

# LICENSING OF BUSINESSES

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#### Chapter 110

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§ 110-34. Judicial Review.

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**[HISTORY: Adopted by the Board of Trustees (now Mayor and Town Council) of the Town of Frisco 03-05-85 as Ord. 85-02.<sup>1</sup> Amendments noted where applicable.]**

### GENERAL REFERENCES

**Alcoholic beverages—See Ch. 53.**

**Dogs and other animals—See Ch. 79.**

**Excavations—See Ch. 87.**

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**[Repealed and Re-Enacted 7-2-02, Ord. 02-12]**

#### § 110-1. Purpose.

The purpose of this chapter is to require the annual licensing and limited regulation of all business activities and enterprises conducted within the corporate boundaries of the town; and to provide the town with necessary information concerning the business activities within the town, including the nature of the business operation, the place of business and other information relating to businesses and professions operating within the town, in order to protect the health, safety and welfare of the town's citizens, inhabitants and visitors.

#### § 110-2. Definitions. [Amended 02-08-11, Ord. 11-01]

For purposes of this chapter the following definitions shall apply. As used herein, the following terms shall have the meanings indicated:

**BUSINESS** - All kinds of trades, vocations, occupations, professions, enterprises, establishments and all other activities and matters (including sales of tangible personal property and furnishing of services), together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted for private profit, gain, pecuniary benefit or advantage, either directly or indirectly, within the town.

**LICENSEE** - Any person, individual, partnership, corporation, firm, estate, trust, association, joint venture or other entity required to obtain an annual business license.

**LICENSE YEAR** - The period from the date of issuance to December 31<sup>st</sup> of the same year.

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<sup>1</sup>Editor's Note: This ordinance also repealed former Ch. 110, Licensing of Businesses, adopted 11-8-1976 as Ord. No. 76-5, as amended.

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PLACE OF BUSINESS - Any fixed location where a business is operated, maintained or conducted.

SPECIALTY LICENSE - Any license required by this code or by other applicable law, other than a general business license, for the operation of a specific type of business.

TEMPORARY BUSINESS - Includes the description of business above, but shall be of a nonpermanent or transient nature.

TOWN - The Town of Frisco.

TOWN LICENSE OFFICER OR LICENSING OFFICER - The Town Clerk of Frisco or his/her designee.

WHOLESALE - A person doing a regularly organized wholesale or jobbing business, and known to the trade as such and selling to retail merchants, jobbers, dealers, or other wholesalers, for the purpose of resale.

### **§ 110-3. License Required.**

- A. It shall be unlawful for any person to operate and maintain or conduct any business within the town, including the delivery of goods by wholesalers within the town which are purchased or contracted for outside the corporate limits of the town, without first obtaining a general business license to conduct such business pursuant to this article, unless otherwise provided by this code. A separate general business license must be obtained for each place of business operating within the town limits. Specialty licenses shall be required in addition to general business licenses when applicable.
- B. Licensing of exterminators within the Town of Frisco will also include regulation of the method of extermination. No person, firm or corporation shall engage in the business of extermination by chemical means upon any property within the town unless the chemicals are approved by the town prior to application for a license. Applicants must present evidence of qualifications and expertise to exterminate within the limits of the Town of Frisco and shall proceed in the manner set forth by regulations on file with the Town Clerk of the Town of Frisco.
- C. The Town of Frisco prohibits commercial businesses that make their sales traveling from residence to residence or business to business without the previous consent of the occupant or owner.
- D. Every license granted under the provisions of this article shall be posted in a conspicuous place at the place of business for the full term of the license. If a person operates and maintains a business within the town but no place of business exists in the town, the license shall be carried on the person of the individual engaging in the business activity. It shall be the duty of each licensee

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to exhibit the license upon the request of any law enforcement officer, inspector, or other officer of the town.

### **§ 110-4. Application. [Amended 01-01-04, Ord. 03-17; 02-08-11, Ord. 11-01]**

- A. The applicant for a general business license shall submit an application to the Town Licensing Officer on forms provided by the Town Licensing Officer. All initial applications shall be investigated by the Town Licensing Officer in order to determine whether grounds exist for denial. Prior to issuing a general business license for a business whose place of business is located within the town limits, the Town Licensing Officer shall forward the application information to the Community Development Department to verify that the particular use for which the license is sought is allowed in the zone in which such use is proposed. If no grounds for denial exist, the Town Licensing Officer shall issue the license through the license year.
- B. All initial applications shall contain the following:
1. Name of the applicant and name and address of the business.
  2. Names, addresses and phone numbers of all owners or, in the case of a publicly held corporation, all directors of the business.
  3. A detailed statement of the kind or nature of business or service, including whether the business or service provides lodging as that term is defined in § 160-28 of this Code.
  4. State sales tax number assigned to the business.
  5. A statement as to whether the business is temporary, seasonal or permanent.
  6. A statement as to whether the business holds a business license in any other municipality and, if so, the name of each such municipality.
  7. A statement as to whether the owner or owners have ever been denied a business license or ever had a license revoked or suspended, and a statement of the place of the denial, revocation or suspension, and the circumstances surrounding the same.
  8. A certification that the business will comply with the regulations and laws of the town.
  9. Evidence of the applicant's ownership or right to possession of the proposed place of business.

