TITLE 5

BUSINESS LICENSES AND REGULATIONS*

Chapters:
5.05 Shopping Carts
5.06 Noncigarette Tobacco Retailer Licensing
5.08 Christmas Tree Sales
5.20 Fireworks Permits-Sale and Display
5.24 Pawnbrokers
5.25 Crematories
5.26 Concrete and Asphalt Plants
5.28 Solicitors and Peddlers
5.29 Commercial Waste Haulers
5.32 Utilities-B & O Tax
5.38 Lakewood Liquor Licensing Authority
5.41 Non-Alcoholic Dance Clubs
5.44 Cable Systems
5.47 Adult Businesses
5.48 Alarm Systems
5.50 Electric and Gas Franchise
5.51 Medical Marijuana Businesses
5.52 Massage Parlors
5.53 Escort Services
5.54 Nongovernmental Residential Facilities for the Treatment or Supervision of Out-of-State Offender
5.56 Lodging Facility License
5.57 Commercial Micromobility – Pilot Program

* For regulations governing kennel licenses, see Chapter 6.32 of this code; for regulations governing contractor's licenses, see Chapter 14.08 of this code; for regulations governing sign contractor's licenses, see the zoning regulations.
Chapter 5.05

SHOPPING CARTS

Sections:

5.05.010 Intent and Purpose.
5.05.020 Definitions.
5.05.030 Shopping Cart Abandonment Prohibited.
5.05.040 Owner Registration Required to Use Shopping Carts.
5.05.050 Owner Responsibility for Identification on Shopping Carts.
5.05.060 Owner Responsibility to Manage Shopping Carts.
5.05.070 Abandoned Shopping Cart Retrieval Service and Impoundment.
5.05.080 Alternative: Owner Agreement with the City’s Cart Retrieval Contractor.
5.05.090 Alternative: Retrieval Proposals.
5.05.100 Administration and Enforcement.
5.05.110 Penalties.
5.05.120 Cumulative Effect.

5.05.010 Intent and Purpose.

The City Council of the City of Lakewood hereby finds that Abandoned Shopping Carts are unsightly, interfere with traffic, promote blight, cause unnecessary expense to Lakewood businesses and consequently Lakewood consumers, and are detrimental to the public health, safety and welfare. The purpose of this Article is to promote the public health, safety and welfare, to ensure Abandoned Shopping Carts are retrieved from Public Property throughout the City of Lakewood in a timely fashion and returned to their Owners, and to avoid unnecessary burdens on the Lakewood community, businesses and customers due to Shopping Carts being taken from Owners’ Premises and due to Abandoned Shopping Carts. (Ord. O-2019-24 § 4, 2019; Ord. O-2018-7 § 1, 2018).

5.05.020 Definitions.

As used in this Article, the following terms, phrases and words shall have the following meanings:

Abandoned Shopping Cart means any Shopping Cart which has been removed from the Premises of the Owner of the Shopping Cart without the Owner’s written consent and is located on Public Property; provided that any Shopping Cart that is removed from such Premises for purposes of repair or maintenance and that is in the possession or custody of the party to whom it has been released by the Owner, shall not be deemed an Abandoned Shopping Cart. Notwithstanding the foregoing definition, any Shopping Cart containing or being used to transport a person’s personal property, shall not be deemed an Abandoned Shopping Cart.

Abandoned Shopping Cart Retrieval Service means routine return to Owners or impoundment of Abandoned Shopping Carts.

City means the City of Lakewood Colorado.

City Council means the city council of the City.

City Manager means the city manager of the City, or the city manager’s designees, including but not limited to all City employees and any independent contractor authorized or engaged by the City to provide Abandoned Shopping Cart Retrieval Services.
Owner means the person, firm, partnership, corporation, association or other entity who or which owns or otherwise exercises possession and control over Shopping Carts for the use of the Owner’s customers in connection with the management and operation of the Owner’s business enterprise, including any officer, employee or agent of said person, firm, partnership, corporation, association or entity. This Article shall apply to all such Owners who own, possess, control or operate a business entity within the City of Lakewood or, if that business entity is located outside the City of Lakewood, whose Shopping Carts are used or found abandoned in the City of Lakewood.

Premises means the entire area owned and/or utilized by the business establishment that provides Shopping Carts and/or used by such business establishment’s customers, including any parking lot or other area provided by or for an Owner for use by a customer for parking an automobile or other vehicle.

Public Property means:

a. Property owned or controlled by the City of Lakewood, any special district formed pursuant to Title 32 of the Colorado Revised Statutes, or the State of Colorado, and

b. The outdoor common area of any building, business, apartment building or complex, or portion thereof which is adjacent to Public Property as defined in a., is open to the public, and contains an Abandoned Shopping Cart visible at street or ground level from adjacent Public Property.

Shopping Cart means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind whether manually, electrically or otherwise propelled including a laundry cart. (Ord. O-2019-24 § 4, 2019; Ord. O-2018-7 § 1, 2018).

5.05.030 Shopping Cart Abandonment Prohibited.

No person who, having a Shopping Cart in his or her possession or custody, shall leave or permit to be left said Shopping Cart upon any sidewalk, street, ditch or other Public Property, or upon any private property, such that it becomes an Abandoned Shopping Cart. (Ord. O-2018-7 § 1, 2018).

5.05.040 Owner Registration Required to Use Shopping Carts.

Every Owner shall register with the City of Lakewood each of its business locations within the City prior to utilizing Shopping Carts at such location. Owners that are already utilizing Shopping Carts at any business location within the City of Lakewood shall register each business location as soon as practicable after adoption of this Ordinance, and in any case no more than 60 calendar days after the effective date of this Ordinance. Said registration shall include the Owner’s contact information; the Owner’s acknowledgement of the content of this article including applicable administrative regulations, costs, fees and potential penalties; the Owner’s acceptance or rejection of an agreement to receive the Owner’s Abandoned Carts directly from the City of Lakewood’s Abandoned Shopping Cart Retrieval Service; and the Owner’s acknowledgement of the area determined by the City Manager within which the Owner must retrieve its Shopping Carts. (Ord. O-2019-24 § 4, 2019; Ord. O-2018-7 § 1, 2018).

5.05.050 Owner Responsibility for Identification on Shopping Carts.

Every Owner shall permanently affix to each of its Shopping Carts a weatherproof, permanent sign that identifies the Owner of the Shopping Cart as recorded on the Owner’s Shopping Cart registration required in 5.05.040. (Ord. O-2018-7 § 1, 2018).
5.05.060 Owner Responsibility to Manage Shopping Carts.

Every Owner shall regularly retrieve its Shopping Carts from the exterior areas of the Owner's Premises and from the area between the Owner's Premises and the street pavement within public rights-of-way contiguous with the Owner's Premises. Such retrieval shall also occur at least once during the 45 minutes after each daily store closing.

In addition, every Owner shall retrieve its Abandoned Shopping Carts from transit stops identified by the City Manager at least once between 5 AM and 11 AM and at least once between 3 PM and midnight. The City Manager's determination from which transit stops, if any, an Owner must retrieve its Shopping Carts shall include, but not be limited to, consideration of historical information of the locations and quantity of an Owner's Abandoned Shopping Carts, the transit stop's proximity to the Owner's Premises, and utilization rates of the transit stop by transit riders.

All Shopping Carts retrieved pursuant to this section shall be returned to the interior of the Owner's building or to a permanent outdoor Shopping Cart storage facility attached to the Owner's building. At all times that the business is closed, all Shopping Carts shall be inside of a locked building or locked to a permanent outdoor Shopping Cart storage facility attached to the Owner's building. (Ord. O-2018-7 § 1, 2018).

5.05.070 Abandoned Shopping Cart Retrieval Service and Impoundment.

The City of Lakewood shall provide an Abandoned Shopping Cart Retrieval Service, which shall include impoundment of Abandoned Shopping Carts. The City Manager shall give actual notice to the Owner of each impounded Shopping Cart. Such notice shall be via any one of the Owner's contact information options on the Owner's Shopping Cart registration.

The Owner of any Abandoned Shopping Cart impounded by the City of Lakewood shall reclaim said cart within 30 calendar days of actual notice from the City of Lakewood. Said Owner shall pay all costs and fees of such impoundment.

