

CHAPTER 6

Business Licenses and Regulations

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ARTICLE I

Business Licenses

Sec. 6-1-10. Business license requirement.

It is unlawful for any person or entity to conduct, engage in or establish a business or place of business in the Town, including a home occupation, without having first obtained a business license. Additionally, certain businesses or business activities defined in this Article shall be subject to special supplemental licensing requirements. A separate business license shall be required for each place of business and, unless otherwise specifically provided on the license, a business license shall expire on December 31 of the year in which it was issued, unless sooner revoked. (Ord. 11, 2002 §1)

Sec. 6-1-20. Definitions.

As used in this Article, the following words shall be defined as follows:

Business means any activity engaged in with the object of financial or other gain, benefit, advantage or profit, either direct or indirect, including, by way of example, the sale, supply or delivery of goods or services, and including such activities conducted by home occupations and professions and nonprofit organizations.

Business license means a license issued pursuant to the terms of this Article and includes peddler, solicitor and transient merchant licenses, general business licenses, special event business licenses, and massage parlor licenses.

General business license means a license issued to engage in a business not subject to the special licensing requirements applicable to specific businesses or business activities identified in this Article.

Home occupation means an occupation, vocation or business engaged in business from a residence in accordance with the regulations governing home occupations in Chapter 16 of this Code.

Massage parlor shall have that meaning as provided under the Colorado Massage Parlor Code, Section 12-48.5-103, C.R.S.

Nonprofit business or organization means a business or organization that has been lawfully established in accordance with the Colorado Revised Nonprofit Corporation Act and/or which has received nonprofit tax exempt status under the Internal Revenue Code by the Internal Revenue Service, U.S. Department of the Treasury.

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

Retailer or retail business means a person or business engaged in the sale of tangible personal property, goods or services to a consumer or user, and not for resale.

Sales tax license means the license required by the Colorado Department of Revenue for persons or businesses conducting retail sales or a retail sales business.

Solicitor means any person, whether a resident of the Town or not, traveling either by foot or vehicle from place to place, from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares, merchandise or personal property of any nature whatsoever for future delivery, or for services to be performed or furnished in the future, whether or not such person has, carries or exposes for sale a sample of the subject of such sale, or whether or not he or she is collecting advance payments on such sales.

Special business event or fund-raising event means a special event occurring at one (1) or more locations and at which more than one (1) business, transient merchant or individual engages in the sale of tangible personal property, goods or services, whether conducted for profit or to raise funds for a nonprofit organization, e.g., craft shows and swap meets.

Transient merchant means any person, whether as owner, agent, consignee or employee, and whether a resident of the Town or not, who engages in a temporary business of selling and delivering goods, wares, services or merchandise within the Town and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, trailer, tent, hotel room, lodging house, apartment, shop or storefront, or any street, alley or other place within the Town for the exhibition and sale of such goods, wares, services and merchandise. (Ord. 11, 2002 §1)

Sec. 6-1-30. License application; denials.

(a) An application for a general or other business license shall be made to the Town Clerk on forms provided therefor and be accompanied by a nonrefundable application fee. Every applicant shall state under oath or affirmation such facts as may be required for the granting of such license, and it shall be unlawful for any person to make any false statement or misrepresentation in connection with any license application.

(b) Except as otherwise provided for in this Article, the Town Clerk shall have the power to grant or deny a license and to impose reasonable limitations and restrictions on any license so granted consistent with the provisions in this Article. Denials shall be for cause. Written notice of the denial shall be provided to the applicant, which notice shall include the grounds for denial.

(c) The following nonexclusive reasons may constitute cause for denial of a business license:

- (1) Previous revocation or suspension of a business license held by the applicant;
- (2) Nonconformance of the premises or building to be used for the business with the requirements of pertinent Town health or safety codes;
- (3) Nonconformance of the business with zoning regulations; however, issuance of a business license shall not mean, nor shall issuance of a business license be construed as, a determination that a proposed business, business activity or business premises satisfies all applicable zoning or other land use regulations; and
- (4) The failure of a person or business engaged in, or intending to engage in, retail sales to possess a valid Colorado sales tax license.

(d) A denial of a business license application may be appealed by the applicant to the Board of Trustees by filing a written notice of appeal with the Town Clerk within ten (10) days from the date of the notice of denial. (Ord. 11, 2002 §1)

Sec. 6-1-40. License fee.

(a) The fee for a business license shall be established and amended from time to time by written resolution adopted by the Board of Trustees, and must be deposited with the Town Clerk prior to consideration of a license application. A separate license fee may be assessed for each business license required under this Article. Notwithstanding the foregoing, nonprofit organizations shall be exempt from having to pay a business license fee, except for the fee for a special events license. In the event a license is denied, the license fee deposited on application shall be refunded.