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10. A statement itemizing what specialty licenses, if any, are required for the business, and evidence that such specialty licenses have been obtained or are pending.
  11. A certification that all information contained in the application is correct to the best of the knowledge of the applicant.
  12. In the case of a temporary business, the name and address as well as evidence of the permission of the owner of the property on which the operation of the business is proposed.
  13. In the case of a permanent or temporary business involving prepared foodstuffs, written approval by the Summit County Health Department.
  14. In the case of a temporary business, a statement describing the particular manner in which the goods, wares or merchandise will be sold.
  15. In the case of a temporary business, a list of dates of operation.
  16. A statement as to whether the business is permitted in the zone in which it is proposed.
- C. An application for renewal of the business license shall be filed with the Town Licensing Officer on or before the first day of the license year, on forms provided by the Town Licensing Officer. In the event a suspension or revocation proceeding is pending when a license renewal is filed, the applicant shall be issued a provisional license by the Town Licensing Officer and the application for renewal shall not be acted upon until the suspension or revocation proceeding has been completed. Any changes to the information provided by the applicant on the initial application pursuant to subsection B above shall be updated on the renewal application in order to provide current and accurate information for the town's records.
- D. All applications must be accompanied by the full amount of the fee charged for such license.

### **§ 110-5. License Fees. [Amended 02-08-11, Ord. 11-01]**

- A. In addition to any other fees required by this code or other applicable law, the annual license fee for a general business license shall be seventy-five dollars (\$75). The fee for a temporary business license shall be twenty-five dollars (\$25) per day, not to exceed seventy-five dollars (\$75) annually.
- B. The license required by this article is for the privilege of pursuing the business, profession, vocation or occupation designated thereon for the duration of the license year. For continuous business it shall be the duty of each licensee to obtain an annual renewal of such license and pay the annual renewal fee of

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seventy-five dollars (\$75) to the Town Licensing Officer on or before the expiration of the license year.

- C. License fees are not refundable upon denial or withdrawal of the application.
- D. All license fees received hereunder by the Town Licensing Officer shall be promptly deposited to the credit of the town's general fund.

### **§ 110-6. License Nontransferable.**

The transfer of a business to a new owner whether by sale, gift or operation of law, shall cause a cancellation of the prior business license. The prior business license shall remain in effect no more than twenty (20) working days from the date of the transfer. The new owner shall not conduct business thereafter until the new owner obtains a new license pursuant to this article.

### **§ 110-7. Denial of License.**

- A. Unless otherwise limited by applicable state law, a general business license application shall be denied based on any of the following grounds:
  - 1. All applicable provisions of the town code and state law have not been met;
  - 2. The required fees have not been paid;
  - 3. The application is incomplete or contains false, misleading or fraudulent statements;
  - 4. The person applying is not qualified or licensed to engage in such business under federal or Colorado law;
  - 5. Previous revocation or suspension of a business license held by applicant within the town or any other jurisdiction;
  - 6. Nonconformance of the business, place of business, building or land use with the requirements of the town codes;
  - 7. Prior or ongoing violations of law in connection with, on or about the place of business; or
  - 8. Any reason that would justify suspension or revocation of a license.
- B. In the event of a denial, the Town Licensing Officer shall mail or deliver to the applicant a written order of denial stating the reason or reasons for the denial within ten (10) days of the denial.

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- C. No license shall be effective until the applicant owns or is entitled to possession of the proposed place of business, and has obtained all required specialty licenses and any other licenses required by applicable law.

### **§ 110-8. Requirements of Licensee.**

Every licensee under this chapter shall:

- A. At all times comply with all laws and regulations applicable to the licensed business, including all state and federal laws, registration and licensing requirements.
- B. Avoid all illegal or unlawful practices or conditions which do or may affect the public health, safety, morals or welfare.
- C. Refrain from operating the licensed business after expiration of the business license.

### **§ 110-9. Conditions of License.**

- A. Public property, streets and rights-of-way shall not be used to conduct any business or to store merchandise, unless special permission has been obtained, in writing, from the Town of Frisco. In the case of an excavation permit, additional permission shall not be required.
- B. The licensee shall keep and maintain the exterior of all business property in an orderly, uncluttered, clean and neat manner, free from rubbish, trash, garbage and debris of any kind.
- C. In the event that a business has been licensed in the past which would at the time of renewal be ineligible to be licensed due to zoning or Building Code requirements being imposed since the original license was issued, the license may be renewed with a written warning that any complaints received relative to the code violation may necessitate the suspension or revocation of the license.