All costs and fees shall be due within 30 calendar days of billing and shall accrue interest after the due date. If not paid within 30 calendar days of billing, such amount shall be subject to collection by any lawful method including, but not limited to, the amount owed being certified to the Treasurer of Jefferson County Colorado as an assessment on and a lien against the property of the Owner. Such amount shall include interest and an additional fee for administration and filing costs of the lien. The assessment shall be collected in the same manner as a real estate tax upon a property and shall have priority over other liens except general taxes and prior special assessments.

Any Abandoned Shopping Cart:

a. impounded by the City that is not reclaimed by the Owner within thirty (30) calendar days of the date of receipt of actual notice as provided herein or
b. the Owner of which is not identifiable from Shopping Cart Owner registrations, may be sold, donated, recycled or disposed of as determined by the City Manager. Such action by the City Manager shall not relieve the Owner of its obligation to pay costs and fees. (Ord. O-2019-24 § 4, 2019; Ord. O-2018-7 § 1, 2018).

5.05.080 Alternative: Owner Agreement with the City of Lakewood's Cart Retrieval Contractor.

The City of Lakewood may offer to any Owner an agreement between said Owner and the operator of the City of Lakewood's Abandoned Shopping Cart Retrieval Service. If offered,
5.05.080

Each Owner shall explicitly accept or reject said agreement. Such agreement shall provide that the Owner would:

a. receive its retrieved Abandoned Shopping Carts directly from the operator of the City of Lakewood’s Abandoned Shopping Cart Retrieval Service,
b. directly compensate the operator of the Abandoned Shopping Cart Retrieval Service,
c. not have said Abandoned Shopping Carts subject to impoundment, and
d. not be obligated to pay to the City of Lakewood the costs and fees associated with impoundment. (Ord. O-2019-24 § 4, 2019; Ord. O-2018-7 § 1, 2018).

5.05.090 Alternative: Retrieval Proposals.

Any Owner may propose to the City Manager an alternative Abandoned Shopping Cart Retrieval Service. The City Manager shall evaluate such proposal and, if reasonably expected by the City Manager to provide Abandoned Shopping Cart Retrieval Service comparable to or better than the City of Lakewood’s program, may approve said alternative. Said alternative shall include measureable standards of success; record keeping and reporting adequate to measure the alternative’s on-going success; reasonable efforts to include other Owners; and, upon the City Manager’s determination that the alternative is not successful, provisions to improve the alternative and provisions to reinstate the City of Lakewood’s Abandoned Shopping Cart Retrieval Service.

Nothing herein obligates the City Manager to approve an alternative Abandoned Shopping Cart Retrieval Service; however, such alternatives are encouraged and desirable to the extent they are successful and do not unduly compromise the City’s Abandoned Shopping Cart Retrieval Service, including reducing efficiency such that costs to remaining users of the City of Lakewood’s Abandoned Shopping Cart Retrieval Service become unreasonable as determined by the City Manager. (Ord. O-2019-24 § 4, 2019; Ord. O-2018-7 § 1, 2018).

5.05.100 Administration and Enforcement.

This Article shall be administered and enforced by the City Manager. The City Manager is hereby authorized and directed to promulgate and implement rules, regulations and procedures necessary or appropriate for administration and enforcement of this Article. The City Manager is hereby authorized to enter into, on or upon any Public Property to examine a Shopping Cart or parts thereof, to obtain information as to the identity of the Owner of any Shopping Cart, to retrieve Abandoned Shopping Carts and to impound Abandoned Shopping Carts in accordance with the provisions of this Article. Nothing contained in this Article shall be deemed to limit the City Manager from entering private property pursuant to permission from the Owner or occupant thereof.

The City Manager is hereby authorized and directed to establish fees necessary or appropriate for administration of this Article. (Ord. O-2018-7 § 1, 2018).

5.05.110 Penalties.

The penalty for a violation of any provision of this chapter shall be as set forth in Section 1.16.020. (Ord. O-2018-7 § 1, 2018).

5.05.120 Cumulative Effect.

The provisions of this Article are cumulative and in addition to any and all other procedures or remedies provided in ordinances of the City of Lakewood or by state law for the abatement of, or prosecutions for, nuisances. Proceedings for abatement pursuant to this part shall not prejudice or affect any other action, whether civil, criminal, equitable or administrative, for abatement or other remedy of such conditions. Nothing contained herein
shall be deemed to invalidate, supersede, or render ineffective any other provision of any ordinance of the City of Lakewood. Neither the inclusion, nor the failure to include, under the terms of this Article, any act or condition otherwise in violation of any provision of this code or other ordinance of this City of Lakewood, unlawful or constituting a nuisance, shall be deemed to render such act or condition lawful. (Ord. O-2019-24 § 4, 2019; Ord. O-2018-7 § 1, 2018).
Chapter 5.06

NONCIGARETTE TOBACCO RETAILER LICENSING

Sections:
5.06.010 Legislative Intent.
5.06.020 Definitions.
5.06.030 License Required.
5.06.040 Regulations.
5.06.050 Application Procedure.
5.06.060 License Issuance; Denial.
5.06.070 Appeal of License Denial.
5.06.080 License Term; Renewal; Expiration.
5.06.090 License Transfer.
5.06.100 License Fee.
5.06.110 Compliance Monitoring.
5.06.120 Suspension or Revocation.
5.06.130 Enforcement.
5.06.140 Compliance with C.R.S. Section 39-22-623.

5.06.010 Legislative Intent

It is the intent of the City Council of the City of Lakewood ("City") in enacting this chapter to prohibit sales of non-cigarette tobacco products to youth, to encourage responsible tobacco retailing, and to reduce the impact of tobacco product use by young people in Lakewood, pursuant to C.R.S. Section 18-13-121. (Ord. O-2019-1 § 1, 2019).

5.06.020 Definitions

The following words and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Application” means an application for a license issued pursuant to this chapter.

“Cigarette” means any tobacco or nicotine product intended to be burned or heated and smoked. The term includes loose tobacco or nicotine products that may be smoked through use of a non-electronic pipe or is "roll-your-own," i.e., any tobacco that, because of its appearance, type, packaging or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

“City Manager” means the City Manager of the City of Lakewood and any agency or person designated by him/her to enforce or administer the provisions of this Chapter.

“License” refers to the non-cigarette tobacco product retailer license.

“Licensee means” the owner or holder of a non-cigarette tobacco product retailer license and shall include the employees, agents and officers thereof, as appropriate.
“Licensed premises” means any area of the premises where non-cigarette tobacco products are authorized to be sold or distributed to a consumer including, but not limited to, the grounds occupied by a retailer and any store, stand, outlet, location or structure where non-cigarette tobacco products are sold, as designated in the approved license application.

“LPD” means the City of Lakewood Police Department.

“Non-cigarette tobacco product” means and includes any product, other than a cigarette, that contains tobacco or nicotine or is made or derived from tobacco and is intended or expected to be ingested, smoked, inhaled, placed in oral or nasal cavities, or applied to the skin of an individual, including hookah or shishah, as well as electronic devices that can be used to deliver nicotine or tobacco to the person using the device, including, but not limited to, an electronic cigarette, cigar, cigarillo or pipe. The term “non-cigarette tobacco product” does not include any product specifically approved by the United States Food and Drug Administration for use in reducing, treating or eliminating nicotine or tobacco dependence, or for other medical purposes, when such product(s) is being marketed and sold solely for such an approved purpose.

“Non-cigarette tobacco product retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, a non-cigarette tobacco product.

“Non-cigarette tobacco product retailing” means the selling, offering for sale, or exchanging for any form of consideration a non-cigarette tobacco product.

“Person” means an individual or entity.

“School” means any private daycare, elementary school, middle school or high school.

“Self-service display” means any display or storage of non-cigarette tobacco products for purchase, whereby a customer may reach or procure such products prior to age verification by a licensee. (Ord. O-2019-1 § 1, 2019).

5.06.030 License Required

A. Non-cigarette tobacco product retailer license required.

1. It is unlawful for any person to act as a non-cigarette tobacco product retailer in the City of Lakewood without first obtaining and maintaining a valid license pursuant to this Chapter for each location where non-cigarette tobacco product retailing occurs.

2. No license shall be issued to authorize non-cigarette tobacco product retailing anywhere other than at the fixed location designated in the license application and approved license. Non-cigarette tobacco product retailing from vehicles is prohibited.

