A) In addition to whatever penalties are applicable under the Idaho Criminal Code, if any person fails or refuses to obey or comply with or violates any of the criminal provisions of this Chapter, such person upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed Three Hundred Dollars (\$300) or by imprisonment not to exceed six (6) days in the City jail, or both, in the discretion of the Court. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.

(B) Nothing herein contained shall prevent or restrict the City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

(C) All remedies and penalties provided for in this section shall be cumulative and independently available to the City and the City shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.

4-16-29: IMMUNITY FROM PROSECUTION: The City and its designee, the Idaho Falls Police Department and all other departments, divisions, and agencies, and all other City officers, agents and employees, charged with enforcement of State and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon property owned or controlled by a Sexually Oriented Business while acting within the scope of authority conferred by this Chapter.

4-16-30: SCOPE AND INTERPRETATION: Notwithstanding the other provisions of this Chapter, nothing in this Chapter shall apply to the sale, loan, distribution, dissemination, presentation or exhibition of material or live conduct which is obscene, as defined under Chapter 18, Title 41, Idaho Code, unless such Chapter or any provision thereof, is determined to be unconstitutional or unenforceable for any reason. This Chapter shall be interpreted to be consistent in all respects with the provisions of Idaho Code Section 18-4113 and shall be applicable only to the extent it regulates the sale, loan, distribution, dissemination presentation or exhibition of material or live conduct that is not otherwise obscene, as defined by Idaho Code Section 18-4101, provided, however, if any provision of such Chapter of the Idaho Code is determined to be unconstitutional or unenforceable for any reason, then this Chapter shall be fully enforceable notwithstanding such determination.

CHAPTER 17

HOTELS

[REPEALED by Ord. 2902, 05-10-12]

CHAPTER 18
PHOTOGRAPHERS

[REPEALED by Ord. 2906, 06-26-14]

CHAPTER 19
PUBLIC DANCING ESTABLISHMENTS
[REPEALED, by Ord. 2901, 05-13-12]