

700 - BUSINESS AND TRADES**710 - Regulation of Transient Sales**

HISTORY: Ordinance No. 176, November 3, 1960; Repealed and reenacted September 1, 1966, by Ordinance No. 196; amended January 2, 1997, by Ordinance No. 411; amended June 7, 2012, by Ordinance No. 554.

710.1. Permit Required.

710.1.1. It is unlawful for any person to solicit, peddle, or otherwise engage in transient sales of goods, wares, merchandise, products, or personal property as defined in Section 710.2 within the Town limits without first procuring a permit as provided in this Section.

710.1.2. It is unlawful to sell goods, wares, merchandise, chattels, or personal property of any kind whatsoever at public auction or by hawking or peddling the same within the Town limits unless such person shall be first procured a permit therefore, as hereinafter provided.

710.1.3. It is unlawful to operate for gain or hire within the Town limits any striking machine, ring game, ball and puppet game, cane rack, knife board, or other similar game or devise typically associated with carnival or fair type activities unless such person shall have first procured a permit therefore, as hereinafter provided.

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

710.2.1. "Solicitor" means any person who travels from place to place within the Town boundaries by any type of conveyance taking or attempting to take orders for the sale of goods, wares, and merchandise, personal property, or services of any kind whatsoever for future delivery, whether or not such person has, carries, or exposes for sale a sample of the subject of such sale, or whether or not he or she is collecting advance payment on such sales.

710.2.2. "Peddler" means any person who travels from place to place by any type of conveyance, carrying his or her goods, wares, and merchandise with him or her, offering and exhibiting such goods, wares, and merchandise for sale; or any person who, without traveling from place to place, sells or offers the same for sale from any type of vehicle or conveyance. A peddler generally offers for sale, consummates the sale, and delivers the goods at one and the same time to the ultimate purchaser or consumer. Any person who solicits, orders, and as a separate transaction, makes

deliveries to the purchaser as part of a scheme or design to evade the provisions of this definition shall be deemed to be peddling and shall be subject to the provisions of this Article.

710.2.3. "Transient Seller" means any person, either as principal or agent, who engages in a business of selling and delivering goods, wares, and merchandise or services from a temporary fixed location within the Town of Limon, and who, in the furtherance of such purpose hires, leases, uses, or occupies any building, structure, room, apartment, lot, parking lot, street, sidewalk, or other place, whether public or private, within the Town, for the exhibition and sale of such goods, wares, and merchandise, either privately or at an auction. Any person who engages in transient selling shall not be relieved from complying with the provisions of this Section by reason of associating himself or herself with any established local dealer, trader, merchant, or auctioneer, or by conducting transient selling in connection with as part of, or in the name of, any established local dealer, trader, merchant, or auctioneer, or by conducting transient selling in connection with, as part of, or in the name of any established local dealer, trader, merchant, or auctioneer. If the conduct of any person falls within the definitions of both peddler and transient selling as contained in this section, he or she shall be deemed to be transient selling for the purposes of this Section.

710.3. Exemptions From Article.

710.3.1. Religious, local government, educational, and charitable nonprofit organizations shall be exempt from the provisions of this Section. Charitable nonprofit organizations exempt under Section 710.3.1 shall provide documentation of non-profit status to the Town Clerk before exemption is granted.

710.3.2. Town Resident yard and garage sales of less than two days in duration and less than seven days in any particular year shall be exempt from the provisions of this Section.

710.3.3. Vendors, merchants, exhibitors, and salespersons who exhibit, demonstrate or solicit orders for goods, wares, or merchandise in conjunction with a local government or public school sponsored event shall be exempt from the provisions of this Section.

710.3.4. Any art or crafts fair, show, exhibition of arts, crafts, or similar handiwork, or Town wide celebrations, observances, or special events such as an annual sidewalk or parking lot sale, which includes more than five (5) exhibitors or merchants, shall be exempt from this Section; provided that the event sponsor advise

the Town Clerk of the name and address of the event sponsor, purpose and duration of the event, number of exhibitions or merchants taking part in the event, and the location of the event.

710.3.5. Any person who exhibits a privately owned vehicle for sale on private property or who temporarily parks a privately owned vehicle on which a “for sale” sign is displayed shall be exempt from the provisions of this Section.

710.3.6. Wholesale and distributor representatives servicing existing businesses in the Town or such representatives soliciting new business with existing businesses in the Town shall be exempt from the provisions of this Section.

710.3.7. Vending machines, coin-operated amusement machines, signs and billboards shall be exempt from the provision of this Section.

710.3.8. Private sales made by telephone or mail appointment where the solicitor is invited to a private residence shall be exempt from the provisions of this Section.

710.4. Transient Sales Permit – Application; Fees; Permit Approval / Denial.

710.4.1. Any person transacting any business or selling activity defined in this Section shall first obtain from the Town Clerk a permit before engaging in any such selling or soliciting activities. This permit shall be referred to as a “Transient Sales Permit”. Applicants must be at least eighteen (18) years of age. Each sales representative of the permitted business must have a copy of the permit on his person and a valid state or military issued identification.

710.4.2. Persons requesting a Transient Sales Permit shall provide a copy of a valid Colorado sales tax license and the following information to the Town Clerk on an application furnished by the Town Clerk.

710.4.2.1. Applicant’s name, date of birth, driver’s license or state or military identification number, home and business address and telephone numbers.

710.4.2.2. Description and license numbers of vehicles used for the transient sales activity.

710.4.2.3. Name, date of birth, driver’s license number and home address of each other sales representative operating under this permit.

710.4.2.4. Name of business firm represented and parent company, if any, and a brief description of the nature of the business and goods being sold.

710.4.2.5. Location(s) and / or method the applicant intends to use to conduct business (such as selling out of home or building, selling out of car / truck, concession stand or booth, or door-to-door sales, etc.)

710.4.2.6. Length of time the applicant intends to be doing business under this permit.

710.4.3. Permit fees shall be paid at the time of application and prior to issuance of the permit. Permits are non-transferable. The Town Clerk or designee may impose conditions on the approval of permits including, but not limited to, cleanup, sanitation, or security measures. The fees to be paid for the issuance of permits shall be established by Resolution of the Board as deemed appropriate from time to time and kept / or posted in the office of the Town Clerk. The cost of the permits shall vary in amount as to the applicant’s need to have a permit issued for a day, for a season, or for a year.

710.4.4. The Transient Sales Permit shall contain the permit number, the name of the applicant and his or her representatives, business name, description of the type of goods to be sold or business activity, location where sales will take place and / or method of sales, any special conditions, date of issuance and expiration, and the Town Clerk’s signature.

710.4.5. The Town Clerk may deny an application for a Transient Sales Permit based on the wants or warrants record, misrepresentation, fraud, deceit, or impropriety of the applicant or his or her representatives or other grounds that such transient business would not be in the best interest of the Town or its citizens.

710.4.6. The Police Chief may suspend or revoke a Transient Sales Permit based on misrepresentation, fraud, deceit, or impropriety of the applicant or his or her representatives or other grounds that such transient business would not be in the best interest of the Town or its citizens and shall give the applicant or permit holder prompt notice.

710.4.7. Any applicant may appeal a denial or revocation of a permit. The applicant may request a hearing before a neutral party appointed by the Mayor. If the applicant requests an appeal hearing, the Town Clerk shall provide written notice of the time and place of the hearing. Such notice shall be mailed postage prepaid by regular United States mail at least five (5) days prior to the date set for hearing.

710.5. Verification of Information; Background Check of Applicant. Upon receipt of an application, the Town Clerk shall verify information on the application and provide a copy of the application to the Town Police Department. The Police Department may conduct a wants or warrants check and provide the results to the Town Clerk.

710.6. Conduct of Business; Prohibited Acts; Same Declared as Nuisance.

710.6.1. No solicitor, peddler, or transient seller shall:

710.6.1.1. Sell from any location within the Town limits without a valid Transient Sales Permit.

719.6.1.2. Carry on his or her business upon any street, alley, sidewalk, park, or any other public place unless specified on the permit that such business activity in such public place be permitted thereunder.

710.6.1.3. Park or stand his or her sales stand, wagon, automobile, or other vehicle upon any sidewalk or sidewalk area, street, alley, highway, or public thoroughfare so as to obstruct free travel thereon.

710.6.1.4. Enter into a sale with any individual under the age of eighteen (18) unless provided for in the permit.

710.6.1.5. Enter into any sale with any individual who appears to be intoxicated or under the influence of drugs.

710.6.1.6. Knowingly provide any inaccurate, false, or misleading information with respect to required records of any transactions conducted by the permit holder.

710.6.1.7. Enter into any private residence or premises in conjunction with transient sale business without having first been invited or requested by the owner or occupant of such residence or premises.

710.6.1.8. Approaching any location posted with "no solicitors" signage.

710.6.2. Any of the above described prohibited activity committed by solicitors, peddlers, or transient sellers shall be declared as a violation of this section and shall be deemed to be a public nuisance.

710.7. Exhibition of Permit. Transient Sales Permit holders and sales representatives are required to exhibit their permit at the request of any Town officer or citizen.

In addition, any transient sales permit holder(s) or sales representatives are required to exhibit their driver's license or other state or military issued identification upon the request of any Town officer or employee.

710.8. Record of Transient Sales Permits. The Town Clerk shall maintain a record of all permits issued pursuant to the provisions of this Section and all permit fees shall be paid into the general fund of the Town of Limon.

710.9. Enforcement. It shall be the duty of the Town Police Department to enforce the provisions of this Section as to any solicitor, peddler, or transient seller found to be engaged in business without a valid Transient Sales Permit or in violation of any other provision of this Section.

710.10. Violations – Penalty. Upon the conviction of any person or persons charged with a violation of this Ordinance or any provisions thereof, such person or persons shall be guilty of a petty offense and shall be subject to a fine as imposed by Sub-section 520.22 – Penalties for Violation under Section 520 – Nuisances.



720 - Taxation

721 - Telephone Companies

HISTORY: Adopted November 21, 1968, by Ordinance No. 206; Deleted in its entirety on April 7, 2016, by Ordinance No. 591

722 - Telephone Utility Companies

HISTORY: Adopted October 7, 1976, by Ordinance No. 241; amended on January 2, 1997, by Ordinance No. 411.

722.1. LEVY OF TAX. There is hereby levied on and against telephone utility company operating within the Town of Limon, (hereinafter called the "Town") a tax on the occupation and business of maintaining a telephone exchange and lines connected therewith in the Town of Limon and of supplying local exchange telephone service to the inhabitants of the Town. The annual amount of tax levied hereby shall be equal to \$3.60 per telephone account for which local exchange telephone service is provided within the corporate limits of the Town of Limon on the effective date as provided in Section **722.2.** and upon each anniversary of the effective date.

722.2. EFFECTIVE DATE. The tax levied by this code shall commence on November 15, 1976, and shall be due and payable in twelve (12) equal monthly installments with the first such installment due thirty (30) days after the effective date.

722.3. FILING STATEMENT.

722.3.1. Within thirty (30) days after the effective date as provided in Section **722.2.**, each telephone utility company subject to this code shall file with the Town Clerk, in such form as the Clerk may require, a statement showing the total telephone accounts for which local exchange telephone service was provided within the corporate limits of the Town on the effective date.

722.3.2. Such statement shall be filed within thirty (30) days after each anniversary of the effective date showing such accounts on the anniversary date.

722.4. FAILURE TO PAY. If any telephone utility company subject to the provisions of this code shall fail to pay the taxes as herein provided, the full amount thereof shall be due and collected from such company, and the same together with an addition of ten percent (10%) of the amount of taxes due shall be and hereby is declared to be a debt due and owing from such company to the Town. The Town Attorney of the Town upon direction of the Board of Trustees shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action at law to collect the said debt in the name of the people of the Town of Limon, Colorado.

722.5. PENALTY FOR VIOLATION. If any officer, agent or manager of a telephone utility company which is subject to the provisions of this code shall fail, neglect, or refuse to make or file the annual statement of accounts provided in Section **722.3.**, the said officer, agent, manager or person shall, on conviction thereof, be punished by a fine not more than Five Hundred Dollars (\$500.00); provided, that each day after said statement shall become delinquent during which the said officer, agent, manager or person shall so fail, neglect, or refuse to make and file such statement shall be considered a separate and distinct offense.

722.6. INSPECTION OF RECORDS. The Town, its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of the telephone utility company which are subject to the provisions of this code and to make copies of the entries or contents thereof.

