

TOWN OF GYPSUM, COLORADO

**ORDINANCE NO. 10
SERIES 2021**

**AN ORDINANCE PROVIDING FOR THE REPEAL AND READOPTION OF
TITLES 5 AND 8, OF THE GYPSUM MUNICIPAL CODE**

WHEREAS, the Town of Gypsum (“Town”) is a home rule municipality duly organized and existing under Articles XX of the Colorado Constitution and the Town’s Home Rule Charter effective October 21, 1982; and

WHEREAS, by Ordinance No. 1, Series 1985, and pursuant to the provisions of Section 31-16-201 through 31-16-208 of the Colorado Revised Statutes, as amended, the Town Council adopted the Gypsum Municipal Code (“Code) consisting of a codification of the Town’s ordinances of a general and permanent nature; and

WHEREAS, several titles, chapters, sections and subsections of the Code have been amended and/or repealed and readopted since 1985; and

WHEREAS, in order to reduce liability risks to the Town, add clarity and consistency, and ensure the Code incorporates current legislation and case law, the Town Council has undertaken a comprehensive review of the Code to ensure the Code is adequately serving the community’s needs as the Town grows; and

WHEREAS, the Town Council finds and determines that Title 5 (Business Taxes, Licenses and Regulations) and Title 8 (Health and Safety) should be repealed and their content readopted and codified, as amended, and that the same is necessary and designed for the purpose of promoting the health, safety, convenience, order, prosperity and welfare of the present and future inhabitants and visitors of the Town;

NOW, THEREFORE, be it ordained by the Town Council of the Town of Gypsum, Colorado that:

Section 1. Repeal and Readoption of Title 5 (Business Taxes, Licenses and Regulations) and Title 8 (Health and Safety). Titles 5 and 8 of the Gypsum Municipal Code are hereby repealed and readopted in their entirety, as attached hereto and incorporated herein.

Section 2. Public Inspection. Copies of this ordinance and the Gypsum Municipal Code are available for public inspection at the office of the Gypsum Town Clerk.


Section 3 Public Hearing: A public hearing on this Ordinance shall be held on the 26th day of October, 2021, at 7:00 p.m. at the Town of Gypsum Town Hall, 50 Lundgren Boulevard, Gypsum, Colorado.

Section 4. Effective Date. This Ordinance shall become effective as a permanent Ordinance five (5) days after publication, following final adoption after a public hearing held on the 26th day of October, 2021, at 7:00 p.m., at the Gypsum Town Hall, 50 Lundgren Blvd., Gypsum, Colorado.

Section 5. Severability. If any portion of this Ordinance, or the Gypsum Municipal Code amended hereby, is found to be void or ineffective, it shall be deemed severed from this Ordinance and the remaining provisions shall remain valid and in full force and effect.

INTRODUCED, READ AND ORDERED PUBLISHED BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF GYPSUM ON THE 12TH DAY OF OCTOBER, 2021.

TOWN OF GYPSUM

By: 
Stephen M. Carver, Mayor

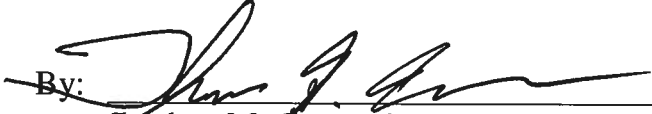
Attest:


Becky Close, Town Clerk

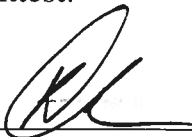


INTRODUCED ON SECOND READING, READ, CONSIDERED AT A PUBLIC HEARING AND FINALLY ADOPTED, PASSED AND APPROVED WITH AMENDMENTS, IF ANY, AND ORDERED POSTED AND PUBLISHED, BY THE TOWN COUNCIL OF THE TOWN OF GYPSUM, COLORADO, UPON A MOTION DULY MADE AND PASSED AT ITS MEETING HELD ON THE 26TH DAY OF OCTOBER, 2021, BY A VOTE OF 5 IN FAVOR AND 0 AGAINST.

TOWN OF GYPSUM

By: 
Stephen M. Carver, Mayor
Tom Edwards, Mayor Pro Tem

Attest:


Becky Close, Town Clerk

(SEAL)



TITLE 5 - BUSINESS TAXES, LICENSES AND REGULATIONS

Chapter 5.01 - UTILITY FRANCHISES

5.01.010 - Power to Grant Franchises.

The Town Council of the Town has the specific and express power to grant and renew utility franchises and the power to approve transfers and sales of utility franchises to certain entities.

5.01.020 - Franchise Requirements—Application.

Any entity proposing to utilize or continuing to utilize streets, alleys, easements and other public ways or places of the Town through the construction, use, operation or placement of facilities, pipes wires, poles or other apparatus and objects of a fixed, permanent or long-term nature, and any entity utilizing the same which proposes to transfer or sell its franchise, plant or system to or merge with another, or to transfer, lease or permit the use of any rights under a franchise to another (herein referred to as "transfer" or "sale" of a franchise), shall submit an application for franchise authority to the Town Clerk. The application for franchise authority shall set forth the applicant's request and shall be submitted to the Town Clerk not less than four months prior to the date by which the applicant desires the franchise be awarded, renewed, transferred or sold.

5.01.030 - Reimbursement for Expenses.

Each applicant shall reimburse the Town for all costs and expenses incurred by the Town in processing, reviewing, negotiating or considering any application for a franchise, or its renewal, sale or transfer, including but not limited to Town staff time and expenses, expert and consulting fees and studies, legal fees, publication costs, public hearings and elections (the "Town costs"). All applications shall be accompanied by a deposit of \$7,500.00. All Town costs shall be reimbursed by an applicant, regardless of whether an application is granted. See chapter 3.04 of this Code for additional provisions regarding reimbursement.

5.01.040 - Delinquent reimbursement.

Any outstanding balance still due and owing after 30 days of the date of billing shall be charged interest at the rate of 18 percent per year. All delinquent Town costs, together

with interest thereon, shall constitute a perpetual priority lien upon any of applicant's real property used in connection with the franchise which is sought. The Town Clerk may certify the delinquent debt to the Eagle County assessor, to be collected, together with the costs of collection, against the property served in the same manner as though they were part of the taxes assessed against property.

5.01.050 - Computation of Town costs.

The Town Manager shall maintain an account of all Town costs pertaining to an application for franchise authority. Periodically, the Town shall provide the applicant with statements of the Town costs, which shall be due and payable within 30 days of the date of the statement. Once final action on the application is taken, the Town shall provide the applicant with a final billing of Town costs. Any application granted shall be automatically revoked if the applicant fails to reimburse 100 percent of the Town costs within 30 days of the final billing.

5.01.060 - Reasonableness of Town Costs.

If the applicant questions the reasonableness of the Town costs, the applicant shall request a review; provided, however, the applicant's request for review shall not extend the time for reimbursement to the Town as set forth in section 5.01.050.

5.01.070 - Prohibition Against Surcharge.

Neither the applicant's costs nor the Town costs shall be surcharged by the applicant against or otherwise charged solely to the Town or customers of the applicant within the Town. The applicant's costs and the Town costs may not be deducted from a franchise fee or other obligation payable to the Town by the applicant.

5.01.080 - Franchise Agreements.

All contracts, agreements or permits granting a utility franchise shall expressly incorporate, by reference or otherwise, the provisions of this Chapter 5.01. The provisions of this Chapter shall be automatically incorporated in all contracts, agreements or permits granting a utility franchise, even though an express reference may be lacking.

5.01.090 - Franchise Publication Requirements.

Any person desiring to secure a franchise or license for any purpose from the Town shall cause a notice of the ordinance granting such franchise or license to be published in a newspaper of general circulation one time, by title only, immediately prior to the next regular meeting of the Town Council at which such ordinance will be introduced and considered on first reading. Such notice shall specify the day, hour and place of the regular meeting of the Town Council at which the applicant intends to apply for such franchise or license, the name of the applicant therefor, and the title of the ordinance. If the ordinance is approved on first reading, the ordinance shall be posted and published in full on the Town's website for two weeks prior to passage of the ordinance on second reading.

Chapter 5.02 - BUSINESS LICENSE

5.02.010 - Short title.

This Chapter shall be known and may be cited as the "General Business Licensing Ordinance of the Town of Gypsum."

5.02.020 - Scope.

It is not intended by this Chapter to repeal or in any way impair any existing provisions of other laws or ordinances. Where this Chapter imposes a greater restriction than imposed by existing provisions of laws or ordinances, the provisions of this Chapter shall control.

5.02.030 - Definitions.

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

(1) *Applicant* means a person who has filed an application for a business license.

(2) *Application* means an application for a business license.

(3) *Business* means all kinds of vocations, occupations, professions, enterprises, establishments, and all other kinds of activities and matters which are conducted for private profit or benefit, either directly or indirectly, within the Town. Mere delivery within the Town of any property purchased or acquired from a regular place of business outside the town shall not be considered to be the conducting of business.

(4) *Insignia* or its singular number "*insignia*", is any tag, plate, badge, emblem, sticker, or any other kind of device which may be required for any use in connection with any license.

(5) *License* or *business license* means a license issued under this Chapter.

(6) *Licensee* means the holder of an unexpired business license.

(7) *Premises* means all lands, structures, places, and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is either affixed to or is otherwise used in connection with any such business conducted on such premises.

(8) *Town license officer* or *license officer* is the license officer of the Town as appointed by resolution of the Town Council.

5.02.040 - Business License Required.

No person shall conduct any business without a valid business license. Upon proper application, business licenses shall be issued or renewed for no more than a one-year term.

5.02.050 - Agents of Nonresident Businesses.

The agents or other representatives of nonresident businesses who are doing business in the Town are personally responsible for compliance with this Chapter.

5.02.060 - Separate Locations and Branch Establishments.

A separate license is required for each branch establishment or separate location of business; provided, however, that warehouses and distributing plants used in connection with and incidental to a licensed business shall not be deemed to be separate places of business or branch establishments. Each rental real property shall be deemed a branch establishment or separate place of business when there is a regular employee or representative authorized to transact business for the owner on the premises.

5.02.070 - Joint License.

A person engaged in two or more businesses at the same location shall not be required to obtain separate licenses for conducting each of such businesses.

5.02.080 - Town License Officer.

The Town license officer shall collect all license fees, review applications, and shall issue licenses to all qualified applicants. The license officer shall:

- (1) Recommend and enforce all reasonable rules and regulations adopted by the Town Council as necessary to the operation and enforcement of this Chapter.
- (2) Adopt, and from time to time amend, all forms and papers necessary for implementing this Chapter.
- (3) Submit all applications to interested Town officials for their review and comments when appropriate for determining eligibility for a license and compliance with Town regulations.
- (4) Investigate and determine the eligibility of any applicant for a license.
- (5) Examine the books and records of any applicant or licensee when reasonably necessary to the administration and enforcement of this Chapter.
- (6) Notify applicants of the approval or denial of their applications.
- (7) Keep confidential names, addresses, electronic addresses, telephone numbers and personal financial information provided by the applicant or licensee, to the extent permitted by the Colorado Open Records Act, §24-72-101, *et seq.*, C.R.S.

5.02.090 - Qualifications of Applicants.

The license officer shall approve an application and issue a license unless he or she determines that the business to be operated would violate the laws of the United States, the State of Colorado, or the Town, or the applicant is in default of an obligation in any manner to the Town except current taxes.

5.02.100 - Procedure for Issuance.

Every person conducting or desiring to conduct a business within Gypsum, excluding anyone who holds a valid Town of Gypsum contractor's license or who otherwise holds or qualifies for a Town of Gypsum transient business license, shall annually submit an application for a business license or renewal to the license officer. The application shall be upon forms provided by the license officer. The application shall require the disclosure of all information necessary to determine compliance with Gypsum's zoning requirements, any of the uniform codes adopted by Gypsum, and any laws or regulations

applicable to the business. These disclosures include, but are not limited to, proof of required licenses from the State of Colorado and any other information which the license officer shall find to be reasonably necessary to the fair administration of the proposed license.

5.02.110 - License Fee.

Each application for a business license or a renewal shall be accompanied by the payment of a fee. Fees for new business licenses and the renewal of a business license shall be in the same amounts. The license fee for a whole year time period shall be established by resolution of the Town Council with the fee amount shall be prorated for any partial year as follows: 100 percent of the license fee for applications received from January 1 to March 31; 75 percent of the license fee for applications received from April 1 to June 30; 50 percent of the license fee for applications received from July 1 to September 30; and 25 percent of the license fee for applications received from October 1 to December 31. These fees will pay for the cost of review of the application and administration of the license.

5.02.120 - Renewal Applications.

(1) All licenses shall expire on December 31 of each year. Initial and renewed licenses shall be issued on January 1 of each year.

(2) An application for the renewal of a license shall require the disclosure of such information required by Section 5.02.100 and any information concerning the conduct and operation of applicant's business during the preceding licensing period as is reasonably necessary for determining the applicants' eligibility for a renewal license.

5.02.130 - Duplicate Licenses.

