

Title 5

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CHAPTER 5.04. LIQUOR CODE**Sec. 5.04.010. Board of Trustees designated.**

The Board of Trustees is designated as the Liquor Licensing Authority for the Town.
(Code 1995, § 5.03.010)

Sec. 5.04.020. Powers and duties; statutory authority.

The Liquor Licensing Authority established pursuant to section 5.04.010 shall have all of the powers and shall be subject to all the duties contained in C.R.S. tit. 44, arts. 3 through 5.
(Code 1995, § 5.03.020)

Sec. 5.04.030. Rule and regulation promulgation authority.

The Liquor Licensing Authority may promulgate such rules and regulations as it deems necessary for its proper functioning not inconsistent with state statutes.
(Code 1995, § 5.03.030)

Sec. 5.04.040. Delegation of authority to Town Clerk to issue licenses and permits.

(a) The Town Clerk shall assist the Board of Trustees, acting as the Local Licensing Authority, by receiving all applications; coordinating with other Town departments when appropriate; scheduling required public hearings; and exercising the Town Clerk's discretion in forwarding applications for renewal of licenses, transfers of ownership, and applications for change of manager of a licensee to the Local Licensing Authority.

(b) As set for the below, the Town Clerk is hereby granted authority to administratively review and approve applications for liquor license renewals; transfers of ownership, including corporate and trade name changes, and reports of changes for corporations, limited liability companies and partnerships; changes of a manager of a licensee; and special event permits.

(1) *Renewals.* The Town Clerk is authorized to administratively review and approve an application for the renewal of any previously approved liquor license or fermented malt beverage license where, after reasonable investigation by the Town Clerk and consultation by the Town Clerk with the Town Marshal and other appropriate administrative personnel, all of the following circumstances are found to exist:

- a. The applicant has timely and properly submitted a complete license renewal application and tendered all required fees in accordance with this chapter and the provisions C.R.S. tit. 44;

- b. The applicant's license in is good standing with the Town and the State, and no violation of law has occurred during the previous year;
 - c. To the knowledge of the Town Clerk, there is no pending or proposed criminal or legal investigation or charges against the applicant or the licensed premises; and
 - d. There is no other information known by the Town Clerk that would cause the Town Clerk to reasonably believe that some violation of applicable law has occurred or that the license should not be renewed.
- (2) *Changes of manager of licensees.* The Town Clerk is authorized to administratively review and approve an application for the change of a manager for a licensed establishment where, after reasonable investigation of the Town Clerk and consultation by the Town Clerk with the Town Marshal and other appropriate administrative personnel, all the following circumstances are found to exist:
 - a. The applicant has timely and properly submitted a complete application for change of manager and tendered all required information in accordance with this chapter and the provisions of C.R.S. tit. 44, and the new manager has presented himself to the Marshal for fingerprinting and a background investigation; and
 - b. There is no information known by the Town Clerk that could support denial of the application for change in manager under applicable law.
- (3) *Temporary permits.* The Town Clerk is authorized to administratively review and approve an application for a temporary permit where, after reasonable investigation by the Town Clerk and consultation by the Town Clerk with the Town Marshal and other appropriate administrative personnel, all the following circumstances are found to exist:
 - a. The applicant has timely and properly submitted a complete application for a temporary permit and tendered all required fees in accordance with this chapter and the provisions of C.R.S. § 44-3-303;
 - b. There is pending an application for the transfer of the liquor or fermented malt beverage license corresponding to the application for a temporary permit;
 - c. The premises subject to the proposed temporary permit is currently subject to a valid liquor license or fermented malt beverage license; and

- d. There is no information known by the Town Clerk that could support denial of the application for change in ownership under applicable law.

(c) Notwithstanding any authority delegated to the Town Clerk for administrative approval of applications under this section, the Town Clerk may, in her discretion, refer any licensing or permitting decision authorized to her under this section to the Board of Trustees if, in the Town Clerk's opinion, the matter should be presented to the Local Licensing Authority. In the event the Town Clerk cannot or will not approve a transfer or renewal of a license, or the issuance of a temporary permit, or the approval of a change in manager of a licensee or a special event permit, then the Town Clerk shall refer the application to the Local Licensing Authority for consideration in accordance with applicable law. Written notice of the time and place of such consideration shall be mailed to the applicant by regular mail at least ten days prior to consideration by the Local Licensing Authority and shall contain such facts or reasons relied upon by the Town Clerk in declining to issue the license or permit for approval. Notice of the proceeding shall also be timely published and posted on the subject premises in accordance with the requirements set forth in C.R.S. § 44-3-311, and timely provided to any person who may have filed a protest against the issuance of the license with the Town Clerk. Additionally, any license or permit applicant, or any party in interest, as defined in C.R.S. § 44-3-311, who is dissatisfied with the decision of the Town Clerk under this section may appeal the same to the Local Licensing Authority by filing a written protest with the Town Clerk not more than ten days after the date of the decision appealed from. The Town Clerk shall promptly set the appeal for hearing before the Local Licensing Authority in accordance with the notice and hearing procedures described above.

(d) The Town Clerk shall not approve an application for the renewal or transfer of a license where the Town Marshal has timely submitted written objections to the Town Clerk concerning such action. Whenever such an objection is received, the Town Clerk shall set the application for hearing before the Local Licensing Authority in accordance with the procedures set forth in subsection (c) of this section.

(e) The Town Clerk shall regularly report to the Authority in a timely manner all licensing actions taken by the Town Clerk under the provisions of this section.
(Code 1995, § 5.03.040)

Sec. 5.04.050. Special permits.

(a) Pursuant to C.R.S. § 44-5-107(5)(a), the Board of Trustees, acting as the Local Licensing Authority, elects not to notify the State Licensing Authority to obtain the State Licensing Authority's approval or disapproval of applications for special events

permits pursuant to C.R.S. tit. 44, art. 5. The Board of Trustees hereby authorizes the issuance of special event permits for the sale, by the drink only, of fermented malt beverages, or the sale, by the drink only, of malt, spirituous, or vinous liquors to the Town, organizations, and political candidates in accordance with this chapter and C.R.S. tit. 44, art. 5. No alcoholic beverages shall be sold at any special event until a special event permit is obtained from the Town. The standards contained in this chapter shall be considered in addition to all other standards and requirements applicable to the issuance of licenses under the Colorado Liquor Code, C.R.S. § 44-3-101 et seq.

(b) Any organization or political candidate desiring to sell alcoholic beverages at a special event shall obtain a permit from the Local Licensing Authority by first completing a special event license permit application and paying a permit fee, which may be established or modified by resolution of the Board of Trustees. An applicant shall file the application at least 30 days prior to the date of the event, unless waived by the Town Clerk for good cause shown.

(c) Upon receipt of an application for a special event permit, the Town Clerk, acting on behalf of the Local Licensing Authority, shall, as required by C.R.S. § 44-5-107(5)(c), access information made available on the State Licensing Authority's website to determine the statewide permitting activity of the organization applying for the permit. Before approving an application, the Town Clerk shall consider compliance with C.R.S. § 44-5-105(3), which restricts the number of permits issued to an organization in a calendar year.

(d) The Town Clerk or the Local Licensing Authority may deny issuance of a special event permit if it determines that the issuance would be injurious to the public welfare because of the nature of the special event, or the applicant's ability to conduct the event in compliance with applicable laws and regulations. Special event permits shall not be transferable.

(e) As required by C.R.S. § 44-5-107(5)(a), the Town Clerk, acting on behalf of the Local Licensing Authority, shall report to the Colorado Liquor Enforcement Division within ten days after the issuance of a permit, the name of the organization to which a permit was issued, the address of the permitted location, and the permitted dates of alcohol beverage service.

(f) Pursuant to C.R.S. § 44-5-105, a special event permit shall not be issued to any organization for more than 15 days in any one calendar year.
(Code 1995, § 5.03.050)

Sec. 5.04.060. Unlawful acts.

It shall constitute a Class A municipal offense for any person licensed to sell alcohol pursuant to the Colorado Beer Code, C.R.S. tit. 3, art. 44:

- (1) To consume any alcoholic beverage in or at any public place within the Town, including, but not limited to, the following public places: restaurants, retail liquor store, pool halls, dance halls, business premises, school premises, recreation halls, public buildings, places of public gathering for amusement or entertainment, parking areas or the surrounding premises of any of the aforementioned places, and streets, alleys, sidewalks, vacant lots or publicly owned property; provided however, this provision shall not apply to premises licensed for consumption thereon pursuant to law.
- (2) To possess an unsealed or open container containing any alcoholic beverage in any public place, including, but not limited to, the following public places: restaurants, retail liquor stores, pool halls, dance halls, business premises, school premises, recreation halls, public buildings, places of public gathering for amusement or entertainment, parking areas surrounding premises of any of the aforementioned places, and streets, alleys, sidewalks, vacant lots or publicly owned property; provided however, that this provision shall not apply to premises licensed for consumption thereon pursuant to law.
- (3) For any person owning or having possession of any premises to allow the consumption of an alcoholic beverage container upon such premises by any such person in violation of subsections (1) and (2) of this section.
- (4) For any person under the age of 21 years to purchase, possess or consume any alcoholic beverage.
- (5) To provide, sell, distribute or give any alcoholic beverage to any person under the age of 21 years.