722.7. LOCAL PURPOSE. The tax herein provided is upon occupations and businesses in the performance of

local functions and is not a tax upon those functions relating to interstate commerce. It is expressly understood that none of the terms of this code be construed to mean that any telephone utility company is issued a franchise by the Town, and is subject to all standards for the use of streets and alleys as required or may be required by the Town, including repair of damage caused by the telephone utility company. The repair of damage shall, in no circumstance, be less than repair to a condition equal to the original condition before damages occurred.

722.8. TAX IN LIEU OF OTHER TAXES, ETC. The tax herein provided shall be in lieu of all other payments by or fees and taxes on any telephone utility subject to the provisions of this code, other than ad valorem taxes, and in addition shall be in lieu of any free service furnished the Town by any said telephone utility.



723 - Sales and Use Tax

HISTORY: Adopted July 27, 1978 by Ordinance No. 251. Amended January 4, 1996 by Ordinance No. 395; amended on July 5, 2012 by Ordinance No. 556.

723.1. PURPOSE. The purpose of this code is to impose a sales tax on the sale of tangible personal property at retail and the furnishing of services within the Town of Limon, Colorado (hereinafter "Limon" or "Town"), and a use tax on the privilege of using or consuming within the Town any construction and building materials and motor and other vehicles on which registration is required, purchased at retail, pursuant to Colorado Revised Statutes of 1973, Title 29, Article 2, as amended.

723.2. DEFINITIONS. For the purpose of this code, the meanings of words herein contained shall be as defined in Colorado Revised Statutes of 1973, Section 39-26-102, as amended, and said definitions are incorporated herein.

723.3. SALES TAX LEVIED. There is hereby levied and there shall be collected and paid a tax equal to two percent (2%) of gross receipts from all sales of tangible personal property at retail and the furnishing of services within the Town. The sales of tangible personal property and the furnishing of services taxable under this code shall be the same as those taxable pursuant to Colorado Revised Statutes of 1973, Section 39-26-104, as amended.

723.4. SALES TAX - NONAPPLICABILITY. The Town's sales tax shall not apply to the sale of construction and building materials, as the term is used in Colorado Revised Statutes of 1973, Section 29-2-109, as amended, if such materials are picked up by the purchaser, and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the Town, including a Certificate of Use on a form provided by the Town, evidencing that a local use tax has been paid.

723.5. SALES TAX COLLECTION AND SCHEDULES.

723.5.1. The collection, administration, and enforcement of this sales tax shall be performed by the Executive Director of the Department of Revenue of the State of Colorado (hereinafter the "Executive Director") in the same manner as the collection, administration, and enforcement of the Colorado state sales tax. The provisions of Colorado Revised Statutes of 1973, Title 39, Article 26, as amended, and all rules and regulations promulgated there under by the Executive Director shall govern the collection, administration, and enforcement of this sales tax.

723.5.2. The sales tax on individual sales levied by this code shall be collected in accordance with schedules set forth in a separate ordinance or code enacted by the Board of Trustees of Limon, or if no such separate ordinance or code is enacted, in accordance with schedules set forth in the rules and regulations promulgated by the Executive Director under Colorado Revised Statutes of 1973, Title 29, Article 2, or Title 39, Article 26, as amended. If any vendor, during any reporting period, shall collect as a sales tax under this code an amount in excess of two percent (2%) of his total taxable sales for that period, he shall remit to the Executive Director the full amount of this sales tax and also such excess.

723.6. SALES TAX EXEMPTIONS.

723.6.1. All sales of personal property on which a specific ownership tax has been paid or is payable shall be exempt from this sales tax when such sales meet both of the following conditions:

723.6.1.1. The purchaser is a nonresident of or has his principal place of business outside the limits of Limon; and

723.6.1.2. Such personal property is registered or required to be registered outside the limits of Limon under the laws of the State of Colorado.

723.6.2. Occasional Sales by a charitable organization recognized as Sales and Use Tax Exempt by the State of Colorado as specified in section 39-26-718 (1) (b), C.R.S as amended.

723.6.2.1. "Occasional Sales" means retail sales of tangible personal property, including concessions, for fund-raising purposes if:

723.6.2.1.1. The sale of tangible personal property or concessions by the charitable organization takes place no more than twelve days, whether consecutive or not, during any one calendar year;

723.6.2.1.2. The funds raised by the charitable organization through these sales are retained by the organization to be used in the course of the organization's charitable service; and

723.6.2.1.3. The funds raised by the charitable organization through these sales do not exceed twenty-five thousand dollars during any one calendar year.

723.6.3. Sales related to a School recognized as Sales and Use Tax Exempt by the State of Colorado as specified in 39-26-725, C.R.S. and 39-26-718 (1)(c), C.R.S. as amended.

723.6.3.1. "School" means a public or nonpublic school for students in kindergarten through twelfth grade or any portion thereof.

723.6.3.2. A sale that benefits a Colorado school shall be exempt from Town sales tax if the sale is made by any of the following:

723.6.3.2.1. A school;

723.6.3.2.2. An association or organization of parents and school teachers;

723.6.3.2.3. A booster club or other club, group, or organization whose primary purpose is to support a school activity; or

723.6.3.2.4. A school class or student club, group, or organization.

723.6.4. All sales and purchases of farm equipment as exempted by 39-26-716 (2)(b) C.R.S. as well as:

723.6.4.1. Any farm equipment under lease or contract, if the fair market value of the equipment is at least one thousand dollars and the equipment is rented

or leased for use primarily and directly in any farm operation as exempted by 39-26-716(2)(c)(I) C.R.S.; and

723.6.4.2. The lessor or seller of such farm equipment shall obtain a signed affidavit from the lessee, renter, or purchaser affirming that the farm equipment will be used primarily and directly in a farm operation as exempted by 39-26-716(2)(c)(II).

723.6.5. All sales and purchases of agricultural compounds that are consumed by, administered to, or otherwise used in caring for livestock are exempt as exempted by 39-26-716 (2) (d) C.R.S.

723.6.6. All sales and purchases of pesticides that are registered by the commissioner of agriculture for use in the production of agricultural and livestock products pursuant to the provisions of the "Pesticide Act", article 9 of title 35, C.R.S., and offered for sale by dealers licensed to sell such pesticides pursuant to section 35-9-115, C.R.S.as exempted by 39-26-716 (2)(e) C.R.S.

723.6.7. All sales and purchases drugs and medical and therapeutic devices exempted by 39-26-717 C.R.S.

723.6.8. All sales and purchases sales of coins and precious metal bullion exempted by 39-26-704(4)(a)(b) C.R.S.

723.7. SALES TAX - CREDIT FOR SALES OR USE TAXES PREVIOUSLY PAID TO ANOTHER MUNICIPALITY. The Town's sales tax shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of two percent (2%). A credit shall be granted against the Limon sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed two percent (2%).

723.8. SALES TAX GENERAL PROVISIONS.

723.8.1. All retail sales shall be considered consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to a destination outside the limits of the Town or to a common carrier for delivery to a destination outside the limits of the Town.

723.8.2. Gross receipts from sales shall include delivery charges when such charges are subject to the state sales and use tax imposed by Colorado Revised

Statutes of 1973, Title 39, Article 26, as amended, regardless of the place to which delivery is made.

723.8.3. In the event a retailer has no permanent place of business in Limon, or more than one place of business, the place or places at which the retail sales are consummated for the purpose of this sales tax shall be determined by the provisions of Colorado Revised Statutes of 1973, Title 39, Article 26, as amended, and by the rules and regulations promulgated there under by the Executive Director.

723.8.4. Gross receipts shall not include the state sales and use tax imposed by Colorado Revised Statutes of 1973, Title 39, Article 26, as amended.

723.9. SALES TAX VENDOR'S FEE. The vendor shall be entitled, as collection agent for Limon, to withhold a collection fee in the amount designated by state statute, currently three and one-third percent (3 1/3%), from the total amount of the sales tax remitted by the vendor to the Colorado Department of Revenue each month or at a frequency stipulated for their account. If any vendor is delinquent in remitting said tax, penalties shall be assessed as provided by statute and shall be paid promptly by any such delinquent vendor.

723.10. USE TAX LEVIED. There is hereby levied and there shall be collected and paid a use tax upon the privilege of using or consuming within the Town, any construction and building materials, and motor and other vehicles on which registration is required, which are purchased at retail, in an amount equal to two percent (2%) of the retail cost thereof.

723.11. USE TAX EXEMPTIONS.

723.11.1. There shall be an exemption to the imposition of a use tax applicable as follows:

723.11.1.1. To the storage, use, or consumption of any tangible personal property, the sale of which is subject to a retail sales tax imposed by the Town;

723.11.1.2. To the storage, use, or consumption of any tangible personal property purchased for resale in the Town, either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business;

723.11.1.3. To the storage, use, or consumption of tangible personal property brought into the Town by a non-resident thereof for his own storage, use, or consumption while temporarily within the Town; however, this exemption does not apply to the storage, use, or consumption of tangible personal property

brought into the State of Colorado by a non-resident to be used in the conduct of a business in this State;

723.11.1.4. To the storage, use or consumption of tangible personal property by the United States government or the State of Colorado, or its institutions or political subdivisions, in their governmental capacities only or by religious or charitable corporations in the conduct of their religious or charitable functions:

723.11.1.5. To the storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label, or the furnished shipping case thereof;

723.11.1.6. To the storage, use, or consumption of tangible personal property and household effects acquired outside of the Town and brought into it by a non-resident acquiring residency;

723.11.1.7. To the storage or use of a motor vehicle if the owner is or was, at the time of purchase, a non-resident of Limon and he purchased the vehicle outside of Limon for use outside of Limon and actually so used it for a substantial and primary purpose of which it was acquired and he registered, titled, and licensed said motor vehicle outside of the Town;

723.11.1.8. To the use or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to July 27, 1978.

723.11.1.9. To the use or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into at any time prior to July 27, 1978.

723.11.1.10. To the use or consumption of any construction and building materials for which a building permit is issued after August 1, 1996 by any business that shows proof of a valid Town of Limon Sales Tax Account with the Colorado Department of Revenue.

(Added August 1, 1996 by Ordinance no. 301)

723.12. USE - TAX CREDIT FOR SALES OR USE TAXES PREVIOUSLY PAID TO ANOTHER MUNICIPALITY. The Town's use tax shall not apply to the storage, use, or consumption of any article of

tangible personal property the sale or use of which has already been subjected to a legally imposed sales or use tax of another statutory or home rule municipality equal to or in excess of two percent (2%). A credit shall be granted against Limon's use tax with respect to a person's storage, use, or consumption in Limon of tangible personal property purchased by him in a previous statutory or home rule municipality. The amount of the credit shall be equal to the tax paid by him by reason of the imposition of a sales or use tax of the previous statutory or home rule municipality on his purchase or use of the property. The amount of the credit shall not exceed two percent (2%). It shall be the obligation of the person or entity claiming the credit to furnish receipts or other written proof of the tax paid by such person or entity to the previous statutory or home rule municipality.

723.13. MOTOR AND OTHER VEHICLE USE TAX COLLECTION.

723.13.1. The two percent (2%) use tax provided for herein shall be applicable to every motor vehicle for which registration is required by the laws of the State of Colorado, and no registration shall be made of any motor or other vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the Department of Revenue of the State of Colorado or its authorized agents until any tax due upon the use, storage, or consumption thereof pursuant to this code has been paid.

723.13.2. This use tax shall be collected by the authorized agent of the Department of Revenue of the State of Colorado in Lincoln County.

723.13.3. The proceeds of this use tax shall be paid to the Town periodically in accordance with an agreement entered into by and between Limon and the authorized Lincoln County Agent of the Department of Revenue of the State of Colorado.

723.14. CONSTRUCTION AND BUILDING MATERIALS USE TAX COLLECTION.

723.14.1. The collection of this use tax for construction and building materials shall be administered by the Board of Trustees of Limon or its authorized representatives.

