

Title 5

BUSINESS LICENSES AND REGULATIONS

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Chapter 5.04

CONTRACTORS

Sections:

- 5.04.010 Contractor Defined.
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5.04.010 Contractor Defined. A. A "building contractor", within the meaning of this Chapter, is a person, firm, corporation, partnership, association or other organization or any combination thereof:

1. Who undertakes with or for another, within the Town, to build, construct, alter, repair, add to or wreck any building, structure, public facility or any portion thereof, for which a permit is required, and for a fixed sum, price, fee, percentage or other compensation.
2. Who builds, constructs, alters, adds to, moves or wrecks any building or structure either on his own or other property.

B. Exceptions. Owners making ordinary repairs to buildings, which repairs do not involve the structure of the building, on which a contractor is not employed, are not “contractors” within the meaning of this Chapter. An owner of property may also secure one (1) building permit for any work done on his own property during each consecutive twelve month (12) period, without being considered a contractor within the meaning of this Chapter.

(Ord. 119 §1, 1981).

5.04.020 License for Contractors. It is unlawful for any contractor as defined above, to engage in any work, or at the business, trade or calling of such contractor in the Town without securing a license from the Town Clerk, and paying the annual license fee.

Before a license shall be issued, the applicant for the license shall pay the license fee and shall satisfy the Contractor’s Licensing Board of Review as to his integrity, qualifications, reputation and financial responsibility. He shall also submit to the Town Clerk a liability insurance policy, or a certificate of insurance with the Town Clerk, in such amounts and subject to such restrictions as the Board may, by regulation, prescribe. The Board shall devise classifications based upon the licensing category and nature of work involved, and shall apply the same requirements uniformly to all building contractors or the classification.

The annual fee, renewal fee and examination fee for each class shall be as follows:

<u>Type of License</u>	<u>Initial Fee</u>	<u>Renewal Fee</u>	<u>Examination Fee</u>
Building Contractor A1	\$200.00	-0-	\$50.00
Public Facilities Contractor A2	\$200.00	-0-	\$50.00
Building Contractor B	\$100.00	-0-	\$20.00
Building Contractor C	\$25.00	-0-	\$20.00

(Ord. 119 §2(part), 1981; Amended Ord. 145 §1, 1983).

5.04.030 Type of Licenses. A. A building contractor class A1 (general unlimited) license shall entitle the holder thereof to contract for construction, alteration, or for any work that falls under any other category of license on any type or size of structure permitted by the Uniform Building Code.

B. A public facilities contractor class A2 (general unlimited) license shall entitle the

holder thereof to contract for the construction, alteration, or for any work concerning drainage structures, fire hydrants, curb and gutter, street paving, sidewalks, bicycle paths, culverts and bridges, street lights and signs, or any other public improvements that are to be dedicated to the Town for use by the public.

C. A building contract class B (general limited) license shall entitle the holder thereof to contract for the construction, alteration or repair of one-family (1) to four-family (4) residential buildings, together with those jobs encompassed within building contractor class C licenses for which he is otherwise qualified.

D. Building contractor class C (Specialty). All other contractors, including specialty or subcontractors, engaging in, but not limited to minor house repair, maintenance, siding, roofing, plastering, masonry, sheetrock installation and including electricians or other specialty trades, shall obtain a class C license.

(Ord. 119 §3(part), 1981).

5.04.040 Contractor's Licensing Board of Review. A. There is established a Contractor's Licensing Board of Review, which shall consist of five (5) members, to serve terms of three (3) years each, to be appointed by the Mayor. To the extent possible, the Mayor shall appoint three (3) of the members to include representatives of the various building trades, and two (2) members to represent the public at large. In order to provide for staggered terms, the Mayor shall initially appoint one (1) member for a term of one (1) year, two (2) members for a term of two (2) years each, and two (2) members for a term of three (3) years each. The Board shall elect a chairman and a secretary, from its own members, and shall meet at the call of the chairman or the secretary. The Board shall conduct oral and written examinations for those who desire to apply for a contractor's license, as set forth in this Chapter, shall determine the amount and nature of insurance required to obtain a contractor's license, and shall conduct hearings for the revocation of any contractor's license.

B. The Board is granted authority to revoke any license granted under the terms of this Chapter, for just cause, including, but not limited to, the failure of a licensed building contractor to maintain in its employment those person or persons who originally qualified for the license obtained, for failure to fulfill a contract, for violation of any terms and conditions of his license, or of any of the ordinances of the Town, or of the statutes of the State of Colorado. Hearings shall be held as provided by law before any license shall be revoked. The Board shall hold examinations at reasonable intervals for all contractors' licenses. If, in the opinion of the Board, the examinations for obtaining a license under the laws of the State of Colorado, or under the laws of other municipalities, are sufficient to insure compliance with the intent of this Chapter, then the Board may, in individual cases, waive further examination.

(Ord. 119 §4(part), 1981).

5.04.050 License Examination. A. All contractors who are engaged in the business of a general or specialty contractor as defined in this Chapter as of the effective date hereof shall not be required to take an examination, although they shall be required to submit an application with proof of insurance, and pay the required fees within thirty (30) days of the effective date of the Ordinance codified in this Chapter.

B. A respective licensee's right to conduct business shall be dependent upon the continued retention of a person who took the examination for the license in an active full-time capacity. Whenever the person that took said examination terminates his active full-time capacity with licensee or otherwise becomes inactive, the licensee shall immediately notify the Board. A licensee shall have a thirty-day (30) grace period in which to apply for another examination by the Board. If no application is made during said period, the license shall automatically terminate.

(Ord. 119 §5(part), 1981).

5.04.060 Expiration of License. All licenses issued under this Chapter terminate on December 31st of each year, and must be renewed within thirty (30) days after the expiration date of the license, or the contractor shall be required to retake any examination and submit a new application. The initial license fee shall be prorated to the number of actual days remaining in the license if the same is applied for after January 1st of each year. (Ord. 119 §6(part), 1981).

5.04.070 Violation--Penalty. Any person, firm or corporation engaging in the business of building contractor or public facilities contractor, which has not first obtained a license therefor, commits a Class B municipal offense. Each day during which the offense occurs shall count as a separate offense. In addition to the other remedies provided by law, the Board or the De Beque Building Official may order the revocation of any building permit issued to any contractor who has violated the terms of this Chapter, or may order that all work be suspended on any structure, until any violation has ceased, all in compliance with the provisions of this Chapter. (Ord. 119 §7(part), 1981; Amended Ord. 258 §5(part), 2001).

Chapter 5.12

PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS

Sections:

- 5.12.010 Authority.
- 5.12.020 Definitions.
- 5.12.030 Transient Business License Required.
- 5.12.040 Exemptions.
- 5.12.050 License Application.
- 5.12.060 License Application Fee.
- 5.12.070 Investigation and Issuance of License.
- 5.12.080 Agent License.
- 5.12.090 Exhibition of License.
- 5.12.100 License Cancellation and Revocation.
- 5.12.110 Unlawful Acts.
- 5.12.120 Duty of Marshal to Enforce.

5.12.010 Authority. This Chapter is enacted pursuant to Section 31-15-501, C.R.S. (Ord. 175 §1(part), 1989).

5.12.020 Definitions. When used in this Chapter, the following definitions apply:

“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, conveying or transporting goods, wares or merchandise, or offering or exposing the same for sale, or making sales and delivering articles to purchasers.

“Solicitor” 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, soliciting or taking, or attempting to take, orders for the sale or purchase of goods, wares or merchandise, including magazines, books, periodicals, real or personal property of any nature whatsoever for future delivery, or for services to be performed, including insurance services, or for the donation of money or financial assistance, whether or not such individual has, carries, or exposes for sale a sample of the subject for such order, or whether or not he is collecting advanced payments on such orders. This definition includes any person who, for himself or for another person, firm or corporation, hires, leases, uses or occupies any vacant lot, motor vehicle, trailer, structure, tent, hotel room, lodging house, apartment, shop or other place within the Town for the primary purpose of exhibiting samples and taking orders for future delivery.

“Transient merchant” means any person, firm or corporation, whether as owner, agent,

cosignee or employee, whether a resident of the Town or not, who engages in the temporary business of selling and delivering goods, wares, property, and merchandise within the Town; and who, in the furtherance of such purpose hires, leases, uses or occupies any vacant lot, motor vehicle, trailer, tent, hotel room, lodging house, apartment, shop, or any street, alley or other place within the Town for the exhibition and sale of goods, wares or merchandise, either privately or at public auction. (Ord. 175 §1(part), 1989).

5.12.030 Transient Business License Required. Except as hereinafter provided, any peddler, solicitor or transient merchant engaging in such business shall be required to obtain a transient business license therefor in compliance with the provisions of this Chapter. (Ord. 175 §1(part), 1989).

5.12.040 Exemptions. The terms of this Chapter do not apply to:

- A. Persons selling personal property at wholesale to dealers in such articles;
- B. Acts of merchants or their employees in delivering goods in their regular course of business;
- C. Newspaper carriers or delivery persons;
- D. Employees of any public utility, or entity holding a franchise from the Town;
- E. Milk and milk producers and sellers, or any persons selling food or food products grown or raised in the State of Colorado;
- F. Dissemination of information, including political materials, without solicitation of money or other consideration;
- G. Any sale required by statute or Court order;
- H. A bona fide auction sale;
- I. Bona fide religious solicitation, where the solicitor does not attempt to sell merchandise other than books, tracts or audio-visual material;
- J. Any person soliciting donations of money or property or selling literature or merchandise from door to door, or in a public place, for a charitable organization which has been determined to be tax exempt under the laws of the State of Colorado or under the United States Internal Revenue Code;
- K. Any fair, show or exhibition of arts, crafts or similar handiwork, which include more than five (5) exhibitors or merchants. In such case, the organizer of said fair should apply to the Town Board of Trustees for a special events license. This application for a special events license

must include the name and local address of the sponsor, proposed duration, number of exhibits or merchants taking part in the fair, purpose of the event, and goods, or types of goods to be sold. The Board of Trustees may impose special conditions upon the approval of a special events license issued as an exemption to the provisions of this Chapter.