### **§ 110-10. Exemptions. [Amended 08-22-06, Ord. 06-28]**

Businesses exempted from licensee fees are as follows:

- A. Churches or established religious organizations.
- B. Corporations, limited liability companies or other entities or organizations which currently have tax exempt status through the Internal Revenue Service.
- C. Public schools.

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- D. A federal, state or local governmental agency that is exempted by state law from collecting municipal taxes.
- E. Individual vendors participating in a special event where the organizer has obtained a business license which umbrellas the individual vendors pursuant to Section 160-8.5 of the Frisco Town Code.

### **§ 110-11. Suspension or Revocation of License.**

- A. *Suspension.* The Town Licensing Officer may suspend a general business license upon determining that a licensee has:
  - 1. Violated or is not in compliance with any section of this article or any other applicable provision of the town code;
  - 2. Operated the business in violation of a building, fire, health, or zoning code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the department, division, or agency charged with enforcing said rules or laws. In the event of such a statute, code, ordinance or regulation violation, the licensing officer shall promptly notify the licensee of the violation and shall allow the licensee a twenty (20) day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the twenty (20) day period, the licensing officer shall forthwith suspend the general business license and shall notify the licensee of the suspension;
  - 3. Failed to file any reports or furnish any other information that may be required by the provisions relating to the specific license;
  - 4. Violated any of the terms pertaining to the license, or any regulation or order lawfully made relating thereto; or
  - 5. Failed to pay the annual license fee.
  - 6. The Town Licensing Officer may suspend a general business license for a period not to exceed one hundred fifty (150) days. The suspension shall remain in effect until and including the last day in the Town Licensing Officer's order or until such time as the violation of the statute, code, ordinance, regulation or order in question has been corrected, whichever is later.
- B. *Revocation.* The Town Licensing Officer shall revoke a general business license upon determining that:
  - 1. A cause for suspension in subsection A of this section occurred and the general business license has been suspended more than once within the preceding twelve (12) months;

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2. A licensee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a general business license;
  3. A licensee knowingly operated the business during a period of time when the licensee's general business license was suspended;
  4. A licensee is delinquent in payment to the town or state for any taxes or fees;  
or
  5. Any fact or condition exists that, if it had existed or had been known to exist at the time of the application for the license, would have warranted the denial of the license.
  6. When the Town Licensing Officer revokes a general business license, the revocation shall continue for one (1) year and the licensee shall not be issued a general business license for one (1) year from the date revocation became effective.
- C. If there is probable cause to believe that reason exists for suspension or revocation of a general business license and the Town Licensing Officer has not suspended or revoked such license, the Town Attorney may file a written complaint with the Town Licensing Officer setting forth the circumstances of the alleged violation.
- D. The Town Licensing Officer shall provide a copy of the complaint to the licensee, together with notice to appear before the Town Manager for the purpose of a hearing on a specified date to show cause why the licensee's general business license shall not be suspended or revoked. The hearing shall be held in accordance with section 110-12 herein.

### **§ 110-12. Denial, Suspension or Revocation Hearing.**

- A. An applicant or licensee may appeal a denial, suspension, or revocation of his or her general business license to the Town Manager and shall be entitled to a hearing before the Town Manager. Said appeal shall be made in writing, stating the grounds for appeal, within five (5) working days of the decision of the Town Licensing Officer. In the event of a suspension or revocation hearing, the business may continue to operate during the hearing process.
- B. At the hearing, the Town Manager shall hear such statements and consider such evidence as is offered that is relevant to the grounds alleged for denial or the violation alleged for suspension or revocation. The Town Manager shall make findings of fact from the statements and evidence offered as to whether such grounds exist or such violation occurred. If the Town Manager determines that grounds for denial or a cause for suspension or revocation exists, he or she shall issue an order denying, suspending, or revoking the general business license

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within thirty (30) days after the hearing is concluded, based on the findings of fact. A copy of the order shall be mailed to or served on the licensee at the address on the license.

- C. The order of the Town Manager made pursuant to subsection B above shall be a final decision and may be appealed to the district court pursuant to Colorado Rule of Civil Procedure 106(a)(4). Failure of a licensee to appeal said order in a timely manner constitutes a waiver by him or her of any right he or she may otherwise have to contest the denial, suspension, or revocation of the general business license.
- D. The Town Manager shall have the power to administer oaths, issue subpoenas, and when necessary grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books and records necessary to the determination of any hearing that the Town Manager conducts. It is unlawful for any person to fail to comply with any subpoena issued by the Town Manager. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the State of Colorado.
- E. All hearings held before the Town Manager regarding denial, suspension, or revocation of a general business license issued under this code shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the Town Manager and shall pay all costs of preparing such record.
- F. In the event of suspension, revocation, or cessation of business, no portion of the general business license fee shall be refunded.