(b) Any licensee who fails to renew his or her business license for an existing business on or before January 31 of each year shall pay a late charge equal to fifty percent (50%) of the amount of the license fee in addition to the license fee. The late charge shall be paid to the Town Clerk prior to consideration of the application to renew the business license. (Ord. 11, 2002 §1)

Sec. 6-1-50. License contents; record keeping; application forms.

Each license shall specify the name of the licensee, a business address, the nature of the business, the term of the license, the place, if any, to which the license attaches, the amount payable thereon, and the date upon which it expires. The Town Clerk shall attest to all licenses granted and keep an adequate record thereof. (Ord. 11, 2002 §1)

Sec. 6-1-60. Display of license.

Every license granted under the provisions of this Article shall be posted in a conspicuous place at the place of business for the full term of the license. Licenses shall be removed upon expiration. It shall also be the duty of every person to whom a license has been issued to show the same at any time during which business is being conducted when requested to do so by any Town official or business customer. (Ord. 11, 2002 §1)

Sec. 6-1-70. License suspension or revocation; grounds.

The Board of Trustees shall have the power to revoke or suspend any license issued under this Article upon notice to the licensee and a hearing as hereinafter provided for any of the following reasons:

- (1) Providing false or fraudulent information on a license application or to the Town Clerk or other Town official;
- (2) Conviction on any violation of federal, state or municipal law committed in the course of operating a licensed business;
- (3) Repeated violations of one (1) or more Town ordinances at the licensee's place of business by the licensee;
- (4) The conduct of the licensee's business creates a breach of the peace or a public nuisance;

(5) The business is of such a nature, or is operated in such a manner, that it is frequented by individuals who consistently disrupt the normal and reasonable peace and tranquility of the neighborhood, or who intimidate, threaten or harass any other business or person in the immediate neighborhood;

(6) The licensee fails to keep and maintain permanent records which, in accordance with accepted accounting practices, are necessary for establishing the licensee's sales tax liability;

(7) The licensee remains in arrears in payment of sales tax or other monies, including fines and fees, due the Town or the Colorado Department of Revenue for more than thirty (30) days after payment is due, or fails to obtain and maintain a valid state sales tax license if engaged in retail sales. (Ord. 11, 2002 §1)

Sec. 6-1-80. License suspension or revocation; hearing.

(a) The Board of Trustees may, on its own motion or otherwise, proceed to suspend or revoke for just cause any business license after notice to the licensee and a hearing as provided in this Article.

(b) Notice of a suspension or revocation hearing by the Board of Trustees shall be posted at the licensee's place of business, if any, and mailed to the licensee by certified U.S. mail, return receipt requested, or hand-delivered at least ten (10) days prior to the hearing.

(c) Every notice of suspension, revocation and/or hearing shall set forth in plain language the grounds for suspension or revocation and direct the licensee to appear before the Board of Trustees at a specified time and date to show cause why the license should not be suspended or revoked.

(d) The public hearing by the Board of Trustees shall include:

(1) A reading of the grounds set forth in the show cause/hearing notice allegedly warranting the suspension or revocation of the licensee's business license.

(2) The presentation by the Town Clerk or other Town official of any and all testimony, evidence, documents or other information supporting the suspension or revocation of the licensee's business license.

(3) The presentation by the licensee of any testimony, evidence, documents or any other information in defense or rebuttal of the allegations or grounds asserted for the suspension or revocation of the licensee's business license. The licensee may present his or her defense by or with the assistance of legal counsel.

(4) The Mayor may place under oath persons testifying or otherwise providing information at the hearing, and all such persons shall be subject to examination by the Board of Trustees and the licensee.

(e) Based on the record of the public hearing, the Board of Trustees may cause the licensee's business license to be suspended or revoked. All decisions by the Board of Trustees shall be reduced to writing and a copy shall be provided to the licensee. (Ord. 11, 2002 §1)

Sec. 6-1-90. Licensing of business in annexed property.

In the event that any business, trade or occupation is being conducted on property at the time of the annexation of such property to the Town, and the person carrying on or engaging in the business, trade or occupation is doing so lawfully and in conformance with all existing laws and statutes governing such

property, the conduct of such business, trade or occupation may be continued upon and subsequent to the annexation of the property to the Town; provided that the applicable license fee is paid within ten (10) days of annexation. In subsequent calendar years, the business must conform to all licensing requirements contained in this Article. (Ord. 11, 2002 §1)

Sec. 6-1-100. Special events business license.

(a) Any person or organization conducting or sponsoring a special business or fund-raising event must apply for and obtain a special events business license from the Town and pay the fee therefor. Applications for a license shall be made on forms provided by the Town Clerk. No special events business license for an event occurring on Town-owned property or right-of-way shall be issued without the applicant, person or organization sponsoring the event having first obtained a permit from the Town to use or occupy the Town-owned property as required by Article V of Chapter 11 of this Code.