(Ord. 175 §1 (part), 1989).

5.12.050 License Application. Applicants for a transient business license under this Chapter shall file with the Town Clerk, at least thirty (30) days before the date upon which the applicant desires to begin his business, a sworn application in writing, in a form to be furnished by the Town Clerk, which shall contain the following information:

- A. The name of the applicant;
- B. The permanent home address of the applicant and full local address where the sales or solicitations will take place;
- C. The nature of the goods or services sold, and the manner and means by which the goods will be sold and orders taken;
- D. The current driver's license, license plate number and motor vehicle identification number of the applicant;
- E. If employed, the name and address of the employer, together with credentials therefrom establishing the exact relationship;
- F. The source of supply of the goods or property proposed to be sold, or orders taken for the sale thereof, where such goods or products are located at the time said application is filed, and the proposed method of delivery;
- G. A recent photograph of the applicant, which photograph shall be approximately two inches (2") by two inches (2"), showing the head and shoulders of the applicant in a clear and distinguishing manner;
- H. The names of at least two (2) persons in Mesa County, Colorado, who will certify as to the applicant's good character and business responsibility, or in lieu of the names of references, such other available evidence as to the good character and business responsibility of the applicant as will enable the Town to properly evaluate such character and business responsibility;
- I. A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, other than traffic violations, the nature of the offense, and the punishment or penalty assessed therefor;
- J. The last cities, or towns, not to exceed three (3), where the applicant carried on

business immediately preceding the date of application and the addresses from which such business was conducted in those municipalities;

K. If the applicant intends to utilize real property for the conduct of business or sales, proof that the applicant is or has permission of the owner of the property;

L. Copies of applicable State, County, and Town sales tax licenses.

(Ord. 175 §1(part), 1989).

5.12.060 License Application Fee. At the time of filing the application, a fee, in an amount set forth by resolution of the Board of Trustees, shall be paid to the Town Clerk to cover the cost of investigation of the facts stated therein. This fee shall be in addition to the business license fee set forth in Section 5.12.070. No application fee shall be required for license renewals in the next succeeding license period. (Ord. 175 §1(part), 1989; Amended Ord. 309 §2 (part), 2006).

5.12.070 Investigation and Issuance of License. A. Upon receipt of an application, the Town Clerk shall refer said application to the Town Marshal, who shall immediately institute such investigation of the applicant's business and moral character as he deems necessary for the protection of the public good and shall endorse the application in the manner prescribed in this Section within twenty (20) days after it has been filed by the applicant with the Town Clerk.

B. If as a result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, the Marshal shall endorse on such application his disapproval and his reasons for the same, and return said application to the Town Clerk, who shall notify the applicant that his application is disapproved and that no license will be issued.

C. If the application is disapproved, the applicant may appeal said decision by filing a notice of appeal with the Town Clerk within five (5) days from the date of the notice of disapproval. If a notice of appeal is timely filed, the Board of Trustees shall conduct a public hearing on said appeal within thirty (30) days to determine whether the Marshal's disapproval should be upheld.

D. If as a result of such investigation, the character and business responsibility of the application are found to be satisfactory, the Marshal shall endorse on the application his approval and return the application to the Town Clerk, who shall upon payment of the prescribed license fee and deposit, deliver to the applicant his license.

E. The applicant shall provide the Town Clerk with an estimate, in writing, of anticipated sales during the period of the license, and shall deposit a sum equal to one percent (1%) of said amount to cover estimated Town sales tax. When the applicant has completed his sales within the Town, he shall either provide proof satisfactory to the Town Clerk that all required sales taxes have been paid, or shall request that the funds held on deposit be used to satisfy his tax obligations. Any excess funds held by the Town shall be refunded to the applicant upon written request.

F. The transient business license fee shall be in an amount set forth by resolution of the Board of Trustees. All licenses under the provisions of this Chapter shall expire at midnight, the thirty-first (31<sup>st</sup>) day of December, in the year when issued. A license may be renewed for the succeeding year by paying the license fee as set forth by resolution of the Board of Trustees prior to the expiration of the license held by the applicant. (Amended Ord. 309 §3 (part), 2006).

G. The transient business license shall contain the signature of the issuing officer and shall show the name, address and photograph of said licensee, the class of license issued, and the kinds of goods to be sold thereunder, and shall contain the words, "The Town of De Beque, Colorado, does not endorse the products of licensee," the amount of fee paid, the date of issuance and date of expiration, as well as the license number and other identifying description of any vehicle used in such licensed business. Each peddler, solicitor or transient merchant must secure a personal license. Except as herein provided for agent licenses, no license shall be used at any time by any person other than the one to whom it is issued. The Town Clerk shall keep a permanent record of all licenses issued.

(Ord. 175 §1(part), 1989).

5.12.080 Agent License. A. Any person or corporation which obtains a primary license in its own name under the provision of this Chapter may thereafter obtain numbered agent licenses authorizing another person to act in its behalf, upon filing of an application with the Town Clerk, which application shall conform to the requirements of subsections 5.12.050(A), (B), (D), (E), (G) and (I). Such application shall be deemed to be approved unless the licensee is notified of its denial within twenty (20) days and shall remain in effect until the license expires, is revoked, or a new application is submitted for transfer to another person.

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

C. Any primary licensee may obtain agent licenses upon payment of an agent license fee in an amount set forth by resolution of the Board of Trustees. Such agent licenses shall become effective only upon submission of an application to operate thereunder, and shall be transferrable to another individual upon the filing of a new application signed by the primary licensee, the payment of a transfer fee in an amount set forth by resolution of the Board of Trustees, and surrender of the previous agent license.

(Ord. 175 §1(part), 1989; Amended Ord. 309 §4 (part), 2006).

5.12.090 Exhibition of License. Licensees shall exhibit their transient business license at the time of initial introduction to any person in the Town for the purpose of consummating any

transaction covered by this Chapter. (Ord. 175 §1(part), 1989).

5.12.100 License Cancellation and Revocation. A license issued under this Chapter may be revoked by the Board of Trustees, after notice to the licensee and an opportunity to be heard. Such license may be revoked for any of the following reasons:

- A. Fraud, misrepresentation or false statements contained in the application;
- B. Fraud, misrepresentation or false statements made in the course of carrying on business as licensed under this Chapter;
- C. Any violation of this Chapter;
- D. Conviction of any criminal offense, misdemeanor or petty offense, excepting traffic violations or infractions;
- E. Conducting the business licensed by this Chapter in an unlawful manner or in such a manner as to constitute a breach of the peace, or to constitute a menace to the health, safety or general welfare of the public;
- F. Failure to pay applicable sales taxes when due. Notice of hearing for the revocation of a license shall be given in writing, setting forth with specificity the grounds of the complaint and the time and place of the hearing. Such notice shall be mailed or delivered to the licensee at his local address as set forth in the application at least five (5) days prior to the hearing.

(Ord. 175 §1(part), 1989).

5.12.110 Unlawful Acts. A. It is unlawful for any peddler, solicitor or transient merchant to engage in any such business in the Town without first obtaining a license therefor in compliance with the provisions of this Chapter. Said offense shall be one of “strict liability.”

B. It is unlawful for any peddler, solicitor or transient merchant to fail to comply with all of the requirements set forth in this Chapter. Said offense shall be one of “strict liability.”

C. It is unlawful for any peddler, solicitor or transient merchant to go in or upon private property or any residence within the Town without first having been requested or invited to do so by the owner or occupant of the private residence. Said offense shall be one of “strict liability.”

D. It is unlawful for any person to conduct any selling or soliciting activity on or in any public street, alley or right-of-way. Said offense shall be one of “strict liability.”

E. Any violation of this Chapter shall constitute a Class B municipal offense. Each day’s violation of any provision contained in this Chapter shall constitute a separate and distinct offense. (Amended Ord. 258 §6(part), 2001).

(Ord. 175 §1 (part), 1989)

5.12.120 Duty of Marshal to Enforce. It shall be the duty of the Town Marshal to require any person peddling, soliciting or canvassing, and who is not known by such officer to be duly licensed, to produce his license; and to enforce the provisions of this Chapter against any person found to be violating the same. (Ord. 175 §1(part), 1989).

## Chapter 5.14

### SEXUALLY ORIENTED BUSINESSES - GENERAL PROVISIONS

#### Sections:

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5.14.160	Sexually Oriented Business - Employee Tips.
5.14.170	Adult Motel Regulations.
5.14.180	Injunctions.
5.14.190	Prohibited Acts - Penalty.
5.14.200	Fees.

5.14.010 Purpose and Description. The purpose of these regulations is to provide for the regulation and licensing of sexually oriented businesses within the Town in a manner which will protect the property values, neighborhoods and residents from the potential adverse secondary effects of sexually oriented businesses while providing to those who desire to patronize sexually oriented businesses the opportunity to do so. It is not the intent of this Chapter to suppress any speech activities protected by the First and Fourteenth Amendments of the United States Constitution or Article II, Section 10 Colorado Constitution, but to impose content-neutral regulations which address the adverse secondary effects of sexually oriented businesses. Nothing in this Chapter is intended to authorize or license anything otherwise prohibited by law.

Sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution. The concern over sexually transmitted diseases is a legitimate health concern of the Town which demands reasonable regulation of sexually oriented businesses to protect the health and well-being of the citizens, including the patrons of sexually oriented businesses. Licensing of sexually oriented businesses is a legitimate and reasonable means of ensuring that operators of

sexually oriented businesses comply with reasonable regulations and that operators do not knowingly allow their businesses to be used as places of illegal sexual activity or solicitation. There is convincing documented evidence that sexually oriented businesses, because of their nature, have a deleterious effect on both the existing businesses around them and surrounding residential areas causing increased crime and downgrading of property values. The purpose of this Chapter is to control adverse effects from sexually oriented businesses and thereby protect the health, safety and welfare of the citizens; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of the surrounding neighborhoods and deter the spread of urban blight. This Chapter is authorized by Section 31-15-401, C.R.S. and other applicable law.

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

B. Adult Bookstore or Adult Video Store: A business having as a substantial and significant portion of its stock and trade, revenues, space or advertising expenditures, resulting from the sale, renting or viewing of one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, laser disks, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or

2. Instruments, devices, or paraphernalia which are designed for specified sexual activities.

C. Cabaret: A nightclub, bar, restaurant or similar business which regularly features:

1. Persons who appear in a state of nudity; or

2. Live performances which are characterized by the exposure to specified anatomical areas or by specified sexual activities; or

3. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

D. Adult Motel: A hotel, motel or similar business which offers private rooms to the public and provides patrons live performances or closed-circuit television transmissions, not including pay per view satellite transmissions, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or

specified anatomical areas.

E. Adult Motion Picture Theater: A business where films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

F. Adult Theater: A theater, concert hall, auditorium, or similar business which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

G. Employee: Includes any person who is paid directly or indirectly by the licensee for services performed on the premises whether such person would otherwise as a matter of law be classified as an employee, agent, manager, entertainer or independent contractor.

H. Licensing Officer: The Licensing Officer referred to in this Title is the Town Clerk unless another official has been designated by the Town Administrator or Board of Trustees as the Licensing Officer.

I. Manager: Any person other than a licensee who is employed by a sexually oriented business to act as a manager or supervisor of the employees, finances or patrons of the business or is otherwise responsible for operation of the business.

J. Peep booth: A viewing room, other than a private room, of less than one hundred fifty square feet (150 sq. ft.) of floor space upon the premises of a sexually oriented business where there is exhibited photographs, films, motion pictures, video cassettes, or other video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas.

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

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

M. Sexual Encounter Establishment: A business or commercial establishment, which as one of its primary business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas, when one or more of the persons exposes any specified anatomical area.

N. Sexually Oriented Business: An adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, sexual encounter establishment or other similar business and includes:

1. The opening or commencement of any sexually oriented business as a new business.
2. The conversion of an existing business, whether or not a sexually oriented business, to a sexually oriented business.
3. The addition of any sexually oriented business to any other existing sexually oriented business.
4. The relocation of any sexually oriented business; or
5. The continuation of a sexually oriented business in existence on the effective date of this Ordinance.

O. Specified Anatomical Areas: Are defined as:

1. Less than completely and opaquely covered: human genitals, pubic region, buttocks and female breast below a point above the top of the areola.
2. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

P. Specified Sexual Activities: Acts, simulated acts, exhibitions, representations, depictions or descriptions of:

1. Human genitals in a state of sexual stimulation or arousal.
2. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.
3. Intrusion, however slight, of any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body or into the body of an animal.
4. Cunnilingus, fellatio, anilingus, masturbation, bestiality, lewd exhibition of genitals or excretory function.
5. Flagellation, mutilation or torture for purposes of sexual arousal, gratification, or abuse.

Q. Stage: A raised floor or platform at least three feet (3') above the surrounding floor measured perpendicularly from the edge of the stage to the surrounding floor and at least thirty-six square feet (36 sq. ft.) in area.

5.14.030 License Required. A. It shall be unlawful for any person to operate a sexually oriented business without a license issued by the Licensing Officer under the provisions of this Chapter.

1. An application for a license must be made on a form provided by the Town.
2. The application must be accompanied by a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business, and designating the use of each room or other area of the premises.
3. The diagram shall designate those rooms or other areas of the premises where patrons are not permitted.
4. The diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches ( +/- 6").
5. The diagram shall designate the place at which the license will be conspicuously posted.
6. No alteration in the configuration of the premises or any change in use of any room or area as shown on the diagram may be made without the prior written approval of the Town.
7. 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 and that the use of any area or room in the premises has not changed.

B. The applicant must be qualified according to the provisions of this Title and the premises must be inspected by the Fire Department, Building Official of the Building Department and the Licensing Officer and found to be in compliance with the law.

C. Contemporaneously with the submission of an application for a license, the applicant shall submit the special review use permit from the Town Planning Department indicating that the requirements of Chapter 14.11 of the De Beque Municipal Code are met unless the applicant's sexually oriented business is an existing nonconforming use under the provisions of Section 14.03.090 of the De Beque Land Use Regulations. In the event that such permit is subject to appeal, no further action shall be taken upon such application until such appeal is finally adjudicated.

5.14.040 Issuance of a Sexually Oriented Business License. A. The sexually oriented business shall be issued a license within thirty (30) days after receipt of an application if the requirements set forth in Section 5.12.070 are met, unless the Licensing Officer finds one or more of the following:

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

2. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

3. The premises to be used for the sexually oriented business have not been approved by the Fire Department, the Building Official and the Licensing Officer as being in compliance with applicable laws and ordinances.

4. The applicant has not been issued a permit by the Town Planning Department indicating the requirements of Title 14 of the De Beque Municipal Code are met and that such permit, if issued, is not subject to appeal or the applicant's sexually oriented business is an existing nonconforming use under Title 14 of the De Beque Municipal Code.

B. The 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 license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

C. The Fire Department and Building Official shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the application by the Licensing Officer. Their certifications shall be promptly presented to the Licensing Officer. The Licensing Officer's inspection shall be completed within thirty (30) days after the receipt of the application.

D. A denial by the Licensing Officer of the application shall be in accordance with Section 5.12.100 of this Title. The applicant may appeal the denial in accordance with the provisions of Section 5.20.020 of this Title.

5.14.050 Manager's Registration. A. It shall be unlawful for any person to work as a manager of a sexually oriented business without first registering with the Licensing Officer.

B. The registration of a manager with the Licensing Officer is in lieu of the issuance of a license to a manager.

C. The Licensing Officer shall register a manager if all of the requirements for a license as set forth under Chapter 5.18 of this Title and Section 5.14.040 of this Chapter are met.

D. The manager's registration shall be issued or denied in accordance with the criteria for issuance or denial of a license as set forth in Chapter 5.16.

E. The registration may be suspended or revoked for any grounds for the suspension or revocation of a license as set forth in Chapter 5.20 of this Title or Sections 5.14.090 or 5.14.100 of this Chapter.

5.14.060 Employee Registration. Each licensee will provide to the Licensing Officer the full name, aliases if any, address, telephone number and date of birth of any employee within five (5) days of employment.

5.14.070 Inspection. A. The licensee or the licensee's employees shall permit representatives of the Marshal's Department, Mesa County Health Department, Building Official of the Building Department, the Fire Department, Planning Department, Licensing Officer or other Town departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law as provided for in this Section.

B. Town departments and agencies shall conduct such inspections in a reasonable manner and only as frequently as may be reasonably necessary.

C. Inspections shall take place during the regular business hours of the sexually oriented business or when any person is on the premises.

D. It shall be unlawful for the licensee or any employee to refuse to permit such lawful inspection of the premises as provided in this Section.

5.14.080 Expiration of License. Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 5.16.050 of this Chapter.

5.14.090 License Suspension or Revocation. A. In addition to the grounds set forth for suspension or revocation of a license in Chapter 5.20 of this Title, the Licensing Officer shall suspend a license for a period not to exceed six (6) months and may revoke a license if the Licensing Officer determines that a licensee or an employee of a licensee has:

1. Violated or is not in compliance with any Chapter of this Title.
2. Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter.
3. Knowingly permitted any unlawful act upon the premises.

B. In determining the action to be taken as provided in this Section, the Licensing Officer shall consider the following aggravating and mitigating circumstances:

1. Whether the licensee has been previously suspended or revoked.

2. Whether the licensee was warned that the conduct involved could lead to a suspension or revocation.
3. Whether the cause for suspension or revocation involves one or several violations.
4. Whether the violation(s) are technical or substantive in nature.
5. The extent to which the licensee, licensee's agents and employees, as opposed to patrons, were involved in the violation(s).
6. The extent to which the licensee or licensee's employees had knowledge of the violation(s).
7. Any corrective or remedial action the licensee has taken to prevent similar violation(s) in the future.
8. Whether the violation(s) involved the commission of a crime, and if so, the degree of felony or misdemeanor involved.
9. The extent to which the violation(s) caused personal injuries or property damages.
10. Whether the licensee has paid damages or made restitution to any person or entity damaged by the violation(s).
11. The extent to which the violations posed a significant risk to the health, safety and welfare of persons on or off of the licensed premises.
12. The length of time over which the violation(s) extended.
13. The extent to which the licensee or licensee's employees realized a financial gain from the violation(s).
14. The number of employees, patrons, or both involved in the violation(s).
15. The nature and extent of enforcement action taken by the Town or any law enforcement to detect the violation(s).
16. The involvement of any persons under twenty one (21) years of age in the violation(s).
17. The extent to which the licensee or licensee's employees have attempted to

cover up the violation(s), destroy evidence or otherwise hinder the investigation and detection of the violation(s).

18. The extent to which the licensee and licensee's employees have acted in good faith.

5.14.100 Mandatory License Revocation. A. The Licensing Officer shall revoke a license if the Licensing Officer determines that:

1. A license has previously been suspended within the preceding twelve (12) months;

2. A licensee gave false information in the material submitted to the Licensing Officer;

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

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

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

6. Excluding conduct within a private room of an adult motel, a licensee or employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sexual conduct to occur on the premises.