### **§ 110-13. Administration.**

The administration of the annual business license required by this chapter shall be through the office of the Town Licensing Officer who is authorized to do the following:

- A. Collect license fees.
- B. Adopt the form of application.
- C. Promulgate and enforce all reasonable rules and regulations necessary to the operation and enforcement of this chapter.
- D. Determine the eligibility, according to the standards of this code and state and federal laws, of each applicant for a general business license with the aid of other town department heads as needed.
- E. Investigate and work with the Town Manager to determine the denial, revocation or suspension of a business license for violation of the license as provided in this chapter.

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F. Issue the general business license upon substantial compliance.

### **§ 110-14. Enforcement; Violations and Penalties.**

- A. The town may seek an injunction to restrain a person from engaging in business who does not obtain a license under this chapter or whose license is revoked or suspended. This remedy shall be in addition to all other remedies prescribed in this chapter or by law.
- B. Any person, firm or corporation violating the provisions of this chapter shall, upon conviction, be punished as provided in Chapter 1, General Provisions, Article I, in addition to those penalties stated in this chapter.

## **ARTICLE II** **[Added 03-07-00, Ord. 00-05]**

### **Licensing of Sexually Oriented Businesses**

#### **§ 110-15. Definitions.**

Certain words and phrases used in this article shall have the meanings ascribed to them in sections 110-2 and 180-32.

#### **§ 110-16. Sexually Oriented Business License Required.**

- A. No sexually oriented business license shall be issued for any sexually oriented business located within any zone district other than the auto oriented commercial district, the contractor trades district, the accommodations district, the mixed use district or the central core district.
- B. No person shall operate a sexually oriented business without first having obtained a valid type A or type B sexually oriented business license issued by the Town.
  - 1. A type A sexually oriented business license shall be required for sexually oriented businesses where alcoholic beverages or alcoholic liquors, as defined by the Colorado Liquor Code, and/or fermented malt beverages, as defined by the Colorado Beer Code, are allowed pursuant to a valid license issued under Chapter 53 of the Code of Ordinances of the Town of Frisco.
  - 2. A type B sexually oriented business license shall be required for all sexually oriented businesses where alcoholic beverages or alcoholic liquors, as defined by the Colorado Liquor Code, and/or fermented malt beverages, as defined by the Colorado Beer Code, are not allowed.
- C. It shall be unlawful to operate or cause to be operated a sexually oriented business when said person knows or reasonably should know that:

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1. The business does not have a sexually oriented business license;
2. The business has a sexually oriented business license that is under suspension;
3. The business has a sexually oriented business license that has been revoked;
4. The business has a sexually oriented business license that has expired;
5. The business operates under a type B sexually oriented business license and allows alcoholic beverages or alcoholic liquors, as defined by the Colorado Liquor Code, and/or fermented malt beverages, as defined by the Colorado Beer Code, on the premises;
6. The business is in violation of any applicable provision of Chapter 180 of this Code.

### **§ 110-17. Fees. [Amended 07-02-02, Ord. 02-12]**

- A. The annual fee for a sexually oriented business license is two hundred twenty-five dollars (\$225.00).
- B. The annual manager's license fee is seventy-five dollars (\$75.00).
- C. An applicant for either a type A or type B sexually oriented business license shall pay a nonrefundable application fee of five hundred twenty-five dollars (\$525.00) at the time of filing an application.

### **§ 110-18. Application for Sexually Oriented Business License.**

- A. The licensing officer is responsible for granting, denying, revoking, renewing, and suspending sexually oriented business licenses for proposed or existing sexually oriented businesses.
- B. The director of the community development department or his or her designee is responsible for ascertaining whether a proposed sexually oriented business for which a sexually oriented business license application has been submitted complies with all location requirements of section 180-34.
- C. The police chief or his or her designee is responsible for providing information on whether an applicant has been convicted of a specified criminal act during the time periods set forth in section 110-21(C) (1)(i).
- D. The building official or his or her designee is responsible for inspecting a proposed sexually oriented business in order to ascertain whether it is in compliance with applicable building codes and ordinances.

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- 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 sexually oriented business license 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 twenty-one (21) years of age or older in the case of a type A sexually oriented business license or eighteen (18) years of age or older in the case of a type B sexually oriented business license.
  2. If the applicant is a legal entity, the application shall state its complete name, the date and place of its organization, evidence that it is in good standing under the laws of the state in which it is organized, and if it is organized under the laws of a state other than Colorado, that it is registered to do business in Colorado, the full legal names, date of birth and capacity of all officers, directors, managers, and principal owners, and the name of the registered agent and the address of the registered agent for service of process, if any.
  3. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the sexually oriented business' fictitious name must be stated.
  4. Whether the applicant or any of the other individuals listed pursuant to subsections (F)(1) or (2) has been convicted of a specified criminal act within the times set forth in section 110-21(C)(1)(i), and if so, the specified criminal act involved, the date of conviction and the place of conviction.
  5. Whether the applicant or any of the other individuals listed pursuant to subsections (F)(1) or (2) has had a previous license under this or any other sexually oriented business ordinance from another city, town or county denied, suspended, or revoked and, if so, the name of the city, town or county where the license was previously denied, suspended or revoked, and the name and location of the sexually oriented business for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension or revocation.
  6. Whether the applicant or any other individuals listed pursuant to subsection (F)(1) or (2) has been a partner in a partnership or a principal owner of a corporation or other legal entity whose license has previously been denied, suspended, or revoked and, if so, the name of the city, town or county where the license was previously denied, suspended or revoked, and the name and location of the sexually oriented business for which the license was denied,