(Code 1995, § 5.03.060)

Sec. 5.04.070. Training workshops.

When an application for renewal or issuance of a new liquor license is processed or approved, the applicant shall be advised that, as a condition of the applicant's liquor license, the applicant must attend a liquor service workshop, which shall include training in the lawful dispensing of alcohol. All liquor license holders working in the business, including LLC managing members, officers, shareholders owning more than ten percent of the stock of the entity, premise managers, and employees are required to

attend the liquor service workshops at their own expense within 90 days after issuance or renewal of the license or date of employment, provided that no person shall be required to attend more than one such workshop within a three-year period. Attendees shall submit written evidence of satisfactory participation to the Town Clerk. Failure to attend or to submit such evidence shall constitute violation of a condition of each license issued, unless the Town Clerk or the Authority finds that the workshop was not reasonably available for attendance or extenuating circumstances exist, as determined by the Town Clerk.

(Code 1995, § 5.03.070; Ord. No. 495, § 3, 2018)

Sec. 5.04.080. Disorderly behavior; report by licensee.

(a) Each licensee shall conduct his or her establishment in a decent, orderly and respectable manner. No licensee, manager, agent or employee of a licensee shall encourage, provoke or permit within or upon the licensed premises, either by its agents or employees or by a patron, the violation of any section of this chapter or associated regulations; the loitering of intoxicated persons or persons under the influence of alcohol, narcotic drugs, stimulants or depressants; lewd or obscene displays or activities; displays of specified anatomical areas; disturbances, disorderly conduct or undue noise; any unlawful act; nor other activity offensive to the residents of the neighborhood in which the establishment is located.

(b) Any licensee, and any manager, agent or employee of a licensee, shall report to the Marshal any unlawful or disorderly act or conduct committed on the licensed premises or observed in the vicinity of the licensed premises, such report shall be made to the Marshal within 24 hours of witnessing, or learning of such unlawful or disorderly act or conduct.

(c) Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises a sign with a minimum height of 14 inches and a minimum width of 11 inches, with each letter to be a minimum of one-half inch in height, which shall read as follows:

"WARNING: The De Beque Marshal's Department must be notified of any and all disorderly acts, conduct or disturbances and all unlawful activities which occur on or within the premises of this licensed business."

(d) It shall not be a defense to a prosecution of a license under this section that the licensee was not personally present on the premises at the time such unlawful activity, disorderly act or disturbance was committed; however, no agent, servant or employee

of the licensee shall be personally responsible for failing to report and disorderly act or conduct or any disturbance and any unlawful activity hereunder if such agent, servant or employee was absent from the premises at the time such activity occurred.

(Code 1995, § 10.24.161; Ord. No. 495, § 2, 2018)

Sec. 5.04.090. Alcoholic beverage licenses.

The Town, acting as a local licensing authority pursuant to C.R.S. tit. 44, art. 3 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. § 44-3-309 unless the building in which the alcoholic beverages are to be sold is at least 500 feet from any public school or parochial school.

(Code 1995, § 5.25.010; Ord. No. 484, § 2, 2017)

CHAPTER 5.08. GENERAL BUSINESS LICENSING

Sec. 5.08.010. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Applicant means the person or entity applying for a business license under this chapter.

Business means any enterprise carried out by a person, firm, or legal entity (e.g., a corporation, limited liability company, partnership, trust, joint venture, or other entity) for the purpose of economic gain or profit, except that the acts of a person providing labor or services for an employer shall not be within this definition.

Business in the Town means performing or providing services involving a physical presence, including selling, leasing, renting, delivering, or installing tangible personal property, real property, products, or services for use or consumption within the Town of De Beque. The term "business in the Town" includes, but is not limited to:

- (1) Maintaining a building, store, office, warehouse, facility, or similar business premises within the Town;
- (2) Sending employees, agents, contractors, or sales persons into the Town to solicit business, or to install, repair, or assist in the use of products or provide services;
- (3) Maintaining one or more employees, agents, or salespersons within the Town;

- (4) Owning, leasing, renting, or exercising control over real or personal property sales within the Town;
- (5) A retailer who makes more than one delivery or engages in more than one transaction within the Town in any 12-month period; or
- (6) Making retail sales sufficient to meet the definition of the term "economic nexus" as set forth in chapter 4.08.

Incidental physical presence means, with respect to business in the Town, any combination of activities that occurs infrequently and is not regularly scheduled within the ordinary course of an individual or entity's business activities.

Licensee means the person or entity holding a business license issued under this chapter.

Licensing Official means the Town Manager, Town Clerk, or a designee charged with administering this chapter.

Premises means the location within the Town where a business licensed under this chapter is carried out.

(Ord. No. 533 (Series 2023), § 5.04.010, 6-27-2023)

Sec. 5.08.020. Business license required; exemptions.

(a) Except as provided in this chapter, any person wishing to conduct business in the Town, on either a temporary or permanent basis, shall first apply for and obtain a business license, paying in advance the full amount of the business license fee. It is unlawful to conduct business in the Town without first obtaining a business license, except as otherwise provided in this chapter.

(b) Persons who engage in business and who have either:

- (1) No physical presence in the Town; or
- (2) An incidental physical presence within the Town;

will be issued a business license by the Town for no additional cost, provided that the person has a State standard retail license (if applicable) issued pursuant to C.R.S. § 39-26-103 and the person is not otherwise subject to license denial under this chapter.

(c) The following are exempt from licensure under this chapter:

- (1) Seasonal stands selling fresh farm products;
- (2) Occasional businesses operated by persons under 18 years of age (e.g., children's food or drink stands);

- (3) Occasional or informal sales that are not a part of a person's regular trade, business, or profession (e.g., garage sales, that are conducted no more than five days in any calendar year);
 - (4) Oil and gas operations or facilities;
 - (5) Enterprises regulated by the State Public Utilities Commission;
 - (6) Incidental business activities undertaken by charitable or nonprofit organizations (e.g., a church bake sale, fundraiser, or the like).
- (d) Additionally, the following activities are not subject to licensure under this chapter:
- (1) Political campaigns seeking to promote, oppose, or raise funds for any candidate, initiative, or matter of public concern;
 - (2) Petitioning activities seeking signatures for any ballot question or referendum;
or
 - (3) Solicitations for the benefit of any nonprofit cause, religious faith, or charity.
- (Ord. No. 533 (Series 2023), § 5.04.020, 6-27-2023)

Sec. 5.08.030. Application, submittals, approval.

- (a) Persons wishing to obtain a business license shall submit an application to the Town containing the following:
- (1) The name and address of the applicant, telephone number, email address, trade name, and type of business entity of the applicant (with proof of entity status, e.g., Secretary of State proof of incorporation);
 - (2) The premises address;
 - (3) A description of the type of business;
 - (4) A copy of the applicant's State standard retail license;
 - (5) Any other information deemed necessary by the licensing official to process the application, including, but without limitation, information concerning municipal code compliance, zoning compliance for the business premises, parking compliance, hours of operation, health code compliance, building code compliance, fire code compliance, access requirements, and any other State, Federal, or Town licensure requirements.

(b) A business license application shall be executed by the applicant or its authorized agent, who shall certify that all statements contained in the application are true and correct to the best of the applicant's knowledge, information, and belief.

(c) An application is complete when the application form and all supplemental information required by the Town are provided by the applicant, the document is signed, and the applicable business license fee is paid to the Town. If the licensing official determines that an application is incomplete, the licensing official will promptly notify the applicant in writing of the material that must be submitted.

(d) Except as provided in section 5.08.050(b), a complete application shall be approved or denied within ten business days of submittal of a complete application. (Ord. No. 533 (Series 2023), § 5.04.030, 6-27-2023)

Sec. 5.08.040. Grounds for license denial.

(a) An application under this chapter may be denied if the licensing official determines that one or more of the following apply:

- (1) False, inaccurate, or misleading statements are made in the application or in supporting documents;
- (2) There are uncured ordinance violations at the premises that are the subject of the application, including, but not limited to, violations of zoning, building, health code, or fire code provisions;
- (3) Any federal, state, or local permits or licenses necessary for the lawful operation of the business have expired, been revoked, or denied; e.g., sales tax licenses;
- (4) The applicant failed to pay any applicable Town fees, fines, or charges owing with respect to the subject business premises; or
- (5) The use proposed for the business premises would be a violation of zoning provisions.