B. When the Licensing Officer revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented license for one (1) year from the date revocation became effective.

5.14.110 Hours of Operation. A. It shall be unlawful for a sexually oriented business to be open for business or for the licensee or any employee of a licensee to allow patrons upon the licensed premises from:

1. On any Tuesday through Saturday from two o'clock (2:00) A.M. until seven o'clock (7:00) A.M.;

2. On any Monday other than a Monday which falls on January 1, from twelve o'clock midnight (12:00) until seven o'clock (7:00) A.M.;

3. On any Sunday from two o'clock (2:00) A.M. until eight o'clock (8:00) A.M.;

4. On any Monday which falls on January 1, from two o'clock (2:00) A.M. until seven o'clock (7:00) A.M.

B. This Section shall not apply to those areas of an adult motel which are private rooms.

5.14.120 Peep Booth Regulations. A. A licensee who has peep booths upon the premises shall comply with all of the following requirements:

1. The diagram accompanying an application for a license shall specify the location of one (1) or more manager's stations.

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

3. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain film or video reproduction equipment or equipment for showing slides or photographs. If the premises has two (2) or more manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

4. It shall be the duty of the licensee and employees present on the premises to ensure that the view area specified in subsection (A)(3) above remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated in the application as an area to which patrons will not be permitted.

5. It shall be the duty of the licensee to ensure that all walls shall be maintained without holes or damage.

6. No peep booth may be occupied by more than one (1) person at any time.

B. It shall be unlawful for any person having a duty under subsections (A)(1) through (A)(5) of this Section to knowingly fail to fulfill that duty.

5.14.130 Lighting Regulations. A. Excluding a private room of an adult motel, the interior portion of the premises to which patrons are permitted access shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place at an illumination of not less than two (2.0) foot-candle as measured at the floor level.

B. It shall be the duty of the licensee and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

5.14.140 Additional Regulations - Adult Theaters, and Adult Cabarets. A. Any adult cabaret or adult theater shall have one (1) or more separate areas designated in the diagram submitted as part of the application as a stage for the licensee or employees to perform as entertainers. Entertainers shall perform only upon the stage. The stage shall be fixed and immovable. No seating for the audience shall be permitted within three feet (3') of the edge of the stage. No members of the audience shall be permitted upon the stage or within three feet (3') of the edge of the stage.

B. It shall be unlawful for the licensee or for any employee to violate any of the requirements of this Section or to knowingly permit any patron to violate the requirements of this Section.

C. In any adult theater or adult cabaret that features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities, the licensee and all employees present on the premises and all patrons must be at least twenty-one (21) years of age.

5.14.150 Conduct for Sexually Oriented Businesses. A. No licensee or employee mingling with the patrons, or serving food or drinks, shall be unclothed or in such attire, costume or clothing, so as to expose to view any specified anatomical area.

B. No licensee or employee shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the breasts, anus or specified anatomical areas of any person.

C. No licensee or employee shall violate the requirements of subsections 5.14.100 (A)(2) through (A)(5) of this Section.

D. It shall be unlawful for any licensee or employee to knowingly permit a patron to violate any of the requirements of this Section.

5.14.160 Sexually Oriented Businesses - Employee Tips. A. It shall be unlawful for any employee of a sexually oriented business to receive tips from patrons except as set forth in subsection (C) of this Section.

B. A licensee that desires to provide for tips from its patrons shall establish one (1) or more boxes or other containers to receive tips. All tips for such employees shall be placed by the patron of the sexually oriented business into the tip box.

C. A sexually oriented business that provides tip boxes for its patrons as provided in this Section shall post one (1) or more signs to be conspicuously visible to the patrons on the premises in letters at least one inch (1") high to read as follows: "All tips are to be placed in tip box and not

handed directly to the entertainer. Any physical contact between the patron and the entertainer is strictly prohibited.”

5.14.170 Adult Motel Regulations. An adult motel that, in addition to the renting of private rooms, operates a sexually oriented business as otherwise defined in this Chapter shall comply with all of the requirements set forth in this Chapter pertaining to that business.

5.14.180 Injunction. Any person who operates or causes to be operated a sexually oriented business without a license is subject to suit for injunction as well as criminal prosecution.

5.14.190 Prohibited Acts - Penalty. Any person who violates any provision of this Chapter, or who fails to perform an act required by any provision of this Chapter, commits a Class A municipal offense.

5.14.200 Fees. A business license fee of three hundred fifty dollars (\$350.00) and a manager's registration fee of seventy-five dollars (\$75.00) shall be paid upon submission of an application and annually thereafter upon renewal of the sexually oriented business license.

(Ord. 329, §1(part), 2006)

Chapter 5.16

ISSUANCE AND CONDITIONS OF SEXUALLY ORIENTED BUSINESS LICENSES

Sections:

- 5.16.010 Issuance or Denial.
- 5.16.020 Posting, Display of License.
- 5.16.030 Licenses for Branch Establishments.
- 5.16.040 Transfer of License.
- 5.16.050 Renewal of License.

5.16.010 Issuance or Denial. A. Except as otherwise provided in this Title 5, the Licensing Officer shall issue a license to an applicant if he finds after investigation:

1. All conditions imposed upon the applicant as prerequisites to the issuance of the said license by the terms of the provisions pertaining to the particular license sought have been met including but not limited to meeting the qualifications of applicants standard set forth in Section 5.18.010.
2. The required application and license fees have been paid;
3. The use to which the premises are proposed to be put shall conform to the requirements of applicable building, fire, safety and zoning regulations; and
4. All other specific requirements of the terms and provisions relating to the application for the particular license requested for use at the premises specified in the application have been met.

B. If the Licensing Officer shall not so find he shall thereupon deny such application and notify the applicant of the denial by serving upon the applicant personally a copy of such denial and the reasons supporting such denial or by mailing the same to him by registered or certified mail at the business address shown on the application.

C. Any applicant aggrieved by any final order of the Licensing Officer after the denial of such application shall have the right to appeal to the Board of Trustees by filing a written appeal, stating the grounds thereof, with the Licensing Officer within ten (10) days following the date of denial of said application.

D. In the event an appeal is timely filed, it shall be heard at the next regular Board of Trustees meeting occurring at least ten (10) days after said filing with the Licensing Officer. Review by the Board shall be a *de novo* hearing.

5.16.020 Posting, Display of License. A. Every license issued by the Town for a business or activity to be conducted at a particular street address shall be posted during the period such license is valid. Such license shall be posted in a conspicuous place and shall be visible from the principal entrance of the business or activity. When such license expires, it shall be removed; no license not in full force and effect shall remain posted.

B. It shall be the duty of each and every person to whom a license has been issued to exhibit the same upon the request of any peace officer, the Licensing Officer, or other official of the Town.

5.16.030 Licenses for Branch Establishments. A license shall be obtained in the same manner prescribed herein for each branch establishment or location of the business as if each such branch establishment or location were a separate business; provided that warehouses and wholesale distributing plants used in connection with and incidental to a business licensed under the provisions of this Title shall not be deemed to be separate places of business or branch establishments.

5.16.040 Transfer of License. No license shall be transferred from one person to another or from one location to another. Any change of ownership or change of location of a licensed business or activity shall require a new application and license with payment of fees therefor according to the provisions pertaining to the particular kind of license.

5.16.050 Renewal of License. A. At any time within thirty (30) days prior to the expiration of his current license, a licensee may make application for a license renewal for the succeeding year and pay the required fees therefor. Unless otherwise provided by this Title, if application is so made and no action or proceeding is pending against the licensee for suspension or revocation of his current license or licenses, he may continue in his business or activity for the succeeding period unless or until his application for license renewal is denied.

B. In the event a suspension or revocation proceeding is pending when a license renewal is applied for, the business or activity may continue in operation during the pendency of such suspension or revocation proceeding but the application for a license renewal shall not be acted upon until the suspension or revocation proceeding has been completed.

(Ord. 329, §2(part), 2006)

Chapter 5.18

QUALIFICATIONS OF APPLICANTS FOR SEXUALLY ORIENTED BUSINESS LICENSES

Sections:

5.18.010      Qualifications of Applicants.

5.18.010      Qualifications of Applicants. The general standards set out in this Section relative to the qualifications of every applicant for a Town sexually oriented business license shall be considered and applied by the Licensing Officer. The applicant shall:

A.      Not have a history or prior misconduct which constitutes evidence that serious criminal conduct would likely result from the granting of a license issued pursuant to this Title.

B.      No Obligations to the Town. Not be in default under the provisions of this Title or indebted to or obligated in any manner to the Town.

C.      Compliance with all Town Regulations. Present certificates furnished by the appropriate officers or agencies to the effect that the proposed use of any premises is in compliance with all applicable Town regulations including, by way of description and not of limitation, zoning, building and fire codes and the like.

(Ord. 329, §3(part), 2006)

Chapter 5.20

SUSPENSION AND REVOCATION PROCEDURES FOR SEXUALLY ORIENTED  
BUSINESS LICENSES

Sections:

- 5.20.010      Grounds for Suspension or Revocation.
- 5.20.020      Hearing Procedures.
- 5.20.030      Hearings.
- 5.20.040      Notice of Suspension or Revocation.
- 5.20.050      Effect of Suspension or Revocation.
- 5.20.060      Appeals.
- 5.20.070      Summary Suspension.
- 5.20.080      Board Decision - Effect Of.
- 5.20.090      Fine in Lieu of Hearings.