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suspended, or revoked, as well as the date of denial, suspension, or revocation.

7. Whether the applicant or any other individual listed pursuant to subsections (F)(1) or (2) holds any other licenses under this article or any other sexually oriented business ordinance from another city, town or county and, if so, the name of such city, town or county, and names and locations of such other licensed businesses.
8. The location of the proposed sexually oriented business including a legal description of the property, street address, and telephone number(s).
9. Proof of the applicant's right to possession of the premises wherein the sexually oriented business will be conducted.
10. The applicant's mailing address and residential address.
11. A sketch or diagram showing the configuration of the premises including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be oriented to the north or to some designated street or object and shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (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 be altered since it was prepared. If the sexually oriented business has or will have a peep booth or booths subject to the provisions of section 180-42, the sketch shall show the locations and dimensions of any manager's stations and demonstrate that there is an unobstructed view from at least one of the manager's stations of every area of the premises to which any patron is permitted access, excluding restrooms. The floor plan shall designate those rooms or other areas of the premises where patrons are not permitted and shall also designate the use of each room or other area of the premises.
12. A current certificate and straight-line drawing prepared within thirty (30) days prior to an initial application by a Colorado registered land surveyor depicting:
  - (i) the property lines and the structures of the property to be certified; and
  - (ii) the location of the property lines of any church, school, dwelling, public park, or childcare facility within five hundred (500) feet of the property to be certified and
  - (iii) the location of the property lines and structures on the property of any other sexually oriented business within one hundred (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 or pending at the time an application is submitted.

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13. If a person who wishes to operate a sexually oriented business is an individual, he or she must sign the application for a sexually oriented business license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each principal owner of the applicant must sign the application for a sexually oriented business license as applicant.
- G. 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 properly to complete the application. The time period for granting or denying a sexually oriented business license shall be stayed during the period in which the applicant is allowed an opportunity properly to complete the application.
- H. The fact that a person possesses or is required to possess other types of state or town licenses does not exempt him or her from the requirement of obtaining a sexually oriented business license.

### **§ 110-19. Duty to Supplement Application.**

- A. Applicants for a sexually oriented business license under section 110-18 shall have a continuing duty promptly to supplement any application information required by that section in the event that said information changes in any way from what is stated on the application.
- B. The failure to comply with said continuing duty to supplement an application within thirty (30) days from the date of such change shall be grounds for suspension of a sexually oriented business license.

### **§ 110-20. Investigation and Application.**

- A. Upon receipt of an application for a sexually oriented business license properly filed with the licensing officer and upon payment of the nonrefundable application fee, the licensing officer shall immediately stamp the application as received and send copies of the application to the director of the community development department, the building official and the police chief. The director of the community development department, the building official and the police chief, or their respective designees, shall promptly conduct an investigation of the applicant, application, and the proposed sexually oriented business in accordance with his or her responsibilities under this section. Investigations shall be completed within twenty (20) days of receipt of the application by the licensing officer. At the conclusion of their investigations, the director of the community development department and the building official shall indicate on the copy of the application his or her approval or disapproval of the application, date it, sign it, and in the event of disapproval, state the reasons therefore. The police chief shall only be required to provide the information specified in section 110-18(C), and shall not be required to approve or disapprove applications.

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- B. The director of the community development and the building official may disapprove an application if he or she finds that the proposed sexually oriented business will be or is in violation of any provision of any statute, code, ordinance, regulation, or other law in effect in the Town. After their investigations and review, the director of the community development department, the building official and the police chief shall immediately return the copy of the application to the licensing officer. The licensing officer shall not issue a sexually oriented business license unless signed copies of the application for the same have been delivered to said officer by the director of the community development department and the building official and unless the police chief has supplied said officer with the information specified in section 110-18(C).

