

CHAPTER 6

BUSINESS LICENSES AND REGULATIONS

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Article 1

LICENSES AND PERMITS GENERALLY

Sec. 6-1. Purpose.

The purpose of this chapter is the regulation and registration of retail businesses operating within the town for the health, safety and welfare of the citizens of the town and for the proper collection of sales tax which supports the town. (Ord. 91-7 Sec. 1, 1991)

Sec. 6-2. License required.

No person shall engage or be engaged in the operation, conduct or carrying on of any retail, profession, trade or business within the town until he or she shall have first obtained a license therefor from the town, except as follows:

- (1) Nonprofit state corporations and federal, state or municipal corporations are hereby exempt from the license set forth in this chapter.
- (2) Persons conducting a business which has as its principal place of business outside of the town shall obtain a peddlers and solicitors license and/or permit instead of a business license. (Ord. 91-7 Sec. 1, 1991)

Sec. 6-3. Separate license required for each trade or business.

Any person operating, conducting or carrying on any retail trade, profession or business which contains or is composed of separate businesses shall secure individual licenses for each trade, profession or business. (Ord. 91-7 Sec. 1, 1991)

Sec. 6-4. License application.

Every person required to obtain a license under this chapter shall make application for the license to the town clerk upon forms provided by the town, and shall state under oath or affirmation such facts as may be required for the granting of such license. It is unlawful for any person to make any false statement or misrepresentation in connection with any application for a license, and the penalties provided in Title 31, C.R.S., shall be applicable. (Ord. 91-7 Sec. 1, 1991)

Sec. 6-5. Payment of fee.

The fee required for any license shall be paid at the office of the town clerk before the granting of the license. (Ord. 91-7 Sec. 1, 1991)

Sec. 6-6. License fees.

Every person required to be licensed by the provisions of this chapter shall pay as follows:

- (1) For sixty (60) days following the effective date of the ordinance codified in this article, there shall be no fee for any license.
- (2) Commencing sixty-one (61) days after the effective date of the ordinance codified in this article, a fee of five dollars (\$5.00) shall be imposed for every license. (Ord. 91-7 Sec. 1, 1991)

Sec. 6-7. Issuance.

Upon receipt of the required fee and compliance with Section 6-4, the town clerk shall issue a certificate separate from the tax receipt which shall indicate that the license tax has been paid for the specified year. (Ord. 91-7 Sec. 1, 1991)

Sec. 6-8. Carrying or posting license required.

No licensee shall fail to carry any license issued in accordance with the provisions of this chapter upon his or her person at all times when engaged in the operation, conduct or carrying on of any retail trade, profession or business for which the license was granted; except that, where such trade or business is operated, conducted or carried on at a fixed place or establishment, such license shall be exhibited at all times in some conspicuous place in the place of business. Every licensee shall produce his or her license for examination when requested to do so by any town police officer or by any person representing the town. (Ord. 91-7 Sec. 1, 1991)

Sec. 6-9. License nontransferable.

No license issued under the provisions of this article shall be transferable from person to person or place to place. (Ord. 91-7 Sec. 1, 1991)

Sec. 6-10. Period of license.

All licenses shall cover a period of three hundred sixty-five (365) days from the date of issuance of the license. (Ord. 91-7 Sec. 1, 1991)

Sec. 6-11. Suspension and revocation of license.

The local licensing authority has the power to suspend or revoke any license issued according to Section 12-47-110(1) to (8), C.R.S., and 1 C.C.R. 203, reg. 47-110.1 and 47-110.2, as amended. The local licensing authority has the specific authority to impose the optional procedures set forth in Section 12-47-110(3) to (6), C.R.S. (Ord. 91-7 Sec. 1, 1991; Ord. 94-15 Sec. 1, 1994)

Secs. 6-12--6-19. Reserved.**Article 2****PEDDLERS AND SOLICITORS****Sec. 6-20. Title.**

This article shall be known and cited as the *Hudson Peddlers and Solicitors Ordinance*. (Ord. 91-2 Sec. 1, 1991)

Sec. 6-21. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) *Clerk* means the town clerk.

(2) *Door-to-door sales* means soliciting at residences, commercial or office outlets, or elsewhere within the town, orders for the sale of or selling of goods, wares, merchandise, services, magazines, contracts, policies of insurance, stocks, bonds, rights or anything of value.

(3) *Sales tax* means the tax authorized and levied by and within the town, pursuant to ordinance (Ord. 91-2 Sec. 2, 1991)

Sec. 6-22. Permits and licenses.

(a) **Permit Required.** Each and every person who engages in door-to-door sales within the town when not previously requested or invited to do so by the owner or occupant of the residence or commercial or office outlet, shall, before going in or upon such residence or commercial or office outlet, register and obtain a permit from the town clerk and pay the permit fee as provided in this chapter.

(b) **License Required.** Each person who engages any other person for salary, commission or other remuneration to engage in door-to-door sales within the town when not previously requested or invited to do so by the owner or occupant of the residence or commercial or office outlet, shall, before commencing such sales, register and obtain a license from the town clerk and pay the license fee as provided by this chapter.

(c) **Sales tax license required.** Each and every person who engages in door-to-door sales or engages any other person for salary, commission or other remuneration to engage in door-to-door sales within the town shall,

before commencing such sales, obtain a sales tax license from the town clerk and pay the license fee as provided, as well as such other licenses and/or permits as may be required by law. (Ord. 91-2 Sec. 3, 1991)

Sec. 6-23. Fees.

(a) The license fee for each person who engages any other person for salary, commission or other remuneration to engage in door-to-door sales shall be thirty-five dollars (\$35.00), and such license shall be issued for six (6) months.

(b) The permit fee for each person engaging in door-to-door sales shall be thirty-five dollars (\$35.00), and such permit shall be issued for six (6) months or the term remaining on the license such permit is issued under, if any. (Ord. 91-2 Sec. 4, 1991)

Sec. 6-24. Application contents.

(a) **License Application Contents.** Each applicant for a license shall file with the town clerk an affidavit on a form supplied by the town clerk stating:

- (1) The full name of the applicant.
- (2) The business address of the applicant.
- (3) The business telephone numbers of the applicant.
- (4) The residence addresses, temporary and permanent of the applicant.

(5) The residence telephone numbers of the applicant.

(6) A description of the applicant, including height, weight, color of eyes and color of hair.

(7) The number and state of issuance of the applicant's motor vehicle operator's license or chauffeur's license, if any.

(8) The number on and state of issuance of the license plates or any motor vehicle owned, rented or being driven by the applicant and of any motor vehicle which the applicant intends to use in the course of door-to-door sales, a description of any such vehicle, and the name and address of the owner of such motor vehicle.

(9) A list of all municipalities in which a peddler's license is presently held.

(10) Whether the applicant is presently on parole or probation for any criminal violations.

(11) A brief explanation of the nature of the merchandise to be sold or other activity that requires a license under this chapter.

(12) The names, business addresses, business telephone numbers, residence addresses and residence telephone numbers of all individuals employing and/or supervising the applicant.

(13) If the applicant is a foreign corporation or an employee of such corporation, a statement in writing of the name, address and telephone number of an agent for process residing in the state.

(14) The number of permits requested and names and addresses of all those who may use such permit, not to exceed twenty-five (25) permits.

(b) Permit Application Contents. A permit application shall contain the same questions as a license application. (Ord. 91-2 Sec. 5, 1991)

Sec. 6-25. License or permit - grounds for denial.

(a) The town clerk may deny the issuance of a license or permit for the following reasons:

(1) Any misrepresentation, fraud, deception, breach of warranty or breach of contract in the town or elsewhere;

(2) Failure to comply with this chapter or violation of any ordinance applicable to his or her permitted activities;

(3) Failure to obtain a sales tax license as required by the town or failure of the applicant, his or her supervisor or his or her employer to remit any sales tax due the town.

(4) Felony convictions for crimes against the person or property of another, or institutionalization for mental illness which caused acts of violence against the person or property of another; provided, however, that such felony convictions or institutionalization occurred within the five (5) years preceding the date of application.

(b) For purposes of this section:

(1) Crimes or acts of violence against the person of another shall include homicide, attempted homicide, rape, attempted rape, sexual assault, assault, battery and other similar felonies involving moral turpitude by whatever name; and

(2) Crimes or acts against the property of another shall include theft, burglary, breaking and entering, larceny and other similar felonies involving moral turpitude by whatever name. (Ord. 91-2 Sec. 6, 1991)

Sec. 6-26. Transfer of licenses and permits.

(a) No person shall transfer or attempt to transfer his or her license to any other person, and no person shall use a license issued to any other person.

(b) No person shall transfer or attempt to transfer his or her permit to any other person, and no other person shall use a permit issued to any other person. (Ord. 91-2 Sec. 7, 1991)

Sec. 6-27. Records.

The town clerk shall maintain records showing each license or permit issued and the alleged violations of this article. (Ord. 91-2 Sec. 8, 1991)

Sec. 6-28. Appeal.

At his or her election, an applicant may appeal any decision relating to his or her license or permit by the town clerk to the board of trustees. If the applicant requests, the board of trustees shall hold a hearing pursuant to this code. The decision of the board of trustees shall be by a majority of the quorum of the board. (Ord. 91-2 Sec. 9, 1991)

Sec. 6-29. Expiration of license or permit.

Each license or permit shall expire on the date specified on the license or permit, and the town clerk shall issue no license or permit for a period longer than six (6) months. On the expiration of a license or permit, any person may apply for the issuance of a new license or permit. (Ord. 91-2 Sec. 10, 1991)

Sec. 6-30. Violation; penalties.

It shall be a violation of this article for any person who employs any other person to engage in door-to-door sales for a salary, commission or other remuneration in the town, without causing such employee to comply with this article, and they shall be guilty of a misdemeanor and, on conviction, shall be punished as set forth in Section 1-51. (Ord. 91-2 Sec. 11, 1991)

Sec. 6-31. Revocation of license or permit.

If the town clerk finds that any of the ground stated in Section 6-25 exist or that an applicant has made a false statement in his or her application, the town clerk shall revoke the license or permit; or for other just cause, communicated to the person, related to the health, safety or welfare of the citizens of the town or related to the person's business integrity or responsibility, the town clerk may revoke the license and permit. (Ord. 91-2 Sec. 12, 1991)

Sec. 6-32. Exhibit of permit.

Whenever requested by any police officer, an official of the town or any customer or prospective customer, a person shall exhibit identification and his or her permit. (Ord. 91-2 Sec. 13, 1991)

Sec. 6-33. Construction.

It is the intent of the board of trustees that not only each person who engaged in door-to-door sales in the town, but also each principal on behalf of whom such individual is acting, shall be licensed as required by this article. (Ord. 91-2 Sec. 14, 1991)

Sec. 6-34. Exemptions.

The following classes of persons shall not be required to obtain a license or permit otherwise required by this article:

- (1) Deliverymen or routemen who are engaged in the business of servicing and soliciting in connection with sales and delivery routes of newspapers, milk, bread, firewood and farm produce.

- (2) Persons soliciting lawn mowing and shoveling of snow.

- (3) Persons authorized by civic, religious, charitable, government or political organizations.

- (4) All companies that have a franchise agreement with the town.

- (5) Persons previously requested or invited to engage in door-to-door sales by the owner or occupant of a residence or commercial or office outlet.

- (6) Persons holding a valid and current business license issued by the town. (Ord. 91-2 Sec. 15, 1991)

Secs. 6-35--6-40. Reserved.

Article 3

SEXUALLY ORIENTED BUSINESSES

*Division 1
General Provisions*

Sec. 6-41. Purpose; intent.

- (a) The purpose and intent of this article is to establish reasonable and uniform regulations designed to curtail the potential harmful secondary effects of sexually oriented businesses upon the surrounding communities in which they are located. These reasonable and uniform regulations are designed to protect town citizens from increased crime, to preserve the quality of life, property values and character of neighborhoods and businesses, to deter the spread of urban blight, and to protect against the spread of sexually transmitted diseases.

(b) The provisions of this article shall not impose limitations or restrictions on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment of the United States Constitution or the Colorado Constitution, or to deny access by the distributors and exhibitors of sexually oriented materials to their intended market. It is also not the intent or purpose of this article to condone or legitimize the distribution of obscene material. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-42. Definitions.

Unless the context otherwise dictates, the words and phrases used in this article shall have the following meanings:

(1) *Board of trustees* is the board of trustees of the town.

(2) *Employee* means a person who works or performs in or for a sexually oriented business regardless of whether or not said person is paid a salary, commission, wage or other compensation by the operator of said business.