(b) A license for a person doing business who either does not have a physical presence in the Town, or who has only an incidental physical presence in the Town may be denied if the Town has previously revoked a business license held by that person due to a violation of Town ordinances.

(c) If a license is denied the licensing official shall notify the applicant in writing of the action and the reasons for the denial. The license fee is nonrefundable in the event of a denial.

(Ord. No. 533 (Series 2023), § 5.04.040, 6-27-2023)

Sec. 5.08.050. General performance standards.

(a) An applicant who wishes to operate more than one business from a single premises within the Town may do so, provided that:

- (1) All businesses and business activities are properly disclosed in the application and approved by the licensing official; and
- (2) A separate business license is issued for each business.

An applicant who operates the same business from more than one premises within the Town may operate under a single license, provided that all business locations are properly disclosed in the application and approved by the licensing official.

(b) New business license applications shall be reviewed by the licensing official for conformity with applicable planning and zoning ordinances. Where a license applicant may require further planning or zoning review, the licensing official shall not issue the license until such time as the applicant has obtained all necessary planning or zoning approvals. Planning and zoning review is not required at the time of license renewal unless there has been a change to the nature of the business or the licensed premises.

(c) Every business licensee is responsible for operating at all times in compliance with applicable planning or zoning ordinances of the Town.

(d) Every business licensee shall pay when due all applicable taxes and fees owing to the Town.

(e) Business licenses shall be displayed prominently at all licensed premises.

(f) All businesses licensed under this chapter shall operate subject to, and in compliance with, applicable Federal, State, and local laws, building codes, fire codes, wastewater permits, food service permits, and the terms and conditions of the business license. All businesses licensed under this chapter shall at all times have a valid certificate of occupancy for all licensed business premises.

(g) If the business license applicant is not the owner of the location where the business is to be located the applicant shall submit a written consent form executed by the record property owner.

(h) Licenses issued under this chapter shall continue on a year-to-year basis, expiring and commencing on December 31 and January 1 of each year, respectively.
(Ord. No. 533 (Series 2023), § 5.04.050, 6-27-2023)

Sec. 5.08.060. License fees.

(a) If applicable, business license fees are due and payable at the time of application and, thereafter, no later than January 15 of each calendar year, or the next business day thereafter. Business license fees are calculated at the rate established by the Board of Trustees from time to time by resolution. If a licensee operates from multiple business premises, the license fee shall be the approved fee multiplied by the total number of business premises. Failure to pay annual license fees is grounds for revocation.

(b) Business license fees not paid within 30 days of the due date are subject to a late fee equal to 50 percent of the amount due. Commencing 60 days from the date the business license fee is due, all unpaid fees shall accrue interest at the rate of eight percent per annum until paid in full.

(c) All business license fees are nonrefundable.
(Ord. No. 533 (Series 2023), § 5.04.060, 6-27-2023)

Sec. 5.08.070. Assignment or transfer prohibited; application following sale or transfer of business.

(a) Licenses issued under this chapter shall not be assigned or transferred to any person or entity not named in the license. Persons who are not named as the licensee shall not conduct business at the licensed premises, nor shall a license issued under this chapter authorize doing business at any other premises not identified in the license.

(b) Upon the sale, conveyance, or transfer of a business or the transfer of an interest in an entity representing 51 percent or more of the ownership of the business, the new owner or transferee shall, within 30 days of the completion of the sale or transfer, apply for a new business license.

(Ord. No. 533 (Series 2023), § 5.04.070, 6-27-2023)

Sec. 5.08.080. License renewal.

A license may be renewed automatically in January of each year, provided that:

- (1) The business is in operation;
- (2) There are no violations of this chapter or of the terms of the license; and
- (3) All applicable fees are paid.

If the licensing official is not satisfied that these conditions have been met, the licensee will be notified by issuance of a notice of violation, as otherwise provided in section 5.08.100.

(Ord. No. 533 (Series 2023), § 5.04.080, 6-27-2023)

Sec. 5.08.090. Grounds for revocation.

The following shall be grounds for business license revocation:

- (1) False, inaccurate, or misleading statements made by the applicant in the application for a business license or in any supporting documentation;
- (2) Ordinance violations, including, but without limitation, violations of this chapter, violations of zoning/planning, sign, building, health, fire code, or other ordinances by the licensee at the business location which are not corrected within the allotted time period following issuance of notice of violation to the licensee;
- (3) The expiration, revocation, or denial of any federal, state, or local licenses or permits necessary for the legal operation of the business;
- (4) Failure by the licensee to pay any Town charges, fees, fines, or assessments that are owing;
- (5) Failure by the licensee to obtain or maintain a sales tax license, failure to collect or remit sales tax, or violations of the sales or use tax laws, if applicable; or
- (6) The use of the licensed premises for any unlawful purpose or enterprise, or the maintenance of a public nuisance, as defined by State law.

(Ord. No. 533 (Series 2023), § 5.04.090, 6-27-2023)

Sec. 5.08.100. Revocation procedure.

(a) Prior to revocation, the licensing official shall issue a written notice of violation describing the nature of the violation and allowing the licensee a period of not less than 30 days in which to correct or abate same. The abatement period may be extended by the licensing official upon a showing of good cause. The notice shall also inform the licensee that the license will be revoked not less than 30 days from the date of notice if the violation is not corrected within that period.

(b) The notice of violation shall be personally served, delivered by certified or first class U.S. mail, or courier addressed to the last known address of the licensee.

(c) The licensee may request a hearing contesting the reasons for revocation by delivering a written request to the licensing official any time prior to the effective date of the license revocation, as stated in the notice of violation. Failure to timely request a hearing shall be a waiver of the right to a hearing. A timely request for a hearing shall result in the revocation being stayed until completion of the hearing.

(d) Cure by the licensee of all violations identified in the notice of violation within the cure period shall result in the license continuing in full force and effect.

(e) Hearings shall be conducted informally and shall be presided over by a hearing officer designated by the Town. The licensee and the licensing official shall each be permitted to offer any evidence, testimony, or exhibits in support of their respective positions.

(f) The decision of the hearing officer shall be issued in writing and delivered to the licensing official and the licensee. In the decision the hearing officer may sustain the revocation of the license, overturn the revocation of the license, or reissue the license subject to those conditions as may be appropriate based on the evidence and the administrative record.

(Ord. No. 533 (Series 2023), § 5.04.100, 6-27-2023)

Sec. 5.08.110. Judicial review.

(a) Persons adversely affected by a final licensing decision under this chapter may appeal the final decision of the Town by commencing a judicial action in the district court in and for the County pursuant to C.R.C.P. 106 in the manner otherwise provided by law. An appeal under this section shall be filed no later than 30 days from the date of the final action or decision of the Town. The appeal shall be based on review of the administrative record before the Town, which shall promptly assemble and transmit same to the court following filing of the action.

(b) The appealing party shall have the burden of proof before the court. The court shall:

(1) Presume that the decision issued under this chapter is valid; and

(2) Determine only whether or not the decision is arbitrary, capricious, or illegal.

(Ord. No. 533 (Series 2023), § 5.04.110, 6-27-2023)

Sec. 5.08.120. Enforcement.

(a) Violations of this chapter may be punishable or enforced in the manner provided by State law for enforcement of municipal ordinance violations and/or by civil action to enjoin or abate the violations. Proof of violation of this chapter shall be sufficient to

obtain an injunction, which shall be issued without the posting of bond by the moving party. In the event the Town commences civil enforcement it may recover against the violator the Town's reasonable attorney fees and court costs, together with any other form or type of relief.

(b) It is unlawful for any person to operate a business in violation of the provisions of this chapter, and any such violation shall be deemed a Class B municipal offense and punishable accordingly. Every day in which a violation of this chapter occurs shall be deemed a separate and distinct violation.

(Ord. No. 533 (Series 2023), § 5.04.120, 6-27-2023)

CHAPTER 5.12. SEXUALLY ORIENTED BUSINESSES—GENERAL PROVISIONS

Sec. 5.12.010. Purpose and description.

(a) 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 Colo. Const. art. II, § 10, 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.

(b) 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 C.R.S. § 31-15-401 and other applicable law.
(Code 1995, § 5.14.010)

Sec. 5.12.020. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade means 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 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.

Adult bookstore or *adult video store* means 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, compact discs or video reproductions, LaserDiscs™, 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.

Adult motel means 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.

Adult motion picture theater means 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.

Adult theater means 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.

Cabaret means a nightclub, bar, restaurant or similar business which regularly features:

- (1) Persons who appear in a state of nudity;
- (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.

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.

Licensing Officer means the Town Clerk unless another official has been designated by the Town Administrator or Board of Trustees as the Licensing Officer.

Manager means 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.

Peep booth means a viewing room, other than a private room, of less than 150 square feet 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.