5.20.010      Grounds for Suspension or Revocation. The Licensing Officer shall suspend for a period not to exceed six (6) months or revoke any sexually oriented business license issued by the Town if he finds that:

- A.      The licensee has failed to pay the annual license fee.
- B.      The licensee has failed to file required reports or to furnish such other information as may be reasonably required by the Licensing Officer or other Town official under the authority vested in him by the terms of the provisions relating to the specific license;
- C.      The licensee or any agent or employee of such licensee has violated any provisions of this Title pertaining to his license or any regulations or order lawfully made under and within the authority of this Title relating to the license;
- D.      The licensee or any agent or employee of such licensee has violated any law of the United States, of the State of Colorado or the Town of De Beque when such violation occurred on the licensed premises, or relates to conduct or activity of any business required to be licensed by this Title.

5.20.020      Hearing Procedures. A. Upon commencement of suspension or revocation proceedings, the Licensing Officer shall set a time and place for the hearing of the matter.

B.      The Licensing Officer shall give the licensee timely notice of the time and place of the hearing and the violations asserted. Such notice shall be served personally or by mailing by first-class mail to the last address furnished to the Licensing Officer by the licensee, at least ten (10) days,

including Saturdays, Sundays and legal holidays prior to the hearing. In lieu of such service, or in addition thereto, a copy of such notice may be affixed to the principal entrance of the licensed premises which shall be deemed to be the principal place of business or main office or may be affixed to some prominent structure on such premises.

C. In any such action, a public hearing shall be granted at which the licensee shall be afforded an opportunity to be heard, present evidence, cross-examine witnesses, and offer evidence in mitigation of any violations.

D. All evidence shall be recorded stenographically or by electronic recording device.

E. In all such proceedings, the Town Attorney shall act on behalf of the Town during the hearing.

5.20.030 Hearings. The Licensing Officer or his designee shall conduct hearings for suspension or revocation of licenses granted pursuant to this Chapter. The hearing shall be conducted in accordance with Chapter 2.08 of the De Beque Municipal Code. The Licensing Officer shall make findings of fact and conclusions concerning the revocation or suspension of a license. The Licensing Officer shall transmit a copy of the final findings of fact and conclusion to the licensee as provided hereafter.

5.20.040 Notice of Suspension or Revocation. A. Upon suspension or revocation of any sexually oriented business license required by this Title, notice of such suspension or revocation shall be given by personally serving the licensee with the order of suspension or revocation or by mailing such order to such person by certified or registered mail at the business address of the licensee as shown on the license or at the address of the designated agent. In lieu of such service, or in addition thereto, a copy of such order may be affixed to the principal entrance of the licensed premises which shall be deemed to be the principal place of business or main office, or may be affixed to some prominent structure on such premises.

B. The order shall be effective immediately upon service of notice thereof unless the order provides otherwise. Service of such order shall be complete upon mailing or posting.

5.20.050 Effect of Suspension or Revocation. Upon the effective date of suspension or revocation of any license required for a business or activity, the licensee of such licensed business or activity shall cease and desist from further operation or activity.

5.20.060 Appeals. Any person aggrieved by any final order of the Licensing Officer after hearing shall have the right to appeal to the Board of Trustees by filing a written appeal with the Town Clerk within ten (10) days following the effective date of the action or order complained of, and such appeal shall have the effect of staying execution of such final order pending appeal.

A. Contents of Appeal. An appeal shall be in writing and shall set out a copy of the order appealed from and shall include a statement of the facts relied upon to contest such order.

B. Hearing.

1. The Town Clerk shall fix a time and place for hearing the appeal which shall be at the next regular meeting of the Board of Trustees occurring not less than ten (10) days following receipt of the notice of appeal or the record on appeal, whichever is later, and shall cause written notice of the same to be served upon the applicant informing him thereof. The Town Clerk shall also give such notice to the Licensing Officer and such Officer may appear and defend the order.

2. Upon appeal to the Board of Trustees of the suspension or revocation, the Board shall review the record, including the transcript of proceedings and evidence before the Licensing Officer, and shall determine whether there is substantial evidence in the record to support the recommendation of the Licensing Officer. If there is substantial evidence in the record to support the recommendation of the Licensing Officer, then the Board shall affirm the decision of the Licensing Officer. If there is not substantial evidence in the record to support the recommendation of the Licensing Officer, then the Board may reverse the recommendation of the Licensing Officer or remand the matter back to the Licensing Officer for further proceedings. No new evidence shall be submitted to the Board unless a majority of the Board determines that such evidence could not have been reasonably presented at the time the matter was heard before the Licensing Officer. If the Board decides to hear new evidence, it may hear the new evidence or remand the matter to the Licensing Officer.

3. The appellant seeking review of the action of the Licensing Officer, at the time of the filing of the notice of appeal, shall pay to the Town the estimated cost for preparing a transcript of the proceedings before the Licensing Officer. The cost of preparing a transcript of testimony before the Licensing Officer shall be charged at rates ordinarily charged by certified court reporters. The cost of preparing the transcript shall be estimated by the Town Clerk. In the event the cost of the transcript is greater than the cost estimated by the Town Clerk, the appellant shall pay this additional cost within ten (10) days after billing by the Town Clerk. In the event that the cost of the transcript is less than the estimated sum paid by the appellant, the Town Clerk shall refund the excess paid within ten (10) days after actual cost of the transcript is determined.

5.20.070 Summary Suspension. When the conduct of any licensee, agent or employee is so inimical to the public health, safety and general welfare as to constitute a nuisance or hazard and thus give rise to an emergency, the Licensing Officer shall have the authority to summarily order the cessation of business and the closure of the premises pending a hearing on the question of whether to suspend or revoke the license. Unless waived by the licensee in writing, the Board of Trustees, within fifteen (15) days after the Licensing Officer has acted, shall conduct a hearing upon the summary order and the activity giving rise to such order. The order shall state the grounds for its issuance and shall give notice of the hearing and shall be served upon the affected person in the manner prescribed in subsection 5.20.020(B). At such hearing the licensee shall show cause why the summary suspension should not be made a final order of suspension or revocation.

5.20.080 Board Decision; Effect of A. The decision of the Board of Trustees in all cases shall be final and conclusive and shall be served upon the licensee by personal service, by registered or certified mail, or by posting as provided in Section 5.20.040 of this Chapter.

B. A decision of Board of Trustees is reviewable only by the District Court under C.R.C.P. 106(a)(4). There shall be no stay of execution pending a review by the Court except by Court order.

5.20.090 Fine in Lieu of Hearing. A. Upon application, stipulation or admission by the licensee, made ten (10) days prior to a scheduled suspension or revocation hearing unless waived by the Licensing Officer, the licensee may request permission to pay a fine in lieu of a hearing. Upon the receipt of the petition, the Licensing Officer or his designee may, in his sole discretion, stay a proposed hearing and cause any investigation to be made which he deems desirable and may, in his sole discretion, grant the petition if he is satisfied:

1. That the public welfare and morals would not be impaired by permitting the licensee to continue operation and that the payment of the fine will achieve the desired disciplinary purposes;

2. That the licensee has not had his license suspended or revoked, nor paid any fine in lieu of suspension during the two (2) years immediately preceding the date of the alleged violations; and

3. That the books and records of the licensee are kept in such a manner that economic loss can be determined with reasonable accuracy therefrom.

B. The fine accepted shall be the equivalent to twenty percent (20%) of the estimated gross revenues from the sale of such merchandise or services on the dates of the alleged violations; except that the fine shall be not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000.00).

C. Payment of any fine pursuant to the provisions of subsection (A) shall be payable in full in the form of cash, certified check or cashier's check made payable to the Town of De Beque. The proceeds of the payment of the fine shall be paid into the General Fund of the Town.

D. Upon payment of the fine pursuant to subsection (A) of this Section, the Licensing Officer or his designee shall enter his further order permanently staying the suspension or revocation hearing.

E. The authority of the Licensing Officer or his designee under this Section is limited to:

1. The granting of such stays as are necessary for him to complete his investigation and make his findings; and

2. If he makes such findings, to the granting of an order permanently staying the imposition of the hearing; and

3. The determination of the fine to be imposed.

F. If the Licensing Officer does not make the findings required in subsection (A) of this Section and does not order the hearing permanently stayed, the hearing shall proceed as scheduled.

G. The determination of the Licensing Officer to deny a fine in lieu of a hearing, or to allow a fine in lieu of a hearing, and the determination of the amount of the fine, shall be final decisions committed to his discretion and not subject to appeal to the Board of Trustees.

(Ord. 329, §4(part), 2006)

Chapter 5.22

RETAIL MARIJUANA LICENSING - GENERAL PROVISIONS

Sections:

- 5.22.010 Purpose and Description.
- 5.22.020 Adoption of Colorado Medical and Retail Marijuana Codes.
- 5.22.030 Definitions.
- 5.22.040 License Required.
- 5.22.050 License Application.
- 5.22.060 Application Review Procedure.
- 5.22.070 Public Hearing Procedure.
- 5.22.080 Review Criteria.
- 5.22.090 Posting, Display of License.
- 5.22.100 Expiration of License.
- 5.22.110 Transfer of License.
- 5.22.111 Change of Location or Licensed Premises Modification.
- 5.22.120 Renewal of License.
- 5.22.130 Inspection.
- 5.22.140 License Suspension or Revocation.
- 5.22.150 License Revocation.
- 5.22.160 Hearings.
- 5.22.170 Notice of Suspension or Revocation.
- 5.22.180 Effect of Suspension or Revocation.
- 5.22.190 Summary Suspension.
- 5.22.200 Performance Standards for Medical and Retail Marijuana Establishments.
- 5.22.210 Injunction.
- 5.22.240 Prohibited Acts – Penalty.

5.22.010 Purpose and Description. The purpose of this Chapter is to regulate and control potential adverse effects from medical and retail marijuana businesses in accordance with the power granted by the Colorado Constitution, state law, and the Town’s police power, and thereby to protect the health, safety and welfare of the citizens; protect the citizens from increased crime; preserve the quality of life; and preserve the property values and character of the surrounding neighborhoods. This Chapter is authorized by section 12-43.4-101, C.R.S. and other applicable law.