3. Except as provided in this subparagraph, no license shall be issued to authorize non-cigarette product retailing within 500 feet of a school, as measured by a straight line from the nearest point of the property line of the site of the school to the nearest point of the property line of the site of the business premises proposed for licensure. Notwithstanding the foregoing, a non-cigarette tobacco product retailer
holding a valid license on the effective date of this chapter shall be exempt from the 500-foot prohibition set forth in this subsection.

4. A licensed premises shall have only one active license at any one time.

5. Non-cigarette tobacco retailing without a valid license is a nuisance as a matter of law.

B. Display of license. Each license shall be prominently displayed in a publicly visible location at the licensed premises.

C. Limitations.

1. No person shall apply for a new license for a one-year period after a license held by such person has been revoked.

2. No license shall be issued to any natural person under 18 years of age.

(Ord. O-2019-1 § 1, 2019).

5.06.040 Regulations

A. Positive Identification Required. No licensee shall sell or transfer a non-cigarette tobacco product without first examining the identification of the recipient to confirm the recipient is at least the minimum age under state and local law to purchase and possess the non-cigarette tobacco product.

B. Minimum age for persons handling non-cigarette tobacco products. Licensees shall not allow, permit or require any person younger than the age of 18 years to sell, stock, retrieve or otherwise handle non-cigarette tobacco products.

C. Self-service displays prohibited. No licensee shall provide or permit a self-service display in areas or on premises under the licensee’s ownership or control. This prohibition does not apply to Tobacco businesses and Tobacco bars with age restrictions as defined by Chapter 9.38 of the Lakewood Municipal Code. (Ord. O-2019-1 § 1, 2019).

5.06.050 Application Procedure

A. Applications shall be submitted and signed by an individual authorized by the person making application.

B. All applications shall be submitted on a form supplied by the City Clerk.

C. All applications shall be accompanied by payment in full of all fees required in this chapter.

D. Applicants and licensees shall inform the City Clerk in writing of any change in the information submitted on an application within 30 calendar days of a change. (Ord. O-2019-1 § 1, 2019).
5.06-060 License Issuance; Denial

A. Upon the receipt of a completed application and all required fees, the City Clerk shall issue a license within 30 days, which period may be extended by the City Clerk for good cause, unless credible evidence indicates that one or more of the following bases for denial exists:

1. The information presented in the application is incomplete, inaccurate or false.
2. The applicant seeks a license for a location prohibited under this chapter;
3. The applicant seeks a license for a location not appropriately zoned for the use;
4. The proposed location for the license is not otherwise in compliance with all city, state or federal laws that pertain to the proposed use; or
5. The applicant is not qualified under this chapter to hold a license.

B. If the City Clerk denies issuance of a license, the City Clerk shall notify the applicant in writing by regular mail, postage prepaid, to the address shown in the application. The notice of denial shall include the grounds for the denial. Notice is deemed to have been properly given upon mailing. (Ord. O-2019-1 § 1, 2019).

5.06.070 Appeal of License Denial

A. An applicant has the right to appeal the City Clerk’s denial of a license to a hearing officer designated by the City Manager. Such appeal shall be initiated by submitting a to the City Clerk, within 20 days of the date of the notice of denial, written request for a hearing.

B. Failure to timely appeal a denial is a waiver of the applicant’s right to contest the denial. (Ord. O-2019-1 § 1, 2019).

5.06.080 License Term; Renewal; Expiration

A. Term. A license shall be valid for a term of one year. A license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired.

B. Renewal. A licensee shall apply for the renewal of a license and submit the renewal license fee no later than 30 days prior to expiration of the existing term. The City Clerk shall renew the license prior to the end of the term, provided that the renewal application and fee were timely submitted and the City Clerk is not aware of any fact that would have prevented issuance of the original license.

C. Expiration. A license not timely renewed shall expire at the end of its term. The failure to timely renew a license requires submission of a new application. The licensee is prohibited from selling any non-cigarette tobacco products after a license has expired, and before a new license is issued. (Ord. O-2019-1 § 1, 2019).

5.06.090 License Transfer

A. A license may be transferred from one person to another so long as the transferee qualifies as a non-cigarette tobacco product retailer and is operating in the same location as the prior licensee.
B. When a license is transferred, the transferee must apply for a license transfer using the process provided in this Chapter 5.06. Any applicable exemption pursuant to section 5.06.030(a)(3) shall continue to apply in case of new ownership and transfer of license.

C. When a license has been issued to a spouse, 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 for the remainder of the term of that 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 term. (Ord. O-2019-1 § 1, 2019).

05.06.100 License Fee

A. The fee to issue or to renew a license shall be established from time to time by resolution of the City Council.

B. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, but not limited to, issuing a license, administering the license program, licensee education and training, licensee inspections, compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the estimated cost of the regulatory program authorized by this chapter. Fees are nonrefundable except as may be required by law.

C. Fees shall be assessed and collected on new applications and license renewals. Fees may also be assessed for any re-inspection of licensees found in violation of the provisions of this chapter. (Ord. O-2019-1 § 1, 2019).

05.06.110 Compliance Monitoring

A. LPD and the City Clerk shall monitor compliance under this chapter, as the Clerk and LPD deem appropriate. The City Clerk shall also conduct licensee inspections on an annual basis.

B. Additional compliance checks shall be conducted as LPD deems appropriate so as to allow LPD to determine, at a minimum, whether the non-cigarette tobacco product retailer is conducting business in a manner that complies with laws regulating access to non-cigarette tobacco products. When LPD deems appropriate, the compliance checks may determine compliance with other laws applicable to non-cigarette tobacco products. LPD shall have the discretion to consider the previous compliance check history of a licensee in determining how frequently to conduct compliance checks with respect to individual licensees.

C. Nothing in this paragraph shall create a right of action in any licensee or other person against the City or its agents and officers.

D. LPD shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of the person’s age if the potential violation occurs when:

1. The person is participating in a compliance check supervised by a police agent or a City of Lakewood code enforcement official; or
2. The person is acting as an agent of a person designated by the City to monitor compliance with this Chapter.


5.06.120 Suspension or Revocation

A. The following constitute grounds for suspension or revocation of a license:

1. A violation by a licensee, or its officers, agents or employees, of any provision of this chapter, or any state or local laws, relating to the sale or furnishing of tobacco or cigarettes to minors, or the storage or display of cigarettes or tobacco products, including, without limitation, C.R.S. 18-13-121 or C.R.S. 44-7-103;
2. Violation of any condition or sanction imposed by the City Clerk or hearing officer in connection with the issuance or renewal of a license;
3. Failure to pay state or local taxes related to the operation of the business associated with the license;
4. Loss of right to possession to the licensed premises;
5. Fraud, misrepresentation or a false statement of material fact contained in the original, or any renewal, application.

B. The City Manager shall appoint a hearing officer to hear all actions relating to the suspension or revocation of licenses pursuant to this chapter. The hearing officer is authorized to impose remedial sanctions for violations.

C. The City of Lakewood shall commence suspension or revocation proceedings by petitioning the hearing officer to issue an order to the licensee to show cause why the license(s) should not be suspended or revoked. The hearing officer shall issue an order to show cause if the petition demonstrates that probable cause exists to determine one or more grounds exist pursuant to subsection A to suspend or revoke the license. The order to show cause shall set the matter for a public hearing before the hearing officer.

D. The City Clerk shall give notice of the public hearing no later than 30 days prior to the hearing by mailing the same in writing to the licensee at the address contained in the license. At the hearing, the licensee shall have the opportunity to be heard, to present evidence and witnesses, and to cross examine witnesses presented by the City of Lakewood. The hearing officer is authorized to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of any hearing the hearing officer is authorized to conduct. The standard of proof at such hearings shall be a preponderance of the evidence. The burden of proof shall be upon the City.