(3) *Establishment of a sexually oriented business* means and includes any of the following:

a. The opening or commencement of any such business as a new business;

b. The conversion of an existing business into a sexually oriented business;

c. The addition of a sexually oriented business to any other existing sexually oriented business; or

d. The relocation of a sexually oriented business.

(4) *Licensing officer* means the town clerk of the town.

(5) *Manager* means an operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

(6) *Operator* means and includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

(7) *Permittee and/or licensee* means a person in whose name a permit or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit or license.

(8) *Person* means an individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.

(9) *Premises or permitted or licensed premises* means any premises that requires a license or permit and that is classified as a sexually oriented business.

(10) *Principal owner* means any person owning, directly or beneficially:

a. Ten percent (10%) or more of a corporation's equity securities;

b. Ten percent (10%) or more of the membership interests in a limited liability company; or

c. In the case of any other legal entity, ten percent (10%) or more of the ownership interests in the entity.

(11) *Specified criminal acts* means any offense which is included in the definition of "unlawful sexual behavior" under Section 18-3-412.5, C.R.S., Sex Offenders-Duty to Register-Penalties, or any offense committed in another state that, if committed in the state, would constitute an offense involving unlawful sexual behavior, or any offense that has a factual basis of one (1) of the offenses specified in the definition of "unlawful sexual behavior." *Specified criminal acts* also includes any offense involving soliciting for prostitution, prostitution, patronizing a prostitute, pandering, pimping, public indecency or the distribution or possession of obscene materials.

(12) Transfer of ownership or control of a sexually oriented business means and includes any of the following:

a. The sale, lease or sublease of the business;

b. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or

c. The establishment of a trust, management arrangement, gift or other similar legal device which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

(13) *Zoning Code* means the town zoning ordinance as amended. (Ord. 02-08 Sec. 1, 2002)

Secs. 6-43—6-46. Reserved.

*Division 2
Permits*

Sec. 6-47. Permit required.

(a) No sexually oriented business shall be permitted to operate without a valid sexually oriented business permit issued by the town.

(b) It shall be unlawful for any person to operate or cause to be operated a sexually oriented business if said person knows or reasonably should know that:

(1) The business does not have a sexually oriented business permit.

(2) The business has a permit which is under suspension.

(3) The business has a permit which has been revoked.

(4) The business has a permit which has expired.

(c) Before any person may work at a licensed premises, he or she shall file a notice with the licensing officer of his or her intended employment on forms supplied by the licensing officer and shall receive approval of such employment from the licensing officer. The prospective employee shall supply such information as the licensing officer requires, including a set of fingerprints, on regular United States Department of

Justice forms. Upon approval, the employee may begin working at the licensed premises. If approval is denied, the prospective employee may, within twenty (20) days from the date of the denial, apply to the licensing officer for a hearing. The decision of the licensing officer after hearing may be appealed to the board of trustees, who may issue such order as is proper in the premises. An investigation fee of fifty dollars (\$50.00) shall accompany the notice of intended employment or a receipt of the licensing officer evidencing the payment of such fee at the time the notice is filed. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-48. Application.

(a) The licensing officer is responsible for granting, denying, revoking, renewing, suspending and canceling sexually oriented business permits for proposed or existing sexually oriented businesses.

(b) The building inspection department is responsible for ascertaining whether a proposed sexually oriented business for which a permit application has been submitted complies with all locational requirements of this article and the zoning ordinance.

(c) The chief of police, another duly authorized law enforcement representative or his or her designee is responsible for providing information on whether an applicant has been convicted of a specified criminal act during the time periods set forth in Section 6-57(c)(10) below.

(d) The building inspection department is responsible for inspecting a proposed, sexually oriented business in order to ascertain whether it is in compliance with applicable statutes and ordinances.

(e) Any person desiring to operate a sexually oriented business shall file with the licensing officer an original and two (2) copies of a sworn permit application on the standard application form supplied by the licensing officer.

(f) The completed application shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is an individual, the individual shall state his or her legal name and any aliases and submit satisfactory proof that he or she is:

a. Eighteen (18) years of age or older; or

b. Twenty-one (21) years of age or older if the sexually oriented business will provide live entertainment.

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

(3) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state the sexually oriented business's fictitious name.

(4) Whether the applicant or any other individual listed pursuant to subsection (f)(1) or (2) has been convicted of a specified criminal act within the times set forth in Section 6-57(c)(10) below, and, if so, the specified criminal act involved, the date of conviction and the place of conviction.

(5) Whether the applicant or any other individual listed pursuant to subsection (f)(1) or (2) has had a previous permit under this or other similar sexually oriented business ordinances from another city, town or county denied, suspended or revoked, and, if so, the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation.

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

(7) Whether the applicant or any other individual listed pursuant to subsection (f)(1) or (2) holds any other permits and/or licenses under this article or other similar sexually oriented business ordinances from another city, town or county and, if so, the names and locations of such other permitted businesses.

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

(9) The applicant's mailing address and residential address.

(10) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be oriented to the north or to some designated street or object and shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The licensing officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. If the sexually oriented business has or will have a peep booth or booths subject to the provisions of Division 5 of this article, the sketch shall show the locations of each manager's station and designate any portion of the premises in which patrons will not be permitted.

(11) A current certificate and straight-line drawing prepared within thirty (30) days prior to an initial application by a Colorado registered land surveyor depicting:

a. The property lines and the structures of the property to be certified;

b. The property lines of any church, school, library, daycare, educational facility, dwelling unit (single or multiple), public park or residential district within three hundred (300) feet of the property to be certified; and

c. The property lines and structures of any other sexually oriented business within one hundred (100) feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

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

(h) In the event that the licensing officer determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, he or she shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.

(i) The fact that a person possesses other types of state or town permits and/or licenses does not exempt him or her from the requirement of obtaining a sexually oriented business permit. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-49. Duty to supplement application.

Applicants for a permit under Section 6-48 above shall have a continuing duty to promptly supplement application information required by that section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty

(30) days from the date of such change shall be grounds for suspension of a permit. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-50. Investigation; application.

(a) Upon receipt of an application for a sexually oriented business permit properly filed with the licensing officer and upon payment of the nonrefundable application fee, the licensing officer shall immediately stamp the application as received and send photocopies of the application to the police department or the Weld County Sheriff's Office and the building inspection department. Each department or agency shall promptly conduct an investigation of the applicant, application and the proposed sexually oriented business in accordance with its responsibilities under law. Said investigation shall be completed within twenty (20) days of receipt of the application by the licensing officer. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it and, in the event it disapproves, state the reasons therefor. The police department or the Weld County Sheriff's Office shall only be required to provide the information specified in subsection 6-48(c), and shall not be required to approve or disapprove applications.

(b) A department or agency shall disapprove an application if it finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the town. After its indication of approval or disapproval, each department or agency shall immediately return the photocopy of the application to the licensing officer. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-51. Issuance.

(a) The licensing officer shall grant or deny an application for a permit within thirty (30) days from the date of its proper filing. Upon the expiration of the thirtieth (30th) day, the applicant shall be permitted to begin operating the business for which the permit is sought, unless and until the licensing officer notifies the applicant of a denial of the application and states the reasons for such denial.

(b) Grant of application for permit.

(1) The licensing officer shall grant the permit application for a sexually oriented business in the zoning districts where such use is permitted under Title 16 of this code, unless one (1) or more of the criteria set forth in subsection (c) below are present.

(2) The permit, 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 permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at any time.

(c) Denial of application for permit. The licensing officer shall deny the application for any of the following reasons:

(1) The applicant fails to show to the town's satisfaction that the requirements of the town's zoning ordinance have been met.

(2) An applicant is:

- a. Under eighteen (18) years of age, or
- b. Under twenty-one (21) years of age if the sexually oriented business will provide live entertainment.

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

(4) An applicant has failed to provide information required by this section for the issuance of the permit or has falsely answered a question or request for information on the application form.

(5) The premises to be used for the sexually oriented business have been disapproved by an inspecting agency pursuant to the provisions of subsection 6-48(b).

(6) The application or permit fees have not been paid.

(7) An applicant or the proposed business is in violation of, or is not in compliance with, any of the provisions of this article.

(8) The granting of the application would violate a statute, ordinance or court order.

(9) The applicant has a permit under this article which has been suspended or revoked within the previous twelve (12) months.

(10) An applicant has been convicted of a specified criminal act or acts for which:

a. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense;

b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; or

c. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanors.

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

(d) If the licensing officer denies the application, he or she shall notify the applicant of the denial and state the reasons for the denial. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-52. Expiration.

(a) Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 6-48 (for renewals, filing of original survey shall be sufficient) above. Application for renewal of a permit shall be made at least thirty (30) days before the expiration date of

the permit. If a renewal application is made fewer than thirty (30) days before the expiration date of a permit, the expiration of the permit will not be affected.

(b) If, subsequent to denial of renewal, the licensing officer finds that the basis for denial of the renewal of the permit has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date denial became final. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-53. Suspension.

(a) The licensing officer shall suspend a permit for a period not to exceed thirty (30) days if he or she determines that a permittee, or an employee of a permittee, has:

(1) Violated, or is not in compliance with any section of this article.

(2) Refused to allow an inspection of the sexually oriented business premises as authorized by this article.

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

(4) Engaged in a permit transfer contrary to Section 6-55 below. In the event that the licensing officer suspends a permit on the grounds that a permittee engaged in a permit transfer contrary to Section 6-55, the licensing officer shall forthwith notify the permittee of the suspension. The suspension shall remain in effect until the applicable section of this article has been satisfied.

(5) Operated the sexually oriented business in violation of the hours of operation provisions of Division 6.

(b) The suspension shall remain in effect until the violation of the statute, code, ordinance or regulation in question has been corrected. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-54. Revocation.

(a) The licensing officer shall revoke a sexually oriented business permit upon determining that:

(1) A cause of suspension in Section 6-53 above occurs and the permit has been suspended within the preceding twelve (12) months.

(2) A permittee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a permit.

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

(4) A permittee or an employee has knowingly allowed prostitution on the premises.

(5) A permittee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended.

(6) A permittee has been convicted of a specified criminal act for which the time period set forth in Section 6-57(c)(10) has not elapsed.

(7) On two (2) or more occasions within a twelve-month period, a person or persons committed an offense, occurring in or on the permitted premises, constituting a specified criminal act for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the permit.

(8) A permittee is delinquent in payment to the town or state for any taxes or fees.

(9) A permittee or an employee has knowingly allowed any specified sexual activity to occur in or on the permitted premises.

(10) The permittee has operated more than one (1) sexually oriented business within the same building, structure or portion thereof.

(b) When the licensing officer revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date revocation became effective. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-55. Transferability.

(a) A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.

(b) A permittee shall not transfer his or her permit to another person unless and until such other person satisfies the following requirements:

(1) Obtains an amendment to the permit from the licensing officer which provides that he or she is now the permittee, which amendment may be obtained only if he or she has completed and properly filed an application with the licensing officer, setting forth the information called for under Section 6-48 in the application; and

(2) Pays a transfer fee of twenty percent (20%) of the annual permit fee.

(c) No permit may be transferred when the licensing officer has notified the permittee that suspension or revocation proceedings have been or will be brought against the permittee.

(d) A permittee shall not transfer his or her permit to another location.

(e) Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-56. Appeal rights.

(a) Any denial, suspension or revocation of a new or renewal permit under this article may be appealed to the board of trustees by written notice within ten (10) days of such denial, suspension or revocation. Unless the applicant requests a longer period, the board of trustees must hold a hearing on the appeal

within thirty (30) days and must issue a decision affirming or reversing the denial, suspension or revocation within fifteen (15) days after the hearing.

(b) Any decision by the board of trustees shall be a final appealable order, and the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(c) In the event that an applicant or licensee seeks judicial review of a decision issued pursuant to this article, the applicant or licensee shall provide written notice of such appeal to the board of trustees within three (3) days of the filing of the appeal. Within ten (10) days of receiving such written notice of appeal, or within such shorter time as may be ordered by the court, the board of trustees shall transmit to the court in which appeal was sought a copy of the full administrative record for the matter, including a complete transcript of all the original papers, testimony and evidence offered, heard and taken into consideration in issuing the final order. The board of trustees shall provide any further information, assistance or cooperation requested by the reviewing court without delay.