723.14.2. Any person, partnership, or corporation who shall build, construct, or improve any building, dwelling or other structure or improvement to realty whatsoever within the Town of Limon, shall upon application for a building permit, pay as a deposit for payment of the tax levied by this code an amount equal

to two percent (2%) of fifty percent (50%) of the estimated cost of the improvement, or two percent (2%) of fifty percent (50%) of the total contract price, if there is a contract for the building construction or improvement; provided, however, that if the estimated cost of the improvement or the total contract price is in excess of Two Hundred Thousand Dollars (\$200,000.00) the Board of Trustees, or their designated agents, in their discretion and upon proper application, may authorize a waiver of said deposit and accept the payment of said tax on a monthly, quarterly or other basis, based upon actual purchases of materials, supplies and equipment for which such tax may be due, subject to such rules and regulations as the Board may from time to time adopt. In all cases where the deposit required by the provisions of this Section is made, if it is determined at the time of the completion of the building, dwelling or other structure of improvement from the invoices and statements reflecting the purchase therefor, that the deposit made as herein required, together with the actual payments to the Town as a sales tax, is in excess of the actual tax due therefor, the person making said deposit or paying said tax may make application to the Board of Trustees or their designated agents for refund of any amount paid in excess of the actual taxes due, in which event it shall be the duty of the person making such application to furnish all necessary bills and invoices evidencing over-payment of the tax, and, if the Board or its designated agent, is satisfied that there has been such overpayment, the sum shall be refunded to the taxpayer.

723.15. REFUND PROCEDURE.

723.15.1. A refund shall be made or credit allowed for any tax paid under protest by any purchaser or user, who has, or claims to have, an exemption as provided in this code and who meets the following procedure and requirements:

723.15.1.1. Application. Applications for refund must be made within One Hundred Eighty (180) days after the completion of a construction project or within Thirty (30) days of the issuance of a Certificate of Occupation as issued by the Building Department whichever event first occurs. All other requests for refund which do not involve a construction project shall be made within ninety (90) days after the purchase or use of the goods on which the exemption is claimed. Such application must be supported by the affidavit of the contractor, purchaser, or user accompanied by the original paid invoices or sales receipts and a certificate issued by the seller, together with such further information as may be requested by the Town or its designated agents.

723.15.1.2. An application for refund of sales or use tax paid under dispute by a purchaser or user who claims an exemption pursuant to this code shall be made within sixty (60) days after the purchase, storage, use or consumption of the goods, or services whereon an exemption is claimed.

723.15.1.3. An application for refund of tax moneys paid in error or by mistake, shall be made within three (3) years after the date of purchase, storage, use or consumption of the goods for which the refund is claimed.

723.15.2. Decisions. Upon receipt of such application and accompanying information, the Director shall examine the same with all due speed and shall give notice to the applicant by an order in writing of his decision thereon.

723.15.3. Hearing. An aggrieved applicant may, within ten (10) days after such decision is mailed to him, petition the Town for a hearing on the claim in which case the Town, or its designated agents, shall, upon notice to the applicant, hold a hearing upon such application, taking such information or evidence as may be material, and shall, thereafter, render its final decision upon such application. The decision of the Town must be issued within ninety (90) days of the hearing. If the applicant remains aggrieved, he is entitled to request or participate in the Alternative Dispute Resolution Procedure as set forth below.

723.16. USE TAX - ALTERNATIVE DISPUTE RESOLUTION PROCEDURE - DEFICIENCY NOTICE OR CLAIM FOR REFUND.

723.16.1. The taxpayer may elect a state hearing on the Town's final decision on a deficiency notice or claim for refund pursuant to the procedure set forth in this section.

723.16.2. As used in this section, the term "state hearing" means a hearing before the Executive Director of the Department of Revenue or delegate thereof as provided in Colorado Revised Statutes of 1973, Title 29, Article 2, Section 106.1(3), as amended.

723.16.3. When the Town asserts that use taxes are due in an amount greater than the amount paid by a taxpayer, the Town shall mail a deficiency notice to the taxpayer by certified mail. The deficiency notice shall state the additional use taxes due. The deficiency notice shall contain notification, in clear and conspicuous type, that the taxpayer has the right to elect a state hearing on the deficiency pursuant to C.R.S. 29-2-106.1(3), as amended. The taxpayer shall also have the right to elect

a state hearing on the Town's denial of such taxpayer's claim for a refund of use tax paid.

723.16.4. The taxpayer shall request the state hearing within thirty days after the taxpayer has exhausted all local remedies. The taxpayer shall have no right to such hearing if he has not exhausted local remedies or if he fails to request such hearing within the time period provided for in this section. "Exhaustion of local remedies" shall mean:

723.16.4.1. The taxpayer has timely requested in writing a hearing before the Town and such Town has held such hearing and issued a final decision thereon in accordance with Section **723.15**. Such hearing shall be informal and no transcript, rules of evidence, or filing of briefs shall be required; but the taxpayer may elect to submit a brief, in which case the Town may submit a brief. The Town shall hold such hearing and issue the final decision thereon within ninety days after the Town's receipt of the taxpayer's written request therefore, except the Town may extend such period if the delay in holding the hearing or issuing the decision thereon was occasioned by the taxpayer, but, in any such event, the Town shall hold such hearing and issue the decision thereon within one hundred eighty days of the taxpayer's request in writing therefore; or

723.16.4.2. The taxpayer has timely requested in writing a hearing before the Town and the Town has failed to hold such hearing or has failed to issue a final decision thereon within the time periods prescribed in section **723.16.4.1**.

723.16.5. If a taxpayer has exhausted his local remedies as provided above, the taxpayer may request a state hearing on such deficiency notice or claim for refund, and such request shall be made and such hearing shall be conducted in the same manner as set forth in C.R.S. 29-2-106.1(3) through (7), as amended.

723.16.6. If the deficiency notice or claim for refund involves only the Town, in lieu of requesting a state hearing, the taxpayer may appeal such deficiency notice or denial of a claim for refund to the Lincoln County District Court as provided in C.R.S. 29-2-106.1(8), as amended, provided that the taxpayer complies with the provisions set forth in Section **723.16.4**.

723.16.7. If the Town reasonably finds that the collection of the use tax will be jeopardized by delay, the Town may utilize the procedures set forth in C.R.S. 39-21-111, as amended.

723.17. ELECTION. Before the sales and use taxes levied by this code shall become effective, they shall be

submitted to and receive the approval of a majority of the qualified electors of Limon voting at a special election which shall be held solely for that purpose on the 29th day of August, 1978.

723.18. AMENDMENTS. The Board of Trustees of Limon may amend, alter or change this code, except as to the two percent (2%) rate of sales and use taxes herein imposed, subsequent to its adoption. Such amendment, alteration, or change need not be submitted to the qualified electors of Limon for their approval.

723.19. PENALTY FOR VIOLATION. Any person convicted of violating any of the provisions of this code shall be punished by a fine of not more than Five Hundred Dollars (\$500.00) for each day of the offense. Further, the Town may impose and record such liens against the property and/or taxpayer as allowed by the laws of the State of Colorado.

(Amended January 2, 1997 by Ordinance No. 411)

723.20. EFFECTIVE DATE OF SALE AND USE TAXES. Upon adoption of this code and subsequent approval of these sales and use taxes by the qualified electors of Limon these sales and use taxes shall apply to all retail sales, unless exempt, made on or after January 1, 1979.



730 - Alcoholic Beverages

HISTORY: Adopted May 4, 1978 by Ordinance No. 250; amended by Ordinance No. 591 on April 7, 2016.

730.1. Pursuant to C.R.S. Section 12-47-505, as amended, each application for a license to sell fermented malt beverages under the Colorado Liquor Code and Colorado Liquor Rules, as amended, filed with the Town of Limon, shall be accompanied by a non-reimbursable application fee payable to the Town of Limon in the following amount:

730.1.1. For a new license, Three Hundred Fifty Dollars (\$350.00);

730.1.2. For a transfer of location of ownership of a license, One Hundred Fifty Dollars (\$150.00); and

730.1.3. For a renewal of a license, Fifty Dollars (\$50.00).

730.2. Pursuant to Section 12-47-135, C.R.S. 1973, as amended, each application for a license to sell alcoholic liquors under the Colorado Liquor Code, C.R.S. 1973 Sections 12-47-101, et seq., as amended, filed with the Town of Limon shall be accompanied by a non-reimbursable application fee payable to the Town of Limon in the following amount:

730.2.1. For a new license, Three Hundred Fifty Dollars (\$350.00);

730.2.2. For a transfer of location or ownership of a license, One Hundred Fifty Dollars (\$150.00); and

730.2.3. For the renewal of a license, Fifty Dollars (\$50.00).

730.3. The Town Clerk is hereby empowered and directed to collect said application fee at the time any such license application is presented for filing. Any such license application not accompanied by the correct application fee shall not be accepted for filing.



731 – Hotel and Restaurant License

Deleted in its entirety by Ordinance No. 591 on April 7, 2016.



732 - Prohibition of the Operation of Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, Marijuana Testing Facilities or Retail Marijuana Stores

(Added by Ordinance No. 562 on March 7, 2013.)

732.1. Purpose and Prohibition. The purpose of this ordinance is to promote the general public welfare and safety throughout the Town of Limon, Lincoln County, Colorado, and, as such, upon the passage of this ordinance, the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities or retail marijuana stores within the incorporated areas of the Town of Limon, Lincoln County, Colorado, shall be strictly prohibited.

732.2. Definitions. Unless otherwise specified or the context otherwise requires, any terms used herein shall have the same meanings as provided in Article XVIII, Section 16 of the Colorado Constitution. These definitions include, but are not limited to the following:

732.2.1. “Marijuana” Or “Marihuana” means all parts of the plant of the genus cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marihuana concentrate. “marijuana” or “marihuana” does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

732.2.2. “Marijuana Accessories” means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.

732.2.3. “Marijuana Cultivation Facility” means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

732.2.4. “Marijuana Establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

732.2.5. “Marijuana Product Manufacturing Facility” means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

732.2.6. “Marijuana Products” means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

732.2.7. “Marijuana Testing Facility” means an entity licensed to analyze and certify the safety and potency of marijuana.

732.2.8. “Medical Marijuana Center” means an entity licensed by a state agency to sell marijuana and marijuana products pursuant to section 14 of this article and the Colorado Medical Marijuana Code.

732.2.9. “Retail Marijuana Store” means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and to sell marijuana and marijuana products to consumers.

732.3. Enforcement. This ordinance shall be enforced by the Town of Limon Police Department.

732.4. Violation. It shall be unlawful for any person to violate any provision of this ordinance. All violations of this ordinance shall be brought in the Limon Municipal Court.

732.5. Disposition of Fines and Forfeitures. Unless otherwise provided by law, all fines and penalties, and the surcharge thereon, for the violation of this ordinance shall be paid into the treasury of the Town of Limon. The fine for a first offense and for any subsequent offense shall be up to five hundred dollars (\$ 500.00) per violation and each day shall be deemed a separate violation.

732.6. Surcharges. In addition to the fines and penalties prescribed in this ordinance, any person convicted of a violation of this ordinance shall be subject to the statutory surcharges as may be adopted and imposed by the Limon Municipal Court. These surcharges shall be paid to the Municipal Court Clerk by each person convicted of violating this ordinance.

732.7. Scope. This ordinance shall apply within the incorporated Town of Limon. This ordinance shall in no way limit application and enforcement of any statutes of the State of Colorado but shall be in addition thereto.



740 - Licensing

741 - Building Contractors

HISTORY: Added by Ordinance No. 343, June 11, 1990; Deleted in its Entirety by Ordinance No. 404, October 3, 1996.



750 - Franchises

751 - Franchise Application Fee

HISTORY: Added by Ordinance No. 364, November 5, 1992; amended by Ordinance No. 591 on April 7, 2016.

751.1. APPLICATION FEE.

At the time of making an application for a franchise within Limon, or at the time of applying for a renewal or transfer of an existing franchise, the franchisee shall make a partial payment of the franchise application fee to the Town of Limon in the amount of \$2,000.00.

751.2. RECORD OF TOWN EXPENSES. From the time of the initial franchise application, through franchise negotiations, and up to and including the time that a new franchise or franchise renewal or transfer takes effect, the Town shall maintain accurate records of all expenses incurred, including but not limited to staff costs, consulting fees, publication fees, legal fees, election expenses, and any other expenses related to the franchising process.

751.3. NOTIFICATION TO FRANCHISEE OF FINAL APPLICATION COSTS. Within thirty days after the effective date of the franchise code, or thirty days after the termination of franchise negotiations, the Town of Limon shall send to the franchisee, by certified mail, return receipt requested, an accounting which shall contain an itemization of all costs incurred by the Town of Limon as set forth in Section **751.2.**

751.4. FINAL PAYMENT OF APPLICATION FEE. In the event the costs incurred by the Town as set forth in Section **751.3.**, are less than the franchisee's initial \$2,000.00 payment, the Town shall refund the difference to the franchisee, which shall be mailed with the accounting. Should the costs incurred by the Town of Limon exceed the initial payment made by the franchisee, the franchisee shall be required to pay the difference to the Town of Limon within thirty days of the

receipt of the accounting, which payment shall constitute the final installment of the franchise application fee.

