

TITLE V

BUSINESS REGULATIONS

CHAPTER 1

LICENSING OF BUSINESSES

- 5-1-1: **Definitions**
- 5-1-2: **Application for and Issuance of License**
- 5-1-3: **Contents of Application**
- 5-1-4: **Payment of License Fee**
- 5-1-5: **License Fees**
- 5-1-6: **License Year**
- 5-1-7: **Date for Applications and Payment of Fee**
- 5-1-8: **Prohibition of Door-to-Door Selling**
- 5-1-9: **Suspension, Revocation or Refusal to Renew License**
- 5-1-10: **Suspension, Revocation or Refusal to Renew License - Hearing**
- 5-1-11: **Exemptions**
- 5-1-12: **Reciprocal License Agreements**
- 5-1-13: **Delinquent Date & Penalty**
- 5-1-14: **Penalty**
- 5-1-1: **DEFINITIONS:** For the purpose of this chapter, the following terms shall have the meaning herein prescribed:

BUSINESS: Includes each and every activity, job, craft, trade, occupation or transaction, together with any devices, machines, or vehicles used therein, which is for the purpose of pursuing financial gain or economic growth.

ENGAGING IN BUSINESS: One act constitutes engaging in business, and includes, but is not limited to, the sale of tangible personal or real property and the rendering of personal services for others for a consideration by persons engaged in any craft, business, occupation, or other calling.

HOME OCCUPATION: The use of a portion of a dwelling or accessory building, studio, or work room for occupation at home and subject to rules and regulations of the City Zoning Ordinance. Includes any business activity at or from one's residence that does not fall within the definition of Limited Home Occupation.

LIMITED HOME OCCUPATION: Any business activity conducted away from one's residence but in which said residence is used as the primary location for any of the following activities associated with the business activity: record keeping, phone calls, reception of mail, computer, or internet activity.

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

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

TEMPORARY OR SEASONAL MERCHANT: A person who sells products for a given period of time at a temporary location; i.e. fruit, vegetables, flowers, Christmas trees, hand crafted items, yard sales, etc.

PEDDLER, ITINERANT, OR TRANSIENT SOLICITOR: A person who does not reside in or have an established business in Syracuse City and who is in the City for a temporary time to sell products or services. (Ord. 02-10)

5-1-2: APPLICATION FOR THE ISSUANCE OF LICENSE. Every person engaging in business, trade, service, or profession, as herein defined, within the corporate limits of Syracuse City, shall secure from the City Recorder a license for each separate place of business, trade, service, or profession, maintained within the City. Such license shall be issued by the City Recorder upon a written application therefor and the payment of the fee as herein provided, for each place of business.(1989)

5-1-3: CONTENTS OF APPLICATION. The application for license shall be written and filed for each place of business, trade, service, home occupation or profession. Said application shall be verified. The application shall contain the following information:

- (A) Name of the Business
- (B) Name and Address of owner(s) or person(s) responsible for the operation thereof.
- (C) All vital statistics regarding applicant as requested on application.
- (D) Location where business is to be conducted.
- (E) Space for signatures.
- (F) Any state license or contractor number.
- (G) Any other information as required by ordinances of the City. (1989)

5-1-4: PAYMENT OF LICENSE FEE. The license fee for each separate place of business, trade, service, or profession within the City shall be computed as hereinafter set out

for each business, trade, service, or profession filing an application. Said fee shall be payable to the City Recorder at the time of the application. (1989)

5-1-5: LICENSE FEES. All new businesses, trades, services, professions, temporary/seasonal merchants, contractors, or other persons required to be licensed hereunder shall pay a business license application fee as follows:

New business application fee	\$25.00
Temporary Merchant	\$25.00
Home occupation application fee	\$45.00

All new and existing businesses shall be assessed a business license fee on the basis of proportionate cost for each year, or any portion thereof, in which business is conducted as follows:

Retail Sales (under 5,000 sq. ft. floor space)	\$ 50.00
Retail Sales (between 5,000 sq ft & 10,000 sq ft)	\$100.00
Retail Sales (over 10,000 sq. ft. floor space)	\$300.00
Professional services	\$ 50.00
General services	\$ 50.00
Food establishments	\$ 50.00
Home occupation	\$ 50.00
Limited Home occupation	\$ 50.00 (Ord 02-10)

5-1-6: LICENSE YEAR. The license year herein shall be the calendar year. (1989)

5-1-7: DATE FOR APPLICATIONS AND PAYMENT OF FEE. Applications for Business Licenses and all fees shall be due and payable on the 1st day of January of each year, or before commencing a new business, trade, service, or profession. (1989)

5-1-8: DOOR-TO-DOOR SOLICITATIONS. No solicitor, peddler, canvasser, hawker, itinerant merchant, transient vendor of merchandise, or door-to-door salesman shall go in or upon private residential property in the City for the purpose of soliciting orders for the sale of goods, wares, merchandise, or contractual rights, or for the purpose of selling, disposing of, peddling, or hawking any of the same, unless the same has complied with the regulation of Chapter 6 of this Ordinance. (Ord 02-27, Ord 02-32)

5-1-9: SUSPENSION, REVOCATION OR REFUSAL TO RENEW. The City Council may suspend, revoke, or refuse to issue a license for any of the following reasons:

- (A) Fraud or misrepresentation in its procurement.
- (B) Violation of this Ordinance or failure to comply with all of the provisions of this ordinance.
- (C) Failure to pay any license fee levied when due.
- (D) Failure to comply with the requirements imposed by the Syracuse City Zoning Ordinance, Title X.
- (E) Violation of any City Ordinance or State or Federal Statute concerning pornographic and harmful materials and performances at the licensed premises.

- (F) Conduct or acts of the licensee or his employees or any act permitted by them on the premises where such business is conducted tending to render the premises a public nuisance as defined in the revised ordinances of the City, or a menace to the health, peace, safety, or general welfare of the City.
- (G) A violation of City Ordinance or Federal or State Statute relating to the business or activity which is licensed and resulting from the conduct of such business or activity.
- (H) For any other good cause shown. (1989)

5-1-10: SUSPENSION, REVOCATION OR REFUSAL TO RENEW LICENSE - HEARING.

- (A) Hearing. Before the City Council shall suspend, revoke, or refuse to issue or renew any license as provided in this Chapter, it shall first afford the licensee an opportunity, in a Hearing, to show cause as to why the license should not be suspended or revoked.
- (B) Notice. The date, time, and place of the Hearing shall be fixed by the City Council and notice thereof shall be personally served on the licensee or mailed to the licensee at the address shown on his last application at least 5 working days prior to the date of the hearing. The City Council must take all possible steps to assure that the licensee gets actual notice. The notice shall indicate the purpose of the hearing and the action contemplated.
- (C) Hearing Procedure. At the hearing, the licensee or applicant shall have the right to appear personally or by counsel, to cross-examine witnesses appearing, and to produce evidence and witnesses on his behalf.
- (D) Notice of Action Taken. After such hearing and upon due deliberation, the City Council shall notify the licensee of its findings and determination. (1989)

5-1-11: EXEMPTIONS.

- (A) Nothing in this Chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States or of the State from payment to municipal corporations of such taxes as are prescribed in this Chapter.
- (B) The provisions of this Chapter shall not be construed as requiring the procuring of any license for any fair, festival, bazaar, entertainment, or enterprise given for the benefit of any church, school or amateur dramatic, literary society, or non-profit service organizations, or to prevent door to door selling by any of those non-profit activities or organizations.
- (C) Upon the written request of a majority of the members of the City Council filed with the City Recorder, any license provided for in this Chapter shall be issued free of charge to any person suffering from any physical or mental disability, or of an age that shall render him/her incapable of performing manual labor; to any indigent person dependant on his/her own efforts for support; or, to any number of persons working solely for the benefit of any worthy charity or for a worthy public enterprise.

(D) The provisions of this chapter shall not be construed as requiring the procuring of a license for selling, offering for sale, taking orders for, or soliciting the sale of any farm products actually produced, raised, or grown by the person so selling to wholesalers, processors, canneries, dairies, and the like other than the general public thru means of advertisement or public display of the product, nor shall it require the licensing of persons selling farm products for feed to livestock or animals.

Any person required to license a business claiming an exemption pursuant to this Chapter shall file a certified statement with the City Recorder stating the facts upon which exemption is claimed. The City Recorder shall, upon a proper showing contained in the verified statement, issue a license to a person claiming exemption under the provisions of this Section without payment to the City of the license tax required by this Chapter. (1989)

5-1-12: **RECIPROCAL LICENSE AGREEMENTS.** The City Council may enter into reciprocal license agreements with adjoining towns or cities for the forbearance of the collection of licenses, upon such terms and conditions as they deem advantageous to the City. (1989)

5-1-13: **DELINQUENT DATE AND PENALTY.** All license fees that are imposed by this Chapter, except the initial license fee for a new business, shall be delinquent after February 15 and a penalty of \$25.00 imposed. If fee and penalty is not paid by March 31, an additional \$25.00 fee shall be imposed. Delinquent fees shall become a part of the license fee levied by this Chapter. (Ord. 02-10)

5-1-14: **PENALTY.** Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor. Each day such violation is committed, or permitted to continue, shall constitute a separate offense and shall be punishable as such hereunder. (1989)

CHAPTER 2

ALCOHOLIC BEVERAGE REGULATIONS

- 5-2-1: Definitions
- 5-2-2: License to Sell Alcoholic Beverages at Retail
- 5-2-3: Retail License Privileges
- 5-2-4: Other Alcoholic Beverages and Liquor Sales
- 5-2-5: Alcoholic Beverages Must be Purchased from Licensed Brewer or Wholesaler
- 5-2-6: Application
- 5-2-7: Qualifications of Licensee
- 5-2-8: Board of Health
- 5-2-9: License Not Transferable
- 5-2-10: Fees
- 5-2-11: Restrictions
- 5-2-12: Unlawful for Minors to Obtain or Consume Alcoholic Beverages
- 5-2-13: Council May Refuse to Grant License
- 5-2-14: Council May Revoke License
- 5-2-15: Inspection

5-2-1: DEFINITIONS. The following words and phrases used in this Chapter shall have the following meaning unless a different meaning clearly appears in the context. All words used herein that are not defined in this Chapter 2, shall have the meaning as defined in Utah Code Ann. § 32A-1-105

ALCOHOLIC BEVERAGES means and includes "beer" and "liquor" as the terms are defined herein.

BEER means all products that contain 63/100 of 1% of alcohol by volume or 1/2 of 1% of alcohol by weight, but not more than 4% of alcohol by volume or 3.2% by weight and are obtained by fermentation, infusion or decoction of any malted grain. Beer may or may not contain hops or other vegetable products. Beer includes products referred to as malt liquor, malted beverages and malt coolers

LIQUOR means and includes alcohol or any alcoholic, spirituous, vinous, fermented, malt, or other liquid or combination of liquids, a part of which is spirituous, vinous, or fermented, and all other drinks or drinkable liquids that contain more than 1/2 of 1% of alcohol volume and is suitable to use for beverage purposes. Liquor does not include any beverage defined as a beer that has an alcohol content of less than 4% by volume.

RETAILER means any person or business engaged in the sale of alcoholic beverages to the consumer or to the public.

SELL or TO SELL, when used in any prohibition, shall be construed to include: to solicit or to receive an order for; to keep or expose for sale; to deliver for value or

gratuitously; to peddle; to possess with intent to sell; to traffic in, for any consideration, promised or obtained, directly or indirectly or under any pretext or by any means whatsoever, to procure or allow to be procured for any other person; and "sale", when used in any prohibition shall include every act of selling as above defined. (Ord-02-07)

5-2-2: LICENSE TO SELL ALCOHOLIC BEVERAGES AT RETAIL. It shall be unlawful for any person to engage in the business of the sale of alcoholic beverages at retail, in bottles, or other original containers, within the corporate limits of Syracuse City, without first having procured a license therefor from the City Council as hereinafter provided. No license shall be issued to any person or business permitting the sale of alcoholic beverages within 600 feet of any church, public or private school, public library, public playground, public building, or park. The 600 feet shall be measured in a straight line from the nearest public entrance of the proposed place of sale to the nearest property boundary of the church, public or private school, public library, public playground, public building, or park. A separate license shall be required for each place of sale and the license shall at all times be conspicuously displayed in the place to which it shall refer or for which it shall be issued. All licenses shall comply with the Alcoholic Beverages Control Act of Utah and the regulations of the Alcoholic Beverages Control Commission, and every license shall recite that it was granted subject to revocation as hereinafter provided. (Ord-02-07)

5-2-3: RETAIL LICENSE PRIVILEGES. Retail licenses issued hereunder shall carry the following privileges and be numbered numerically commencing from the number one. A license for retail sale of beer for off-premise consumption shall entitle the licensee to sell beer on the licensed premises in original containers no larger than two liters for consumption off the premises. (Ord 02-07)

- A. All alcoholic beverages shall be displayed or stored in the area of the outlet most distant from the public entrance to the outlet and shall not be placed where it cannot be viewed or otherwise be monitored by outlet personnel.
- B. Advertising for alcoholic beverages or the sale thereof shall be confined to the inside of the outlet and shall only be placed adjacent to or in connection with the storage or display of the same. (Ord 05-10)

5-2-4: OTHER ALCOHOLIC BEVERAGES AND LIQUOR SALES. Syracuse City shall not consent to the grant of the following licenses within the City:

- A. Licenses for the sale of alcoholic beverages for consumption on the licensed premises.
- B. Package agencies under Utah Code Ann. §32A-3-102.
- C. Restaurant liquor licenses under Utah Code Ann. §32A-4-102.
- D. Airport lounge liquor licenses under Utah Code Ann. §32A-4-202.
- E. Private club liquor licenses under Utah Code Ann. §32A-5-102.
- F. Special use permits under Utah Code Ann. §32A-6-102.
- G. Public service permits under Utah Code Ann. §32A-6-201.
- H. Industrial or manufacturing use permits under Utah Code Ann. §32A-6-301.
- I. Single event permits under Utah Code Ann. §32A-7-102.
- J. Alcoholic beverage manufacturing licenses under Utah Code Ann. §32A-8-102.

- K. Warehousing licenses under Utah Code Ann. §32A-9-102.
- L. Alcoholic beverage wholesaling licenses under Utah Code Ann. §32A-1-102. (Ord-02-07)

5-2-5: ALCOHOLIC BEVERAGES MUST BE PURCHASED FROM LICENSED BREWER OR WHOLESALER.

- A. It shall be unlawful for any licensee to purchase, acquire, or possess for the purpose of sale, or to sell any alcoholic beverage except that which he shall have lawfully purchased from a brewer or wholesaler licensed under the requirements of the Utah Alcoholic Beverages Act, Utah Code Ann. §32A-1-101 et seq. Violation of this subsection is a Class 6 misdemeanor.
- B. All purchases of alcoholic beverages made by any retailer from a licensed wholesaler shall be from that wholesaler who is authorized by the Alcoholic Beverages Commission to sell alcoholic beverages in the geographical area in which the retailer is located, unless an alternate wholesaler is authorized by the commission to sell to the retailer as provided in Utah Code Ann. §32A-11-101 et seq. Violation of this subsection is a Class 8 misdemeanor. (Ord-02-07)

5-2-6: APPLICATION. All applications for licenses authorized by this Chapter shall be verified and filed with the City Council and shall state the applicant's name in full, that he has complied with all necessary requirements and possesses the qualifications specified in the Utah Alcoholic Beverage Act, and if the applicant is a partnership, the names and addresses of all partners, and if a corporation, the names and addresses of all officers and directors. The application must be subscribed by the applicant who must state under oath that the facts stated therein are true. Applicants must furnish such other information establishing that the licensee bears a good moral character and is a fit and proper person to be granted a license, as and when the city Council shall require.

