

Title 5

Business Taxes, Licenses and Regulations *

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Chapter 5.04

General Provisions

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5.04.010 Billiard Table, Shooting Gallery or Bowling alley License – Payment of Fee.

License may be granted by the Mayor and Town Clerk to any person to keep billiard tables, shooting gallery or bowling alley, upon payment by the applicant, the sum of \$_____ per year, always payable in advance. (Ord. 21 Art. 1 § 1, 1909; amended 1978).

5.04.020 Bond Required.

An applicant for any such license as provided herein shall execute a bond to the Town, to be approved by the Mayor, with security in the sum of two hundred dollars, on the condition that the person so licensed shall not, during the period for which such license is granted, permit any such language or activity as described in the Ordinances prohibiting disorderly conduct which tends to incite an immediate breach of the peace, to be used in or about his premises where such billiard or pool tables, shooting gallery or bowling alley is situated. The occurrence of any such language or activity constitutes a violation of the provisions of this chapter. (Ord. 21 Art. 1 § 2, 1909; amended 1978).

5.04.030 Persons Under Age Prohibited From Billiard Table Rooms.

No licensee shall allow any person under the age of sixteen to frequent the room where a billiard table is situated. (Ord. 21 Art. 1 § 3, 1909; amended 1978).

5.04.040 Applicability of Provisions.

The provisions of this chapter and the definition of "billiard table" shall apply to and include bagatelle tables or pinball tables and to all tables upon which games are played with balls. (Ord. 21 Art. 1 § 5, 1909; amended 1978).

5.04.050 License Issuance for Public Auctions.

The Mayor and Town Clerk may, in their discretion, issue license to any person or corporation for the sale of goods, wares or merchandise at public auction within any building or on the streets of the Town, upon such person's paying to the Town Clerk the sum of \$_____ for each and every day or part thereof, or \$_____ per year said auction is to be carried on. Any license granted pursuant to the provisions of this chapter may be revoked by the Mayor for any improper conduct, misrepresentation

or fraud on account of the person or corporation so licensed. (Ord. 21 Art. 1 § 6, 1909; amended 1978).

5.04.060 Sales at Public Auction Exempt From Chapter Provisions.

All sales made at public auction under and by virtue of legal process or by any trustee or mortgage shall be exempt from the provisions of this chapter. (Ord. 21 Art. 1 § 8, 1909).

5.04.070 Licenses for Amusements and Entertainment.

A. The Mayor and Town Clerk shall issue licenses to any person, persons, company or corporation who shall own, conduct or manage for profit, within the limits of the Town, any theater, circus, caravan, exhibition, show, amusement, natural or artificial curiosities, panorama, concert, musical entertainment or performance of any kind or nature upon payment by said parties of the following fee: for each circus, caravan or other show the sum of \$_____ per day; for each hall or opera house used for entertainments, with a seating capacity of less than____, \$_____ per year, payable in advance; for each such hall with a seating capacity of more than ____, \$_____ per year, payable in advance.

B. Any such person, company or corporation giving any exhibition or performance in the opera house or hall or under canvas without first having obtained a license as herein provided, constitutes a violation of the provisions of this chapter; provided that for all such entertainments or exhibitions given by the citizens of the Town for benevolent or charitable purposes, no license shall be required. (Ord. 21 Art. 2 § 2, 1909; amended 1978).

5.04.080 Violation – Penalty.

Any violation of the provisions of this chapter will be punished in accordance with the provisions of Chapter 1.08 of the Hayden Municipal Code. (Ord. 21 Art. 2 §2, 1909; amended 1978).

Chapter 5.08

Entertainment

5.08.010 Fee Designated.

5.08.020 License Required.

5.08.010 Fee Designated.

Each person or company offering to show in the Town (for profit) shall pay the Town the sum of five dollars for each time they exhibit, except entertainments for charitable purposes. (Ord. 18 (part), 1908).

5.08.020 License Required.

Any person or company desiring to exhibit in the Town shall apply in advance to the Town Clerk, and upon payment to the Clerk of the fee required, the Clerk is authorized to issue license to such person or company (Ord. 18 (part), 1908)

Chapter 5.12

Peddlers

- 5.12.010 Nuisance – When.**
- 5.12.020 Duty of Town Marshal to Suppress Nuisance.**
- 5.12.030 Violation of Section 5.12.010 – Penalty.**
- 5.12.040 License – Required.**
- 5.12.050 Peddler – Defined.**
- 5.12.060 Farm Products Excepted.**
- 5.12.070 License – Issuance – Fee.**
- 5.12.080 License – Revocation.**
- 5.12.090 Violation of Sections 5.12.040 Through 5.12.080 – Penalty.**

5.12.010 Nuisance – When.

The practice of going in and upon private residences in the Town by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, not having been requested or invited to do so by the owner or owners, occupant or occupants of such private residence, for the purpose of soliciting for the sale of goods, wares and merchandise, and/or for the purpose of and/or peddling or hawking the same, is a nuisance, and punishable as such as a misdemeanor. (Ord. 76 § 1, 1937).

5.12.020 Duty of Town Marshal to Suppress Nuisance.

The Town Marshal of the Town is required and directed to suppress the nuisance described in Section 5.12.010 above, and to abate any such nuisance as is described in Section 5.12.010. (Ord. 76 § 2, 1937).

5.12.030 Violation of Section 5.12.010 – Penalty.

Any person convicted of perpetrating a nuisance as described and prohibited in Section 5.12.010, upon conviction thereof, shall be fined a sum of not less than twenty-five dollars (\$25.00), nor more than one hundred dollars (\$100.00), together with costs of proceedings, which said fine may be satisfied, if not paid in cash, by execution against the person or anyone convicted of committing the misdemeanor herein prohibited. (Ord. 76 § 3, 1937).

5.12.040 License – Required.

All persons are prohibited from selling or offering to sell any goods, wares, or merchandise, chattels or property of any kind at public auction or by hawking or peddling the same within the limits of the Town without having first obtained a license therefor, as provided in this chapter. (Ord. 269 § 1, 1979).

5.12.050 Peddler – Defined.

"Peddler", for the purposes of this chapter, means any person, either principal or agent, who is temporarily in or locates within the limits of the Town for the purposes of displaying goods, wares or merchandise or works of art for sale, or selling the same, or for the purpose of taking orders for the

sale of the same. It also includes transients, dealers and hawkers of goods, wares or merchandise. (Ord. 269 § 2, 1979).