(Ord.488, §6, 2017)

5.22.020 Adoption of Colorado Medical and Retail Marijuana Codes. Except as expressly set forth herein, the Town hereby adopts and incorporates herein the Colorado Medical Marijuana Code, Article 43.3, Title 12, Colorado Revised Statutes (“Medical Code”), and Retail Marijuana Code, Article 43.4, Title 12, Colorado Revised Statutes (“Retail Code”) (“Collectively,

“Codes”), and the provisions of the Colorado Department of Revenue Marijuana Enforcement Division Permanent Rules Related to the Colorado Marijuana Code, 1 CCR 212-1 and 212-2, as now existing or as may be hereafter amended. At least one (1) copy of these documents will be kept on file by the Town Clerk and open to public inspection during regular business hours.

(Ord.488, §6, 2017)

5.22.030 Definitions. Except where specifically defined in this Section, the capitalized terms in this Chapter shall have the same meaning as that set forth in Article XVIII, Section 16 of the Colorado Constitution, the Codes, or the Permanent Rules Related to the Colorado Marijuana Code. In the event of any conflict between such documents, the Permanent Rules shall control over this Section, the Colorado statutes shall control over the Permanent Rules, and the Colorado Constitution shall control over all other legal authorities. Federal law shall not be relevant in interpreting this Section.

- A. Applicant shall mean the person or entity submitting an Application, Change Application, Renewal Application, or other application provided for under this Chapter, and shall include all members, shareholders, officers, directors, partners and managers in the case of a corporate entity or partnership.
- B. Application shall mean the submission by an Applicant of all materials required under this Chapter or under the Code or Permanent Rules for a new License.
- C. Change Application means an application from a Licensee to change the location of a License or to modify or expand a Licensed Premises, including by adding a new type of Retail or Medical Marijuana Establishment to the licensed premises that complies with Section 5.22.111.
- D. Colorado Retail Marijuana Code or Retail shall mean Article 43.4 of Title 12 Colorado Revised Statutes, as amended.
- E. Colorado Medical Marijuana Code or Medical Code Shall Mean Article 43.3 of Title 12 of the Colorado Revised Statutes, as amended.
- F. License shall mean a license granted by the Town to an Applicant for a Licensed Premises.
- G. Licensed Premises shall mean the premises specified in a State License supplied for approval pursuant to this Chapter, owned or in the possession of the Licensee permitting the Licensee to operate a Retail and/or Medical Marijuana Establishment in accordance with the provisions of the Codes and this Chapter.
- H. Licensee shall mean a person licensed pursuant to the Code and approved pursuant to this Chapter.

- I. Medical Marijuana shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- J. Medical Marijuana center shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- K. Medical Marijuana Establishment shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- L. Medical Marijuana-Infused Product shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- M. Medical Marijuana-Infused Products Manufacturing Facility shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- N. Medical Marijuana Testing Facility shall have the same meaning as set forth in Section 14.01.180 of the Municipal Code.
- O. Optional Premises Cultivation Operation shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- P. Permanent Rules Related to the Colorado Marijuana Code or Permanent Rules shall mean the Colorado Department of Revenue Permanent Rules Related to the Colorado Retail Marijuana Code, dated September 9, 2013, as the same may be in effect and amended from time to time.
- Q. Renewal Application means an application from an existing licensee to renew a License previously approved by the Board of Trustees pursuant to this Chapter that complies with Section 5.22.120.
- R. Retail Marijuana shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- S. Retail Marijuana Cultivation Facility-Limited shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- T. Retail Marijuana Cultivation Facility shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- U. Retail Marijuana Establishment shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- V. Retail Marijuana Product shall have the same meaning as that set forth in Section

14.01.180 of the Municipal Code.

- W. Retail Marijuana Products Manufacturing Facility shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- X. Retail Marijuana Store shall have the same meaning as that set forth in Section 14.01.180 of the Municipal Code.
- Y. State License shall mean the license granted by the Colorado Department of Revenue pursuant to the Codes and Permanent Rules for the operation of a Medical or Retail Marijuana Establishment.

(Ord.472, §5, 2016) (Ord.488, §6, 2017) (Ord.489, §3, 2017)

5.22.040 License Required. It shall be unlawful for any person to operate a Medical or Retail Marijuana Establishment without a State License and without a License issued under the provisions of this Chapter. A separate License is required for each Medical Marijuana Establishment, Retail Marijuana Establishment and each Licensed Premises.

(Ord.488, §6, 2017)

5.22.041 Limit on Licensed Premises. The total number of each type of Medical and Retail Marijuana Establishments, as defined in Chapter 14.01.180, licensed to operate within the Town shall not exceed four (4) at any point in time. No Application will be accepted, processed, or reviewed unless a License of the type applied for is available as of the date of submission of an Application.

(Ord. 456 § 4, 2015) (Ord.488, §6, 2017) (Ord.489, §3, 2017)

5.22.050 License Application.

An Application for the Operation of a Medical or Retail Marijuana Establishment at a Licensed Premises shall be made as required by the Codes and Permanent Rules. The Applicant has the burden of demonstrating compliance with the provisions of this Chapter, the Municipal Code, the Codes, the Permanent Rules, and any other applicable law, rule or regulation. All representations and information contained in the Application must be truthful. The Application to the Town shall include the following:

1. An application form provided by the Town.
2. A complete copy of the State License application as or to be submitted to the State Marijuana Enforcement Division.
3. Proof of ownership, lease, rental agreement, or other arrangement for

possession of the proposed Licensed Premises

4. A diagram showing the configuration of the proposed Licensed Premises, including a statement of total floor space occupied by the businesses, and designating the use of each room or other area of the premises.

5. The diagram shall designate those rooms or other areas of the premises where patrons are not permitted.

6. Sign, security, video surveillance, odor control, and lighting plans indicating how the Applicant will comply with the requirements of the Codes, this Chapter and other applicable provisions of the Municipal Code.

7. An area map, drawn to scale, indicating the boundaries of the property upon which the Medical or Retail Marijuana Establishment is located, and indicating the proximity, measured per the standards as set forth below, of the proposed License Premises to any kindergarten through 12<sup>th</sup> grade public or private school and indicating the proximity to any other licensed Medical or Retail Marijuana Establishment.

8. The diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches ( +/- 6"). A dimensioned map utilizing the Mesa County GIS system is acceptable.

9. The diagram shall designate the place at which the License will be conspicuously posted as required by this Chapter.

10. Payment of all required fees as set forth on the Town's Medical and Retail Marijuana Establishment fee schedule together with an agreement to reimburse consultant fees on a form provided by the Town.

(Ord. 486, §3, 2017) (Ord.488, §6, 2017) (Ord.489, §3, 2017)

5.22.060 Application Review Procedure.

A. Within ten (10) business days of submission of an Application the Town Administrator or its designee shall conduct an initial review of the Application to determine whether it is complete. Such initial review will examine whether:

(1) all application materials required by section 5.22.050 have been received;

(2) the proposed Licensed Premises location is approved pursuant to the zoning, land use laws and distance requirements of the Town, or that the necessary land use application(s) has been made under section 14.030.180 and 14.030.080. Land use applications may be processed

concurrently with the Application for a License. If a licensee has obtained land use approval to operate a retail marijuana establishment of the licensed premises, additional land use approval will not be required to operate the same type of medical marijuana establishment on the same licensed premises unless the Town Administrator determines otherwise based on the criteria set forth in this Chapter. The same is true if a licensed premises was originally approved for the operation of a medical marijuana establishment and a licensee desires to operate the same type of retail marijuana establishment at the licensed premises;

(3) the Applicant has established a meeting date with the Colorado Department of Revenue Marijuana Enforcement Division at which an application for a state license will be submitted, or that the application for a State License has been submitted to and has been deemed complete by the Colorado Department of Revenue Marijuana Enforcement Division;

(4) the Applicant is, or will be, entitled to possession of the proposed Licensed Premises for which application is made by virtue of ownership, lease, rental agreement, or other arrangement for possession.

B. If during the initial review the Application is deemed incomplete the Town Administrator shall notify the Applicant in writing of the missing and required materials or information. The Applicant shall have ten (10) business days from this notice to provide the missing materials or information, or the Application will be deemed automatically denied.

C. If or when the Application is deemed complete the Town Administrator shall notify the Applicant and schedule a public hearing on the Application in front of the Board of Trustees not less than thirty (30) or not more than sixty (60) days from the date the Application is deemed complete.

D. The Applicant shall be required to provide notice of the public hearing at its sole cost and expense. Such notice shall be made by publishing a legal notice in a newspaper of general circulation within the Town, by posting a notice of public hearing in a conspicuous place on the premises viewable from a public right-of-way, and by mailing notice via certified U.S. Mail to all properties within 250 feet of the property line of the proposed premises. All notice must be provided, and all signs posted, not less than fifteen (15) days prior to the scheduled public hearing. The notice shall state the type of license applied for, the date of the application, the date of the hearing, the name and address of the Applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the Applicant is a partnership, the notice shall contain the names and addresses of all partners, and if the Applicant is a corporation, association, limited liability company or other organization, the notice shall contain the names and addresses of the president or manager or other managing officer(s) of the business as well as their members or shareholders, as applicable. If the partners, members, officers, managers, or shareholders are corporate entities and not individual persons, the individuals comprising such entities shall also be disclosed.

E. The Town Administrator shall forward the completed Application to all appropriate

Town departments, consultants and referral agencies for review of compliance with the provisions of this Chapter, the Codes, the Permanent Rules, and any other applicable law, rule or regulation.