### **§ 110-21. Issuance of Sexually Oriented Business License.**

- A. The licensing officer shall grant or deny an application for a sexually oriented business license within thirty (30) days from the date of its proper filing. Upon the expiration of the thirty (30) days, the applicant shall be licensed to begin operating the business for which the sexually oriented business license is sought, unless and until the licensing officer notifies the applicant, by first class mail to the address on the application, of a denial of the application and states the reason(s) for that denial.
- B. Grant of application for sexually oriented business license.
1. The licensing officer shall grant the sexually oriented business license unless one or more of the criteria set forth in subsection (C) below is present.
  2. The sexually oriented business license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at any time.
- C. Denial of application for sexually oriented business license.
1. The licensing officer shall deny the application for any of the following reasons:
    - a. An applicant is under twenty-one (21) years of age in the case of an application for a type A sexually oriented business license or under eighteen (18) years of age in the case of an application for a type B sexually oriented business license.
    - b. An applicant is overdue on his or her payment to the Town of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to a sexually oriented business.

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- c. An applicant has failed to provide information required by this article for the issuance of the sexually oriented business license or has falsely answered a question or request for information on the application form and has refused to provide corrected information.
- d. The premises to be used for the sexually oriented business have been disapproved by an inspecting agency pursuant to the provisions of section 110-20(B).
- e. The application or sexually oriented business license fees have not been paid.
- f. An applicant for the proposed business is in violation of or is not in compliance with any of the provisions of this article.
- g. The granting of the application would violate a statute, ordinance, or court order.
- h. The applicant has or had a sexually oriented business license under this article, or under the regulatory provisions of another jurisdiction, that was suspended or revoked within the previous twelve (12) months. In the case of a denial of an application due to the suspension or revocation of the applicant's license in another jurisdiction, the applicant shall be entitled to a hearing before the Town Manager. After the hearing, the Town Manager may grant the application without regard to the suspension or revocation of the applicant's license in another jurisdiction if he finds that the grounds for suspension or revocation in that jurisdiction would not be grounds for suspension or revocation of a license pursuant to this article.
- i. An applicant has been convicted of a specified criminal act or acts for which:
  - I. 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;
  - II. 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
  - III. 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.
  - IV. The fact that a conviction is being appealed shall have no effect on disqualification of the applicant. An applicant who has been convicted

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of a specified criminal act or acts may qualify for a sexually oriented business license only when the time period required above has elapsed.

- V. If the licensing officer denies the application, he or she shall notify the applicant, by first class mail to the address on the application, of the denial and state the reason(s) for the denial. A copy of such denial shall be forwarded to the town attorney.

### **§ 110-22. Expiration of Sexually Oriented Business License.**

- A. Each sexually oriented business license shall expire one year from the date of issuance and may be renewed only by making application as provided in section 110-18 of this article, including but not limited to a review of whether the applicant has been convicted of a specified criminal act or acts (for renewals, filing of the original survey shall be sufficient). Application for renewal of a sexually oriented business license shall be made at least thirty (30) days before the expiration date of the sexually oriented business license.
- B. If, subsequent to denial of renewal the licensing officers find that the basis for denial of the renewal of the sexually oriented business license has been corrected, the applicant shall be granted a sexually oriented business license if no more than ninety (90) days have elapsed since the date denial became final.

### **§ 110-23. Suspension of Sexually Oriented Business License.**

- A. The licensing officer may suspend a sexually oriented business license for a period not to exceed one hundred fifty (150) days, unless the period is extended by operation of subpart B of this section, if he or she determines that a licensee or an employee of a licensee has:
  - 1. Violated or is not in compliance with any section of this article or any provision of chapter 180 of this Code; or
  - 2. Refused to allow an inspection of the sexually oriented business premises as authorized by this article; or
  - 3. Knowingly allowed repeated disturbances of the public peace to occur within the licensed establishment or upon the premises of the licensed establishment involving patrons, employees, or the licensee; or
  - 4. Operated the sexually oriented business in violation of a building, fire, health, or zoning code, ordinance, or regulation, whether federal, state, or local, said determination being based on investigation by the department, division, or agency charged with enforcing said rules or laws. In the event of such a statute, code, ordinance, or regulation violation, the licensing officer shall promptly notify the licensee of the violation and shall allow the licensee a twenty (20) day period in which to correct the violation. If the licensee fails to

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correct the violation before the expiration of the twenty (20) day period, the licensing officer shall forthwith suspend the sexually oriented business license and shall notify the licensee of the suspension; or

5. Operated the sexually oriented business in violation of the hours of operation provisions in section 180-43; or
  6. Transferred a sexually oriented business license contrary to section 110-26. In the event of such suspension, the licensing officer shall forthwith notify the original licensee and the transferee of the suspension. The suspension shall remain in effect until the applicable provisions of section 110-26 have been satisfied.
- B. The suspension shall remain in effect until and including the last day in the licensing officer's order and until the violation of the statute, code, ordinance, or regulation in question has been corrected.