5.12.060 Farm Products Excepted.

This chapter shall not apply to persons selling vegetables, produce or provisions raised by such persons, or any product of their own farm or premises, situated within the County of Routt. (Ord. 269 § 3, 1937).

5.12.070 License – Issuance – Fee.

The license for peddlers is twenty-five dollars (\$25.00) per day. Upon receipt of the license fee, the town clerk may grant a license. However, such license may be denied for good cause. The Board of Trustees may, for good cause, deny any license so granted or grant any license that has been refused. (Ord. 279 § 1, 1979; Ord. 269 § 4, 1979).

5.12.080 License – Revocation.

Any license granted pursuant to the provisions of this chapter may be revoked by the Board of Trustees as follows:

- A. For any improper conduct on the part of the licensee;
- B. Upon the perpetration of any fraud or misrepresentation on the part of the licensee;
- C. Upon the display or sale of any goods, wares or merchandise other than those specified in his license;
- D. Upon the display or sale of any goods, wares or merchandise upon the streets of the Town such as to cause the blockading, either by such display or by the congregation of the crowd, of any street or side-walk within such Town. (Ord. 269 § 5, 1979)

5.12.090 Violation of Sections 5.12.040 Through 5.12.080 – Penalty.

Any violation of the provisions of Sections 5.12.040 through 5.12.080 will be punished in accordance with the provisions of Chapter 1.08 of this code. (Ord. 269 § 6, 1979)

Chapter 5.17

Cable Television and Cable Television Permits

- 5.17.010 Definition of Terms.**
- 5.17.020 Grant of Franchise.**
- 5.17.030 Standards of Service.**
- 5.17.040 Regulation by Franchise Authority.**
- 5.17.050 Compliance and Monitoring.**
- 5.17.060 Insurance and Indemnification.**
- 5.17.070 Enforcement and Termination of Franchise.**

5.17.080 Unauthorized Reception.

5.17.090 Miscellaneous Provisions.

5.17.010 Definition of Terms.

For the purpose of the Ordinance codified in this Chapter, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership with, the Grantee.

B. "Basic Cable" is the tier of service regularly provided to all subscribers that includes the retransmission of local broadcast television signals.

C. "Cable Act" means the Cable Communications Policy Act of 1984 and 1992, as amended.

D. "Cable Service" means (i) the one-way transmissions to subscribers of video programming or other programming service, and (ii) subscriber interaction, if any, which is required for the selection of such video programming or any other lawful communication service.

E. "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other communications equipment that is designed to provide Cable Service and other service to subscribers.

F. "FCC" means the Federal Communications Commission, or successor governmental entity there-to.

G. "Franchise" shall mean the initial authorization, or renewal thereof, issued by the Franchising Authority whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to subscribers.

H. "Franchise Authority" means the Town of Hayden or the lawful successor, transferee, or assignee thereof.

I. "Grantee" means TCI Cablevision of Colorado, Inc., or their lawful successor, transferee, or assignee thereof.

J. "Gross Revenues" means the monthly Cable Service revenues received by Grantee from Subscribers of the Cable System, including local advertising revenue placed on the Cable System; provided, however, that such phrase shall not include: (i) revenues received from any national advertising carried on the Cable System; (ii) any taxes on Cable Service which are imposed directly or indirectly on any Subscriber thereof by any governmental unit or agency, and which are collected by the Grantee on behalf of such governmental unit or agency.

K. "Person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

L. "Public Way" shall mean the surface of and the space above and below any of the following property: any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, as may be designated by Town now or in the future, including but not limited to public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon, now or hereafter owned by the Franchise Authority in the Service Area which, after designation by the Franchise Authority, shall entitle the Franchise Authority and Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Cable System.

M. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexations or other legal means.

N. "Service Tier" means a category of Cable Service or other services, provided by Grantee and for which a separate charge is made by Grantee.

O. "Subscriber" means a person or user of the Cable System who lawfully receives Cable Services or other service therefrom with Grantee's express permission.

P. "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station. (Ord. 413 § 1, 1994).

5.17.020 Grant of Franchise.

A. The Town hereby grants to Grantee a nonexclusive franchise which authorizes the Grantee to construct and operate a Cable System and offer Cable Service and other services in, along, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along, any Public Way and all extensions thereof and additions thereto such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment, as may be necessary or appurtenant to the Cable System, as approved by the Franchising Authority.

B. The Franchise granted pursuant to this Chapter shall be for an initial term of fifteen (15) years from the effective date of this Franchise as set forth in Section 2.3 of the Franchise, unless otherwise lawfully terminated in accordance with the terms of this Chapter.

C. In the event the Franchising Authority enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than Grantee to enter into the Franchising Authority's streets and public ways for the purpose of construction or operating a cable system or providing cable service to any part of the service area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law. (Ord. 413, § 2, 1994).

5.17.030 Standards of Service.

A. All transmission and distribution structures, poles, other lines, and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as not to cause interference with the proper use of Public Ways, or with other users of Public Ways, and with the rights and reasonable convenience of the Town and property owners who own property that adjoins any of said Public Ways.

B. If, during the course of Grantee's construction, operation, or maintenance of the Cable System, there occurs a disturbance of any Public Way by Grantee, it shall, at its expense, replace and restore such Public Way to a condition comparable to the condition of the Public Way existing immediately prior to such disturbance.

C. Upon its receipt of reasonable advance notice, not to be less than two (2) business days, the Grantee shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of the Grantee when required by Franchising Authority by reason of traffic conditions, public safety, street abandonment, 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 Franchising Authority; but, the Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, Grantee may apply for such funds.

D. The Grantee shall, on the request of any person holding a building moving permit issued by the Franchising Authority, temporarily raise or lower its wires to permit the moving of such building, provided (a) 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 (b) the Grantee is given not less than five (5) business days advance written notice to arrange for such temporary wire changes.

E. The Grantee shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with the Grantee's wires, cables, or other equipment. The Grantee shall reasonably compensate the Franchising Authority or property owner for any damages caused by such trimming.

F. Subject to any applicable state or federal regulations or tariffs, the Franchising Authority shall have the right to make additional use, for any public purpose, of any conduits controlled or maintained exclusively by or for the Grantee in any Public Way, provided that (a) such use by the Franchising Authority does not interfere with a current or future use by the Grantee; (b) the Franchising Authority holds the grantee harmless against and from all claims, demands, costs, or liabilities of every kind and nature whatsoever arising out of such use of said poles or conduits, including, but not limited to, reasonable attorneys' fees and costs; and (c) at Grantee's sole discretion, the Franchising Authority may be required either to pay a reasonable rental fee or otherwise reasonably compensate Grantee for the use of such conduits or equipment; provided, however, that Grantee agrees that such compensation or charge shall not exceed those paid by it to public utilities pursuant to the applicable pole attachment agreement, or other authorization, relating to the Service Area.

G. Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in accordance with applicable FCC or other federal, state, and local statutes, ordinances, or regulations. The Cable System shall not endanger or interfere with the safety of persons or property in the Service Area.

H. In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground. In those areas of the Service Area where transmission or distribution facilities of the respective public utilities providing telephone communication and electric services are both aerial and underground, Grantee shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aurally or underground. Nothing contained in this Section will require Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional coupler), amplifiers, power supplies, pedestals, or other related equipment.

I. The Cable System, as constructed as of the date of the passage and final adoption of this Ordinance, substantially complies with the material provisions hereof. Grantee is hereby authorized to extend the Cable System as necessary, as desirable, or as required pursuant to the terms hereof within the Service Area. Whenever Grantee shall receive a request for service from at least fifteen (15) Subscribers within 1,320 cable-bearing strand feet (one-quarter cable mile) of its trunk or distribution cable, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for system extension, other than the usual connection fees for all Subscribers; provided that such extension is technically feasible, and it will not adversely affect the operation, financial condition, or market development of the Cable System, or as provided for under subsection (J) of this Section.

J. No Subscriber shall be refused service arbitrarily. However, for unusual circumstances, such as a Subscriber's request to locate his cable drop underground, existence of more than one hundred fifty (150) feet of distance from distribution cable to connection of service to Subscriber, or a density of less than fifteen (15) Subscribers per 1,320 cable-bearing strand feet of trunk or distribution cable, Cable Service or other service may be made available on the basis of a capital contribution in aid of construction, including cost of material, labor, and easements. For the purpose of determining the amount of capital contribution in aid of construction to be borne by Grantee and Subscribers in the area in which Cable Service may be expanded, Grantee will contribute an amount equal to the number of potential subscribers per 1,320 cable-bearing strand feet of its trunks or distribution cable, and whose denominator equals fifteen (15) Subscribers. Potential Subscribers will bear the remainder of the construction and other costs on a pro rata basis. Grantee may require that the payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance.

K. The Grantee shall provide without charge one (1) outlet of Basic Service to each of the Franchising Authority's office building(s), local fire station(s), police station(s), public library(s), and public school building(s) that are passed by its Cable System. The outlets of Basic Service shall not be used to sell Cable Services in or throughout such buildings; nor shall such outlets be located in common or public areas open to the public, unless otherwise used solely for educational purposes. Users of such outlets shall hold Grantee harmless from any and all liability and claims arising out of their use of such outlets, including, but not limited to, those arising from copyright liability. Notwithstanding anything to the contrary set forth in this Section, the Grantee shall not be required to provide an outlet to such buildings where the drop line from the feeder cable to said buildings or

premises exceeds one hundred fifty (150) cable feet, unless it is technically feasible and so long as it will not adversely affect the operation, financial condition, or market development of the Cable System to do so, or unless the appropriate governmental entity agrees to pay the incremental cost of such drop line in excess of one hundred fifty (150) cable feet. In the event that additional outlets of Basic Service are provided to such buildings, the building owner shall pay the usual installation fees associated therewith, including, but not limited to, labor and materials. Upon request of Grantee, the building owner may also be required to pay the service fees associated with the provision of Basic Service and the additional outlets relating thereto.

L. in the case of any emergency or disaster, the Grantee shall, upon request of the Franchising Authority, make available its facilities for the Franchising Authority to provide emergency information and instructions during the emergency or disaster period. The Franchising Authority shall hold the Grantee, its agents, employees, officers, and assigns hereunder, harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including but not limited to, reasonable attorney's fees and costs.

M. The Grantee shall maintain all parts of the system in good condition so it meets or exceeds FCC technical standards throughout the entire franchise period.

Upon termination of service to any subscriber, the Grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon his request.

The Grantee shall provide 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 system use.

Grantee shall not allow its cable or other operations to interfere with television reception of persons not served by Grantee, nor shall the system interfere with, obstruct or hinder in any manner, the operation of the various utilities servicing the residents of the Town including the regional television transmitter system now in operation.

Grantee shall have a toll free, publicly listed telephone and be so operated that complaints and requests for repairs or adjustments may be received on a twenty-four (24) hour basis.

Grantee shall maintain a repair and maintenance crew so it will respond to subscriber complaints or requests for service within twenty-four (24) hours after receipt of the complaints or requests.

The Grantee shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the Town. The Grantee shall furnish a notice of such procedure to each subscriber at the time of initial subscription to the system.

N. The Grantee shall provide one (1) channel to the Franchise Authority for governmental and educational access. The Grantee may utilize any unused portion on such channel upon request to the Franchise Authority. Such consent shall not unreasonably be withheld.

O. Grantee shall upgrade its facilities, equipment, and services so that its system is as advanced as the current state of technology will allow. At all times, Grantee's cable system shall be not less advanced than any other stand alone system of comparable size operated by Grantee, excluding any

pilot or test system. The Town shall order the Grantee to comply with this section in case of specific violations which it may investigate upon complaint or upon its own motion. (Ord. 413 § 3, 1994).

5.17.040 Regulation by Franchise Authority.

A. Grantee shall pay to the Franchising Authority a franchise fee equal to three percent (3%) of Gross Revenues (as defined in Section 1.1 of this Franchise) received by Grantee from the operation of the Cable System on an annual basis; provided, however, that Grantee may credit against any such payments (i) any tax, fee or assessment of any kind imposed by Franchising Authority or other governmental entity on a cable operator, or subscriber, or both, solely because of their status as such; (ii) any tax, fee or assessment of general applicability which is unduly discriminatory against cable operators or subscribers; including any such tax, fee, or assessment imposed, both on utilities and cable operators and their business, occupation, and entertainment tax. For the purpose of this section, the three (3)-month period applicable under the Franchise for the computation of the franchise fee shall be a calendar quarter, unless otherwise agreed to in writing by the Franchising Authority and Grantee. Payments shall be made quarterly to the Town. Payments are due forty-five (45) days after each three (3) month quarter of the calendar year, with the first payment for each year due on May 15. Each payment shall be accompanied by a report from an officer of Grantee showing the basis for the computation. In no event shall the franchise fee payments required to be paid by Grantee exceed three percent (3%) of Gross Revenues received by Grantee in any 12-month period.