The applicant for such license, together with such information as is required by the City to be attached thereto, shall be referred to the Chief of Police for inspection and report. The Chief of Police shall, within five business days after receiving such application make report to the city Council of the following:

- A. the general reputation and character of the persons who habitually frequent the place;
- B. the nature and kind of business conducted at such place by the applicant or by any other person, or by the applicant at any other place;
- C. whether intoxicating liquors are or have been served or permitted to be consumed in said place, or by said applicant at any other place;
- D. whether said business is, or has been conducted in a lawful, quiet and orderly manner;
- E. the nature and kind of entertainment, if any, at said place;
- F. whether gambling or dancing is or has been permitted upon the premises or by the applicant at any other place; and

- G. the proximity of the premises to any church, public or private school, public library, public playground, public building, or park. The Chief of Police shall add to his report his recommendation as to granting or denying the application.

Upon receipt of the Chief of Police's report, the City Council shall act upon the application as it shall deem necessary to protect the public health, safety, welfare and morals of the City. (Ord-02-07)

5-2-7: QUALIFICATIONS OF LICENSEE. No license shall be granted to any person or business to sell alcoholic beverages at retail unless he shall be of good moral character and is over the age of twenty-one years. No license shall be issued to anyone who has been convicted of, pled guilty to, or failed to contest any felony or the violation of any law or ordinance relating to intoxication liquors, including but not limited to:

- A. driving under the influence to alcohol,
- B. alcohol-related reckless driving,
- C. keeping a gambling or disorderly house, or
- D. any other law involving moral turpitude. No license shall be issued to any partnership if any partner lacks any of the qualifications set forth in this Section. No license shall be issued to any corporation in which any director or officer lacks any such qualifications. (Ord-02-07)

5-2-8: BOARD OF HEALTH. No license shall be issued until the applicant therefore shall have procured, when necessary under City or County ordinances, from the City or County Board of Health, a permit for the sale of alcoholic beverages. The permit shall name the premises to be licensed and shall state that they are in sanitary condition and that the equipment used in the storage or distribution of sale of the alcoholic beverages comply with all health regulations of the City, of Davis County and of the State of Utah. (Ord-02-07)

5-2-9: LICENSE NOT TRANSFERABLE. Any license issued under the provisions of this Chapter shall not be transferable. (Ord-02-07)

5-2-10: FEES. The fees stated in this section shall accompany applications provided for in this Chapter. The fees shall be deposited in the City Treasury if the license is granted, and returned to the applicant if denied.

All licenses provided for herein shall be issued for a term of one year; except that all licenses issued on or subsequent to January 1st of any year shall expire at midnight on the 31st day of December of that year, and the license fees required for the interim license shall be the full fee herein provided for a yearly license.

All fees set forth in this section will be established and may be changed by resolution of the City Council. (Ord-02-07)

5-2-11: RESTRICTIONS.

- A. It shall be unlawful to sell alcoholic beverages to any person under the age of twenty-one (21) years or to any person who is intoxicated or under the influence of any intoxicating beverage.

- B. It shall be unlawful to advertise the sale of alcoholic beverages except under such regulations as are made by the Alcoholic Beverage Control Commission of Utah.
- C. It shall be unlawful to sell alcoholic beverages between the hours of 1:00 a.m. and 6:00 a.m.
- D. It shall be unlawful for any person to consume alcoholic beverages in any public park, public school, public playground or public building or at any activity or event sponsored by the City or to sell alcoholic beverages at any activity or event sponsored by the City. (Ord-02-07)

5-2-12: UNLAWFUL FOR MINORS TO OBTAIN OR CONSUME ALCOHOLIC BEVERAGES. It shall be unlawful for any person under age of 21 to purchase or obtain alcoholic beverages from a retailer or from licensed premises or consume alcoholic beverages on or about any licensed premises, or to enter upon, remain in or loiter about any licensed premises where alcoholic beverages is sold. (Ord. 02-07)

5-2-13: COUNCIL MAY REFUSE TO GRANT LICENSE. The City Council may, at its discretion, when in its opinion it is necessary to protect the public health, peace, safety, welfare and morals of the City, refuse to grant any license applied for.

Any applicant whose application for a license has been denied may have a hearing before the City Council regarding its decision to deny the license. No hearing will be held unless the applicant applies for the hearing within 10 days of the denial. At the hearing, the applicant shall have an opportunity to present evidence and call witnesses in support of the grant of a license. (Ord-02-07)

5-2-14: COUNCIL MAY REVOKE LICENSE. The City Council may, after a hearing, at its discretion, when in its opinion it is necessary to protect the public health, peace, safety, welfare and morals of the City, revoke any licenses granted under this Chapter. Notice of the hearing shall be given to the licensee at least 5 business days prior to the hearing, and the licensee shall have an opportunity to present evidence and call witnesses at the hearing.

The council shall revoke any license issued if the licensee shall cease to possess all of the qualifications required by Section 5-2-7 or if he fails to comply with the provisions of these Ordinances or with the rules, regulations and orders of the City-County health Department relating to health matters. Upon revocation of a license by the Council, the fee paid by the licensee to the City shall be forfeited to the City. (Ord-02-07)

5-2-15: INSPECTION. All licensed premises shall be subject to inspection by any officer, agent, or peace officer of the City, or the Alcoholic Control Commission of the State Board of Health, and every licensee shall, at the request of the City-County Board of Health, furnish to it samples of alcoholic beverages which he shall have for sale. (Ord-02-07)

CHAPTER 3

CABLE TELEVISION SYSTEMS

- 5-3-1: **Definitions**
- 5-3-2: **Nature of Grant of Authority**
- 5-3-3: **Non-Exclusive Grant**
- 5-3-4: **Term of Franchise**
- 5-3-5: **Application - Selection Process - Renewal**
- 5-3-6: **Application Fee**
- 5-3-7: **Franchise Payments**
- 5-3-8: **Conditions of Street Occupancy**
- 5-3-9: **Safety Requirements**
- 5-3-10: **System Construction and Extension]**
- 5-3-11: **Operational and Technical Performance Standards; Force Majeure**
- 5-3-12: **Rates**
- 5-3-13: **Indemnification of City and Insurance**
- 5-3-14: **Procedures**
- 5-3-15: **Procedures upon Termination**
- 5-3-16: **Transfers and Assignments**
- 5-3-17: **Miscellaneous Provisions**
- 5-3-18: **Compliance with Applicable Laws and Ordinances**
- 5-3-19: **Separability**

5-3-1: DEFINITIONS. When used in this Ordinance, unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given. Except where specifically conflicting with the definitions recited below, this Chapter hereby incorporates by reference the CATV definitions and the Federal Communications Commission rules and regulations adopted from time to time, including but not limited to those set forth in Title 47, Code of Federal Regulations, Section 76.5, Definitions. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, and words in the singular number include the plural.

BASIC CATV SERVICE. The distribution of broadcast television signals by the Grantee.

BASIC SUBSCRIBER REVENUES. All remuneration received directly by the Company from subscribers in payment for regularly furnished basic CATV service, but shall not include any taxes on services furnished by the Grantee imposed on any subscriber or user by any government, governmental unit, political subdivision, agency, or instrumentality, and collected by the Grantee.

CABLE TELEVISION SYSTEM. A system composed of, without limitation, antenna, cables, wires, lines, towers, wave guides, or any other conductors, converters, equipment, or facilities, designed, constructed, or wired for the purpose of producing, receiving, amplifying, and distributing by coaxial cable radio, television, or other electronic or electrical signals to and from persons, subscribers and locations in the franchise area.

CATV. A cable television system.

CITY. The City of Syracuse, Utah

COUNCIL. The governing body of the City

FRANCHISE. Includes any authorization granted hereunder in terms of a franchise, privilege, permit, license, or otherwise to construct, operate and maintain a CATV system in the City.

FRANCHISE AREA. That area within the corporate limits of the City as now or hereafter constituted.

GRANTEE. The person, firm or corporation to whom or which a franchise as hereinabove defined is granted by the Council under this Ordinance and the lawful successor, transferee, or assignee of said person.

GROSS REVENUES. All revenue derived directly or indirectly by the Grantee, its affiliates, subsidiaries, parents or any person in which the Grantee has a financial interest from or in connection with the operation of its CATV service within the corporate limits of the City as such corporate limits now exist or may be established hereafter.

PERSON. Any natural person, company, or entity of any kind.

PROPERTY OF GRANTEE. All property owned, installed, or used by the Grantee in the conduct of a CATV business in the City.

STREET. The surface of and the space above and below any public street, way, place, right of way, road, highway, freeway, bridge, tunnel, lane, path, bike-path, alley, court, sidewalk, parkway, drive, communications, or utility easement, by whatever name called, now or hereafter existing as such within the franchise area.

SUBSCRIBER. Any person or entity receiving and paying for basic CATV service. (1981)

5-3-2: NATURE OF GRANT OF AUTHORITY. Any franchise granted pursuant to the provisions of this Chapter to engage in the business of operating and providing a CATV system in the City for the interception, sale, transmission, and distribution of television programs and other audio-visual electrical signals and rights to transmit the same to the inhabitants of the City on the terms and conditions set forth in this Ordinance, and for the purpose to erect, install, construct, repair, replace, reconstruct, maintain, and retain in, on, over, under, upon, across and along any street or streets laid out or dedicated and all extensions thereof and additions thereto in the franchise area, such poles, wires, cable, conductors, ducts, conduit, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other property as may be necessary and appurtenant to the CATV system; and in addition, so to use, operate, and provide similar facilities or properties rented or leased from other persons, including, but not limited to, any public utility or other grantee franchised or permitted to do business in the City; provided, however that all construction, installation, maintenance, and operation shall comply with the requirements of this Ordinance. The granting of a franchise by the City shall constitute an offer and the receiving and acceptance of such franchise by the grantee shall constitute an acceptance and the relationship between the City and grantee shall be contractual in nature. (1981)

5-3-3: NON-EXCLUSIVE GRANT. Any franchise granted by the City as provided in this Ordinance and any right to use and occupy public streets for the purposes set forth herein, shall not be exclusive, and other franchises may be granted by the City to suitable and qualified applicants. (1981)

5-3-4: TERM OF FRANCHISE. The term of any CATV franchise granted by the City pursuant to this Ordinance shall be for a period of 15 years from and after the grant and acceptance date of the franchise to be awarded. At the option of the City and upon applications of the Grantee, a franchise may be renewed for such a period or periods as the City may determine. (1981)

5-3-5: APPLICATION - SELECTION PROCESS - RENEWAL.

(A) Application. No license franchise or renewal thereof shall be issued except upon written application to the City on forms prescribed by the City Council. Such forms shall contain such information as the City Council may prescribe as to the following:

- (1) Citizenship and character of the applicant.
- (2) The financial, technical, and other qualifications of the applicant to operate the system.
- (3) Complete information as to its principals and ultimate beneficial owners, including, in the case of corporations, all stockholders, both nominal and beneficial, owning 1% or more of the issued and outstanding stock, and in the case of incorporated associations, all members and ultimate beneficial owners however designated.
- (4) Description in detail of the equipment and facilities proposed to be constructed, installed and maintained
- (5) A statement or schedule setting forth the number of channels and all of the television or radio stations proposed to be received, transmitted, conducted, relayed or otherwise conveyed over its system.
- (6) Such other information as the City Council may deem appropriate or necessary.

Such application shall be signed by the applicant or a duly authorized representative, evidence of whose authority shall be submitted with the application.

(B) Publication. The City Council, after the last date fixed for the receipt of the application, may, but shall not be required to, cause to be published in a newspaper of general circulation within the City, a notice of a public hearing, giving the time, date, and place of such hearing, and listing the names of the applicants and inviting public examination of the applicants and qualifications of said applicants.

(C) Public Hearing. Any public hearing held pursuant to this Section shall be conducted in accordance with the standards of due process in fairness to applicants and the public and in accordance with the FCC rules and regulations

and orders and policies pertinent to such hearing. Each applicant shall be notified of the time and location of his application to be considered.

(D) Renewal. At the option of the City and upon application of the grantee, any franchise granted under this Chapter may be renewable in the same manner as required herein for obtaining an original franchise, except those provisions which are by their terms expressly inapplicable. The City Council may, at its option, waive compliance with any or all of the requirements of this Section. (1981)

5-3-6: APPLICATION FEE. Each application shall be accompanied by a filing fee in the amount of \$100.00, which shall be payable to the City Recorder. (1981)

5-3-7: FRANCHISE PAYMENTS. Any Grantee hereunder shall pay the City, on or before each March 31st, a franchise fee of 3% of basic subscriber revenues received for cable television operation in the City for the preceding calendar year, and no other fee, charge or consideration. Sales tax or other taxes levied on a per subscription basis and collected by the Grantee shall be deducted from the gross annual basic subscribed revenues in computing any sums due the City. The Grantee shall provide an annual summary report showing gross annual basic subscriber revenues received during the preceding year. (1981)

5-3-8: CONDITIONS OF STREET OCCUPANCY.

(A) No construction on streets, alleys, public grounds, or public places within the City shall be commenced without prior approval of the City pursuant to applications submitted by Grantee therefor, and at least 10 days prior notice given to the City thereof. Grantee shall not open or disturb the surface of any street, sidewalk, driveway, or public place for any purpose without first having obtained a permit to do so in a manner provided by City Ordinance.

(B) All transmission and distribution structures, poles, lines, and equipment installed or erected by Grantee within the franchise area shall be so located as to cause minimum interference with the proper use of streets and with the rights and reasonable convenience of property owners who adjoin any of said streets.

(C) In case of disturbance of any street or paved area, the Grantee shall, at its expense and in a manner approved by the City, and under City supervision, replace and restore such street or paved area in as good condition as theretofore.

(D) The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from the street or other public place, any property of the Grantee when lawfully required by the City by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by the City, but the Grantee shall in all cases have the right of abandonment of its property, subject to City Ordinances.

(E) The Grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings; provided:

- (1) The expense of such temporary raising or lowering of wires is paid by said person, including, if required by the Grantee, making such payment in advance; and
 - (2) The Grantee is given not less than three business days advance notice to arrange for such temporary wire changes.
- (F) The Grantee shall have the authority to trim trees overhanging any streets in the franchise area so as to prevent branches from coming in contact with Grantee's wires and cables, except that at the option of the City, such trimming may be done by it or under its supervision and direction at Grantee's expense.
- (G) Subject to any applicable State or Federal regulations or tariffs, the City shall have the right to make additional use, for any public purpose, of any poles or conduits controlled or maintained exclusively by or for the Grantee in any street, provided:
- (1) Such use by the City does not interfere with the use by the Grantee; and
 - (2) The City holds the Grantee harmless against and from all claims, demands, causes of actions, suits, actions, proceedings, damages, costs or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits. (1981)

5-3-9: SAFETY REQUIREMENTS.

- (A) A Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- (B) All structures and all lines, equipment and connections in, over, under and upon all streets of the franchise area shall be kept and maintained in a safe and suitable condition and in good order and repair. (1981)

5-3-10: SYSTEM CONSTRUCTION AND EXTENSION.

- (A) Any Grantee authorized hereunder may extend a CATV system within the franchise area to the extent that such extension is or may become technically and economically feasible.
- (B) Whenever such Grantee shall have received written requests for service from at least 15 subscribers within 400 cable meters (1300 cable feet) of its aerial trunk cable, or from at least 25 subscribers within 400 cable meters (1300 cable feet) of its underground trunk cable, it shall extend its system to such subscribers solely for the usual connection and service fees for all subscribers, provided that such extension is technically and economically feasible. The 400 meters shall be measured in extension length of Grantee's cable required for service located within the public way or easement and shall not include length of necessary drop to the subscriber's home or premises.
- (C) No person in any Grantee's service area shall be arbitrarily refused service, but in recognition of the capital costs involved in unusual circumstances, including, without limitation, instances when the distance from distribution cable to connection of service to subscribers is more than 45 meters (150 cable feet) or

when a subscriber density exists less than the density specified hereinabove, service may be made available on the basis of costs of materials, labor, and easements, in order to prevent inequitable burdens on cable subscribers in more densely populated areas.