A duplicate license, valid for the remainder of the license period, shall be issued by the license officer to replace any license previously issued, which has been lost, stolen, defaced, or destroyed, upon the paying to the license officer of a duplicate license fee in the amount to be set by resolution of the Town Council.

5.02.140 - Supplemental Information.

A licensee shall report in writing any change in information contained in its last application within 30 days of such change and a supplemental license shall be issued where appropriate.

5.02.150 - Denial of License.

The license officer shall approve or deny in writing an application for a business license. Within 30 days of a denial, the license officer shall mail information outlining the appeals process to the applicant's address as specified in the application. Upon denying any application, all fees paid in advance shall be refunded to the applicant provided the applicant is not otherwise indebted to the town.

5.02.160 - Contents of License.

Each license issued shall state upon its face the following:

- (1) The name of the licensee and any other name under which such business is to be conducted.
- (2) The kind and address of each business so licensed.
- (3) The amount of license fee paid.
- (4) The dates of issuance and expiration thereof.
- (5) Such other information as the license officer shall determine as necessary.

5.02.170 - Duties of Licensee.

Every licensee under this Chapter 5.02 shall:

- (1) Permit all reasonable inspections of the business and examinations of records as necessary for determining compliance with his business license.
- (2) Comply with all laws and regulations applicable to such licensed business and avoid all practices or conditions which do or may negatively affect the public health, morals or welfare.
- (3) Refrain from operating the licensed businesses upon expiration of the license, unless renewed, and during the period the license is revoked or suspended.

(4) Post and maintain such license upon the licensed premises in a place where it may be seen at all times. If a licensee has no business premises, he or she shall carry such license on his person when conducting business in the Town.

(5) Affix any insignia delivered by the license officer for use in connection with licensed business premises on the inside glass part of the window of said establishment, facing the public way or in the inside glass part of the door opening on the public way so as to be plainly visible from the public way, or in such other prominent place in proximity to the principal public entrance to such establishment so as to be plainly visible from such public entrance. The license officer may also provide an insignia to be placed on the inside of any vehicle used in a licensed business. Any insignia shall indicate the expiration date of the business license it is issued under.

5.02.180 - Change of Business Locations.

(1) Upon changing the location of the licensed business, a licensee shall file a written application for change with the license officer and pay a relocation fee which is dependent upon the number of employees employed by the applicant as set by resolution of the Town Council. No business shall be conducted at the new location until a new license is issued.

5.02.190 - Nontransferable.

Business license shall be nontransferable. Upon transferring a business, the new owner shall not conduct business until the new owner submits an application for a new business license and one is issued.

5.02.200 - Inspections.

The license officer, Town officials charged with enforcing the Gypsum Municipal Code, and police officers may conduct inspections and examine businesses to enforce compliance with this Chapter. Such persons may enter premises of licensees and business during normal business hours, with or without a search warrant, to conduct inspections.

5.02.210 - Compliance Orders.

If the license officer determines, in his/her sole discretion, that a business violated the Gypsum Municipal Code or any law, including the failure to obtain all relevant licenses required by the State of Colorado, the license officer shall personally service the affected

person with a written compliance order apprising the person affected of his specific violations and ordering him to comply. As an alternative to personal service, a copy of the compliance order shall be posted in a conspicuous manner on the premises and mailed first class U.S. certified mail to the licensee or business owner. The compliance order shall require compliance within 30 days of the date of the personal service or the posting and mailing of the order.

5.02.220 - Suspension or Revocation.

(1) Grounds for revocation or suspension. Upon receipt of a verified written complaint of any violation of the provisions of this Chapter or failure of a licensee to comply with a compliance order issued pursuant to Section 5.02.210, the license officer shall have the power to suspend or revoke any business license if the license officer finds, in his or her sole discretion, that the licensee has committed any of the following acts or omissions:

- (a) Failed to comply with any zoning requirements of the Town.
- (b) Willfully and/or deliberately disregarded any provision of this Chapter or relevant sections of the Gypsum Municipal Code.
- (c) Misrepresented a material fact, or committed fraud or deceit in order to obtain a license.
- (d) Engaged in any willful, fraudulent act by which another is injured.
- (e) Carelessly or negligently failed to provide reasonable safety measures or failed to follow all required practices for the protection of employees and the public health, morals or welfare.
- (f) Failed or refused to obtain a license prior to operating a business for which a license is required by this Chapter.
- (g) Failed to obtain all relevant licenses required by the State of Colorado.
- (h) Violated any laws or regulations applicable to such business.

(2) Emergency suspension. The license officer may make an emergency suspension of any license should the actions of the licensee or business involved pose an immediate, serious and imminent threat to the health, safety and welfare of the residents of the Town. Such emergency suspension shall not continue longer than 60 days without a hearing before the license officer.

(3) Length of suspension or revocation. The license officer, in his/her sole discretion, may suspend a license for up to six months and may revoke a license for up to one year during which period the licensee may not operate any related business in the Town. In determining the length of suspension or revocation, the license officer shall take into consideration the severity of the licensee's violation of this Chapter, the licensee's past performance, any attempt by the licensee to remedy the violation(s), and any verified written complaints received against the business or applicant.

(4) Reapplication. At the end of the period of revocation or suspension, any applicant whose license has been suspended or revoked may reapply for a new business license. Such license will only be granted if the applicant has served the full suspension or revocation term and sufficiently shows, to the satisfaction of the license officer, that the violations of this Chapter or other reason(s) for suspension or revocation of the license have been remedied.

5.02.230 - License Hearing.

Upon written request to the license officer received within 30 days of any decision by the license officer, including but not limited to compliance orders or the denial suspension, or revocation of a license, the license officer shall hold a license hearing and issue a written decision. Notice of such hearing, to be held within 30 days of receipt of the hearing request, shall be given the affected person. Upon written application or on his or her own motion, the license officer shall have the authority, in a proper case, to extend the time for compliance, to grant a new hearing date, and to change, modify or rescind any recommendation or order.

5.02.240 - Appeals.

Any person aggrieved by any decision of the license officer after a license hearing, including but not limited to a license, shall have the right to appeal to the Town Council upon filing with the Town Clerk a written appeal and request for hearing received by the Town Clerk within 30 days following issuance of a written hearing decision by the license officer. Such appeal shall set out a copy of the order or decision appealed from and shall include a statement of the facts in support of the appeal. A copy of the appeal shall be forwarded to the license officer.

5.02.250 - Appeals Hearing.

The Town Council shall hold a hearing on any appeal of a decision of the license officer at its next regularly scheduled meeting scheduled at least seven days after filing the

appeal and shall give notice to the appellant of the time and place of such hearing, and shall also notify the license officer who may appear and defend such order. After hearing evidence from the applicant and the license officer, the Town Council may issue a verbal decision and shall issue written findings which shall be final and conclusive.

5.02.260 - License Register.

The Town Clerk shall keep a register listing every license issued under this Chapter and listing the name of the licensee, the name of the business, the type of business and the date of issuance and expiration.

5.02.270 - Fines.

A person who violates the requirements of this Chapter may be fined the maximum amount for violations of the Gypsum Municipal Code pursuant to section 2.01.100. Separate violations will be deemed to have occurred for each day a person is in violation of this Chapter.

5.02.280 - Exemptions.

The Town Council may, by resolution, exempt from the requirements of this Chapter 5.02 any business conducted in conjunction with a Town-sponsored or Town-supported special event, but such exemption shall not extend to operations of the same business which are not conducted in conjunction with an exempted special event.

5.02.290 - Updating Information.

Licensees shall keep information on their licenses up to date. If information changes from what was submitted in the application, including but not limited to the licensee's address, the address of the business, the owner of the business or the type of business conducted, the licensee shall notify the license officer in writing no more than 14 days after such change.

Chapter 5.03 - LIQUOR LICENSES

5.03.010 - Liquor License Fees.

The amount of license fees for liquor licenses and fermented malt beverage licenses issued by the Town are as set forth in Sections 44-3-505(1) and 44-3-505(4) C.R.S., or any successor statutes, as amended from time to time.

5.03.020 - Authorization to Adopt Application Fee Schedule.

The Town Council, sitting as the local liquor licensing authority, is hereby authorized, pursuant to Section 44-3-505, C.R.S., to adopt by resolution, and from time to time amend, application fees to cover actual and necessary expenses incurred by the local liquor licensing authority to process applications for and related to liquor licenses.

5.03.030 - Optional Disciplinary Fine Procedures.

(1) Whenever a decision of the local liquor licensing authority suspending a license for 14 days or less 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, petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. Upon the receipt of the petition, the local liquor licensing authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if it is satisfied:

(a) That 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 purposes;

(b) That the books and records of the licensee are kept in such a manner that the loss of sales of alcohol beverages that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom; and

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

(2) The fine adopted shall be the equivalent to 20 percent of the licensee's estimated gross revenues from sales of alcohol beverages during the period of the proposed suspension; except that the fine shall be not less than \$200.00 nor more than \$1,000.00.

(3) Payment of any fine pursuant to the provisions of this section shall be in the form of cash or in the form of a certified check or cashier's check made payable to the local liquor licensing authority.

(4) Upon payment of the fine pursuant to subsection (3) of this section, the local liquor licensing authority shall enter its further order permanently staying the imposition of the suspension. Such moneys shall be paid into the general fund of the Town.

(5) In connection with any petition pursuant to this section, the authority of the local liquor licensing authority is limited to the granting of such stays as are necessary for it to complete its investigation and make its findings and, if it makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

(6) If the local liquor licensing authority does not make the findings required in subsection (1) of this section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the local liquor licensing authority.

Chapter 5.04 - CONTRACTOR LICENSES

5.04.010 - Short Title.

This Chapter shall be known and may be cited as the "Contractor Licensing Ordinance of the Town of Gypsum."

5.04.020 - Definitions.

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

(1) *Applicant* means a person, firm, partnership, corporation, association, organization, or any combination thereof who has filed an application for a contractor license.

(2) *Application* means an application for a contractor license.

(3) *Construction work* shall include building, constructing, altering, repairing, adding to, wrecking, or moving any building or structure, or any portion thereof, or doing any construction or demolition work or supervising any such work for a fixed sum, price, fee percentage, trade in kind, or other compensation including the cost of the materials or labor or any combination thereof.

(4) *Contractor* shall include any person, firm, partnership, corporation, association or organization, or any combination thereof, who undertakes for himself, or

with or for another, any construction work. Such definition shall include those persons normally designated in the building industry as subcontractors.

(5) *Contractor licensing official* shall mean the Town Manager and his/her designees, including the sales tax auditor, building inspector, Town engineer, public works director, public works inspector, and others as may be designated by the Town Manager to administer and enforce the contractor licenses as further designated in this Chapter.

(6) *License or contractor license* means a license issued under this Chapter.

(7) *Licensee* means the holder of an unexpired contractor license.

(8) *Revocation* shall mean that any legally issued contractor license shall become null and void and the authority to perform any construction work is revoked for a period of time not to exceed one year from the date of revocation.

(9) *Suspension* shall mean that the authority to perform any construction work authorized by any legally issued contractor license is temporarily withdrawn for a period of time not to exceed six months from the date of suspension.

(10) *Verified written complaint* means a written complaint containing a statement signed by a person indicating he or she has personal knowledge of the allegations of the complaint and knows them to be true.

5.04.030 - Applicability.

The provisions of this Chapter shall apply to all contractors, with the following exceptions:

(1) Any utility franchise for which a license registration is otherwise required under the provisions of this Title 5.

(2) Any electrical contractor or master electrician who is properly licensed or registered with the Colorado State Electrical Board.

(3) Licensing of plumbers is governed by the International Plumbing Code as adopted and amended in Chapter 15.05 of the Municipal Code and plumbers shall not be required to also apply for a contractor license under this Chapter.

(4) Any homeowner desiring to build, construct, alter, repair, add to, demolish, or improve a home for his/her own residence if he/she does the work by himself/herself or obtains assistance from not more than one person at a given time who:

(a) During the period of such employment for a homeowner or within the previous 12 months, is not otherwise engaged in or receiving benefits from a person or company defined in this Chapter as a contractor;

(b) Works for hourly wages or receives no compensation, and

(c) Is not now or has not been for the previous 12 months licensed as a contractor.

(d) Any person assisting more than two homeowners during any consecutive 24-month period shall be presumed to be a contractor and said person must be licensed pursuant to the provisions of this Chapter.

5.04.040 - Contractor License Required.

No contractor shall perform construction work within the Town without a valid contractor license. Upon proper application, contractor licenses shall be issued or renewed for no more than a one-year term. Anyone who holds a valid Town contractor license shall not be required to obtain a separate business license from the Town.

5.04.050 - Contractor Licensing Official.

The contractor licensing official shall collect all license fees, review applications, shall issue licenses to all qualified applicants, and shall:

(1) Recommend and enforce all reasonable rules and regulations adopted by the Town Council as necessary to the operation and enforcement of this Chapter.

(2) Adopt, and from time to time amend, all forms and papers necessary for implementing this Chapter.