(Ord.488, §6, 2017) (Ord.489, §3, 2017)

5.22.070 Public Hearing Procedure.

A. Except as specifically set forth herein, all hearings for a License shall be conducted pursuant to the quasi-judicial procedures of Chapter 2.08.

B. The Board of Trustees may on its own motion and without the Applicant's consent continue the public hearing one (1) time to a date certain for a period not to exceed thirty (30) days. Continuances for longer than thirty (30) days require the consent of the Applicant.

C. All decisions on an Application shall be in writing stating the reasons therefore. The Board shall either deny the Application or approve the application with or without conditions. Within thirty (30) days after the date of the public hearing a copy of such decision shall be hand delivered or sent by first-class mail to the Applicant at the address shown in the Application. If the Board fails to approve the Application within these deadlines, unless the deadline is waived by the Applicant, such failure shall be deemed a denial of the Application.

D. The Town shall notify the state licensing authority of such decision.

5.22.080 Review Criteria and Appeals

A. In order to approve a License the Board of Trustees shall find:

1. The Application is complete and all fees have been paid.
2. Public Notice was properly provided pursuant to the provisions of this Chapter.
3. The Applicant is qualified under the provisions of this Chapter.
4. The State License Application has been prepared for submission to (including the setting of a meeting date with the Marijuana Enforcement Division) or received by the Marijuana Enforcement Division, deemed complete, and approved or conditioned on granting of the License by the Town.
5. The proposed Licensed Premises comply with the design and performance requirements of the Codes, the Permanent Rules, and this Chapter, including meeting the required spacing.

B. With respect to those decisions delegated to the Town Administrator in this Chapter. The Town Administrator shall consider and make decisions based on the following

criteria, as appropriate.

1. The impact of the proposed action on the character, traffic, and public and utility services in the surrounding area;
2. The special review use approval criteria set forth in section 14-06-120(B) of the Town Code;
3. The decree and significance of the proposed change from the Applicant's original special review use and/or License approval, if any; and
4. Any other standards set forth in this Chapter.

C. Any person entitled to receive mailed public notice pursuant to Section 5.22.060(D) may appeal to the Town Board of Trustees a decision made by the Town Administrator pursuant to Section 5.22.060(A)(2). Said appeal will be conducted pursuant to Chapter 2.08 of the De Beque Municipal Code. Appeals of any decision made by the Board of Trustees pursuant to this Chapter shall be made to a court of competent jurisdiction in accordance with Colorado Law.

D. The approval requirements set forth in this Chapter shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other state or local law, including, but not by way of limitation, a retail sales tax license, retail food establishment license, or development, zoning or building permit.

(Ord.488, §6, 2017) (Ord.489, §3, 2017)

5.22.090 Posting, Display of License. A. Every License issued by the Town for a Medical or Retail Marijuana Establishment shall be posted during the period such license is valid. Such License shall be posted in a conspicuous place and shall be visible from the principal entrance of the Licensed Premises. When such License expires, it shall be removed; only valid Licenses in full force and effect shall remain posted.

B. It shall be the duty of each Licensee to exhibit the License upon the request of any peace officer or other official of the Town.

(Ord.488, §6, 2017)

5.22.100 Expiration of License. Each License shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 5.22.120 of this Chapter. A licensee must immediately notify the Town and cease operations if the licensee's State License expires or is not renewed for any reason. No licensee shall operate a Retail or Medical Marijuana Establishment without a valid, active State License.

(Ord.488, §6, 2017)

5.22.110 Transfer of License. No License shall be transferred from one person or entity to another without prior approval from the Town and the State. Any change of ownership, including change to corporate or partnership structure, shall require an application for transfer of ownership and payment of the transfer of ownership fee set by the Town. The Town Administrator shall approve or deny the transfer application based on the standards set forth in this Chapter. A transfer of a License in compliance with this Section 5.22.110 is not considered an application for a new License and is therefore not subject to or affected by Section 5.22.041.

(Ord.472, §5, 2016) (Ord. 486, §3, 2017)

5.22.111 Change of Location or Licensed Premises Modification.

A. A License may be transferred to a different location or a Licensed Premises may be modified or expanded, including by adding the operation of another type of Retail or Medical Marijuana Establishment at the licensed premises, only upon:

1. submission of a complete Change Application at least 30 days prior to the effective date of the proposed change;
2. payment of the License Change Application fee in effect at the time of application; and
3. approval of the Change Application by the Board of Trustees following a public meeting at which the Change Application was reviewed and considered. If the Change Application seeks only to modify or expand a Licensed Premises, including by adding the operation of another type of Retail or Medical Marijuana Establishment at the licensed premises, the Town Administrator may approve, conditionally approve, or deny the Change Application based on the standards set forth in this Chapter. The Town Administrator reserves the right to refer a Change Application to the Board of Trustees for review and approval thereof.

B. A Change Application shall include the following:

1. A change application form prepared and provided by the Town;
2. Proof of ownership, lease, rental agreement, or other arrangement for possession of the new location of the License and Licensed Premises;
3. Payment of the Change Application fee; and
4. A diagram showing the configuration of the proposed Licensed Premises at the new location or the proposed modifications to the Licensed Premises at the original location, including a statement of total floor space occupied by the business, and designating the use of each room or other area of the premises and which rooms or areas where patrons are not permitted.

C. The Application Review Procedures set forth in Section 5.22.060(A) – (C) and (E) shall apply to all Change Applications, except that the Town Administrator shall schedule a public meeting for review of the Application instead of a public hearing.

D. In order to approve a Change Application the Board of Trustees shall find:

1. The Change Application is complete and all fees have been paid;
2. Public Notice was properly provided pursuant to the provisions of this Chapter; and
3. the proposed new location of the Licensed Premises is permitted under the zoning, land use laws, and distance requirements of the Town, or that the necessary land use application(s) has been made under section 14.030.180 and 14.030.080 and approved. Land use applications may be processed concurrently with the Change Application.

E. Applicant shall change the location of its business to that specified in the approved Change Application within 60 days of the Board of Trustee’s approving the Change Application pursuant to this Chapter.

F. At no time may a Medical or Retail Marijuana Establishment operate or exercise any of the privileges granted pursuant to a License in more than one location.

G. A Change Application is not considered an application for a new License and is therefore no subject to or affected by Section 5.22.041.

(Ord.472, §5, 2016) (Ord. 486, §3, 2017) (Ord.488, §6, 2017) (Ord.489, §3, 2017)

5.22.120 Renewal of License.

A. At any time from sixty (60) to thirty (30) days prior to the expiration of the current License, a Licensee may submit a Renewal Application to renew the existing License for the succeeding year and pay the required fees. Unless otherwise provided by this Chapter, if application is so made and no action or proceeding is pending against the Licensee for suspension or revocation of the current License, such License may continue as valid unless or until the Renewal Application is reviewed by the Board of Trustees.

B. The Town Administrator or its designee shall send the Renewal Application to all Town departments for review and comment.

C. The Renewal Application shall be brought before the Board of Trustees for consideration at a public meeting of the Board.

D. The Board of Trustees may renew the License upon a finding that Licensee’s licensed Medical or Retail Marijuana Establishment was operational as of the date the Renewal Application was considered by the Board and that there have not been any suspensions of the License or violations of this Chapter, the Code, or the Permanent Rules by the Licensee within the preceding

one (1) year period. Should the Licensee's Medical or Retail Marijuana Establishment not be operational, a violation have been found to exist or for other good cause the Board of Trustees may renew the License with or without conditions or may deny the renewal.

E. A Renewal Application is not considered an application for a new License and is therefore no subject to or affected by Section 5.22.041.

(Ord.472, §5, 2016) (Ord. 486, §3, 2017) (Ord.488, §6, 2017)

5.22.130 Inspection. A. The Licensee and/or owner of any Licensed Premises shall permit representatives of the Colorado Marijuana Enforcement Division, Marshal's Department, Mesa County Health Department, Town Administrator or his designee, or the Fire Department, to inspect the premises of a Medical or Retail Marijuana Establishment for the purpose of ensuring compliance with this Chapter, the Code and the Permanent Rules.

B. Town departments and agencies shall conduct such inspections in a reasonable manner and only as frequently as may be reasonably necessary.

C. Except in cases of emergency, inspections shall take place during the regular business hours of the Medical or Retail Marijuana Establishment or when any person is on the Licensed Premises.

D. It shall be unlawful for the Licensee or any employee to refuse to permit such lawful inspection of the Licensed Premises as provided in this Section.

(Ord.488, §6, 2017)

5.22.140 License Suspension or Revocation. A. The Town shall conduct a hearing to suspend a License for a set period of time and may revoke a License if the Board of Trustees determines that a Licensee has:

1. Violated or is not in compliance with this Chapter or other provisions of the Municipal Code.
2. Refused to allow an inspection of the Licensed Premises as authorized by this Chapter.
3. Knowingly permitted any act upon the premises that is unlawful under the laws of the State of Colorado or the Town.
4. Violated any provision of the Codes or Permanent Rules.
5. The Licensee has failed to file required reports or to furnish such other information as may be reasonably required by Town under the authority vested in it by the

Codes or Permanent Rules.

In the event the State License is suspended or revoked for any reason the License granted by the Town under this Chapter shall automatically be suspended for the same period or revoked without any further action by the Town.

B. In determining the action to be taken as provided in this Section, the Town shall consider the following aggravating and mitigating circumstances:

1. Whether the License has been previously suspended or revoked.
2. Whether the Licensee was warned that the conduct involved could lead to a suspension or revocation.
3. Whether the cause for suspension or revocation involves one or several violations.
4. Whether the violation(s) are technical or substantive in nature.
5. The extent to which the Licensee, Licensee's agents and employees, as opposed to patrons, were involved in the violation(s).
6. The extent to which the Licensee or Licensee's employees had knowledge of the violation(s).
7. Any corrective or remedial action the Licensee has taken to prevent similar violation(s) in the future.
8. Whether the violation(s) involved the commission of a crime, and if so, the degree of crime involved.
9. The extent to which the violation(s) caused personal injuries or property damages.
10. Whether the Licensee has paid damages or made restitution to any person or entity damaged by the violation(s).
11. The extent to which the violations posed a significant risk to the health, safety and welfare of persons on or off of the Licensed Premises.
12. The length of time over which the violation(s) extended.
13. The extent to which the Licensee or Licensee's employees realized a financial gain from the violation(s).