### **§ 110-24. Revocation of Sexually Oriented Business License.**

- A. The licensing officer shall revoke a sexually oriented business license upon determining that:
1. A cause of suspension in section 110-23 of this article occurred and the sexually oriented business license has been suspended within the preceding twelve (12) months; or
  2. A licensee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a sexually oriented business license; or
  3. A licensee, manager or an employee has knowingly allowed possession, use, or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises; or
  4. A licensee, manager or an employee has knowingly allowed acts of prostitution or negotiations for acts of prostitution on the premises; or
  5. A licensee, manager or an employee knowingly operated the sexually oriented business during a period of time when the licensee's sexually oriented business license was suspended; or
  6. A licensee has been convicted of a specified criminal act for which the time period set forth in section 110-21(C)(1)(i) has not elapsed; or
  7. On two (2) or more occasions within a twelve (12) month period, a person or persons committed an offense, occurring in or on the licensed premises constituting a specified criminal act for which a conviction has been obtained,

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and the person or persons were employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the sexually oriented business license; or

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

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

B. When the licensing officer revokes a sexually oriented business license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective.

### **§ 110-25. Suspension or Revocation Hearing.**

A. A licensee shall be entitled to a hearing before the Town Manager if the Town seeks to suspend or revoke his or her sexually oriented business license based on a violation of this article or any provision of chapter 180 of this Code. The business may continue to operate during the hearing process.

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

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

D. At the hearing, the Town Manager shall hear such statements and consider such evidence as the police department or other enforcement officers, the owner, occupant, lessee, or other party in interest, or any other witness shall offer that is relevant to the violation alleged in the complaint. The Town Manager shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the Town Manager determines that a cause for suspension or revocation exists, he or she shall issue an order suspending or revoking the sexually oriented business license within thirty (30) days after the hearing is concluded based on the findings of fact. A copy of the order shall be mailed to or served on the licensee at the address on the license. In performing his duties pursuant to this section 110-25, the Town Manager may retain independent counsel to advise him with regard any matter.

E. The order of the Town Manager made pursuant to subsection (D) above shall be a final decision and may be appealed to the district court pursuant to Colorado Rule

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of Civil Procedure 106(a)(4). Failure of a licensee timely to appeal said order constitutes a waiver by him or her of any right he or she may otherwise have to contest the suspension or revocation of the sexually oriented business license.

- F. The Town Manager shall have the power to administer oaths, issue subpoenas, and when necessary grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing, which the Town Manager conducts. It is unlawful for any person to fail to comply with any subpoena issued by the Town Manager. A subpoena shall be served in the same manner as a subpoena issued by the district court of the State of Colorado.
- G. All hearings held before the Town Manager regarding suspension or revocation of a sexually oriented business license issued under this ordinance shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the Town Manager, and shall pay all costs of preparing such record.
- H. In the event of suspension, revocation, or cessation of business, no portion of the sexually oriented business license fee shall be refunded.

### **§ 110-26. Transfer of Sexually Oriented Business License.**

- A. A licensee shall not operate a sexually oriented business under the authority of a sexually oriented business license at any place other than the address designated in the application for sexually oriented business license.
- B. A licensee shall not transfer his or her sexually oriented business license to another person unless and until such other person satisfies the following requirements:
  - 1. Obtains an amendment to the sexually oriented business license from the licensing officer that provides that he or she is now the licensee, which amendment may be obtained only if he or she has completed and properly filed an application with the licensing officer setting forth the information called for under section 110-18 in the application; and
  - 2. Pays a transfer fee of twenty (20) percent of the annual sexually oriented business license fee.
- C. No sexually oriented business license may be transferred when the licensing officer has notified the licensee that suspension or revocation proceedings have been or will be brought against the licensee.
- D. Any attempt to transfer a sexually oriented business license either directly or indirectly in violation of this section is hereby declared void.

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### **§ 110-27. Manager's License Required; Change of Manager; Inactive Status.**

- A. A manager or designee shall be on the premises of a sexually oriented business at all times during operation. It shall be unlawful for any person to work as a manager of a sexually oriented business without first obtaining a manager's license for such premises.
- B. In the event a manager ceases to be employed at the premises listed in his or her application, the manager shall immediately report such change to the licensing officer but in no event shall such change be reported later than ten days after cessation of employment.
- C. Provided a manager has complied with the requirements of subsection (B), his or her license shall remain in inactive status until it expires or is reactivated. A manager who is re-employed at the premises listed in the manager's license may reactivate his or her license provided the licensing officer determines he or she still meets the requirements of section 110-28.

### **§ 110-28. Application for Manager's License.**

- A. A manager shall submit an application for a manager's license for each sexually oriented business the manager proposes to manage on a form to be provided by the licensing officer. The application shall contain the applicant's name, address, date of birth, telephone number, address, the name and address of the sexually oriented business that manager proposes to manage and the information required in section 110-18(F)(4).
- B. The police department shall conduct an investigation of the applicant to determine if the applicant has been convicted of a specified criminal act within the times set forth in section 110-21(C) (1)(i).
- C. The licensing officer shall grant the application within ten (10) days of its filing unless:
  - 1. The applicant is under the age of twenty-one (21) in the case of a type A sexually oriented business license or under the age of eighteen (18) in the case of a type B sexually oriented business license;
  - 2. The applicant has failed to provide the information required by this section;
  - 3. The license fee has not been paid;
  - 4. The applicant has been convicted of a specified criminal act within the times set forth in section 110-21(C) (1) (i).