- (D) For all residential structures hereafter erected which are to be served by underground utilities, the developer of the subdivision or development may acquire CATV service for this development under the following conditions, but otherwise a Grantee shall not be obligated to construct CATV system in such new development: Developer shall perform all trenching and backfilling necessary for the provisions of cable television service, including furnishing of any imported backfill material required, and will furnish and install for any Grantee any necessary distribution conduit and substructures, including pedestals, required in accordance with any Grantee's plans and specifications. Developer may enter into a written agreement with any Grantee whereby such costs may be reimbursed to the developer by Grantee at the rate of 50% of basic subscriber revenues generated from CATV service supplied within the development over a period not to exceed 3 years.

In addition to providing plans and specifications to the developer, the Grantee shall inspect the facilities required hereunder, and certify to the City prior to final approval of the subdivision or development that the facilities required herein are properly installed. The City shall have the right to review and require its approval of the maps and specifications provided by the Grantee. The cost of that portion of an extension to a subdivision or development from the Grantee's existing facilities in excess of 60 meters (200 feet) outside the boundaries of the subdivision or development shall be borne by the developer. Facilities installed hereunder shall be owned, operated, and maintained by Grantee. (1981)

5-3-11: OPERATIONAL AND TECHNICAL PERFORMANCE STANDARDS; FORCE MAJEURE.

- (A) Number of Channels. The Grantee's cable distribution system shall be capable of carrying at least 16 television channels.,
- (B) Channel Uses. In case of an emergency or disaster, Grantee shall, upon request of the City Council, make available its facilities to the City for emergency use during the emergency or disaster.
- (C) Operation and Maintenance of System. A Grantee shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the system.
- (D) Office in the City. A Grantee shall maintain a local office, either within the City or not more than 15 miles therefrom, where subscribers may call in or telephone during regular business hours without incurring added message or toll charges, so that complaints and requests for repairs or adjustments may be promptly reported.
- (E) Signal Quality Requirement. A Grantee shall:
- (1) Produce a picture, whether in black and white or in color, that is undistorted, free from ghost images and accompanied with proper sound on typical

standard production T.V. sets in good repair and as good as the state of the art allows.

- (2) Transmit signals of adequate strength to produce good pictures with good sound at all outlets, without causing cross-modulation in the cables or interfering with other electrical or electronic systems.
 - (3) Limit failures to a minimal by locating and correcting malfunctions promptly.
 - (4) Demonstrate by instruments and otherwise to subscribers that a signal of adequate strength and quality is being delivered.
- (F) Two-Way Capability. A Grantee shall design and construct the system in such a manner so as to provide return video signals as production technology allows and as the demand requires.
- (G) Compliance with Codes. Methods of construction, installation and maintenance of any cable television system constructed within the City shall comply with the latest editions of the following codes and engineering standards:
- National Electrical Safety Code
 - National Electrical Code
 - National Bureau of Standards Handbook
 - National Cable Television Association (NCTA) - Engineering Standards:
 - J - 001B-670 - Subscriber Visual Carrier Level
 - J - 002-02267 - CATV Amplifier Distortion Characteristics
 - J - 005-06669 - Noise Level in Cable Systems
- (H) System Performance. The system shall be capable of delivering all NTSC color and monochrome signals to standard EIA television receivers, including monochrome, color and FM receivers. The signal shall be distributed to individual subscribers' television sets without noticeable degradation of color fidelity, picture information, audio distortion, or cross channel interference measured at the connection to the TV set.
- (I) Construction of Towers. Any towers constructed for use in the City relating to cable television systems shall comply with the standards contained in Structural Standards for Steel Antenna Towers and Antenna Supporting Structures, EIA Standards RS-222-A, as published by the Engineering Department of Electronic Industries Association. The installation and physical dimensions of any tower constructed for use by cable television systems should comply with all appropriate Federal Aviation Agency regulations, including, but not limited to, "Objectives Effecting Navigable Air Space, 14 CFR 77.1 et seq February 1965", and any amendments thereto.
- (J) Antenna Structures. Any antenna structures used in cable television systems within the City should comply with construction marking and lighting of antenna structure, 47 CFR 17.1 et seq September, 1967, and any amendments thereto.
- (K) Compliance With OSHA. All working facilities and conditions used during construction, installation, and maintenance of any cable television system shall comply with the standards of the Occupational Safety and Health Administration.

- (L) Compliance with FCC. Any Grantee shall comply fully with the rules and standards for cable television operation and maintenance adopted by the Federal Communications Commission.
- (M) Compliance With City Ordinances. A Grantee shall comply fully with rules and regulations contained and provided within this Ordinance and all other City Ordinances which apply to the operation of a cable system.
- (N) Force Majeure. A Grantee shall have no obligation to construct or extend the system, nor to provide, repair, replace, maintain or operate CATV service, for any cause beyond Grantee's control, including, without limitation, acts of God, fire, flood, earthquakes, hurricane, unavoidable casualty, extraordinary delays in transportation, strikes, lockouts, picketing, boycotts, embargoes, government orders or other requirements, acts of civil or military authorities, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, energy shortages, acts or omissions of carriers, or activities or other emergency conditions, including weather conditions, incompatible with good quality workmanship. (1981)

5-3-12: RATES. A Grantee shall maintain on file with the City Recorder a schedule setting forth all rates and charges to be made to subscribers for basic CATV service, including connection and service charges. Notice of changes in rates and charges shall be filed with the City Recorder at least 30 days in advance of the effective date thereof. (1981)

5-3-13: INDEMNIFICATION OF CITY AND INSURANCE.

- (A) Any Grantee hereunder shall at all times protect and hold the City harmless from all claims, actions, suits, liability, loss, expense or damages of every kind and description, including investigation costs, court costs, and reasonable attorney's fees, which may accrue to or be suffered or claimed by any person or persons arising out of the negligence of a Grantee in the ownership, construction, repair, replacement, maintenance and operation of its cable television system and by reason of any license, copyright, property right or patent of any article or system used in the construction or use of said system, provided the City gives the Grantee prompt notice of any such claims, actions, and suits, without limitation, in writing.
- (B) Prior to the commencement of construction, a Grantee shall submit to the City Recorder for approval satisfactory evidence in the form of certificates of insurance or equivalent, including, but not limited to, the following coverage areas:
 - (1) Workmen's compensation and employee liability coverage on all employees of a Grantee as required by statute.
 - (2) Comprehensive general liability coverage, including the blanket contractual liability option and a broad form damage endorsement covering, but not limited to, explosion, collapse or other unsound activity.
 - (3) Comprehensive automobile liability coverage. The minimum limits of coverage on each of the above described coverages shall in no event be less than \$500,000.

- (C) All insurance policies required by this Ordinance shall be so endorsed as to make the City a named insured under the policy. Further, each policy shall be so endorsed as to require the insurer or carrier to give not less than 60 days notice of cancellation or renewal to the City. Such policy shall further carry an endorsement providing a waiver of any rights of subrogation in favor of the City.
- (D) All such insurance may contain reasonable deductible provisions not to exceed \$1,000 for any type of coverage.
- (E) The City may require that any and all investigation of claims made by any person against the City arising out of any use or misuse of privileges granted to a Grantee hereunder shall be made by, or at the expense of the Grantee or its insurer. The Grantee may bring its obligations to carry any insurance required hereby within the coverage of any so-called blanket policy or policies of insurance now or hereafter carried, by appropriate amendment, endorsement or otherwise, provided, however, the interest of the City shall be as fully protected thereby as if the Grantee had obtained individual policies of insurance. (1981)

5-3-14: PROCEDURES.

- (A) Any inquiry, proceeding, investigation or other action to be taken or proposed to be taken by the City in regard to the operations of a Grantee's cable television system, shall be taken only after 15 days written notice to the Grantee of such action or proposed action, and the Grantee has been given an opportunity to respond in writing and at any hearing which may be specified by the City.
- (B) The notice required by this Section shall state clearly the action or proposed action to be taken, the time provided for response and the person or persons in authority to whom such response should be addressed, and such other procedures as may be specified by the City. If a hearing is to be held, the notice shall give the date and the time of such hearing, whether public participation will be allowed and the procedures by which such participation may be obtained. The Grantee shall be a necessary party to any hearing conducted in regard to its operation. (1981)

5-3-15: PROCEDURE UPON TERMINATION. Upon termination of a franchise, if a Grantee shall not have acquired an extension renewal thereof and accepted the same, it may have and it is hereby granted, the right to enter upon the streets or other property of the City, for the purpose of removing therefrom any or all of its property or otherwise. In so removing said property, the grantee shall refill, at its expense, any excavation that it shall make and shall leave such streets in as good condition as that prevailing prior to Grantee's removal of its property. Prior to such removal, Grantee shall comply with the provisions of Section 5-3-8 hereof. (1981)

5-3-16: TRANSFERS AND ASSIGNMENTS.

- (A) Any Grantee hereunder shall not sell or transfer or make, execute or enter into any deed, deed of trust, mortgage, sales contract, or any loan, lease, pledge, sale, gift, or similar agreement concerning any of the facilities and property, real or personal, of the CATV system without prior approval of the City Council. This Section shall not apply to the disposition of worn out or obsolete facilities or personal property in the normal course of carrying on the CATV business.

- (B) A franchise granted under this Ordinance shall not be assigned or transferred, either in whole or in part, or leased, sublet, or mortgaged in any manner, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, either by act of the company or by operation of law without the consent of the City Council.
- (C) Such Council consent shall not be unreasonably withheld and neither this Section nor other Sections of this Ordinance shall preclude the mortgaging, hypothecating, or assigning of rights in the system, or the pledge of stock by the Grantee for the purpose of financing.
- (D) In the event of such transfer, sale, pledge, or other encumbrance of the CATV System, or any part thereof, copies of all documents connected therewith shall be filed in the office of the City Recorder, and no such transfer, sale, pledge, or other encumbrance shall be effective until such shall have been so filed. (1981)

5-3-17: MISCELLANEOUS PROVISIONS.

- (A) When not otherwise prescribed herein, all matters herein required to be filed with the City shall be filed with the City Recorder.
- (B) A Grantee shall provide, without charge, one outlet of basic CATV service to each governmental office building, fire station, police station, and public school building that is passed by its cable. The distribution of the cable facility inside such buildings and the extent thereof shall be at the option, duty, and expense of the building owner. (1981)

5-3-18: COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES. A Grantee shall at all times during the life of this franchise be subject to all lawful exercise of the police power by the City. The City reserves the right to adopt from time to time, in addition to the provisions herein contained, such Ordinances as may be necessary to the exercise of police power, which Ordinances and regulations shall be reasonable and consistent with the laws of the state or other local or federal laws or regulations. (1981)

5-3-19. SEPARABILITY. If any part of this Ordinance is for any reason held invalid by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions. The invalidity of any portion of this Ordinance shall not abate, reduce, or otherwise affect any consideration or other obligation required of a Grantee. All Ordinances and parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed. (1981)

CHAPTER 4

SEXUALLY ORIENTED BUSINESSES

5-4-1	Title for Citation
5-4-2	Purpose and Findings
5-4-3	Application of Provisions
5-4-4	Definitions
5-4-5	Obscenity – Statutory Provisions
5-4-6	Location and Zoning Restrictions
5-4-7	Business License Required
5-4-8	Exemptions form license Requirements
5-4-9	Business Categories – Number of Licenses
5-4-10	Employee Licenses
5-4-11	License – Application – Disclosure Required
5-4-12	License – Fees
5-4-13	License – Premise Location and Name
5-4-14	Issuance of License
5-4-15	License – Term
5-4-16	License – Notice of Change of Information
5-4-17	License – Transfer Limitations
5-4-18	License – Display
5-4-19	License – Statement in Advertisements
5-4-20	General Regulations
5-4-21	Outcall Services – Operation Requirements
5-4-22	Design of Premises
5-4-23	Nude Entertainment Business – Design of Premises
5-4-24	Nude Entertainment Business – Location Restriction
5-4-25	Nude Dancing Agencies
5-4-26	Performers – Prohibited Activities
5-4-27	Patrons – Prohibited Activities
5-4-28	Nudity – Defenses to Prosecution
5-4-29	Hours of Operation
5-4-30	Inspection of Premises
5-4-31	Existing Businesses – Compliance Time Limits
5-4-32	Violation – Injunction When
5-4-33	Violation – License Suspension or Revocation
5-4-34	Effect of License Revocation
5-4-35	Appeal Procedures
5-4-36	Violation Penalty
5-4-37	Severability
5-4-38	

5-4-1: **TITLE OF CITATION.** The ordinance codified in this chapter shall be known and may be referred to as the "Sexually Oriented Business and Employee Licensing Ordinance. (Ord. 05-13)

5-4-2: **PURPOSE AND FINDINGS**

(A) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations applicable thereto. The provisions of this ordinance 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 ordinance 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 this ordinance to condone or legitimize the distribution of obscene material. It is a purpose hereof to protect the citizenry from the detrimental secondary effects caused by sexually oriented businesses.

- (B) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the City Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters*, 426 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to Phoenix, Arizona, Minneapolis, Minnesota; Austin, Texas; Indianapolis, Indiana; Amarillo, Texas; Kansas City, Missouri; Rochester, New York; and a report from the American Planning Association Report 495/496 Planning Advisory Service, and also the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council finds:
- (1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities. Thus, the City desires to make the owners of these establishments responsible for the activities that occur on their premises.
 - (2) Certain employees of sexually oriented businesses defined in this ordinance as adult theatres and cabarets engage in higher incidence of certain types of illicit behavior than employees of other establishments.
 - (3) Sexual acts, including masturbation, oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.
 - (4) Offering and providing such space encourages such activities, which creates unhealthy conditions.
 - (5) Persons frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
 - (6) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), chlamydia, trichomoniasis, genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
 - (7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States – 600 in 1982; 2,200 in 1983; 4,600 in 1984; 8,555 in 1985; 253,448 in 1992; and 621,329 in 1997; and 902,223 as of December 2003.
 - (8) As of December 2003, there are 2,176 reported cases of AIDS in the State of Utah.

- (9) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one 351,852 cases reported to the Center for Disease Control in 2002.
- (10) Since 1981 and to present, there have been an increasing cumulative number of persons testing positive for the HIV antibody in the State of Utah.
- (11) In 2003, the primary and secondary syphilis cases reported to the Center for Disease Control increased to 7,177 from 6,862 in 2002, an increase of 4.6 %.
- (12) The Center for Disease Control estimates that 7.4 million new cases of trichomoniasis occur in men and women each year in the United States.
- (13) The office of the surgeon general of the United States, in a report dated October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
- (14) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are primarily transmitted by sexually acts.
- (15) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
- (16) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.
- (17) The findings noted in Paragraphs (a) through (o) raise substantial governmental concerns.
- (18) Sexually oriented businesses have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.
- (19) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health safety and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, falls in possession and control of the premises and activities occurring therein.
- (20) Prohibiting doors or similar partitions on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theatres.

- (21) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
- (22) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.
- (23) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct, which this ordinance is designed to prevent or who are likely to be witnesses to such activity.
- (24) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.
- (25) The barring, of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.
- (26) The general welfare, health, morals and safety of the citizens of the City will be promoted by the enactment of this ordinance. (Ord. 05-13)

5-4-3: APPLICATION OF PROVISIONS. This chapter imposes regulatory standards and license requirements on certain business activities, which are characterized as sexually oriented businesses, and certain employees of those businesses characterized as sexually oriented business employees. Except where the context or specific provisions require, this chapter does not supersede or nullify any other related ordinances. The chapter shall not apply to any business premise licensed or required to be licensed by the State of Utah or the City for the sale or consumption of alcohol. (Ord. 05-13)

5-4-4: DEFINITIONS. For the purpose of this chapter, the following words shall have the following meanings:

- (A) ADULT MEDIA means magazines, books, videotapes, movies, slides, cd-roms, or other devices used to record computer images, or other media that are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities.
- (B) ADULT MEDIA STORE means a commercial establishment that rents and / or sells media, and that meets any of the following three tests:
 - (1) 15 percent or more of the gross public floor area is devoted to adult media.
 - (2) 15 percent or more of the stock-in-trade consists of adult media.
 - (3) Which, as one of its principal purposes, offers for sale or rental, for any form of consideration, any one or more of the following: Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures,

video cassettes or video reproductions, slides or other visual representations, the central theme of which depicts or describes "specified sexual activities" or "specified anatomical areas"; or instruments, devices or paraphernalia which are designated for use in connection with "specified sexual activities", except for legitimate medically recognized contraceptives.