(d) Subject to the provisions of subsection (f) below, any licensee lawfully operating a sexually oriented business prior to the denial of a permit renewal application, or the suspension or revocation of a permit, may continue to operate said business during the pendency of an appeal of a decision rendered under this article to the board of trustees or to a court.

(e) Subject to the provisions of subsection (f) below, any licensee lawfully acting as a manager in a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to serve

in such capacity during the pendency of an appeal of a decision rendered under this article to the board of trustees or to a court.

(f) In the event that an applicant for a new sexually oriented business permit or a new sexually oriented business manager license seeks judicial review of the denial of a new license, and such review does not result in a final judicial decision within thirty (30) days of the date the appeal was filed, the town will issue such applicant a provisional sexually oriented business permit or sexually oriented business manager license upon request of the applicant. The provisional license:

(1) Will allow an applicant for a sexually oriented business permit to operate the sexually oriented business named in the permit application under the same terms as a normal sexually oriented business permit issued pursuant to Section 6-51 above for the period of time specified in subparagraph (g) of this section.

(2) Will allow an applicant for a sexually oriented business manager license to act as a manager on the premises of a sexually oriented business under the same terms as a normal sexually oriented business employee license issued pursuant to Section 6-51 above for the period of time specified in subparagraph (g) of this section.

(3) Will be subject to the same requirements as a normal sexually oriented business permit or sexually oriented business manager license issued under Section 6-51 or 6-63 of this article.

(g) A provisional license will expire on whichever of the following three (3) dates is earliest:

(1) The date that a judicial decision is issued upholding the permit denial.

(2) The date on which a nonprovisional sexually oriented business permit or sexually oriented business manager license is issued to the applicant pursuant to a judicial decision overturning the license denial.

(3) The date one (1) year from the issuance of the provisional license.

(h) In the event that judicial review of the denial of a new permit or license application is still pending thirty (30) days before the expiration date of a provisional license, the provisional licensee may file a renewal license application with the town pursuant to Section 6-52 above. The licensing officer shall grant an application for renewal of a provisional license unless he or she determines that new grounds exist for denial of a permit or license application pursuant to Section 6-51 above which did not exist at the time of the original permit or license application. In the event that an application for renewal of a provisional license is denied and the applicant seeks judicial review of that denial, the town has the right to consolidate such review with the pending judicial appeal of the previous permit or license denial. (Ord. 02-08 Sec. 1, 2002)

Secs. 6-57—6-62. Reserved.

*Division 3
Manager's License*

Sec. 6-63. License required.

It shall be unlawful, and a person commits a misdemeanor, if he or she works as a manager of a sexually oriented business without first obtaining a manager's license. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-64. Application.

(a) A manager shall submit an application for a manager's license on a form to be provided by the licensing officer. The application shall contain the applicant's name, address, date of birth, phone number and the information required in Section 6-48.

(b) The licensing officer shall grant the application within ten (10) days of its filing unless:

- (1) The applicant is:
 - a. Under eighteen (18) years of age; or
 - b. Under twenty-one (21) years of age if the sexually oriented business will provide live entertainment.
- (2) The applicant has failed to provide the information required by this section.
- (3) The license fee has not been paid.
- (4) The applicant has been convicted of a specified criminal act within the times set forth in Section 6-51(c)(10). (Ord. 02-08 Sec. 1, 2002)

Secs. 6-65—6-70. Reserved.

*Division 4
Inspection*

Sec. 6-71. Inspection.

(a) An applicant or permittee shall permit representatives of the building inspection department, the health department and the fire department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(b) A person who operates a sexually oriented business or his or her agent commits a misdemeanor if he or she refuses to permit such lawful inspection of the premises at any time that it is occupied or open for business. (Ord. 02-08 Sec. 1, 2002)

Secs. 6-72--6-77. Reserved.

*Division 5
Sexually Explicit Films or Videos in Peep
Booths*

Sec. 6-78. Generally.

A person who operates or causes to be operated a sexually oriented business, which exhibits on the premises in a peep booth or similar viewing area, a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the requirements of this article. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-79. Regulation of peep booths.

(a) A sexually oriented business with a peep booth or similar viewing area shall have one (1) or more manager's stations, subject to the following regulations:

- (1) At least one (1) employee must be on duty and situated at each manager's station at all times that any patron is present inside the premises; and
- (2) 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 rest rooms. Rest rooms may not contain video display equipment. If the premises has two (2) or more manager's stations designated, then

the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any doors, walls, merchandise, display racks or other materials at all times, and no patron shall be permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Section 6-48.

(b) Peep booths and similar viewing areas shall be subject to the following regulations:

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

(2) No door, screen or other covering shall be placed or allowed to remain on any peep booth, and no holes or openings shall be placed or allowed to remain in the wall between any two (2) adjacent peep booths.

(c) A person having a duty under this article commits a misdemeanor if he or she knowingly fails to fulfill that duty. (Ord. 02-08 Sec. 1, 2002)

Secs. 6-80--6-85. Reserved.

*Division 6
Hours of Operation*

Sec. 6-86. Hours of operation.

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:

(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 a.m. 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. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-87. Exemption.

This article shall not apply to those areas of an adult motel that are private rooms. (Ord. 02-08 Sec. 1, 2002)

Secs. 6-88--6-90. Reserved.

*Division 7
Additional Regulations*

Sec. 6-91. Minimum age.

(a) It shall be unlawful for any person:

(1) Under the age of eighteen (18) years to be upon the premises of a sexually oriented business; or

(2) Under the age of twenty-one (21) years to be upon the premises of a sexually oriented business that provides live entertainment.

(b) It shall be unlawful for the licensee or any employee of the licensee to allow any person:

(1) Under the age of eighteen (18) years to be upon the premises of a sexually oriented business; or

(2) Under the age of twenty-one (21) years to be upon the premises of a sexually oriented business that provides live entertainment. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-92. Lighting regulations.

(a) Excluding a private room of an adult motel, the interior portion of the premises of a sexually oriented business to which patrons are permitted access shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place (including peep booths) at an illumination of not less than five (5) foot-candles 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 during the hours of operation prescribed in Section 6-86. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-93. Stage required in adult cabaret and adult theater.

Any adult cabaret or adult theater shall have one (1) or more separate areas designated as a stage in the diagram submitted as part of the application for the licensee. Entertainers shall perform only upon the stage. The stage shall be fixed and immovable. No seating for the audience shall be permitted within six (6) feet of the edge of the stage. No members of the audience shall be permitted upon the stage or within six (6) feet of the edge of the stage. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-94. Conduct in sexually oriented businesses.

(a) No licensee, manager or employee mingling with the patrons of a sexually oriented business, or serving food or drinks, shall be in a state of nudity. It is a specific defense to prosecution for a violation of this section that an employee of a sexually oriented business exposed any specified anatomical area during the employee's bona fide use of a rest room, or during the employee's bona fide use of a dressing room which is accessible only to employees.

(b) No licensee or employee shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the breasts, anus, genitals or other specified anatomical areas of any person. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-95. 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 (b) of this section.

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

(c) A sexually oriented business that provides tip boxes for its patrons as provided in this section shall post one (1) or more signs to be conspicuously visible to the patrons on the premises in letters at least one (1) inch high to read as follows: "All tips are to be placed in the tip box and not handed directly to employees. Any physical contact between a patron and employees is strictly prohibited." (Ord. 02-08 Sec. 1, 2002)

Sec. 6-96. Unlawful acts.

It shall be unlawful for the licensee or for any manager or employee to violate any of the requirements of this article or to knowingly permit any patron to violate the requirements of this article. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-97. Exemptions.

The provisions of this article regulating nude model studios do not apply to:

- (1) A college, junior college or university supported entirely or partly by taxation;
- (2) A private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or
- (3) A business located in a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and where no more than one (1) nude model is on the premises in a state of undress at any one (1) time. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-98. Fees.

- (a) The annual fee for a sexually oriented business permit is two hundred fifty dollars (\$250.00).
- (b) The annual manager's license fee is fifty dollars (\$50.00).
- (c) An applicant for a sexually oriented business permit shall pay a nonrefundable

application fee of eight hundred dollars (\$800.00) at the time of filing an application.

(d) An applicant for an employee permit shall pay a nonrefundable application fee of fifty dollars (\$50.00) at the time of filing an application. (Ord. 02-08 Sec. 1, 2002)

Secs. 6-99—6-104. Reserved.

Division 8

Criminal Penalties and Additional Relief

Sec. 6-105. Town's remedies.

- (a) If any person fails or refuses to obey or comply with or violates any of the criminal provisions, such person upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed four hundred ninety-nine dollars (\$499.00). Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation shall be considered as a separate offense.
- (b) Nothing herein contained shall prevent or restrict the town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

(c) All remedies and penalties provided for in this section shall be cumulative and independently available to the town, and the town shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law. (Ord. 02-08 Sec. 1, 2002)

Sec. 6-106—6-109. Reserved.

Article 4

ALCOHOLIC BEVERAGES

Division 1
In General

Sec. 6-110. Alcoholic beverage tastings.

(a) Pursuant to Section 12-47-301(10)(a), C.R.S., the town hereby authorizes alcoholic beverage tastings for licensed retail liquor stores and liquor-licensed drug stores within the town.

(b) The town shall not require a further application prior to allowing retail liquor licensees or liquor-licensed drug stores to conduct alcoholic beverage tastings, and elects not to impose additional limitations on such tastings beyond those limitations set forth in Title 12, Chapter 47, C.R.S. (Ord. 04-09 Sec. 1, 2004)

Sec. 6-111—6-120. Reserved.

Division 2
Liquor Licenses

Sec. 6-121. Purpose; intent.

(a) No license provided by this article shall be issued to or held by:

(1) Any person until the annual fee has been paid;

(2) Any person who is not of good moral character;

(3) Any corporation, any of whose officers, directors or stockholders holding ten percent (10%) of the outstanding and issued capital stock of the corporation are not of good moral character;

(4) Any partnership, association or company, any of whose officers, or any of whose members holding ten percent (10%) or more interest therein, are not of good moral character;

(5) Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the respective licensing authorities;

(6) Any sheriff, deputy sheriff, police officer, prosecuting officer, the state licensing authority or any of its inspectors or employees;

(7) Any person, unless he or she is with respect to his or her character, record and reputation satisfactory to the respective licensing authority; and

(8) Any natural person under twenty-one (21) years of age.

(b) In making a determination as to character or when considering the conviction of a crime, the local licensing authority shall be governed by the provisions of Section 24-5-101, C.R.S.

(c) Jurisdiction.

(1) In investigating the qualifications of the applicant or a licensee, the local licensing authority may have access to

criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the local licensing authority takes into consideration information concerning the applicant's criminal history record, the local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

(2) As used in subsection (1) of this section, *criminal justice agency* means any federal, state, or municipal court or any governmental agency or subunit of such agency that performs the administration of criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-122. Separate license for each business.

(a) Each license issued under this article is separate and distinct and no person shall exercise any of the privileges granted under any license other than that which he or she holds. A separate license shall be issued for each specific business and each location, and in such license the particular liquors which the applicant is authorized to manufacture or sell shall be named and described.

(b) In the event a specific business holding a license issued under this article changes its business location, an application for a new

license reflecting the change of location shall be made to the town clerk. An application fee in the amount of five hundred dollars (\$500.00) shall be paid to the town at the time of making the application.

(c) The town clerk shall cause the new application for a license reflecting the change of location to be placed on the agenda of a board of trustees (the *board*) meeting to be held not less than four (4) days nor more than thirty (30) days after the clerk has received the application. The applicant, or his or her attorney, shall be in attendance at the board meeting at which his or her application is presented. The date of presentation of the application to the board shall be deemed the date of filing the application. Upon receipt of the application, the board shall follow procedures set forth in this article for the investigation of the applicant and the conduct of a public hearing and the notice requirement for such public hearing. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-123. Sale of all or part of business interest.

(a) Whenever any individual, corporation or partnership existing or licensed under this article sells all or part of its corporate stock, partnership interest or business interest in a beer or liquor outlet and a new license application is required by the state, an application fee in the amount of five hundred dollars (\$500.00) shall be paid to the town at the time of making the application.