(b) Applications for a special events business license must be submitted not less than thirty (30) days prior to the date of the special event and must identify the name and address of each person or organization sponsoring the event. Applications must be accompanied by a written plan describing, at a minimum, the manner in which the special event shall be conducted, including, without limitation: (1) a description of all proposed activities and any booths or other structures to be constructed or utilized; (2) a list of all transient merchants and other businesses participating in the special event; and (3) whether a street closure will be necessary.

(c) Applications for a special event business license shall be approved or denied by the Town Clerk. No license shall be issued for an event on Town-owned property or right-of-way without written verification that the licensee has and shall continue to maintain general liability insurance sufficient to insure and indemnify the Town against any injury to person or property that might arise from or during the event. Insurance coverage shall be in amounts not less than those recovery limits set forth in the Colorado Governmental Immunity Act, Section 24-10-114, C.R.S., or any successor statute thereto.

(d) All licensees shall inform each person or organization intending to make, or making, any retail sale at the special event of their duty to secure a Colorado sales tax license and to collect and remit the appropriate sales taxes, unless the event sponsor or organizer elects to collect and remit such taxes under its own sales tax license, if any.

(e) Where the event sponsor or organizer elects to collect sales taxes under its own sales tax license, said sponsor or organizer shall submit to the Town Clerk within thirty (30) days after the conclusion of the special event a written financial report reflecting, at a minimum, total sales of goods and/or services generated at the special event and the total sales tax revenues collected. Compliance with the reporting requirements in this Subsection shall be in addition to any required sales tax reporting due to the Colorado Department of Revenue.

(f) Any transient merchant or business authorized by the event sponsor to participate in a licensed special event shall be exempt from having to obtain an individual business license to conduct business at such event. (Ord. 11, 2002 §1)

Sec. 6-1-110. Massage parlor license.

(a) Notwithstanding any other provision in this Article, no person, corporation, business or other entity shall operate a massage parlor within the Town without first having obtained a license as required under the Colorado Massage Parlor Code. Applications for a massage parlor license shall be made on forms furnished by the Town Clerk and shall be accompanied by a nonrefundable application fee as may be established by the Board of Trustees.

(b) An application for a new massage parlor license, or the renewal of an existing license, shall be processed and reviewed in accordance with the procedures and standards set forth in the Colorado Massage Parlor Code, Sections 12-48.5-101, et seq., C.R.S., or any successor statute.

(c) The fee for a new or renewed massage parlor license shall be equal to the maximum amount authorized under the Colorado Massage Parlor Code, or such lesser amount as may be established by the Board of Trustees from time to time.

(d) This Section has been adopted to implement the provisions of the Colorado Massage Parlor Code. In the event of the repeal of the Colorado Massage Parlor Code by the Colorado General Assembly, this Section shall correspondingly be deemed to be repealed and of no further effect. (Ord. 11, 2002 §1)

Sec. 6-1-120. Peddler, solicitor and transient merchant license; prohibitions.

(a) No peddler, solicitor or transient merchant shall engage in business or operate within the corporate limits of the Town without first having obtained a license from the Town Clerk, except as otherwise provided in this Section.

(b) Applications for a license under this Section shall be filed with the Town Clerk on forms provided therefor. Such applications shall, at a minimum, contain the following information:

- (1) Full name and, if a natural person, physical description and date of birth;
- (2) Permanent and local addresses;
- (3) Brief description of the nature of the business and the goods or services to be sold, solicited or delivered;
- (4) Length of time during which business is to be conducted within the Town;
- (5) Proof of a valid state sales tax license, inclusive of the license number;
- (6) If a vehicle is to be used, a description of the vehicle, including the license plate number and vehicle identification number, and the name and driver's license information for the vehicle operator; and
- (7) A statement of whether the applicant has been convicted of any crime, including misdemeanors and violations of municipal ordinances, other than traffic violations, including the jurisdiction and nature of the offense and the penalty imposed.

(c) No license shall be issued under this Section absent the payment of a fee as established by the Board of Trustees.

(d) Transient merchants participating in a licensed special event need not obtain a separate license as otherwise required under this Section if they have previously registered with the event sponsor.

(e) Except as may be otherwise allowed for sponsored special events, every individual who is a peddler, solicitor or transient merchant shall be required to make an individual application and obtain a license, which shall be issued in the individual's name. Any license issued to a firm, association or corporation shall include the name of the authorized representative of the firm, association or corporation, and the name of the individual authorized representative shall appear on the application. No license shall be transferable or be used by any other person than the individual whose name appears thereon and if a firm, association, corporation or other entity is to have more than one (1) representative engaged in business within the Town, a separate license shall be required for each representative.

(f) It is unlawful for any peddler, solicitor or transient merchant to go uninvited upon any property, or approach any person upon property, that is posted by a sign that states "No Solicitors or Peddlers," or contains some similar warning or prohibition, or to engage in door-to-door sales or solicitations at private residences between the hours of 8:00 p.m. and 9:00 a.m. on the following day.