- (C) ADULT BUSINESS an inclusive term used to describe collectively: an adult motion picture theater, adult media store, lingerie modeling studio, sexual oriented massage studio, sex shop, adult cabaret, adult video arcade booths, bathhouse, or adult video store.
- (D) ADULT MOTION PICTURE THEATER means an establishment emphasizing or predominantly showing sexually oriented movies which:
- (1) Excludes minors from the showing of two consecutive exhibitions; repeated showings of any single presentation shall not be considered a consecutive exhibition; or
 - (2) As its principal business, shows, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions which are primarily characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".
- (E) ADULT LIVE ENTERTAINMENT OR CABARET means a theater, concert hall, auditorium or similar commercial establishment which:
- (1) Excludes minors from the showing of two consecutive exhibitions; repeated performance of the same presentation shall not be considered a consecutive exhibition; or
 - (2) As its principal business, features persons who appear in live performances or dancers in a state of nudity or which are characterized by the exposure of specified anatomical areas or by specified sexual activities
- (F) BUSINESS LICENSE AUTHORITY means the City's business license coordinator or designee.
- (G) ESTABLISHMENT any business regulated by this Chapter.
- (H) EMPLOY means hiring an individual to work for pecuniary compensation in any other form of compensation, whether such person is hired on the payroll of the employer, as an independent contractor, as an agent, or in any other form of employment relationship.
- (I) ESCORT means any person who, for pecuniary compensation, dates, socializes, visits, consorts with or accompanies or offers to date, consort, socialize, visit or accompany another or others about social affairs, entertainment or places of amusement, or within any place of public or private resort or any business or commercial establishment or any private quarters. Escort shall not be construed to include persons who provide business or personal services such as licensed private nurses, aides for the elderly or handicapped, social secretaries or similar service personnel whose relationship with their patron is characterized by a bona fide contractual relationship having a duration of more than 12 hours and who provide a service not principally characterized as dating or socializing. Escort

shall also not be construed to include persons providing services such as singing telegrams, birthday greetings or similar activities characterized by appearances in a public place, contracted for by a party other than the person for whom the service is being performed and of a duration not longer than one hour.

- (J) ESCORT SERVICES means an individual or entity that, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce patrons to escorts.
- (K) ESCORT SERVICE RUNNER means any third person, not an escort, who, for pecuniary compensation, acts in the capacity of an agent or broker for an escort service, escort or patron by contracting or meeting with escort services, escorts or patrons at any location within the City, whether or not such third person is employed by such escort service, escort, patron, or by another business, or is an independent contractor or self-employed.
- (L) EXPLICIT SEXUAL MATERIAL means any hard-core material.
- (M) GROSS PUBLIC FLOOR AREA means the total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture arcades, service areas, behind-counter areas, storage areas visible from such other areas, restrooms (whether or not labeled "public"), areas used for cabaret or similar show (including stage areas), plus aisles, hallways, and entryways serving such areas.
- (N) HARD-CORE MATERIAL means media characterized by sexual activity that includes one or more of the following: erect male organ; contact of the mouth of one person with the genitals of another; penetration with a finger or male organ into any orifice in another person; open female labia; penetration of a sex toy into an orifice; male ejaculation; or the aftermath of male ejaculation.
- (O) LINGERIE MODELING STUDIO means an establishment or business that provides the services of live models modeling lingerie to individuals, couples, or small groups in a room smaller than 800 square feet.
- (P) MASSAGE STUDIO means an establishment offering massage therapy and or body work by a massage therapist licensed under the Utah State Division of Occupational and Professional Licensing issued in accordance with the general provisions as adopted in Utah State Code Title 58, Chapter 47b.
- (Q) MEDIA means anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything that is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, cd-roms, other magnetic media, and undeveloped pictures.
- (R) NUDE DANCING AGENCY means any person, agency, firm, corporation, partnership, or any other entity or individual which offers to furnish, book or otherwise engage the service of a professional dancer licensed pursuant to this chapter for performance or appearance at a business licensed for live nude entertainment, adult cabaret or adult theaters.

- (S) NUDE ENTERTAINMENT BUSINESS means a business, including adult live entertainment, adult theater, where employees perform or appear in the presence of patrons of the business in a state of nudity. A business shall also be presumed to be a nude entertainment business if the business holds itself out as such a business.
- (T) NUDITY or STATE OF NUDITY means a state of dress in which opaque clothing covers less than the female breast below a point immediately above the top of the areola, or the male or female genitals, pubic region or anus.
- (U) OUTCALL SERVICES means services of a type performed by a sexually oriented business employee outside of the premises of the licensed sexually oriented business, including but not limited to escorts, models, dancers or other similar employees. No activity or service by any escort or employee shall be performed on the premises of the establishment.
- (V) PATRON means any person who contracts with or employs any escort services or escort or the customer of any business licensed pursuant to this chapter.
- (W) PECUNIARY COMPENSATION means any commission, fee, salary, tip, gratuity, hire, profit, reward, or any other form of consideration.
- (X) PERSON means any person, unincorporated association, corporation, partnership or other legal entity.
- (Y) SEX SHOP means an establishment offering goods for sale or rent and that meets any of the following tests.
- (1) The establishment offers for sale items from any two of the following categories: (a) adult media, (b) lingerie, or (c) leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; and the combination of such items constitutes more than 10 percent of its stock in trade or occupies more than 10 percent of its floor area.
 - (2) More than 5 percent of its stock in trade consists of sexually oriented toys or novelties.
 - (3) More than 5 percent of its gross public floor area is devoted to the display of sexually oriented toys or novelties.
- (Z) SEXUALLY ORIENTED BUSINESS means an inclusive term used to describe collectively: an adult motion picture theater, adult media store, lingerie modeling studio, massage studio, sex shop, adult cabaret, adult video arcade booths, bathhouse, or adult video store.
- (AA) SEXUALLY ORIENTED BUSINESS EMPLOYEES means those employees who work on the premises of the sexually oriented business in activities related to the sexually oriented portion of the business. This includes all managing employees, dancers, escorts, models or other similar employees whether or not hired as employees, agents or as independent contractors. Employees shall not include individuals whose work is unrelated to the sexually oriented portion of the business, such as janitors, bookkeepers and similar employees. Sexually oriented business employees shall not include cooks, serving persons, and similar employees, except where they may be managers or supervisors of the

business. All persons making outcall meetings or arrangements under this chapter, including escorts, models, guards, escort runners, drivers, chauffeurs and other similar employees, shall be considered sexually oriented business employees.

- (BB) SEXUALLY ORIENTED TOYS OR NOVELTIES means instruments, devices, or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs.
- (CC) SPECIFIED ANATOMICAL AREAS means (1) less than completely and opaquely covered: human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (DD) SPECIFIED SEXUAL ACTIVITIES means human genitals in a state of sexual stimulation or arousal or acts as listed in the following:
- (1) Acts of:
 - (a) Masturbation
 - (b) Human sexual intercourse
 - (c) Sexual copulation between a person and a beast
 - (d) Fellatio
 - (e) Cunnilingus
 - (f) Bestiality
 - (g) Pederasty
 - (h) Buggery, or
 - (i) Sodomy
 - (j) any copulation between a human male and another human male, human female, or beast.
 - (2) Manipulating or caressing or fondling by any person of:
 - (a) The genitals of a human
 - (b) The pubic area of a human
 - (c) The uncovered female nipple and areola
 - (d) The uncovered Buttock
 - (3) Sadomasochistic practices means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.
- (EE) VIDEO VIEWING BOOTH OR ARCADE BOOTH means any booth, cubicle, stall or compartment that is designed, constructed, or used to hold or seat patrons and is used for presenting motion pictures or viewing publications by any photographic electronic, magnetic, digital, or other means or media (including but not limited to, film, video or magnetic tape, laser disc, cd-rom, books, magazines, or periodicals) for observation by patrons therein, A video-viewing booth shall not mean theater, movie house, playhouse, or a room or enclosure or portion thereof that contains more than 600 square feet. (Ord 05-13)

5-4-5: OBSCENITY - STATUTORY PROVISIONS. Notwithstanding anything contained in this chapter, nothing in this chapter shall be deemed to permit or allow the showing

or display of any matter which is contrary to the provisions of the Syracuse Municipal Code, or other applicable federal or state statutes prohibiting obscenity. (Ord. 05-13)

5-4-6: LOCATION AND ZONING RESTRICTIONS. It is unlawful for any sexually oriented businesses to do business at any location within the City not zoned for such business. Sexually oriented businesses licensed as adult businesses, nude entertainment businesses pursuant to this chapter shall only be allowed in areas zoned for their use. Businesses licensed as outcall services and nude dancing agencies are not limited to locations permitted by the zoning ordinance. (Ord. 05-13)

5-4-7: BUSINESS LICENSE REQUIRED. It shall be unlawful for any person to operate a sexually oriented business, as specified below, without first obtaining a sexually oriented business license. The business license shall specify the type of business for which it is obtained. (Ord. 05-13)

5-4-8: EXEMPTION FROM LICENSE REQUIREMENTS. The provisions of this chapter shall not apply to any sex therapist or similar individual licensed by the state to provide bona fide sexual therapy or counseling, licensed medical practitioner, licensed nurse, psychiatrist, psychologist, nor shall it apply to any educator licensed by the state for activities in the classroom.

(A) Legitimate Artistic Modeling.

- (1) The City does not intend to unreasonably or improperly prohibit legitimate modeling which may occur in a state of nudity for purposes protected by the First amendment or similar state protection. The city does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling. Notwithstanding the provisions of Section 5-4-2, a licensed outcall employee may appear in a state of nudity before a customer or patron providing that a written contract for such appearance was entered into between the customer or patron and the employee and signed at least twenty-four hours before the nude appearance. All of the other applicable provisions of this chapter shall still apply to such nude appearance.
- (2) In the event of a contract for nude modeling or appearance signed more than forty-eight hours in advance of the modeling or appearance, the individual to appear nude shall not be required to obtain a license pursuant to this chapter. During such unlicensed nude appearance, it is unlawful to:
 - (a) appear nude in the presence of persons under the age of eighteen;
 - (b) Allow, offer or agree to any touching of the contracting party or other person by the individual while appearing in a state of nudity;
 - (c) Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or committing activities harmful to a minor;
 - (d) Allow, offer, commit or agree to any sex act as validly defined by City ordinances or state statute;
 - (e) Allow, offer or agree to the contracting party or other person masturbating in the presence of the individual contracted to appear nude;

- (f) Allow, offer or agree for the individual appearing nude to be within three feet of any other person while performing, modeling or appearing in a state of nudity. (Ord. 05-13)

5-4-9 BUSINESS CATEGORIES - NUMBER OF LICENSES.

- (A) It is unlawful for any business premises to operate or be licensed for more than one category of sexually oriented business, except that a business may have a license for both outcall services and nude dancing agency on the same premises.
- (B) The categories of sexually oriented businesses are:
 - (1) Outcall services;
 - (2) Adult businesses;
 - (3) Nude entertainment businesses;
 - (4) Nude dancing agency. (Ord. 05-13)

5-4-10: EMPLOYEE LICENSES. It shall be unlawful for any sexually oriented businesses to employ or for any individual to be employed by a sexually oriented business in the capacity of a sexually oriented business employee, unless that employee first obtains a sexually oriented business employee license. (Ord. 05-13)

5-4-11: LICENSE APPLICATION - DISCLOSURES REQUIRED. Before any applicant may be licensed to operate a sexually oriented business or as a sexually oriented business employee pursuant to this ordinance, the applicant shall submit, on a form to be supplied by Syracuse City Business License Coordinator, the following:

- (A) The correct legal name of each applicant, corporation, partnership, limited partnership or entity doing business under an assumed name.
- (B) If the applicant is a corporation, partnership or limited partnership or individual or entity doing business under an assumed name, the information required below for individual applicants shall be submitted for each partner and each principal of an applicant and for each officer, director of a corporation, and any shareholder (corporate or personal) of more than 50 percent of the stock of any applicant. Any holding company or any entity holding more than 50 percent of an applicant shall be considered an applicant for purposes of disclosure under this chapter. In the case of an outcall service license the shareholders' disclosure requirements shall apply to any shareholder of more than 10 percent of the stock of the applicant.
- (C) For all applicants or individuals, the application must also state: any other names or aliases used by the individual; the age, date and place of birth; present business address and telephone number; present residence and telephone number; Utah drivers license or identification number; and social security number.
- (D) Written proof that any individual is at least 18 years of age;
- (E) Attached to the form as provided above, two color photographs of the applicant clearly showing the individual's face and the individual's fingerprints on a form provided by the City Police Department. for persons not residing in the City, the

photographs and fingerprints shall be on a form from the law enforcement jurisdiction where the person resides. Fees for the photographs and fingerprints shall be paid by the applicant directly to the issuing agency;

- (F) For any individual applicant required to obtain a sexually oriented business employee license as an escort or as a nude entertainer, a certificate from the county Health Department or a physician licensed by the State of Utah, stating that the individual has, within thirty days immediately preceding the date of the application, been examined and found to be free of any contagious or communicable diseases;
- (G) All previous residence addresses, if any, of each individual applicant for the three years immediately preceding the date of the filing of the application;
- (H) A statement detailing the business license and permit history of the applicant for the five-year period immediately preceding the date of the filing of the application for any license or permit identical to or similar to those regulated by this chapter; and whether the applicant, previously operating or seeking to operate such business or engaging in such occupation in this or in any other county, city or state, has ever had a 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 state in full the reasons for the denial, revocation or suspension.
- (I) All criminal convictions or pleas nolo contendere, except those which have been expunged, for the applicant, individual or other entity subject to disclosure under this chapter for five years prior to the date of application. This disclosure shall include identification of all ordinance violations, excepting minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense), stating the date, place, nature of each conviction or plea of nolo contendere and sentence of each conviction or other disposition; identifying the convicting jurisdiction. Application for a sexually oriented business or employee license shall constitute a waiver of disclosure of any criminal conviction or plea of nolo contendere for the purposes of any proceeding involving the business or employee license;
- (J) In the event the applicant is not the owner of record of the real property upon which the business or proposed business is or is to be, the applicant shall furnish the name, address, and phone number of the owner of record of the property.
- (K) A description of the services to be provided by the business with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees for services to be charged by the licensee, and any rules, regulations or employment guidelines under or by which the business intends to operate. This description shall also include:
 - (1) The hours that the business or service will be open to the public, and the methods of promoting the health and safety of the employees and patrons and preventing them from engaging in illegal activity.
 - (2) The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities.

- (3) The methods of supervising employees and patrons to prevent employees and patrons from charging or receiving fees for services or acts prohibited by this chapter or other statutes or ordinances.
- (4) The methods of screening employees and customers in order to promote the health and safety of employees and customers and prevent the transmission of disease, and prevent the commission of acts of prostitution or other criminal activity.
- (5) 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.
- (6) If an applicant wishes to operate a sexually oriented business, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in ordinance 5-4-23.
- (7) If the property on which the sexually oriented business is to be located, is owned by any person or entity other than the applicant, the applicant shall submit a letter, signed by said owner, stating that the applicant has fully disclosed to the owner that the business to be operated is a sexually oriented business, and that the type and nature of the inventory has also been disclosed. (Ord 05-13)

5-4-12: LICENSE - FEES.

(A) Each applicant for a sexually oriented business or employee license shall be required to pay regulatory license fees pursuant to the following schedule.