E. In determining whether a license should by suspended or revoked, and in determining whether to impose conditions and/or sanctions in the event of a suspension, the hearing officer shall consider the following factors:

1. The nature and circumstances of the violation;
2. Corrective action, if any, taken by the licensee;
3. Prior violations, if any, by the licensee;
4. The likelihood of recurrence of the violation;
5.06.120

5. Whether the violation was willful;
6. Previous sanctions, if any, imposed on the licensee.

F. The hearing officer shall consider the following non-binding guidelines in determining whether to suspend or revoke a license and, in the case of a suspension, the length of the suspension. The purpose of these guidelines to provide consistent treatment of violations of this chapter. The actual sanction imposed upon a licensee for any violation may vary from the guidelines when warranted by the specific facts and circumstances of the case. The decision of the hearing officer with respect to the suspension or revocation shall constitute a final administrative action by the City of Lakewood.

1. For a first offense within a three-year period: license suspension for seven days.
2. For a second offense within a three-year period: license suspension for 30 days.
3. For a third or subsequent offense within a three-year period: license revocation.


5.06.130 Enforcement

A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

B. Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter is unlawful and shall cause the offender to be subject to the general penalty provisions of the Lakewood Municipal Code.

C. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. (Ord. O-2019-1 § 1, 2019).

5.06.140 – Compliance with C.R.S. Section 39-22-623

This chapter is not and shall not be construed in any way as imposing a fee, license or tax as a condition for engaging in the business of selling cigarettes or imposing a tax on cigarettes. The non-cigarette tobacco product retailer license in no way applies to the sale of cigarettes. If any part of this chapter is found to impose a fee, license or tax as a condition for engaging in the business of selling cigarettes, then that part shall be deemed void. (Ord. O-2019-1 § 1, 2019).
Chapter 5.08

CHRISTMAS TREE SALES

Sections:

5.08.010 Required.
5.08.020 Application-Fee-Contents.
5.08.030 Letter to accompany application.
5.08.040 Investigation upon receipt of application.
5.08.050 Issuance of license.
5.08.060 Separate license for each location.
5.08.070 Transfer prohibited.
5.08.080 Term of license.
5.08.090 Licensee's additional rights.
5.08.100 Electrical wiring.
5.08.110 Buildings to conform to building code.
5.08.120 Posting license.
5.08.130 Return of deposit.
5.08.140 Setback.
5.08.150 Time for application.
5.08.160 Revocation.
5.08.170 False statements in application.
5.08.180 Retail nursery defined.

5.08.010 Required.

It is unlawful for any person, firm or corporation, except one operating a retail nursery, as defined in Section 5.08.180, to sell or engage in the business of selling severed fir or evergreen trees (commonly called Christmas trees) at retail or wholesale, in the city without first obtaining a license therefor as provided in this chapter. (Ord. O-84-125 § 1, 1984: Ord. O-70-117 § 1, 1970).

5.08.020 Application-Fee-Contents.

Any person, firm or corporation desiring a license to sell severed fir or evergreen trees within the city shall make application therefor to the City Clerk upon an application form to be furnished by the City Clerk, and each such application shall be accompanied by a nonrefundable application fee in the amount of fifty dollars. Each application shall contain the following information, as well as such additional information as may be required by the City Clerk:

A. Applicant's name, address and telephone number;
B. The location and description of the premises where the said trees are to be offered for sale;
C. The name of the owner (or lessee) of the property where the trees are to be offered for sale;
5.08.030 Letter to accompany application. 
Each such application shall also be accompanied by a letter, contract or lease from the property owner or lessee of the premises where the sales are to be conducted, granting the use of the premises and permission to use the same. (Ord. O-70-117 § 3, 1970).

5.08.040 Investigation upon receipt of application. 
The City Clerk shall refer the application to the Department of Planning, Permits and Public Works, which shall advise the Clerk as to whether the premises are properly zoned and have sufficient setback space for the sales proposed to be made. (Ord. O-91-59 § 4, 1991; Ord. O-70-117 § 4, 1970).

5.08.050 Issuance of license-Fee. 
If the City Clerk receives a report from the Planning Department, Permits and Public Works Department that the zoning and space available for setback on the premises is appropriate for the sale of Christmas trees, and if the application is otherwise in order and the application fee has been paid, the City Clerk shall issue a Christmas tree sales license to the applicant for sales to be made at the location described in the application upon the payment of an additional fifty dollars as a license fee, and the deposit of fifty dollars in cash, or by certified check, cashier's check or money order. (Ord. O-2019-24 § 4, 2019; Ord. O-91-59 § 4 (part), 1991; Ord. O-81-19 § 3, 1981: Ord. O-70-117 § 5, 1970).

5.08.060 Separate license for each location. 
A separate license shall be required for each location designated by the applicant where trees are to be offered for sale. (Ord. O-70-117 § 6, 1970).

5.08.070 Transfer prohibited. 
No license issued under this chapter shall be transferred from one firm, person or corporation or location to another firm, person, corporation or location. (Ord. O-70-117 § 7, 1970).

5.08.080 Term of license. 
The license shall be issued to be effective beginning the day following Thanksgiving and shall expire as of December 31st of each year. (Ord. O-93-64 § 1, 1993: Ord. O-70-117 § 8, 1970).

5.08.090 Licensee's additional rights. 
Any person holding a license to sell trees as aforesaid shall also have the right to sell foliage therefrom or parts of fir or evergreen trees without securing a separate license. (Ord. O-70-117 § 9, 1970).

5.08.100 Electrical wiring. 
All electrical wiring at each location shall conform with the requirements of the city building code (Chapters 14.02 and 14.06), and must be installed by a registered electrical contractor. The building official shall not issue a permit for electrical installation at a location for the sale of Christmas trees without a showing that a Christmas tree license has been issued for such location, where such license is required. (Ord. O-93-64 § 2, 1993: Ord. O-70-117 § 10, 1970).
5.08.110 Buildings to conform to building code.
All buildings moved onto or constructed upon any Christmas tree sales lot shall in all respects conform to the requirements of the building code of the city or such regulations as may be promulgated by the Building Official. (Ord. O-70-117 § 11, 1970).

5.08.120 Posting license.
The Christmas tree sales license for each location must be posted in a conspicuous place at each location at all times. (Ord. O-70-117 § 12, 1970).

5.08.130 Return of deposit.
The deposit of each applicant for each location will be returned in the event that all debris, trees, temporary buildings, and trash have been removed from the location and all sales taxes have been paid in full on or before January 15th of the year succeeding the year in which sales are made. In the event of failure to remove such debris, trees, temporary buildings, or trash, or to pay all sales taxes in full, the deposit will be forfeited. (Ord. O-93-64 § 3, 1993: Ord. O-70-117 § 13, 1970).

5.08.140 Setback.
No fence, wiring, Christmas trees, stands, tents or structures shall be located on any lot or premises unless there is at least a twenty-foot setback from the curb line of the street or streets facing the same. No license shall be issued for any location where such setback is physically impossible. (Ord. O-70-117 § 15, 1970).

5.08.150 Time for application.
No application shall be accepted in any year prior to the first of November, or after the fifteenth day of December. (Ord. O-70-117 § 16, 1970).

5.08.160 Revocation.
If it appears to the City Clerk during the existence of any license authorized in this chapter that a licensee or its agents, servants or representatives are in any way violating any of the ordinances of the city or the terms of the license, the City Clerk may issue a cease and desist order, and may summarily suspend the license of the licensee if there is not compliance with such cease and desist order within twenty-four hours after the service thereof. Notice and opportunity for hearing shall be afforded to such licensee within one business day following the date of suspension. The clerk may revoke any license following such hearing if it appears that there has been any such violation and failure to comply with a cease and desist order. (Ord. O-70-117 § 17, 1970).

5.08.170 False statements in application.
The making of any false statement in the application of any licensee is unlawful, and is good cause for the revocation of the license of such licensee. (Ord. O-70-117 § 18, 1970).

5.08.180 Retail nursery defined.
A “retail nursery” is any person, firm or corporation which sells nursery stock, not limited to the sale of fir or evergreen trees. (Ord. O-93-64 § 4, 1993: Ord. O-84-125 § 2, 1984).
Chapter 5.20

FIREWORKS PERMITS-SALE AND DISPLAY

Sections:
5.20.010 Definitions.
5.20.020 Unlawful to sell or use fireworks.
5.20.030 Applicability.
5.20.040 Public displays.
5.20.050 Application for permit.
5.20.060 Investigation.
5.20.070 Competent fireworks operators.
5.20.080 Spectators.
5.20.090 Issuance of permit.
5.20.100 Conducting displays and prohibition.
5.20.110 Transferability.
5.20.120 Liability insurance.
5.20.140 Sale of display fireworks at retail.
5.20.150 Application for permit to sell display fireworks at retail.
5.20.160 Investigation.
5.20.170 Issuance of license.
5.20.180 Limit on location and transferability.
5.20.190 Filing application.
5.20.200 Insurance for sales at retail.
5.20.210 Seizure of fireworks.