(b) The board shall follow the procedures in this article for the investigation of the applicant, and shall determine whether the investigation reveals any information tending to establish that the applicant may be prohibited from holding a license pursuant to section 6-121 of this article. If the investigation

reveals no information tending to establish that the applicant may be prohibited from holding a license, the town clerk shall issue a license to the applicant. Provided, however, that if the investigation reveals any information tending to establish that the applicant may be prohibited from holding a license, the town clerk shall cause the new application for the existing outlet to be placed on the agenda not less than four (4) days nor more than thirty (30) days after the town clerk has received the application. The applicant, or his or her attorney, shall be in attendance at the board meeting at which his or her application is presented. The date of presentation of the application to the board shall be deemed the date of filing of the application. Upon receipt of the application, the board shall follow procedures set forth in this article for conducting a public hearing. The board shall only consider the criteria listed in Section 6-111 of this article when conducting the hearing.

(c) The town clerk shall have the authority to issue a temporary permit to any applicant under this section who has also satisfied the applicable provisions of Section 12-47-303, C.R.S. and the provision of such statute shall apply to both the issuance and administration of such a temporary permit. The town clerk shall charge a fee of one hundred dollars (\$100.00) for a temporary permit. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-124. Change of corporate officers or directors.

(a) Whenever any corporation causes a change in its corporate officers or directors, and a license addendum is required to be filed with the state, an application fee in the amount of one hundred dollars (\$100.00) shall be paid to the town at the time of filing the addendum with the town.

(b) Upon the filing of a license addendum, the procedures set forth in this section of this article shall be followed. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-125. Additional licenses; rules and regulations; fees.

The town clerk shall establish rules and regulations concerning temporary beer or liquor licenses, special events licenses and renewal of 3.2 beer licenses. The clerk is authorized to establish rules and regulations not inconsistent with other provisions of this article for the filing, processing, investigation and review of applications for these licenses. The application and renewal fees for these licenses shall not be greater than the maximum fee allowed by law. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-126. Renewal.

(a) All renewal applications for malt, vinous and spirituous liquor licenses and fermented malt beverage licenses shall be submitted to the town clerk on the prescribed forms, together with the applicable license fee, no later than forty-five (45) days prior to the date on which the license expires. No renewal application shall be accepted by the town clerk which is not complete in every detail.

(b) Upon receiving the completed renewal application, the town clerk shall assemble the file of the applicant and review the file to determine whether *good cause* is present for nonrenewal. Whether good cause is present is a fact specific inquiry depending on the circumstances of the case, and may be based on evidence that continuation of the license would be contrary to the public interest, as well as the conduct of the licensee. If the town clerk's review indicates no facts or circumstances supporting good cause for

nonrenewal, the town clerk shall issue a renewal license. Provided, however, that in the event that the renewal application is made by a financial institution which came into possession of the license by virtue of a deed in lieu of foreclosure, a hearing must be held before the board.

(c) If there is information before the town clerk tending to constitute good cause for not renewing a particular license for an additional year, the town clerk, at the direction of the board, shall cause to be issued a notice of hearing on the license renewal. In the event the town clerk issues a notice requiring a hearing to renew a license, the notice shall be served and a notice of the hearing shall be conspicuously posted on the premises at least ten (10) days prior to the hearing.

(d) Hearings held on any renewal application, after proper notice has been given, may result in denial of renewal of the license for good cause.

(e) In the event that a license is renewed by the licensing authority, such renewal will not affect a pending show cause order which relates to an incident that occurred prior to the date of the renewal. The licensing authority shall be authorized to take whatever action is necessary against a licensee either in the form of suspension or revocation of the liquor license regardless of when such license has been renewed. (Ord. 05-03 Sec. 1, 2005)

Secs. 6-127—6-136. Reserved.

*Division 3
3.2 Beer*

Sec. 6-137. Application required; filing.

(a) An application for a 3.2 beer license shall be required for the following:

- (1) Sales for consumption off the premises of the licensee;
- (2) Sales for consumption on the premises of the licensee; and
- (3) Sales for consumption both on and off the premises of the licensee.

A person licensed pursuant to this subsection may deliver at retail fermented malt beverages in factory-sealed containers in conjunction with the delivery of food products, if such person has obtained a permit for the delivery of fermented malt beverages from the state licensing authority.

(b) All new applications for 3.2 beer licenses shall be filed, in duplicate, on forms made available by the office of the secretary of state, with the town clerk and shall be accompanied by the following:

- (1) Three (3) letters of character reference;
- (2) In the case of a partnership, except between husband and wife, a certified copy of the partnership agreement and a statement showing the financial and management interests of each partner, along with their name, residence address and telephone number;
- (3) In the case of a corporation, a copy of its articles of incorporation and, if a foreign corporation, evidence of qualification to do business in this state and a sworn statement setting forth the names, residence addresses and telephone numbers of each stockholder, director and officer of the corporation; and

(4) In the case of existing buildings, a plan of the interior of the building; in the

case of buildings not yet built, architectural plans and specifications for the building. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-138. Manager registration.

A person licensed pursuant to this division shall manage the premises himself or herself or shall employ a separate and distinct manager on the premises and shall report the name of such manager to the town. Such person licensed shall also report any change in managers to the town within thirty (30) days after the change. Such failure to report a change in managers shall be grounds for suspension of a license. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-139. Fee.

An application fee in the amount of five hundred dollars (\$500.00) and a license fee of three dollars and seventy-five cents (\$3.75) shall be paid to the town at the time of making an application for a 3.2 beer license, and a renewal fee of twenty-five dollars (\$25.00) shall also be imposed by the town for renewals. This fee shall be used by the town to defray the expenses incurred by the town in investigating the applicant and conducting the hearing. In addition, the town shall impose a fee of seventy-five dollars (\$75.00) for the registration of a manager if the manager is different from the licensed person, and shall also impose a fee of seventy-five dollars (\$75.00) for a change of managers in accordance with section 6-138 of this article. No part of this fee shall be refundable to the applicant for any reason. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-140. Establishing neighborhood and public hearing dates.

(a) The town clerk shall cause the application for a 3.2 beer license to be placed on

the agenda of a board meeting to be held not less than four (4) days nor more than thirty (30) days after the clerk has received the application. The date of presentation of the application to the board shall be deemed the date of filing of the application.

(b) The corporate limits of the town shall be designated the neighborhood upon the presentation of the application.

(c) The board shall also set a date for a public hearing, which date shall be held not less than thirty (30) days from the date of the board meeting at which the date is set. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-141. Public notice.

(a) The applicant for a 3.2 beer license shall cause to be posted and published a public notice of hearing thereon. The sign used for posting such notice shall be of cardboard material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height and stating the type of license applied for, the date of the application, the date of 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 sign shall contain the names and addresses of all partners. If the applicant is a corporation, association or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary and manager or other managing officers.

(b) The published notice shall contain the same information as that required for signs, and shall be composed of eight-point boldface type so as to be not less than one (1) column in width nor less than six (6) inches in length.

(c) Where the building in which the 3.2 beer is to be sold is in existence at the time of the application for the license, the sign shall be placed on the premises so as to be conspicuous and plainly visible to the general public from the exterior of the building. If the building is not in existence at the time of such application, the sign shall be posted upon the premises upon which the building is to be constructed in such manner that it shall be conspicuous and plainly visible to the general public. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-142. Investigation of applicant.

(a) The Weld County Sheriff's Department shall make an investigation of the applicant for a 3.2 beer license and, in the case of a corporation, the board of directors of the applicant and, in the case of a partnership, the partners of the applicant. Such investigation shall include the fingerprinting and photographing of the applicant and the obtaining from the Colorado Bureau of Investigation of a report on the applicant. A written report of the finding of such investigation shall be delivered by the Weld County Sheriff's Department to the town clerk at least ten (10) days prior to the hearing on the application.

(b) Not less than five (5) days prior to the date of the hearing on an application under this division, the written report of the findings based on the investigation by the police department shall be made available to the applicant and other interested parties. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-143. Procedure at hearing.

The rules of procedure to be followed in the conducting of the public hearing upon an application for a 3.2 beer license shall be established by the mayor. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-144. Considerations for approving or denying application.

Before entering any decision approving or denying the application for a 3.2 beer license, the board shall consider the following:

(1) The desires of the adult inhabitants of the neighborhood as evidenced by petitions, remonstrances or otherwise;

(2) The reasonable requirements of the neighborhood;

(3) The character and reputation of the applicant subject to the provisions contained in Section 6-121 of this article; and

(4) Other pertinent facts and evidence affecting the qualification of the applicant. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-145. Approval or disapproval.

The decision of the board approving or disapproving the application for a 3.2 beer license shall be in writing, stating the reasons, and shall be issued within thirty (30) days after the date of the public hearing on the application. A copy of such decision shall be sent by mail to the applicant to the address shown in the application. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-146. Issuance of license in cases of building to be constructed.

In the case of buildings not yet in existence, where the board votes in favor of the issuance of a 3.2 beer license, the license shall not be issued until the building in which the business is to be conducted is ready for occupancy, and then only after inspection of the premises has been made to determine that the

applicant has complied substantially with the architect's drawings and plans and specifications submitted with the application for such license. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-147. Change of location.

All of the procedures outlined in this division shall be applicable to a change of location of an existing 3.2 beer license. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-148. Rehearing limitation.

No application for the issuance of a 3.2 beer license shall be considered by the board if an application for a similar type license has been denied for the same location within the two (2) years immediately preceding the date of such new application. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-149. Judicial review.

Any person applying to the courts for a review of any licensing authority's decision shall apply for review within thirty (30) days after the date of decision and shall be required to pay the cost of preparing a transcript of proceedings before the licensing authority when such a transcript is furnished by the licensing authority pursuant to court order. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-150—6-159. Reserved.

*Division 4
Liquor*

Sec. 6-160. Definitions.

As used in this Division, the term *liquor license* shall include the following classes of licenses:

- (1) Retail liquor store license;
- (2) Liquor-licensed drugstore;
- (3) Beer and wine license;
- (4) Hotel and restaurant license;
- (5) Club license;
- (6) Tavern license;
- (7) Optional premises license;
- (8) Brew pub license;
- (9) Arts license; and
- (10) Racetrack license. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-161. Application.

All applications for new liquor licenses shall be filed with the town clerk. They shall be filed in duplicate on forms made available by the state liquor licensing authority. Each application shall be verified by the oath or affirmation of such persons as prescribed by the state licensing authority. Any application shall be accompanied by the following:

- (1) Three (3) letters of character reference;
- (2) The occupational tax required by the town;
- (3) In the case of existing buildings, a plan of the interior of the building; in the case of buildings not yet built, architectural plans and specifications for the building;
- (4) Some evidence of ownership or right to possession of the premises, consisting of a copy of a deed or lease thereto;

(5) In the case of a partnership, except between husband and wife, a certified copy of the partnership agreement and a statement showing the financial and management interests of each partner, along with their name, residence address and telephone number; and

(6) In the case of a corporation, a copy of its articles of incorporation and, if a foreign corporation, evidence of qualification to do business in this state and a sworn statement setting forth the names, residence address and telephone number of each stockholder, director and officer of the corporation. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-162. Optional premises.

(a) *Optional premises* means:

(1) Premises specified in an application for a hotel and restaurant license under section 12-47-101, C.R.S. with related outdoor sports and recreational facilities for the convenience of its guests or the general public located on or adjacent to the hotel and restaurant within which such license is authorized to serve alcoholic beverages in accordance with the provisions of this division and at the discretion of the state and local licensing authorities; and

(2) The premises specified in an application for an optional premises license located on an applicant's outdoor sports and recreational facility. For purposes of this section, *outdoor sports and recreational facility* means a facility which charges a fee for the use of such facility.

(b) The requirements for an optional premises license shall be:

(1) An applicant or holder of a hotel and restaurant license desiring to sell or serve alcoholic beverages on an optional premises shall:

a. Provide a scale drawing showing the area to be licensed;

b. Make a mark on the scale drawing indicating the location where alcoholic beverages are to be dispensed, significant land or architectural factors; and

c. An affidavit of the owner or the agent and manager of the facility showing the need, convenience or desirability of the optional premises license.

(2) The decisions of the board shall be made by resolution within thirty (30) days of the date of providing all information pertinent to the application. No public hearing shall be required, but the board may order a public hearing should, in its discretion, a public hearing be necessary. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-163. Application fee.

An application fee in the amount of five hundred dollars (\$500.00) shall be paid to the town at the time of making an application for a liquor license. This fee shall be used by the town to defray the expenses incurred by the town in investigating the applicant and conducting the hearing. No part of this fee shall be refundable to the applicant for any reason. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-164. Initial appearance before board.

(a) The town clerk shall cause the application for a liquor license to be placed on the agenda of a board meeting to be held not less than four (4) days nor more than thirty (30) days after the clerk has received the application. The date of presentation of the application to the board shall be deemed the date of filing the application.