(g) The following persons, organizations or activities shall be exempt from the licensing requirements contained in this Section:

(1) Self-employed farmers or gardeners who go door-to-door or from place to place to sell and deliver, or offer for sale and delivery, fruits, vegetables or other agricultural produce grown by them; but excluding roadside or other temporary produce stands.

(2) Merchants who have acquired a business license and operate within their established business premises or at a licensed special event.

(3) Organizations or persons engaged in door-to-door political or religious advocacy or religious proselytizing.

(4) Salespersons or merchants engaged in selling products wholesale or delivering services directly to licensed retail businesses.

(5) Door-to-door newspaper delivery and persons delivering goods or services to preestablished residential customers pursuant to a regular schedule over a defined and established route. (Ord. 11, 2002 §1)

Sec. 6-1-130. Cease and desist orders.

If any business within the Town is operating without a license required under this Article, the Town Clerk may issue an order to the business to cease and desist all further operations until a license is issued for the business. The order shall give the business three (3) days to comply with all applicable licensing requirements, secure the necessary license, and pay all amounts due the Town, or to post a bond in the amount owing the Town and to request in writing a hearing before the Board of Trustees. If the business does nothing, it shall cease operations on the third day. If a hearing is requested, the Town Clerk shall promptly schedule the same before the Board of Trustees and notify the subject business in writing of the time and date thereof. The proceedings shall not relieve or discharge anyone from the liability for the payment of the taxes,

penalties and interest due and owing to the Town, or from the prosecution of any offense committed under the Town's ordinances. (Ord. 11, 2002 §1)

Sec. 6-1-140. Sales tax license.

All persons or businesses engaged in retail sales or a retail business within the Town must obtain and retain a valid Colorado sales tax license as required under the Emergency Retail Sales Act of 1935 during all times in which such business is being conducted. (Ord. 11, 2002 §1)

Sec. 6-1-150. Exemptions.

Notwithstanding the licensing provisions set forth in this Article, the following activities shall be exempt from the business license requirements:

- (1) That activity commonly known and referred to as a residential garage sale or rummage sale, or similar irregular private noncommercial activity; but only if the person or organization engaged in such activity conducts not more than four (4) such sales in any calendar year.
- (2) The door-to-door delivery of newspapers.
- (3) The performance of odd jobs or services by self-employed minors.
- (4) The door-to-door sale of food or other items by members of a nonprofit organization as part of a fund-raising campaign. (Ord. 11, 2002 §1)

Sec. 6-1-160. Penalty.

Failure to comply with the terms of this Article shall constitute a violation of this Code. Any person found guilty of or who pleads guilty or *nolo contendere* to a violation of any section of this Article shall be punishable as set forth in the general penalty provisions of this Code. (Ord. 11, 2002 §1)

ARTICLE II

Alcoholic Beverages

Sec. 6-2-10. Definitions.

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

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

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

(b) All other terms shall be defined as set forth in the provisions of the Colorado Beer Code, the Colorado Liquor Code and Special Event Permits, as the definitions presently exist or may hereafter be amended. (Ord. 11, 2002 §1)

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

Pursuant to declaration by the General Assembly, the Colorado Beer Code, Section 12-46-101 et seq., C.R.S., the Colorado Liquor Code, Section 12-47-101 et seq., C.R.S., and Special Event Permits, Section 12-48-101 et seq., C.R.S., as they presently exist or may hereafter be amended, shall apply to the sale of fermented malt beverages, alcoholic beverages, special malt liquors, spirituous liquors and vinous liquors in the Town. (Ord. 11, 2002 §1)

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

The Board of Trustees finds and determines that it is empowered by Section 12-47-135, C.R.S., to fix and collect certain fees in connection with the application for issuance, transfer and renewal of certain types of beer, wine and liquor licenses. The Board of Trustees further finds that the fees established in this Article are reasonable and are in amounts sufficient to cover actual and necessary expenses incurred by the Town in connection with the handling of such licenses and applications therefor. (Ord. 11, 2002 §1)

Sec. 6-2-40. Licensing fees.

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

- (1) For a new license, the sum of three hundred fifty dollars (\$350.00);
- (2) For a transfer of location or ownership, the sum of one hundred fifty dollars (\$150.00);
- (3) For renewal of a license, the sum of fifty dollars (\$50.00); and
- (4) For a temporary liquor license, the sum of two hundred fifty dollars (\$250.00). (Ord. 11, 2002 §1)

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

(a) Whenever a decision of the Board of Trustees, acting as the Local Licensing Authority (hereinafter "Authority"), suspending a retail license for fourteen (14) days or less becomes final, whether by failure of the retail licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition the Authority for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. Upon the receipt of the petition, the Authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

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

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

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

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

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

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

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

(f) If the Authority, does not make the findings required in Subsection (a) above and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the Authority. (Ord. 11, 2002 §1)

Sec. 6-2-60. Temporary permits.