B. The Franchising Authority may regulate rates for the provision of Basic Cable and other services and equipment as expressly permitted by applicable law.

C. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, as amended, unless the procedures and substantive protection set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or state law.

In addition to the procedures set forth in Section 626(a) of the Cable Act, the Franchising Authority agrees to notify Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as, the past performance of Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the franchise prior to the expiration of its term. Notwithstanding anything to the contrary set forth in this Section 5.17.040, the Grantee and Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof. The Grantee and the Franchising Authority consider the terms set forth in this section to be consistent with the express provisions of Section 626 of the Cable Act, as amended.

D. Except to the extent expressly required by federal or state law, if a renewal or extension of Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or transfers it to another party, any such

acquisition or transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern.

Grantee and Franchising Authority agree that in the case of a lawful revocation of the Franchise, at Grantee's request, which shall be made in its sole discretion, Grantee shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. The Franchising Authority further agrees that during such a period of time, it shall authorize the Grantee to continue to operate pursuant to the terms of its prior Franchise for a six (6) month period of time from the effective date of such revocation. If, at the end of that time, Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, Grantee and Franchising Authority may either avail themselves of any rights they may have pursuant to federal or state law, or Grantee may request an extension to continue operating beyond the initial six (6) month period; or, at Grantee's discretion, Grantee may remove all of its cable wires and equipment from the Cable System. The Franchising Authority and Grantee agree that Grantee's continued operation of its Cable System during the six (6) month period or any extensions granted by the Franchise Authority shall not be deemed to be a waiver, nor an extinguishment of, any right of either the Franchising Authority or the Grantee. Notwithstanding anything to the contrary set forth in this subsection, neither Franchising Authority nor Grantee shall be required to violate federal or state law.

E. Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an Affiliate, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecations, or by assignment of any rights, title, or interest of Grantee in the Franchise or Cable System in order to secure indebtedness.

F. On or about the fifth and tenth anniversaries of the date of this Franchise, and only upon Grantor's written request, the Grantee shall attend a public meeting for the purpose of performance evaluation. Topics which may be discussed may include but are not limited to: customer service; rate structure; services offered; and programming services offered.

G. In accepting this Franchise, Grantee acknowledges that its rights hereunder are subject to the police power of the Town to adopt and enforce general Ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and Ordinances enacted by the Town pursuant to such power. (Ord. 413 § 4, 1994).

5.17.050 Compliance and Monitoring.

A. The Franchising Authority may perform technical tests of the Cable System during reasonable times and in a manner which does not unreasonably interfere with the normal business operations of the Grantee or the Cable System in order to determine whether or not the Grantee is in compliance with the terms hereof and applicable state or federal laws. Except in emergency circumstances, such tests may be undertaken only after giving Grantee reasonable notice thereof, not to be less than two (2) business days, and providing a representative of Grantee an opportunity to be present during such tests. In the event that such testing demonstrates that the Grantee has substantially failed to comply with a material requirement hereof, the reasonable costs of such tests shall be borne by the Grantee. In the event that such testing demonstrates that Grantee has substantially complied with such material provisions hereof, the cost of such testing shall be borne by the Franchising Authority Except in

emergency or non-compliant circumstances, the Franchising Authority agrees that such testing shall be undertaken no more than two (2) times a year in the aggregate, and that the results thereof shall be made available to the Grantee upon Grantee's request.

B. The Grantee agrees that the Franchising Authority may review such of its books and records, during normal business hours, as is reasonably necessary to monitor compliance with the terms hereof. Such records shall include, but shall not be limited to, any public records required to be kept by the Grantee pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. The Franchising Authority agrees to treat any information disclosed by the Grantee to it as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. (Ord. 413 § 5, 1994).

5.17.060 Insurance and Indemnification.

A. Grantee shall maintain in full force and effect during the life of any permit public liability insurance in a solvent insurance company authorized to do business in the State of Colorado, at no less than in the following amounts: (1) \$500,000.00 property damage in any one accident; (2) \$ 1,000,000 00 for personal injury to any one person; (3) \$2,000,000.00 for personal injury in any one accident. Provided that all such insurance may contain reasonable deductible provision not to exceed \$1,000.00 for any type of coverage, and provided further that the Town may require that any and all investigations of claims made by any person, firm or corporation against the Town arising out of any use or misuse of privileges granted to Grantee hereunder shall be made by or at the expense of Grantee or its insurer.

B. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards, and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System, including, but not limited to, reasonable attorney's fees and costs. (Ord. 413 § 6, 1994).

5.17.070 Enforcement and Termination of Franchise.

A. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, it shall notify Grantee, in writing, of the specific nature of the alleged noncompliance.

B. Grantee shall have thirty (30) days from receipt of the notice described in Section A: (a) to respond to the Franchising Authority contesting the assertion of noncompliance, or (b) to cure such default, or (c) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps and proceed diligently to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be in compliance.

C. Subject to applicable federal and state law, in the event the Franchising Authority, after such meeting, determines that Grantee is in default of any provision of the Franchise, the Franchising Authority at its sole discretion may take any of the following steps:

1. Foreclose on all or any part of any security provided under this Franchise, if any, including without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default; or,

2. Commence an action at law for monetary damages or seek other equitable relief which shall include reasonable attorneys fees and costs.

3. In the case of a substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or

4. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages.

The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of the Franchise by reason of any failure of the Franchising Authority to enforce prompt compliance.

D. The Grantee shall not be held in default or noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such noncompliance or alleged defaults are caused by strikes, acts of God, power outages, or other events reasonably beyond its ability to control. Nonpayment of penalties shall not be construed as an act of God. (Ord. 413 § 7, 1994).

5.17.080 Unauthorized Reception.

In addition to those criminal and civil remedies provided by state and federal law, it shall be a misdemeanor for any person, firm, or corporation to create or make use of any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any part of the Cable System without the express consent of the Grantee. Further, without the express consent of Grantee, it shall be a misdemeanor for any person to tamper with, remove, or injure any property, equipment, or part of the Cable System or any means of receiving Cable Service or other services provided thereto. (Ord. 413 § 8, 1994).

5.17.090 Miscellaneous Provisions.

A. The following documents shall be incorporated herein by this reference, and in the case of a conflict or ambiguity between or among them, the document of latest date shall govern:

1. Any enabling ordinance in existence as of the date hereof; and

2. Any proposal submitted by Grantee pursuant to a Franchise renewal procedure, as amended and supplemented during the Franchise renewal negotiation process;

3. Any Franchise Agreement between Grantee and Franchising Authority reflecting the renewal of the Franchise, if any.

B. If the FCC, or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Franchise, then to the extent such jurisdiction

shall preempt and supersede or preclude the exercise of the like jurisdiction by the Franchising Authority, the jurisdiction of the Franchising Authority shall cease and no longer exist.