5.20.010 Definitions.
As used in this chapter unless the context otherwise requires:
"Fireworks" means any combustible or explosive composition, or any substance or combination of substances, or device prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation, and shall include blank cartridges, toy pistols, toy cannons, toy canes or toy guns in which explosives are used, firecrackers, torpedoes, sky-rockets, sky lanterns, Roman candles, dayglo bombs, sparklers or other devices of like construction and any devices containing any explosive or flammable compound, or any tablet or other device containing an explosive substance, except that the term "fireworks" shall not include any auto flares, paper caps containing not in excess of an average of twenty-five hundredths of a grain of explosive content per cap and toy pistols, toy canes, toy guns or other devices for use of such caps, the sale and use of which shall be permitted at all times.

"Manufacturer" includes any wholesaler and any person who manufactures, makes, constructs or produces any fireworks article or device.

"Person" includes an individual, partnership, firm, company, association or corporation.

"Retailer" includes any person who sells, delivers, consigns or furnishes fireworks to another person not for resale.

5.20.020  **Unlawful to sell or use fireworks.**
Except as provided in Sections 5.20.030 and 5.20.040, it is unlawful in the city for any person to:
A. Use or explode any fireworks; or
B. Offer for sale, expose for sale or sell any fireworks; or
C. Have fireworks in his possession with intent to offer the same for sale. (Ord. O-74-38 § 1 (part), 1974).

5.20.030  **Applicability.**
This chapter shall not be construed to prohibit:
A. Any person, including a manufacturer, who has first obtained a license to sell display fireworks in accordance with the provisions of this chapter, from offering for sale, exposing for sale, selling and having in his possession with intent to offer for sale, or sell display fireworks to any municipality, fair association, amusement park or other organization or group holding a display permit issued as provided in this chapter, or to the Colorado State Fair and Industrial Exposition Commission, or to any county or district fair duly organized under the laws of this state;
B. The manufacture or wholesale of fireworks, or any phase thereof, which are of concern is subject to the sole authority of the Secretary of State of Colorado;
C. Any person from using or exploding fireworks in accordance with the provisions of any public display permit issued as provided in this chapter, or as part of a supervised public display of any county or district fair organized under the laws of this state;
D. Any person from using, exploding, selling or offering for sale any fireworks when such is done for a legitimate purpose other than for the purposes of display, exhibition, noise, amusement or entertainment; provided, however, it shall be the burden of those using, exploding or selling fireworks to prove their purpose was a legitimate and permitted one. Such permitted legitimate purposes shall include, but not be limited to, the following:
   1. The explosion of blank cartridges for a show or theater or for signal or ceremonial purposes in organized athletics or sports,
   2. The sale or use of model or educational rockets which utilize a replaceable engine or motor cartridge or nonmetallic construction, containing less than two ounces of propellant and designed to be launched by an electrical ignition system and which contain a parachute or other means for safe recovery of the rocket vehicle,
   3. The importation, purchase, sale or possession of fireworks which are used or to be used solely to prevent damage to crops by animals or birds. (Ord. O-74-38 § 1 (part), 1974).

5.20.040  **Public displays.**
The city may grant permits within the city boundaries for supervised public displays of fireworks by fair associations, amusement parks or other organizations and groups, subject to the rules and regulations hereinafter set forth. (Ord. O-74-38 § 1 (part), 1974).

5.20.050  **Application for permit.**
Any fair association, amusement park or other organization or group desiring to conduct a supervised public display of fireworks shall apply in writing to the City Clerk for such a permit not less than thirty days in advance of the date of the display. Such application shall be accompanied by a nonrefundable application fee of twenty-five dollars; and such application shall contain the following information:
A. The name of the organization sponsoring the display, together with the names of persons actually in charge of the display;
B. The date and time of day at which the display is to be held;
C. The exact location planned for the display;
D. The name of the competent fireworks operators who are to supervise discharge of the fireworks;
E. The type and class of fireworks to be discharged and the number of set pieces, shells (specifying single or multiple break) and other items including experimental or model rockets or missiles;
F. The manner and place of storage of such fireworks prior to and during the display;
G. A diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of all buildings, highways, and the location of all nearby trees, telegraph or telephone lines, or other overhead obstructions;
H. Proof that satisfactory compensation insurance is carried for all employees;
I. Proof of public liability insurance with the same limits and coverage as are set forth in Section 5.20.120, protecting the city, applicant, manufacturer, wholesaler, seller, supplier and property owner, and operators of the display from liability. (Ord. O-74-38 § 1 (part), 1974).

5.20.060 Investigation.

On receipt of any such application, the City Clerk shall provide to the Police Department and the Fire Department or fire protection district within which the proposed location lies, a copy of the application together with a request that an investigation of the location of the proposed display be conducted for the purpose of determining if the fireworks will be of such character or so located as to be hazardous to property or dangerous to any person. Before a permit is granted, the location and handling of the display shall be approved, after investigation, by the Chief of Police and the Chief of the Fire Department or the fire protection district in which the display is to be conducted, or their authorized agents. The Chief of Police and the Chief of the Fire Department or fire protection district concerned or their authorized agents shall be requested to report to the City Clerk with respect to the results of their investigations and shall further be requested to make recommendations for the granting or denial of the permit, and recommendations with respect to the prescribing of reasonable conditions for the display, taking into account locations, parking of vehicles, controlling spectators, storage and firing of fireworks, and precautions in general, against danger to life and property from fire, explosion or panic. No permit for public display shall be granted if the operator and the location in the handling of the display are not approved by the Chief of Police and the Chief of the Fire Department or the fire protection district in which such display is to be located or their authorized agents. No permit for public display shall be granted where discharge, failure to fire, faulty firing or fallout from any fireworks or other objects would endanger persons, buildings, structures, woods and trees, brush, parks or other grass-covered land. (Ord. O-93-64 § 23, 1993; Ord. O-74-38 § 1 (part), 1974).

5.20.070 Competent fireworks operators.

No public fireworks display permit shall be granted unless at least two experienced fireworks operators are provided. Both operators shall:
A. Be responsible for, and have charge of, the display with respect to preparation for transporting, unloading, storing, preparing special effects, set and mechanical pieces, setting mortars and rocket launchers, loading, arming, firing and disposing of all unfired or defective (dud) rockets, missiles and fireworks articles or items;
B. Be responsible for setting all fireworks including mortars, finale batteries (hedgehogs) and rocket launchers at locations designated by the fire department or fire district, and take into account wind direction and velocity predicted for the firing time in setting the firing angles. Shells, rockets and missiles shall not be permitted to cross or burst above areas occupied by persons;
C. Be responsible for acts of all persons employed in connection with fireworks for the display. He shall have authority to dismiss or discharge any employee or person, whether remunerated or not, at any time during the operation of the display who, through smoking, drinking, carelessness or negligence or any other act, endangers the safety of himself, any other person or any property. (Ord. O-93-64 § 24, 1993; Ord. O-74-38 § 1 (part), 1974).

5.20.080 Spectators.
Spectators at public displays of fireworks shall be restrained behind lines or barriers as designated by local authorities. Only authorized persons and those in actual charge of the display shall be allowed inside these lines or barriers during the unloading, preparation or firing of fireworks. (Ord. O-74-38 § 1 (part), 1974).

5.20.090 Issuance of permit.
If the required approval of the Chief of Police and Chief of the Fire Department (or their authorized agents), or any of them, is not received by the City Clerk, no permit shall issue; however, if such approval is received, the City Clerk shall issue a public fireworks display permit, subject to such reasonable conditions as may be prescribed by the Chief of Police or by the Chief of the Fire Department or the fire protection district in which the display is to be conducted, if all requirements of this chapter are met. (Ord. O-93-64 § 25, 1993; Ord. O-74-38 § 1 (part), 1974).