(a) Purpose. This Section is enacted in accordance with Sections 12-46-106.5, and 12-47-106.5, C.R.S., which authorize a local licensing authority, at its discretion, to issue a temporary permit to a transferee of a fermented malt beverage license or a liquor license issued by the state licensing authority.

(b) Temporary permit; delegation to Town Clerk. The Town Clerk is hereby authorized to issue a temporary permit to a transferee of a fermented malt beverage license or of any class of liquor license which shall authorize the transferee to continue selling such fermented malt beverages or alcoholic beverages as permitted under the permanent license during the period in which an application to transfer the ownership of the license is pending.

(c) Conditions. A temporary permit shall authorize the transferee to conduct business and sell either fermented malt beverages or alcoholic beverages, as the case may be, at retail in accordance with the license of the transferor subject to compliance with all of the following conditions:

(1) The premises where such fermented malt beverages or alcoholic beverages are sold shall have been previously licensed by the state and local licensing authorities, and such license shall have been valid at the time the application for transfer of ownership was filed with the Town Clerk.

(2) The applicant has filed with the Town Clerk on forms provided by the Department of Revenue a completed application for the transfer of the fermented malt beverage license or the liquor license.

(3) The application for a temporary permit shall be filed no later than thirty (30) days after the filing of the application for transfer of ownership and shall be accompanied by a temporary permit fee of one hundred dollars (\$100.00).

(d) Process. The temporary permit set forth in this Section may be granted by the Town Clerk when he or she is satisfied that all of the conditions of this Article have been satisfied. If granted, the temporary permit shall be issued within three (3) working days after the receipt of the completed application. A temporary permit issued in accordance with this Section shall be valid until such time as the application to transfer ownership of the license to the applicant is granted or for one hundred twenty (120) days, whichever shall occur first; except that, if the application to transfer the license has not been granted within the one-hundred-twenty-day period and the transferee demonstrates good cause, the Board of Trustees may extend, in its discretion, the validity of said permit for an additional period not to exceed sixty (60) days.

(e) Bankruptcy. A temporary permit may also be authorized in the event of a transfer of possession of the licensed premises by operation of law, a petition in bankruptcy pursuant to federal bankruptcy law, the appointment of a receiver, a foreclosure action by a secured party, or a court order dispossessing the prior licensee of all rights pursuant to Article 40 of Title 13, C.R.S.

(f) Cancellation. A temporary permit issued in accordance with this Section may be canceled, revoked or summarily suspended if the local or state licensing authority determines that there is probable cause to believe that the transferee has violated any provision of this Article, has violated any rule or regulation adopted by the local or state licensing authority or has failed to truthfully disclose those matters required pursuant to the application forms required by the Department of Revenue. (Ord. 6, 1991; Ord. 11, 2002 §1)

Sec. 6-2-70. Optional premises.

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

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

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

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

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

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

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

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

(3) A description of the provisions which have been made for storing malt, vinous and spirituous liquors in a secured area on or off the optional premises for the future use on the optional premises. (Ord. 11, 2002 §1)

Sec. 6-2-80. Educational requirements.

Every hotel and restaurant licensee, registered manager and licensee's employee is encouraged to obtain a certificate of completion from an educational program of training for intervention procedures for servers of alcohol. Those registered managers obtaining a certificate of completion may file a copy of the certificate of completion with the Authority with an application of renewal of a liquor license. (Ord. 11, 2002 §1)

Sec. 6-2-90. Liquor tastings.

(a) The Town hereby enacts liquor tasting provisions by reference from Sections 12-47-103 and 12-47-301, C.R.S., and accepts all terms and conditions of said statutes.

(b) Any establishment providing a liquor tasting shall do so in accordance with all provisions of this Section.

(c) The Town will issue a permit that allows retail liquor licensed establishments to provide tastings. The fee for said permit is fifty dollars (\$50.00) annually.

(d) Any establishment holding a liquor tasting shall provide tasting schedules to the Police Department. Any change in the original schedule will be reported to the Police Department at least twenty-four (24) hours before the new date and/or time. (Ord. 1, 2005)

ARTICLE III

Lodging Occupation

Sec. 6-3-10. Purpose.

The Board of Trustees hereby finds, determines and declares:

(1) For the purposes of this Article, every person who furnishes a lodging room or accommodation for consideration in the Town is exercising a taxable privilege. The purpose of this Article is to impose a tax which will be paid by every vendor providing such lodging room or accommodation in the Town, which tax will provide revenues for basic Town services.

(2) The classification of the provision of lodging as separate businesses and occupations is reasonable, proper, uniform and nondiscriminatory, and the taxable amount hereby levied is reasonable, proper, uniform, nondiscriminatory and necessary. (Ord. 2008-10 §1)

Sec. 6-3-20. Definitions.