- (1) Yearly business regulatory license fees:
 - (a) Adult businesses \$250.00
 - (b) Outcall businesses \$300.00
 - (c) Nude dancing agencies \$100.00
 - (d) Nude entertainment business \$300.00
- (2) For each business applicant, an initial investigation fee of fifty dollars (\$50.00) for each applicant required to submit a separate disclosure application;
- (3) Yearly sexually oriented business employee license fees:
 - (a) Any employee providing outcall business services away from the premises of the outcall business \$150.00
 - (b) Adult business employees, outcall business employees requiring a license but not performing any services outside the licensed premises, nude entertainment business employees requiring a license but not individually providing nude entertainment services to patrons and employees of nude dancing \$ 50.00

agencies requiring licenses but who are not performers

- (c) Employees of nude entertainment businesses personally providing nude entertainment to patrons \$150.00

(B) Any individual applying for more than one license at the same time shall pay the higher of all applicable fees and an additional twenty dollars for each additional license requested.

(C) These fees shall be in addition to the other licenses and fees required to do business in the City. (Ord 05-13)

5-4-13: LICENSE - PREMISES LOCATION AND NAME.

(A) It is unlawful to conduct business under a license issued pursuant to this chapter at any location other than the licensed premises. Any location to which telephone calls are automatically forwarded by such business shall require a separate license.

(B) It is unlawful for any sexually oriented business to do business in the City under any name other than the business name specified in the application. (Ord. 05-13)

5-4-14: ISSUANCE OF LICENSE. The City Business License Coordinator shall approve the license application within thirty (30) business days after receipt of an application, unless the business license coordinator finds one or more of the following:

(A) An applicant is under eighteen years of age.

(B) The required fees, taxes, or late penalties assessed in relation to the sexually oriented business or employee license have not been paid.

(C) The applicant has falsely answered a material question or request for information as authorized by this chapter.

(D) The applicant has been convicted of a violation of a provision of this chapter within two years immediately preceding the filing of the application; however, the fact that a conviction is being appealed shall have no effect on the denial.

(E) The premises to be used for the business have been disapproved by the county health department, the City Dire Department, the City Police Department and the City Building Officials or the City Zoning Officials as not being in compliance with the applicable laws and ordinances of the City.

If any of the foregoing reviewing agencies cannot complete their review within the thirty (30) day approval or denial period, the agency or department may obtain from the city business license official an extension of time for their review of no more than fifteen days. The total time for the City to approve or deny a license shall not exceed forty-five days from the receipt of an application. Businesses located outside of the corporate boundaries of the city, but requiring a license under this chapter, may be denied a license pursuant to this chapter if the business does not have a valid business license to conduct business at the business location from the appropriate jurisdiction for that location;

(1) Upon receipt of an application all departments required to review the application shall determine within seven days whether or not the application

is incomplete in items needed for processing. Incomplete applications shall immediately be returned to the applicant with a specification of the items which are incomplete.

- (2) The time for processing applications specified in this section shall begin to run from the receipt of a complete application.
 - (3) In the event that a license for a nude entertainment business, a nude dancing agency or an adult business has not been disapproved within thirty (30) days or the forty-five (45) days allowed after an extension, the City shall issue the license pending completion of the City's review.
 - (4) Any license issued pursuant to subsection (3) above may be revoked by the City pursuant to the revocation procedures of section 5-4-31 through 5-4-33 if the completed review determines that the license should have been denied.
- (F) An applicant for the proposed business is in violation of or not in compliance with this chapter.
- (G) An applicant has been convicted of or pled nolo contendere to a crime:
- (1) Involving prostitution; exploitation of prostitution; aggravated promotion of prostitution; solicitation of sex acts; sex acts for hire; compelling prostitution; aiding prostitution; sale, distribution or display of material harmful to minors; sexual performance by minors; possession of child pornography; public lewdness; indecent exposure; any crime involving sexual abuse or exploitation of a child; sexual assault or aggravated sexual assault; rape; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving similar elements from any jurisdiction regardless of the exact title of the offense:
 - (a) for which:
 - (i) Less than two years have elapsed from the date of conviction, if the conviction is of a misdemeanor offense, or less than five years, if the convictions are of two or more misdemeanors within the five years; or
 - (ii) Less than five years have elapsed from the date of conviction if the offense is a felony.
 - (2) The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section. (Ord. 05-13)

5-4-15: **LICENSE TERM.** Sexually oriented business employee licenses issued pursuant to this chapter shall be valid from the date of issuance through January 1st of each succeeding year. The license fees required under Section 5-4-12 above shall not be prorated for any portion of year, but shall be paid in full for whatever portion of the year the license is applied for. (Ord. 05-13)

5-4-16: **LICENSE - NOTICE OF CHANGE OF INFORMATION.** Any change in the information required to be submitted under this chapter for either a sexually oriented business license or sexually oriented business employee license shall be given, in

writing, to the business license authority and the police department within fourteen days after such change. (Ord. 05-13)

5-4-17: LICENSE - TRANSFER LIMITATIONS. Sexually oriented business licenses granted under this chapter shall not be transferable. It is unlawful for a license held by an individual to be transferred. It is unlawful for a license held by a corporation, partnership or other non-corporate entity to transfer any part in excess of 50 percent thereof, without filing a new application and obtaining prior city approval. If any transfer of the controlling interest in a business licensee occurs, the license is immediately null and void, and the business shall not operate until a separate new license has been properly issued by the City as provided in this chapter. (Ord. 05-13)

5-4-18: LICENSE - DISPLAY. It is unlawful for any sexually oriented business location within the boundaries of the city to fail to display the license granted pursuant to this chapter in a prominent location within the business premises. It is unlawful for any individual licensed pursuant to this chapter to fail to, at all times while engaged in licensed activities within the corporate boundaries of the City, carry their employee license on their person. If the individual is nude, such license shall be visibly displayed within the same room as the employee is performing. When requested by police, City licensing, or other enforcement personnel or health official, it is unlawful to fail to show the appropriate licenses while engaged in licensed activities within the corporate boundaries of the City. (Ord. 05-13)

5-4-19: LICENSE - STATEMENT IN ADVERTISEMENTS. It is unlawful for any advertisement by the sexually oriented business or employee to fail to state that the business or employee is licensed by the City and shall include the City license number. (Ord. 05-13)

5-4-20: GENERAL REGULATIONS. It is unlawful for any sexually oriented business or sexually oriented business employee to:

- (A) Allow persons under the age of eighteen years on the licensed premises, except that in adult businesses which exclude minors from less than all of the business premises, minors shall not be permitted in excluded areas;
- (B) Allow, offer or agree to conduct any outcall business with persons under the age of eighteen years;
- (C) To allow, offer or agree to allow any alcohol being stored, used or consumed on or in the licensed premises;
- (D) Allow the outside door to the premises to be locked while any patron or customer is on or in the licensed premises;
- (E) Allow, offer or agree to gamble on the licensed premises;
- (F) Allow, offer or agree to any sexually oriented business employee touching or for any sexually oriented business employee to touch specified anatomical areas of any patron or customer, whether clothed or unclothed;
- (G) Allow any sexually oriented business employee to perform or appear on the premises of a nude entertainment business in a state of nudity or for the employee to perform or appear in a state of nudity on such premises except on a stage designed and separated as required in Section 5-4-23(A)(3) and (B).

- (H) Allow, offer or agree to illegal possession, use, sale or distribution of controlled substances on the licensed premises;
- (I) Allow sexually oriented business employees to possess, use, sell, or distribute controlled substances while engaged in the activities of the business;
- (J) Allow, offer or agree to commit prostitution solicitation of prostitution, solicitations of a minor or committing activities harmful to a minor to occur on the licensed premises or, in the event of an outcall employee or business, the outcall employee committing, offering or agreeing to commit prostitution, attempting to commit prostitution, soliciting prostitution, soliciting a minor, or committing activities harmful to a minor;
- (K) Allow, offer, commit or agree to any sex act as validly defined by City ordinances or state statute in the presence of any customer or patron;
- (L) Allow, offer or agree to any outcall employee appearing before any customer or patron in a state of nudity.
- (M) Allow, offer or agree to allow a patron or customer to masturbate in the presence of the sexually oriented business employee or on the premises of a sexually oriented business.
- (N) To engage or allow any employee to engage in activity for the purpose of soliciting, beckoning, requesting or suggesting to any person(s) to enter such premises as a patron within twenty-five feet of any sexually oriented business.
- (O) To allow an employee to act in a capacity of what is commonly known as a "lookout" to be stationed or maintained to give warning of the approach of any police officer to the premises of a sexually oriented business or to maintain or operate any electrical or other device which is used or capable of being used to give warning to persons within the premises of a sexually oriented businesses of the approach of any police officer. (Ord. 05-13)

5-4-21:

OUTCALL SERVICES - OPERATION REQUIREMENTS. It is unlawful for any business or employee providing outcall services contracted for in Syracuse City, to fail to comply with the following requirements

- (A) All businesses licensed to provide outcall services pursuant to this chapter shall provide to each patron a written contract in receipt of pecuniary compensation for services. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount such services shall cost the patron, and any special terms or conditions relating to the service to be performed. The contract need not include the name of the patron. The business licensee shall keep and maintain a copy of each written contract entered into pursuant to this section for a period of not less than one year from the date of provision of services thereunder. The contract shall be numbered and entered into a register listing the contract number, date, names of all employees involved in the contract and pecuniary compensation paid
- (B) All outcall businesses licensed pursuant to this chapter shall maintain an open office or telephone at which the licensee or licensee's designated agent may be personally contacted during all hours outcall employees are working. The address and phone number of the license location shall appear and be included in all patron contracts and published advertisements. For outcall businesses

which premises are licensed within the corporate limits of the City, private rooms or booths where the patrons may meet with the outcall employee shall not be provided at the open office or any other location by the service, nor shall patrons meet outcall employees at the business premises.

- (C) Outcall services shall not advertise in such a manner that would lead a reasonably prudent person to conclude that specified sexual activities would be performed by the outcall employee. (Ord. 05-13)

5-4-22:

DESIGN OF PREMISES.

- (A) In addition to the general requirements of disclosure for a sexually oriented business, any applicant for a license as an adult business or nude entertainment business shall also submit a diagram of the premises of the license. The design and construction, which must be completed prior to granting a license or opening for business, shall conform to the following provisions:
 - (1) The interior of the premises of an adult business shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms.
 - (2) Restrooms of an adult business may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person be allowed in the restroom per stall, and only one person in any stall at a time, and requiring that patrons shall not be allowed access to manager's station areas.
 - (3) For businesses which exclude minors from the entire premises, all windows, doors and other apertures to the premises shall be darkened or otherwise constructed to prevent anyone outside the premises from seeing the inside of the premises. Businesses which exclude minors from less than all of the premises shall be designed and constructed so that minors may not see into the area from which they are excluded. The above restriction shall not apply to a reception area or foyer where no depictions or displays of specified sexual anatomical areas can be seen while standing within said foyer area.
 - (4) The diagram required shall not necessarily be a professional engineer's or architect's blueprint; however, the diagram must show marked internal dimensions, all overhead lighting fixtures, and ratings for illumination capacity.
- (B) It shall be the duty of the licensee and the licensee's employees to insure that the views from the manager's station in subsection (1) of this section remain unobstructed by any doors, walls, merchandise, display racks or any other materials, at all times that any patron is present in the premises, 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.
- (C) The premises shall at all times be equipped and operated with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot candle, measured at floor level. It shall be the duty of the licensee and the licensee's employees

present on the premises to insure that the illumination described above is maintained at all times that any patron is present in the premises. (Ord. 05-13)

- (D) A person who operates or causes to be operated a sexually oriented business, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, 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 license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and 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 (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. Each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The City 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.
 - (4) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any one (1) 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 shall not contain video reproduction equipment nor shall any video be viewed from within the restrooms. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station.
 - (6) It shall be the duty of the licensee to ensure that the view area specified in Subsection (5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure 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 (1) of this Section.
 - (7) No viewing room may be occupied by more than one person at a time.
 - (8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at

an illumination of not less than five (5) foot-candles as measured at the floor level.

- (9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- (12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (14) The licensee shall cause all floor wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within four (4) feet of the floor. (Ord. 05-13)

5-4-23: NUDE ENTERTAINMENT BUSINESS -- DESIGN OF PREMISES.

- (A) In addition to the requirements in Section 5-4-22, it is unlawful for any nude entertainment business premises licensed under this chapter to:
 - (1) Permit a bed, sofa, mattress or similar item in any room on the premises, except that a sofa may be placed in a reception room open to the public or in any office to which patrons are not admitted, and except that in an adult theater such items may be on the stage as part of the performance.
 - (2) Allow any door on any room used for the business, except for the door to an office to which patrons shall not be admitted, outside doors and restroom doors, to be lockable from the inside.
 - (3) Provide any room for "private performances" without a separation by a solid wall at least three feet high and six inches wide. The patron or patrons shall remain on one side of the wall and the employee or employees shall remain on the other side of the wall during all times the performer is in a state of nudity.

"Private performances" as used herein means the nude performance or appearance by an employee or employees for a patron while the patron is in an area not accessible during such performance to all other patrons in the establishment.
- (B) Nude entertainment businesses, including adult theaters, shall also require that any performance area be on a stage raised at least two (2) feet from the level of the main floor separated from the patrons by a minimum of three feet, which separation shall be delineated by a physical barrier at least three feet high.
- (C) It is a Class B misdemeanor for a person having a duty under Subsections 1 through 3 of Subsection (A) to fail to fulfill that duty. (Ord. 05-13)

- 5-4-24: NUDE ENTERTAINMENT BUSINESS - LOCATION RESTRICTION.** It is unlawful for any business licensed for nude entertainment to be located within three hundred thirty (330) feet of a business licensed for the sale or consumption of alcohol. (Ord. 05-13)
- 5-4-25: NUDE DANCING AGENCIES.**
- (A) It is unlawful for any individual or entity to furnish, book, or otherwise engage the services of a professional dancer, model or performer to appear in a state of nudity for pecuniary compensation in, or for, any nude entertainment business or adult theater licensed pursuant to this chapter unless such agency is licensed pursuant to this chapter.
- (B) It is unlawful for any individual or entity to furnish, book or otherwise engage or permit any person to perform as a professional dancer, model or performer in a state of nudity, either gratuitously or for compensation, in, or for, any business licensed pursuant to this chapter, unless such person is licensed pursuant to this chapter. (Ord. 05-13)
- 5-4-26: PERFORMERS - PROHIBITED ACTIVITIES.** It is unlawful for any professional dancer, model or performer, while performing in any business licensed pursuant to this chapter:
- (A) To touch in any manner any person while the performer is in a state of nudity or to touch any specified anatomical area of another performer;
- (B) To throw any object or clothing off the stage area;
- (C) To accept any money, drink or any other object directly from any person; or
- (D) To allow a patron to touch such performer while in a state of nudity or to place any money or object on the performer or within the costume or person of the performer. (Ord. 05-13)
- 5-4-27: PATRONS - PROHIBITED ACTIVITIES.** It is unlawful for any person, or any patron of any nude entertainment business to touch in any manner any performer while in a state of nudity; to place any money or object on or within the costume or person of any performer; to cross over the barrier separating the patrons from the stage during a nude performance; to bring into the premises any alcoholic beverage for on-premise consumption; or to give or offer to give to any such performer any drinks, money or object while such performer is performing; except that money may be placed on the stage which shall not be picked up by the performer except by hand. (Ord. 05-13)
- 5-4-28: NUDITY - DEFENSES TO PROSECUTION.** It is a defense to prosecution for violation under this chapter that a person appearing in a state of nudity did so in a modeling class operated:
- (A) By a proprietary school licensed by the state, or a college, junior college or university supported entirely or partly by taxation;
- (B) 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. (Ord. 05-13)

