

ORDINANCE NO. 28C

AN ORDINANCE REGULATING BUSINESSES IN BOULDER TOWN, UTAH

WHEREAS, Boulder Town desires to license, control and regulate businesses in the town; and

WHEREAS, the Town Council deems it necessary to enact certain standards and regulations regarding businesses located in Boulder Town in the interest of health, safety and welfare of its citizens,

BE IT ORDAINED BY THE TOWN COUNCIL OF BOULDER TOWN, UTAH:

Section 1. General Requirements. The provisions of this ordinance shall govern all businesses within the municipal limits of Boulder Town, Utah, and shall regulate all business licenses required and granted by Boulder Town, excluding licenses for the sale of alcoholic beverages.

1.1 Purpose. The purpose of this ordinance is to regulate business activities, promote the safety, health and prosperity of the community, and protect the comfort and convenience of its citizens.

1.2 Compliance required. It shall be unlawful for any person, either directly or indirectly, to conduct any business or non-profit enterprise, or to use in connection therewith, any vehicle, premises, machine or device in whole or in part for which a license is required by any law or ordinance of this town without a license first being procured and kept in effect at all such times as required by law. Failure to comply with these regulations shall be a Class B Misdemeanor.

1.3 One act constitutes doing business. For the purpose of this ordinance, any person shall be deemed to be in business or engaging in non-profit business and thus subject to the requirements of this ordinance when any of the following are done:

- (a) Selling any goods or service; or
- (b) Soliciting business or offering goods or services for sale or hire; or
- (c) Acquiring or using any vehicle or any premises in the town for business purposes.

1.4 Responsibility for obtaining a license. It shall be the responsibility of the person engaging in business within the town to voluntarily apply and maintain in full force and effect a valid license. The agents or other representatives of non-residents who are doing business in the town shall be personally responsible for compliance by their principals and the businesses they represent with the terms of this ordinance.

1.5 Separate license for branch establishments. A license shall be obtained in the manner prescribed herein for each branch establishment or location of the business engaged in, as if each branch establishment or location were a separate business, provided that warehouses used in connection with and incidental to a business licensed under the provisions of this ordinance shall not be deemed to be separate places of business or branch establishments.

1.6 Joint License. A person engaged in two or more businesses at the same location may

be required to obtain separate licenses for conducting each of such businesses, but in the discretion of the town when such businesses are complementary, a single license may be issued which shall specify on its face all such businesses operated at that location. A fee for each separate business activity specified on the face of such license shall be required. However, such joint license shall not include a license for beer sales.

1.7 No license required. No license shall be required under this ordinance for any business operating under the following conditions:

(a) Business is solely resale. No license shall be required for any solicitor or salesman who solicits, obtains orders for or sells goods in the town solely for resale and maintains no premise in the town in connection therewith.

(b) Business is solely agricultural production. No license shall be required for any person in the business of producing crops or raising of livestock either for use or sale.

(c) Business is of an incidental nature. No license shall be required for any person who provides a service on a limited basis, does not have a regular place of business, does not meet the requirements of a "home occupation" as defined in this ordinance, does not earn more than \$1,000.00 per year from such activity and is determined by the Town Council to qualify under this section. This exclusion is intended to apply to, but is not limited to, activities such as limited local services provided by minors in an effort to generate limited supporting income.

(d) Business is non-profit. No license shall be required for any person engaged in business solely for religious, charitable, eleemosynary or any other types of strictly non-profit purpose which is tax exempt in such activities under the laws of the United States and the State of Utah.

(e) Business is exempt from municipal taxation. No license shall be required on any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the State of Utah.

(f) Business licensed by reciprocating authority. No license shall be required on any person who does not maintain a place of business within Boulder Town and has paid a similar fee to another municipality or county within the State of Utah, provided such authority exempts from its fees, businesses domiciled in Boulder Town doing business within such authority.

1.8 Class of license. All licenses issued under this ordinance shall be of the following classes:

(a) Class I (General Business License). This class shall include all businesses that do not meet the requirements of a "home occupation" as defined in this ordinance.

(b) Class II (Home Occupation License). This class shall include all businesses that meet the requirements of a "home occupation" as defined in this ordinance.

1.9 Term of license. All licenses shall be effective from the date of issue through the end

of the current calendar year and shall expire on the first day of January of the succeeding year, unless the application for license specifically requests a shorter term.