When not clearly otherwise indicated by the context, the following words and phrases as used in this Article shall have the following meanings:

Lodging means hotel rooms, motel rooms, lodging rooms, motor hotel rooms, guest house rooms, recreational vehicle pads or other similar accommodations that are rented to persons for a period of less than one (1) month or thirty (30) consecutive days, but shall not include rentals under a written agreement for occupancy for a period of at least one (1) month or every thirty (30) days.

Person means an individual, partnership, firm, joint enterprise, limited liability company, corporation, estate or trust or any group or combination acting as a unit, but shall not include the United States, the State and any political subdivision thereof.

Sale means the furnishing for consideration by any person of lodging within the Town.

Tax means the tax payable by the vendor or the aggregate amount of taxes due from the vendor during the period for which the vendor is required to pay the occupation tax on the provision of lodging under this Article.

Taxpayer means the vendor obligated to pay the tax under the terms of this Article.

Vendor means a person furnishing lodging for consideration within the Town. (Ord. 2008-10 §1)

Sec. 6-3-30. Levy of tax.

Effective January 1, 2009, there is hereby levied by the Town an occupation tax on the provision of lodging upon every person or business that furnishes any hotel room, motel room, lodging room, motor hotel room, guest house room, recreational vehicle pad or other similar accommodation for consideration for less than one (1) month or thirty (30) consecutive days within the Town in the amount of two dollars (\$2.00) per day, per occupied lodging room or accommodation. (Ord. 2008-10 §1)

Sec. 6-3-40. Exemptions.

The following transactions shall be exempt from the tax imposed by this Article:

(1) Accommodations provided by the United States, the State, its departments and institutions and the political subdivisions of the State in their governmental capacities only.

(2) Accommodations provided by those charitable, religious and eleemosynary organizations that have received from the Internal Revenue Service status under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, while in the conduct of their regular charitable, religious or eleemosynary functions and activities; and

(3) Accommodations provided to a person who is a permanent resident of a hotel, motel, apartment hotel, lodging house, motor hotel, guest house or other similar business pursuant to a written agreement for a period of at least one (1) month or thirty (30) consecutive days. (Ord. 2008-10 §1)

Sec. 6-3-50. Collection of tax.

(a) Every vendor providing lodging taxable under this Article shall remit such tax on or before the twentieth day of each month on account of lodging provided in the preceding month. Said payment shall be accompanied by a return which shall contain such information and be in such form as the Town Clerk may prescribe.

(b) The burden of proving that any transaction is exempt from the tax shall be upon the vendor.

(c) If the accounting methods regularly employed by the vendor in the transaction of business, or other conditions, are such that the returns aforesaid made on a calendar month basis will impose unnecessary hardship, the Town Clerk may, upon request of the vendor, accept returns at such intervals as will, in the Town Clerk's opinion, better suit the convenience of the vendor and will not jeopardize the collection of the tax; provided, however, that the Town Clerk may by rule permit a vendor whose monthly tax obligation is less than sixty dollars (\$60.00) to make returns and pay taxes at intervals no greater than three (3) months.

(d) It shall be the duty of every vendor to maintain, keep and preserve suitable records of all sales made by the vendor and such other books or accounts as may be required by the Town Clerk in order to determine the amount of the tax for which the vendor is liable under this Article. It shall be the duty of every such vendor to keep and preserve for a period of three (3) years all such books, invoices and other records, and the same shall be open for examination by the Town Clerk.

(e) The tax to be paid by a vendor shall not be stated and charged separately from the sales price of lodging on any record thereof at the time when the sale is made or at the time when evidence of the sale is issued, provided that the vendor may indicate that the sales price "includes \$2.00 Town of Fairplay Lodging Occupation Tax." (Ord. 2008-10 §1)

Sec. 6-3-60. Audit of records.

(a) For the purpose of ascertaining the correct amount of the occupation tax on the provision of lodging due from any person engaged in such business in the Town under this Article, the Town Clerk or an authorized agent may conduct an audit by examining any relevant books, accounts and records of such person.

(b) All books, invoices, accounts and other records shall be made available within the Town limits and be open at any time during regular business hours for examination by the Town Clerk or an authorized agent. If any taxpayer refuses to voluntarily furnish any of the foregoing information when requested, the Town Clerk may issue a subpoena to require that the taxpayer or its representative attend a hearing or provide any such books, accounts and records for examination.

(c) Any exempt organization claiming exemption under the provisions of this Article is subject to audit in the same manner as any other person engaged in the lodging business in the Town. (Ord. 2008-10 §1)

Sec. 6-3-70. Tax overpayments and deficiencies.

An application for refund of tax monies paid in error or by mistake shall be made within three (3) years after the date of payment for which the refund is claimed. If the Town Clerk determines that, within three (3) years of the due date a vendor overpaid the occupation tax on the provision of lodging, he or she shall process a refund or allow a credit against a future remittance from the same taxpayer. If at any time the Town Clerk determines that the amount paid is less than the amount due under this Article, the difference, together with the interest, shall be paid by the vendor within ten (10) days after receiving written notice and demand from the Town Clerk. The Town Clerk may extend that time for good cause. (Ord. 2008-10 §1)

Sec. 6-3-80. Tax information confidential.