- 5-4-29: HOURS OF OPERATION.** No nude entertainment business shall provide nude entertainment between the hours of 1:00 a.m. and 10:00 a.m. (Ord. 05-13)
- 5-4-30: INSPECTION OF PREMISES.** A police officer or other authorized officer may during the hours that the establishment is open for business, upon presentation of proper identification, inspect those portions of any premises in which a sexually oriented businesses regulated under this chapter is conducted that are open to or frequented by patrons and the records kept on the premises as required by 5-4-21(A). Such inspection shall be limited in scope to that necessary to determine compliance with the regulatory provisions of this chapter. (Ord. 05-13)
- 5-4-31: EXISTING BUSINESSES - COMPLIANCE TIME LIMITS.**
- (A) The provisions of this chapter shall be applicable to all persons and businesses described herein, whether the herein described activities were established before or after the effective date of the ordinance codified in this chapter, and regardless of whether such persons and businesses are currently licensed to do business in the City.
- (1) All such persons and businesses requiring outcall service licenses shall have forty-five days from the effective date of the ordinance codified in this chapter, or until their current license expires, whichever is first in time, to comply with the provisions of this chapter.
- (2) All nude entertainment businesses shall have one hundred five (105) days from the effective date of the ordinance codified in this chapter, or until their current license must be renewed, whichever is first, to comply with the provisions of this chapter.
- (B) For the year 2005 all businesses required by this chapter to be licensed as sexually oriented businesses shall be credited against the fees required by this chapter with the regulator license fees paid for the current 2005 license. (Ord. 05-13)
- 5-4-32: VIOLATION - INJUNCTION WHEN.** An entity or individual who operates or causes to be operated a sexually oriented business without a valid license or who employs or is employed as an employee of a sexually oriented business, or who operates such a business or functions as such an employee in violation of the provisions of this chapter, is subject to a suit for injunction in addition to the civil and criminal violations provided herein and any other remedy available at law or in equity. (Ord. 05-13)
- 5-4-33: VIOLATION - LICENSE SUSPENSION OR REVOCATION.**
- (A) The City may issue a notice suspending or revoking a sexually oriented business or employee license granted under this chapter if a licensee or an employee of the licensee has:
- (1) Violated or is not in compliance with the provisions of this chapter;
- (2) Has refused to allow any inspection of the premises of the sexually oriented business specifically authorized by this chapter, or by any other statute or ordinance;
- (3) Has knowingly provided materially false or misleading information in obtaining the license;

- (4) A licensee or an employee knowingly operated the sexually oriented business or worked under the employee license during the period when the business license or employee licensee's license was suspended;
 - (5) A licensee has committed an offense which would be grounds for denial of a license for which the time period required has not elapsed;
 - (6) On two or more occasions within a twelve month period, a person or persons committed in or on, or solicited for in or on the licensed premises, or an outcall employee solicited or committed on or off the premises, an offense which would be grounds for denial of a license for which a conviction has been obtained, and the persons were employees, whether or not licensed, of the sexually oriented business at the time the offenses were committed;
- (B) Suspension or revocation shall take effect within ten days of the issuance of notice, unless an appeal is filed as provided by this chapter.
- (C) The fact that a conviction is being appealed shall have no effect on the revocation of the license. (Ord. 05-13)

5-4-34: EFFECT OF LICENSE REVOCATION. When a license issued pursuant to this chapter is revoked, the revocation shall continue for one year from its effective date, and the licensee shall not be issued a sexually oriented business or employee license for one year from the date of such revocation. (Ord. 05-13)

5-4-35 APPEAL PROCEDURE.

- (A) If the license is denied or approved with qualifications, or if a notice of suspension or revocation is given, the applicant or licensee may file an appeal with the business licensing authority.
- (B) Filing of an appeal must be within ten days of the date of service of the notice of any denial, qualified approval, suspension or revocation. Upon receiving the notice of such appeal, the business licensing authority shall schedule a hearing before a designated hearing officer within twenty days from the date of the appeal unless such time shall be extended for good cause.
- (C) The hearing officer shall hold a public hearing on the record, and take such facts and evidence as necessary to determine whether the denial, qualified approval, suspension or revocation was proper under the law.
- (D) The burden of proof shall be on the City.
- (E) After the hearing, the hearing officer shall have seven working days, unless extended for good cause, in which to render findings of fact, conclusions of law, and recommended decision to the city manager.
- (F) Either party may object to the recommendation of the hearing officer by filing the party's objection and reasons, in writing to the city manager within seven days following the recommendation. In the event the hearing officer recommends upholding a suspension or revocation, the license shall be immediately suspended and shall remain suspended until any subsequent appeal is decided. If no objections are received within the seven days, the city manager may immediately adopt the recommendation of the hearing officer.

(G) If objections are received, the city manager shall have ten working days to consider such objections before issuing the city manager's final decision. The city manager may, in the city manager's discretion, take additional evidence or require written memorandum on issues of fact or law. The standard by which the city manager shall review the decision of the hearing officer is whether substantial evidence exists in the record to support the hearing officer's recommendation.

(H) An applicant aggrieved by the city manager's decision shall have judicial review of such decision pursuant to Rule 65.B, Utah Rules of Civil Procedure, or any other applicable ordinance, statute or ruling providing for such review. (Ord. 05-13)

5-4-36: **VIOLATION - PENALTY.** In addition to revocation or suspension of a license as provided in this chapter, the violation of any provision of this chapter shall be a Class B misdemeanor. Each day of a violation shall be considered a separate offense. (Ord. 05-13)

5-4-37: **SEVERABILITY.** In the event that any provision of this chapter is declared invalid for any reason, the remaining provisions shall remain in effect. (Ord. 05-13)

CHAPTER 5

TELECOMMUNICATIONS RIGHTS-OF WAY

- 5-5-1: Scope of Ordinance
- 5-5-2: Excluded Activity
- 5-5-3: Definitions
- 5-5-4: Non-Exclusive Franchise
- 5-5-5: Every Provider Must Obtain
- 5-5-6: Nature of Grant
- 5-5-7: Current Providers
- 5-5-8: Nature of Franchise
- 5-5-9: Regulatory Approval Needed
- 5-5-10: Term
- 5-5-11: Compensation
- 5-5-12: Franchise Application
- 5-5-13: Application Criteria
- 5-5-14: Franchise Determination
- 5-5-15: Construction and Technical Requirements
- 5-5-16: New Grades or Lines
- 5-5-17: The City Authority to move system in case of an emergency
- 5-5-18: A Provider required to temporarily move system for third party
- 5-5-19: Rights-of-way change - Obligation to move system
- 5-5-20: Protect Structures
- 5-5-21: No Obstruction
- 5-5-22: Safety Precautions
- 5-5-23: Repair
- 5-5-24: System Maintenance
- 5-5-25: Trimming of Trees
- 5-5-26: Franchise and License Non-Transferable
- 5-5-27: Insurance, Indemnity, and Security
- 5-5-28: Oversight
- 5-5-29: Maintain Records
- 5-5-30: Confidentiality
- 5-5-31: Provider's Expense
- 5-5-32: Right of Inspection
- 5-5-33: Enforcement - City Designee
- 5-5-34: Enforcement Provision
- 5-5-35: Force Majeure
- 5-5-36: Continuation after Expiration
- 5-5-37: Continuation by Incumbent Local Exchange Carrier
- 5-5-38: Abandoned System
- 5-5-39: Removal of Abandoned System
- 5-5-40: Transfer of Abandoned System to City
- 5-5-41: Removal of Above-Ground System
- 5-5-42: Leaving Underground System
- 5-5-43: Publicizing work
- 5-5-44: Conflicts
- 5-5-45: Severability
- 5-5-46: New Developments
- 5-5-47: Notices
- 5-5-48: Exercise of Police Power
- 5-5-49: Ordinance Applicability

5-5-50: Other Applicable Ordinances

5-5-51: City Failure to Enforce

5-5-52: Construed According to Federal and Utah Law

5-5-1 **SCOPE OF ORDINANCE.** This ordinance shall provide the basic local scheme for providers of telecommunications services and systems that require the use of the rights-of-way, including providers of both the system and service, those providers of the system only, and those providers who do not build the system but who only provide services. This ordinance shall apply to all future providers and to all providers in the City prior to the effective date of this ordinance, whether operating with or without a franchise as set forth in Section 5-5-49.

5-5-2 **EXCLUDED ACTIVITY.**

(A) Cable TV. This Ordinance shall not apply to cable television operators otherwise regulated by Title V, Chapter 3, Cable Television Systems.

(B) Wireless Services. This ordinance shall not apply to personal wireless service facilities.

(C) Provisions Applicable to Excluded Providers. Providers excused by other law that prohibits the City from requiring a Franchise shall not be required to obtain a Franchise, but all of the requirements imposed by this ordinance through the exercise of the City's police power and not preempted by other law shall be applicable.

5-5-3 **DEFINITIONS.** For the purpose of this ordinance, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The word "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

APPLICATION means the process by which a provider submits a request and indicates a desire to be granted a franchise to utilize the rights-of-way of all, or a part, of the City. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a provider to the City concerning: the construction of a telecommunications system over, under, on or through the rights-of--way; the telecommunications services proposed to be provided in the City by a provider; and any other matter pertaining to a proposed system of service.

CITY means Syracuse City, Utah.

COMPLETION DATE means the date that a provider begins providing services to customers in the City.

CONSTRUCTION COSTS means all costs of constructing a system, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.

CONTROL OR CONTROLLING INTEREST means actual working control in whatever manner exercised, including, without limitation, working control through

ownership, management, debt instruments or negative control, as the case may be, of the system or of a provider. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person, or group of persons acting in concert, of more than twenty-five percent (25%) of any provider (which person or group of persons is hereinafter referred to as "controlling person"). "Control" or "controlling interest" as used herein may be held simultaneously by more than one person or group of persons.

FCC means the Federal Communications Commission, or any successor thereto.

FRANCHISE means the rights and obligation extended by the City to a provider to own, lease, construct, maintain, use or operate a system in the rights-of-way within the boundaries of the City. Any such authorization, in whatever form granted, shall not mean or include: (1) any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City; (2) any other permit, agreement or authorization required in connection with operations on rights-of-way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along the rights-of-way.

FRANCHISE AGREEMENT means a contract entered into in accordance with the provisions of the ordinance between the City and a franchisee that sets forth, subject to this ordinance, the terms and conditions under which a franchise will be exercised.

GROSS REVENUE includes all revenues of a provider that may be included as gross revenue within the meaning of Chapter 26, Title 11, Utah Code annotated, 1953, as amended.

INFRASTRUCTURE PROVIDER means a person providing to another, for the purpose of providing telecommunication services to customers, all or part of the necessary system which uses the rights-of-way.

OPEN VIDEO SERVICE means any video programming services provided to any person through the use of rights-of-way, by a provider that is certified by the FCC to operate an open video system pursuant to sections 651, et seq., of the Telecommunications Act (to be codified at 47 U.S.C. Title VI, Part V), regardless of the system used.

OPEN VIDEO SYSTEM means the system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment, or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing open video services to or from subscribers or locations within the City.

OPERATOR means any person who provides service over a telecommunications system and directly or through one or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.

ORDINANCE OR TELECOMMUNICATIONS ORDINANCE means this Telecommunications Ordinance concerning the granting of franchises in and by the City for the construction, ownership, operation, use or maintenance of a telecommunications system.

PERSON includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

PERSONAL WIRELESS SERVICES FACILITIES has the same meaning as provided in Section 704 of the Act {47 U.S.C. 332(c)(7)(c)}, which includes what is commonly known as cellular and PCS services that do not install any system or portion of a system in the rights-of-way.

PROVIDER means an operator, infrastructure provider, reseller, or system lessee.

PSC means the Public Service Commission, or any successor thereto.

RESALER refers to any person that provides local exchange service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission.

RIGHTS-OF-WAY means the surface of and the space above and below any public street, sidewalk alley, or other public way of any type whatsoever, now or hereafter existing as such within the City.

SIGNAL means any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

SYSTEM LESSEE refers to any person that leases a system or a specific portion of a system to provide services.

TELECOMMUNICATIONS means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video, and voice), without change in the form or content of the information sent and received.

TELECOMMUNICATIONS SYSTEM OR "SYSTEM" means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased, or used by a provider, located in the rights-of-way and utilized in the provision of services, including fully digital or analog, voice, data and video imaging and other enhanced telecommunications services. Telecommunications system or systems also includes an open video system.

TELECOMMUNICATIONS SERVICE(S) OR "SERVICES" means any telecommunications services provided by a provider within the City that the provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the services provided within the City, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. § 521, et seq.), and the Telecommunications Act of 1996. Telecommunications System or Systems also includes an Open Video System.

WIRE MEANS fiber optic telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes.

5-5-4

NON-EXCLUSIVE FRANCHISE. The City is empowered and authorized to issue non-exclusive franchises governing the installation, construction, and maintenance of systems in the City's rights-of-way, in accordance with the provisions of this

ordinance. The franchise is granted through a franchise agreement entered into between the City and provider.

- 5-5-5 EVERY PROVIDER MUST OBTAIN.** Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every provider must obtain a franchise prior to constructing a telecommunications system or providing telecommunications services using the rights-of-way, and every provider must obtain a franchise before constructing an open video system or providing open video services via an open video system. Any open video system or service shall be subject to the customer service and consumer protection provisions applicable to the Cable TV companies to the extent the City is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular telecommunications systems may be used for multiple purposes does not obviate the need to obtain a franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should it intend to provide telecommunications services over the same system, must also obtain a telecommunications franchise.
- 5-5-6 NATURE OF GRANT.** A franchise shall not convey title, equitable or legal, in the rights-of-way. A franchise is only the right to occupy rights-of-way on a non-exclusive basis for the limited purposes and for the limited period stated in the franchise; the right may not be subdivided, assigned, or subleased. A franchise does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the city's property. This section shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise.
- 5-5-7 CURRENT PROVIDERS.** Except to the extent exempted by federal or state law, any provider acting without a franchise on the effective date of this ordinance shall request issuance of a franchise from the city within 90 days of the effective date of this Ordinance. If such request is made, the provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a franchise is not granted, the provider shall comply with the provisions of Sections 5-5-42 thru 5-5-48.
- 5-5-8 NATURE OF FRANCHISE.** The franchise granted by the City under the provisions of this ordinance shall be a nonexclusive franchise providing the right and consent to install, repair, maintain, remove and replace its system on, over or under the rights-of-way in order to provide services.
- 5-5-9 REGULATORY APPROVAL NEEDED.** Before offering or providing any services pursuant to the franchise, a provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the appropriate federal, state and local authorities, if required, and shall submit to the City upon the written request of the City evidence of all such approvals, permits, authorizations or licenses.
- 5-5-10 TERM.** No franchise issued pursuant to this ordinance shall have a term of less than five (5) years or greater than fifteen (15) years. Each franchise shall be granted in a nondiscriminatory manner.
- 5-5-11 COMPENSATION.** As fair and reasonable compensation for any franchise granted pursuant to this ordinance, a provider shall have the following obligations:

- (A) Application Fee. In order to offset the cost to the City to review an application for a franchise and in addition to all other fees, permits or charges, a provider shall pay to the City, at the time of application, \$500 as a non-refundable application fee.
- (B) Franchise Fees. The franchise fee, if any, shall be set forth in the franchise agreement. An obligation to pay a franchise fee shall commence on the completion date. The franchise fee is offset by any business license fee or business license tax enacted by the City.
- (C) Excavation Permits. The provider shall also pay fees required for an excavation permit as provided in Section 4-1-7.
- (D) Timing. Unless otherwise agreed to in the franchise agreement, all franchise fees shall be paid on a monthly basis within forty-five (45) days of the close of each calendar month.
- (E) Fee Statement and Certification. Unless a franchise agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.
- (F) Future Costs. A provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any renewal or provider-initiated renegotiation, or amendment of this ordinance or a franchise, provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association.
- (G) Taxes and Assessments. To the extent taxes or other assessments are imposed by taxing authorities, other than the City, on the use of the City property as a result of a provider's use or occupation of the rights-of-way, the provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this ordinance.
- (H) Interest on Late Payments. In the event that any payment is not actually received by the City on or before the applicable date fixed in the franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.
- (I) No Accord and Satisfaction. No acceptance by the City of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the City may have for additional sums payable.
- (J) Not in Lieu of Other Taxes or Fees. The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this ordinance, or as required by applicable law. By way of example, and not

limitation, excavation permit fees and fees to obtain space on the City owned poles are not waived and remain applicable.