14. The number of employees, patrons, or both involved in the violation(s).
15. The nature and extent of enforcement action taken by the Town or any law enforcement to detect the violation(s).
16. The involvement of any persons under twenty one (21) years of age in the violation(s).
17. The extent to which the Licensee or Licensee's employees have attempted to cover up the violation(s), destroy evidence or otherwise hinder the investigation and detection of the violation(s).
18. The extent to which the Licensee and Licensee's employees have acted in good faith.

(Ord.488, §6, 2017)

5.22.150 License Revocation. A. The Board of Trustees may revoke a license if the Board finds and determines that:

1. The License has previously been suspended within the preceding twelve (12) months;
2. The Licensee gave false information in the material submitted to the Town;
3. A Licensee or employee has knowingly allowed consumption of marijuana on the Licensed Premises;
4. A Licensee or an employee has knowingly allowed someone under the age of twenty-one onto the Licensed Premises;
5. A Licensee or an employee knowingly operated the Medical or Retail Marijuana Establishment during a period of time when the License was suspended; or
6. A Licensee has commenced operation of its Medical or Retail Marijuana Establishment without satisfying all conditions precedent, if any, imposed on the initial grant or renewal of Licensee's License.

B. When the Town revokes a license, the revocation shall continue for one (1) year, and the Licensee shall not be issued a License for one (1) year for the premises in question, nor as to any other premises within the Town, from the date revocation became effective.

(Ord.488, §6, 2017) (Ord. 486, §3, 2017)

5.22.160 Hearings. A. The Board of Trustees shall conduct hearings for suspension or revocation of Licenses granted pursuant to this Chapter in accordance with Chapter 2.08 of the De Beque Municipal Code. The Board of Trustees shall make findings of fact and conclusions concerning the revocation or suspension of a license. The Board of Trustees shall transmit a copy of the final findings of fact and conclusion to the Licensee as provided hereafter and to the State.

B. Upon commencement of suspension or revocation proceedings, the Town Administrator or its designee shall set a time and place for a hearing of the matter before the Board of Trustees.

C. The Town Administrator shall give the Licensee timely notice of the time and place of the hearing and the violations asserted. Such notice shall be served personally or by mailing by first-class mail to the last address furnished to the Town by the Licensee, at least ten (10) days prior to the hearing. In lieu of such service, or in addition thereto, a copy of such notice may be affixed to the principal entrance of the Licensed Premises.

D. In any hearing the Licensee shall be afforded an opportunity to be heard, present evidence, cross-examine witnesses, and offer evidence in mitigation of any alleged violations.

E. All evidence shall be recorded by electronic recording device.

F. In all such proceedings, the Town Attorney shall act as the attorney on behalf of the Town.

5.22.170 Notice of Suspension or Revocation. A. Upon suspension or revocation of any License required by this Chapter, notice of such suspension or revocation shall be given by personally serving the Licensee with the order of suspension or revocation or by mailing such order to such person by certified or registered mail at the business address of the Licensee as shown on the License or at the address of the designated agent. In lieu of such service, or in addition thereto, a copy of such order may be affixed to the principal entrance of the Licensed Premises.

B. The order shall be effective immediately upon service of notice thereof unless the order provides otherwise. Service of such order shall be complete upon mailing or posting.

C. A decision of Board of Trustees is reviewable only by the Mesa County District Court under C.R.C.P. 106(a)(4). There shall be no stay of execution pending a review by the Court except by Court order.

5.22.180 Effect of Suspension or Revocation. Upon the effective date of suspension or revocation of any License, the Licensee shall immediately cease and desist from further operation or activity.

5.22.190 Summary Suspension. When the conduct of any Licensee, agent or employee

is so inimical to the public health, safety and general welfare as to constitute a nuisance or hazard and thus give rise to an emergency, the Town Administrator shall have the authority to summarily order the cessation of business and the closure of the Licensed Premises pending a hearing on the question of whether to suspend or revoke the license. Unless waived by the Licensee in writing, the Board of Trustees shall conduct a hearing upon the summary order and the activity giving rise to such order within fifteen (15) days after the Town Administrator has acted. The order shall state the grounds for its issuance and shall give notice of the hearing and shall be served upon the affected person in the manner prescribed herein. At such hearing the Licensee shall show cause why the summary suspension should not be made a final order of suspension or revocation.

5.22.200 Performance Standards for Medical and Retail Marijuana Establishments

A. Hours of Operation. All Medical and Retail Marijuana Establishments may operate from the hours of 9:00am to 10:00pm, Monday through Sunday.

B. Location of Licensed Premises. Medical and Retail Marijuana Establishments shall be located only in areas of the Town as allowed in Chapter 14. No Medical or Retail Marijuana Establishment shall be located:

(1) within four hundred feet (400') of any existing public or private school facility where classes are held for children aged kindergarten through the 12<sup>th</sup> grade. The distance shall be computed by a straight line measurement from the nearest property line of the school property to the nearest structure line of the premises housing the Medical or Retail Marijuana Establishment;

(2) in any zone district not specifically permitted by right or as a special review use by Chapter 14.

C. Qualifications of Applicants. In addition to the requirements of the Codes and Permanent Rules, the Applicant and Licensee shall:

(1) Demonstrate that they possess the qualities of honesty, fairness, candor, trustworthiness and responsibility, that they do not have a history of prior misconduct. Prior acts of misconduct include, but are not necessarily limited to: criminal convictions, criminal or other formal charges of fraud, theft, or an act of moral turpitude.

(2) Not be in default under the provisions of this Chapter or the Town Code or be in default of any agreement with the Town.

D. Miscellaneous. In addition, all Medical or Retail Marijuana Establishments shall comply with the following requirements:

(1) Any applicable Town business/sales tax license shall be obtained, and all applicable state, county, city, and special district sales taxes shall be collected and remitted in a timely manner.

(2) A sign permit shall be obtained from the Town for all signage. All exterior signage associated with a Medical or Retail Marijuana Establishment will meet the standards established in the Code and in the Municipal Code.

(3) No Licensee shall allow the smoking in public or consumption of any Medical or Retail Marijuana on the Licensed Premises.

(4) All sales and distribution of Medical or Retail Marijuana shall occur only upon the Licensed Premises unless distribution is done by a person or business with a valid medical or retail marijuana transporter license issued by the Colorado Marijuana Enforcement division, the Licensee is strictly prohibited from delivering Retail Marijuana to any person at any location other than the Licensed Premises.

(5) No Licensed Premises shall be managed by any person other than the Licensee or the establishment manager listed on the Application. Such Licensee or establishment manager shall be responsible for all activities that occur within the Licensed Premises.

(6) There shall be posted in a conspicuous location in each Medical and Retail Marijuana Establishment legible signs as required by the Codes, including but not limited to:

- a. A warning that the use of marijuana may impair a person's ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or operate machinery when under the influence of or impaired by marijuana;
- b. A warning that loitering in or around a Medical or Retail Marijuana Establishment is prohibited by state law;
- c. A warning that possession and distribution of marijuana is a violation of federal law;
- d. A warning that consumption of marijuana within a Medical or Retail Marijuana Establishment is prohibited;
- e. A warning that the smoking or consumption of marijuana in public is prohibited by state law;
- f. A notice that no-one under the age of twenty-one (21) is allowed on the Licensed Premises;
- g. The name and contact information for the owner or owners and any business manager of the Medical or Retail Marijuana Establishment;
- h. The State and Town Medical or Retail Marijuana Establishment license; and
- i. All sales tax/business licenses.

(7) The provisions of Chapter 7.10 of the Town Municipal Code shall apply to all Medical and Retail Marijuana Establishments. Pursuant to 7.10.040(B), an odor control plan must be submitted as follows:

- a. as part of an Application for a new License; or

b. with respect to Licenses issued prior to the effective date of Chapter 7.10, the earlier of sixty days following the effective date of Chapter 7.10 or with the submission of the Licensee's next Renewal Application or Change Application. An inspection may occur within sixty (60) days of approval of an existing Licensee's odor control plan to determine compliance therewith.

(Ord. 487 §3, 2017) (Ord.488, §6, 2017)

5.22.210 Injunction. Any person who operates or causes to be operated a Medical or Retail Marijuana Establishment without a license is subject to suit for injunction as well as criminal prosecution. Nothing in this Section shall limit any other remedy available to the Town under applicable law.

(Ord.488, §6, 2017)

5.22.240 Prohibited Acts - Penalty. Any person who violates any provision of this Chapter, or who fails to perform an act required by any provision of this Chapter, commits a Class A municipal offense. Each day that a violation continues shall be considered a separate violation.

(Ord. 444 § 2, 2014); (Amended Ord. 456 §4, 2015). (Ord. 485 §2, 2017)

Chapter 5.25

MISCELLANEOUS

Sections:

5.25.010 Alcoholic Beverage Licenses

5.25.010 Alcoholic Beverage Licenses. The Town, acting as a local licensing authority pursuant to Article 47 of Title 12 of the Colorado Revised Statutes for the purpose of issuing alcoholic beverage licenses, shall not receive or act upon an application for any class of alcoholic beverage license listed in C.R.S. § 12-47-309(1) unless the building in which the alcoholic beverages are to be sold is at least 200 feet from any public or parochial school.

(Ord. 484, §2, 2017)