C. In any action by the Franchising Authority or representative thereof mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

D. Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Franchising Authority or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

The notices or responses to the Franchising Authority shall be addressed as follows:

The Town of Hayden
P.O. Box 190
Hayden, Colorado 81639

The notice or responses to the Grantee shall be addressed as follows:

TCI Cablevision of Colorado, Inc.
625 South Lincoln
P.O. Box 772882
Steamboat Springs, Colorado 80477

with copy to:

TCI Cablevision of Colorado, Inc.
Attention: Legal Department
47005 Syracuse Pkwy.
Suite 1100
Denver, Colorado 80237

(Ord. 413 § 9, 1994)

Chapter 5.20

Liquor Licenses

5.20.010 Reduction of Distance.

5.20.020 Compliance With Other Laws.

5.20.030 Liquor License Special Event Permits; Election Under C.R.S. § 12-48-107(5).

5.20.010 Reduction of Distance.

As authorized by § 12-47-138(1) (d) (IV) of the C.R.S., as amended, the Board of Trustees, as the local liquor licensing authority, may grant hotel and restaurant liquor licenses for locations at least one hundred (100) feet from any middle or high school or any post-secondary educational facility. (Ord. 395, 1992).

5.20.020 Compliance with Other Laws.

Licenses granted pursuant to this Ordinance shall be subject to all other provisions of the liquor code and the Colorado Revised Statutes. (Ord. 395, 1992).

5.20.030 Liquor License Special Event Permits; Election under C.R.S. § 12-48-107(5).

A. The Board of Trustees, acting as the Hayden Liquor Licensing Authority, hereby elects, on an application by application basis, at its option, such option to be exercised within five (5) business days after the filing of an application for a liquor license special events permit for events within the Town, to exercise local control over the issuance of liquor license special event permits for events within the Town, as authorized by Section 12-48-107(5), C.R.S., as existing or as hereafter amended. Such option shall be exercised by the Town Manager in accordance with the time limitations reflected above.

B. In addition, if the Town assumes local control, before approval, the Town Clerk shall confirm the following when appropriate for special event licenses:

1. Timely and proper posting of a conspicuous public notice sign as required by Article 48, Title 12, C.R.S., as amended.
2. Whether the applicant satisfies the eligibility criteria set forth in Article 48, Title 12, C.R.S., as amended.
3. After investigation, no sufficient grounds for denial appear to exist and no protests have been filed by affected persons.
4. That the applicant has not exceeded and does not propose to exceed the maximum number of special event calendar days permitted by Article 48, Title 12, C.R.S., as amended.

C. The Town Clerk shall report the issuance of any special event permit to the state Liquor Enforcement Division in accordance with the requirements of Article 48, Title 12, C.R.S., as amended.

D. The special event liquor license permit fee is hereby established to be one hundred dollars (\$100.00) per day as of the effective date of this ordinance. (Ord. 657 §1, 2013)

Chapter 5.21

Sexually Oriented Business Licenses

- 5.21.010 Application for Sexually Oriented Business License.**
- 5.21.020 Duty to Supplement Application.**
- 5.21.030 Investigation and Application.**
- 5.21.040 Issuance of Sexually Oriented Business License.**
- 5.21.050 Expiration of Sexually Oriented Business License.**
- 5.21.060 Suspension of Sexually Oriented Business License.**
- 5.21.070 Revocation of Sexually Oriented Business License.**
- 5.21.080 Suspension or Revocation Hearing.**
- 5.21.090 Transfer of Sexually Oriented Business License.**
- 5.21.100 Manager's License Required – Change of Manager – Inactive Status.**
- 5.21.110 Application for Manager's License.**
- 5.21.120 Expiration of Manager's License.**
- 5.21.130 Suspension of Manager's License.**
- 5.21.140 Revocation of Manager's License.**
- 5.21.150 Suspension or Revocation Hearing.**
- 5.21.160 Notice.**
- 5.21.170 Judicial Review.**
- 5.21.180 Inspection.**

5.21.010 Application for Sexually Oriented Business License.

A. The Town Clerk is the licensing officer and is responsible for granting, renewing, and suspending sexually oriented business licenses for proposed or existing sexually oriented businesses.

B. The Board of Trustees for the Town is responsible for revoking the licenses of existing sexually oriented businesses.

C. The Town Manager or his or her designee is responsible for ascertaining whether a proposed sexually oriented business for which a sexually oriented business license application has been submitted complies with all locational requirements of the sexually oriented business regulation ordinance.

D. The Police Chief or his or her designee is responsible for providing information on whether an applicant has been convicted of a specified criminal act during the time periods set forth in Section 5.21.040 (C).

E. The Building Official or his or her designee is responsible for inspecting a proposed sexually oriented business in order to ascertain whether it is in compliance with applicable building codes and ordinances.

F. Any person desiring to operate a sexually oriented business shall file with the licensing officer an original and two copies of a sworn sexually oriented business license application on the standard application form supplied by the licensing officer.

G. The completed application shall contain the following information and shall be accompanied by the following documents:

1. If the applicant is an individual, the individual shall state his or her legal name and any aliases, and submit satisfactory proof that he or she is twenty-one years of age or older in the case of a type A sexually oriented business license or eighteen years of age or older in the case of a type B sexually oriented business license.

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

3. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the sexually oriented business' fictitious name must be stated.

4. Whether the applicant or any of the other individuals listed pursuant to subsections (F)(1) or (2) of this section has been convicted of a specified criminal act within the times set forth in Section 5.21.040(C)(1)(i), and if so, the specified criminal act involved, the date of conviction and the place of conviction.

5. Whether the applicant or any of the other individuals listed pursuant to subsections (F)(1) or (2) of this section has had a previous license under this or any other sexually oriented business ordinance from another city, town or county denied, suspended, or revoked and, if so, the name of the city, town or county where the license was previously denied, suspended or revoked, and the name and location of the sexually oriented business for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension or revocation.

6. Whether the applicant or any other individuals listed pursuant to subsection (F)(1) or (2) of this section has been a partner in a partnership or a principal owner of a corporation or other legal entity whose license has previously been denied, suspended, or revoked and, if so, the name of the city, town or county where the license was previously denied, suspended or revoked, and the name and location of the sexually oriented business for which the license was denied, suspended, or revoked, as well as the date of denial, suspension, or revocation.