(K) Continuing Obligations and Holdover. In the event a provider continues to operate all or any part of the system after the term of the franchise, such operator shall continue to comply with all applicable provisions of this ordinance and the franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation, provided that any such continued operations shall in no way be construed as a renewal or other extension of the franchise, or as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

(L) Costs of Publication. A provider shall assume any publication costs associated with its franchise that may be required by law.

5-5-12 FRANCHISE APPLICATION. To obtain a franchise to construct, own, maintain or provide services through any system within the City, to obtain a renewal of a franchise granted pursuant to this ordinance, or to obtain the City approval of a transfer of a franchise, as provided in Section 5-5-26(B), granted pursuant to this ordinance, an application must be filed with the City.

5-5-13 APPLICATION CRITERIA. In making a determination as to an application filed pursuant to this ordinance, the City may, but shall not be limited to, request the following from the provider:

(A) A copy of the order from the PSC granting a Certificate of Convenience and Necessity.

(B) Certification of the provider's financial ability to compensate the City for provider's intrusion, maintenance and use of the rights-of-way during the franchise term proposed by the provider.

(C) Provider's agreement to comply with the requirements of Section 5-5-15 of this ordinance.

5-5-14 FRANCHISE DETERMINATION. The city, in its discretion, shall determine the award of any franchise on the basis of these and other considerations relevant to the use of the rights-of-way, without competitive bidding.

5-5-15 CONSTRUCTION AND TECHNICAL REQUIREMENTS.

(A) General Requirement. No provider shall receive a franchise unless it agrees to comply with each of the terms set forth in this section governing construction and technical requirements for its system, in addition to any other reasonable requirements or procedures specified by the City or the franchise, including requirements regarding locating and sharing in the cost of locating portions of the system with other systems or with city utilities. A provider shall obtain an excavation permit, pursuant to the excavation ordinance, before commencing any work in the rights-of-way.

(B) Quality. All work involved in the construction, maintenance, repair, upgrade and removal of the system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is

determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety or welfare, or quality of service or reliability, then a provider shall, at its own cost and expense, promptly correct all such conditions.

(C) Licenses and Permits. A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including but not limited to any necessary approvals from persons and/or the City to use private property, easements, poles and conduits. A provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

5-5-16 NEW GRADES OR LINES. If the grades or lines of any rights-of-way are changed at any time in a manner affecting the system, then a provider shall comply with the requirements of the excavation ordinance.

5-5-17 THE CITY AUTHORITY TO MOVE SYSTEM IN CASE OF AN EMERGENCY. The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of the system and appurtenances on, over or under the rights-of-way of the City, in which event the City shall not be liable therefor to a provider. The City shall notify a provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this section. Notice shall be given as provided in Section 5-5-47.

5-5-18 A PROVIDER REQUIRED TO TEMPORARILY MOVE SYSTEM FOR THIRD PARTY. A provider shall, upon prior reasonable written notice by the City or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of said structure. A provider may impose a reasonable charge on any person other than the City for any such movement of its systems.

5-5-19 RIGHTS-OF-WAY CHANGE - OBLIGATION TO MOVE SYSTEM. When the City is changing a rights-of-way and makes a written request, a provider is required to move or remove its system from the rights-of-way, without cost to the City, to the extent provided in the excavation ordinance. This obligation does not apply to systems originally located on private property pursuant to a private easement, which property was later incorporated into the rights-of-way, if that private easement grants a superior vested right. This obligation exists whether or not the provider has obtained an excavation permit.

5-5-20 PROTECT STRUCTURES. In connection with the construction, maintenance, repair, upgrade or removal of the system, a provider shall, at its own cost and expense, protect any and all existing structures belonging to the City and all designated landmarks, as well as all other structures within any designated landmark district. A provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the rights-of-way of the City required because of the presence of the system. Any such alteration shall be made by the City or its designee on a

reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City, any municipal structure or any other rights-of-way of the City involved in the construction, maintenance, repair, upgrade or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a provider pursuant to the franchise.

5-5-21 NO OBSTRUCTION. In connection with the construction, maintenance, upgrade, repair or removal of the system, a provider shall not unreasonably obstruct the rights-of-way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the City without the prior consent of the appropriate authorities.

5-5-22 SAFETY PRECAUTIONS. A provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

5-5-23 REPAIR. After written reasonable notice to the provider, unless, in the sole determination of the City, an eminent danger exists, any rights-of-way within the City which are disturbed or damaged during the construction, maintenance or reconstruction by a provider of its system may be repaired by the City at the provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the City shall submit to such a provider an itemized statement of the cost for repairing and restoring the rights-of-way intruded upon. The provider shall, within thirty (30) days after receipt of the statement, pay to the City the entire amount thereof.

5-5-24 SYSTEM MAINTENANCE. A provider shall:

- (A) Install and maintain all parts of its system in a non-dangerous condition throughout the entire period of its franchise.
- (B) Install and maintain its system in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations.
- (C) At all reasonable times, permit examination by any duly authorized representatives of the City of the system and its effect on the rights-of-way.

5-5-25 TRIMMING OF TREES. A provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over rights-of-way so as to prevent the branches of such trees from coming in contact with its system.

5-5-26 FRANCHISE AND LICENSE NON-TRANSFERRABLE

- (A) Notification of Sale. When a provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the

provider or its successor entity shall promptly notify the City of the nature of the transaction. The notification shall include either

- (1) The successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement, or
 - (2) the successor entity's application in compliance with Sections 5-5-12 thru 5-5-15 of this ordinance.
- (B) Transfer of Franchise. Upon receipt of a notification and certification in accordance with this section, the City designee, as provided for in Section 5-5-33 shall send notice affirming the transfer of the franchise to the successor entity. If the City has good cause to believe that the successor entity may not comply with this ordinance or the franchise agreement, it may require an application for the transfer. The application shall comply with Sections 5-5-12 thru 5-5-15.
- (C) If PSC Approval No Longer Required. If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in this section, and the City has good cause to believe that the successor entity may not comply with this ordinance or the franchise agreement, it may require an application. The application shall comply with Sections 5-5-12 thru 5-5-15.
- (D) Events of Sale. The following events shall be deemed to be a sale, assignment or other transfer of the franchise requiring compliance with this section: (i) the sale, assignment or other transfer of all or a majority of a provider's assets to another person; (ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in a provider; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by a provider so as to create a new controlling interest in such a provider; or (iv) the entry by a provider into an agreement with respect to the management or operation of such provider or its system.

5-5-27 INSURANCE, INDEMNITY, AND SECURITY. Prior to the execution of a franchise, a provider will deposit with the City an irrevocable, unconditional letter of credit or surety bond as required by the terms of the Franchise, and shall obtain and provide proof of the insurance coverage required by the franchise. A provider shall also indemnify the City as set forth in the franchise.

5-5-28 OVERSIGHT. The City shall have the right to oversee, regulate and inspect periodically the construction, maintenance, and upgrade of the system, and any part thereof, establish and maintain managerial and operational records, standards, procedures and controls to enable a provider to prove, in reasonable detail, to the satisfaction of the City at all times throughout the term, that a provider's in compliance with the franchise. A provider shall retain such records for not less than the applicable statute of limitations.

5-5-29 MAINTAIN RECORDS. A provider shall at all times maintain:

- (A) On file with the City, a full and complete set of plans, records and "as-built" hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS

system, of all existing and proposed installations and the types of equipment and systems installed or constructed in the rights-of-way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks which shall include annotations of all rights-of-ways where work will be undertaken. As used herein, "as-built" maps includes "file construction prints." Maps shall be drawn to scale. "As-built" maps, including the compatible electronic format, as provided above, shall be submitted within 30 days of completion of work or within 30 days after completion of modification and repairs. "As-built" maps are not required of the provider who is the incumbent local exchange carrier for the existing system to the extent they do not exist.

- (B) Throughout the term of the franchise, a provider shall maintain complete and accurate books of account and records of the business, ownership, and operations of a provider with respect to the system in a manner that allows the City at all times to determine whether a provider is in compliance with the franchise. Should the City reasonably determine that the records are not being maintained in such a manner, a provider shall alter the manner in which the books and/or records are maintained so that a provider comes into compliance with this section. All financial books and records which are maintained in accordance with the regulations of the FCC and any governmental entity that regulates utilities in the State of Utah, and generally accepted accounting principles shall be deemed to be acceptable under this section.

5-5-30 CONFIDENTIALITY. If the information required to be submitted is proprietary in nature or must be kept confidential by federal, state or local law, upon proper request by a provider, such information shall be classified as a protected record within the meaning of the Utah Government Records Access and Management Act ("GRAMA"), making it available only to those who must have access to perform their duties on behalf of the City, provided that a provider notifies the City of, and clearly labels the information which a provider deems to be confidential, proprietary information. Such notification and labeling shall be the sole responsibility of the provider.

5-5-31 PROVIDER'S EXPENSE. All reports and records required under this ordinance shall be furnished at the sole expense of a provider, except as otherwise provided in this ordinance or a franchise.

5-5-32 RIGHT OF INSPECTION. For the purpose of verifying the correct amount of the franchise fee, the books and records of the provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records, provided that the City shall not audit the books and records of the provider more often than annually. The provider agrees to reimburse the City the reasonable costs of an audit if the audit discloses that the provider has paid ninety-five percent (95%) or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the provider herein is found to be incorrect, then payment shall be made on the corrected amount within thirty (30) calendar days of written notice, it being agreed that the city may accept any amount offered by the provider, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

5-5-33 ENFORCEMENT - CITY DESIGNEE. The City is responsible for enforcing and administering this ordinance, and the City or its designee as appointed by the Mayor is authorized to give any notice required by law or under any franchise agreement.

- 5-5-34 ENFORCEMENT PROVISION.** Any franchise granted pursuant to this ordinance shall contain appropriate provisions for enforcement, compensation, and protection of the public, consistent with the other provisions of this ordinance, including, but not limited to, defining events of default, procedures for accessing the bond/security fund, and rights of termination or revocation.
- 5-5-35 FORCE MAJEURE.** In the event a provider's performance of any of the terms, conditions or obligations required by this ordinance or a franchise is prevented by a cause or event not within a provider's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of utilities, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.
- 5-5-36 CONTINUATION AFTER EXPIRATION.** Upon either expiration or revocation of a franchise granted pursuant to this ordinance, the City shall have discretion to permit a provider to continue to operate its system or provide services for an extended period of time not to exceed six (6) months from the date of such expiration or revocation. A provider shall continue to operate its system under the terms and conditions of this ordinance and the franchise granted pursuant to this ordinance.
- 5-5-37 CONTINUATION BY INCUMBENT LOCAL EXCHANGE CARRIER.** If the provider is the incumbent local exchange carrier, it shall be permitted to continue to operate its system and provide services without regard to revocation or expiration, but shall be obligated to negotiate a renewal in good faith.
- 5-5-38 ABANDONED SYSTEM.** In the event that (1) the use of any portion of the system is discontinued for a continuous period of twelve (12) months, and thirty (30) days after no response to written notice from the City to the last known address of provider; (2) any system has been installed in the rights-of-way without complying with the requirements of this ordinance or franchise; or (3) the provisions of Section 5-5-8 are applicable and no franchise is granted, a provider, except the provider who is an incumbent local exchange carrier, shall be deemed to have abandoned such System.
- 5-5-39 REMOVAL OF ABANDONED SYSTEM.** The City, upon such terms as it may impose, may give the provider written permission to abandon, without removing any system, or portion thereof, directly constructed, operated or maintained under a franchise. Unless such permission is granted or unless otherwise provided in this ordinance, a provider shall remove within a reasonable time the abandoned system and shall restore, using prudent construction standards, any affected rights-of-way to their former state at the time such system was installed, so as not to impair their usefulness. In removing its plant, structures and equipment, a provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all rights-of-way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the rights-of-way cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this ordinance and any security fund provided in a franchise shall continue in full force and effect during the period of removal and until full compliance by a provider with the terms and conditions of this section.

- 5-5-40** **TRANSFER OF ABANDONED SYSTEM TO CITY.** Upon abandonment of any system in place, a provider, if required by the City, shall submit to the City a written instrument, satisfactory in form to the City, transferring to the City the ownership of the abandoned system.
- 5-5-41** **REMOVAL OF ABOVE-GROUND SYSTEM.** At the expiration of the term for which a franchise is granted, or upon its revocation or earlier expiration, as provided for by this ordinance, in any such case without renewal, extension or transfer, the City shall have the right to require a provider to remove, at its expense, all above ground portions of a system from the rights-of-way within a reasonable period of time which shall not be less than one hundred eighty (180) days. If the provider is the incumbent local exchange carrier, it shall not be required to remove its system, but shall negotiate a renewal in good faith.
- 5-5-42** **LEAVING UNDERGROUND SYSTEM.** Notwithstanding anything to the contrary set forth in this ordinance, a provider may abandon any underground system in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator or other person.
- 5-5-43** **PUBLICIZING WORK.** Before entering onto any private property, a provider shall make a good faith attempt to contact the property owners in advance, and describe the work to be performed.
- 5-5-44** **CONFLICTS.** In the event of a conflict between any provision of this ordinance and a franchise entered pursuant to it, the provisions of this ordinance in effect at the time the franchise is entered into shall control.
- 5-5-45** **SEVERABILITY.** If any provision of this ordinance is held by any federal, state or local court of competent jurisdiction, to be invalid as conflicting with any federal or state statute, or is ordered by a court to be modified in any way in order to conform to the requirements of any such law and all appellate remedies with regard to the validity of the ordinance provisions in question are exhausted, such provision shall be considered a separate, distinct, and independent part of this ordinance, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law is subsequently repealed, rescinded, amended or otherwise changed, so that the provision which had been held invalid or modified is no longer in conflict with such law the provision in question shall return to full force and effect and shall again be binding on the City and the provider, provided that the City shall give the provider thirty (30) days, or a longer period of time as may be reasonably required for a provider to comply with such a rejuvenated provision, written notice of the change before requiring compliance with such provision.
- 5-5-46** **NEW DEVELOPMENTS.** It shall be the policy of the City to liberally amend this ordinance, upon application of a provider, when necessary to enable the provider to take advantage of any developments in the field of telecommunications which will afford the provider an opportunity to more effectively, efficiently, or economically serve itself or the public.
- 5-5-47** **NOTICES.** All notices from a provider to the City required under this ordinance or pursuant to a franchise granted pursuant to this ordinance shall be directed to the officer as designated by the Mayor. A provider shall provide in any application for a franchise the identity, address and phone number to receive notices from the City. A provider shall immediately notify the City of any change in its name, address, or telephone number.

- 5-5-48 EXERCISE OF POLICE POWER.** To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders, or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.
- 5-5-49 ORDINANCE APPLICABILITY.** This ordinance shall apply to all franchises granted or renewed after the effective date of this ordinance. This ordinance shall further apply, to the extent permitted by applicable federal or state law to all existing franchises granted prior to the effective date of this ordinance and to a provider providing services, without a franchise, prior to the effective date of this ordinance.
- 5-5-50 OTHER APPLICABLE ORDINANCES.** A provider's rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. A provider shall comply with all applicable general laws and ordinances enacted by the City pursuant to its police powers. In particular, all providers shall comply with the City zoning and other land use requirements.
- 5-5-51 CITY FAILURE TO ENFORCE.** A provider shall not be relieved of its obligation to comply with any of the provisions of this ordinance or any franchise granted pursuant to this ordinance by reason of any failure of the City to enforce prompt compliance.
- 5-5-52 CONSTRUED ACCORDING TO FEDERAL AND UTAH LAW.** This ordinance and any franchise granted pursuant to this ordinance shall be construed and enforced in accordance with the substantive laws of the State of Utah and shall be construed in a manner consistent with all applicable federal statutes.