(3) Submit all applications to interested Town officials for their review and comments when appropriate for determining eligibility for a license and compliance with Town regulations.

(4) Investigate and determine the eligibility of any new applicant for a license.

(5) Examine the books and records of any applicant or licensee when reasonably necessary to the administration and enforcement of this Chapter.

(6) Notify applicants of the approval or denial of their applications.

(7) Upon request, confirm whether a contractor holds a current license.

5.04.060 - Qualifications of Applicants.

The contractor licensing official shall approve an application and issue a license unless he determines that the contractor would violate the laws of the United States, the State of Colorado, or the Town, or the applicant is in default of an obligation in any manner to the Town except current taxes.

5.04.070 - Procedure for Issuance.

Every contractor shall annually submit an application for a contractor license or renewal to the contractor licensing official. The application shall be upon forms provided by the contractor licensing official. The application shall require the disclosure of all information necessary to determine compliance with any uniform codes adopted by Gypsum, the requirements imposed by Sections 4.05.060 and 4.05.100, and any other information which the contractor licensing official shall find to be reasonably necessary to the fair administration of the proposed license.

5.04.080 - License Fee.

Each applicant for a contractor license or a renewal shall be accompanied by the payment of a fee. Fees for new contractor licenses and the renewal of a contractor license shall be in the same amounts. The license fee for a whole year time period shall be set by resolution of the Town Council. The fee amount shall be prorated for any partial year as follows: 100 percent of the license fee for applications received from January 1 to March 31; 75 percent of the license fee for applications received from April 1 to June 30; 50 percent of the license fee for applications received from July 1 to September 30; and 25 percent of the license fee for applications received from October 1 to December 31. These fees will pay for the cost of review of the application and administration of the license.

5.04.090 - Renewal Applications.

(1) All licenses shall expire on December 31 of each year. Initial and renewed licenses shall be issued on January 1 of each year.

(2) An application for the renewal of a license shall require the disclosure of such information concerning the conduct and operation of the applicant during the preceding licensing period as is reasonably necessary for determining the applicants' eligibility for a renewal license.

5.04.100 - Insurance requirements.

(1) Liability insurance required. Every contractor granted a license under the terms of this Chapter shall be required to maintain at all times workers' compensation insurance in the statutorily required amounts, employees' liability and public liability

insurance with minimum limits of not less than \$100,000.00 for one person and \$300,000.00 for any one accident, and property damage insurance with a minimum limit of not less than \$25,000.00 for any one accident.

(2) Certificate of insurance. At the time application is made, and before a license or registration can be issued, the contractor shall file with the contractor licensing official a certificate, naming the Town as certificate holder, signed by a qualified agent of an insurance company. The certificate shall contain the following items, together with a statement and a copy of an endorsement placed on each policy requiring ten days' written notice by certified mail to the contractor licensing official if it becomes necessary to cancel the policy for any reason:

- (a) The policies required by this section have been issued to the licensee for employees' liability insurance or workers' compensation insurance, public liability insurance and public property damage insurance;
- (b) The minimum limits of each policy;
- (c) The policy numbers;
- (d) The name of the company;
- (e) The effective dates of the policies; and
- (f) The expiration dates of the policies.

(3) Cancellation. In the event of a cancellation of a policy, the licensee shall be required to furnish a new certificate in full compliance with the terms of this section within ten days; otherwise the license shall be automatically revoked without a hearing before the contractor licensing official. The license shall be reinstated when the licensee has furnished a certificate of insurance in compliance with this section, unless such license is suspended for reasons other than the failure to file a proper certificate of insurance.

5.04.110 - Duplicate Licenses.

A duplicate license, valid for the remainder of the license period, shall be issued by the contractor licensing official to replace a license previously issued, which has been lost, stolen, defaced, or destroyed, upon the paying to the contractor licensing official of a duplicate license fee as set by resolution of the Town Council.

5.04.120 - Updating information.

Licensees shall keep information on their license up to date. If information changes from what was submitted in the application, including but not limited to the licensee's address

or type of construction work, the licensee shall notify the contractor licensing official in writing no more than 14 days after such change.

5.04.130 - Compliance Orders.

If the contractor licensing official, or if a designee of the contractor licensing official, with approval from the contractor licensing official, determines in their sole discretions, that a contractor violated the Gypsum Municipal Code or any law, including the failure to obtain all relevant licenses required by the State of Colorado, the contractor licensing official must personally serve the contractor with a written compliance order apprising the contractor of his specific violations and ordering him to comply. As an alternative to personal service, a copy of the compliance order shall be mailed first class U.S. certified mail to the contractor. The compliance order shall require compliance within 30 days of the date of the personal service or the posting and mailing of the order.

5.04.140 - Suspension or Revocation.

(1) Grounds for revocation or suspension. Upon receipt of a verified written complaint of any violation of the provisions of this Chapter or failure of a licensee to comply with a compliance order issued pursuant to section 5.04.130, the contractor licensing official shall have the power to suspend or revoke any contractor license if the contractor licensing official finds, in his or her sole discretion, that the licensee has committed any of the following acts or omissions:

- (a) Abandoned any contract for construction work without legal cause.
- (b) Diverted funds or property received for performance of a specific contract and applied such funds for any other purposes, or failed to use such funds for the performance of said contract with the intent to defraud or deceive creditors or the owner.
- (c) Fraudulently departed from or disregarded approved plans and/or specifications during the performance of any construction work without the consent of the owner or the owner's duly authorized representative.
- (d) Willfully and/or deliberately disregarded any provision of this Chapter or relevant sections of the Gypsum Municipal Code.
- (e) Misrepresented a material fact, or committed fraud or deceit in order to obtain a license.
- (f) Engaged in any willful, fraudulent act as a contractor by which another is injured.

(g) Committed fraud or deceit in obtaining any required building permits in which the contractor lends his/her name and license to another and fails to assume the obligations and responsibilities of a contractor thereunder.

(h) Carelessly or negligently failed to provide reasonable safety measures for the protection of workmen and the public.

(i) Failed or refused to obtain a license prior to starting construction work for which a license is required by this Chapter.

(j) Failed to obtain all relevant licenses required by the State of Colorado.

(k) Failed to maintain the insurance required by Section 5.04.100.

(2) Emergency suspension. The contractor licensing official may make an emergency suspension of any license should the actions of the contractor involved pose an immediate, serious and imminent threat to the health, safety and welfare of the residents of the Town. Such emergency suspension shall not continue longer than 60 days without a hearing before the contractor licensing official.

(3) Length of suspension or revocation. The contractor licensing official may suspend a License for up to six months and may revoke a license for up to one year during which period the contractor may not perform any contracting work in the Town. In determining the length of suspension or revocation, the contractor licensing official shall take into consideration the severity of the contractor's violation of this Chapter, the contractor's past performance, any attempt by the contractor to remedy the violation(s), and any verified written complaints received against the contractor.

(4) Reapplication. At the end of the period of revocation or suspension, a contractor may reapply for a new license. Such license will only be granted if the contractor has served the full suspension or revocation term and the contractor sufficiently shows, to the satisfaction of the contractor licensing official in his/her sole discretion, that the violations of this Chapter or other reason(s) for suspension or revocation of the license have been remedied.

5.04.150 - License Hearing.

Upon written request to the contractor licensing official received within thirty (30) days of any decision by the contractor licensing official, including but not limited to compliance orders or the denial, suspension, or revocation of a license, the contractor licensing official shall hold a license hearing and issue a written decision. Notice of such hearing, to be held within 30 days of receipt of the hearing request, shall be given the affected person. Upon written application or on his own motion, the contractor licensing

official shall have the authority, in a proper case, to extend the time for compliance, to grant a new hearing date, and to change, modify or rescind any recommendation or order.

5.04.160 - Appeals.

Any person aggrieved by any decision of the contractor licensing official after a license hearing shall have the right to appeal to the Town Council upon filing with the Town Clerk a written appeal and request for hearing within 30 days following issuance of a written hearing decision by the contractor licensing official. Such appeal shall set out a copy of the order or decision appealed from and shall include a statement of the facts in support of the appeal. A copy of the appeal shall be forwarded to the contractor licensing official.

5.04.170 - Appeals Hearing.

The Town Council shall hold a hearing on any appeal of a decision of the contractor licensing official at its next regularly scheduled meeting scheduled at least seven days after filing the appeal and shall give notice to the appellant of the time and place of such hearing, and shall also notify the contractor licensing official who may appear and defend such order. After hearing evidence from the applicant and the contractor licensing official, the Town Council may issue a verbal decision and shall issue written findings which shall be final and conclusive.

5.04.180 - License Register.

The Town Clerk shall keep a register listing every license issued under this Chapter and listing the name of the licensee, the name of the licensee's business, the type of contractor work and the date of issuance and expiration.

5.04.190 - Fines.

A person who violates the requirements of this Chapter may be fined the maximum amount for violations of the Gypsum Municipal Code pursuant to section 2.01.100. Separate violations will be deemed to have occurred for each day a person is in violation of this Chapter .

5.04.200 - Exemptions.

The Town Council may, by resolution, exempt from the requirements of this Chapter 5.04 any construction work conducted in conjunction with a Town-sponsored or Town-supported special event, but such exemption shall not extend to operations of the same construction work which are not conducted in conjunction with an exempted special event.

Chapter 5.05 - TRANSIENT BUSINESS LICENSE

5.05.010 - Short Title.

This Chapter shall be known and may be cited as the "Transient Business Licensing Ordinance of the Town of Gypsum."

5.05.020 - Scope.

It is not intended by this Chapter to repeal or in any way impair any existing provisions of other laws or ordinance. Where this Chapter imposes greater restrictions than imposed by existing provisions of laws or ordinance, the provisions of this chapter shall control.

5.05.030 - Definitions.

Words used in this Chapter 5.05 shall have the following meanings ascribed to them:

- (1) *Application* means an application for a transient business license.
- (2) *License or transient business license* means a license issued under this Chapter.
- (3) *Peddler* is an individual who engages in the itinerant or transient sale or bartering of any goods, merchandise or services directly to the consuming public, whether or not the goods, merchandise, or services are actually delivered at the time of sale. A peddler engages in such activities as selling from door-to-door, hawking of items at public events, and selling or canvassing by means of carrying goods or samples around from place to place in order to encounter consumers who will purchase or order the goods.
- (4) *Peddling* includes all activities ordinarily performed by a peddler, but does not include the following:
 - (a) Any sales efforts by telephone or mail, where there is no face-to-face encounter with the purchaser at the time of sale, delivery or provision of goods, merchandise or services;
 - (b) Any sales by itinerant salespersons selling goods or merchandise or providing services exclusively to commercial, industrial or business accounts;
 - (c) Any sale by a person who has or represents a permanent business location within the Town which has obtained a valid business license pursuant to Chapter 5.02 of the Gypsum Municipal Code.

(5) *Town license officer* or *license officer* is the license officer of the Town as appointed by resolution of the Town Council.

5.05.040 - Prohibited activities.

It shall be unlawful for any person:

(1) To go in or upon the private property of any residence within the Town for the purpose of peddling without first obtaining a valid transient business license issued by the Town license officer and without having the permission of the owner or occupant of the private residence;

(2) To make any false statement or misrepresentation of fact, or otherwise to engage in fraud, in the course of carrying on the activities permitted under this Chapter, or to fail to fulfill the obligations and representations which the peddler makes to a purchaser;

(3) In peddling any goods, merchandise or services to be delivered or provided at a future date, to refuse or fail to give to a purchaser at the time of sale a written and signed receipt which shall accurately set forth the name, address and telephone number of the peddler; a brief description of the goods, merchandise or services to be delivered or provided; the anticipated date and manner of delivery or provision; the amount paid by the purchaser; the balance due on the purchase; and the terms of payment;

(4) To fail or refuse to leave peacefully private property immediately when told to do so by the landowner, the landowner's agent or representative, or the occupant of the premises;

(5) To engage in door-to-door sales at residences from one-half hour after sunset until 8:00 a.m. the next day; or

(6) To obstruct, impede or otherwise interfere with the public's use of public streets, ways or places, other than as authorized by other provisions of the Gypsum Municipal Code.

5.05.050 - Exempt Organizations and Individuals.

The following types of organizations and individuals selling goods, merchandise or services on their behalf are not required to obtain a transient business license under this Chapter but shall otherwise comply with all other applicable laws and requirements, including section 5.05.040 of this Chapter:

(1) State and local governmental departments, agencies and subdivisions, including public schools and school groups;

- (2) State-accredited private schools and academies and school groups;
- (3) Charitable, civic, patriotic, religious, educational, recreational, fraternal or cultural organizations which are tax exempt pursuant to Section 501(c) of the federal Internal Revenue Code of 1986, as amended; and
- (4) Political candidates canvassing for public office, their workers or representatives from a political parties.

5.05.060 - Town License Officer.