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### **§ 110-29. Expiration of Manager's License.**

- A. Each manager's license shall expire one year from the date of issuance and may be renewed only by making application as provided in section 110-26, including but not limited to a review of whether the applicant has been convicted of a specified criminal act or acts. Application for renewal of a manager's license shall be made at least thirty (30) days before the expiration date of the manager's license.
- B. If, subsequent to denial of renewal the licensing officer finds that the basis for denial of the renewal of the manager's license has been corrected, the applicant shall be granted a manager's license if no more than ninety (90) days have elapsed since the date denial became final.

### **§ 110-30. Suspension of Manager's License.**

- A. The licensing officer may suspend a manager's license for a period not to exceed ninety (90) days, unless the period is extended by operation of subpart B of this section, if he or she determines that the manager has:
  - 1. Violated or is not in compliance with any section of this article or any provision of chapter 180 of this Code; or
  - 2. Refused to allow an inspection of the sexually oriented business premises as authorized by this article; or
  - 3. Knowingly allowed repeated disturbances of the public peace to occur within the licensed establishment or upon the premises of the licensed establishment involving patrons, employees, or the licensee; or
  - 4. Operated the sexually oriented business in violation of the hours of operation provisions in section 180-43.
- B. The suspension shall remain in effect until and including the last day in the licensing officer's order and until the violation of the statute, code, ordinance, or regulation in question has been corrected.

### **§ 110-31. Revocation of Manager's License.**

- A. The licensing officer shall revoke a manager's license upon determining that:
  - 1. A cause of suspension in section 110-30 of this article occurred and the manager's license has been suspended within the preceding twelve (12) months; or

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2. The manager gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a manager's license; or
  3. The manager knowingly allowed possession, use, or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises; or
  4. The manager knowingly allowed acts of prostitution or negotiations for acts of prostitution on the premises; or
  5. The manager knowingly operated the sexually oriented business during a period of time when the sexually oriented business license was suspended; or
  6. The manager has been convicted of a specified criminal act for which the time period set forth in section 110-21(C)(1)(i) has not elapsed; or
  7. The manager has knowingly allowed any specified sexual activity to occur in or on the licensed premises.
- B. When the licensing officer revokes a manager's license, the revocation shall continue for one year and the licensee shall not be issued a manager's license for one year from the date revocation became effective.

### **§ 110-32. Suspension or Revocation Hearing.**

- A. A manager shall be entitled to a hearing before the Town Manager if the Town seeks to suspend or revoke the manager's license based on a violation of this article or any provision of chapter 180 of this Code. The manager may continue to manage a sexually oriented business during the hearing process.
- B. When there is probable cause to believe that a cause for suspension or revocation exists, the town attorney may file a written complaint with the licensing officer setting forth the circumstances of the alleged violation.
- C. The licensing officer shall provide a copy of the complaint to the licensee, together with notice to appear before the Town Manager for the purpose of a hearing on a specified date to show cause why the licensee's license should not be suspended or revoked.
- D. At the hearing, the Town Manager shall hear such statements and consider such evidence as the police department or other enforcement officers, the owner, employer, occupant, lessee, or other party in interest, or any other witness shall offer that is relevant to the violation alleged in the complaint. The Town Manager shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the Town Manager determines that a cause for suspension or revocation exists, he or she shall issue

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an order suspending or revoking the manager's license within thirty (30) days after the hearing is concluded based on the findings of fact. A copy of the order shall be mailed to or served on the licensee at the address on the license.

- E. The order of the Town Manager made pursuant to subsection (D) above shall be a final decision and may be appealed to the district court pursuant to Colorado Rule of Civil Procedure 106(a)(4). Failure of a licensee timely to appeal said order constitutes a waiver by him or her of any right he or she may otherwise have to contest the suspension or revocation of the manager's license.
- F. The Town Manager shall have the power to administer oaths, issue subpoenas, and when necessary grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing, which the Town Manager conducts. It is unlawful for any person to fail to comply with any subpoena issued by the Town Manager. A subpoena shall be served in the same manner as a subpoena issued by the district court of the State of Colorado.
- G. All hearings held before the Town Manager regarding suspension or revocation of a manager's license issued under this ordinance shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the Town Manager, and shall pay all costs of preparing such record.
- H. In the event of suspension, revocation, or cessation of business, no portion of the manager's license fee shall be refunded.

### **§ 110-33. Notice.**

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

### **§ 110-34. Judicial Review.**

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

### **§ 110-35. Inspection.**

- A. An applicant or licensee or manager shall permit representatives of the licensing officer, building official, the director of the community development department, the police department, the county health department and the fire department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

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