Chapter 6

Door-to-Door Solicitation

- 5-6-1: Purpose
 - 5-6-2: Definitions
 - 5-6-3: Solicitation Prohibited
 - 5-6-4: Exception for Invited Solicitor
 - 5-6-5: Exemptions from Chapter
 - 5-6-6: Charitable Exception
 - 5-6-7: Registration of Solicitors
 - 5-6-8: Application for Certificate, Review, Issuance, Denial
 - 5-6-9: Proof of Identification Required
 - 5-6-10: Registration Complete with Issuance
 - 5-6-11: Form of Certificate and Badge
 - 5-6-12: Maintenance of Registry
 - 5-6-13: Renewal of Certificate
 - 5-6-14: Non-transferability
 - 5-6-15: Deceptive Soliciting Practices Prohibited
 - 5-6-16: Revocation of Certificate
 - 5-6-17: Appeal
 - 5-6-18: "No Soliciting" Notice
 - 5-6-19: Duties of Solicitors
 - 5-6-20: Time of Day Restrictions
 - 5-6-21: Penalties
-
- 5-6-1: **PURPOSE.** The city has an interest in protecting the well-being, tranquility, and privacy of the home. The privacy, which all citizens enjoy within their own walls, includes an ability to avoid intrusions, and the City has a responsibility to protect citizens from such intrusions. The City also has an interest in protecting consumers from inappropriate or fraudulent practices and to protect its citizens from criminal activity such as disorderly conduct, theft, trespass and assault. The City has a responsibility to protect its citizens from actual harm as well as to protect them from potential harm, which may result in unregulated door-to-door solicitation. There must be a balance of these legitimate interests of the City and the effect of the regulations on the rights of those who are regulated. Based upon the information which the City has considered and the experience of its officers and those affected by door-to-door canvassing and solicitation, the City finds that the procedures, rules and regulations set forth in this Chapter are tailored narrowly to preserve and protect the City interests reflected herein while at the same time balancing the rights of those regulated. (Ord. 02-27, 02-32)
 - 5-6-2: **DEFINITIONS.** For the purpose of this Chapter, the following definitions shall apply:

- (A) HOME SOLICITATION SALE: means a consumer cash sale or credit sale of goods or services in which the seller or a person acting for him engages in a face-to-face solicitation of the sale at a residence or place of employment of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It does not include a sale made pursuant to preexisting open-end accounts, or a sale made between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.
- (B) REGISTRANT or REGISTERED SOLICITOR: means any person who is subject to this Chapter who has obtained a valid Certificate of Registration from the Licensing Department of the City.
- (C) RESIDENCE: means any living unit contained within any building or structure that is occupied by any person as a dwelling consistent with the zoning laws of the City.
- (D) SOLICITING or SOLICITATION: means any of the following activities designed or intended to seek, obtain, promote or facilitate Home Solicitation Sale:
- (1) Seeking or attempting to obtain orders for the sale or exchange of goods, wares, merchandise or perishables of any kind, for any kind of remuneration or consideration, regardless of whether advance payment is sought;
 - (2) Seeking or attempting to obtain prospective customers to apply for or to purchase insurance, subscriptions to publications, or publications;
 - (3) Seeking or attempting to obtain contributions of money or any other thing of value for the benefit of any association, organization, corporation, or program;
 - (4) Seeking to obtain orders or prospective customers for goods or services;
 - (5) Other activities falling within the commonly accepted definition of "Soliciting."
- (E) SOLICITOR or SOLICITORS: means a person or persons engaged in the activities defined as "Soliciting." (Ord. 02-27, 02-32)

5-6-3: **SOLICITATION PROHIBITED.** Unless otherwise authorized or permitted pursuant to the terms and provisions of this Chapter, the practice of being in and upon private residential property within the City by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise and/or services for the purpose of Home Solicitation Sales, Soliciting, or Soliciting orders for the sale of goods, wares, merchandise and/or services, and/or for the purpose of disposing and/or peddling or hawking, the same is prohibited and is punishable as set forth in this Chapter. (Ord. 02-27, 02-32)

5-6-4: **EXCEPTION FOR INVITED SOLICITOR.** The prohibition under Section 5-6-3 shall not apply if the owner or occupant of the private residential property has previously and specifically invited the solicitor to the private residential property. Such invitation shall not relieve the solicitor from complying with all other terms and provisions of this Chapter. (Ord. 02-27, 02-32)

5-6-5: EXEMPTIONS FROM CHAPTER. The terms and provisions of this Chapter do not apply to persons engaged in non-commercial distribution of religious tracts and information, the door-to-door canvassing and pamphleteering as vehicles for the dissemination of ideas or engaged in political activities as a candidate or on behalf of a candidate in a recognized state or local election. (Ord. 02-27, 02-32)

5-6-6: CHARITABLE EXCEPTION. The prohibition under Section 5-6-3 shall not apply if the solicitor is working on behalf of a charitable organization recognized as such under regulations issued by the IRS pursuant to its authority created by the terms of 26 U.S.C. §501. Any solicitor claiming such exception shall provide written verification to the City License Officer and receive approval from such Officer prior to engaging in any soliciting within the City. Such approval shall be evidenced by such documentation as determined appropriate by the License Officer. The Charitable Exception shall apply generally to persons making solicitations for a church, religious organization or charitable organization recognized by the IRS as a non-profit corporation, and shall include any unincorporated association or corporation under the supervision and control of any church, charitable organization or religious organization, if the church or organization is tax exempt under IRS regulations. The Charitable Exception shall apply to students soliciting contributions to finance extracurricular social, athletic, artistic, scientific or cultural programs, provided that the solicitation has been approved by the school principal or superintendent of schools and such approval has been filed in writing with the City License Officer; provided, however, that no such solicitation is permitted if the occupant of the residence has complied with the "No Soliciting" provisions of Section 5-6-18. (Ord. 02-27, 02-32)

5-6-7: REGISTRATION OF SOLICITORS. All persons not exempted as provided in this Chapter desiring to engage in soliciting within the City shall, prior to doing so, apply to the City License Officer for an Annual Certificate of Registration. The certificate executed by the License Officer or designee shall be maintained by the License Officer and a legal copy shall be carried by the Registrant at all times while soliciting. Upon request for inspection by an owner or occupant of a residence or a City Police Officer while engaged in soliciting, the Registrant shall show proof of such registration.

The registration of any solicitor may be revoked at any time for violating any of the terms or provisions of this Chapter or otherwise, if the solicitor becomes ineligible to continue as a registered solicitor, including, but not limited to, conviction of any felony in any jurisdiction or conviction of any crime involving moral turpitude. (Ord. 02-27, 02-32)

5-6-8: APPLICATION FOR CERTIFICATE, FEES, REVIEW, ISSUANCE, DENIAL.

(A) The city License Officer shall provide a standard form for use for registration of solicitors. The applicant shall pay a registration fee as set by the City Council. The applicant shall state upon oath or affirmation that the information is truthfully provided to the best of the knowledge and belief of the applicant. The applicant shall supply the following information and any such additional information that the License Officer may include upon the application form:

(1) Applicant's true, correct and legal name, including any former names or aliases;

- (2) The name address and telephone number of any and all organizations for which applicant will be soliciting;
 - (3) The applicant's home address and applicant's headquarters or place or organization contact;
 - (4) The names and addresses of applicant's immediate supervisor and company officers and managers, if any;
 - (5) The purpose for which soliciting will be done;
 - (6) A brief description of the method of presentation that will be made;
 - (7) The dates for which soliciting is planned;
 - (8) Whether a permit, license or Certificate of Registration in connection with soliciting has ever been revoked by any jurisdiction, explaining the circumstances;
 - (9) The applicant shall also apply to the State Bureau of Criminal Identification for a criminal background check, and as a condition precedent to issuance of a Certificate of Registration, the applicant shall provide to the license Officer a certified report from the Bureau of Criminal Identification showing the criminal history, if any, of the applicant. No application shall be approved for an applicant (a) with a felon conviction within ten (10) years (b) who has been incarcerated in federal or state prison within the past ten (10) years, (c) who has ever been convicted of a crime involving abuse of a child, (d) who is on parole or probation to any court or penal institution, or (e) who has received a conviction of any crime involving moral turpitude within the past ten (10) years.
- (B) Upon review, if all requirements are met, the License Officer shall issue a Certificate to the applicant.
- (C) Upon review the License Officer may refuse to issue a Certificate to the applicant for any of the following reasons:
- (1) The location and time of solicitation would endanger the safety and welfare of the solicitors or their customers;
 - (2) The applicant falsified information on the application;
 - (3) The applicant has been convicted of a felony, misdemeanor involving moral turpitude, a violation involving trafficking in controlled substances, or any violent acts against person or property, such conviction being entered within the five (5) years preceding the date of application, or if any of the provisions in the preceding paragraph (A)(9) are met;
 - (4) The applicant is a person against whom a judgment, based upon fraud, deceit or misrepresentation, has been entered within the five (5) years immediately preceding the date of the application.
 - (5) There is no proof as to the authority of the applicant to serve as an agent of the principal;

(6) The applicant has been denied a permit under this Chapter within the immediate past year, unless the applicant can and does show to the satisfaction of the License Officer the reasons for such earlier denial no longer exist; or

(7) Any other reason rendering it manifestly inappropriate to issue a Certificate. (Ord. 02-27, 02-32)

5-6-9: PROOF OF IDENTIFICATION REQUIRED. No Certificate of Registration shall be issued to any applicant until the applicant establishes proof of identification. The License Officer shall verify an applicant's true identity by use of any of the following that bear a photograph of said applicant:

(1) A valid Drivers License issued by any state;

(2) A valid United States Uniformed Service Identification Card;

(3) A valid passport of the United States; or

(4) Such other identification as the License Officer may deem acceptable. (Ord. 02-27, 02-32)

5-6-10: REGISTRATION COMPLETE WITH ISSUANCE. Registration shall be complete when the License Officer issues the Certificate of Registration. (Ord. 02-27,02-32)

5-6-11: FORM OF CERTIFICATE AND BADGE.

(1) Each certificate shall be numbered, shall list the name of the individual solicitor and of any organization on whose behalf the solicitor is authorized to solicit, the date on which the certificate expires and shall be dated and signed by the License Officer or designee.

(2) Each registered solicitor shall wear prominently on his or her person a badge issued by the City with a recent photograph of the solicitor and the name and address of any entity with which the solicitor is associated. Such badge shall be worn at all times while the solicitor is engaged in soliciting. (Ord. 02-27,02-32)

5-6-12: MAINTENANCE OF REGISTRY. The license Officer shall maintain and make available for public inspection a record of every application received, together with any information pertaining thereto, all certificates of registration issued, and all denials of applications. Each application shall be numbered in consecutive order and each certificate issued shall be assigned a number exclusive to the registered solicitor. Every certificate renewed shall be identified with the duplicate number of the application upon which it was initially issued. The License Officer shall furnish to the Chief of Police a listing of all certificates issued and renewed and the Chief of Police shall maintain such listing for public inspection and for identification. (Ord. 02-27,02-32)

5-6-13: RENEWAL OF CERTIFICATE. A certificate shall be valid for the calendar year in which it was issued and shall expire at midnight on December 31st of each year without regard to the date of issuance. Any certificate in good standing may be renewed upon request of the registered solicitor. The applicant shall be required to fill out a renewal application providing the information required in the initial registration. (Ord. 02-27,02-32)

5-6-14: **NON-TRANSFERABILITY.** Certificates of Registration shall be issued only in the name of the applicant and the firm, corporation, or association on whose behalf the applicant is authorized to solicit. The certificate shall be non-transferable from an individual to another individual, from individual to firm, from firm to firm, and firm to individual. It shall be a violation for a solicitor whose certificate authorizes soliciting on behalf of a firm named in a certificate to solicit on behalf of any other firm, organization, or association, or for any purpose other than that specified on the application. Any certificate used by a person other than the person for whom it was originally issued shall be forfeited, confiscated and immediately cancelled. (Ord. 02-27,02-32)

5-6-15: **DECEPTIVE SOLICITING PRACTICES PROHIBITED.**

- (1) No solicitor shall intentionally make any materially false or fraudulent statement in the course of soliciting.
- (2) A solicitor shall immediately disclose to the consumer during face-to-face solicitation the first and last name of the solicitor, the name and address of the entity with whom the solicitor is associated and the true purpose of the solicitor's contact with the consumer.
- (3) No solicitor shall use a fictitious name, an alias, or any name other than his or her true and correct name.
- (4) No solicitor shall represent directly or by implication that the City endorses the solicitation or that the granting of a Certificate of Registration implies any endorsement by the City of the solicitor's product or service or of the individual solicitor. (Ord. 02-27,02-32)

5-6-16: **REVOCAION OF CERTIFICATE.** The License Officer shall revoke any Certificate of Registration issued pursuant to the provisions of this Chapter if the Registrant is convicted of a violation of this Chapter or otherwise becomes disqualified for the issuance of a Certificate of Registration. Notice of revocation shall be immediately given to the Registrant by personal service or by certified mail to the address listed on the application and to the organization for which the registrant was soliciting. Immediately upon the giving of such notice, the Certificate of Registration shall become null and void and shall remain so unless the revocation order is rescinded. (Ord. 02-27,02-32)

5-6-17: **APPEAL.** An applicant whose registration was denied or a registrant whose certificate was revoked by the License Officer shall have the right to appeal to the City Council or its designee. Any appeal must be demanded in writing sent by certified mail to the City Recorder with a copy to the License Officer within seven (7) calendar days of the decision from which the appeal is taken. Such appeal shall describe in detail the nature of the appeal, the action complained of and the grounds for appeal. A right of appeal is in derogation of any other rights in law or equity that the applicant may have. (Ord. 02-27,02-32)

5-6-18: **"NO SOLICITING" NOTICE.**

- (1) Any occupant of a residence desiring to secure the protection of this Chapter shall give notice of a desire to refuse solicitors by displaying a placard or sign no smaller than 16 square inches stating "No Soliciting," "No Solicitors," "No Salesmen" or words of similar import which shall be posted on or near the main

entrance door or on or near the property line adjacent to the sidewalk leading to the residence.

- (2) The display of such sign or placard shall be deemed to constitute notice to any solicitor that the inhabitant of the residence does not desire to receive and/or does not invite solicitors.
- (3) It shall be the responsibility of the solicitor to check each residence for the presence of any such Notice.
- (4) The provisions of this Section shall apply to solicitors who are soliciting under the provisions of Section 5-6-6 of this Chapter. (Ord. 02-27,02-32)

5-6-19: DUTIES OF SOLICITORS.

- (1) Every solicitor shall, prior to entering premises on which a residence or dwelling is located, examine the sidewalk leading to the Residence or dwelling unit and the door and areas near the door for any "No Soliciting" sign or placard or any other notice or sign notifying a solicitor not to solicit on the premises, such as, but not limited to, "No Salesmen"; and "No Solicitors" signs. If such sign or placard is posted, solicitor shall desist from any efforts to solicit at the residence or dwelling and shall immediately depart from such property. Possession of a Certificate of Registration does not in any way relieve any solicitor of this duty.
- (2) It is a violation of this Chapter for any person not otherwise exempted to knock on the door, ring the doorbell, or in any other manner attempt to attract the attention of an occupant of a residence that bears a "No Soliciting" or similar sign or placard. It is a violation of this Chapter for any solicitor, through ruse, deception, or concealment of a purpose to solicit, to take action calculated to secure an audience with the occupant of a residence that has posted a "No Soliciting" or similar sign or placard.
- (3) Any solicitor who is at any time asked by the occupant of a residence or dwelling to leave shall immediately and peacefully depart. (Ord. 02-27,02-32)

5-6-20: TIME OF DAY RESTRICTIONS. It shall be unlawful for any person, whether licensed or not, to solicit any person at a residence before 9:00 a.m. or after sundown, or on holidays (defined herein to include: New Years Day, Presidents Day, Easter, Memorial Day, July 4th and 24th, Labor Day, Thanksgiving Day, and Christmas Day) unless the Solicitor has express permission from the resident to do so. (Ord. 02-27,02-32)

5-6-21: PENALTIES. Any person who engages in soliciting without complying with the requirements of this Chapter or violates any other terms or provision of this Chapter shall be guilty of a Class B Misdemeanor. A second offense may be prosecuted and punished as a Class A Misdemeanor. (Ord. 02-27,02-32)

5-6-22: FEES. The fees required under this ordinance may be set by resolution of the City Council. (Ord. 02-27,02-32)