751.5. FAILURE TO PAY. Any franchise agreement entered into by the Town of Limon shall contain a provision acknowledging that a franchisee's failure to pay the franchise application fee as set forth in this code shall constitute a material breach of the terms of the franchise agreement.

751.6. REVIEW OF FRANCHISE APPLICATION FEE.

751.6.1. Request for Review. If the franchisee disputes the reasonableness of the franchise application fee, it may seek review of the charges by filing a protest with the Town Board of Trustees within thirty days of the franchisee's receipt of the accounting statement.

751.6.2. Hearing Procedure. In the event a protest is filed, the Town Board of Trustees shall appoint a disinterested individual to serve as a hearing officer. The hearing officer shall schedule a hearing date not less than thirty and not more than sixty days from the date of his appointment, and shall notify both the Town of Limon and the franchisee of the hearing date by certified mail, return receipt requested. Notice must be mailed no less than twenty days prior to the hearing date. At the hearing, the franchisee shall bear the burden of proving that any charges are unreasonable, and may present evidence regarding the reasonableness of the charges. The Town of Limon may respond to any allegations of unreasonableness.

751.6.3. Purpose of Hearing. The hearing shall be for the purpose of considering protest as to the reasonableness of the Town's incurred expenses in the franchising process. The hearing officer is not authorized to consider evidence challenging the Town's decision to incur the costs charged.

751.6.4. Evidence. Evidence may be received in the form of documents, exhibits and testimony from witnesses. The hearing officer shall have all powers necessary to insure the fair and efficient conduct of the hearing but shall not be bound by the Colorado Rules of Evidence. All hearings shall be open to the public.

751.6.5. Decision. The hearing officer may recommend approval of the charges, or recommend alterations of any charges based upon the evidence presented. The Town Board of Trustees at its next regularly scheduled meeting, shall either approve or reject the recommendation of the hearing officer. Any action of the Town Board of Trustees is final, and any payment determined to be due must be made to the

Town within seven days. Nonpayment constitutes a material breach of the terms of the franchise.

751.6.6. Costs. The Town and the franchisee shall share equally in the costs of the hearing. The franchisee's share of the costs shall be included in the final determination of charges due made by the Town Board of Trustees.

751.7. CHALLENGE TO ORDINANCE/ATTORNEY'S FEES. In the event that any legal action is brought to challenge the validity, legality, or constitutionality of this code, the Town shall recover from any unsuccessful party as part of the costs of the action, all costs incurred, including reasonable attorney's fees, in such litigation.



**752 – Natural Gas Franchise
– Black Hills Colorado Gas Utility Co LP**

HISTORY: Created by Ordinance No. 199, April 6, 1967. Ordinance No. 318, November 6, 1986 repealed and replaced Ordinance No. 199; Amended April 5, 2007 by Ordinance No. 519 – Franchise Term for 25 years – Term ends April 5, 2030; Black Hills Energy was an Assignee/Transferee as of April 5, 2007.

752.1. FRANCHISE GRANTED. The Board of Trustees of Limon, Colorado, (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Aquila, Inc., d/b/a Aquila Networks, a Delaware corporation (transferred to Black Hills Colorado Gas Utility Co LP) (hereinafter called "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas and other operations connected therewith or incident thereto for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and all other apparatus and appliances necessary or convenient for transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business.

752.2. ASSIGNMENT/TRANSFER.

752.2.1. In this franchise agreement, the following words have the meanings indicated:

752.2.1.1. Control: actual working control in whatever manner exercised. Control includes, but may not necessarily require majority stock ownership.

752.2.1.2. Proposed transferee: a proposed purchaser, transferee, lessee, assignee or person acquiring ownership or control of the Franchise or the Grantee.

752.2.2. Prior to an assignment or transfer, either party may request a proposed transferee to indicate whether it:

752.2.2.1. Has ever been convicted or held liable for acts involving deceit including any violation of federal, state or local law or regulations during the five years prior to the request, or is currently under an indictment, investigation or complaint charging such acts;

752.2.2.2. Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against the proposed transferee by any court of competent jurisdiction during the five years prior to the request;

752.2.2.3. Has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a natural gas distribution and/or supply system whereby the proposed transferee's potential liability exceeds \$75,000.00; or

752.2.2.4. Is financially solvent, by submitting supporting financial data.

752.2.3. The consent or approval of the Grantor to any transfer by the Grantee does not constitute a waiver or release of the rights of the Grantor in or to its public rights-of-way easements and any transfer shall by its own terms be expressly subject to the terms and conditions of this Franchise Agreement.

752.2.4. Notwithstanding anything contained in this Agreement, Grantee may pledge or hypothecate the assets of its natural gas distribution and/or supply system (including this franchise) for the purposes of financing without the consent of the Grantor; provided however that no other entity shall be deemed to have authority to operate a natural gas distribution and/or supply system within the Franchise Area, unless authorized by both parties hereto.

752.3. TERM. The rights and privileges granted hereunder shall remain in effect for a period of twenty-five (25) years from the effective date of this code.

752.4. FRANCHISE FEES OR TAXES.

752.4.1. In exchange for the franchise granted herein, Grantee shall collect from its residential and commercial customers, but not from the Town of Limon, Colorado, located within the corporate limits of Grantor, and pay to Grantor an amount equal to four percent (4%) of gross receipts derived from the sale, distribution or transportation of natural gas delivered within the present or future limits of Grantor. Gross receipts as used herein are revenues received from the sale, distribution or transportation of natural gas, after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered. In consideration of said grant and as compensation for the use and occupancy of the streets, alleys, and public grounds, Grantee shall make a report of gross receipts and shall pay, as a franchise fee, into the treasury of said Town, quarterly, an amount equal to four percent (4%) of Grantee's gross receipts from the sale of natural gas to domestic and commercial consumers in the Town. The amount paid by Grantee shall be in lieu of, and Grantee shall be exempt from, all other occupation, license, excise or right-of-way permit fees or taxes which the Town may impose for the rights and privileges herein granted for the privilege of doing business within the Town, and in the event any such fee, charge, license, tax or assessment shall be imposed by the Town, the payment to be made in accordance with the provisions of this section shall be reduced in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Grantee. Ad valorem property taxes imposed generally upon all real and personal property within the Town shall not be deemed to affect the obligation of the Grantee under this section.

752.4.2. Any consideration hereunder shall be reported and paid to Grantor by Grantee on a quarterly basis. Such payment shall be made not more than thirty (30) days following the close of the period for which payment is due. Initial and final payments shall be prorated for the portions of the periods at the beginning and end of the term of this code.

752.4.3. If at any time the Colorado Public Utilities Commission or other authority having proper jurisdiction, prohibits such recovery, then the parties shall within thirty (30) days of the effective date of any such ruling mutually determine a satisfactory and equitable means of compensating the Grantor for the Grantee's use of its streets, alleys, and public grounds. Should the parties fail to come to a mutually acceptable agreement as to the

compensation to be paid to the Grantor, the parties agree to submit the question of compensation to an arbitrator of the parties joint choosing, such arbitration to be completed within thirty days of submittal and the result thereof to be binding upon the parties subject to the non-exclusive nature of this agreement. In addition, the Company may petition or request the Grantor to discount or reduce the fee payable for natural gas delivered to a specific customer of Company when it is required to reduce the fee to retain the business of that customer. Modification or reduction of the fee could occur if the fee would cause the customer to cease purchase or transportation deliveries of natural gas from the Company by installing equipment to access natural gas supply not subject to the Town's fee. The Grantor shall not unreasonably withhold its agreement to the requested discount or reduction of the fee and the parties shall mutually work together in such instance to further the interests of both the Grantor and the Grantee whenever possible.

752.4.4. Grantor shall provide copies of annexation ordinances to Grantee on a timely basis to ensure appropriate franchise fee collection from customers within the corporate limits of Grantor.

752.4.5. Grantor shall have access to and the right to examine during normal business hours, those of Grantee's books, receipts, files, records and documents that are necessary to verify the correctness of payments due hereunder. If it is determined that a mistake was made in the payment of any fee required hereunder, such mistake shall be corrected promptly upon discovery, such that any under-payment by Grantee shall be paid within 30 days of the recalculation and any over-payment by Grantee shall be discounted from the next payment(s) due.

752.5. GOVERNING RULES AND REGULATIONS.

The franchise granted hereunder is subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by state or federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee, shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee. Provided however, should any judicial, regulatory or legislative body having proper jurisdiction take any action that precludes Grantee from recovering from its customers any cost associated with services provided hereunder, then Grantee and Grantor shall

renegotiate the terms of this code in accordance with the action taken so as to allow Grantee to be made economically whole. In determining the rights and duties of the Grantee, the terms of this code shall take precedence over any conflicting terms or requirements contained in any other ordinance or code enacted by the Grantor.

752.6. PROVISION FOR INADEQUATE ENERGY

SUPPLIES. If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or the supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

752.7. CONSTRUCTION AND MAINTENANCE OF GRANTEE'S FACILITIES.

752.7.1. Any pavements, sidewalks or curbing or other improvements in the public right-of-way taken up and any and all excavations made shall be done in such a manner as to cause only such inconvenience to the inhabitants of Grantor and the general public as is reasonably necessary, and repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation.

752.7.2. Grantee agrees that for the term of this franchise it will use its best efforts to maintain its facilities and equipment in a condition sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance or code, except that in emergency situations Grantee shall take such immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify Grantor as soon as reasonably possible.

752.7.3. Grantor will give Grantee reasonable notice of plans for street improvements where paving or resurfacing of a permanent nature is involved that affects Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements, and the time when the Grantor will start the work, and, if more than one right-of-way is

involved, the order in which the work is to proceed. The notice shall be given to the Grantee a sufficient length of time in advance of the actual commencement of the work, considering reasonable working conditions, to permit the Grantee to make any additions, alterations, or repairs to its facilities.

752.8. EXTENSION OF GRANTEE’S FACILITIES.

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria and the other factors set forth herein, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor, acknowledging the Grantor’s preference that all of the Grantor’s residents have access to the Grantee’s service, whenever practicable. The Grantee acknowledges that in the extension of Grantee’s facilities or in Grantee’s unilateral improvement or relocation of its facilities, the Grantee will give the Grantor reasonable notice of plans for such extension, improvement, or relocation. The notice shall contain the nature and character of the extension, improvement, or relocation, the proposed time that the Grantee will start the work, and other pertinent information either required by the Grantor’s codes and ordinances, or deemed necessary by the Grantor in the administration of Grantor’s streets, alleys, public ways, and other infrastructure. Grantee will comply with all of Grantor’s applicable codes and ordinances relative to land use.

752.9. RELOCATION OF GRANTEE’S FACILITIES.

752.9.1. If Grantor elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way or public place for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, at the cost and expense of Grantee, if such removal is necessary to prevent interference and is not merely for the convenience of the Grantor. If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and is not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive payment for the cost of such relocation as a precondition to relocating its facilities or equipment. Grantor shall consider reasonable alternatives in designing its public works projects and exercising its authority under this section so as not to arbitrarily cause Grantee unreasonable additional expense. Grantor shall also provide a reasonable alternative location for Grantee’s facilities. Grantor shall give Grantee written notice of an order or request to

vacate a public right-of-way; provided, however, that its receipt of such notice shall not deprive Grantee of its right to operate and maintain its existing facilities in such public right-of way until it receives the reasonable cost of relocating the same and Grantor provides a reasonable alternative location for such facilities.

752.9.2. Any person or corporation desiring to move a building or other structure along, or to make any unusual use of, any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and a pay a sum sufficient to cover the expense of moving Grantee’s facilities and equipment in such location, and any damages incident thereto.

752.10. CONFIDENTIAL INFORMATION. Grantor acknowledges that certain information it might request from Grantee pursuant to this code may be of a proprietary and confidential nature, and that such requests may be subject to the Homeland Security Act or other confidentiality protections under state or federal law. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to its proprietary or commercial value, Grantor and its employees, agents and representatives shall maintain the confidentiality of such information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such proprietary or confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief.

752.11. FORCE MAJEURE. It shall not be a breach or default under this code if either party fails to perform its obligations hereunder due to force majeure. Force majeure shall include, but not be limited to, the following: (1) physical events such as acts of God, landslides, lightning, earthquakes, fires, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; (2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; (3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, code, executive order, or regulation promulgated by a governmental authority having jurisdiction; and (4) any other causes, whether of the kind herein enumerated or otherwise not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid force majeure and to resolve such event as promptly as reasonably possible once it occurs in order to resume performance of its obligations hereunder; provided, however, that this

provision shall not obligate a party to settle any labor strike.