The Town license officer shall collect all license fees, review applications, and shall issue licenses to all qualified applicants. The license officer shall:

- (1) Recommend and enforce all reasonable rules and regulations adopted by the Town Council as necessary to the operation and enforcement of this Chapter.
- (2) Adopt, and from time to time amend, all forms and papers necessary for implementing this Chapter.
- (3) Submit all applications to interested Town officials for their review and comments when appropriate for determining eligibility for a license and compliance with Town regulations.
- (4) Investigate and determine the eligibility of any applicant for a license.
- (5) Examine the books and records of any applicant or licensee when reasonably necessary to the administration and enforcement of this Chapter.
- (6) Notify applicants of the approval or denial of their applications.
- (7) Keep confidential names, addresses, electronic addresses, telephone numbers and personal financial information provided by the applicant or licensee, to the extent permitted by the Colorado Open Records Act, §24-72-101, et seq., C.R.S.

5.05.070 - Application Required.

At least seven business days prior to the date upon which the applicant desires to begin peddling within the Town, an applicant for a transient business license shall file with the Town Manager or license officer a sworn application in writing on a form provided by the license officer that contains the following information:

- (1) Name of the applicant.
- (2) Description of the applicant.

- (3) Permanent home address and temporary local address of the applicant.
- (4) A description of the nature of the business and/or goods for sale or for future delivery.
- (5) If employed, the name, address, telephone number together with credentials establishing the exact relationship between the employer and employee.
- (6) The length of time for which the right to do business is desired.
- (7) A statement taken by the Town Manager or business license officer as to whether or not the applicant has ever been convicted of any crime or misdemeanor, or if the applicant has been so convicted, a statement as to the nature of the offense and conviction.
- (8) Two identical photographs of the applicant that reasonably identify the applicant, and which measure two inches by two inches.

5.05.080 - Application Fee.

At the time of filing of the application, the applicant shall pay to the Town Manager or license officer to cover the cost of investigating the facts stated in the application and associated administrative costs. The amount of the application fee shall be as set by resolution of the Town Council.

5.05.090 - Application Review, Denial, and Approval.

- (1) The license officer shall approve or deny in writing an application for a transient business license within seven (7) days of the date the application is received by the Town.
- (2) If the application is found unsatisfactory, the Town Manager or business license officer shall so endorse upon the application and set forth the reasons for the denial, and thereupon shall notify the applicant of the denial of such application and that no license will be issued thereunder. The application fee shall not be refunded if an application is denied.
- (3) An applicant denied a license may request a hearing pursuant to the procedures in section 5.03.230 of the Gypsum Municipal Code. A person aggrieved by a decision of the license officer after a license hearing may appeal the decision to the Town Council pursuant to the procedures outlined in sections 5.03.240 and 5.03.250 of the Gypsum Municipal Code.
- (4) If, as a result of the Town's investigation, the application is found to be satisfactory, the Town Manager or Town license officer shall endorse the same on the

application and upon receipt of the fees required by section 5.05.100 set forth hereafter, shall execute and deliver to the applicant a license to carry on such business within the corporate limits of the town.

5.05.100 - Reasons for Denial.

(1) In the exercise of the Town's police powers, the license officer may deny a license to any of the following persons:

(a) Any person under the age of eighteen (18) years;

(b) Any person whose character and record are such as not to warrant the License Officer's confidence that the person seeking a license will conduct the business of peddling lawfully, honestly and fairly, or without resorting to duress, coercion, or harassment of any person being solicited for business or other acts of violence or force against persons or property;

(c) Any person convicted of a felony, misdemeanor or ordinance violation involving a sex offense, trafficking of controlled substances, or any violent acts against persons or property, such conviction being entered within the five (5) years preceding the date of application;

(d) Any person against whom a judgment based upon, or conviction for, fraud, deceit or misrepresentation has been entered within the five (5) years preceding the date of application; or

(e) Any person who has been denied a business license or transient business license by the Town within the immediately past year, unless the applicant can and does show to the satisfaction of the license officer that the reasons for such earlier denial no longer exist.

(2) In making a determination as to the character or record, or when considering a criminal or ordinance violation conviction or judgment, the license officer shall be governed by the provisions of C.R.S. Section 24-5-101, as amended, pertaining to the effect of criminal convictions on employment rights. The license officer shall also give consideration to the following criteria:

(a) The reliability of any source as to character and record and any corroboration of any such evidence;

(b) The nature of any criminal or ordinance violation conviction listed in paragraph (a) of this section or any judgment involving fraud, deceit or misrepresentation, including the classification of any felony or misdemeanor conviction; length of time incarcerated or severity of remedy or penalty imposed; mitigating or aggravating factors involved; subsequent record of conduct, including educational

achievements and work history; subsequent convictions or parole or probation violations; and the correlation, if any, between the illegal or fraudulent activity and the subject matter of the license; and

(c) Any presented evidence tending to show the applicant's rehabilitation as being a law-abiding and productive member of society.

(3) As part of the review, the license officer may require fingerprinting of the applicant and conduct a check of the applicant's background, including a review of the applicant's criminal history record within the five (5) years preceding the date of application. The license officer may request an additional fee from the applicant to cover costs of the background check and shall either approve or deny the application within seven days of receipt of the completed background check.

(4) Grounds sufficient for denial of a license under this section shall be sufficient grounds for suspension or revocation of the license or nonrenewal of the license.

5.05.110 - License Fee.

Upon approval of an application and at the time of issuance of a license under this Chapter, the applicant shall pay a fee to the license officer as set by resolution of the Town Council. Licenses shall be valid for up to one (1) year. The fee amount shall be prorated for any partial year as follows: 100% of the license fee for applications received from January 1 to March 31; 75% of the license fee for applications received from April 1 to June 30; 50% of the license fee for applications received from July 1 to September 30; and 25% of the license fee for applications received from October 1 to December 31. These fees will pay for the cost of review of the application and administration of the license.

5.05.120 - Contents of License.

The license shall contain the signature and seal of the issuing officer, the type of license issued, the kinds of goods to be sold, the date of issuance, the expiration date and a two-inch by two-inch photograph of the applicant.

5.05.130 - Nonsolicitation List.

(1) The business license officer shall maintain a list of persons within the Town who restrict visits to their residence by peddlers. A copy of the nonsolicitation list shall be provided to each licensed peddler.

(2) No peddler shall enter upon private property where the occupant has listed the property on the Town's nonsolicitation list, or who has posted a clearly visible "no

solicitation" or similar sign or notice which indicates that solicitation of business is either not desired or is prohibited on the property.

5.05.140 - License Register.

The Town Clerk shall keep a registered listing of every current license issued under this Chapter and listing the name of the licensee, the name of the business (if any), the type of goods sold and the date of issuance and expiration of the license.

5.05.150 - Fines.

Any person who violates the requirements of this Chapter may be fined up to \$300.00 per violation. Separate violations will be deemed to occur for each day a person is in violation.

Chapter 5.06 - TOBACCO PRODUCT RETAIL LICENSE

5.06.010 - Purpose and Intent.

The purpose of this Chapter is to establish a process for licensing sellers of tobacco products within the Town to ensure compliance with the business standards and practices of the Town, to encourage the responsible sale of tobacco products, to discourage violations of laws that prohibit or discourage the sale or distribution of tobacco products to young people, to reduce the likelihood that youth will become tobacco product users by prohibiting the sale of tobacco products to persons under 21 years of age, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein to protect the health, safety and welfare of the residents of the Town.

5.06.020 - Defined Terms.

As used in this Chapter 5.06, the following terms shall have the following meanings:

(1) *Arm's length transaction* means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of a violation of this Chapter is not an arm's length transaction.

(2) *Cigarette* means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(a) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(b) Tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(c) Any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (a) of this definition.

(d) The term "*cigarette*" includes roll-your-own, i.e. any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(3) *Cigar* means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any other substance containing tobacco. For purposes herein, cigar includes, but is not limited to tobacco products known or labeled as a "cigar," "cigarillo" or "little cigar."

(4) *Consumer* means a person who purchases tobacco products not for Sale to another.

(5) *Electronic smoking device* means any product containing or delivering nicotine intended for human consumption that can be used by an individual to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation from the product. Electronic smoking device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic smoking device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medically approved or certified purposes.

(6) *License* means a license issued by the Town to operate as a tobacco product retailer.

(7) *Licensee* means the holder of an unexpired license.

(8) *License officer* means the Town Clerk for administration of the license, i.e. issuance, renewal and collection of license fees.

(9) *License fee* means the annual fee for a tobacco product retail license.

(10) *Licensed premises* means the retail location within the Town for which a tobacco product retail license is issued.

(11) *Little cigar* means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco and weighing no more than three pounds per thousand. "*Little cigar*" includes, but is not limited to, any product known or labeled as "small cigar" "cigarillo" or "little cigar."

(12) *Minimum legal sales age* means 21 years of age or older.

(13) *Person* means any natural person, partnership, cooperative association, corporation, limited liability company, personal representative, receiver, trustee, assignee or other legal entity.

(14) *Sale or sell* means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

(15) *Self-service display* means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the licensee or an employee of the licensee and a direct person-to-person transfer between the purchaser and the licensee or employee of the licensee. A vending machine is a form of self-service display.

(16) *Tobacco paraphernalia* means any item designed for the consumption, use, or preparation of a tobacco product.

(17) *Tobacco product* means:

(a) Any product which contains, is made or derived from tobacco or used to deliver nicotine, synthetic nicotine or other substances intended for human consumption, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, bidis, snus, nicotine product, mints, hand gels; and

(b) An electronic smoking device; and

(c) Notwithstanding any provision of subsections (a) and (b) above to the contrary, "tobacco product" includes any component, part, accessory or associated tobacco paraphernalia of a tobacco product whether or not sold separately.

(d) The term "tobacco product" does not include:

(i) Any product that contains marijuana; and

(ii) Any product made from or derived from tobacco and approved by the Food and Drug Administration (FDA) for use in connection with cessation of smoking.

(18) Tobacco product retailer means any person who engages in the sale of tobacco products directly to the public from any store, stand, booth, concession, outlet, vehicle, cart, vending machine, structure or any grounds or any other enterprise that sells, offers for sale, or does or offers to exchange for any form of consideration tobacco products. "Tobacco product retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.

5.06.030 - Applicability.

(1) The license officer shall receive and process applications for licenses pursuant to the requirements herein.

(2) No person shall have any entitlement or vested right in a license under these regulations.

5.06.040 - Requirements and Prohibitions.

(1) License required. A separate license is required for each retail location within the Town where tobacco products are sold.

(2) Display of license. Each tobacco product retail license shall be prominently displayed at the licensed premises in a publicly visible location.

(3) Minimum legal sales age. Tobacco products shall not be sold or offered for sale to any person under 21 years of age.

(4) Minimum legal sales age signage requirements. Signage is required to be prominent displayed at all entrances to a licensed premises indicating that tobacco products shall not be sold to any person under 21 years of age.

(5) Self-service displays prohibited. The sale of tobacco by means of a self-service display is prohibited.

(6) Packaging and labeling. Tobacco products may not be sold to any consumer unless such product:

(a) Is sold in the original manufacturer's packaging intended for sale to Consumers; and

(b) Conforms to all applicable federal labeling requirements.

(7) Positive identification required. No licensee shall sell or transfer any tobacco product to an individual who appears to be under the age of 30 years without first examining the government-issued photographic identification of the recipient to confirm that the recipient is at least the minimum legal sales age.

(8) False and misleading advertising prohibited. A tobacco product retailer without a valid license, including a tobacco product retailer whose license has been suspended or revoked shall not engage in any of the following, which shall constitute tobacco product retailing without a license:

(a) The display of any tobacco product in public view; and

(b) Any advertising, including but not limited to displays, that promotes the sale or distribution of any tobacco product that could lead a reasonable consumer to believe that such products can be obtained from the tobacco product retailer.

5.06.050 - Limits on License Eligibility.

(1) Fixed location. The application must include a fixed location for tobacco product retailing. Licenses will not be granted at a location other than a fixed location. Mobile sales of tobacco products is prohibited within the Town.

(2) Under-age applicant. The applicant must be at least as old as the minimum legal sales age.

5.06.060 - License Application.

(1) An application for a license shall be submitted in the names of either all owners of the business or all individuals proposing to conduct tobacco product retailing and shall be signed by the same or an authorized agent thereof.

(a) It is the responsibility of each applicant to be informed regarding all laws applicable to tobacco product retailing, including those laws affecting the issuance of a license.

(b) No applicant may rely on the issuance of a license as a determination by the Town that the applicant has complied with all laws applicable to tobacco product retailing.

(c) A license issued contrary to this Chapter, contrary to any other law, or on the basis of false or misleading information supplied by an applicant shall be automatically revoked.

(d) Nothing in this Chapter shall be construed to vest in any person obtaining and maintaining a license any status or right to act as a tobacco product retailer in contravention of any provision of law.