Person means an individual, proprietorship, partnership, corporation, association or other legal entity.

Private room means 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.

Sexual encounter establishment means a business or commercial establishment, which as one of its primary business purposes, offers for any form of consideration, a

place where two or more persons may congregate, associate or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas, when one or more of the persons exposes any specified anatomical area.

Sexually oriented business means 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 the ordinance from which this chapter is derived.

Specified anatomical areas means:

- (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.

Specified sexual activities means 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.

Stage means a raised floor or platform at least three feet above the surrounding floor measured perpendicularly from the edge of the stage to the surrounding floor and at least 36 square feet in area.

(Code 1995, § 5.14.020)

Sec. 5.12.030. 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.
- (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 14.40 are met unless the applicant's

sexually oriented business is an existing nonconforming use under the provisions of section 14.12.090. 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.

(Code 1995, § 5.14.030)

Sec. 5.12.040. Issuance of a sexually oriented business license.

(a) The sexually oriented business shall be issued a license within 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 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.

(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 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 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. The applicant may appeal the denial in accordance with the provisions of section 5.24.020.

(Code 1995, § 5.14.040)

Sec. 5.12.050. 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 5.20 and section 5.12.040 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 5.24 or section 5.12.090 or 5.12.100. (Code 1995, § 5.14.050)

Sec. 5.12.060. 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 days of employment.

(Code 1995, § 5.14.060)

Sec. 5.12.070. Inspection.

(a) The licensee or the licensee's employees shall permit representatives of the Marshal's Department, 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.

(Code 1995, § 5.14.070)

Sec. 5.12.080. Expiration of license.

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in section 5.16.050.
(Code 1995, § 5.14.080)

Sec. 5.12.090. License suspension or revocation.

(a) In addition to the grounds set forth for suspension or revocation of a license in chapter 5.24, the Licensing Officer shall suspend a license for a period not to exceed six 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 violations 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 violations.
- (6) The extent to which the licensee or licensee's employees had knowledge of the violations.
- (7) Any corrective or remedial action the licensee has taken to prevent similar violations in the future.
- (8) Whether the violations involved the commission of a crime, and if so, the degree of felony or misdemeanor involved.
- (9) The extent to which the violations caused personal injuries or property damages.

- (10) Whether the licensee has paid damages or made restitution to any person or entity damaged by the violations.
 - (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 violations extended.
 - (13) The extent to which the licensee or licensee's employees realized a financial gain from the violations.
 - (14) The number of employees, patrons, or both involved in the violations.
 - (15) The nature and extent of enforcement action taken by the Town or any law enforcement to detect the violations.
 - (16) The involvement of any persons under 21 years of age in the violations.
 - (17) The extent to which the licensee or licensee's employees have attempted to cover up the violations, destroy evidence or otherwise hinder the investigation and detection of the violations.
 - (18) The extent to which the licensee and licensee's employees have acted in good faith.
- (Code 1995, § 5.14.090)

Sec. 5.12.100. 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 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 C.R.S. § 12-22-3 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 year, and the licensee shall not be issued a sexually oriented license for one year from the date revocation became effective.

(Code 1995, § 5.14.100)

Sec. 5.12.110. 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 2:00 a.m. until 7:00 a.m.;
- (2) On any Monday other than a Monday which falls on January 1 from 12:00 midnight until 7:00 a.m.;
- (3) On any Sunday from 2:00 a.m. until 8:00 a.m.;
- (4) On any Monday which falls on January 1 from 2:00 a.m. until 7:00 a.m.

(b) This section shall not apply to those areas of an adult motel which are private rooms.

(Code 1995, § 5.14.110)

Sec. 5.12.120. 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 or more manager's stations.
- (2) It is the duty of the licensee to ensure that at least one 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 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 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) of this section 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 person at any time.

(b) It shall be unlawful for any person having a duty under subsections (a)(1) through (5) of this section to knowingly fail to fulfill that duty.
(Code 1995, § 5.14.120)

Sec. 5.12.130. 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 footcandles 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.
(Code 1995, § 5.14.130)

Sec. 5.12.140. Additional regulations; adult theaters and adult cabarets.

(a) Any adult cabaret or adult theater shall have one 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 of the edge of the stage. No members of the audience shall be permitted upon the stage or within three feet 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 21 years of age.

(Code 1995, § 5.14.140)

Sec. 5.12.150. 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 section 5.12.100(a)(2) through (5).

(d) It shall be unlawful for any licensee or employee to knowingly permit a patron to violate any of the requirements of this section.

(Code 1995, § 5.14.150)

Sec. 5.12.160. 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 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 or more signs to be conspicuously visible to the patrons on the premises in letters at least one inch 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."

(Code 1995, § 5.14.160)

Sec. 5.12.170. 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.

(Code 1995, § 5.14.170)

Sec. 5.12.180. 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.

(Code 1995, § 5.14.180)

Sec. 5.12.190. 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.

(Code 1995, § 5.14.190)

Sec. 5.12.200. Fees.

A business license fee and a manager's registration fee, which may be established or modified or amended from time to time by resolution of the Board of Trustees, shall be paid upon submission of an application and annually thereafter upon renewal of the sexually oriented business license.

(Code 1995, § 5.14.200; Ord. No. 329, §1(part), 2006)

**CHAPTER 5.16. ISSUANCE AND CONDITIONS OF SEXUALLY ORIENTED
BUSINESS LICENSES****Sec. 5.16.010. Issuance or denial.**

(a) Except as otherwise provided in this title, 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 5.20.010;
- (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 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 days after said filing with the Licensing Officer. Review by the Board shall be a de novo hearing.
(Code 1995, § 5.16.010)

Sec. 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.
(Code 1995, § 5.16.020)

Sec. 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.

(Code 1995, § 5.16.030)

Sec. 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.

(Code 1995, § 5.16.040)

Sec. 5.16.050. Renewal of license.

(a) At any time within 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, 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.

(Code 1995, § 5.16.050; Ord. No. 329, §2(part), 2006)

CHAPTER 5.20. QUALIFICATIONS OF APPLICANTS FOR SEXUALLY ORIENTED BUSINESS LICENSES

Sec. 5.20.010. Qualifications of applicants; compliance with all Town regulations.

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:

- (1) 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.

- (2) 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.
 - (3) 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.
- (Code 1995, § 5.18.010; Ord. No. 329, §3(part), 2006)

CHAPTER 5.24. SUSPENSION AND REVOCATION PROCEDURES FOR SEXUALLY ORIENTED BUSINESS LICENSES

Sec. 5.24.010. Grounds for suspension or revocation.

The Licensing Officer shall suspend for a period not to exceed six months or revoke any sexually oriented business license issued by the Town if he finds that:

- (1) The licensee has failed to pay the annual license fee.
- (2) 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;
- (3) 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;
- (4) The licensee or any agent or employee of such licensee has violated any law of the United States, of the State or the Town when such violation occurred on the licensed premises, or relates to conduct or activity of any business required to be licensed by this title.

(Code 1995, § 5.20.010)

Sec. 5.24.020. 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 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.

(Code 1995, § 5.20.020)

Sec. 5.24.030. 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 2.12. 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.

(Code 1995, § 5.20.030)

Sec. 5.24.040. 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.

(Code 1995, § 5.20.040)

Sec. 5.24.050. 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.

(Code 1995, § 5.20.050)

Sec. 5.24.060. 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 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.

- (1) *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.
- (2) *Hearing.*
 - a. 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 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.
 - b. 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.

- c. 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 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 days after actual cost of the transcript is determined.

(Code 1995, § 5.20.060)

Sec. 5.24.070. 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 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 section 5.24.040(b). At such hearing the licensee shall show cause why the summary suspension should not be made a final order of suspension or revocation.

(Code 1995, § 5.20.070)

Sec. 5.24.080. 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 5.24.040.

(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.

(Code 1995, § 5.20.080)

Sec. 5.24.090. Fine in lieu of hearing.

(a) Upon application, stipulation or admission by the licensee, made ten 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 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 20 percent 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 \$500.00 nor more than \$10,000.00.

(c) Payment of any fine pursuant to the provisions of subsection (a) of this section 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;

(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.

(Code 1995, § 5.20.090; Ord. No. 329, § 4(part), 2006)

CHAPTER 5.28. MARIJUANA LICENSING—GENERAL PROVISIONS

Sec. 5.28.010. 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 the Colorado Marijuana Code, article 10, title 44, Colorado Revised Statutes ("Marijuana Code" or the "code") and other applicable law.

(Ord. No. 537 (Series 2023), § 5.22.010, 9-26-2023)

Sec. 5.28.020. Adoption of State medical and retail marijuana codes.

Except as expressly set forth herein, the Town hereby adopts and incorporates herein the Marijuana Code, and the provisions of the Colorado Department of Revenue Marijuana Enforcement Division Permanent Rules Related to the Colorado Marijuana Code, 1 CCR 212-3, as now existing or as may be hereafter amended. At least one copy of these documents will be kept on file by the Town Clerk and open to public inspection during regular business hours.