(b) The board shall designate the neighborhood upon the presentation of the application.

(c) The applicant shall comply with the policies and procedures established by the town clerk and adopted by the board for applications, including but not limited to the form of petitions and the means and methods for surveying and canvassing the neighborhood.

(d) The board shall also set a date for public hearing, which shall be not less than thirty (30) days from the date of the board meeting at which the date is set. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-165. Public notice.

The applicant for a liquor license shall cause to be posted and published a public notice of hearing thereon:

(1) The sign used for posting such notice shall be of cardboard material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height and stating the type of license applied for, the date of the application, the date of 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 corporation, association or other organization, the sign shall contain the names and addresses of the president, vice president, secretary and manager or other managing officers.

(2) The published notice shall contain the same information as that required for signs, and shall be composed of eight-point boldface type so as to be not less than one (1) column in width nor less than six (6) inches in length.

(3) Where the building in which the liquor is to be sold is in existence at the time of the application for the license, the sign shall be placed on the premises so as to be conspicuous and plainly visible to the general public from the exterior of the building. If the building is not in existence at the time of such application, the sign shall be posted upon the premises upon which the building is to be constructed in such manner that it shall be conspicuous and plainly visible to the general public. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-166. Investigation of applicant.

(a) The Weld County Sheriff's Department shall make an investigation of the applicant for a liquor license and, in the case of a corporation, the board of directors of the applicant and, in the case of a partnership, the partners of the applicant. Such investigation shall include the fingerprinting and photographing of the applicant and the obtaining from the Colorado Bureau of Investigation of a report on the applicant. A written report of the finding of such investigation shall be delivered by the chief of police to the town clerk at least ten (10) days prior to the hearing on the application.

(b) Not less than five (5) days prior to the date of the hearing on an application under this division, the written report of the findings based on the investigation by the Weld County Sheriff's Department shall be made available to the applicant and other interested parties. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-167. Procedure at hearing.

The rules of procedure to be followed in the conducting of the public hearing upon an application for a liquor license shall be established by the mayor. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-168. Consideration of factors.

Before entering any decision approving or disapproving the application for a liquor license, the board shall consider the following:

- (1) The facts and evidence of the investigation;
- (2) The reasonable requirements of the neighborhood for the type of license for which application has been made, including reference to the number, type and availability of liquor outlets located in or near the neighborhood under consideration;
- (3) The desires of the adult inhabitants of the neighborhood as evidenced by petitions, remonstrances or otherwise; and
- (4) Other pertinent facts and evidence affecting the qualification of the applicant. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-169. Decision of board.

The decision of the board approving or denying the application for a liquor license shall be in writing, stating the reasons, and shall be issued within thirty (30) days after the date of the public hearing thereon. A copy of such decision shall be sent by mail to the applicant at the address shown in the application. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-170. License fees.

(a) The following license fees shall be paid to the town annually in advance:

(1) For each retail liquor store license, one hundred fifty dollars (\$150.00). Pursuant to subsection (c) below, one hundred twenty-seven dollars and fifty cents (\$127.50) shall be paid to the Colorado Department of Revenue, and twenty-two dollars and fifty cents (\$22.50) shall be paid to the town clerk;

(2) For each liquor-licensed drugstore, one hundred fifty dollars (\$150.00). Pursuant to subsection (c) below, one hundred twenty-seven dollars and fifty cents (\$127.50) shall be paid to the Colorado Department of Revenue, and twenty-two dollars and fifty cents (\$22.50) shall be paid to the town clerk;

(3) Beer and wine licenses:

a. For each beer and wine license, except as provided in subparagraph b below, three hundred twenty-five dollars (\$325.00). Pursuant to subsection

c. below, two hundred seventy-six dollars and twenty-five cents (\$276.25) shall be paid to the Colorado Department of Revenue, and forty-eight dollars and seventy-five cents (\$48.75) shall be paid to the town clerk;

b. For each beer and wine license issued to a resort hotel, three hundred seventy-five dollars (\$375.00). Pursuant to subsection (c) below, three hundred eighteen dollars and seventy-five cents (\$318.75) shall be paid to the Colorado Department of Revenue, and fifty-six dollars and twenty-five cents (\$56.25) shall be paid to the town clerk;

(4) For each hotel and restaurant license, five hundred dollars (\$500.00). Pursuant to subsection (c) below, four hundred twenty-five dollars (\$425.00) shall be paid to the Colorado Department of Revenue, and seventy-five dollars (\$75.00) shall be paid to the town clerk;

(5) For each tavern license, five hundred dollars (\$500.00). Pursuant to subsection (c) below, four hundred twenty-five dollars (\$425.00) shall be paid to the Colorado Department of Revenue, and seventy-five dollars (\$75.00) shall be paid to the town clerk;

(6) For each optional premises license, five hundred dollars (\$500.00). Pursuant to subsection (c) below, four hundred twenty-five dollars (\$425.00) shall be paid to the Colorado Department of Revenue, and seventy-five dollars (\$75.00) shall be paid to the town clerk;

(7) For each club license, two hundred seventy-five dollars (\$275.00). Pursuant to subsection (c) below, two hundred thirty-three dollars and seventy-five cents (\$233.75) shall be paid to the Colorado Department of Revenue, and forty-one dollars and twenty-five cents (\$41.25) shall be paid to the town clerk;

(8) For each brew pub license, five hundred dollars (\$500.00). Pursuant to subsection (c) below, four hundred twenty-five dollars (\$425.00) shall be paid to the Colorado Department of Revenue, and seventy-five dollars (\$75.00) shall be paid to the town clerk;

(9) For each arts license, two hundred seventy-five dollars (\$275.00). Pursuant to subsection (c) below, two hundred thirty-three dollars and seventy-five cents (\$233.75) shall be paid to the Colorado Department of Revenue, and forty-one dollars and twenty-five cents (\$41.25) shall be paid to the town clerk;

(10) For each racetrack license, five hundred dollars (\$500.00). Pursuant to subsection (c) below, four hundred twenty-five dollars (\$425.00) shall be paid to the Colorado Department of Revenue, and seventy-five dollars (\$75.00) shall be paid to the town clerk; and

(11) For each bed and breakfast permit, twenty-five dollars (\$25.00). Pursuant to subsection (c) below, twenty-one dollars and twenty-five cents (\$21.25) shall be paid to the Colorado Department of Revenue, and three dollars and seventy-five cents (\$3.75) shall be paid to the town clerk.

(b) No rebate shall be paid by the town of any alcoholic beverage license fee paid for any such license issued by it, except upon affirmative action by the local licensing authority rebating a proportionate amount of such license fee.

(c) Eighty-five percent (85%) of the license fees provided for in this section and collected by the town clerk shall be paid to the Colorado Department of Revenue, which shall transmit said fees to the state treasurer to be credited to the old age pension fund.

(d) Each application for a license provided for in this section filed with the local licensing authority shall be accompanied by an application fee in the following amounts to cover actual and necessary expenses:

- (1) For a new license, five hundred dollars (\$500.00);
- (2) For a transfer of location or ownership, five hundred dollars (\$500.00) each;
- (3) For a renewal of license, fifty dollars (\$50.00), except that an expired license renewal fee shall be five hundred dollars (\$500.00); and
- (4) For the registration of a manager who is separate from the licensed person, or for a change in managers, seventy-five dollars (\$75.00).

(e) The local licensing authority may charge corporate applicants and limited liability companies up to one hundred dollars (\$100.00) for the cost of each fingerprint analysis and background investigation undertaken to qualify new officers, directors, stockholders, members or managers pursuant to the requirements of Section 6-121 of this article;

however, the local licensing authority shall not collect such a fee if the applicant has already undergone a background investigation and paid a fee to the state licensing authority. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-171. Business premises prerequisite.

In the case of buildings not yet in existence, where the board votes in favor of the issuance of a liquor license, the license shall not be issued until the building in which the business is to be conducted is ready for occupancy, and then only after inspection of the premises has been made to determine that the applicant has complied substantially with the architect's drawings and plans and specifications submitted for such license. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-172. Distance from schools.

(a) No liquor license provided for by this Division shall be issued to or held by any person who will operate any place where liquor is sold or is to be sold by the drink within five hundred (500) feet from any public or parochial school or the principal campus of any college, university or seminary.

(b) Subsection (a) does not apply to:

- (1) The renewal or reissuance of any license once granted;
- (2) Any licensed premises located or to be located on land owned by a municipality;
- (3) A liquor license in effect and actively doing business before the principal campus was constructed; or

(4) Any club located within the principal campus of any college, university or seminary, which limits its membership to the faculty or staff of such institution. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-173. Transfer.

No license for alcoholic liquor granted under the provisions of this division shall be transferable, except that when a license has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license period. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-174. Change of location.

All of the procedures outlined in this division shall be applicable to a change of location of an existing liquor license. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-175. Rehearing limitation.

No application for the issuance of an alcoholic liquor license shall be considered by the board if an application for a similar type of license has been denied for the same location within the two (2) years immediately preceding the date of such new application. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-176. Judicial review.

Any person applying to the courts for a review of the state or any local licensing authority's decision shall apply for review

within thirty (30) days after the date of decision of refusal by a local licensing authority or, in the case of approval by a local licensing authority, within thirty (30) days after the date of decision by the state licensing authority, and shall be required to pay the cost of preparing a transcript of proceedings before the licensing authority when such a transcript is demanded by the person taking the appeal or when such a transcript is furnished by the licensing authority pursuant to court order. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-177. Exemptions.

(a) The provisions of this division shall not apply to the sale or distribution of sacramental wines sold and used for religious purposes.

(b) Any provision of this article to the contrary notwithstanding, when permitted by federal law, rules and regulations promulgated pursuant thereto, a head of a family may produce for family use and not for sale such amount of malt or vinous liquor as is exempt from the federal excise tax on such liquors when produced by a head of a family for family use and not for sale.

(1) The production of malt or vinous liquors under the circumstances set forth in this subsection shall be in strict conformity with federal law, and rules and regulations issued pursuant thereto.

(2) Malt or vinous liquors produced pursuant to the provisions of this subsection shall not be required to obtain any license provided by this division. (Ord. 05-03 Sec. 1, 2005)

Secs. 6-178—6-187. Reserved.

*Division 5
Regulation of Conduct in Establishments
Selling Alcoholic Beverages*

Sec. 6-188. Definitions.

The following words, terms and phrases, when used in sections 6-126 and 6-189 through 6-197 of this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult means a person lawfully permitted to purchase alcoholic beverages.

Alcoholic beverage means fermented malt beverage or malt, vinous or spirituous liquors; except that *alcoholic beverage* shall not include confectionery containing alcohol within the limits prescribed by section 25-5-410(1)(i)(II), C.R.S.

Bed and breakfast means an overnight lodging establishment that provides at least one (1) meal per day at no charge other than a charge for overnight lodging and does not sell malt, vinous, or spirituous liquors by the drink.

Brew pub means a retail establishment that manufactures not more than one million eight hundred sixty thousand (1,860,000) gallons of malt liquor on its premises each year.

Brewery means any establishment where malt liquors are manufactured, except brew pubs licensed under this article.

Club means:

a. A corporation that:

1. Has been incorporated for not less than three (3) years;

2. Has a membership that has paid dues for a period of at least three (3) years; and

3. Has a membership that for three (3) years has been the owner, lessee or occupant of an establishment operated solely for objects of a national, social, fraternal, patriotic, political or athletic nature, but not for pecuniary gain, and the property as well as the advantages of which belong to the members.

b. A corporation that is a regularly chartered branch or lodge, or article of a national organization that is operated solely for the objects of a patriotic or fraternal organization or society, but not for pecuniary gain.

Distillery means any establishment where spirituous liquors are manufactured.

Fermented malt beverage or *3.2 beer* means any beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops or any similar product or any combination thereof in water containing not less than one-half of one percent (0.5%) alcohol by volume and not more than three and two-tenths percent (3.2%) alcohol by weight or four percent (4%) alcohol by volume; except that *fermented malt beverage* shall not include confectionery containing alcohol within the limits prescribed by section 25-5-410(1)(i)(II), C.R.S.

Fine means a form of discipline imposed pursuant to this article in lieu of a suspension. Any fine shall be the equivalent of twenty percent (20%) of the retail licensee's estimated gross revenues from sales of alcoholic beverages during the period of the proposed suspension, except that the fine shall be not less than two hundred dollars (\$200.00) nor more than five thousand dollars (\$5,000.00).