5.20.100 Conducting displays and prohibition.
The display shall be conducted only at such times, at such places and pursuant to such conditions as may be prescribed by the Chief of Police or the Chief of the Fire Department or the fire protection district in which the display is to be conducted. No public display of fireworks shall be conducted by any person or organization without a duly issued public display permit issued as provided for in this chapter. (Ord. O-93-64 § 26, 1993; Ord. O-74-38 § 1 (part), 1974).

5.20.110 Transferability.
No public fireworks display permit shall be transferable or assignable. (Ord. O-74-38 § 1 (part), 1974).

5.20.120 Liability insurance.
Each applicant for a public display permit shall file with the City Clerk, prior to the issuance of any such permit, a policy of public liability insurance, in form satisfactory to the City Clerk, with coverage of at least three hundred thousand dollars and a policy of property damage insurance in the amount of at least one hundred thousand dollars, all protecting from liability the applicant, the manufacturer, the supplier, the seller, the buyer, the property owner, the user, and the city. (Ord. O-89-29 § 1, 1989; Ord. O-87-33 § 1, 1987; Ord. O-74-38 § 1 (part), 1974).
5.20.140 Sale of display fireworks at retail.

It is unlawful for any person to sell or offer to sell at retail in this city any fireworks which are to be used for display purposes until he first obtains a permit for the sale of display fireworks at retail from the city. (Ord. O-74-38 § 1 (part), 1974).

5.20.150 Application for permit to sell display fireworks at retail.

Any person, partnership, association or corporation desiring to obtain a fireworks sale permit shall file an application therefor with the City Clerk, which application shall be accompanied by a nonrefundable application fee of fifty dollars and which shall contain the following:

A. Name and address of applicant;
B. If applicant is a corporation, the names and addresses of the principal officers of the corporation and the name of the person who will manage, be responsible for and be in charge of the sale of fireworks;
C. If the applicant is a partnership, the names and addresses of the partners and the name and address of the person who will be in charge of and supervise and manage the sale of display fireworks;
D. Location where the applicant will sell display fireworks;
E. The manner and method of proposed sales at retail of display fireworks;
F. Such other information as the City Clerk may require to make, or aid in, the investigation required by Section 5.20.160. (Ord. O-74-38 § 1 (part), 1974).

5.20.160 Investigation.

Upon receipt of an application for a permit to sell display fireworks at retail, the City Clerk shall refer the same to the Chief of Police and the Chief of the Fire Department or fire protection district within which the location named in the permit lies with a request that they determine whether the applicant can safely engage in the sale of such fireworks at the location named in the application. (Ord. O-93-64 § 27, 1993; Ord. O-87-33 § 3, 1987; Ord. O-74-38 § 1 (part), 1974).

5.20.170 Issuance of license.

If the City Clerk receives a report from the Police Department or the Fire Department or fire protection district concerned, approving the issuance of the license on the basis of the criteria set forth in Sections 5.20.150 and 5.20.160, the City Clerk, upon payment of a license fee of twenty-five dollars for each location at which display fireworks shall be sold at retail, shall issue a permit for the sale of display fireworks at retail which shall be valid for a period of twenty months from the date of issuance. Each separate permit issued shall apply and be valid only with respect to the location for which it is issued. If the report of the Police Department or the Fire Department or fire protection district indicates that the criteria set forth in Section 5.20.160 are not met, then, and in that event, no license shall be issued. (Ord. O-93-64 § 28, 1993; Ord. O-87-33 § 4, 1987; Ord. O-74-38 § 1 (part), 1974).

5.20.180 Limit on location and transferability.

A fireworks sale permit shall be valid only for the premises or location for which it is issued. Such permit or permits shall not be transferable, assignable or renewable. (Ord. O-74-38 § 1 (part), 1974).
5.20.190 **Filing application.**
Each application for a fireworks sale permit shall be filed with the City Clerk on or before June 20th of the calendar year in which the permit is sought. (Ord. O-74-38 § 1 (part), 1974).

5.20.200 **Insurance for sales at retail.**
Every applicant for a permit to sell display fireworks at retail shall comply within the insurance requirements in the amount set forth in Section 5.20.120. (Ord. O-93-64 § 29, 1993: Ord. O-74-38 § 1 (part), 1974).

5.20.210 **Seizure of fireworks.**
The Chief of Police or any authorized agent of the City shall seize, take and remove at the expense of the owner or possessor all stocks of fireworks stored or held in violation of this chapter. (Ord. O-93-64 § 30, 1993; Ord. O-74-38 § 1 (part), 1974).
Chapter 5.24

PAWN BROKERS

Sections:

5.24.010 Definitions.
5.24.020 License required.
5.24.030 Application.
5.24.040 Application fee.
5.24.050 Investigation.
5.24.060 Denial-Suspension-Revocation.
5.24.070 Transferability-Change of ownership-Change of corporate structure.
5.24.080 Manager-Change of manager.
5.24.090 Expiration and annual renewal.
5.24.100 Annual license fee.
5.24.110 Bond required.
5.24.120 City Manager's approval required.
5.24.140 Books and records.
5.24.150 Pawn tickets.
5.24.160 Transfer of pawn ticket generally-Transfer to pawnbroker.
5.24.170 Loss of pawn ticket.
5.24.180 Adverse claims.
5.24.190 Altered pawn ticket.
5.24.200 Seizure of counterfeit or reportedly lost pawn ticket-Seizure of counterfeit or fraudulent identification.
5.24.230 Property held-Time limit-Sale of unredeemed articles.
5.24.240 Sale of articles represented by pawn tickets transferred to pawnbroker.
5.24.250 Hold order.
5.24.260 No deficiency or offsets permitted.
5.24.270 Unlawful transactions.
5.24.280 Unlawful to pawn certain items.
5.24.290 Safekeeping-Insurance.
5.24.300 Accepting lost or stolen articles.
5.24.310 Seized property held by Police-Administrative hearing to determine possession.
5.24.315 Conduct of hearing regarding right to possession of seized property.
5.24.320 Liability for pledged property.
5.24.340 Investigation-Right of entry.
5.24.350 Hours.
5.24.360 Videotape and photograph requirements.
5.24.370 Transaction fee.
5.24.380 Recovery of transaction fees, penalty, and interest.
5.24.390 Transaction fee deficiency.
5.24.400 Interest rate on delinquent transaction fees.
5.24.010 Definitions.

As used in this chapter:

"Contract for purchase" means a contract entered into between a pawnbroker and a customer pursuant to which money is advanced to a customer by the pawnbroker on the delivery of tangible personal property by the customer on the condition that a customer, for a fixed price and within a fixed period of time, to be no less than thirty days, has the option to cancel said contract.

"Fixed price" means that amount agreed upon to cancel a contract for purchase during the option period. Said fixed price shall not exceed one-fifth of the original purchase price for each month plus the original purchase price.

"Fixed time" means that period of time, to be no less than thirty days, as set forth in a contract for purchase, for an option to cancel said contract.

"Manager" means an individual employee of a pawnbroker who directs the business of the pawnbroker and who is in direct control of the pawnbroking business.

"Option" means the fixed time and the fixed price agreed upon by the customer and the pawnbroker in which a contract for purchase may but does not have to be rescinded by the customer.

"Pawnbroker" means a person, partnership, limited liability company, or corporation regularly engaged in the business of making contracts for purchase or purchase transactions in the course of his business. The term does not include Secondhand Dealers as defined in and regulated by C.R.S. Section 18-13-114 through C.R.S. Section 18-13-118.

"Pawnbrokering" means the business of a pawnbroker as defined by this section.

"Pledge" or "pledged property" means any tangible personal property deposited with a pawnbroker pursuant to a contract for purchase in the course of his business as defined in this section.

"Pledgor" means a customer who delivers a pledge into the possession of a pawnbroker.

"Purchase transaction" means the purchase by a pawnbroker in the course of his business of tangible personal property for resale, other than newly manufactured tangible personal property which has not previously been sold at retail, when such purchase does not constitute a contract for purchase.

"Tangible personal property" means all personal property other than choses in action, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a contract for purchase or a purchase transaction. (Ord. O-2007-28 § 2, 2007; Ord. O-2005-9 §§ 1, 2, 3, 2005; Ord. O-98-50 § 1, 1998; Ord. O-90-8 § 1, 1990; Ord. O-89-61 § 1 (part), 1989).
5.24.020 License required.
It is unlawful for any person, firm or corporation to conduct the business of a pawnbroker within the city limits unless such person, firm or corporation shall have first obtained a "pawnbroker's license" from the city. (Ord. O-89-61 § 1 (part), 1989).