752.12. HOLD HARMLESS.

752.12.1. Each party hereto (the "Indemnifying Party") shall, at its sole cost and expense, indemnify, hold harmless, release and defend the other party (the "Indemnified Party"), its officials, boards, commissions, employees and agents from and against any and all liability, loss, claims, suits, judgments, reasonable costs and attorneys' fees, and damages of any kind alleged by a claimant against the Indemnifying Party that arises out of the Indemnifying Party's negligence in performing its obligations under this Franchise.

752.12.2. If a claim arises, the Indemnified Party shall tender the defense of the claim to the Indemnifying Party. The Indemnified Party may participate in the defense of a claim at the expense of the Indemnifying Party. The Indemnifying Party may in its sole discretion settle any claims affecting the Indemnified Party without the latter's approval or the Indemnifying Party may relieve itself of all duty to defend and indemnify the Indemnified Party by paying to the Indemnified Party that sum which the claimant has offered to accept and which the Indemnifying Party would have paid but for the Indemnified Party's objection.

752.12.3. The Indemnifying Party is not required to indemnify the Indemnified Party for the unlawful activities, gross negligence or willful misconduct or ultra vires acts on the part of the Indemnifying Party's officials, boards, commissions, agents or employees, nor for their actions contrary to statutory or constitutional law.

752.12.4. The fact that the Grantee carries out any activities under the Franchise through independent contractors does not constitute an avoidance of or defense to its duty of defense and indemnification under this section. Notwithstanding anything contained herein, Grantee and such independent contractor shall not be considered partners, agents or joint employers.

752.13. INSURANCE. Grantee shall maintain insurance at all times during the term of this franchise and any extensions hereof in an adequate amount to cover and protect itself and others to whom Grantee may be held legally liable in the performance of its duties. Grantee shall upon request provide Grantor with a certificate of insurance evidencing such coverage and naming Grantor as an additional insured thereunder. All insurance carriers providing the coverage described in this section shall be fully licensed to offer insurance in the State of Colorado.

752.14. PROCEDURE FOR REMEDYING VIOLATIONS TO FRANCHISE. If either party asserts that the other is in default in the performance of a material obligation under this Franchise or has practiced deceit or fraud, the complaining party must, within 90 days of the date it discovers such default, notify the other party in writing of the nature of the default and the desired remedy. The notice shall be served in the manner provided under the laws of Colorado for the service of original notices in civil actions. The defaulting party shall have a reasonable amount of time, pursuant to applicable state law, but in no event more than 120 days after service of the notice, to cure the default, resolve any disputes with respect thereto, or agree to amend or terminate this Ordinance/code/ franchise. If the default is not resolved within the 120-day period, the parties may seek all remedies available at law, including, but not limited to, non-binding arbitration, mediation or litigation.

752.15. PROCEDURES IN EVENT OF TERMINATION.

752.15.1. If this Agreement expires without renewal or is otherwise lawfully terminated, the Grantor may, subject to applicable law:

752.15.1.1. Allow the Grantee to maintain and operate its natural gas distribution and supply system on a month-to-month or short-term extension of this Agreement; or

752.15.1.2. Order the removal of the aboveground system facilities from the franchise area within a reasonable period of time as determined by the Grantor.

752.15.2. In any event, upon termination of this Franchise, Grantee shall be given a reasonable amount of time to remove its plant, structures and equipment, and in so doing, the Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all streets and public places in as good a condition as that prevailing prior to the Grantee's removal of its equipment. The indemnification and insurance provisions shall remain in full force and effect during the period of removal.

752.15.3. If the Grantee fails to complete any removal required by this section, or any work required by law within one-hundred-twenty (120) days after receipt of written notice or termination of this Franchise, as the case may be, the Grantor may cause the work to be done and the Grantee shall reimburse the Grantor for the reasonable costs incurred within thirty (30) days after receipt of an itemized list of the costs.

752.15.4. The Grantor may seek legal and equitable relief to enforce the provisions of this section.

752.16. RECEIVERSHIP AND FORECLOSURE.

752.16.1. At the option of the Grantor, subject to applicable law, this Agreement may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

752.16.1.1. The receivership or trusteeship is vacated within one hundred twenty (120) days after such appointment; or

752.16.1.2. The receivers or trustees have, within one hundred twenty (120) days after their appointment, fully complied with all the terms and provisions of this Agreement, and have remedied all defaults under the Agreement. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Agreement.

752.16.2. If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of the Grantee, the Grantor may serve notice of revocation on the Grantee and to the purchaser at the sale, and the rights and privileges of the Grantee under this Agreement shall be revoked thirty (30) days after service of such notice, unless:

752.16.2.1. The Grantor has approved the transfer of the Franchise, in the manner provided herein; and

752.16.2.2. The purchaser has covenanted and agreed with the Grantor to assume and be bound by all of the terms and conditions of this Agreement.

752.17. NON-ENFORCEMENT BY GRANTOR.

Grantee is not relieved of its obligation to comply with any of the provisions of this Agreement or the franchise ordinance/ code by reason of any failure of the Grantor to enforce prompt compliance. Grantor's forbearance or failure to enforce the provisions of this Agreement shall not serve as a basis to stop any subsequent enforcement.

752.18. SUCCESSORS AND ASSIGNS.

752.18.1. All rights, privileges and authority granted to Grantee hereunder shall inure to the benefit of Grantee's lessees, successors and assigns, subject to the terms, provisions and conditions herein contained,

and all obligations imposed upon Grantee hereunder shall be binding upon Grantee's lessees, successors and assigns.

752.18.2. Neither party may assign this franchise without the prior written consent of the other party, which consent may not be unreasonably withheld and which, the parties acknowledge, is subject to state law; provided, however, that the Grantee may assign this franchise, without the Grantor's consent, to: (a) an affiliate of Grantee (which shall include any person or entity that, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with Grantee); (b) any person or entity with which Grantee is merged or consolidated; (c) any person or entity which acquires a substantial part of the Grantee's assets; or (d) any person or entity to which Grantee has assigned, transferred or pledged its rights or interests under this franchise for a mortgage or otherwise as security for indebtedness. Upon the assignment of this franchise to an assignee referred to in clause (a) or (c) above and such assignee's delivery to the Grantor of a writing agreeing to assume Grantee's obligations, Grantee shall be relieved of all further liability hereunder. Nothing in this section shall restrict the right of a mortgagee or other debtor of Grantee, or a purchaser upon foreclosure sale, to operate the franchise, subject to the Grantor's consent as set forth herein, and subject to the terms contained herein and any provisions with respect to this franchise contained in the Grantor's Ordinances, Codes, standards, policies, and regulations as adopted by the Grantor during the terms of the franchise agreement or as empowered by applicable state statute.

752.19. NO THIRD PARTY BENEFICIARIES. This code constitutes a franchise agreement between the Grantor and Grantee. No provision of this code shall inure to the benefit of any third person, including the public at large, so as to constitute any such person as a third party beneficiary of the agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action for any person not a party hereto.

752.20. SEVERABILITY. If any section, subsection, paragraph, term or provision of this Agreement is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction thereof, such determination shall have no effect on the validity of any other section, subsection, paragraph term or provision of this Agreement, all of which will remain in full force and effect for the term of the Agreement, or any renewal or renewals thereof.

752.21. NON WAIVER. Any waiver of any obligation or default under this code shall not be construed as a

waiver of any future defaults, whether of like or different character.

752.22. REPEAL CONFLICTING ORDINANCES. This code, shall constitute the entire agreement between the Grantor and the Grantee relating to the franchise granted by Grantor hereunder, and the same shall supersede all prior ordinances relating thereto, and any terms and conditions of such prior ordinances/codes or parts of ordinances/codes in conflict herewith are hereby repealed. Ordinance No. 318 of the Town of Limon, Colorado, is hereby repealed as of the effective date hereof.

752.23. EFFECT AND INTERPRETATION OF CODE. The captions that precede each section of this code are for convenience and/or reference only and shall not be taken into consideration in the interpretation of any of the provisions of this code.



753 - Mountain View Electric Association

HISTORY: Added by Ordinance No. 361, June 4, 1992; Granted new Franchise Agreement with Ordinance No. 602 on September 7, 2017 – Franchise Agreement term for 25 years – End of term August 31, 2042.

753.1. GRANT OF FRANCHISE

753.1.1. Grant of Franchise. The Town of Limon, Colorado, hereafter referred to as "Town," hereby grants to Mountain View Electric Association, Inc., a Colorado corporation, hereafter referred to as "Company," for the period specified in, and subject to the conditions, terms and provisions contained in this Ordinance, a non-exclusive right to furnish, sell, transmit, and distribute electricity within the Town, to the Town, and to residents of the Town. Subject to the conditions, terms, and provisions contained in this Ordinance, the Town also hereby grants to the Company a non-exclusive right to acquire, construct, install, locate, maintain, operate, and extend into, within and through the Town all facilities reasonably necessary to furnish, sell, transmit, and distribute electricity within the Town and a non-exclusive right to make reasonable use of the streets and other public places as may be necessary to carry out the terms of this Ordinance.

753.1.2. Exclusions.

753.1.2.1. The Town retains the following rights in regard to this franchise:

753.1.2.2. To repeal the franchise for misuse, non-use, or failure of the Company to comply with the provisions hereof;

753.1.2.3. To require proper and adequate extension of plant, facilities, and service, and the maintenance thereof at the highest practicable standard;

753.1.2.4. To establish reasonable standards of service and quality to prevent against discrimination in service or rates;

753.1.2.5. To use, control, and regulate the use of Town streets, public easements, and other public places and the space above and beneath them; and

753.1.2.6. To impose such other regulations as may be determined by the Town Board of Trustees to be conducive to the health, safety, welfare, convenience, and accommodation of the public.

753.1.3. Term of Franchise. This Franchise shall be in full force and effect from and after its passage, approval, and publication, as by law required, provided that the Company has filed with the Town Clerk a written acceptance of the terms in a form approved by the Town Attorney within thirty days after said passage and approval. The base term of this franchise shall be for twenty-five years, beginning with the effective date of this Ordinance and expiring on August 31, 2042. The base term may be extended thereafter unless terminated by either party upon one year's written notice to the other party, provided, however, any extension is conditioned on the Company's satisfactorily performing all its obligations hereunder and provided, further, no extension shall extend the term of this franchise beyond December 31, 2043.

753.2 PROVISION OF SERVICE

753.2.1. Company shall furnish electrical energy within the corporate limits of the Town, to the Town, and to the inhabitants thereof, and to any person or persons or corporation doing business in that portion of the Town, at the applicable and effective rates and under the terms and conditions set forth in the rate schedules, standards for service, rules and regulations, and service connection and extension policies as approved by the Company's Board of Directors or as approved by any other competent authority having jurisdiction in the premises.

753.2.2. Company will from time to time during the term of this franchise make such enlargements and extensions of its electrical system as the business of the Company and the growth of the franchised area justify, in

accordance with its standards for service, rules and regulations, and service connection and extension policies for electric service concurrently in effect as approved by the Company's Board of Directors or as approved by any other competent authority having jurisdiction in the premises.

753.2.3. There is hereby granted to the Company the right, in accordance with the applicable National Electrical Safety Code, the privilege and authority to locate, build, construct, acquire, purchase, extend, maintain, and operate into, within, and through the Town all necessary, needful and convenient poles, pole lines, posts, wires, transformers, guy posts and guy wires, apparatus, appliances and works, for the purchase, generation, transmission, and distribution of electrical energy, with the right and privileges for the period and upon the terms and conditions hereinafter specified to furnish, sell, and distribute said electrical energy to the Town, and the inhabitants thereof, for light, heat, and power or other purposes by means of conduits, cables, poles with wires strung thereon, or otherwise, on, over, under, along, across, and through any and all streets, alleys, viaducts, bridges, roads, lanes, and other public ways and places of the Town and on, over, under, along, across and through any extension, connection with or continuation of the same and/or on, over, along, under, across, and through any and all such new streets, alleys, viaducts, bridges, roads, lanes, and other public ways and places as may be hereafter laid out, opened, located, or constructed within the territory now or hereafter included in the boundaries of the Town. All poles, pole lines, posts, wires, transformers, guideposts and guidewires, apparatus, appliances and works, conduits, plants, substations, or other materials or objects pertaining thereto, used or placed by the Company within the Town shall be and remain the property of the Company unless conveyed under separate agreement.