Good cause, for the purpose of refusing or denying a license renewal or initial license issuance, means:

- a. The licensee or applicant has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of this article or any rules and regulations promulgated pursuant to this article;
- b. The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license in prior disciplinary proceedings or arose in the context of potential disciplinary proceedings;
- c. In the case of a new license, the applicant has not established the reasonable requirements of the neighborhood or the desires of its adult inhabitants as provided in section 12-47-301(2), C.R.S.; or
- d. Evidence that the licensed premises have been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the establishment is located, which evidence must

include a continuing pattern of fights, violent activity or disorderly conduct. For purposes of this paragraph, *disorderly conduct* is defined in section 18-9-106, C.R.S.

Hard cider means an alcoholic beverage containing at least one-half of one percent (0.5%) and less than seven percent (7%) alcohol by volume that is made by fermentation of the natural juice of apples or pears, including but not limited to flavored hard cider and hard cider containing not more than 0.392 gram of carbon dioxide per one hundred (100) milliliters. For the purpose of simplicity of administration of this article, *hard cider* shall in all respects be treated as vinous liquor except where expressly provided otherwise.

Hotel means any establishment with sleeping rooms for the accommodation of guests and having restaurant facilities.

Inhabitant means an individual who resides in a given neighborhood or community for more than six (6) months each year.

Lewd or indecent displays means performing acts of or acts which simulate:

- a. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law;
- b. The touching, caressing or fondling of the breast, buttocks, anus or genitals;
- c. The displaying of the pubic hair, anus, vulva or genitals; and

d. The displaying of a post-pubertal human female breast below a point immediately above the top of the areola, or the displaying of the post-pubertal human female breast where the nipple only or the nipple and the areola only are covered.

License means a grant to a licensee to manufacture or sell fermented malt beverages or malt, vinous or spirituous liquors as provided by this article.

Licensed premises means the premises specified in an application for a license under this article which are owned or in possession of the licensee and within which such licensee is authorized to sell, dispense or serve fermented malt beverages or malt, vinous or spirituous liquors in accordance with the provisions of this article.

Licensee means a person holding a license issued pursuant to this article.

Limited winery means any establishment manufacturing not more than one hundred thousand (100,000) gallons, or the metric equivalent thereof, of vinous liquors annually which uses not less than seventy-five percent (75%) Colorado-grown products in the manufacture of such vinous liquors.

Liquor license shall include the following classes of licenses:

- a. Retail liquor store license;
- b. Liquor-licensed drugstore;
- c. Beer and wine license;

- d. Hotel and restaurant license;
- e. Club license;
- f. Tavern or gaming tavern license;
- g. Optional premises license;
- h. Brew pub license;
- i. Arts license; and
- j. Racetrack license.

Liquor-licensed drugstore means any drugstore licensed by the state board of pharmacy that has also applied for and has been granted a license by the state licensing authority to sell malt, vinous and spirituous liquors in original sealed containers for consumption off the premises.

Local licensing authority means, for purposes of this article, the town's special licensing authority.

Location means a particular parcel of land that may be identified by an address or by other descriptive means.

Malt liquors includes beer and shall be construed to mean any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops or any other similar product, or any combination thereof, in water containing more than three and two-tenths percent (3.2%) of alcohol by weight or four percent (4%) alcohol by volume.

Meal means a quantity of food of such nature as is ordinarily consumed by an individual at regular intervals for the purpose of sustenance.

Medicinal spirituous liquors means any alcoholic beverage, excepting beer and wine, that has been aged in wood for four (4) years and bonded by the United States government and is at least one hundred (100) proof.

Nudity means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

Optional premises means:

a. Premises specified in an application for a hotel and restaurant license under section 12-47-103, C.R.S. with related outdoor sports and recreational facilities for the convenience of its guests or the general public located on or adjacent to the hotel or restaurant which is licensed to serve alcoholic beverages in accordance with the provisions of this article and at the discretion of the state and local licensing authorities; and

b. The premises specified in an application for an optional premises license located on an applicant's outdoor sports and recreational facility. For purposes of this paragraph, *outdoor sports and recreational facility* means a facility that charges a fee for the use of such facility.

Person means a natural person, partnership, association, company, corporation or organization or a manager, agent, servant, officer or employee thereof.

Premises means a distinct and definite location, which may include a building, a part of a building, a room or any other definite contiguous area.

Racetrack means any premises where races meet or simulcast races with pari-mutuel wagering are held in accordance with the provisions of section 12-60-102, C.R.S.

Rectify means to blend spirituous liquor with neutral spirits or other spirituous liquors of different age.

Rectifying plant means any establishment where spirituous liquors are blended with neutral spirits or other spirituous liquors of different age.

Resort complex means a hotel with related sports and recreational facilities for the convenience of its guests or the general public located contiguous or adjacent to the hotel.

Resort hotel means a hotel with well-defined occupancy seasons.

Restaurant means an establishment which is not a hotel provided with special space, sanitary kitchen and dining room equipment, and persons to prepare, cook and serve meals, where, in consideration of payment, meals, drinks, tobaccos and candies are furnished to guests and in which

nothing is sold excepting food, drinks, tobaccos, candies and items of souvenir merchandise depicting the theme of the restaurant or the geographical or historic subjects of the nearby area. Any establishment connected with any business wherein any business is conducted, excepting hotel business, limited gaming conducted pursuant to sections 12-47.1-101 through 12-47.1-302, C.R.S., or the sale of food, drinks, tobaccos, candies or such items of souvenir merchandise, is declared not to be a restaurant. Nothing in this subsection shall be construed to prohibit the use in a restaurant of orchestras, singers, floor shows, coin-operated music machines, amusement devices that pay nothing of value and cannot by adjustment be made to pay anything of value, or other forms of entertainment commonly provided in restaurants.

Retail liquor store means an establishment engaged only in the sale of malt, vinous and spirituous liquors and soft drinks and mixers, all in sealed containers for consumption off the premises; tobaccos, tobacco products, smokers' supplies and nonfood items related to the consumption of such beverages; and liquor-filled candy and food items approved by the state licensing authority, which are prepackaged, labeled and directly related to the consumption of such beverages and are sold solely for the purpose of cocktail garnish in containers up to sixteen (16) ounces. Nothing in this subsection shall be construed to authorize the sale of food items that could constitute a snack, meal or portion of a meal.

School means a public, parochial or nonpublic school that provides a basic academic education in compliance with school attendance laws for students in grades one (1) to twelve (12). *Basic academic educa-*

tion has the same meaning as set forth in Section 22-33-104(2)(b), C.R.S.

Sealed containers means any container or receptacle used for holding an alcoholic beverage, which container or receptacle is corked or sealed with any stub, stopper or cap.

Sell or sale means any of the following: to exchange, barter or traffic in; to solicit or receive an order for, except through a licensee licensed under article 46 or 48 of title 12, C.R.S.; to keep or expose for sale; to serve with meals; to deliver for value or in any way other than gratuitously; to peddle or possess with intent to sell; to possess or transport in contravention of this article; or to traffic in for any consideration promised or obtained, directly or indirectly.

Sell at wholesale means selling to any other than the intended consumer of fermented malt beverages or malt, vinous or spirituous liquors. *Sell at wholesale* shall not be construed to prevent a brewer or wholesale beer dealer from selling fermented malt beverages or malt, vinous or spirituous liquors to the intended consumer thereof or to prevent a licensed manufacturer or importer from selling such beverages to a licensed wholesaler.

Spirituous liquors means any alcoholic beverage obtained by distillation, mixed with water and other substances in solution, and includes among other things brandy, rum, whiskey, gin and every liquid or solid, patented or not, containing at least one-half of one percent (0.5%) alcohol by volume and which is fit for use for beverage purposes. Any liquid or solid containing beer or wine in combination with any

other liquor shall not be construed to be fermented malt or malt or vinous liquor but shall be construed to be spirituous liquor.

State licensing authority means the executive director of the department of revenue or the deputy director of the department of revenue if the executive director so designates.

Tavern means an establishment serving malt, vinous and spirituous liquors in which the principal business is the sale of such beverages at retail for consumption on the premises and where sandwiches and light snacks are available for consumption on the premises.

Vinous liquors means wine and fortified wines that contain not less than one-half of one percent (0.5%) and not more than twenty-one percent (21%) alcohol by volume and shall be construed to mean an alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar.

Winery means any establishment where vinous liquors are manufactured. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-189. Penalty for violation.

(a) Any licensee who violates the terms of this article may be subject to suspension or revocation of his or her liquor license pursuant to Section 12-47-601, C.R.S.

(b) Whenever a decision of the licensing authority suspending a license for fourteen (14) or fewer days becomes final, whether by failure of the licensee to appeal the decision or

by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension or such earlier date as the licensing authority may designate in its decision, petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. The licensing authority may, in its sole discretion, stay the proposed suspension in part or in whole and grant the petition if it finds, after any investigation that it deems desirable, that:

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

(2) The books and records of the licensee are kept in such a manner that the loss of sales during the proposed suspension can be determined with reasonable accuracy therefrom; and

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

(c) Payment of any fine shall be in the form of cash, a certified check or a cashier's check payable to the licensing authority. Such fine shall be paid into the general fund of the town.

(d) The licensing authority may grant such conditional or temporary stays as are necessary for it to complete its investigations,

to make its findings as specified in subsection (b) of this section, and to grant a permanent stay of the entire or part of the suspension. If no permanent stay is granted, the suspension shall go into effect on the operative date finally set by the licensing authority. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-190. Use of gambling equipment.

No licensee shall install, maintain or operate, or permit the installation, maintenance or operation of, within or upon the licensed premises, any gambling table, establishment, device, machine, apparatus or other thing contrary to this article or to the laws of this state or which is kept or used for the purpose of gambling either directly or indirectly. This article shall not be construed to prohibit the use of bona fide amusement devices which do not and cannot be adjusted to pay anything of value, and which may not be used for gambling, directly or indirectly, and for the scoring, achievement, use or operation of which no prize, reward or thing of value is offered or paid by any person. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-191. Conduct on premises.

(a) Each licensee shall conduct his or her establishment in a decent, orderly and respectable manner, and shall not permit within or upon the licensed premises the loitering of habitual drunkards or intoxicated persons, lewd or indecent displays, profanity, rowdiness, undue noise or other disturbance or activity offensive to the senses of the average citizen, or to the residents of the neighborhood in which the establishment is located.

(b) Any licensee shall immediately report to the police department any unlawful or disorderly act, conduct or disturbance committed on the premises.

(c) Each licensee shall post and keep at all times visible to the public in a conspicuous place on the premises, signs to be furnished by the town clerk's office, which signs shall be in the following forms:

(1) "Warning! Hudson police must be notified of all disturbances in this establishment and on the grounds, which are part of this establishment."

(2) "Warning! A mandatory fine of nine hundred ninety-nine dollars (\$999.00) and imprisonment of up to one (1) year may be levied on any person convicted of carrying or possessing any dangerous or deadly weapon, including firearms or knives with over three-and-one-half-inch blades, into or onto any public property, any organized public gathering, or any establishment licensed for the sale of alcoholic or fermented malt beverages."

(d) Prosecution or conviction under this section shall not prohibit prosecution or conviction under any other applicable law or ordinance, and the penalties provided shall be accumulative and in addition to all other penalties incurred under such other applicable law or ordinance enacted by the town.

(e) It shall not be a defense that the licensee was not personally present on the premises at the time any unlawful or disorderly act, conduct or disturbance took place; provided, however, that an agent, servant or employee of the licensee shall not be responsible hereunder when absent from the premises while not on duty.

(f) Any person who violates any provision of this section, upon conviction thereof, shall be fined not more than nine hundred ninety-nine dollars (\$999.00) and/or shall be imprisoned for not more than one (1) year. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-192. When consumption on premises prohibited.

No licensee shall permit the consumption of malt, vinous or spirituous beverages or 3.2 percent beer on the licensed premises at any time when the sale of such beverages is prohibited by law. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-193. Soliciting drinks.

No licensee, manager or agent shall employ or permit upon any liquor licensed on-sale premises any employee, waiter, waitress, entertainer, host or hostess to mingle with patrons and personally beg, procure or solicit the purchase or sale of drinks or beverages for the use of the one begging, procuring or soliciting or for the use of any other employee. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-194. Loitering.