5.24.030 Application.
All applicants for a pawnbroker's license shall file an application for such license with the City Clerk on forms to be provided by the City Clerk. Each individual applicant, partner of a partnership, manager of a limited liability company, officer, director, and holder of ten percent or more of the corporate stock of the corporate applicant or holder of ten percent or more interest in a limited liability company, all managers, and any person with a financial interest in the pawnbroker establishment shall be named in each application form, and each of them shall be photographed and fingerprinted by the Police Department; and each of them shall furnish three letters of character reference from residents of the city or the surrounding metropolitan area. Each individual applicant, partnership, limited liability company, and corporate applicant shall, in addition, furnish as an attachment to and part of such application evidence that the proposed establishment meets the requirements of the zoning ordinance, proof of the applicant's right to possession of the premises wherein the business of pawnbroking will be conducted, a Financial Questionnaire, Consent to Release Financial Information, and a current personal financial statement or a balance sheet and income account statement for the preceding twelve-month period prior to the date of the application. Each corporate applicant shall furnish evidence that it is in good standing under the statutes of the State of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 2, 1998; Ord. O-89-61 § 1 (part), 1989).

5.24.040 Application fee.
Each applicant, whether an individual, partnership, limited liability company, or corporation, shall pay an application fee at the time of filing an application. The fee shall be set by city council resolution. (Ord. O-98-50 § 3, 1998; Ord. O-89-61 § 1 (part), 1989).

5.24.050 Investigation.
On receipt of a properly completed application, together with all information required in connection therewith, fingerprints and photographs, and the payment of the application and license fees, the City Clerk shall transmit the application to the Police Department for investigation of the background, character, and financial responsibility of each individual applicant, the partners of a partnership, the manager of the limited liability company, the officers, directors, and holders of ten percent or more of the stock of a corporation or holders of ten percent or more interest in a limited liability company, each person named as a manager of a proposed pawnbroker's establishment, and any person with a financial interest in the pawnbroker establishment. 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 Police Department shall furnish the results of such an investigation to the City Clerk, together with a recommendation with respect to the granting or denial of the license, and reasons therefor. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 4, 1998; Ord. O-90-8 § 2, 1990; Ord. O-89-61 § 1 (part), 1989).
5.24.060  Denial-Suspension-Revocation.

A. The application of any applicant may be denied, or an existing license may be suspended or revoked by the City Manager or designee, if it is shown that the individual applicant, any partner of a partnership, the manager of the limited liability company, any officer, director, or holder of ten percent or more of the stock of a corporate applicant or holder of ten percent or more interest in a limited liability company, any manager of a pawnbroker's establishment and any person with a financial interest in the pawnbroker establishment is not of good moral character as to reasonably assure that the operations of the pawnbroker's establishment will be conducted lawfully and in a manner which will not be detrimental to the public interest or well-being. Having been adjudged in any civil or criminal proceeding to have indulged in business or trade practices prohibited by law, or convicted of any felony or other offense involving moral turpitude and pertinent circumstances connected therewith, shall be considered in determining whether, in fact, an individual applicant, partner, manager of limited liability company, director, officer, or holder of ten percent or more of a corporate applicant's stock or holder of ten percent or more interest in a limited liability company, or a manager of the pawnbroker's establishment, is a person of good moral character at the time of the application, or time of review for possible suspension or denial.

B. The fact that an individual applicant, partnership, limited liability company, or corporation is not financially responsible, not in good standing, or not authorized to do business in Colorado, may also be grounds for denial, suspension, or revocation of a pawnbroker's license. As used herein, "financially responsible" means having sufficient income and assets to defray expenses and provide for liabilities of the business as they become due.

C. Any pawnbroker found to be in violation of any of the provisions of this chapter may have his license suspended or revoked after notice and hearing before the City Manager or designee. Such suspension or revocation shall be at the direction of the City Manager or designee, and further, at his discretion, and for good cause shown at a revocation or suspension hearing, the City Manager or designee may declare the pawnbroker ineligible for relicensing for the purpose of carrying on the business or pawnbrokering within the city limits at any future time. Notwithstanding the above, a pawnbroker may apply for relicensing and present evidence of rehabilitation at an administrative hearing before the City Manager or designee. A pawnbroker may be granted a new license provided the City Manager or designee finds adequate evidence of rehabilitation was presented to show the pawnbroker is ready to accept the responsibilities of a law-abiding and productive member of society.

D. Any applicant or pawnbroker wishing to appeal any ruling or decision regarding this chapter, for which a hearing pursuant to Section 5.24.315 or Subsection C of this provision is not available, shall appeal to the City Manager. Said appeal shall be in writing and within fourteen days of the decision or ruling which is the subject of the appeal. The City Manager or designee shall notify the pawnbroker in writing of the time and place fixed by him for such hearing.

E. Every decision of the hearing officer shall be in writing, and notice thereof shall be mailed to the pawnbroker within twenty days after such hearing, and all such decisions shall be final. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 5, 1998; Ord. O-89-61 § 1 (part), 1989).
5.24.070  Transferability-Change of ownership-Change of corporate structure.

Licenses issued under this chapter shall not be transferable. Any change in the partners of a partnership or manager of a limited liability company or in officers, directors, or holders of ten percent or more of the stock of a corporation or holders of ten percent or more interest in a limited liability company licensee holding a pawnbroker’s license shall result in termination of the license of the partnership, limited liability company, or corporation, unless such licensee within thirty days of any such change, files a written notice of such change with the City Clerk and pays a nonrefundable fee. The fee shall be set by city council resolution. Any such change shall be reported on forms provided by the City Clerk and shall require the names of all new partners, officers, directors, and all holders of ten percent or more of the corporation or holders of ten percent or more interest in a limited liability company stock who were not previously holders of such amount of stock, all of whom shall be required to furnish, together with such notice, all of the information required from such persons in connection with an original application, three letters of character reference from residents of the city or the surrounding metropolitan area, and each person shall be investigated by the Police Department as provided in Section 5.24.050. Grounds for denial of any such transfer of corporation or limited liability ownership, change of corporate or limited liability company structure, partnership, and termination of the license thereon, shall be the same as for denial of the license under Section 5.24.060. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 6, 1998; Ord. 0-89-61 § 1 (part), 1989).

5.24.080  Manager-Change of manager.

A. A pawnbroker shall employ a manager to operate a pawnbrokering business, provided the pawnbroker retains complete control of all aspects of the pawnbrokering business, including but not limited to the pawnbroker’s right to possession of the premises, his responsibility for all debts, and the pawnbroker must bear all risk of loss or opportunity for profit from the business.

B. In the event a licensee changes the manager of a pawnbroker establishment, the licensee shall immediately report such change and register the new manager on forms provided by the City Clerk within thirty days of such change. The new manager shall be photographed, fingerprinted, and furnish three letters of character reference from residents within the city or within the surrounding metropolitan area, and shall be investigated by the Police Department as provided in Section 5.24.050. The licensee shall pay a nonrefundable investigation fee in the amount then charged by the Colorado Department of Public Safety and a manager registration fee. The manager registration fee shall be set by city council resolution. Failure of a licensee to report such a change or failure of the manager to meet the standards and qualifications as required in Section 5.24.060 shall be grounds for termination of the license. (Ord. O-2019-24 § 4, 2019; Ord. O-2005-9 § 4, 2005; Ord. O-98-50 § 7, 1998; Ord. 0-89-61 § 1 (part), 1989).

5.24.090  Expiration and annual renewal.

Each license issued pursuant to this chapter shall be for a period of one year from the date of issuance, and an application for renewal shall be filed not less than thirty days prior to the expiration of the period for which the license is issued. A late renewal may be approved by the City Manager or designee if good cause is shown for the late filing of the renewal application. Copies of the pawnbroker’s balance sheets and income statements for the
preceding twelve-month period shall be submitted with each renewal application. When an application for renewal is received in proper form by the City Clerk, the City Clerk shall refer the renewal application to the Police Department for investigation and its recommendation with respect to the approval or denial of the renewal application. An investigation shall be made by the Police Department unless the Chief of Police, or designee, in his discretion, deems an investigation unnecessary and elects to recommend approval without such investigation. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 8, 1998; Ord. O-89-61 § 1 (part), 1989).