7. Whether the applicant or any other individual listed pursuant to subsections (F)(1) or (2) of this section holds any other licenses under this article or any other sexually oriented business ordinance from another city, town or county and, if so, the name of such city, town or county, and names and locations of such other licensed businesses.

8. The location of the proposed sexually oriented business including a legal description of the property, street address, and telephone number(s).

9. Proof of the applicant's right to possession of the premises wherein the sexually oriented business will be conducted.

10. The applicant's mailing address and residential address.

11. A sketch or diagram showing the configuration of the premises including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be oriented to the north or to some designated street or object and shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. The licensing officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. If the sexually oriented business has or will have a peep booth or booths subject to the provisions of Section 9.17.20 of this code, the sketch shall show the locations and dimensions of any manager's stations and demonstrate that there is an unobstructed view from at least one of the manager's stations of every area of the premises to which any patron is permitted access, excluding restrooms. The floor plan shall designate those rooms or other areas of the premises where patrons are not permitted and shall also designate the use of each room or other area of the premises.

12. A current certificate and straight-line drawing prepared within thirty days prior to an initial application by a Colorado registered land surveyor depicting: (i) the property lines and the structures of the property to be certified; and (ii) the location of the property lines of any church, school, dwelling, public park, or childcare facility within five hundred feet of the property to be certified and (iii) the location of the property lines and structures on the property of any other sexually oriented business within one hundred feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence or pending at the time an application is submitted.

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

H. In the event that the licensing officer determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, he or she shall promptly notify the applicant of such fact and allow the applicant ten days properly to complete the application. The time period for granting or denying a sexually oriented business license shall be stayed during the period in which the applicant is allowed an opportunity properly to complete the application.

I. The fact that a person possesses or is required to possess other types of state or town licenses does not exempt him or her from the requirement of obtaining a sexually oriented business license. (Ord. 508 (part), 2001)

5.21.020 Duty to Supplement Application.

A. Applicants for a sexually oriented business license under Section 5.21.010 shall have a continuing duty to promptly supplement any application information required by that section in the event that said information changes in any way from what is stated on the application.

B. The failure to comply with said continuing duty to supplement an application within thirty days from the date of such change shall be grounds for suspension of a sexually oriented business license. (Ord. 508 (part), 2001)

5.21.030 Investigation and Application.

A. Upon receipt of an application for a sexually oriented business license properly filed with the licensing officer and upon payment of the nonrefundable application fee, the licensing officer shall immediately stamp the application as received and send copies of the application to the Building Official and the Police Chief. The Town Manager, the Building Official and the Police Chief, or their respective designees, shall promptly conduct an investigation of the applicant, application, and the proposed sexually oriented business in accordance with his or her responsibilities under this section. Investigations shall be completed within twenty days of receipt of the application by the licensing officer. At the conclusion of their investigations, the Town Manager and the Building Official shall indicate on the copy of the application his or her approval or disapproval of the application, date it, sign it, and in the event of disapproval, state the reasons therefor. The Police Chief shall only be required to provide the information specified in Section 5.21.010(D), and shall not be required to approve or disapprove applications.

B. The Town Manager and the Building Official may disapprove an application if he or she finds that the proposed sexually oriented business will be or is in violation of any provision of any statute, code, ordinance, regulation, or other law in effect in the Town. After their investigations and review, the Building Official and the Police Chief shall immediately return the copy of the application to the licensing officer. The licensing officer shall not issue a sexually oriented business license unless signed copies of the application for the same have been delivered to said officer by the Town Manager and the Building Official and unless the Police Chief has supplied said officer with the information specified in Section 5.21.030(D). (Ord. 508 (part), 2001)

5.21.040 Issuance of Sexually Oriented Business License.

A. The licensing officer shall grant or deny an application for a sexually oriented business license within thirty days from the date of its proper filing. Upon the expiration of the thirty days, the applicant shall be licensed to begin operating the business for which the sexually oriented business license is sought, unless and until the licensing officer notifies the applicant, by first class mail to the address on the application, of a denial of the application and states the reason(s) for that denial.

B. Grant of application for sexually oriented business license.

1. The licensing officer shall grant the sexually oriented business license unless one or more of the criteria set forth in subsection C of this section is present.

2. The sexually oriented business license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at any time.

C. Denial of application for sexually oriented business license.

1. The licensing officer shall deny the application for any of the following reasons:

a. An applicant is under twenty-one years of age in the case of an application for a type A sexually oriented business license or under eighteen years of age in the case of an application for a type B sexually oriented business license.

b. An applicant is overdue on his or her payment to the Town of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to a sexually oriented business.

c. An applicant has failed to provide information required by this article for the issuance of the sexually oriented business license or has falsely answered a question or request for information on the application form and has refused to provide corrected information.

d. The premises to be used for the sexually oriented business have been disapproved by an inspecting agency pursuant to the provisions of Section 5.21.030(B).

e. The application or sexually oriented business license fees have not been paid.

f. An applicant for the proposed business is in violation of or is not in compliance with any of the provisions of this chapter.

g. The granting of the application would violate a statute, ordinance, or court order.

h. The applicant has or had a sexually oriented business license under this article, or under the regulatory provisions of another jurisdiction, that was suspended or revoked within the previous twelve months. In the case of a denial of an application due to the suspension or revocation of the applicant's license in another jurisdiction, the applicant shall be entitled to a hearing before the Town Board of Trustees. After the hearing, the Board may grant the application without regard to the suspension or revocation of the applicant's license in another jurisdiction if the Board finds that the grounds for suspension or revocation in that jurisdiction would not be grounds for suspension or revocation of a license pursuant to this chapter.

i. An applicant has been convicted of a specified criminal act or acts for which:

(i) Less than two years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense;

(ii) Less than five years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; or

(iii) Less than five years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two or more misdemeanors.

The fact that a conviction is being appealed shall have no effect on disqualification of the applicant. An applicant who has been convicted of a specified criminal act or acts may qualify for a sexually oriented business license only when the time period required above has elapsed.

2. If the licensing officer denies the application, he or she shall notify the applicant, by first class mail to the address on the application, of the denial and state the reason(s) for the denial. A copy of such denial shall be forwarded to the Town Attorney. (Ord. 508 (part), 2001).