(Ord. No. 537 (Series 2023), § 5.22.020, 9-26-2023)

Sec. 5.28.030. Definitions.

Except where specifically defined in this section, the capitalized terms in this chapter shall have the same meaning as that set forth in Colo. Const. art. XVIII, § 16, the Code, 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 State 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. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Active facility means a Marijuana Establishment that is open for business and operated continuously during regular business hours during the term of its license issued under this chapter. Active facilities shall include Seasonal operations as defined in this section.

Applicant means the person or entity submitting an application of any kind under this chapter, and shall include all members, shareholders, officers, directors, partners and managers in the case of a corporate entity or partnership.

Application means the submission by an Applicant of all materials required under this chapter for a license.

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 marijuana business to the licensed premises that complies with section 5.28.120.

Colorado Marijuana Code means C.R.S. tit. 44, art. 10, as amended.

License means a license granted by the Town to an Applicant for a licensed premises.

Licensed premises means 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 marijuana establishment in accordance with the provisions of the Code and this chapter.

Licensee means a person licensed pursuant to the Code and approved pursuant to this chapter.

Medical marijuana shall have the same meaning as that set forth in section 14.04.220.

Medical marijuana center shall have the same meaning as that set forth in section 14.04.220.

Medical marijuana establishment shall have the same meaning as that set forth in section 14.04.220.

Medical marijuana testing facility shall have the same meaning as set forth in section 14.04.220.

Medical marijuana-infused product shall have the same meaning as that set forth in section 14.04.220.

Medical marijuana-infused products manufacturing facility shall have the same meaning as that set forth in section 14.04.220.

Optional premises cultivation operation shall have the same meaning as that set forth in section 14.04.220.

Permanent Rules Related to the Colorado Marijuana Code or *Permanent Rules* means the Colorado Department of Revenue Permanent Rules Related to the Colorado Marijuana Code 1 C.C.R. 212-3:1-105 et seq., as the same may be in effect and amended from time to time.

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 5.28.140.

Retail marijuana shall have the same meaning as that set forth in section 14.04.220.

Retail marijuana cultivation facility shall have the same meaning as that set forth in section 14.04.220.

Retail marijuana cultivation facility, limited, shall have the same meaning as that set forth in section 14.04.220.

Retail marijuana establishment shall have the same meaning as that set forth in section 14.04.220.

Retail marijuana product shall have the same meaning as that set forth in section 14.04.220.

Retail marijuana products manufacturing facility shall have the same meaning as that set forth in section 14.04.220.

Retail marijuana store shall have the same meaning as that set forth in section 14.04.220.

Seasonal operations will include facilities operated seasonally, provided:

- (1) The facility has been approved by the Town to operate seasonally; and

- (2) The facility is open for business no less than three contiguous months during each calendar year during the term specified in its license.

State license means the license granted by the State Department of Revenue pursuant to the Codes and Permanent Rules for the operation of a Marijuana Establishment. (Ord. No. 537 (Series 2023), § 5.22.030, 9-26-2023; Ord. No. 550 (Series 2025), 3-25-2025)

Sec. 5.28.040. License required.

It shall be unlawful for any person to operate a marijuana establishment without a State license and without a license issued under the provisions of this chapter. A separate license is required for each marijuana establishment and each licensed premises.

(Ord. No. 537 (Series 2023), § 5.22.040, 9-26-2023)

Sec. 5.28.050. Limit on licensed premises.

The total number of each type of marijuana establishment, as defined in section 14.04.220, licensed to operate within the Town shall not exceed four 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. No. 537 (Series 2023), § 5.22.041, 9-26-2023)

Sec. 5.28.060. License application.

An application for the operation of a marijuana establishment at a licensed premises shall be made as required by the code and permanent rules. The Applicant has the burden of demonstrating compliance with the provisions of this chapter, the Municipal Code, this Marijuana Code, 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 code, 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 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 12th grade public or private school and indicating the proximity to any other licensed 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. A dimensioned map utilizing the 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 marijuana establishment fee schedule together with a signed agreement to reimburse consultant fees on a form provided by the Town.
 - (11) The Town may require other or additional submittals as may be reasonably necessary for the particular application or as dictated by this Marijuana Code, Permanent Rules, or other Town ordinances.
- (Ord. No. 537 (Series 2023), § 5.22.050, 9-26-2023)

Sec. 5.28.070. Application review procedure.

(a) Within ten business days of submission of an application the Town Clerk or a 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 5.28.060 have been received;
- (2) The proposed licensed premises location complies with the zoning, land use laws, and distance requirements of the Town, or that the necessary land use application has been made for a special use (SU) has been made. If approval of a SU has not been obtained for the proposed licensed premises, review of the application will be stayed pending completion and approval of the SU process.

- a. The Applicant has established a meeting date with the State 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 State Department of Revenue Marijuana Enforcement Division;
- b. 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, it is determined that the application is incomplete the Town shall notify the Applicant in writing of the missing and required materials or information. The Applicant shall have ten 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 shall notify the Applicant and promptly schedule a public hearing on the application before the Board of Trustees.

(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 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 officers 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. No. 537 (Series 2023), § 5.22.060, 9-26-2023)

Sec. 5.28.080. 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 2.12.

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

(c) All decisions on an application shall be in writing stating the reasons therefor. The Board shall either deny the application or approve the application with or without conditions. Within 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.
(Ord. No. 537 (Series 2023), § 5.22.070, 9-26-2023)

Sec. 5.28.090. Review criteria and appeals.

(a) In order to approve a license, the Board of Trustees shall find that all of the following are satisfied:

- (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, this Marijuana Code, or Permanent Rules.
- (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 Code, the Permanent Rules, and this chapter, including meeting the required spacing.
- (6) There is an approved and valid special use for the licensed premises.

(b) Any person entitled to receive mailed public notice pursuant to section 5.28.070(d) may appeal to the Town Board of Trustees a decision made by the Town Administrator pursuant to section 5.28.070(a)(2). Said appeal will be conducted pursuant to chapter 2.12. 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 State law.

(c) 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. No. 537 (Series 2023), § 5.22.080, 9-26-2023)

Sec. 5.28.100. Posting, display of license.

(a) Every license issued by the Town for a 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. No. 537 (Series 2023), § 5.22.090, 9-26-2023)

Sec. 5.28.110. Expiration of license.

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in section 5.28.140. A licensee must immediately notify the Town and cease operations if the licensee's State license expires or is not valid for any reason. No licensee shall operate a marijuana establishment without a valid, active State license.

(Ord. No. 537 (Series 2023), § 5.22.100, 9-26-2023)

Sec. 5.28.120. 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 Clerk may 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 is not considered an application for a new license and is therefore not subject to or affected by section 5.28.050.

(Ord. No. 537 (Series 2023), § 5.22.110, 9-26-2023)

Sec. 5.28.130. 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 marijuana establishment at the licensed premises, only upon submission and approval of the following:

- (1) A change application form prepared and provided by the Town;
- (2) Proof that the current license is active facility;
- (3) Proof that ownership, lease, rental agreement, or other arrangement for possession for the new location of the license and licensed premises;
- (4) Payment of the change application fee;
- (5) A diagram showing the use and 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;
- (6) An approved special use for the proposed change pursuant to section 14.12.080; and
- (7) Such other materials as may be reasonably necessary to evaluate the specific application.

(b) In order to approve a change application, the decision maker 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 change to the licensed premises is permitted under the Code, the Permanent Rules, this chapter, and applicable ordinances of the Town.

(c) The Applicant shall change the location of its business to that specified in the approved change application within 60 days of the decision authorizing the change.

(d) At no time may a marijuana establishment operate or exercise any of the privileges granted pursuant to a license in more than one location.

(e) A change application is not considered an application for a new license and is therefore not subject to or affected by section 5.28.050, except that a change application seeking approval of the addition of a different license category at the licensed premises will be reviewed for compliance with section 5.28.050.

(Ord. No. 537 (Series 2023), § 5.22.111, 9-26-2023)

Sec. 5.28.140. Renewal of license.

(a) At any time from 90 to 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 a renewal application is so made such license may continue as valid unless or until the renewal application is reviewed for final action.

(b) License renewals may be issued administratively by the Town Clerk, without a hearing, for a period of one year if the Clerk finds that the licensed premises:

- (1) Is an active facility;
- (2) The State license is valid; and
- (3) There are no outstanding violations of this chapter, the Code, Permanent Rules, Town ordinances, or the applicable license that would justify non-renewal.

(c) Alternatively, the Clerk has discretion to refer any renewal action to the Board of Trustees for review and final action if there are complaints filed against the licensee, there are pending violations, or if there are other circumstances constituting good cause.