(2) All applications shall be submitted on a form supplied by the license officer and shall contain the following information:

(a) The name, address, and telephone number of each applicant seeking a license; and

(b) The business name, address, and telephone number of the single fixed location where a license is sought; and

(c) A name and mailing address authorized by each applicant authorized to receive all communications and notices (the "authorized address") required by, authorized by, or convenient to the enforcement of this Chapter. If an authorized address is not supplied, each applicant shall be understood to consent to the provision of notice at the business address specified in subsection (b) above; and

(d) A copy of a driver's license or other government-issued identification verifying that all applicants meet the minimum legal sales age requirement.

(3) A tobacco product retailer shall inform the Town in writing of any change in the information submitted on the application within ten business days of a change.

5.06.070 - License Fees.

(1) The license fee for applications submitted through December 31, 2019 shall be \$50.00 for new applications, and \$25.00 for renewals.

(2) Beginning in 2020, the license fees shall be reviewed at least annually and, if necessary, adjusted by the Town Manager to reflect the direct and indirect costs incurred by the Town in connection with the adoption, administration and enforcement of this Chapter.

(3) License fees are due at the time of initial application and each annual renewal and are nonrefundable. A license is not valid until the license fee has been paid.

5.06.080 - Issuance of a License.

(1) A. Upon the receipt of a completed application and the payment of the license fee pursuant to this Chapter, the license officer shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

(a) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this Chapter.

(b) The application seeks authorization for a license at a location where this Chapter prohibits issuance of tobacco product retail license, and/or the zoning of the property prohibits this type of use.

(c) The application seeks authorization for a license for an applicant for whom this Chapter prohibits a license to be issued.

(d) The application seeks authorization for tobacco product retailing that is prohibited pursuant to this Chapter, that is unlawful pursuant to these regulations, or that is unlawful pursuant to any other law.

5.06.090 - License Term, Renewal and Expiration.

(1) Term. The term of a license is up to one year. All Licenses shall expire on December 31 of each year. Initial and renewed licenses shall be issued on January 1 of each year.

(2) Renewals. A tobacco product retailer shall apply for the renewal of the license and submit the applicable license fee no later than 30 days prior to expiration of the term. An application for the renewal of a license shall require the disclosure of such information required by section 5.06.060 and any information concerning the conduct and operation of the tobacco retail establishment during the preceding licensing period as is reasonably necessary for determining the applicants' eligibility for a renewal license.

(3) Expiration of license.

(a) A license that is not been timely renewed shall expire at the end of its term.

(b) To renew a license that has expired, the applicant must submit the license fee, application renewal form, and a signed affidavit affirming that the applicant

has not sold and will not sell any tobacco products after the license expiration date and before the license is renewed.

(c) An applicant who failed to renew a license and engaged in tobacco product retailing without a valid license after the expiration of the license will be issued a renewal license only after waiting a period of time that is equivalent to the period of time during which the licensee engaged in tobacco product retailing. If such time period cannot be determined, a new license will be issued only after waiting the equivalent period of time between the expiration of the previous license and the date the applicant submitted a complete application for renewal.

5.06.100 - Duplicate Licenses.

A duplicate

license, valid for the remainder of the term of the license, shall be issued by the license officer to replace any license previously issued, which has been lost, stolen, defaced, or destroyed without any willful conduct on the part of the licensee, upon the paying to the license officer of a duplicate license fee as established by resolution of the Town Council.

5.06.110 - License Non-transferrable.

(1) A tobacco product retail license shall not be transferred from one person to another or from one location to another. A new license is required whenever a tobacco product retail location has a change in owner(s) in an arm's length transaction. Notwithstanding any other provision of this Chapter, prior violations at a licensed premises shall continue to be counted against the location and license ineligibility periods shall continue to apply to the location unless:

(a) the location has been transferred to new business owner in an arm's length transaction; and

(b) the new owner(s) provide the Town with clear and convincing evidence that the new owner(s) has acquired or is acquiring the location in an arm's length transaction.

5.06.120 - License Conveys a Limited, Conditional Privilege.

Nothing in this Chapter shall be construed to grant any person obtaining or maintaining a license any status or right other than the limited conditional privilege to act as a tobacco

product retailer at the licensed premises. Nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this section.

5.06.130 - Denial of License.

The license officer shall approve or deny in writing an application for a license within 30 days of denial and information outlining the appeals process shall be mailed to the applicant's address as specified in the application.

5.06.140 - Inspections.

The license officer, Town officials charged with enforcing the Gypsum Municipal Code, and police officers may conduct inspections and examine businesses to enforce compliance with this Chapter. Such persons may enter premises during normal business hours, with or without a search warrant, to conduct inspections.

5.06.150 - Compliance Orders.

If the license officer determines, in his/her sole discretion, that a business violated the Gypsum Municipal Code or any law, including the failure to obtain all relevant licenses required by the State of Colorado, the license officer or designee shall serve the affected person with a written compliance order apprising the person affected of his specific violations and ordering him to comply. Service may either be by personal service or a copy of the compliance order may be posted in a conspicuous manner on the premises and mailed first class U.S. certified mail to the licensee or business owner at the address as provided in section 5.06.060(2). The compliance order shall require compliance within 30 days of the date of the personal service or the posting and mailing of the order.

5.06.160 - Compliance monitoring.

(1) The Town shall not enforce any law establishing a minimum legal sales age for tobacco product purchases or for possession of tobacco pursuant to Section 25-14-301, C.R.S., against a person who otherwise might be in violation of such law because of the person's age if the potential violation occurs when the person was acting at the direction of the Town or the Eagle County Sheriff's Office for the purposes of monitoring compliance with this Chapter.

(2) Whenever evidence of a violation of this Chapter is obtained in any part through the participation of an individual under the minimum legal sales age to purchase

tobacco products, such individual shall not be required to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

5.06.170 - Penalties, Suspension and Revocation of License.

(1) Grounds for revocation or suspension. Upon receipt of a verified written complaint of any violation of the provisions of this Chapter or failure of a Licensee to comply with a compliance order issued pursuant to section 5.06.150, the license officer shall have the power to suspend or revoke any license if the license officer finds, in his/her sole discretion, that the licensee has committed any of the following acts or omissions:

- (a) Failed to comply with any requirements of this Chapter.
- (b) Willfully and/or deliberately disregarded any provision of this Chapter or relevant sections of the Gypsum Municipal Code.
- (c) Misrepresented a material fact, or committed fraud or deceit in order to obtain a license.
- (d) Engaged in any willful, fraudulent act by which another is injured.
- (e) Carelessly or negligently failed to provide reasonable safety measures or failed to follow all required practices for the protection of employees and the public health, morals or welfare.
- (f) Failed or refused to obtain a license prior to operating a tobacco retail establishment for which a license is required by this Chapter.
- (g) Failed to obtain, or had suspended or revoked, a business license by the Town.
- (h) Failed to obtain all relevant licenses required by the State of Colorado.
- (i) Failed to comply with any zoning requirements of the Town.
- (j) Violated any laws or regulations applicable to such business.

(2) Emergency suspension. The license officer may make an emergency suspension of any license should the actions of the licensee or business involved pose an

immediate, serious and imminent threat to the health, safety and welfare of the residents of the Town. Such emergency suspension shall not continue longer than 60 days without a hearing before the license officer.

(3) Length of suspension or revocation. The license officer, in his/her sole discretion, may suspend a license for up to six months and may revoke a license for up to one year during which period the licensee may not operate any business in the Town that engages in tobacco products retailing. In determining the length of suspension or revocation, the license officer shall take into consideration the severity of the licensee's violation of this Chapter, the licensee's past performance, any attempt by the licensee to remedy the violation(s), and any verified written complaints received against the business or applicant.

(4) Reapplication. At the end of the period of revocation or suspension, any applicant whose license has been suspended or revoked may reapply for a new license. Such license will only be granted if the applicant has served the full suspension or revocation term and sufficiently shows, to the satisfaction of the license officer, that the violations of this Chapter or other reason(s) for suspension or revocation of the license have been remedied.

5.06.180 - License Hearing.

Upon written request to the license officer within 30 days of any decision by the license officer, including but not limited to compliance orders or the denial, suspension, or revocation of a license, the license officer shall hold a hearing and issue a written decision. Notice of such hearing, to be held within 30 days of receipt of the hearing request, shall be given to the affected person. Upon written application or on his/her own motion, the license officer shall have the authority, in a proper case, to extend the time for compliance, to grant a new hearing date, and to change, modify or rescind any recommendation or order.

5.06.190 - Appeals.

Any person aggrieved by any decision of the license officer after a license hearing, including but not limited to a licensee, shall have the right to appeal to the Town Council upon filing with the Town Clerk a written appeal and request for hearing received within 30 days following issuance of a written hearing decision by the license officer. Such appeal shall set out a copy of the order or decision appealed from and shall include a statement of the facts in support of the appeal. A copy of the appeal shall be forwarded to the license officer.

5.06.200 - Appeals Hearing.

The Town Council shall hold a hearing on any appeal of a decision of the license officer at its next regularly scheduled meeting scheduled at least seven days after filing the appeal and shall give notice to the appellant of the time and place of such hearing, and shall also notify the license officer who may appear and defend such order. After hearing evidence from the applicant and the license officer, the Town Council may issue a verbal decision and shall issue written findings which shall be final and conclusive.

5.06.210 - Tobacco Retailing without a License.

(1) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Town finds based on a preponderance of evidence, after notice and an opportunity for a hearing before the license officer, that any person has engaged in tobacco product retailing without a valid license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a license as follows:

(a) After a first violation of this Chapter, no new license may be issued at the location where the violation occurred, until 30 days have passed from the date of the violation, unless ownership of the business at the location has been transferred in an arm's length transaction.

(b) After a second violation of this Chapter, no new license may be issued at the location until 90 days have passed from the date of the violation, unless ownership of the business at the location has been transferred in an arm's length transaction.

(c) After a third or subsequent violation of this Chapter, no new license may be issued at the location until one year has passed from the date of the violation, unless ownership of the business at the location has been transferred in an arm's length transaction.

5.06.220 - Fines.

A person who violates the requirements of this Chapter may be fined the maximum amount for violations of the Gypsum Municipal Code pursuant to section 2.01.100. Separate violations will be deemed to have occurred for each day that a tobacco product is offered for sale in violation of this Chapter and for each tobacco product distributed, sold, or offered for sale in violation of this Chapter.

5.06.230 - Additional Remedies.

(1) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

(2) In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the Town, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

TITLE 8 - HEALTH AND SAFETY

Chapter 8.01 - Chapter 8.04 - GARBAGE AND TRASH COLLECTION

8.01.010 - Definitions.

The following words, terms and phrases, when used in this Chapter 8.01, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) *Ashes* means the residue from the burning of wood, coal, coke or other combustible materials.

(2) *Person* means any person, firm, partnership, association, corporation, company, organization or association of any kind.

(3) *Refuse* means all nonputrescible solid wastes, except body wastes, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, solid wastes, and market, commercial and industrial wastes.

(4) *Residential unit* means any single-family home, accessory dwelling unit, and separately each unit of a multi-family residence.

8.01.020 - Preparation of Refuse for Collection.

(1) Normal pick-up. All refuse to be collected by the Town during its regular refuse collection program must be placed in containers supplied by the Town, which are to be placed in a location designated by the Town on designated dates and times. The Public Works Director may provide for additional pick-up of regular refuse placed in containers, based on demand and availability of vehicles and personnel. All other refuse that cannot be placed in containers, to be collected by the Town, shall be subject to the special refuse collection program.

(2) Special collection. The Public Works Director shall provide a program of special pick-up of refuse which cannot be placed in containers approved by the Town. Refuse subject to the special collection program shall include items such as furniture, appliances without freon, automobile tires, and similar items which are able to be collected by the Public Works Department and are accepted by the Eagle County landfill. Such program shall require, prior to collection, notification of and approval by the Public Works Director of the special refuse to be collected, and payment of special collection

fees or a sufficient deposit to ensure payment of fees. Special refuse collection shall be scheduled upon request.

8.01.030 - Containers.

(1) **Residential containers.** All refuse for collection and disposal by the Town shall be placed in containers supplied by the Town. Such containers shall be kept in a clean, neat, and sanitary condition at all times. If any container is damaged, lost, or rendered unusable, a user fee must be paid to the Town for a replacement container. Containers may not be removed from the property they are servicing.

(2) **Nonresidential containers.** All refuse for collection and disposal by the Town shall be placed in containers supplied by the Town. Such containers shall be kept in a clean, neat, and sanitary condition at all times. Nonresidential customers must pay a user fee based on the size of the container. If any container is damaged, lost, or rendered unusable, a user fee must be paid to the Town for a replacement container. Containers may not be removed from the property they are servicing.

(3) **Multifamily residential containers.** The Town, at its sole option, may choose to require for multifamily residential units, dumpsters or containers other than those utilized for single family residential units, but each unit will be charged the appropriate user fee and monthly rate for a residential use, regardless of the type of container or dumpster.

8.01.040 - Storage of Refuse.

(1) No person shall place refuse in any street, alley or other public place, including recycling containers or recycling facility locations, or upon private property whether owned by such person or not, within the Town, except in proper containers for collection or under express approval granted by the Public Works Director, nor shall any person throw or deposit any refuse in any stream or other body of water.