Section 2. Town License Officer; Powers and Duties.

2.1 Town License Officer. The Town Clerk shall serve as the License Officer for all responsibilities specified in this section.

2.2 Powers and Duties. The License Officer shall have the following powers and duties:

(a) The officer shall issue licenses in the name of the town to all persons qualified under the provisions of this ordinance upon payment to the town of all license fees required hereunder. All information furnished to or secured by the officer under the authority of this section shall be kept in accordance with State and local laws governing the accumulation, handling and dissemination of such documents and information, and those charged with administration of this ordinance may release the name, address and nature of said business upon request.

(b) Adopt forms. The officer shall adopt all forms and prescribe the information required therein as to all matters relevant to the issuance of a license. An application shall include, as a minimum, the following information:

(1) The name of the person desiring a license and the name under which the business will be conducted.

(2) The class of license desired.

(3) Description of the business, trade or profession to be provided or practiced.

(4) The place where such business, trade, or profession is to be located.

(5) The period of time for which such license is desired, if less than the remaining calendar year.

(c) Investigate information submitted. The officer may investigate and determine the eligibility of any applicant or licensee, either at the time of issuance of a license or within a reasonable time thereafter, in such manner as may be reasonable and necessary for the proper administration and enforcement of this ordinance.

(d) Inspect premises and records. The officer may inspect prospective or existing places of businesses to insure compliance with all applicable building, fire, safety and health codes, and any other regulations necessary to the administration and enforcement of the laws of Boulder Town, the State of Utah and the United

States. In order to perform the required inspections, the officer shall utilize the Town Fire Marshal, the Town Building Inspector and the Town Legal Counsel, who shall serve as Ex-Officio License Deputies. Said deputies are hereby authorized to examine places of business subject to this ordinance, at reasonable times and upon proper advance notice to the applicant or licensee, and shall report any violations to the License Officer.

(e) Give notice. The officer shall notify each applicant of the acceptance or rejection of his/her application. In the event of rejection, the applicant may request and receive the reason(s) for his/her rejection in writing.

(f) Good standing of applicant or licensee. The officer shall determine that the applicant or licensee is not in default under the provisions of any town ordinance; determine that he/she is not in violation of any town zoning regulation by reason of the condition of the business premises or the use to be made thereof. A favorable determination of the applicant's standing in light of these factors shall be a condition precedent to the issuance of a license under this ordinance.

Section 3. Procedure for issuance of a license.

3.1 Application required. A written statement shall be submitted upon forms provided by the License Officer.

(a) Form of application. A written statement upon forms provided by the License Officer.

(b) Contents of application. The License Officer shall require the disclosure of all information which the officer shall find to be reasonably necessary to the fair administration of this ordinance, that the business is properly licensed and registered as required, and complies with all applicable state or federal laws.

(c) Payment of fees. Payment in full of all fees chargeable for such license.

3.2 Issuance of Receipt. Whenever a license cannot be issued at the time of application, the License Officer shall issue a receipt for the money paid in advance, subject to the condition that an issued receipt shall not be construed as approval for the issuance of a license, nor shall it entitle or authorize the applicant to open or maintain any business contrary to the provisions of this ordinance.

3.3 Due date for applications. All applications for new or renewal licenses shall be made in writing and submitted to the License Officer on or before January 1 of each year on forms as set forth herein. The fee payment in full shall accompany the annual application. Unless otherwise notified by the licensee, the officer is entitled to presume the continued operation of any business licensed in the preceding year.

3.4 Other licenses required. For any business requiring a license from the State of Utah or the United States, the obtaining of such license is a prerequisite to receiving a license under this ordinance.

3.5 Approval of application. In the event the town shall approve an application for a license, such approval shall be acknowledged by the issuance of a license certificate signed by the mayor and attested by the town clerk.

3.6 Non-approval of application. Upon disapproval of any application submitted under the provisions of this ordinance, the License Officer shall refund all fees paid in advance to the applicant.

(a) Hearing before the Town Council. Upon denial of a license, an applicant may appear before the Town Council for the purpose of presenting reasons for setting aside such denial. If the applicant makes such appearance and presents adequate justification, the Town Council may, in its discretion, set aside the denial and approve the application.