(a) All specific information gained under the provisions of this Article which is used to determine the tax due from a taxpayer, whether furnished by the taxpayer or obtained through audit, shall be treated by the Town and its officers, employees or legal representatives as confidential. Except as directed by judicial order or as provided in this Article, no Town officer, employee or legal representative shall divulge any confidential information. If directed by judicial order, the officials charged with the custody of such confidential information shall be required to provide only such information as is directly involved in the action or proceeding. Any Town officer or employee who shall knowingly divulge any information classified herein as confidential, in any manner, except in accordance with proper judicial order or as otherwise provided in this Article, or by law, shall be guilty of a violation hereof.

(b) The Town Clerk may furnish officials of any other governmental entity who may be owed sales tax any confidential information, provided that said jurisdiction enters into an agreement with the Town to grant reciprocal privileges to the Town.

(c) Nothing contained in this Section shall be construed to prohibit the delivery to a taxpayer or his or her duly authorized representative a copy of such confidential information relating to such taxpayer, the publication of statistics so classified as to prevent the identification of particular taxpayers or the inspection of such confidential information by an officer, employee or legal representative of the Town. (Ord. 2008-10 §1)

Sec. 6-3-90. Forms and regulations.

The Town Clerk is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of returns, the ascertainment, assessment and collection of said occupation tax on the provisions of lodging and, in particular and without limiting the general language of this Article, to provide for:

(1) A form of report on the provision of lodging to be supplied to all vendors.

(2) The records which vendors providing lodging are to keep concerning the tax imposed by this Article. (Ord. 2008-10 §1)

Sec. 6-3-100. Enforcement and penalties.

(a) It shall be unlawful for any person to intentionally, knowingly or recklessly fail to pay the tax imposed by this Article or to make any false or fraudulent return or for any person to otherwise violate any provision of this Article. Any person convicted of a violation of this Article shall be deemed guilty of a

municipal offense. Each day or portion thereof that any violation of this Article continues shall constitute a separate offense.

(b) A penalty in the amount of ten percent (10%) of the tax due or the sum of ten dollars (\$10.00), whichever is greater, shall be imposed upon the vendor and become due in the event the tax is not remitted by the twentieth day of the month as required by this Article or such other date as prescribed by the Town Clerk, and one and one-half percent (1.5%) interest shall accrue each month on the unpaid balance. The Town Clerk is hereby authorized to waive, for good cause shown, any penalty assessed.

(c) If any part of a deficiency is due to negligence or intentional disregard of regulations, but without intent to defraud, there shall be added ten percent (10%) of the total amount of the deficiency, and interest, from the vendor required to file a return. If any part of the deficiency is due to fraud with the intent to evade the tax, then there shall be added fifty percent (50%) of the total amount of the deficiency, together with interest, and, in such case, the whole amount of the unpaid tax, including the additions, shall become due and payable ten (10) days after written notice and demand by the Town Clerk.

(d) If any vendor fails to make a return and pay the tax imposed by this Article, the Town may make an estimate, based upon available information, of the amount of tax due and add the penalty and interest provided above. The Town shall mail notice of such estimate by certified mail to the vendor at his or her address as indicated in the Town records. Such estimate shall thereupon become an assessment, and such assessment shall be final and due and payable from the taxpayer to the Town Clerk ten (10) days from the date of service of the notice or the date of mailing by certified mail; provided, however, that, within the ten-day period, such delinquent taxpayer may petition the Town Clerk for a revision or modification of such assessment and shall, within such ten-day period, furnish the Town Clerk the documents, facts and figures showing the correct amount of such taxes due and owing.

(e) Such petition shall be in writing, and the facts and figures submitted shall be submitted either in writing or orally and shall be given by the taxpayer under penalty of perjury. Thereupon, the Town Clerk may modify such assessment in accordance with the facts submitted in order to effectuate the provisions of this Article. Such assessment shall be considered the final order of the Town Clerk and may be reviewed under Rule 106(a)(4) of the Colorado Rules of Civil Procedure, provided that the taxpayer gives written notice to the Town Clerk of such intention within ten (10) days after the final order of assessment. (Ord. 2008-10 §1)

Sec. 6-3-110. Tax lien.