(2) Any unauthorized accumulation of refuse on any premises is declared to be a nuisance and is prohibited.

(3) No person shall cast, place, sweep or deposit anywhere within the Town any refuse in such a manner that it may be carried or deposited by the elements upon any street, alley, sewer, parkway or other public place, or into any other properties within the Town.

(4) No person shall place refuse in a container supplied by the Town for refuse generated by another property.

(5) Any person found guilty of violating subsections (1), (2), (3), or (4) of this section shall be subject to a fine of up to \$1,000.00, plus the costs of abating the violation.

8.01.050 - Collection—Generally.

(1) All refuse accumulated in the Town shall be collected, conveyed and disposed of by the Town, unless alternate arrangements for regular collection and disposal are approved in writing by the Public Works Director. In the event alternate arrangements are approved, the fees for collection and disposal of refuse by the Town shall be waived, and the container returned to the Town.

(2) This Chapter 8.01 shall not prohibit the actual producer of refuse, or the owner of the premises upon which the refuse has accumulated, from personally collecting, conveying and disposing of such refuse; provided that such refuse is of a nature not normally collectible by the Town or it is additional to the amount normally collected from the producer under the rates and schedules established by the Public Works Director for the particular producer and the Public Works Director has authorized the disposal of such excess; and provided further, that such producer or owner shall comply with the provisions of this Chapter 8.01 and with any other governing law or ordinance. Such hauling shall not affect the obligation of such producer or owner to pay charges set forth in accordance with Section 8.01.070.

8.01.060 - Collection—Supervision.

(1) All refuse accumulated within the Town shall be collected, conveyed and disposed of by the Town under the supervision of the Public Works Director. The Public Works Director shall have the authority to make regulations concerning the days of collection, type and location of waste containers and such other matters pertaining to the collection, conveyance and disposal as he shall find necessary, and to change and modify the same after notice as required by law, provided that such regulations are not contrary to the provisions of this chapter.

(2) Any person aggrieved by a regulation of, or fee charged by, the Public Works Director shall have the right to appeal the determination to the Town Council, which shall have the authority to confirm, modify or revoke any such regulation or fee, or the application of the same.

8.01.070 - Fees.

(1) Refuse collection and disposal fees shall be as follows:

Residential

User Fee (per residential unit)	\$80.00	
One pick-up per week	\$18.00 per month	{2x week pick-up = \$36.00/mo.}
Each additional pick-up	\$18.00 per pick-up	{3x week pick-up = \$54.00/mo.}

Nonresidential

200 gallon dumpster

User Fee	\$90.00	
One pick-up per week	\$36.00 per month	{2x week pick-up = \$72.00/mo.}
Each additional pick up	\$36.00 per pick-up	{3x week pick-up = \$108.00/mo.}

300 gallon dumpster

User Fee	\$120.00	
One pick-up per week	\$58.00 per month	{2x week pick-up = \$116.00/mo.}
Each additional pick-up	\$58.00 per pick-up	{3x week pick-up = \$174.00/mo.}

450 gallon dumpster

User Fee	\$150.00	
One pick-up per week	\$90.00 per month	{2x week pick-up = \$180.00/mo.}

Each additional pick-up	\$90.00 per pick-up	{3x week pick-up = \$270.00/mo.}
<i>Special Refuse</i>	\$30.00 minimum per pick-up	
Couch, Mattress, Box Springs, Chairs, Cabinets, etc.	\$20.00 per item	
Hideaway Beds, Appliances	\$32.00 per item	
Refrigerators, Freezers (Must have documents confirming freon removal)	\$65.00 per item	
Tires	\$11.00 per item	
Senior Rate—Sixty-five or older, upon proof of eligibility by drivers' license, birth certificate, or other government-issued identification	\$7.50	
All other items	Fees to be determined by Public Works Director	

(2) The owners or tenants of all occupied properties, residential and nonresidential, shall pay regular collection and disposal fees established by the Town Council, unless alternate arrangements for regular collection and disposal have been approved in writing, by the Public Works Director. Such fees shall apply so long as property is occupied, regardless of the amount of refuse collected and disposed of by the Town, or the frequency with which the property owner or tenant places refuse for collection by the Town. In the event alternate arrangements are approved, the fees for collection and disposal of refuse by the Town shall be waived, and the container returned to the Town.

(3) A current schedule of all fees for collection and disposal of refuse established pursuant to ruling of the Town Council shall be available for public inspection in the office of the Town Clerk.

8.01.080 - Delinquent Accounts.

(1) All fees for refuse collection by the Town shall be paid no later than the 25th day of the month of the billing. Late charges will be added at a rate of one percent of the unpaid balance at the time of the next billing. All fees for collection and disposal of refuse by the Town shall constitute a perpetual priority lien on the property for which the service is provided. If such fees are not paid when due, the Town Clerk may certify such charges to the County Treasurer of Eagle County, Colorado, to be collected, together with the costs of collection, against the property served in the same manner as though they were part of the taxes assessed against the property. The Town may utilize all other methods legally available to enforce payment including judicial enforcement. The property owner shall be responsible for all costs incurred by the Town, including attorneys' fees, to enforce the payment of delinquent fees.

(2) The Town may discontinue collection and disposal of refuse from property for which payment of fees is delinquent. Prior to discontinuing service, the Town shall mail a written notice to the property owner and/or person named on the service account, of the Town's intent to discontinue service. Such notice shall be mailed seven days prior to the date which service is to be discontinued. If the delinquent fees have not been paid or a hearing before the Town Council requested prior to the date identified by the Town for the service to be discontinued, refuse, collection, and disposal by the Town will be discontinued.

8.01.090 - Special Refuse Problems.

No person shall place in containers for regular collection by the Town any hazardous materials, flammable or explosive materials, tires, refrigerator or other cooling devices without appropriate freon removal certification, or any other material not accepted by the Eagle County landfill.

8.01.100 - Individual and Outside Collectors.

(1) Requirements for vehicles. All persons who collect or transport waste material of any nature within the Town shall use watertight vehicles provided with a tight cover and so operated as to prevent offensive odors escaping therefrom and refuse from being blown, dropped or spilled.

(2) Disposal. Disposal of refuse shall be made outside the Town limits, unless otherwise specifically authorized by the Public Works Director.

(3) Rules and regulations. The Public Works Director shall have the authority to make such other reasonable regulations concerning collection and transportation of refuse within the Town as necessary, subject to the right of appeal as set forth in section 8.01.060(2).

Chapter 8.02 - NUISANCES

8.02.010 - Title for Citation.

The ordinance codified in this title shall be known and may be cited as the "Town Nuisance Ordinance."

8.02.020 - Purpose of Provisions.

(1) It is the intent and purpose of this Chapter 8.02 to discourage, prohibit, outlaw and abate certain conditions affecting the health, safety and general welfare of the citizens of the Town, particularly children, which pose a danger because of broken glass, sharp protrusions, insecure objects, or further create habitat for rodents, insects and other pests, or further constitute a blighting influence upon the area in which they are located, which cause a loss in property value to surrounding property.

(2) This Chapter 8.02 identifies certain types of nuisances but is not intended to be exclusive or to limit circumstances or conditions of nuisance to those delineated herein, it being the intent of this chapter to provide a framework for dealing with, curing and prohibiting nuisance after such circumstances are found to exist.

(3) It is the purpose of this Chapter 8.02 is also to implement the Colorado Noxious Weed Act, Article 5.5, Title 35, C.R.S., by declaring certain undesirable plant species and noxious weeds to be a nuisance. For the purposes of this chapter, "noxious weed" shall have the meaning provided in Section 35-5.5-103, C.R.S. (Ord. 14 §I, 1997)

8.02.030 - Right to Farm and Ranch Policy.

(1) Ranching, farming, and all manner of agricultural activities and operations within and adjacent to the Town are integral elements of and necessary for the continued vitality of the Town's history, economy, landscape, lifestyle, and culture. Given their importance to the Town, western Colorado, and the state, agricultural lands and operations are worthy of recognition and protection.

(2) Colorado is a "right-to-farm" state pursuant to C.R.S. 35-3.5-101, *et seq.* Landowners, residents and visitors must be prepared to accept the activities, sights, sounds, and smells of agricultural operations within and adjacent to the Town as a normal and necessary aspect of living in a town with a strong rural character and a healthy ranching sector. Those with an urban sensitivity may perceive such activities, sights, sounds, and smells only as inconvenience, eyesore, noise, and odor. However, state law and Town policy provide that ranching, farming, or other agricultural activities and operations within and adjacent to the Town shall not be considered to be nuisances so long as operated in conformance with the law and in a non-negligent manner. Therefore, all persons must be prepared to encounter noises, odors, lights, mud, dust, smoke, chemicals, machinery on public roads, livestock on public roads, storage and disposal of

manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides, and pesticides, any one or more of which may occur as a part of legal and non-negligent agricultural operations.

(3) All owners of land, whether agricultural or non-agricultural, have obligations under state law and Town ordinances with regard to the maintenance of fences and irrigation ditches, controlling weeds, keeping livestock and pets under control, using property in accordance with zoning, and other aspects of using and maintaining property. Residents and landowners are encouraged to learn about these rights and responsibilities and act as good neighbors.

(4) Ranching, farming, and all manner of agricultural activities and operations within and adjacent to the Town are not, and shall not become private or public nuisances because of any changed conditions in or about the locality of such operation after it has been in operation for more than one year, provided it was not a nuisance when begun. However, the protections of this subsection (4) shall not apply in the case of operations otherwise not in conformance with the law or conducted in a negligent manner, or when a change in operation would result in a private or public nuisance, or when a substantial increase in the size of operations occurs.

8.02.040 - Definitions.

As used in this Chapter 8.02:

(1) *Abandon* means to leave a thing with the intention not to retain possession of or assert ownership over it. The intent need not coincide with the act of leaving. It is prima facie evidence of intent that:

(a) If it is a motor vehicle and/or off-road vehicle, such motor vehicle and/or off-road vehicle has been left for more than seven days unattended or unmoved; or

(b) If it is a motor vehicle and/or off-road vehicle, valid license plates or other identifying marks have been removed from the motor vehicle and/or off-road vehicle; or

(c) If it is an appliance, such as an icebox, refrigerator or other appliance, such thing is left outside for more than seven days; or

(d) Personal property is left unattended or unmoved outside of a completely enclosed building and the last owner or person in possession of such things does not retain land ownership, possessory rights to land, a business presence in the Town, or residency in the Town for a period of six months.

(2) *Dangerous substances* means those substances which, if exposed to a human, are toxic, corrosive, mutagenic, carcinogenic, or substances known to cause chromosomal or genetic damage or other epidermal or internal disease or damage. A substance is not considered dangerous if under the operation, control or possession, secured from public contact, of a licensed medical, pharmaceutical or chemical dealer or practitioner.

(3) *Graffiti* means any writing, word, symbol, figure, design or other inscribed material written, sprayed, painted, etched or otherwise applied to any exterior surface of a building, wall, fence, tree, sidewalk, curb or other object without the authority or consent of the owner, occupant, or person having lawful control of the property.

(4) *Graffiti material* means material used to create graffiti, including:

(a) Broad tipped markers: Any felt tip indelible marker or similar implement with a flat or angled writing surface that, is similar implement with a flat or angled writing surface that, at its broadest width, is greater than one-fourth [of one inch], containing ink or other pigmented liquid that is not water soluble.

(b) Etching equipment: Any tool, device, or substance that is intended to be used to make permanent marks on any natural or manmade surface.

(c) Paint stick: Any device containing a solid form of paint, chalk, wax, epoxy, or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-fourth inch in width.

(d) Spray paint container: Any aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property.

(5) *Graffiti vandalism* means defacing any public or private property with graffiti.

(6) *Junk* means any old, used or secondhand materials of any kind, including but not limited to cloth, rags, clothing, paper, rubbish, bottles, rubber, iron, tires, brass, copper or other metal, furniture, toys, implements, refrigerators, freezers, all other appliances, the parts of used motor vehicles and/or off-road vehicles, machines, apparatuses and contrivances, and parts thereof, which are no longer in use, any used building materials, boards or other lumber, cement blocks, bricks, brickbats, rebar or other secondhand building material, or any discarded machinery, tractors, trucks or automobiles, or any other article or thing commonly known and classified as junk. An item is not considered junk if the same is kept, stored or collected in completely enclosed buildings or where a licensed automobile dealer or farm implement dealer conducts a bona fide business enterprise within allowable zoning.

(7) *Noxious odors* means smells, vapors, scents or other airborne matter which offends the olfactory senses of a reasonable person. Examples, but not by way of limitation, of circumstances or conditions which may cause noxious odors are tannery plants, feedlots, open and unaerated sewage lagoons or septic tanks without proper percolation, and rendering plants.