(b) Compliance pending legal action. When the issuance of a license is denied and any action is instituted by the applicant to compel its issuance, such applicant shall not engage in the business for which a license was refused unless a license shall be issued pursuant to a judgment ordering the same.

3.7 Renewal license procedure. An applicant for renewal of a license shall submit an application for renewal to the License Officer on such forms provided by the town.

3.8 Duplicate license procedure. A duplicate license shall be issued by the License Officer to replace any license previously issued which has been lost, stolen, defaced or destroyed upon the filing by the licensee of a statement of such condition and paying a replacement fee of Five Dollars (\$5.00).

Section 4. License fees. Every person engaged in business within the town shall pay an annual license fee as required by this ordinance unless specifically excluded by this ordinance or qualifying under the Exemptions section of this ordinance.

4.1 Class I license fee. The Class I license fee shall be Twenty Five Dollars (\$25.00) per year.

4.2 Class II license fee. The Class II license fee shall be Five Dollars (\$5.00) per year.

4.3 Payment of license fee. All license fees provided for in this ordinance shall be payable annually in advance.

4.4 Pro-rated fees. Any application for a license pursuant to this ordinance filed subsequent to June 30 of any year shall be required to pay a pro-rated fee equal to one-

half of the annual license fee.

4.5 Rebate of fee. No rebate or refund of any license fee or part thereof shall be made by reason of non-use of such license or by reason of a change of location or due to any business rendering the use of such license ineffective.

4.6 Late fee penalties. Any license fee due on January 1 that is paid later than February 1 shall be considered to be late and subject to a late penalty charge equal to fifty percent (50%) of the license fee. Any such fee not paid by March 1 shall render the business to be operating without a license and in violation of this ordinance. Such business shall be subject to criminal prosecution for every day of operation after March 1. Any such license issued after March 1 shall be subject to a late penalty charge of one-hundred percent (100%) of the license fee. No license shall be issued until the license fee and all penalties have been paid in full.

4.7 License fee additional. The license fee herein provided for shall be in addition to any and all licenses and taxes imposed by any other ordinance of Boulder Town.

4.8 Fee not to constitute an undue burden on interstate commerce. The license fee specified by this ordinance shall be applied so as to not create an undue burden on interstate commerce. In any case, where the license fee is believed by a licensee or applicant to place an undue burden upon such commerce, they may apply to the License Officer for an adjustment of the fee so that it shall not be discriminatory, unreasonable or unfair. Such application may be made before or within six months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, describe his/her method of business and the gross volume or estimated gross volume of such business and provide such other information as the License Officer may deem necessary in order to determine the extent, if any, of any undue burden on such commerce. The License Officer shall then conduct an investigation, comparing the applicant's business with other businesses of like nature and shall make findings of facts from which he/she shall determine whether the fee specified in this ordinance is discriminatory, unreasonable or unfair to the applicant's business. The License Officer shall recommend to the Town Council a license fee for the applicant that is not discriminatory, unreasonable or unfair. If the Town Council is satisfied that such license fee is the amount that the applicant should pay, the Council shall adjust the license fee accordingly. If the regular license fee has already been paid, the Council shall order a refund of the amount over and above the fee established by the Council. In setting the fee to be charged, the License Officer shall have the power to base the fee upon a percentage of gross sales or may use any other method which will assure that the fee assessed will be uniform with that assessed on businesses of a like nature.

Section 5. License certificate.

5.1 Certificate information. Each license certificate issued hereunder shall state on its face the following information:

- (a) The name of the licensee and any other name under which such business is to be conducted.
- (b) The class of license issued.
- (c) The location where the business, trade or profession is to be conducted.
- (d) The date of issuance and expiration thereof.
- (e) Such other information as the License Officer shall determine.

5.2 Certificate display. Every license certificate issued under this ordinance shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the place of business so that the same may be easily seen. When such certificate has expired, it shall be removed by the licensee from the place of posting and no certificate which is not in full force and effect shall remain posted within the place of business. If the licensee's business is such that a certificate cannot be displayed, due to the transient or mobile nature of the business, then the licensee shall carry such certificate during all times in which the licensee is engaged in or pursuing the business for which such certificate has been issued and shall provide the certificate upon the request of an authorized officer.

Section 6. License administration.

6.1 Transfer of license. No license issued under this ordinance shall be assigned or transferred to any other person. A license shall not be deemed to authorize any person, other than the named licensee, to conduct business for which the license has been issued nor to authorize any other person, business, trade or profession to conduct business permitted under the authority of such license.