(a) The tax imposed by this Article, together with the interest and penalties herein provided and the costs of collection which may be incurred, shall be and, until paid, remain a first and prior lien superior to all other liens on all the tangible personal property of a taxpayer within the Town and may be foreclosed by seizing under distraint warrant and selling so much thereof as may be necessary to discharge the lien. Such distraint warrant may be issued by the Town Clerk whenever the taxpayer is in default in the payment of the tax, interest, penalty or costs. Such warrant may be served and the goods subject to such lien seized by any Town police officer, the County Sheriff or any duly authorized employee of the Town. The property so seized may be sold by the agency seizing the same or by the Town Clerk in a public auction after ten (10) days have passed following an advertised notice in a newspaper published in the Town, in the same manner as is prescribed by law in respect to executions against property upon judgment of a court of record, and the remedies of garnishment shall apply.

(b) The tax imposed by this Article shall be and remain a first and prior lien superior to all other liens on the real property and appurtenant premises at which the taxable transactions occurred. (Ord. 2008-10 §1)

Sec. 6-3-120. Recovery of unpaid tax.

(a) The Town Clerk may also treat any such taxes, penalties, costs or interest due and unpaid as a debt due the Town from the taxpayer.

(b) In case of failure to pay the taxes, or any portion thereof, or any penalty, costs or interest thereon when due, the Town Clerk may recover at law the amount of such taxes, penalties, costs, the reasonable value of any attorney's time or the reasonable attorney's fees charged, plus interest, in any county or district court of the county wherein the taxpayer resides or had a principal place of business (at the time the taxes become due) having jurisdiction of the amount sought to be collected.

(c) The return of the taxpayer or the assessment made by the Town Clerk shall be prima facie proof of the amount due.

(d) Such actions may be actions in attachment, and writs of attachment may be issued to the Police Department or County Sheriff, as the case may be, and in any such proceeding no bond shall be required of the Town Clerk, nor shall any police officer or sheriff require of the Town Clerk an indemnifying bond for executing the writ of attachment or writ of execution upon any judgment entered in such proceedings. The Town Clerk may prosecute appeals in such cases without the necessity of providing bond therefor.

(e) It shall be the duty of the Town Attorney, when requested by the Town Clerk, to commence action for the recovery of taxes due under this Article, and this remedy shall be in addition to all other existing remedies or remedies provided in this Article.

(f) The Town may certify the amount of any delinquent tax, plus interest, penalties and the costs of collection, as a charge against the property at which the taxable transaction occurred, to the County Treasurer for collection in the same manner as delinquent ad valorem taxes. (Ord. 2008-10 §1)

Sec. 6-3-130. Status of unpaid tax in bankruptcy and receivership.

Whenever the business or property of a taxpayer subject to this Article shall be placed in receivership, bankruptcy or assignment for the benefit of creditors or seized under distraint for taxes, all taxes, penalties and interest imposed by this Article, and for which the taxpayer is in any way liable under the terms of the Article, shall be a prior and preferred lien against all the property of the taxpayer, except as to other tax liens which have attached prior to the filing of the notice, and no sheriff, receiver, assignee or other officer shall sell the property of any person subject to this Article under process or order of any court without first ascertaining from the Town Clerk the amount of any taxes due and payable under this Article. If there are any such taxes due, owing and unpaid, it shall be the duty of such officer to first pay the amount of taxes out of the proceeds of such sale before making payment of any monies to any judgment creditor or other claimants of whatsoever kind or nature, except the costs of the proceedings and other preexisting tax liens as above provided. (Ord. 2008-10 §1)

Sec. 6-3-140. Hearings, subpoenas and witness fees.

(a) Hearings before the Town Clerk pursuant to provisions of this Article shall be held before the Municipal Judge. Any subpoena issued pursuant to this Article may be enforced by the Municipal Judge. The fees of witnesses for attendance at hearings shall be the same as the fees of witnesses before the District Court, such fees to be paid when the witness is excused from further attendance. When the witness is subpoenaed at the instance of the Town Clerk, such fees shall be paid in the same manner as other expenses under the terms of this Article, and when a witness is subpoenaed at the instance of any party to any such proceeding, the Town Clerk may require that the cost of service of the subpoena and the fee of the witness be borne by the party at whose instance the witness is summoned. In such case, the Town Clerk, at his or her discretion, may require a deposit to cover the cost of such service and witness fees. A subpoena issued as aforesaid shall be served in the same manner as a subpoena issued out of a court of record.

(b) In the case of a false or fraudulent return with intent to evade taxation, the tax, together with interest and penalties thereon, may be assessed, or proceedings for the collection of such taxes may be commenced at any time.

(c) Before the expiration of such period of limitation, the taxpayer and the Town Clerk may agree in writing to an extension thereof, and the period so agreed on may be extended by subsequent agreements in writing. (Ord. 2008-10 §1)

Sec. 6-3-150. Exemption from revenue limitation.

The occupation tax on the provision of lodging imposed by this Article and the use of revenues derived from said tax was approved by the electors of the Town on April 1, 2008. As a part of said approval, the revenues are to be collected and spent as a voter-approved revenue change, notwithstanding any revenue or expenditure limitations contained in Article X, Section 20 of the Colorado Constitution. (Ord. 2008-10 §1)