(d) Prior to renewal the Town Clerk shall send the Renewal Application to all Town departments for review and comment. If Town staff intends to seek non-renewal at the renewal hearing, it shall notify the licensee in writing of its intention not less than ten days prior to the hearing. In that written notice the Town shall provide a general description of the facts constituting good cause for non-renewal.

(e) In the event there are pending violations of this chapter, the Code, Permanent Rules, or other Town ordinances, the violations shall be adjudicated prior to final action on the renewal.

(f) If the renewal application is brought before the Board of Trustees, the matter shall be conducted pursuant to the quasi-judicial procedures of chapter 2.12. At the time of final action, the license may be renewed, denied, or renewed subject to conditions. The final decision shall be in writing and state the reasons for such decision.

(g) Licenses for active facilities are eligible for renewal. Any licensee that is not an active facility shall not be renewed.

(h) A renewal application is not considered an application for a new license and is therefore not subject to or affected by section 5.28.050.
(Ord. No. 537 (Series 2023), § 5.22.120, 9-26-2023)

Sec. 5.28.150. Inspection.

(a) The licensee and/or owner of any licensed premises shall permit representatives of the State Marijuana Enforcement Division, Marshal's Department, County Health Department, Town Administrator or a designee, or the Fire Department, to inspect the premises of a 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 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. No. 537 (Series 2023), § 5.22.130, 9-26-2023)

Sec. 5.28.160. License enforcement.

(a) Complaints of violations of this chapter, the Code, Permanent Rules, or other Town ordinances will be investigated by the Town. If the Town confirms a violation, it will notify the licensee in writing, and it shall be the obligation of the licensee to cure or abate the violations within 30 days of notice. Failure to cure violation(s) may result in suspension, non-renewal, administrative penalties, or other license sanctions.

(b) In the event the State license is suspended or revoked for any reason the license granted by the Town under this chapter shall be deemed to be automatically suspended for the same period or revoked without any further action by the Town.

(c) License enforcement proceedings shall be conducted in accordance with the procedures specified in section 5.28.180.

(d) In determining the action to be taken with respect to any violation, 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 violations 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 violations.
- (6) The extent to which the licensee or licensee's employees had knowledge of the violations.
- (7) Any corrective or remedial action the licensee has taken to prevent similar violations in the future.
- (8) Whether the violations involved the commission of a crime and, if so, the degree of crime involved.
- (9) The extent to which the violations caused personal injuries or property damages.
- (10) Whether the licensee has paid damages or made restitution to any person or entity damaged by the violations.
- (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 violations extended.
- (13) The extent to which the licensee or licensee's employees realized a financial gain from the violations.
- (14) The number of employees, patrons, or both involved in the violations.
- (15) The nature and extent of enforcement action taken by the Town or any law enforcement to detect the violations.
- (16) The involvement of any persons under 21 years of age in the violations.

(17) The extent to which the licensee or licensee's employees have attempted to cover up the violations, destroy evidence or otherwise hinder the investigation and detection of the violations.

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

(e) Each licensee has an affirmative duty to report to the Town in writing all alleged violations of the Colorado Marijuana Code, the Permanent Rules, or other applicable laws occurring upon or related to the licensed premises within ten days of the receipt of any charge, summons, or similar notice of violation. Any such violation, or the failure of the licensee report same, may be a basis for additional license enforcement action by the Town.

(Ord. No. 537 (Series 2023), § 5.22.140, 9-26-2023)

Sec. 5.28.170. 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 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 21 years onto the licensed premises;
- (5) A licensee or an employee knowingly operated a marijuana establishment during a period of time when the license was suspended;
- (6) A licensee has commenced operation of its marijuana establishment without satisfying all conditions precedent, if any, imposed on the initial grant or renewal of licensee's license;
- (7) The licensed premises are not an active facility, as defined in this chapter; or
- (8) There is other good cause for revocation, as defined by the Code, Permanent Rules, or this chapter.

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

(Ord. No. 537 (Series 2023), § 5.22.150, 9-26-2023)

Sec. 5.28.180. Hearings.

(a) The Board of Trustees shall conduct hearings for violation, suspension, revocation, or other action with respect to licenses granted pursuant to this chapter in accordance with chapter 2.12. 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, renewal, 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 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 the event that Town staff may recommend suspension, non-renewal, or revocation in any proceeding concerning a license under this chapter, the Town shall notify the licensee in writing of that recommendation or determination, which shall be sent not less than ten days prior to the hearing date.

(e) 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.

(f) All evidence shall be recorded by electronic recording device.

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

(Ord. No. 537 (Series 2023), § 5.22.160, 9-26-2023)

Sec. 5.28.190. Notice of suspension or revocation.

(a) Upon suspension, revocation, or other action with respect to any license issued under 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.

(Ord. No. 537 (Series 2023), § 5.22.170, 9-26-2023)

Sec. 5.28.200. 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.

(Ord. No. 537 (Series 2023), § 5.22.180, 9-26-2023)

Sec. 5.28.210. 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 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.

(Ord. No. 537 (Series 2023), § 5.22.190, 9-26-2023)

Sec. 5.28.220. Performance standards for marijuana establishments.

(a) *Hours of operation.* All marijuana establishments may operate from the hours of 9:00 a.m. to 10:00 p.m., Monday through Sunday.

(b) *Location of licensed premises.* Marijuana establishments shall be located only in areas of the Town as allowed in title 14. No marijuana establishment shall be located:

- (1) Within 400 feet of any existing public or private school facility where classes are held for children aged kindergarten through the 12th 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 title 14.

(c) *Qualifications of applicants.* In addition to the requirements of the Code and Permanent Rules, the Applicant and licensee shall:

- (1) Demonstrate that they possess the qualities of honesty, fairness, candor, trustworthiness, and responsibility, and 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 or theft, or acts of moral turpitude.
- (2) Not be in default under the provisions of this chapter or the Town ordinances; be in default of any agreement with the Town; or have any unpaid or outstanding taxes, fees, fines, or assessments.

(d) *Miscellaneous.* In addition, all 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 marijuana on the licensed premises.
- (4) All sales and distribution of 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 Code, 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 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 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 21 years is allowed on the licensed premises;
 - g. The name and contact information for the owner and any business manager of the marijuana establishment;
 - h. The State and Town marijuana establishment license; and
 - i. All sales tax/business licenses.
- (7) The provisions of chapter 7.10 shall apply to all medical and retail marijuana establishments. Pursuant to section 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 60 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 60 days of approval of an existing licensee's odor control plan to determine compliance therewith.

(Ord. No. 537 (Series 2023), § 5.22.200, 9-26-2023)

Sec. 5.28.230. 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. In any such proceeding, the Town need only show proof of the violation to obtain injunctive relief, which shall be issued without the posting of bond by the Town.

(Ord. No. 537 (Series 2023), § 5.22.210, 9-26-2023)

Sec. 5.28.240. 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. No. 537 (Series 2023), § 5.22.240, 9-26-2023)

CHAPTER 5.32. NATURAL MEDICINE LICENSING—GENERAL PROVISIONS

Sec. 5.32.010. Purpose and description.

The purpose of this chapter is to regulate and control potential adverse effects from Natural Medicine businesses in accordance with the power granted by the State 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 the Colorado Natural Medicine Code, C.R.S. title 44, art. 50 ("Natural Medicine Code" or the "code") and other applicable law.

(Ord. No. 549 (Series 2025), exh. 1(5.23.010), 3-25-2025)

Sec. 5.32.020. Adoption of State Natural Medicine Codes.

Except as expressly set forth herein, the Town hereby adopts and incorporates herein the Natural Medicine Code, and the provisions of the Colorado Department of Revenue Natural Medicine Division and the Colorado Department of Regulatory Agencies Permanent Rules Related to the Colorado Natural Medicine Code, 1 C.C.R. 213-1, as now existing or as may be hereafter amended. At least one copy of these documents will be kept on file by the Town Clerk and open to public inspection during regular business hours.

(Ord. No. 549 (Series 2025), exh. 1(5.23.020), 3-25-2025)

Sec. 5.32.030. Definitions.

Except where specifically defined in this section, the capitalized terms in this chapter shall have the same meaning as that set forth in C.R.S. § 12-170-104, the Natural Medicine Code, or the Permanent Rules Related to the Colorado Natural Medicine Code. In the event of any conflict between such documents, the Permanent Rules shall control over this section, the State statutes shall control over the Permanent Rules, and the State Constitution shall control over all other legal authorities. Federal law shall not be relevant in interpreting this section.

Active facility means a Natural Medicine Establishment that is open for business and operated continuously during regular business hours during the term of its license issued under this chapter. Active Facilities shall include Seasonal Operations as defined in this section.

Applicant means the person or entity submitting an application of any kind under this chapter, and shall include all members, shareholders, officers, directors, partners and managers in the case of a corporate entity or partnership.