753.2.4. Company is further granted the right, privilege, and authority to excavate in, occupy, and use any and all streets, alleys, viaducts, bridges, roads, lanes, and other public ways and places under the supervision of the properly constituted authority of the Town (hereinafter referred to as "Town Right-of-Way") for the purpose of bringing electrical energy into, within, and through the Town and supplying electrical energy to the Town and the inhabitants thereof and in Company's territory located outside the Town, and further to trim or cut down such trees and shrubbery and to control the growth of same by chemical means, machinery, or otherwise, as may be reasonably necessary to effect said purpose or purposes, provided, however, that the Company shall so locate its plants, substations, works, transmissions and distribution structures, lines,

equipment, and conduits within the Town as to cause minimum interference with the proper use of streets, alleys, and other public ways and places. Company shall also recognize the rights and reasonable convenience of property for owners whose property adjoins any of said streets, alleys, or other public ways and places as they are conveyed to the Company prior to placement of its facilities. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, pavement, water main, sewer, or any other public or private improvement, the Company shall repair or cause to be repaired and restored to its original condition such sidewalk, graveled or paved street, road, alley, water main, sewer, or other public or private improvement after the installation of its poles, conduits, or other structures.

753.2.5. Notwithstanding any provision of law to the contrary, if at any time during the term of this Franchise it shall be necessary to change the position of any pole, conduit, or service connection of the Company located in a Town Right-of-Way (including the undergrounding thereof) to permit the Town to lay, make or change street grades, pavements, sewers, water mains, or to accommodate street widening projects or other Town work constituting an exercise of the Town's police power, such changes shall be made by the Company at its own expense. Company hereby waives any rights it may have now or during the term of this Franchise that may differ from the obligation to relocate or underground electric facilities located in a Town Right-of-Way as set forth herein at the Company's sole expense, except as provided in C.R.S. 40-9.5-117. Notwithstanding the provisions of C.R.S. 40-9.5-117, before exercising its rights thereunder, the Company shall consult with the Town in an effort to reach agreement on whether the costs of undergrounding will be paid by the Town in lieu of imposing any surcharge under the statute.

753.2.6. The Town shall have the right, without cost and after notice to Company, to use all poles of the Company within said Town for the purpose of stringing wires thereon for its fire alarm and police signal systems; provided, however that the installations meet the requirements of the National Electrical Safety Code and height standards of the Company, and provided further, that the Company assumes and shall be subject to no liability and shall be subject to no additional expenses in connection therewith, It is further provided that the use of said poles by said Town shall not interfere in any unreasonable manner with the Company's use of same. The Company shall have the right to make such use of its poles and other property, other than the uses contemplated in this ordinance as it deems proper so long as such other use does not interfere with the supplying of electrical energy.

753.2.7. Company, from time to time, may promulgate such rules, regulations, terms, and conditions governing the conduct of its business, including the utilization of electrical energy and payment therefore, and the interference with, or alteration of any of the Company's property upon the premises of its customer, as shall be necessary to ensure continuous service to each and all of its customers and the proper measurement thereof and payment therefore.

753.2.8. The Company shall at all times during the period of this franchise maintain an office in the Town of Limon.

753.3. FINANCIAL RESPONSIBILITY. At the time of the execution of this Ordinance, and from time to time at the Town's request, the Company shall provide the Town with proof of its ability to meet its obligations under this Ordinance. This proof may take the form of insurance coverage. The Company shall supply the Town with a list of its insurance companies with the types of coverage and levels of insurance then in effect. Said list shall be kept current by annual revisions as of January 1 during the term of the franchise. Nothing herein contained shall create any right in any third party or cause the Town to be liable to any party for a failure to so act.

753.4. INDEMNIFICATION. Company shall hold the Town harmless and indemnify it from all liability claims, demands, judgments, litigation, suits or damage and all reasonable expenses, to include, but not be limited to, reasonable attorney fees, necessarily accruing against the Town arising or resulting from the negligent exercise by the Company of any of the rights and privileges hereby granted; provided, that the Company shall have had notice of the pendency of any action against the Town arising out of such exercise by the Company of said rights and privileges and be permitted at its own expense to appear and defend or assist in the defense of the same. None of the Town's damages or expenses reimbursed by the Company under this section shall be surcharged solely to the residents of the Town.

753.5. BREACH OF CONTRACT. This franchise constitutes a valid and binding contract between Company and Town. If the Company shall be in default in the performance of any of the terms and conditions of this Ordinance and shall continue in default for more than thirty days after receiving notice from the Board of Trustees of the Town of such default, the Town shall have a breach of contract claim against the Company, in addition to any other rights provided by the constitution or statutes of the State of Colorado and the Board of Trustees may, by Ordinance duly passed and adopted, terminate all rights granted under this Ordinance to the

Company. The notice of default shall specify the provision or provisions in default. Said notice shall be in writing and shall be served in the manner provided by the laws of Colorado for the service of original notices in civil actions. The parties agree that if there is a dispute as to whether or not there has been a breach of this contract, the parties will present that issue to binding arbitration, which shall be conducted within thirty days and which shall be conducted by a three-person arbitration panel consisting of one arbiter selected by each of the parties, and a third arbiter shall be selected by the two other arbiters. If the panel is not selected within ten days of the demand for arbitration, either party may ask the District Court for Lincoln County to name a third arbiter, and those three shall, within thirty days, determine the issue of whether or not there has been a breach, which shall be binding on both parties.

753.6 FRANCHISE FEE.

753.6.1. Franchise Fee. In consideration for the grant of this franchise, the Company shall pay the Town a sum equal to three percent (3%) of Gross Revenue received from the sale of electricity within the Town. So long as the Company performs its obligations under this Ordinance, including payment of the franchise fee, the Company will be exempt from the payment of any license fees or charges to the Town; but payment of the franchise fee does not exempt the Company from any lawful taxation upon its property from sales and use taxes, property taxes, excavation permit fees and building permit charges, and from fees and charges for excavating for or construction of underground or overhead facilities that are uniform and generally applicable to contractors performing similar work. Gross Revenue from the sale of electricity shall be defined as revenue received by the Company as a result of applying a rate schedule to a service, including facility charges, energy charges and demand charges, but not including deposits, taxes, late charges or similar charges. All amounts paid to the Company by the Town or any of its departments for electric service shall be excluded from computation of the franchise fee.

753.6.2. Payment Schedule. Unless otherwise specifically provided herein, payment of the franchise fee and other charges accruing after the effective date of this Ordinance shall be made in quarterly installments not more than thirty days following the close of the calendar quarter for which payment is to be made. Initial and final payments shall be prorated for the portions of the quarters at the beginning and end of the term of this Ordinance.

753.6.3. Confirmation of Fee Calculations. The Town shall provide copies of all annexation plats to the

Company within twenty-five days of the approval of the plats by the Town. The Company will provide with each quarterly franchise fee installment payment a detailed accounting of the calculation of the franchise fee in a manner and format mutually acceptable to the Company and the Town. Employees of the Company will meet with employees or agents of the Town at least once in each calendar year to review such plats and accountings and to reconcile any issues that might appear.

753.6.4. Audit. The Town Manager or other authorized Town representative shall have access to the books of the Company for the purpose of auditing or checking to insure that the franchise fee has been correctly computed and paid. Any late payment by the Company shall be subject to a late payment fee of 1 % per month and reimbursement of any costs incurred by the Town in enforcing collection.

753.6.5. Change of Franchise Fee. Once during each calendar year of the Franchise Term, the Town, upon giving thirty days' notice to the Company, may review and change the consideration to be paid by the Company under this Ordinance (the Franchise Fee).

753.7. TOWN'S NEGOTIATION/REVIEW COSTS. At the Town's option, the Company shall pay in advance or reimburse the Town for the Town's expenses incurred in negotiating and reviewing the franchise which may include but are not limited to the Town's expenses incurred in publication of notices, publication and codification of ordinances, photocopying of documents, legal costs arising from the negotiations and/or review of the franchise, long distance telephone charges, and other out-of-pocket expense arising from the negotiations. None of the Town expenses reimbursed by the Company hereunder shall be surcharged against the Town's ratepayers.

753.8. GOVERNING LAW. This Ordinance shall be governed and construed in accordance with the laws of the State of Colorado, and ordinances of the Town, all as now existing or as hereinafter amended. The venue shall be the District Court, Lincoln County, Colorado.

753.9. JUDICIAL REVIEW. Termination of the franchise under this Ordinance shall be subject to judicial review as provided by law in the District Court of Lincoln County, Colorado, or, if subject to federal jurisdiction, in the United States District Court for the District of Colorado.

753.10. SEVERABILITY. If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory, or legislative body having proper

jurisdiction, the remaining provisions shall not be affected.

753.11. NON WAIVER. Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

753.12. TRANSFER OF FRANCHISE. This franchise is subject to any limitations on transfers, lease, or assignment of franchises that are set forth in the Town's Ordinances. However, Company may assign or transfer this franchise to an affiliate or may pledge, mortgage, or otherwise assign its rights hereunder as security for indebtedness without further prior notice or approval. Any approval that may be required for a transfer, lease, or assignment shall not be unreasonably withheld.



754 - Cable TV

(Deleted in its entirety on April 7, 2016, by Ordinance No. 591.)



760 – Adult Entertainment Establishments

(Added January 6, 2005, by Ordinance No. 498.)

760.1. PURPOSE. The purpose and intent of this section is to regulate adult businesses, to promote the health, safety, morals and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult businesses within the Town, thereby reducing or eliminating the adverse secondary effects from such adult businesses. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult materials. Similarly, it is not the intent nor effect of this section to restrict or deny access by adults to adult materials protected by the First Amendment or the Colorado constitution, or to deny access by the distributors and exhibitors of adult entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

760.2. DEFINITIONS:

760.2.1. ADULT ARCADE: An establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors or similar machines, or other image producing machines, for viewing by five (5) or fewer persons each, are used to show films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

760.2.2. ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE: A commercial establishment which a) devotes a significant or substantial portion of its stock-in-trade or interior floor space to; b) receives a significant or substantial portion of its revenues from; or c) devotes a significant or substantial portion of its advertising expenditures to the promotion of: the sale, rental or viewing (for any form of consideration) of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas". An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas", and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such establishment from being categorized as an adult bookstore, adult novelty store or adult video store so long as the provisions hereof are otherwise met.

760.2.3. ADULT BUSINESS: An adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, sexual encounter establishment or nude model studio. The definition of "adult businesses" shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State engages in medically approved and recognized sexual therapy.

760.2.4. ADULT CABARET: A club, restaurant, "pop shop", or similar commercial establishment which features: a) persons who appear nude or in a state of nudity or semi-nude; b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities", or c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

760.2.5. ADULT MOTEL: A motel, hotel or similar commercial establishment which: a) offers public accommodations for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this adult type of material by means of a sign visible from the public right of way, or by means of any off-premises advertising, including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television, or b) offers a sleeping room for rent for a period of time less than ten (10) hours; or c) allows a tenant or occupant to sub-rent a sleeping room for a time period of less than ten (10) hours.

760.2.6. ADULT MOTION PICTURE THEATER: A commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions depicting or describing "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

760.2.7. ADULT THEATER: A theater, concert hall, auditorium or similar commercial establishment which, for any form or consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities".

760.2.8. EMPLOYEE: A person who works or performs in and/or for an adult business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

760.2.9. ESTABLISHMENT: In regard to an adult business, means and includes any of the following:

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

760.2.9.2. The conversion of an existing business into an adult business;

760.2.9.3. The addition of an adult business to any other existing adult business; or

760.2.9.4. The relocation of an adult business.

760.2.10. LICENSING OFFICER: The Town Clerk.

760.2.11. MANAGER: An operator, other than a licensee, who is employed by an adult business to act as

a manager or supervisor of employees or is otherwise responsible for the operation of the business.

760.2.12. NUDE MODEL STUDIO: Any place where a person, who appears in a state of nudity or displays "specified anatomical areas", is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons.

760.2.13. NUDITY OR STATE OF NUDITY: a) The appearance of human bare buttocks, anus, male genitals, female genitals or the areola or nipple of the female breast; or b) a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

760.2.14. OPERATOR: Includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

760.2.15. PEEP BOOTH: A viewing room of less than one hundred fifty (150) square feet of floor space.

760.2.16. PERMITTEE AND/OR LICENSEE: A person in whose name a permit and/or license to operate an adult business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

760.2.17. PERSON: An individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.

760.2.18. PREMISES OR PERMITTED OR LICENSED PREMISES: Any premises that requires a license and/or permit and that is classified as an adult business.