No licensee, manager or agent shall permit upon any premises licensed under this article for on-premises consumption any person to loiter in or about the premises for the purpose of begging and soliciting any patron or customer of or visitor in such premises to purchase any drinks or beverages of any type or nature whatsoever, for the one soliciting or begging. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-195. Nudity on premises.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages or 3.2 percent beer shall permit any person to appear in a state of nudity within or upon the premises. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-196. Indecent displays.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages or 3.2 percent beer shall permit any lewd or indecent display by any person within or upon the premises. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-197. Showing of films, etc., depicting acts prohibited.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages or 3.2 percent beer shall permit the showing of films, still pictures, electronic reproduction or other visual reproductions depicting any act or live performance prohibited by sections 6-189 through 6-196 of this article. (Ord. 05-03 Sec. 1, 2005)

Secs. 6-198—6-208. Reserved.

*Division 6
Special Events Permit*

Sec. 6-209. Special events permit authorized.

The town shall be authorized to issue special events permits in accordance with section 12-48-101, C.R.S. (Ord. 05-03 Sec. 1, 2005)

Sec. 6-210. Fee.

In addition to the fees paid to the department of revenue, an application for a special events permit shall be accompanied by a fee paid to the town in the amount of twenty-five dollars (\$25.00) to defray the expenses for any necessary investigation and for the issuance of the permit. (Ord. 05-03 Sec. 1, 2005)

Secs. 6-211—6-220. Reserved.

Article 5

**MEDICAL MARIJUANA
DISPENSARIES**

Sec. 6-221. Short title.

This article shall be known and may be cited as the "Medical Marijuana Dispensary Ordinance." (Ord. 09-17 Sec. 1, 2009)

Sec. 6-222. Findings.

The board of trustees adopts this article based upon the following findings of fact:

(1) On November 7, 2000, the voters of the State of Colorado approved Amendment 20. Amendment 20 added Section 14 of Article 18 to the Colorado Constitution and created a limited exception from criminal liability under state law (as opposed to federal law) for seriously ill persons who are in need of marijuana for specified medical purposes and who obtain and use medical marijuana under the limited, specified circumstances described in Amendment 20.

(2) The intent of Amendment 20 was to enable certain specified persons who comply with the registration provisions of the law to legally obtain, possess, cultivate, grow, use and distribute marijuana without fear of criminal prosecution under state (as opposed to federal) law.

(3) Despite the adoption of Amendment 20, marijuana is still a controlled substance under state and federal law. As a result, making it legal for a person to obtain, possess, cultivate, grow, use and distribute marijuana, even for medical use as contemplated by Amendment 20, has the potential for abuse that should be closely monitored and regulated by local authorities to the extent possible.

(4) If not closely monitored and regulated, the presence of marijuana, even for the purposes legally permitted by Amendment 20, can cause an increase in illegal activities within the town, affecting the health, safety, order, comfort, convenience and general welfare of the residents of the town.

(5) If medical marijuana dispensaries operating pursuant to Amendment 20 were allowed to be established and to operate

without appropriate local regulation of their location, medical marijuana dispensaries might be established in areas that would conflict with the town's comprehensive land use plan; be inconsistent with surrounding uses; or otherwise be detrimental to the public health, safety and welfare.

(6) Nothing in this article allows a person to:

a. Engage in conduct that endangers others or causes a public nuisance;

b. Possess, cultivate, grow, use or distribute marijuana for any purpose other than for use as medical marijuana as authorized and limited by Amendment 20 and the implementing state statutes and administrative regulations;

c. Possess, cultivate, grow, use or distribute marijuana that is otherwise illegal under applicable law; or

d. Engage in any activity related to the possession, cultivation, growing, use or distribution of marijuana that is otherwise not permitted under the laws of the town or the state.

(7) This article is necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the order, comfort and convenience of the town and the inhabitants thereof.

(8) No person, business, activity or use that distributed or involved the distribution of marijuana within the town prior to the enactment of this article shall be deemed to have been legally established under this Code, and no such person, business, activity or use shall be entitled to claim legal, non-conforming status under any provision of this Code or applicable law. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-223. Purpose.

Recognizing that there is a potential conflict between federal and state law with respect to the operation of medical marijuana dispensaries, it is the purpose of this article to:

(1) Impose specific requirements and limitations for those individuals registering with the state as a "patient" or "primary caregiver" as those terms are defined in Amendment 20 and the statutes and administrative regulations implementing Amendment 20.

(2) Require that a medical marijuana dispensary (as defined in this article) be operated in a safe manner that does not endanger the public welfare.

(3) Mitigate potential negative impacts that a medical marijuana dispensary might cause on surrounding properties and persons.

(4) Regulate the conduct of persons owning, operating and using a medical marijuana dispensary in order to protect the public health, safety and welfare.

(5) Establish a nondiscriminatory mechanism by which the town can control, through appropriate regulation, the location and operation of medical marijuana dispensaries within the town. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-224. Authority.

The board of trustees hereby finds, determines and declares that it has the power to adopt this article pursuant to:

(1) The Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.;

(2) Part 3 of Article 23 of Title 31, C.R.S., (concerning municipal zoning powers);

(3) Section 31-15-103, C.R.S., (concerning municipal police powers);

(4) Section 31-15-401, C.R.S., (concerning municipal police powers);

(5) Section 31-15-501, C.R.S., (concerning municipal authority to regulate businesses). (Ord. 09-17 Sec. 1, 2009)

Sec. 6-225. Definitions.

(a) As used in this article, the following words shall have the following meanings:

Alcoholic beverage has the meaning provided in section 6-188 of this chapter.

Amendment 20 means a voter-initiated amendment to the Colorado Constitution adopted November 7, 2000. Amendment 20 added Section 14 of Article 18 to the Colorado Constitution.

Applicant means a person twenty-one (21) years of age or older who has submitted an application for a permit pursuant to this article.

Application means an application for a permit submitted pursuant to this article.

Cultivation means the process by which a person promotes the germination and growth of a seed to a mature marijuana plant. *Cultivation* does not include the storing or watering of mature marijuana plants without the aid of grow lighting.

Day means a calendar day, unless otherwise indicated.

Good cause (for the purpose of refusing or denying a permit renewal under this article) means: a) the permittee has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of

this article and any rule and regulation promulgated pursuant to this article; b) the permittee has failed to comply with any special terms or conditions that were placed on its permit at the time the permit was issued or that were placed on its permit in prior disciplinary proceedings or that arose in the context of potential disciplinary proceedings; or c) the permittee's medical marijuana dispensary has been operated in a manner that adversely affects the public health, welfare or safety of the immediate neighborhood in which the medical marijuana dispensary is located. Evidence to support such a finding can include: a) a continuing pattern of offenses against the public peace, as defined in article 4 of chapter 10 of this code; b) a continuing pattern of drug-related criminal conduct within the premises of the medical marijuana dispensary or in the immediate area surrounding the medical marijuana dispensary; or c) a continuing pattern of criminal conduct directly related to or arising from the operation of the medical marijuana dispensary.

Medical marijuana dispensary or *dispensary* means the use of any property or structure within the town to distribute, transmit, give, dispense or otherwise provide marijuana in any manner to patients or primary caregivers in accordance with Amendment 20 and the implementing state statutes and administrative regulations.

Patient has the meaning provided in Amendment 20.

Permit means a permit to operate a medical marijuana dispensary issued by the town pursuant to this article.

Permittee means the person to whom a permit has been issued pursuant to this article.

Primary caregiver has the meaning provided in Amendment 20.

Town means the town of Hudson, Colorado.

Town administrator means the town administrator of the town or designee.

(b) In addition to the definitions provided in subsection (a) hereof, the other defined terms in Amendment 20 are incorporated into this article by reference. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-226. Permit required.

No person shall operate a medical marijuana dispensary within the town without a valid permit issued in accordance with this article. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-227. Application for permit.

(a) A person seeking to obtain a permit pursuant to this article shall file an application with the town administrator. The form of the application shall be provided by the town administrator.

(b) A permit issued pursuant to this article does not eliminate the need for the permittee to obtain other required town licenses and permits related to the operation of the approved medical marijuana dispensary, including, without limitation:

(1) Any required land use approval, if applicable;

(2) A town business and sales tax license; and

(3) A building permit, mechanical permit, plumbing permit or electrical permit.

(c) An application for a permit under this article shall contain the following information:

(1) The applicant's name, address, telephone number and social security number;

(2) The street address and unit number, if applicable, of the proposed medical marijuana dispensary and a complete description of the site for which the permit is being obtained;

(3) If the applicant is not the owner of the proposed location of the medical marijuana dispensary, a notarized statement from the owner of such property authorizing the submission of the application;

(4) A completed set of the applicant's fingerprints;

(5) A statement, to be initialed by the applicant, that the applicant and the employees of the medical marijuana dispensary may be subject to prosecution under federal marijuana laws;

(6) A statement, to be initialed by the applicant, that the town accepts no legal liability in connection with the approval and subsequent operation of the medical marijuana dispensary;

(7) An acknowledgement that the town will conduct a background investigation as specified in section 6-229 of this article; and

(8) Any additional information that the town administrator reasonably determines to be necessary in connection with the investigation and review of the application.

(c) Applications shall be processed by the town administrator in order of receipt. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-228. Application fee.

An applicant shall pay to the town a non-refundable application fee when the application is filed. The purpose of the fee is to cover the administrative costs of processing the application. For applications filed in 2009, the application fee is two thousand dollars (\$2,000.00). Thereafter, the amount of the application fee shall be fixed by the board of trustees by resolution. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-229. Investigation of application.

(a) Upon receipt of a properly completed application, together with all information required in connection therewith, and the payment of the application fee as required by section 6-228 above, the town administrator shall transmit copies of the application to:

(1) The Weld County Sheriff's Department;

(2) The planning department; and

(3) Any other person or agency which the town administrator determines should properly investigate and comment upon the application.

(b) Upon receipt of a completed application, the Weld County Sheriff's Department, on behalf of the town, shall obtain and review a criminal background records search on the applicant from the Colorado Bureau of Investigation.

(c) Within twenty (20) days of receipt of a completed application, those town departments and other referral agencies described in subsection (a) above shall provide the town administrator with comments concerning the application. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-230. Standards for issuance of permit.

The town administrator shall issue a permit under this article when, from a consideration of the application and from such other information as may otherwise be obtained, the town administrator determines that:

- (1) The application (including any required attachments and submissions) is complete and signed by the applicant;
- (2) The applicant has paid the application fee and any other fees required by section 6-228 of this article;
- (3) The application does not contain a material falsehood or misrepresentation;
- (4) The application complies with all of the requirements of this article;
- (5) The applicant has not previously been convicted of a felony violation of state law related to the sale, possession or use of a scheduled controlled substance. In making this determination, the town administrator shall be governed by the provisions of Section 24-5-101, C.R.S.; and
- (6) The proposed location of the medical marijuana dispensary is permitted under section 6-244 of this article. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-231. Denial of permit.

(a) The town administrator shall deny an application for a permit under this article if the town administrator determines that:

- (1) Information contained in the application or supplemental information requested from the applicant is found to be false in any material respect; or

(2) The application fails to meet any of the standards set forth in section 6-230 above.

(b) If an application is denied, the application fee shall not be refunded. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-232. Authority to impose conditions on permit.

The town administrator shall have the authority to impose such reasonable terms and conditions on a permit as may be necessary to protect the public health, safety and welfare and to obtain compliance with the requirements of this article and applicable law. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-233. Decision by town administrator.

(a) The town administrator shall approve, deny or conditionally approve an application within thirty (30) days of the receipt of the completed application unless, by written notice to the applicant, the decision period is extended for an additional ten (10) days if necessary for the town administrator to complete the review of the application.

(b) If an application is denied, the town administrator shall clearly set forth in writing the grounds for denial.

(c) In the event an application is conditionally approved, the town administrator shall clearly set forth in writing the conditions of approval. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-234. Notice of decision.

The town administrator shall notify the applicant of the decision on the application within three (3) business days of rendering the decision. Notice shall be given by mailing a

copy of the town administrator's decision to the applicant by regular mail, postage prepaid, at the address shown in the application. Notice is deemed to have been properly given upon mailing. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-235. Appeal of denial or conditional approval of permit.

(a) An applicant has the right to appeal the town administrator's denial or conditional approval of an application to the board of trustees by filing a written request with the town administrator within twenty (20) days of the date of the notice of the decision described in section 6-234 above.

(b) The applicant shall be provided with not less than ten (10) days' prior written notice of the appeal hearing to be held by the board of trustees.

(c) The burden of proof in an appeal filed under this section shall be on the applicant.