5.21.050 Expiration of Sexually Oriented Business License.

A. Each sexually oriented business license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 5.21.010 of this chapter, including but not limited to a review of whether the applicant has been convicted of a specified criminal act or acts (for renewals, filing of the original survey shall be sufficient). Application for renewal of a sexually oriented business license shall be made at least forty-five days before the expiration date of the sexually oriented business license.

B. If, subsequent to denial of renewal the licensing officers finds that the basis for denial of the renewal of the sexually oriented business license has been corrected, the applicant shall be granted a sexually oriented business license if no more than ninety days have elapsed since the date denial became final. (Ord. 508 (part), 2001)

5.21.060 Suspension of Sexually Oriented Business License.

A. The licensing officer may suspend a sexually oriented business license for a period not to exceed one hundred fifty days, unless the period is extended by operation of subsection B of this section, if he or she determines that a licensee or an employee of a licensee has:

1. Violated or is not in compliance with any section of this article or any provision of Chapter 9.17 of this code; or

2. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter; or

3. Knowingly allowed repeated disturbances of the public peace to occur within the licensed establishment or upon the premises of the licensed establishment involving patrons, employees, or the licensee; or

4. Operated the sexually oriented business in violation of a building, fire, health, or zoning code, ordinance, or regulation, whether federal, state, or local, said determination being based on investigation by the department, division, or agency charged with enforcing said rules or laws. In the event of such a statute, code, ordinance, or regulation violation, the licensing officer shall promptly notify the licensee of the violation and shall allow the licensee a twenty day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the twenty day period, the licensing officer shall forthwith suspend the sexually oriented business license and shall notify the licensee of the suspension; or

5. Operated the sexually oriented business in violation of the hours of operation provisions in Section 9.17.120, or

6. Transferred a sexually oriented business license contrary to Section 5.21.090. In the event of such suspension, the licensing officer shall forthwith notify the original licensee and the

transferee of the suspension. The suspension shall remain in effect until the applicable provisions of Section 5.21.060 have been satisfied.

B. The suspension shall remain in effect until and including the last day in the licensing officer's order and until the violation of the statute, code, ordinance, or regulation in question has been corrected. (Ord. 508 (part), 2001)

5.21.070 Revocation of Sexually Oriented Business License.

A. The Board of Trustees of the Town shall revoke a sexually oriented business license upon determining that:

1. A cause of suspension in Section 5.21.060 of this chapter occurred and the sexually oriented business license has been suspended within the preceding twelve months; or

2. A licensee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a sexually oriented business license; or

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

4. A licensee, manager or an employee has knowingly allowed acts of prostitution or negotiations for acts of prostitution on the premises; or

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

6. A licensee has been convicted of a specified criminal act for which the time period set forth in Section 5.21.040(C)(1)(i) has not elapsed; or

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

8. A licensee is delinquent in payment to the town or state for any taxes or fees; or

9. A licensee, manager or an employee has knowingly allowed any specified sexual activity to occur in or on the licensed premises.

B. When the Town Board revokes a sexually oriented business license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. (Ord. 508 (part), 2001)

5.21.080 Suspension or Revocation Hearing.

A. A licensee shall be entitled to a hearing before the Town Board of Trustees if the Town seeks to suspend his or her sexually oriented business license based on a violation of this chapter or any provision of Chapter 9.17 of this code. The business may continue to operate during the hearing process.

B. When there is probable cause to believe that a cause for suspension or revocation exists, the town attorney may file a written complaint with the licensing officer setting forth the circumstances of the alleged violation.

C. The licensing officer shall provide a copy of the complaint to the licensee, together with notice to appear before the Town Board of Trustees for revocation or suspension, for the purpose of a hearing on a specified date to show cause why the licensee's sexually oriented business license should not be suspended or revoked.

D. At the hearing, the Board of Trustees shall hear such statements and consider such evidence as the police department or other enforcement officers, the owner, occupant, lessee, or other party in interest, or any other witness shall offer that is relevant to the violation alleged in the complaint. The Board of Trustees shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the Town Board determines that a cause for suspension or revocation exists it shall issue an order suspending or revoking the sexually oriented business license within thirty days after the hearing is concluded based on the findings of fact. A copy of the order shall be mailed to or served on the licensee at the address on the license. In performing his duties pursuant to this Section 5.21.080, the Board of Trustees may retain independent counsel to advise it or him with regard to any matter.

E. The order of the Board of Trustees made pursuant to subsection D of this section above shall be a final decision and may be appealed to the district court pursuant to Colorado Rule of Civil Procedure 106(a)(4). Failure of a licensee timely to appeal said order constitutes a waiver by him or her of any right he or she may otherwise have to contest the suspension or revocation of the sexually oriented business license.

F. The Board of Trustees shall have the power to administer oaths, issue subpoenas, and when necessary grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing which the Board of Trustees conducts. It is unlawful for any person to fail to comply with any subpoena issued by the Board of Trustees. A subpoena shall be served in the same manner as a subpoena issued by the district court of the State of Colorado.

G. All hearings held before the Board of Trustees regarding suspension or revocation of a sexually oriented business license issued under this ordinance shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the Town Clerk, and shall pay all costs of preparing such record.

H. In the event of suspension, revocation, or cessation of business, no portion of the sexually oriented business license fee shall be refunded. (Ord. 508 (part), 2001)

5.21.090 Transfer of Sexually Oriented Business License.

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

B. A licensee shall not transfer his or her sexually oriented business license to another person unless and until such other person satisfies the following requirements:

1. Obtains an amendment to the sexually oriented business license from the licensing officer that provides that he or she is now the licensee, which amendment may be obtained only if he or she has completed and properly filed an application with the licensing officer setting forth the information called for under Section 5.21.010 in the application; and

2. Pays a transfer fee of twenty percent of the annual sexually oriented business license fee.

C. No sexually oriented business license may be transferred when the licensing officer has notified the licensee that suspension or revocation proceedings have been or will be brought against the licensee.

D. Any attempt to transfer a sexually oriented business license either directly or indirectly in violation of this section is declared void. (Ord. 508 (part), 2001)

5.21.100 Manager's License Required – Change of Manager – Inactive Status.

A. A manager or designee shall be on the premises of a sexually oriented business at all times during operation. It is unlawful for any person to work as a manager of a sexually oriented business without first obtaining a manager's license for such premises.

B. In the event a manager ceases to be employed at the premises listed in his or her application, the manager shall immediately report such change to the licensing officer but in no event shall such change be reported later than ten days after cessation of employment.