Application means the submission by an Applicant of all materials required under this chapter a License.

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 Natural Medicine business to the Licensed Premises that complies with section 5.32.130.

Colorado Natural Medicine Code means C.R.S. title 44, art. 50, as amended.

License means a license granted by the Town to an Applicant for a Licensed Premises.

Licensed Premises means 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 Natural Medicine Establishment in accordance with the provisions of the Code and this chapter.

Licensee means a person licensed pursuant to the Code and approved pursuant to this chapter.

Natural Medicine shall have the same meaning as that set forth in section 14.04.220.

Natural Medicine Business shall have the same meaning as that set forth in section 14.04.220.

Natural Medicine Cultivation Facility shall have the same meaning as that set forth in section 14.04.220.

Natural Medicine Healing Center shall have the same meaning as that set forth in section 14.04.220.

Natural Medicine Testing Facility shall have the same meaning as that set forth in section 14.04.220.

Natural Medicine Product shall have the same meaning as set forth in section 14.04.220.

Natural Medicine Product Manufacturer shall have the same meaning as that set forth in section 14.04.220.

Natural Medicine Services shall have the same meaning as that set forth in section 14.04.220.

Permanent Rules Related to the Colorado Natural Medicine Code or Permanent Rules means the Colorado Department of Revenue Permanent Rules Related to the Colorado Natural Medicine Code 1 C.C.R. 213-1 et seq., as the same may be in effect and amended from time to time.

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 5.32.140.

Seasonal Operations will include Facilities operated seasonally, provided:

- (1) The Facility has been approved by the Town to operate seasonally; and
- (2) The Facility is open for business no less than three contiguous months during each calendar year during the term specified in its license.

State License means the license granted by the State Department of Revenue pursuant to the Codes and Permanent Rules for the operation of a Natural Medicine Establishment.

(Ord. No. 549 (Series 2025), exh. 1(5.23.030), 3-25-2025)

Sec. 5.32.040. License required.

It shall be unlawful for any person to operate a Natural Medicine Establishment without a State License and without a License issued under the provisions of this chapter. A separate License is required for each Natural Medicine Establishment and each Licensed Premises.

(Ord. No. 549 (Series 2025), exh. 1(5.23.040), 3-25-2025)

Sec. 5.32.050. Limit on licensed premises.

The total number of each type of Natural Medicine Establishment, as defined in section 14.04.220, licensed to operate within the Town shall not exceed four 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. No. 549 (Series 2025), exh. 1(5.23.041), 3-25-2025)

Sec. 5.32.060. License application.

An application for the Operation of a Natural Medicine Establishment at a Licensed Premises shall be made as required by the Natural Medicine Code and Permanent Rules. The Applicant has the burden of demonstrating compliance with the provisions of this chapter, the Municipal Code, the Natural Medicine Code, 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 Department of Revenue (DOR) and/or the Colorado Department of Regulatory Agencies (CORA) Natural Medicine 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 Code, 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 Natural Medicine Establishment is located, and indicating the proximity, measured per the standards as set forth below, of the proposed License Premises to any kindergarten through 12th grade public or private school and indicating the proximity to any other licensed Natural Medicine 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. A dimensioned map utilizing the 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 Natural Medicine Establishment fee schedule together with a signed agreement to reimburse consultant fees on a form provided by the Town.
 - (11) The Town may require other or additional submittals as may be reasonably necessary for the particular application, or as dictated by the Natural Medicine Code, Permanent Rules, or other Town ordinances.
- (Ord. No. 549 (Series 2025), exh. 1(5.23.050), 3-25-2025)

Sec. 5.32.070. Application review procedure.

(a) Within ten business days of submission of an application the Town Clerk or a 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 5.32.060 have been received;
- (2) The proposed Licensed Premises location complies with the zoning, land use laws, and distance requirements of the Town, or that the necessary land use application has been made for a Special Use (SU) has been made. If approval of a SU has not been obtained for the proposed Licensed Premises, review of the application will be stayed pending completion and approval of the SU process:
 - a. The application for a State License has been submitted to and has been deemed complete by the State Department of Revenue and/or Colorado Department of Regulatory Agencies Natural Medicine Division;
 - b. 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, it is determined that the application is incomplete the Town shall notify the Applicant in writing of the missing and required materials or information. The Applicant shall have ten 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 shall notify the Applicant and promptly schedule a public hearing on the application before the Board of Trustees.

(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 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 officers 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. No. 549 (Series 2025), exh. 1(5.23.060), 3-25-2025)

Sec. 5.32.080. 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 2.12.

(b) The Board of Trustees may on its own motion and without the Applicant's consent continue the public hearing one time to a date certain for a period not to exceed 30 days. Continuances for longer than 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 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.
(Ord. No. 549 (Series 2025), exh. 1(5.23.070), 3-25-2025)

Sec. 5.32.090. Review criteria and appeals.

(a) In order to approve a License, the Board of Trustees shall find that all of the following are satisfied:

- (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, the Code, or Permanent Rules.
- (4) The State License application has been prepared for submission to or received by the Natural Medicine Division of DOR and/or DORA, 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 Natural Medicine Code, the Permanent Rules, and this chapter, including meeting the required spacing.
- (6) There is an approved and valid Special Use for the Licensed Premises.

(b) Any person entitled to receive mailed public notice pursuant to section 5.32.070(d) may appeal to the Town Board of Trustees a decision made by the Town Administrator pursuant to section 5.32.070(a)(2). Said appeal will be conducted pursuant to chapter 2.12. 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 State law.

(c) 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. No. 549 (Series 2025), exh. 1(5.23.080), 3-25-2025)

Sec. 5.32.100. Posting; display of license.

(a) Every License issued by the Town for a Natural Medicine 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. No. 549 (Series 2025), exh. 1(5.23.090), 3-25-2025)

Sec. 5.32.110. Expiration of license.

Each License shall expire one year from the date of issuance and may be renewed only by making application as provided in section 5.32.140. A Licensee must immediately notify the Town and cease operations if the Licensee's State License expires or is not valid for any reason. No Licensee shall operate a Natural Medicine Establishment without a valid, active State License.

(Ord. No. 549 (Series 2025), exh. 1(5.23.100), 3-25-2025)

Sec. 5.32.120. 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 Clerk may 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 is not considered an application for a new License and is therefore not subject to or affected by section 5.32.050.

(Ord. No. 549 (Series 2025), exh. 1(5.23.110), 3-25-2025)

Sec. 5.32.130. 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 Natural Medicine Establishment at the Licensed Premises, only upon submission and approval of the following:

- (1) A change application form prepared and provided by the Town;
- (2) Proof that the current License is an Active Facility;
- (3) Proof that ownership, lease, rental agreement, or other arrangement for possession for the new location of the License and Licensed Premises;
- (4) Payment of the change application fee;
- (5) A diagram showing the use and 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;

- (6) An approved Special Use for the proposed change; and
- (7) Such other materials as may be reasonably necessary to evaluate the specific application.

(b) In order to approve a change application, the decision maker 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 change to the Licensed Premises is permitted under the Code, the Permanent Rules, this chapter, and applicable ordinances of the Town.

(c) The Applicant shall change the location of its business to that specified in the approved change application within 60 days of the decision authorizing the change.

(d) At no time may a Natural Medicine Establishment operate or exercise any of the privileges granted pursuant to a License in more than one location.

(e) A change application is not considered an application for a new License and is therefore not subject to or affected by section 5.32.050, except that a change application seeking approval of the addition of a different license category at the Licensed Premises will be reviewed for compliance with section 5.32.050.

(Ord. No. 549 (Series 2025), exh. 1(5.23.111), 3-25-2025)

Sec. 5.32.140. Renewal of license.

(a) At any time from 90 to 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 a renewal application is so made such License may continue as valid unless or until the Renewal Application is reviewed for final action.

(b) License renewals may be issued administratively by the Town Clerk, without a hearing, for a period of one year if the Clerk finds that the Licensed Premises:

- (1) Is an Active Facility;
- (2) The State License is valid; and

- (3) There are no outstanding violations of this chapter, the Code, Permanent Rules, Town ordinances, or the applicable License that would justify non-renewal.

(c) Alternatively, the Clerk has discretion to refer any renewal action to the Board of Trustees for review and final action if there are complaints filed against the Licensee, there are pending violations, or if there are other circumstances constituting good cause.

(d) Prior to renewal the Town Clerk shall send the Renewal Application to all Town departments for review and comment. If Town staff intends to seek non-renewal at the renewal hearing, it shall notify the Licensee in writing of its intention not less than ten days prior to the hearing. In that written notice the Town shall provide a general description of the facts constituting good cause for non-renewal.

(e) In the event there are pending violations of this chapter, the Natural Medicine Code, Permanent Rules, or other Town ordinances, the violations shall be adjudicated prior to final action on the renewal.