760.2.19. PRINCIPAL OWNER: Any person owning, directly or beneficially, a) ten percent (10%) or more of a corporation's equity securities; b) ten percent (10%) or more of the membership interests in a limited liability company; or c) in the case of any other legal entity, ten percent (10%) or more of the ownership interests in the entity.

760.2.20. PRIVATE ROOM: A room in an adult motel that is not a peep booth, has a bed and a bath in the room or adjacent room, and is used primarily for lodging.

760.2.21. SEMINUDE: A state of dress in which clothing covers no more than the genitals, pubic region,

and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

760.2.22. SEXUAL ENCOUNTER ESTABLISHMENT: A business or commercial establishment, that as one of its primary business purposes, offers, for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas" or activities when one or more of the persons is in a state of nudity or seminude. An adult motel will not be classified as a sexual encounter establishment by virtue of the fact that it offers private rooms for rent.

760.2.23. SEXUAL ORIENTED BUSINESS: This term shall have the same meaning as an Adult Entertainment Establishment as regulated by this code.

760.2.24. SPECIFIED ANATOMICAL AREAS: (A) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or (B) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

760.2.25. SPECIFIED CRIMINAL ACTS: Sexual crimes against children, sexual abuse, rape or crimes connected with another adult business, including distribution of obscenity, prostitution, or pandering.

760.2.26. SPECIFIED SEXUAL ACTIVITIES: (A) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts; (B) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy; (C) Masturbation, actual or simulated; or (D) Human genitals in a state of sexual stimulation, arousal or tumescence; (E) Excretory functions as part of or in connection with any of the activities set forth in subsections (A) through (D) of this definition.

760.2.27. TRANSFER OF OWNERSHIP OR CONTROL OF AN ADULT BUSINESS; (Means and includes any of the following):

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

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

760.2.27.3. The establishment of a trust, management arrangement, gift or other similar legal devise which transfers ownership or control of the

business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

760.3. LOCATION OF ADULT BUSINESSES; AMORTI-ZATION.

760.3.1. It shall be unlawful to operate or cause to be operated any adult entertainment establishments, also known as sexually oriented businesses in any location in the town except as provided in the Land Development Code of the Town of Limon, Chapter II-Zoning, as amended.

760.3.2 It shall be unlawful to operate or cause to be operated an adult entertainment establishment, also known as sexually oriented businesses within one thousand feet (1000') of:

760.3.2.1. A church;

760.3.2.2. A school or childcare facility;

760.3.2.3. A public park (not including trails);

760.3.3. It shall be unlawful to cause or permit the operation of an adult business within one thousand feet (1,000') of another adult entertainment establishment, also known as sexually oriented business. The distance between any such businesses and those businesses specified in section **760.3.2.** shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which the adult business is located.

760.3.4. It shall be unlawful to cause or permit the operation or maintenance of more than one adult business in the same building, structure or portion thereof.

760.3.5. Any adult business lawfully operating on the effective date of this chapter that is in violation of sections **760.3.2.** through **760.3.4.** will be permitted to continue for a period six (6) months from the effective date hereof. However, the zoning administrator may grant an extension of time during which an adult business in violation of sections **760.3.2.** through **760.3.4.** will be permitted to continue upon a showing that the owner of the business has not had a reasonable time to recover the initial financial investment in the business. No such extension of time shall be for a period greater than that reasonably necessary for the owner of the business to recover his/her initial financial investment in the business. An adult business in violation of sections **760.3.2.** through **760.3.4.** may continue during such extended period, unless the business is sooner

terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such business shall not be enlarged, extended or altered except that the business may be brought into compliance with this chapter. If two (2) or more adult businesses are within one thousand feet (1,000') of one another and otherwise in a permissible location, the adult business which was first established and continually operating at the particular location will be deemed to be in compliance with sections **760.3.2.** through **760.3.4.**, and the later established business(es) will be deemed to be in violation of sections **760.3.2.** through **760.3.4.**

760.3.6. An adult business lawfully operating is not rendered a nonconforming use by the subsequent location of a church, school, childcare facility, public park, residential district, or a residential lot within five hundred feet (500') of the adult business; however, if the adult business ceases operation for a period of one hundred eighty (180) days or more regardless of any intent to resume operation, it may not recommence operation in that location.

760.4. LICENSE REQUIRED; FEE:

760.4.1. No person shall conduct an adult business without first having obtained an annual adult business license.

760.4.2. Applicants for an annual adult business license shall pay a license fee of fifty dollars (\$50.00).

760.4.3. In the event an application for an adult business license is withdrawn or denied, the license fee shall not be refunded to the applicant.

760.5. LICENSE APPLICATION:

760.5.1. All applicants for an adult business license shall file an application for such license with the Town Clerk on forms to be provided by the Clerk. Each principal owner and all managers and employees shall be named in the application form.

760.5.2. The completed application shall contain the following information and shall be accompanied by the following documents:

760.5.2.1. If the applicant is:

760.5.2.1.1. An individual, the individual shall state his or her legal name and any aliases and shall submit satisfactory proof that he or she is eighteen (18) years of age;

760.5.2.1.2. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

760.5.2.1.3. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the statutes of the state, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the state, the names and capacity of all officers, directors and principal owners, and the name of the registered corporate agent and the address of the registered office for service of process;

760.5.2.1.4. A limited liability company shall state its complete name, the date of filing of the articles of organization and operating agreement, the names of all managers and members.

760.5.2.2. Whether the applicant or any other individual listed under section **760.5.1.** had worked under or has had a previous adult business license under this chapter or other adult business or adult entertainment code or ordinance from another state, city or county denied, suspended or revoked, including the name and location of the adult business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation.

760.5.2.3. Whether the applicant or any other individual listed under section **760.5.1.** holds any other licenses under this chapter or other similar adult business code or ordinance from another municipality, county or state and, if so, the names and locations of such other permitted business.

760.5.2.4. The location of the proposed adult business, including a legal description of the property, street address and telephone number(s), if any.

760.5.2.5. Proof of the applicant's right to possession of the premises wherein the adult business is proposed to be conducted.

760.5.2.6. The applicant's, or any other individual's listed, pursuant to section **760.5.1.**, mailing address and residential address.

760.5.2.7. A photocopy of the driver's license or other government issued identification card for the individuals listed in section **760.5.1.**

760.5.2.8. A floor plan of the proposed licensed premises which specifies the location and dimensions of any manager's station and demonstrates that there is an

unobstructed view from at least one of the manager's stations of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. The proposed floor plan shall designate those rooms or other areas of the premises where patrons are not permitted and shall also designate the use of each room or other area of the premises. The proposed floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (±6"). The diagram shall designate the place where the license will be conspicuously posted and the location of any proposed stage. A floor plan is not required of the licensed premises of an adult motion picture theater.

760.5.2.9. A current certificate drawing prepared, within thirty (30) days prior to the application, by a land surveyor depicting the property lines and the structures containing any adult business or massage parlor within one thousand feet (1,000') of the closest exterior wall of the structure in which the applicant's business is proposed to be located and depicting the property line of any church, school, childcare facility, public park, residential zone district or residential lot within five hundred feet (500') from the closest exterior wall of the structure in which the applicant's business is proposed to be located.

760.5.2.10. Whether the applicant or any of the other individuals listed pursuant to section **760.5.2.1.** have been convicted of a specified criminal act within the times set forth in section **760.8.**and, if so, the specified criminal act involved, the date of conviction and the place of conviction.

760.5.2.11. Photographs (passport size or approximately 2 inches by 2 inches) and fingerprints of all principal owners and each manager, general partner and in the case of a corporate applicant, the president of the corporation.

760.5.3. If the applicant is an individual, he/she must sign the application for a license. If the applicant is a corporation it must be signed by the president or vice president and attested to by the secretary or assistant secretary. If the applicant is a general or limited partnership it must be signed by a general partner. If the applicant is a limited liability company it must be signed by the manager.

760.5.4. If an omission or error is discovered by the Town clerk, the application will be returned to the applicant for completion or correction without further action by the town clerk. Any application rejected due to an omission or error shall be refiled only when the

omission or error has been remedied. For the purposes of this chapter, the date the town clerk accepts an application which is complete shall be the date the application is filed with the Town clerk.

760.5.5. In the event that the Town clerk determines that the applicant has improperly completed the application, he/she shall promptly notify the applicant of such fact and allow the applicant thirty (30) days to properly complete the application. The time period for granting or denying a license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.

760.5.6. Applicants for a license under this chapter shall have a continuing duty to promptly supplement application information required by this section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) days from the date of such change, by supplementing the application on file with the town clerk, shall be grounds for the suspension or revocation of an adult business license.

760.6. APPLICATION FEE: Each applicant for a new license or as specified in Section **760.12.1.**, whether an individual, partnership or corporation, shall pay an application fee of one hundred fifty dollars (\$150.00) at the time of the filing of an application. Such application fee shall be nonrefundable.

760.7. INVESTIGATION. On receipt of a properly completed application and the payment of the application and license fees, the Town clerk shall investigate the background of each individual applicant, employee, the partners of a partnership, or the officers, directors and holders of the stock of a corporation. Each applicant shall pay a nonrefundable investigation fee at the time the application is filed in the amount then charged by the Colorado department of public safety for each person who will be investigated. The investigation conducted by the clerk shall be sufficient to verify the accuracy of all the information required by section **760.5.** The clerk shall also transmit a request to the Town's zoning official for a report that the proposed location of such adult business complies with the locational requirements of this chapter. The zoning official shall issue such report within five (5) business days of transmission of the request. If the zoning official fails to issue the report as required, the Town clerk shall presume that the proposed location of the adult business complies with this chapter.

760.8. APPROVAL/DENIAL OF LICENSE:

760.8.1. The application of any applicant shall be approved or denied by the Town clerk within fourteen

(14) days of the date the application is filed with the Town clerk. The Town clerk shall deny a license if:

760.8.1.1. The applicant is under the age of eighteen (18) years;

760.8.1.2. The applicant has made a false statement upon the application or has given false information in connection with an application;

760.8.1.3. The applicant or any holder of any class of stock, or a director, officer, partner or principal of the applicant has had an adult business license revoked or suspended anywhere within the state within one year prior to the application;

760.8.1.4. The applicant has operated an adult business which has determined to be a public nuisance under state law or this code within one year prior to the application;

760.8.1.5. A corporate applicant is not in good standing or authorized to do business in the state; or

760.8.1.6. The applicant is overdue in the payment to the Town of taxes, fees, fines or penalties assessed against him/her or imposed against him/her in relation to an adult business;

760.8.1.7. The applicant has not obtained the required sales tax license;

760.8.1.8. The applicant has been convicted of a specified criminal act within the five (5) year period prior to the date the application is filed with the Town clerk.

760.8.2. In the event that the Town clerk denies a license, he/she shall make written findings of fact stating the reasons for the denial, and a copy of such decision shall be sent by first class mail to the address shown in the application. An applicant shall have the right to a hearing before the Municipal Judge as set forth in section **760.11.3.** A written request for such hearing shall be made to the Municipal Judge within ten (10) days of the date of the denial of the license by the Town clerk. This hearing shall be held within fourteen (14) days from the date a timely request for hearing is received by the Municipal Judge and shall follow all the relevant procedures set forth for a suspension or revocation of a license contained in Section **760.11.3.**

760.8.2.1. At the hearing referred to above, the Municipal Judge shall hear such statements and consider such evidence as the police department or other enforcement officers, the applicant or other party in

interest, or any other witness shall offer which is relevant to the denial of the license application by the Town clerk.

760.8.2.2. If the Municipal Judge determines that the applicant is ineligible for a license per section **760.8.1.**, he/she shall issue an order sustaining the Town clerk's denial of the application, within two (2) days after the hearing is concluded, based on findings of fact. A copy of the order shall be mailed to the applicant at the address supplied on the application.

760.8.2.3. The order of the Municipal Judge made pursuant to section **760.8.2.2.** shall be a final decision and may be appealed to the district court pursuant to Colorado rules of civil procedure 106(a)(4). Failure of an applicant to timely follow the limits specified above constitutes a waiver by him/her of any right he/she may otherwise have to contest the denial of his/her license application.

760.8.3. If any Town official or department fails to render a timely decision pursuant to the terms of this section then said official or department shall be deemed to have approved or consented to the issuance of the requested license.

760.9. TERM OF LICENSE. All licenses granted pursuant to this chapter shall be for a term of one year. Said term shall commence on January 1 of each year and terminate upon December 31 of the same year. Applications for a license filed at any other time during the year shall be treated the same as if they were filed January 1 of that year and shall terminate on December 31 of that same year, and no proration shall be permitted.