(d) If the board of trustees finds by a preponderance of the evidence that the decision of the town administrator was correct, the board of trustees shall uphold the decision of the town administrator. If the board of trustees finds by a preponderance of the evidence that the decision of the town administrator was incorrect, the town administrator's decision shall be set aside and the permit issued (if it was previously denied) or the conditions of approval stricken or modified.

(e) Any decision made by the board of trustees pursuant to this section shall be a final decision and may be appealed to the district court pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The applicant's failure to timely appeal the decision is a waiver of the applicant's right to contest the denial or conditional approval of the application. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-236. Contents of permit.

(a) A permit shall contain the following information:

(1) The name of the permittee;

(2) The date of the issuance of the permit;

(3) The address at which the permittee is authorized to operate the medical marijuana dispensary;

(4) Any special conditions of approval imposed upon the permit by the town administrator, pursuant to section 6-232 of this article; and

(5) The date of the expiration of the license.

(b) A permit must be signed by both the applicant and the town administrator to be valid. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-237. Permit not transferable.

A permit is nontransferable and nonassignable. Any attempt to transfer or assign a permit voids the permit. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-238. Notice of issuance of permit.

Immediately upon the issuance of a permit, the town administrator shall send a copy of the permit to:

(1) The Weld County Sheriff's Department;

(2) The planning department; and

(3) Any other person or agency as determined by the town administrator. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-239. Duration of permit; renewal.

(a) Each permit issued pursuant to this article shall be valid for one (1) year from the date of issuance and may be renewed as provided in this section.

(b) An application for the renewal of an existing permit shall be made to the town administrator not less than forty-five (45) days prior to the date of expiration. No application for renewal shall be accepted by the town administrator after the date of expiration. The town administrator may waive the forty-five-day time requirement set forth in this subsection if the applicant demonstrates an adequate reason.

(c) The provisions of sections 6-226 through 6-238 of this article, inclusive, shall apply to the processing of an application to renew a permit. The timely filing of a renewal application shall extend the current permit until a final decision is made on the renewal application, including any appeal of the town administrator's decision to the board of trustees.

(d) At the time of the filing of an application for the renewal of an existing permit, the applicant shall pay a renewal fee in an amount fixed by resolution by the board of trustees.

(e) The town administrator may refuse to renew a permit for good cause. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-240. Duties of permittee.

It is the duty and obligation of each permittee to do the following:

(1) Comply with all of the terms and conditions of the permit and any special conditions on the permit imposed by the town administrator, pursuant to section 6-232 of this article;

(2) Comply with all of the requirements of this article;

(3) Comply with all other applicable town ordinances;

(4) Comply with all state laws and administrative regulations pertaining to the medical use of marijuana, including but not limited to Amendment 20; Section 18-18-406.3, C.R.S.; and the administrative regulations issued by the Colorado Department of Public Health and Environment found at 5 C.C.R. § 1006-2, all as amended from time to time;

(5) Comply with all applicable federal laws, rules or regulations, other than a federal law, rule or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20; and

(6) Permit inspection of its records and operation by the town administrator for the purpose of determining the permittee's compliance with the terms and conditions of the permit. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-241. Posting of permit.

A permit shall be continuously posted in a conspicuous location at the medical marijuana dispensary. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-242. Suspension or revocation of permit.

(a) A permit issued pursuant to this article may be suspended or revoked by the town administrator for the following reasons:

(1) Fraud, misrepresentation or a false statement of material fact contained in the permit application;

(2) A violation of any town, state or federal law or regulation, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20;

(3) A violation of any of the terms and conditions of the permit, including any special conditions of approval imposed upon the permit by the town administrator pursuant to section 6-232 of this article;

(4) A violation of any of the provisions of this article;

(5) Operations have ceased at the medical marijuana dispensary for more than ninety (90) days, including during a change of ownership of the dispensary; or

(6) Ownership of the medical marijuana dispensary has been transferred without the new owner obtaining a permit pursuant to this article.

(b) In connection with the suspension of a permit, the town administrator may impose reasonable conditions.

(c) The town administrator shall notify the permittee of the decision to suspend or revoke the permit within three (3) business days of rendering the decision. Notice shall be given by mailing a copy of the town administrator's decision to the permittee by regular mail, postage prepaid, at the address shown in the permit. Notice is deemed to have been properly given upon mailing.

(d) No suspension or revocation shall be final until the permittee has been given the opportunity for a hearing to address the suspension or revocation. The permittee has the right to appeal the town administrator's suspension or revocation to the board of trustees by

filing a written request with the town administrator within twenty (20) days of the date of the notice of decision issued by the town administrator, as described in subsection (c) above.

(1) The burden of proof in an appeal filed under this section shall be on the permittee.

(2) If the board of trustees finds by a preponderance of the evidence that the decision of the town administrator was correct, the board of trustees shall uphold the decision of the town administrator. If the board of trustees finds by a preponderance of the evidence that the decision of the town administrator was incorrect, the town administrator's decision shall be set aside or modified, and any conditions imposed by the town administrator related thereto shall be stricken or modified.

(3) Any decision made by the board of trustees shall be a final decision and may be appealed to the district court, pursuant to Rule 106(a)(4) of the Colorado Rules of Civil Procedure. The permittee's failure to timely appeal the decision is a waiver of the permittee's right to contest the suspension or revocation of the permit. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-243. Limitation on sale of marijuana.

No marijuana may be sold, given away or transferred at a medical marijuana dispensary, except to patients and to primary caregivers. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-244. Prohibited locations; permanent location required.

Prior to the issuance of a permit for a medical marijuana dispensary, the town administrator shall determine whether the proposed location of

the medical marijuana dispensary complies with the requirements of this section and chapter 16 of this code. Failure to comply with the requirements of this section shall preclude issuance of a permit.

(1) No medical marijuana dispensary shall be located within two hundred (200) feet of any:

- a. Area zoned for residential use;
- b. Single-family, two-family or multi-family dwelling;
- c. Church;
- d. Licensed day care facility;
- e. Educational facility or school, college or university, either public or private;
- f. Public park, public pool or public or private recreational facility; or
- g. Halfway house or correctional facility.

(2) No medical marijuana dispensary shall be located within five hundred (500) feet of any other medical marijuana dispensary.

(3) The distances described in Paragraphs (1) and (2) above shall be computed by direct measurement from the nearest property line of the land used for the above purposes to the nearest portion of the building housing the medical marijuana dispensary, using a straight line.

(4) Each medical marijuana dispensary shall be operated from a permanent location. No medical marijuana dispensary shall be permitted to operate from a moveable, mobile or transitory location.

(5) The suitability of a location for a medical marijuana dispensary shall be determined at the time of the issuance of the first permit for such dispensary. The fact that changes in the neighborhood that occur after the issuance of the first permit might render the site unsuitable for a medical marijuana dispensary under this section shall not be grounds to suspend, revoke or refuse to renew the permit for such dispensary so long as the permit for the dispensary remains in effect. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-245. Hours of operation.

A medical marijuana dispensary may open no earlier than 9:00 a.m. and shall close no later than 7:00 p.m. the same day. A medical marijuana dispensary may be open seven (7) days a week. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-246. Signage.

All signage for a medical marijuana dispensary shall comply with the requirements of article 8 of chapter 16 of this code. In addition, no permittee shall display a sign for the medical marijuana dispensary that contains the word "marijuana" or a graphic/image of any portion of a marijuana plant. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-247. Required warnings to be posted.

There shall be posted in a conspicuous location in each medical marijuana dispensary a legible sign containing the following warnings:

(1) A warning that the diversion of marijuana for nonmedical purposes is a violation of state law;

(2) A warning that the use of medical 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 to operate machinery when under the influence of or impaired by marijuana;

(3) A warning that loitering in or around the medical marijuana dispensary is prohibited by state law; and

(4) A warning that possession and distribution of marijuana is a violation of federal law. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-248. On-site consumption.

The consumption or inhalation of marijuana on or within the premises of a medical marijuana dispensary is prohibited. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-249. Paraphernalia.

Devices, contrivances, instruments and paraphernalia for inhaling or otherwise consuming marijuana, including but not limited to rolling papers and related tools, water pipes and vaporizers, may lawfully be sold at a medical marijuana dispensary. Such items may be sold or provided only to patients or primary caregivers. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-250. On-site cultivation, growing and processing.

The growing, cultivation or processing of marijuana on or within the premises of a medical marijuana dispensary is prohibited unless the dispensary is equipped with a proper ventilation system that filters out the odor of marijuana so that the odor is not capable of being detected by a person with a normal sense of smell at the exterior of the dispensary or any adjoining business, parcel or tract of real property. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-251. Alcohol.

The sale or consumption of an alcoholic beverage within a medical marijuana dispensary is prohibited. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-252. Security requirements.

A permittee shall provide adequate security on the premises of a medical marijuana dispensary, including but not limited to the following:

(1) Security surveillance cameras installed to monitor the main entrance, along with the interior and exterior of the premises, to discourage and to facilitate the reporting of criminal acts and nuisance activities occurring at the premises. Security video shall be preserved for at least seventy-two (72) hours by the permittee and be made available to law enforcement officers upon demand;

(2) Robbery and burglary alarm systems which are professionally monitored and maintained in good working conditions;

(3) A locking safe permanently affixed to the premises that is suitable for storage of all of the saleable inventory of marijuana;

(4) Exterior windows (without shades) of sufficient size to permit observation of the inside of the dispensary premises by a law enforcement officer standing outside of the dispensary; and

(5) Exterior lighting that illuminates the exterior walls of the business. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-253. Sales and business license required.

At all times while a permit is in effect, the permittee shall possess a valid license issued under section 6-2 of this chapter. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-254. Taxes.

Each permittee shall pay sales tax on all medical marijuana, paraphernalia and other tangible personal property sold by the permittee at the medical marijuana dispensary. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-255. Penalties; injunctive relief.

(a) It is a misdemeanor offense for any person to violate any provision of this article. Any person convicted of having violated any provision of this article shall be punished as set forth in section 1-51 of this code.

(b) The operation of a medical marijuana dispensary without a valid permit issued pursuant to this article may be enjoined by the town in an action brought in a court of competent jurisdiction. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-256. No waiver of governmental immunity.

In adopting this article, the board of trustees is relying on, and does not waive or intend to waive by any provision of this article, the monetary limitations (presently one hundred fifty thousand dollars [\$150,000.00] per person and six hundred thousand dollars [\$600,000.00] per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as from time to time amended, or any other limitation, right, immunity or protection otherwise available to the town, its officers or its employees. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-257. No town liability.

By accepting a permit issued pursuant to this article, a permittee releases the town, its officers, elected officials, employees, attorneys and agents from any liability for injuries, damages or liabilities of any kind that result from any arrest

or prosecution of dispensary owners, operators, employees, clients or customers for a violation of state or federal laws, rules or regulations. The town administrator may require a permittee to execute a written instrument confirming the provisions of this section. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-258. Indemnification of town.

By accepting a permit issued pursuant to this article, a permittee, jointly and severally if more than one (1), agrees to indemnify and defend the town, its officers, elected officials, employees, attorneys, agents, insurers and self-insurance pool against all liability, claims and demands on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage or any other loss of any kind whatsoever, which arise out of or are in any manner connected with the operation of the medical marijuana dispensary that is the subject of the permit. The permittee further agrees to investigate, handle, respond to and provide defense for and defend against, any such liability, claims or demands at his or her expense and to bear all other costs and expenses related thereto, including court costs and attorney fees. The town administrator may require a permittee to execute a written instrument confirming the provisions of this section. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-259. Other laws remain applicable.

The provisions of this article do not protect permittees, operators, employees, customers and clients of a permitted medical marijuana dispensary from prosecution pursuant to any laws that may prohibit the cultivation, sale, use or possession of controlled substances. In addition, as of the date of the adoption of this article, the cultivation, sale, possession, distribution and use of marijuana remain violations of federal and state law (except for conduct covered by Amendment

20), and this article affords no protection against prosecution under such federal and state laws. Permittees, operators, employees, customers and clients of a permitted medical marijuana dispensary assume any and all risk and any and all liability arising or resulting from the operation of the dispensary under any state or federal law. Further, to the greatest extent permitted by law, any actions taken under the provisions of this article by any public officer or officers, elected or appointed officials, employees, attorneys and agents of the town shall not become a personal liability of such person or of the town. (Ord. 09-17 Sec. 1, 2009)

Sec. 6-260. Rules and regulations.

The town administrator shall have the authority from time to time to adopt, amend, alter and repeal administrative rules and regulations as may be necessary for the proper administration of this article. (Ord. 09-17 Sec. 1, 2009)