(f) If the renewal application is brought before the Board of Trustees, the matter shall be conducted pursuant to the quasi-judicial procedures of chapter 2.12. At the time of final action, the License may be renewed, denied, or renewed subject to conditions. The final decision shall be in writing and state the reasons for such decision.

(g) Licenses for Active Facilities are eligible for renewal. Any Licensee that is not an Active Facility shall not be renewed.

(h) A Renewal Application is not considered an application for a new License and is therefore not subject to or affected by section 5.32.050.

(Ord. No. 549 (Series 2025), exh. 1(5.23.120), 3-25-2025)

Sec. 5.32.150. Inspection.

(a) The Licensee and/or owner of any Licensed Premises shall permit representatives of the DORA and/or DOR Colorado Natural Medicine Division, Marshal's Department, Mesa County Health Department, Town Administrator or a designee, or the Fire Department, to inspect the premises of a Natural Medicine 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 Natural Medicine 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. No. 549 (Series 2025), exh. 1(5.23.130), 3-25-2025)

Sec. 5.32.160. License enforcement.

(a) Complaints of violations of chapter, the Code, Permanent Rules, or other Town ordinances will be investigated by the Town. If the Town confirms a violation, it will notify the Licensee in writing, and it shall be the obligation of the Licensee to cure or abate the violations within 30 days of notice. Failure to cure violations may result in suspension, non-renewal, administrative penalties, or other license sanctions.

(b) In the event the State License is suspended or revoked for any reason the License granted by the Town under this chapter shall be deemed to be automatically suspended for the same period or revoked without any further action by the Town.

(c) License enforcement proceedings shall be conducted in accordance with the procedures specified in section 5.32.180.

(d) In determining the action to be taken with respect to any violation, 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 violations 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 violations.
- (6) The extent to which the Licensee or Licensee's employees had knowledge of the violations.
- (7) Any corrective or remedial action the Licensee has taken to prevent similar violations in the future.

- (8) Whether the violations involved the commission of a crime, and if so, the degree of crime involved.
- (9) The extent to which the violations caused personal injuries or property damages.
- (10) Whether the Licensee has paid damages or made restitution to any person or entity damaged by the violations.
- (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 violations extended.
- (13) The extent to which the Licensee or Licensee's employees realized a financial gain from the violations.
- (14) The number of employees, patrons, or both involved in the violations.
- (15) The nature and extent of enforcement action taken by the Town or any law enforcement to detect the violations.
- (16) The involvement of any persons under 21 years of age in the violations.
- (17) The extent to which the Licensee or Licensee's employees have attempted to cover up the violations, destroy evidence or otherwise hinder the investigation and detection of the violations.
- (18) The extent to which the Licensee and Licensee's employees have acted in good faith.

(e) Each Licensee has an affirmative duty to report to the Town in writing all alleged violations of the Colorado Natural Medicine Code, the Permanent Rules, or other applicable laws occurring upon or related to the Licensed Premises within ten days of the receipt of any charge, summons, or similar notice of violation. Any such violation, or the failure of the Licensee to report the same, may be a basis for additional license enforcement action by the Town.

(Ord. No. 549 (Series 2025), exh. 1(5.23.140), 3-25-2025)

Sec. 5.32.170. 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 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 Natural Medicine on the Licensed Premises;
- (4) A Licensee or an employee has knowingly allowed someone under the age of 21 years onto the Licensed Premises;
- (5) A Licensee or an employee knowingly operated a Natural Medicine Establishment during a period of time when the License was suspended;
- (6) A Licensee has commenced operation of its Natural Medicine Establishment without satisfying all conditions precedent, if any, imposed on the initial grant or renewal of Licensee's License;
- (7) The Licensed premises are not an Active Facility, as defined in this chapter; or
- (8) There is other good cause for revocation, as defined by the Natural Medicine Code, Permanent Rules, or this chapter.

(b) When the Town revokes a license, the revocation shall continue for one year, and the Licensee shall not be issued a License for one year for the premises in question, nor as to any other premises within the Town, from the date revocation became effective. (Ord. No. 549 (Series 2025), exh. 1(5.23.150), 3-25-2025)

Sec. 5.32.180. Hearings.

(a) The Board of Trustees shall conduct hearings for violation, suspension, revocation, or other action with respect to Licenses granted pursuant to this chapter in accordance with chapter 2.12. 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, renewal, or revocation proceedings, the Town Manager or its designee shall set a time and place for a hearing of the matter before the Board of Trustees.

(c) The Town Manager 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 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 the event that Town staff may recommend suspension, non-renewal, or revocation in any proceeding concerning a license under this chapter, the Town shall notify the Licensee in writing of that recommendation or determination, which shall be sent not less than days prior to the hearing date.

(e) 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.

(f) All evidence shall be recorded by electronic recording device.

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

(Ord. No. 549 (Series 2025), exh. 1(5.23.160), 3-25-2025)

Sec. 5.32.190. Notice of suspension or revocation.

(a) Upon suspension, revocation, or other action with respect to any License issued under 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 the Board of Trustees is reviewable only by the 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.

(Ord. No. 549 (Series 2025), exh. 1(5.23.170), 3-25-2025)

Sec. 5.32.200. 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.

(Ord. No. 549 (Series 2025), exh. 1(5.23.180), 3-25-2025)

Sec. 5.32.210. 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 Manager 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 15 days after the Town Manager has acted. The order shall state the grounds for its issuance, 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.

(Ord. No. 549 (Series 2025), exh. 1(5.23.190), 3-25-2025)

Sec. 5.32.220. Performance standards for Natural Medicine Establishments.

(a) *Hours of operation.* All Natural Medicine Establishments may operate from the hours of 9:00 a.m. to 10:00 p.m., Monday through Sunday.

(b) *Location of licensed premises.* Natural Medicine Establishments shall be located only in areas of the Town as allowed in Title 14. No Natural Medicine Establishment shall be located:

- (1) Within 400 feet of any existing public or private school facility where classes are held for children aged kindergarten through the 12th 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 Natural Medicine Establishment;
- (2) In any zone district not specifically permitted by right or as a special review use by Title 14.

(c) *Qualifications of applicants.* In addition to the requirements of the Code and Permanent Rules, the Applicant and Licensee shall:

- (1) Demonstrate that they possess the qualities of honesty, fairness, candor, trustworthiness, and responsibility, and 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 or theft, or acts of moral turpitude.

- (2) Not be in default under the provisions of this chapter or the Town ordinances; be in default of any agreement with the Town; or have any unpaid or outstanding taxes, fees, fines, or assessments.

(d) *Miscellaneous.* In addition, all Natural Medicine 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 Natural Medicine Establishment will meet the standards established in the Natural Medicine Code and in the Municipal Code.
- (3) No Licensee shall allow the use of any Natural Medicine on the Licensed Premises unless so permitted by State License.
- (4) All sales and distribution of Natural Medicine shall occur only upon the Licensed Premises unless the distribution is done by a person or business with a valid Natural Medicine transporter license issued by the Colorado Natural Medicine Division, the Licensee is strictly prohibited from delivering Natural Medicine 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 Natural Medicine Establishment legible signs as required by the Code, including but not limited to:
 - a. A warning that the use of Natural Medicine 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 Natural Medicine.
 - b. A warning that loitering in or around a Natural Medicine Establishment is prohibited by State law;
 - c. A warning that possession and distribution of Natural Medicine is a violation of Federal law;

- d. A warning that consumption of Natural Medicine within a Natural Medicine Establishment not licensed to administer Natural Medicine is prohibited;
 - e. A warning that the consumption of Natural Medicine in public is prohibited by state law;
 - f. A notice that no one under the age of 21 years is allowed on the Licensed Premises;
 - g. The name and contact information for the owner or owners and any business manager of the Natural Medicine Establishment;
 - h. The State and Town Natural Medicine Establishment license; and
 - i. All sales tax/business licenses.
- (7) The provisions of chapter 7.10 shall apply to all Natural Medicine Establishments. Pursuant to section 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 the ordinance from which chapter 7.10 is derived, the earlier of 60 days following the effective date of the ordinance from which chapter 7.10 is derived or with the submission of the Licensee's next Renewal Application or Change Application. An inspection may occur within 60 days of approval of an existing Licensee's odor control plan to determine compliance therewith.
- (Ord. No. 549 (Series 2025), exh. 1(5.23.200), 3-25-2025)

Sec. 5.32.230. Injunction.

Any person who operates or causes to be operated a Natural Medicine 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. In any such proceeding, the Town need only show proof of the violation to obtain injunctive relief, which shall be issued without the posting of bond by the Town.

(Ord. No. 549 (Series 2025), exh. 1(5.23.210), 3-25-2025)

Sec. 5.32.240. 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. No. 549 (Series 2025), exh. 1(5.23.240), 3-25-2025)