(8) *Nuisance* means, in addition to those conditions, acts or circumstances specifically described in this Chapter 8.02, any act, substance, occupation, condition or use of property which is of such a nature and continuing for such length of time as to:

(a) Substantially annoy, injure or endanger the comfort, health, repose or safety of the public;

(b) In any way render the public insecure in life, health, or in the use of property; or

(c) Unlawfully and substantially interfere with, obstruct or tend to obstruct or render dangerous for passage any street, alley, highway or other public way.

(9) *Person* means any individual, group of individuals, partnership, corporation, association, trust, or any other entity recognized at law.

(10) *Storage* means the collection, assembly or warehousing of things, fungible goods or any other item of personal property, without distribution from a site or location for a period of seven days.

(11) *Uncut weeds and vegetation* means any nonagricultural vegetation which, because of improper attendance or neglect, exceeds ten inches in height, is not compatible with the landscaping and vegetative character of the adjoining lots and neighborhood, causes neighborhood blight, poses a fire hazard, or creates a health hazard as a habitat for rodents or insects.

(12) *Undesirable plants* means leafy spurge, also known by the scientific name of *Euphorbia esula*; and the knapweed plants known as diffuse, Russian, and spotted knapweeds, also known by the scientific names of *Centaurea diffusa*, *Centaurea repens* *Centaurea maculosa*.

(13) *Unsafe structure* means any man-made structure which fails to meet proper building, plumbing, fire and electrical codes to such a degree that habitation, use or entry, in the opinion of either the relevant fire inspector or building inspector, poses an immediate danger to persons or property.

8.02.050 - Keeping of Junk, Maintaining a Nuisance and Dangerous Conditions Prohibited.

(1) It is unlawful to keep, store or provide for the collection of junk within the Town, and the keeping of junk within the Town is declared to be a nuisance and is detrimental to the health, safety, convenience and general welfare of the citizens of the Town.

(2) It is unlawful to keep, maintain perpetuate, store, operate, own or control dangerous substances, unsafe structures or uncut weeds and vegetation within the Town, and the keeping, maintaining, perpetuation, storage, operation, ownership or controlling of such dangerous substances, unsafe structures or uncut weeds and vegetation is declared to be a nuisance and is detrimental to the health, safety, convenience and general welfare of the citizens of the Town.

(3) It is unlawful to create, perpetuate, vent or disburse noxious odors within the Town, and the creation, perpetuation, venting or disbursement of noxious odors within the Town is declared to be a nuisance and is detrimental to the health, safety, convenience and general welfare of the citizens of the Town.

(4) It is unlawful to maintain, store, possess on one's premises, perpetuate, own or control inoperable appliances, motor vehicles and/or off-road vehicles or machinery, or to leave or permit to remain outside of any dwelling building or other structure, or within any public area or public highway or street, any inoperable motor vehicle and/or off-road vehicle, abandoned motor vehicle and/or off-road vehicle or junk, and the same is declared to be a nuisance and is detrimental to the health, safety, convenience and general welfare of the citizens of the Town.

(5) It is unlawful for any person to leave, or permit to remain outside of any dwelling, building or other structure, or within any unoccupied or abandoned building, structure or dwelling accessible to children, under his control, any unattended or discarded icebox, refrigerator or other container which has a door or lid, snap-lock, or other locking device which may not be released from the inside without first removing such door or lid, snap-lock or other locking device, and the maintaining, discarding, ownership or control of such device is declared to be a nuisance and is detrimental to the health, safety, convenience and general welfare of the citizens of the Town, particularly children.

(6) All undesirable plants, dead and or dying vegetation and noxious weeds, at any and all stages of growth or development, their carriers, and any and all premises, plants, and things infested or exposed to infestation therewith are hereby declared a public nuisance. Undesirable plants, invasive weeds and noxious weeds shall be abated pursuant to the nuisance abatement procedures of the Gypsum Municipal Code, or pursuant to the provisions of the Colorado Noxious Weed Act, Sections 35-5.5-101, et seq., C.R.S.

8.02.060 - Graffiti Prohibited.

(1) Defacement.

(a) It is unlawful for any person to commit graffiti vandalism.

(b) It shall be unlawful for any person to aid, abet, or advise another to commit graffiti vandalism.

(2) Purchase and possession of graffiti materials.

(a) It shall be unlawful for any person to purchase, procure or possess, or attempt to purchase, procure or possess any prohibited graffiti material with the intent to use such material in the commission of graffiti vandalism.

(b) It is unlawful for any person under the age of 18 years, except when under the direct supervision of the minor's parent, legal guardian, a school teacher, or a law enforcement officer in the performance of a duty, to purchase, procure, or possess, or attempt to purchase, procure or possess, any graffiti material.

(c) It shall be an affirmative defense to charges under this section that the person or minor is:

(i) Within their home;

(ii) At their place of employment and within the scope of that employment;

(iii) Upon the property with express permission from the owner, occupant, or person having lawful control of the property, to possess the graffiti materials on the property;

(iv) Attending school, or traveling between a lawful location and a school, at which the person is enrolled if the person is participating in a class at the school that formally requires the possession of the graffiti materials; or

(v) Transporting graffiti materials between lawful locations while going about one's business or activity while so transporting. Transporting shall not include loitering or aimlessly driving, riding, or walking.

(3) Removal of graffiti required. Any owner, occupant, or person having lawful control of the property on which graffiti has been applied in violation of this section is required to remove such graffiti within seven calendar days of the application of such graffiti and if not removed, the Town may take action to remove the graffiti and collect the costs of abatement pursuant to the abatement provisions of section 8.02.070 of the Gypsum Municipal Code.

(4) Penalties. A person who violates the requirements of this Chapter may be fined the maximum amount for violations of the Gypsum Municipal Code pursuant to section 2.01.100, in addition to any restitution and abatement charges:

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8.02.070 - Violations; Investigation; Notice; and Abatement.

(1) Violations. Any person, persons, firm, association, or corporation in violation of any provision of this Chapter 8.02, or any employee, assistant, agent, or other person participating or taking part in, joining or aiding in violation of any provision of this Chapter may be prosecuted to the municipal court. Each day, or any portion of a day, a violation continues shall constitute a separate violation.

(2) Investigation.

(a) Right of entry. The Town Manager or his designee may inspect property whenever there is reasonable cause to believe that there exists in or upon such property any condition which violates this Chapter 8.02. The Town Manager or his designee shall request entry from the owner, occupant, lessee, or agent of the premises (the "responsible party") either in person or by leaving at the building or premises a written notice of intent to inspect not sooner than 24 hours after the time specified in the notice of intention to inspect. Any written notice shall state that the responsible party may refuse entry and that in the event such entry is refused, inspection may be made only upon issuance of a search warrant by the municipal court.

(b) Search warrants. In addition to, or in lieu of, the procedures described in section 8.02.070(2)(a), the Town Manager, Code Enforcement Officer, or peace officer, may apply to the judge of the municipal court by presentation of an affidavit showing probable cause to obtain a search warrant entitling authorized representatives of the Town to enter the property described in said warrant, using such reasonable force as may be necessary to gain entry, and to inspect and search for and/or seize property located upon the premises. The person applying for such warrant shall not be required to demonstrate specific knowledge of the condition of the particular structure or premises at issue in order to obtain a search warrant, but must show some factual or practical circumstances that would cause an ordinary prudent person to believe that there is a fair probability or substantial chance that evidence of a violation will be found. In determining whether probable cause exists for issuance of the search warrant, the municipal court judge shall consider the totality of the facts and circumstances known to the affiant, and due consideration shall be given to the affiant's experience and training in evaluating the existence or probable existence of a violation of this Chapter 8.02, and may issue the warrant if there is a fair probability or substantial chance that evidence of a violation will be found in a particular place. It shall be unlawful for any responsible party

to deny entry or to resist reasonable force used by any officer or Town employee acting pursuant to a search warrant.

(c) Emergencies. Whenever an emergency situation exists, the Town Manager or his designee may immediately enter into any building or upon any premises within the Town, using such reasonable force as may be necessary. An emergency situation shall include, but not be limited to, any situation of imminent danger or loss of, or injury or damage to, life, limb, property, or threat to public safety. It is unlawful for any responsible party to deny entry to the Town Manager, Code Enforcement Officer, or peace officer, or to resist reasonable force used by such officer acting pursuant to this subsection.

(3) Notice.

(a) The Town may, but is not required to, provide an opportunity to correct a violation by providing a written notice of violation. For any violation which does not threaten imminent danger of damage or injury, the reasonable time for abatement shall not exceed seven days, unless it appears from the facts and circumstances that compliance could not reasonably be made within seven days, or that a good faith attempt at compliance is being made.

(b) If a written notice of a violation is given, it shall be served by:

(i) Posting a copy of the notice in a conspicuous place on the property upon which said nuisance exists; and

(ii) Mailing a copy of the notice, by first-class United States mail, to the last known address of the owner or other person exercising control over the property as reflected in the county real estate or tax assessment records. At the time of mailing of said notice, the Town shall obtain a certificate of mailing from the U.S. Post Office.

(4) Abatement.

(a) Notice to abate. Upon the discovery of any violation of this Chapter 8.02 on public or private property, the Town Manager or his designees may notify the responsible party in writing, requiring the responsible party to remove and abate the violation(s) from the property. Service of a notice of violation pursuant to subsection 8.02.070(3)(b) shall be considered service of a notice to abate.

(b) Abatement order. Anyone who neglects or refuses to comply with the notice to abate the nuisance shall be guilty of a violation of this Chapter and the Town Attorney may apply to the municipal court for an abatement order as follows:

(i) The application shall be accompanied by an affidavit establishing to the satisfaction of the municipal court, based on a preponderance of the evidence, that a violation exists on the subject property, and that the Town has complied with the notice requirements of section 8.02.070(3), and that the named responsible party has failed to abate the identified nuisance upon the property.

(ii) The Town shall give notice to the named responsible party of its application for the abatement order in the manner provided in subsection 8.02.070(3)(b). The notice shall include a copy of the Town's application and its affidavit in support of its application, as well as the time, date and place at which the Town will appear before the municipal court to request entry of the abatement order.

(iii) At the stated time, date and place, the municipal court judge shall hold a hearing to review the application for abatement order, the affidavit and any testimony or other evidence offered by the Town in support of the application, as well as any testimony or other evidence presented by the named responsible party, if present. Thereafter, the municipal court is authorized to enter an order authorizing the Town to enter upon such property, abate the nuisance and recover its costs as provided in section 8.02.070(4).

(iv) Upon the municipal court's issuance of an order authorizing the abatement of a nuisance, the Code Enforcement Officer or other authorized representative of the Town shall abate said nuisance or cause the same to be abated, employing such forces and persons as may be necessary to abate said nuisance, or cause the same to be abated, including the employees of the Town, either by contract or otherwise. All other Town officials and employees are authorized and directed to render such assistance to the Town Manager or other authorized representative of the Town as may be required for the abatement of such nuisance.

(v) Any officer or employee of the Town who shall be authorized herein to abate any nuisance specified in this Chapter 8.02 shall have authority to engage the necessary assistance and incur the necessary expenses thereof. The Town or any of its representatives shall proceed in all abatement cases with due care and without any unnecessary destruction of property.

(c) Noxious weeds.

(i) The Town Council hereby implements the Colorado Noxious Weed Act, Article 5.5, Title 35, C.R.S., by declaring certain undesirable plant species and noxious weeds to be a nuisance. "Noxious weed" shall have the same meaning as provided in Section 35-5.5-103, C.R.S.

(ii) Noxious weeds grow and spread rapidly and must be eradicated quickly in order to prevent them from spreading to adjacent and nearby

properties. As such, the Town employs a modified abatement procedure for noxious weeds. The Town shall provide a notice to abate pursuant to Section 8.02.070(3) and if such violations have not been abated within seven days, the Town may summarily abate the noxious weeds without seeking an abatement order from the municipal court. The Town may collect its costs of abatement pursuant to section 8.02.070(4)(e), plus an additional charge of \$150.00. Such fine shall be in lieu of the ten-percent charge for inspection and incidentals permitted pursuant to section 8.02.070(4)(e), herein.

(d) Abatement without notice or court order.

(i) Public right-of-way and property. Any violation located or found in or upon any street, avenue, alley, public sidewalk, highway, public right-of-way, public grounds, park, recreation facility, or public property in the Town may be abated pursuant to chapter 8.05 of the Gypsum Municipal Code.

(ii) Emergency abatement. If, in the judgment of the Town Manager or his designee, a violation is a cause of imminent danger to the public health, safety or welfare, any such violation may be summarily abated by the Town and the costs of abatement shall be charged and recovered as provided by section 8.02.070(4)(e).

(e) Costs of abatement.

(i) The actual costs of abatement, plus ten percent of such abatement costs for inspection and incidental costs occurred in abating the violation, shall be assessed upon the lot, lots or tracts of land upon which such violation is abated. Such costs shall be paid to the Town within 30 days after the Town has mailed notice of the assessment by certified mail to the owner of the property; provided, however, that if the Town has knowledge that the property is occupied by someone other than the owner, the Town shall mail such notice of assessment by certified mail to both the owner and occupant. Service shall be complete upon depositing the notice with the U.S. Postal Service, postage prepaid for certified mail. Every such assessment shall be a lien in the amounts assessed against such lot, lots, or tract of land until paid.