760.10. LICENSE RENEWAL. Renewal of an existing license granted pursuant to this chapter may be had by payment of the annual licensing fee and filing of a renewal application with the Town clerk not less than forty five (45) days prior to the date of expiration. The Town clerk may waive, for good cause shown, this filing time requirement.

760.11. SUSPENSION OR REVOCATION OF LICENSE:

760.11.1. The Municipal Judge may suspend a license for a period not to exceed six (6) months or revoke any license granted pursuant to this chapter upon a finding of any of the following facts:

760.11.1.1. Repeated disturbances of the public peace have occurred within the licensed establishment or upon any parking areas, sidewalks, access ways or grounds within the neighborhood of the licensed

establishment involving patrons, employees or the licensee;

760.11.1.2. The licensee or any employees thereof have offered for sale or knowingly allowed to be consumed or possessed upon the licensed premises, or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises, narcotics, dangerous drugs or fermented malt, malt, vinous or spirituous beverages;

760.11.1.3. The licensee or manager is not upon the licensed premises at all times that adult entertainment is being provided;

760.11.1.4. Adult entertainment was offered at the licensed establishment during hours prohibited by section **760.14.**;

760.11.1.5. The licensee, manager or employee has allowed or has done nothing to prevent patrons from engaging in public displays of indecency in violation of state law or has allowed patrons or employees to engage in acts of prostitution or negotiations for acts of prostitution within the licensed establishment or upon any parking areas, sidewalks, access ways or grounds immediately adjacent to the licensed establishment, when the licensee, manager or employee knew or should have known such displays or acts were taking place;

760.11.1.6. The licensee or manager made a false statement or gave false information in connection with an application for a license or a renewal of a license;

760.11.1.7. The licensee, manager, or employee violated or permitted a violation of any provisions of this section **760** including the standards of conduct set forth in section **760.15.**;

760.11.1.8. The manager or the employee of the licensed establishment is under the age of eighteen (18) years;

760.11.1.9. The licensee, in the case of a corporation, is not in good standing or authorized to do business in the state;

760.11.1.10. The licensee or an employee knowingly operated any aspect or facilities of the adult business during a period of time when the adult business license was suspended;

760.11.1.11. The licensee is delinquent in the payment to the Town or state for any taxes or fees past due;

760.11.1.12. The licensee, manager or employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation or masturbation, to occur within the licensed premises; or

760.11.1.13. The licensee, manager or employee has been convicted of a specified criminal act.

760.11.2. Nothing in this chapter shall prohibit the Town from taking any other enforcement action provided for by this code, the laws of the state, or of the United States.

760.11.3. A licensee shall be entitled to a hearing before the Municipal Judge if the Town seeks to suspend or revoke his/her license based on a violation of this chapter;

760.11.3.1. When there is probable cause to believe that a licensee has violated or permitted a violation of this chapter to occur in or near the licensed establishment, the police department may file a written complaint with Municipal Judge setting forth the circumstances of the violation.

760.11.3.2. Municipal Judge shall provide a copy of the complaint to the licensee, together with notice to appear before the Municipal Judge for the purpose of a hearing on a specified date to show cause why the licensee's license should not be suspended or revoked.

760.11.3.3. In such cases where specified criminal acts are in issue, the provisions of Colorado Revised Statutes section 24-5-101 shall control.

760.11.3.4. At the hearing referred to above, the Municipal Judge shall hear such statements and consider such evidence as the police department, or other enforcement officers, the owner, occupant, lessee or other party in interest, or any other witness shall offer which is relevant to the violation alleged in the complaint. The Municipal Judge shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the Municipal Judge determines that a violation did occur he/she shall issue an order suspending or revoking the license, within twenty (20) days after the hearing is concluded, based on the findings of fact. A copy of the order shall be mailed to or served on the licensee at the address on the license.

760.11.3.5. The order of the Municipal Judge made pursuant to section **760.11.3.** shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4).

Failure of a licensee to timely appeal said order constitutes a waiver by him/her of any right he/she may otherwise have to contest the suspension or revocation of his/her license.

760.11.3.6. The Municipal Judge shall have the power to administer oaths, issue subpoenas and, when necessary, grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books and records necessary to the determination of any hearing which the Municipal Judge conducts. It is unlawful for any person to fail to comply with any subpoena issued by the Municipal Judge. A subpoena shall be served in the same manner as a subpoena issued by the District Court of the State. Upon failure of any witness to comply with such subpoena, the Town Attorney shall:

760.11.3.6.1. Petition any Judge of the Municipal Court of the Town, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the Court, after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of wilful failure to comply with such order of Court; or

760.11.3.6.2. Petition the appropriate District Court setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, that the Court, after hearing evidence in support of or contrary to the petition, enter its order as in other civil actions, compelling the witness to attend and testify or produce books, records or other evidence, under penalty of punishment for contempt in case of willful failure to comply with such order of Court.

760.11.4. In the event of suspension, revocation, or cessation of business, no portion of the license fee, application fee or investigative fee shall be refunded.

760.11.5. When the Municipal Judge revokes a license, the revocation shall continue for one year, and the licensee shall not be issued an adult business license for one year from the date the revocation became effective.

760.12. DISPLAY; TRANSFERABILITY; CHANGE OF OWNERSHIP:

760.12.1. Any adult business license issued pursuant to the terms of this section **760** shall be prominently displayed at all times upon the premises for

which the license was issued in accordance with section **760.5.2.8.**

760.12.2. Licenses issued under this Chapter shall not be transferable except as provided herein. Any transfer of ownership or control by a licensee holding an adult business license shall result in termination of the license unless such licensee within thirty (30) days prior to any such transfer files a written notice of such transfer accompanied by the application fee and an investigation fee as required by Sections **760.6.** and **760.7.** Any such transfer shall be reported on forms provided by the Town Clerk and shall require the names of all new principal owners and any information as required by Section **760.5.** Approval or denial by the Town Clerk of such transfer shall be upon the same terms as provided for in this Chapter for the approval or denial of an adult business license.

760.12.3. When a license has been issued to a husband and wife or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license.

760.12.4. Each license issued under this Chapter is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he holds. A separate license shall be issued for each specific adult business and each geographical location.

760.13. MANAGER; CHANGE OF MANAGER:

760.13.1. A registered manager shall be on the premises of an adult business at all times that adult entertainment is being provided. It shall be unlawful for any person to work as a manager of an adult business without first registering with the Town Clerk. The registration form shall require the applicant to provide his/her legal name and any aliases, home address, telephone number and satisfactory proof that he is twenty one (21) years of age.

760.13.2. In the event a licensee changes the manager or any employees of an adult business, the licensee shall report such change and register the new manager or any employees on forms provided by the Town Clerk within ten (10) days of such change. Any new employee or manager shall pay the investigation fee specified in Section **760.7.** and shall be subject to approval or denial in accordance with the provisions of Section **760.8.**

760.14. HOURS OF OPERATION. It shall be unlawful for a sexually oriented business to be open for business or for the licensee or any employee of a licensee to allow patrons upon the licensed premises from twelve o'clock (12:00) midnight until eight o'clock (8:00) A.M.

760.15. STANDARDS OF CONDUCT:

760.15.1. The following standards of conduct must be adhered to by employees of any adult business which offers, conducts or maintains live adult entertainment:

760.15.1.1. Clothing. No employee or entertainer mingling with the patrons or serving food or beverages shall be unclothed or in such attire, costume or clothing so as to expose to view any specified anatomical area.

760.15.1.2. Touching, Caressing, Fondling. No employee or entertainer shall encourage or knowingly permit any person upon the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any other person.

760.15.1.3. Simulation of Specified Areas. No employee or entertainer shall wear or use any device or covering exposed to view, which simulates the breast, genitals, anus, pubic hair or any portion thereof.

760.15.1.4. Performance Standards.

760.15.1.4.1. No employee or entertainer shall be unclothed or in such attire, costume or clothing so as to expose any portion of the specified anatomical area except upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest patron or behind a solid, uninterrupted physical barrier which completely separates the entertainer from any patrons. This barrier must be a minimum of one-fourth inch (1/4") thick and have no openings between the entertainer and any patrons. The stage shall be fixed and immovable.

760.15.1.4.2. No employee or entertainer shall perform while nude or seminude any obscene acts or obscene acts which simulate specified sexual activities.

760.15.1.5. Use of Inanimate Objects: No employee or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this Section.

760.15.1.6. Menu. There shall be posted and conspicuously displayed in every area offering adult entertainment a list of food and beverage prices.

760.15.1.7. Alcohol and Liquor. No adult entertainment use shall be located within any premises which is licensed for the retail sale of three and two-tenths percent (3.2%) beer, malt, vinous or spirituous liquor, as such terms are defined in title 12, articles 46 and 47 Colorado Revised Statutes.

760.15.1.8. Consumption of Alcohol. It shall be unlawful to permit the consumption of three and two-tenths percent (3.2%) beer or other alcoholic beverages within the same premises as an adult entertainment use.

760.15.1.9. Tips. Any tips for entertainers shall be placed by a patron into a tip box which is permanently affixed in the adult business and no tip may be handed directly to an entertainer. A licensee that desires to provide for such tips from its patrons shall establish one or more containers to receive tips. Any physical contact between a patron and an entertainer is strictly prohibited.

760.15.1.10. Tip Boxes. An adult business that provides tip boxes shall conspicuously display in the common area of the premises one or more signs in letters at least one inch (1") high to read as follows:

**ADULT ENTERTAINMENT IS REGULATED
BY THE TOWN OF LIMON**

Any tips are to be placed in tip box and not handed directly to the entertainer. Any physical contact between the patron and the entertainer is prohibited by law. Violators face maximum penalties of \$1,000 and/or one year in jail.

760.15.1.11. Outside Visibility. No adult entertainment occurring on the premises shall be visible at any time from outside of the premises.

760.15.2. Any licensee who offers, conducts, or maintains live adult entertainment or an adult arcade which exhibits in a peep booth, a film, videocassette or other video reproduction, shall comply with the following requirements in addition to those set forth in section **760.15.2.1.:**

760.15.2.1. It is the duty of the licensee of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

760.15.2.2. It is the duty of the licensee and manager of the premises to ensure that any doors to public areas on the premises remain unlocked during business hours.

760.15.2.3. The interior of the premises shall be configured in such a manner that there is an

unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment or other forms of adult entertainment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the manager's, stations. The view required in this subsection must be by direct line of sight from the manager's station. A manager's station may not exceed thirty two (32) square feet of floor area.

760.15.2.4. No alteration to the configuration or location of an adult business may be made without the prior written approval of the zoning official.

760.15.2.5. It shall be the duty of the licensee, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in section **760.2.3.** remains unobstructed by any doors, curtains, drapes, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the license application filed pursuant to this chapter.

760.15.2.6. No peep booth may be occupied by more than one person at any one time.

760.15.2.7. Peep booths must be separated from other peep booths by a solid, uninterrupted physical divider which is a minimum of one-fourth inch (1/4") thick and serves to prevent physical contact between patrons.

760.16. AGE RESTRICTIONS. Admission to adult businesses is restricted to persons of the age of eighteen (18) years or more.

760.17. LIGHTING REQUIREMENTS:

760.17.1. All off street parking areas and premises entries of adult businesses shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot-candle of light on all parking surfaces and/or walkways. This required lighting level is to help ensure the personal safety of patrons and employees and to reduce the incidence of vandalism and other criminal conduct.

760.17.2. The premises of all adult businesses, except adult motion picture theaters, shall be equipped

with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access to provide an illumination of not less than two (2) foot-candles of light as measured at the floor level.

760.17.3. Adult motion picture theaters shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access to provide an illumination of not less than one foot-candle of light as measured at the floor level.

760.18. RIGHT OF ENTRY. The application for an adult business license shall constitute consent of the licensee and his/her agents or employees to permit the Town's police department or any other agent of the Town to conduct routine inspections of any licensed adult business during the hours the establishment is conducting business.

760.19. EXEMPTIONS, GENERALLY:

760.19.1. It is an affirmative defense to prosecution under this chapter if a person appearing in a state of nudity or seminude did so in a modeling class operated:

760.19.1.1. By a proprietary school, licensed by the state; a college, junior college or university supported entirely or partly by taxation;

760.19.1.2. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

760.19.1.3. In a structure:

760.19.1.3.1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;

760.19.1.3.2. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

760.19.1.3.3. Where no more than one nude model is on the premises at any one time.