C. Provided a manager has complied with the requirements of subsection B of this section, his or her license shall remain in inactive status until it expires or is reactivated. A manager who is re-employed at the premises listed in the manager's license may reactivate his or her license provided the licensing officer determines he or she still meets the requirements of Section 5.21.110. (Ord. 508 (part), 2001)

5.21.110 Application for Manager's License.

A. A manager shall submit an application for a manager's license for each sexually oriented business the manager proposes to manage on a form to be provided by the licensing officer. The application shall contain the applicant's name, address, date of birth, telephone number, address, the name and address of the sexually oriented business that manager proposes to manage and the information required in Section 5.21.010(F)(4).

B. The police department shall conduct an investigation of the applicant to determine if the applicant has been convicted of a specified criminal act within the times set forth in Section 5.21.030 (C)(1)(i).

C. The licensing officer shall grant the application within ten days of its filing unless:

1. The applicant is under the age of twenty-one in the case of a type A sexually oriented business license or under the age of eighteen in the case of a type B sexually oriented business license;

2. The applicant has failed to provide the information required by this section;

3. The license fee has not been paid;

4. The applicant has been convicted of a specified criminal act within the times set forth in Section 5.21.040(C)(1)(i). (Ord. 508 (part), 2001)

5.21.120 Expiration of Manager's License.

A. Each manager's license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 5.21.110, including but not limited to a review of whether the applicant has been convicted of a specified criminal act or acts. Application for renewal of a manager's license shall be made at least thirty days before the expiration date of the manager's license.

B. If, subsequent to denial of renewal the licensing officer finds that the basis for denial of the renewal of the manager's license has been corrected, the applicant shall be granted a manager's license if no more than ninety days have elapsed since the date denial became final. (Ord. 508 (part), 2001)

5.21.130 Suspension of Manager's License.

A. The licensing officer may suspend a manager's license for a period not to exceed ninety days, unless the period is extended by operation of subsection B of this section, if he or she determines that the manager has:

1. Violated or is not in compliance with any section of this chapter or any provision of Chapter 9.17 of this code; or

2. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter; or

3. Knowingly allowed repeated disturbances of the public peace to occur within the licensed establishment or upon the premises of the licensed establishment involving patrons, employees, or the licensee; or

4. Operated the sexually oriented business in violation of the hours of operation provisions in Chapter 9.17;

B. The suspension shall remain in effect until and including the last day in the licensing officer's order and until the violation of the statute, code, ordinance, or regulation in question has been corrected. (Ord. 508 (part), 2001)

5.21.140 Revocation of Manager's License.

A. The Board of Trustees shall revoke a manager's license upon determining that:

1. A cause of suspension in Section 5.21.130 of this article occurred and the manager's license has been suspended within the preceding twelve months; or

2. The manager gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a manager's license; or

3. The manager knowingly allowed possession, use, or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises; or

4. The manager knowingly allowed acts of prostitution or negotiations for acts of prostitution on the premises; or

5. The manager knowingly operated the sexually oriented business during a period of time when the sexually oriented business license was suspended; or

6. The manager has been convicted of a specified criminal act for which the time period set forth in Section 5.21.040(C)(1)(i) has not elapsed; or

7. The manager has knowingly allowed any specified sexual activity to occur in or on the licensed premises.

B. When the Board of Trustees revokes a manager's license, the revocation shall continue for one year and the licensee shall not be issued a manager's license for one year from the date revocation became effective. (Ord. 508 (part), 2001)

5.21.150 Suspension or Revocation Hearing.

A. A manager shall be entitled to a hearing before the hearing officer Board of Trustees if the Town seeks to suspend the manager's license based on a violation of this chapter or any provision of Chapter 9.17 of this code. A manager shall be entitled to a hearing before the Board of Trustees if the Town seeks to revoke the manager's license based on a violation of this article or any provision of Chapter 9.17. The manager may continue to manage a sexually oriented business during the hearing process.

B. When there is probable cause to believe that a cause for suspension or revocation exists, the town attorney may file a written complaint with the licensing officer setting forth the circumstances of the alleged violation.

C. The Board of Trustees, if revocation, or the licensing officer, if suspension, shall provide a copy of the complaint to the licensee, together with notice to appear before the Board of Trustees for

the purpose of a hearing on a specified date to show cause why the licensee's license should not be suspended or revoked.

D At the hearing, the Board of Trustees shall hear such statements and consider such evidence as the police department or other enforcement officers, the owner, employer, occupant, lessee, or other party in interest, or any other witness shall offer that is relevant to the violation alleged in the complaint. The Board of Trustees shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the Board of Trustees determines that a cause for suspension or revocation exists it shall issue an order suspending or revoking the manager's license within thirty days after the hearing is concluded based on the findings of fact. A copy of the order shall be mailed to or served on the licensee at the address on the license.

E. The order of the Board of Trustees made pursuant to subsection D of this section shall be a final decision and may be appealed to the district court pursuant to Colorado Rule of Civil Procedure 106(a)(4). Failure of a licensee timely to appeal said order constitutes a waiver by him or her of any right he or she may otherwise have to contest the suspension or revocation of the manager's license.

F. The Board of Trustees shall have the power to administer oaths, issue subpoenas, and when necessary grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing which the Board of Trustees conducts. It is unlawful for any person to fail to comply with any subpoena issued by the Board of Trustees. A subpoena shall be served in the same manner as a subpoena issued at the district court in the State of Colorado.

G. All hearings held before the Board of Trustees of a manager's license issued under this ordinance shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the Town Clerk, and shall pay all costs of preparing such record.

H. In the event of suspension, revocation, or cessation of business, no portion of the manager's license fee shall be refunded. (Ord. 508 (part), 2001)

5.21.160 Notice.

Any notice required by this chapter shall be deemed sufficient if it is deposited in first class mail, postage pre-paid, to the address on the application and shall be effective upon mailing. (Ord. 508 (part), 2001)

5.21.170 Judicial Review.

After denial of an application, or denial of a renewal of an application, or suspension or revocation of a license, such act shall be a final decision. Therefore, the applicant or licensee may seek judicial review of such administrative action pursuant to Colorado Rules of Civil Procedure. The court shall promptly review such administrative action. (Ord. 508 (part), 2001)

5.21.180 Inspection.

A. An applicant or licensee or manager shall permit representatives of the licensing officer, building official, the Town Manager, the Police Department, the county Health Department and the Fire Department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

B. It is unlawful for any person, applicant, licensee, or manager who operates a sexually oriented business or his or her agent to refuse to permit such lawful inspection of the premises at any time that it is occupied or open for business. (Ord. 508 (part), 2001)