6.2 Revocation of license. Any license issued pursuant to the provisions of this ordinance may be revoked by the Town Council due to:

- (a) The failure of the licensee to comply with the requirements of this ordinance or any other regulation of Boulder Town, the State of Utah or the United States.
- (b) The conduct of any unlawful activities, or the permitting of such activities, on the premises of the business.

6.3 Notice of revocation. Prior to the revocation of a license or denial of an application to renew a license, the licensee or applicant shall be given notice stating the reason(s) the Town Council intends to revoke the license or deny the application for renewal and the date of the meeting at which such action shall be taken. Notice shall be given a least ten days prior to such meeting, but not more than thirty days prior. The licensee or applicant shall have the right to appear before the Council, and to be represented by legal counsel,

to hear the evidence supporting such action and shall have the right to present evidence as to why the license should not be revoked or the application denied.

6.4 Reciprocal recognition of licenses.

(a) No license shall be required for operation of any vehicle or equipment in Boulder Town when:

- (1) Such vehicle is merely passing through the town, and
- (2) Such vehicle is used exclusively for inter-town or interstate commerce.

(b) No license shall be required of any person whose only business activity in this municipality is the mere delivery of property sold by such person at a regular place of business maintained outside the town where:

- (1) Such person's business is at the time of delivery licensed by a Utah municipality or county in which such place of business is situated, and
- (2) The authority licensing such business grants to licensees of Boulder Town making deliveries within its jurisdiction, the same privilege upon substantially the same terms, as granted under this section, and
- (3) Neither the property delivered nor any of the facilities by which it was manufactured, produced or processed are subject to inspection by Boulder Town for compliance with health or sanitary standards.

(c) The License Officer shall, at the request of any person, certify a copy of this section to any municipality or county of the State of Utah.

Section 7. Definitions.

7.1 "Business" means and includes all activities engaged within Boulder Town carried on for the purpose of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in the term "business" unless otherwise specifically provided.

7.2 "Engaging in business" includes, but is not limited to, the sale of tangible personal property at retail or wholesale, the manufacturing of goods or property and the rendering of personal services for others. The term shall include those persons engaged in any profession, trade, craft, business, occupation or other calling, except the rendering of personal services by an employee to his/her employer under any contract of personal employment.

7.3 "Place of business" means each separate location maintained or operated by the

licensee within Boulder Town from which business activity is conducted or transacted.

7.4 “Each separate place of business” means each separate establishment or place of operation, whether or not operating under the same name, within Boulder Town, including a home or other place of lodging if the same is held out by advertisements, listings, or otherwise as the establishment or place of operation of a person engaging in the business of selling tangible, personal property at either retail or wholesale, or both, in the town.

7.5 “Employee” means the operator, owner or manager of a business and any persons employed by such person in the operation of said business in any capacity and also any salesman, agent or independent contractor engaged in the operation of the business in any capacity.

7.6 “Wholesaler” means a person doing a regularly organized wholesale jobbing business and selling to retail merchants, jobbers, dealers or other wholesalers, for the purpose of resale.

7.7 “Wholesale” means a sale of tangible personal property by wholesalers to retail merchants, jobbers, dealers or other wholesalers for resale, and does not include a sale by wholesalers or retailers to users or consumers not for resale, except at otherwise specified.

7.8 “Home Occupation” means an activity carried out for gain by a resident and conducted entirely within the resident’s home and/or a separate building of no more than 750 square feet and is clearly incidental and accessory to the residential use of the dwelling or property and provided that the home occupation:

- (a) does not change the residential character of the residence and does not result in noise, vibration, light, odor, dust, smoke, or other air pollution noticeable at or beyond the property line;
- (b) does not include any outside storage of goods, materials, or equipment;
- (c) has no signage;
- (d) complies with all required Federal and State licensing requirements;
- (e) complies with all required Local licensing requirements.

Section 8. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance, including but not limited to any exemption, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 9. General Repealer. Boulder Town Ordinance No. 28B and any other prior ordinance, policy, or resolution which is in conflict with this ordinance is hereby expressly repealed, except that the provisions of Boulder Town Ordinance No. 29A, 29B, and 29C are not hereby repealed, but remain in effect.