(ii) Failure to pay such assessment within such thirty-day period shall cause such assessment to become a lien against such lot, block or parcel of land and the lien shall have priority over all liens, except general taxes and prior special assessments, and the same may be certified at any time after such failure to so pay by the Town to the County Treasurer to be placed upon the tax list for the current year and to be collected in the same manner as other taxes, along with a ten-percent penalty to defray the cost of collection.

(5) Effect of property conveyance. When title to a parcel is conveyed from one person to another, any separate violation existing prior to the time of the conveyance may be used to prove that a violation exists with respect to such parcel, if the reason for the

conveyance was to avoid the parcel being declared a public nuisance pursuant to the provisions of this Chapter 8.02. It shall be a rebuttable presumption that a reason for the conveyance of the parcel was to avoid the parcel from being declared a public nuisance if:

- (a) the parcel was conveyed for less than fair market value;
- (b) the parcel was conveyed to an entity or entities controlled directly or indirectly by the person, entity, or entities conveying the parcel; or
- (c) the parcel was conveyed to a relative of the person conveying the parcel.

(6) Civil action. The Town, by the Town Manager or his or her designee, may bring a civil action in the municipal court to have a violation declared as such by the court and for an order enjoining the violation or authorizing its restraint, removal, termination or abatement by the responsible party.

(7) Other remedies. The remedies set forth herein are cumulative. The initiation of any action or the imposition of any penalty shall not preclude the Town from instituting any other proceeding to require compliance with the provision of this Chapter 8.02 and with any administrative order and determinations made hereunder. No provision herein shall be construed to limit the right of any person to bring a private action to abate a private nuisance.

8.02.080 - Post-Storage Hearings for Owners of Impounded Motor Vehicle and/or Off-Road Vehicles.

(1) As to any motor vehicle and/or off-road vehicle impounded pursuant to this Chapter 8.02 by or at the request of the Town, its agents or employees, a person who has a legal entitlement to possession of the motor vehicle and/or off-road vehicle has a right to a post-seizure administrative hearing to determine whether there was probable cause to impound the motor vehicle and/or off-road vehicle, if such person files a written demand, on forms so provided for such a hearing, with the Town Clerk within ten days after such person has learned such motor vehicle and/or off-road vehicle has been impounded, or within ten days after the mailing, of the date set in the notice of stored motor vehicle and/or off-road vehicle, whichever occurs first. The notice of stored motor vehicle and/or off-road vehicle shall be sent in the mail to the legal and registered owner or their agent, and to the garage where the motor vehicle and/or off-road vehicle is stored, within 48 hours, excluding weekends and holidays, after impounding and storage of the motor vehicle and/or off-road vehicle.

(2) A hearing shall be conducted before the Town Manager within 48 hours of receipt of a written demand therefor from the person seeking the hearing, unless such person waives the right to a speedy hearing. Saturdays, Sundays and Town holidays are to be excluded from the calculation of the 48-hour period. The hearing officer shall be someone other than the person who directed the impounding and storage of the motor vehicle and/or off-road vehicle, and may be the Town Manager. The sole issue before the hearing officer shall be whether there was probable cause to impound the motor vehicle and/or off-road vehicle in question.

(3) "Probable cause to impound" means such a state of facts as would lead a person of ordinary care and prudence to believe that there was sufficient breach of local, state or federal law to grant legal authority for the removal of the motor vehicle and/or off-road vehicle.

(4) The hearing officer shall conduct the hearing in an informal manner and shall not be bound by technical rules of evidence. The person demanding the hearing shall carry the burden of establishing that such person has the right to possession of the motor vehicle and/or off-road vehicle. The Town shall carry the burden of establishing that there was probable cause to impound the motor vehicle and/or off-road vehicle in question. At the conclusion of the hearing, the hearing officer shall prepare a written decision. A copy of such decision shall be provided to the person demanding the hearing and the registered owner of the motor vehicle and/or off-road vehicle (if not the person requesting the hearing). The hearing officer's decision in no way affects any criminal proceeding in connection with the impound in question, and any criminal charges involved in such proceeding may only be challenged in the appropriate court. The decision of the hearing officer is final. Failure of the registered or legal owner, or their agent, to request or attend a scheduled post-seizure hearing shall be deemed a waiver of the right to such hearing.

(5) The hearing officer shall only determine that as to the motor vehicle and/or off-road vehicle in issue either (1) there was probable cause to impound the motor vehicle and/or off-road vehicle, or (2) there was no such probable cause. In the event that the hearing officer determines that there was no probable cause, the hearing officer shall prepare and date a certificate of no probable cause, copies of which shall be given to the possessor of the motor vehicle and/or off-road vehicle and the Town. Upon receipt of the possessor's copy of such certificate, the garage having custody of the motor vehicle and/or off-road vehicle shall release the motor vehicle and/or off-road vehicle to its possessor. Upon a finding of no probable cause, towing and storage fees shall be paid by the Town in accordance with arrangements made between the Town and the garage. If the possessor fails to present the certificate to the garage having custody of the motor vehicle and/or off-road vehicle within 24 hours of its receipt, excluding the days when the garage is not open for business, the possessor shall assume liability for all subsequent storage charges. Such certificate shall advise the possessor of such requirement.

8.02.090 - Mediation Panel.

Mediation panel shall be appointed for the purpose of hearing grievances regarding agricultural conflicts between landowners or residents within and adjacent to the Town, and making recommendations for the resolution of such conflicts. The panel shall be made up of three residents of the Town or areas adjacent to the Town, appointed by the Town Council. Each member shall serve a term of two years, except that one member of the initial panel shall be appointed for a one year term only so as to stagger the terms of the panel. Priority in appointment shall be given to individuals with mediation, arbitration, and other dispute resolution skills, however, experience in ranching or farming shall be mandatory for at least one member of the panel. Members of the panel shall receive no compensation, but may receive reasonable expenses incurred in the carrying out of their duties, and the Town shall make reasonable staff time and other in kind resources available to the panel, as needed.

8.02.100 - Procedure and Rules.

The initial mediation panel shall draft and recommend rules or procedures for the hearing of grievances by the panel. Such rules or procedures shall be presented to the Town Council for its approval and adoption. Any amendments to such rules and procedures shall be made in the same manner. The rules or procedures recommended by the panel and adopted by the Town Council shall conform in the minimum to the following:

(1) Hearing of grievances shall be informal and appearances before the panel shall be by the parties themselves without representation by an attorney; a party may be represented by counsel to receive general advice on how to proceed or whether to accept a resolution recommended by the panel, but such counsel may not make an appearance, in person, in writing, or otherwise, before the panel; and

(2) Hearing of grievances and acceptance of any recommendation of the panel shall be voluntary; the procedure is not mandatory and the results are not binding on either party, unless the parties by mutual written agreement agree that they shall be bound by the decision of the mediation panel.

Chapter 8.03 - EMERGENCY RESPONSE AUTHORITIES

8.03.010 - Emergency Response Authority.

In accordance with Section 29-22-102(3)(a) C.R.S., the emergency response authority for hazardous substance incidents occurring within the corporate limits of the Town shall be the Gypsum Fire Protection District.

Chapter 8.04 - CIGARETTES AND TOBACCO PRODUCTS

8.04.010 - Definitions.

As used in this Chapter 8.04, unless the context otherwise requires:

(1) *Cigarette, tobacco product, or nicotine product* means a product that contains nicotine or tobacco or is derived from tobacco and is intended to be ingested or inhaled by or applied to the skin of an individual; or an device that can be used to deliver tobacco or nicotine to the person inhaling from the device, including an electronic cigarette, cigar, cigarillo or pipe.

8.04.020 - Furnishing to, Purchase by, and Possession by Minors of Cigarettes and Tobacco Products.

(1) No person shall knowingly furnish to any person who is under 21 years of age, by gift, sale, or any other means, any cigarettes or tobacco products.

(2) No person who is under 21 years of age shall purchase, or obtain by any means, any cigarettes or tobacco products.

(3) No person who is under 21 years of age shall possess or have within their control or person, or shall consume by any means, any cigarettes or tobacco products in a public place, public facility, public accommodation, or motor vehicle and/or off-road vehicle at any of the above locations or public right-of-way.

(4) It shall not be a violation of this section for a person under the age of 21 years to

sell or handle any unopened container of tobacco products in the course of his or her employment.

8.04.030 - Violations and Penalties.

(1) Every person convicted of a violation of any provision of this chapter 8.04 shall be punished by a fine of not more than \$100.00.

(2) The penalty may, in the discretion of the municipal court judge, be deferred upon successful completion of useful community service and/or attendance at a program designed to assist participants in stopping their personal use of tobacco products.

(3) This chapter may be enforced by the Town Manager, Town Code Enforcement Officer, and every officer of the Gypsum Police Department and Eagle County Sheriff's Department ("Town enforcement officers"). Town enforcement officers may issue a summons and complaint to appear in the municipal court for violations of this chapter, or, a penalty assessment notice consistent with a penalty assessment schedule adopted by the municipal judge consistent with the Colorado Rules of Municipal Procedure Rule 210(b)(4) and Part 17 of the Model Traffic Code.

Chapter 8.05 - MAINTENANCE OF PUBLIC RIGHT-OF-WAY AREAS

8.05.010 - Planting and Maintenance of Public Right-of-Way Areas.

(1) Plantings made adjacent to or on public right-of-way area are a privilege allowed by the Town to owners of the abutting property, with the provision that the property owner, any resident(s) of the property, and subsequent owner(s) will be responsible for acceptable maintenance and removal of such growth in accordance with municipal ordinance and regulation.

(2) All new conifer trees shall be located a minimum of ten feet away from onsite and adjacent driveways, roadways, sidewalks, and pedestrian trails to avoid overgrowth of vegetation and to improve visibility and reduce damage to public infrastructure. Measurement shall be from the center of the tree to the edge of the driveway, road, sidewalk or trail.

(3) Trees, or other plant growth when permitted to grow upon or adjacent to public streets or public right-of-way, shall be kept and maintained in such a manner as not to endanger, interfere, or otherwise conflict with requirements of safe public use thereon or conflict with the safety of vehicles or pedestrians from entering onto the public right-of-way from private driveways.

(4) Any time that such plants or trees established under this privilege interfere with or jeopardize necessary public passage on public right-of-way, or obstruct any improvements made thereon for public benefit or vehicular or pedestrian lines of sight, the Town may order the owner and/or resident of abutting property enjoying such privilege to modify or eliminate such growth.

(5) The Town reserves the right at all times to undertake trimming, removing or otherwise treating any such trees or plant growth, as the Town may deem necessary for the public interest.

(6) Property owners shall also be responsible for any damage to public infrastructure caused by vegetation growth.

8.05.020 - Abatement Procedures.

(1) A Town official, or authorized agent thereof, is authorized and directed to give notice to any owner, owner's agent, occupant, or lessee whose property or adjacent public right-of-way is being kept or maintained in violation of the provisions of this chapter. Such notice may be personally served upon such person or, if not personally, may be posted upon the property or deposited in the United States mail, addressed to the owner's agent, occupant, lessee or owner of record at the address on the assessment roll of the county assessor or at such other, more recent address as may be available to the Town, or with respect to occupants, at the address of the property so occupied. If service of mailing of the notice is to any party other than the owner, or if the property is posted, a copy of the notice shall be mailed via United States mail to the owner of record.

(2) The notice shall state that, if the offending trees, shrubs, or bushes are not cut or eradicated (as applicable), and/or removed from such property, on or before seven days from the date of such notice, the removal may be done by the Town and all cost of abatement, including the cost of inspection, the cost of any grading or sloping necessary to protect the public safety and all other incidental cost in connection therewith, including administrative cost, will be charged against the property of the responsible party in addition to any other penalty and costs or orders that may be imposed.

(3) If the property has not been brought into compliance with this article within seven days from the date of the notice, the abatement may be done by the Town, either by Town personnel, or by private contractors. In the event of such abatement by the Town, the cost, including inspection, removal of obstructions, if any, the cost of grading or sloping necessary to protect the public safety, and all other incidental costs in connection therewith, including administrative costs shall be assessed against the property of the responsible party.

8.05.030 - Recover of Expenses—Lien.

(1) All costs and expenses incurred by the Town in abatement shall be paid by the property owner to the Town in full within thirty (30) days after mailing to the property owner, by certified mail, a notice of and the assessment of such cost. Such notice shall include a statement of the work performed to abate the nuisance, the date of performance and the cost and expenses.

(2) Failure to pay the assessment within 30 days shall cause the assessment to become a lien with penalty and interest upon the real property that was subject to the

abatement by the Town. The penalty and interest shall be assessed at a rate equivalent to that which is assessed by the state law upon delinquent general property taxes. Such lien shall have priority over all other liens except general taxes and shall, upon the Town's certification and filing with Eagle County, be collected and paid to the Town by the county treasurer in the same manner as delinquent general property taxes.