5.24.100 Annual license fee.

The annual license fee for carrying on the business of pawnbroking shall be payable to the City Clerk at the time an initial application for a license is filed or at the time a renewal application is filed. Annual license fees shall be nonrefundable unless an application is denied. The fee shall be set by city council resolution. (Ord. O-98-50 § 9, 1998; Ord. O-89-61 § 1 (part), 1989).

5.24.110 Bond required.

Every applicant for a pawnbroker's license shall furnish a bond with a responsible surety, to be approved by the City Manager or designee, in the amount of ten thousand dollars, for the benefit of the people of the city, conditioned upon the safekeeping or return of all tangible personal property held by the pawnbroker, as required by law and ordinance, and the due observance of the provisions of this chapter. No license shall be issued or renewed absent such approved bond. Termination or cancellation of an approved bond shall be grounds for summary suspension of the license and for subsequent revocation if a new bond is not furnished within thirty days after demand by the City Manager or designee. (Ord. O-2019-24 § 4, 2019; Ord. O-89-61 § 1 (part), 1989).

5.24.120 City Manager's approval required.

The City Manager or designee shall have final authority to approve or deny any application or application for renewal, and to review any determination of the City Clerk and the Police Department made with respect thereto. The City Manager or his designee in his discretion may issue the license or reject the application upon the basis of the criteria heretofore set forth, the recommendations of the Police Department, the findings of the City Clerk, and his determination of whether the applicant has made a sufficient showing of good moral character, financial responsibility, experience and general fitness to command the confidence of the public and to warrant the belief that the business will be operated lawfully, honestly, and efficiently. (Ord. O-2019-24 § 4, 2019; Ord. O-89-61 § 1 (part), 1989).

5.24.140 Books and records.

A. A pawnbroker, his employee, agent, or any other person acting on his behalf shall keep an alphabetical index of the names of customers and a numerical register or automated format approved by the Police Department in which the pawnbroker, his employee, agent, or any other person acting on his behalf shall legibly record the following information in the English language, in ink, and contemporaneously with each contract for purchase or purchase transaction:

1. The name of the customer;
2. The address and phone number of the customer;
3. The date of birth of the customer;
4. The number of customer's valid Colorado driver's license, or one of the following
alternative forms of identification:

   a. Valid Colorado identification card;
   b. A valid driver’s license with photograph, issued by another state
   c. Military identification card;
   d. Valid passport;
   e. Alien registration card;
   f. An identification document with no photograph, issued by the state or federal government;
5. The date, time, and place of the contract for purchase or purchase transaction;
6. An accurate, detailed account and description of each item of tangible personal property including but not limited to any trademark, identification number, serial number, model number, brand name, or identifying marks on such property;
7. The signature of the customer; and
8. A clear and identifiable imprint of the customer’s right index finger.
B. The pawnbroker shall obtain a written declaration of the customer’s ownership which shall state that each item of tangible personal property is totally owned by the customer, how long the customer has owned the property, whether the customer or someone else has found the property, and if the property was found, the details of the finding. The customer shall sign his name in the register or other tangible or electronic record, and the individual declaration of ownership for each item of tangible personal property and receive a copy of the contract for purchase or a receipt of the purchase transaction.
C. The pawnbroker shall keep the register or other tangible or electronic record for at least three years after the date of the last transaction entered in the register. The register shall be kept in a place which is reasonably safe from destruction or theft.
D. Such register and other books and records of the pawnbroker shall be open to the inspection of any Police Department employee. Upon the demand of such employee, the pawnbroker shall produce and show any tangible personal property given to the pawnbroker in connection with any contract for purchase or purchase transaction. The pawnbroker’s books shall list the date on which each contract for purchase was canceled, whether it was redeemed, or forfeited and sold.
E. 1. Every pawnbroker shall provide the Police Department with records, in a format approved by the Police Department, of all tangible personal property accepted by the pawnbroker pursuant to a contract for purchase or a purchase transaction and copies of each customer’s declaration of ownership. The records shall contain the same information required to be recorded in the pawnbroker’s register or other tangible or electronic record pursuant to this section. The required information shall be mailed or otherwise delivered to the Police Department within seven days of each contract for purchase or purchase transaction.
   2. The reporting format of the required information shall be one of the following:
      a. Forms approved by the Police Department together with a computer diskette containing the same information in a format approved by the Police Department; or
5.24.150 **Pawn tickets.**

At the time of making a contract for purchase or upon the subsequent renewal of any contract for purchase the pawnbroker shall deliver to the customer a pawn ticket from a bound book containing stubs, which book and stubs are correspondingly serially numbered, and which stubs shall contain the following information:

The name and address of the licensee; a description of the pledge sufficient to adequately identify the pledge; the date of the transaction; the amount, duration, and terms of the contract for purchase. Language which represents suitably Sections 5.24.150 through 5.24.170 shall appear on the back of the pawn ticket.

The pawnbroker may insert on the pawn ticket any other terms, conditions, and information not inconsistent with the provisions of this chapter. (Ord. O-89-61 § 1 (part), 1989).

5.24.160 **Transfer of pawn ticket generally-Transfer to pawnbroker.**

The holder of the pawn ticket shall be presumed to be the person entitled to cancel the contract for purchase and except as provided otherwise in this chapter, the pawnbroker shall deliver the pledge to the person presenting the pawn ticket on payment of principal and charges and upon surrender of the pawn ticket. The holder of any pawn ticket may transfer same to the issuing pawnbroker by writing upon the ticket "Transferred to (name of pawnbroker)" and signing same under such writing. The effect of transferring a pawn ticket to the issuing pawnbroker shall be to vest in the pawnbroker such ownership and title to the pawn ticket and the pledged property represented thereby as the holder had. The pawnbroker may thereafter sell the pledged property in accordance with the provisions of Section 5.24.240. Every instance of transference of a pawn ticket to a pawnbroker shall be reported within seven (7) days to the Police Department as set out in section 5.24.140 E. 2. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 12, 1998; Ord. O-89-61 § 1 (part), 1989).

5.24.170 **Loss of pawn ticket.**

If a pawn ticket is lost, destroyed, or stolen the customer shall so notify the issuing pawnbroker in writing. Before permitting the cancellation of the contract for purchase or issuing a duplicate pawn ticket, the pawnbroker may, in addition to satisfying himself of the validity of the claim, require the customer to make an affidavit of the alleged loss, destruction, or theft of the ticket. Upon receipt of such affidavit or statement in writing as the case may be, the pawnbroker shall permit the customer to cancel the contract for purchase or the pawnbroker shall deliver to the customer a duplicate ticket and the pawnbroker shall incur no liability for doing so unless he had previously received written notice of an adverse claim. The form of the affidavit shall be substantially as follows:
AFFIDAVIT OF LOSS OF PAWN TICKET

STATE OF COLORADO  )
COUNTY OF  ) SS:

I, ___________________________, being first duly sworn, do depose and say:

1. I am the pledgor of a pawn ticket issued by (name of pawnbroker), numbered ____________, ("Unknown" if number is not known), and dated ____________ ("Unknown" if date is not known).

2. The above-described pawn ticket has not been sold, negotiated, or transferred in any other manner by me.

3. The above-described pawn ticket was (lost, destroyed, or stolen) as follows:

________________________

4. The pledge represented by this pawn ticket is (description of pledge).

Further affiant sayeth not.

________________________
Affiant

Subscribed and sworn to before me this _____ day of ______________, 20_____

________________________
Notary Public

My Commission expires: ____________

(Ord. O-89-61 § 1 (part), 1989).

5.24.180  Adverse claims.

If more than one person claims the right to cancel a contract for purchase the pawnbroker shall incur no liability for refusing to deliver the pledge until the respective rights of the claimants are adjudicated. If no action is brought against the pawnbroker by either party prior to the expiration of the period for which he is required under Section 5.24.230 to hold the pledge, he may proceed to sell the pledge in accordance with the provisions of this chapter. (Ord. O-89-61 § 1 (part), 1989).

5.24.190  Altered pawn ticket.

The alteration of a pawn ticket shall not excuse the pawnbroker who issued it from liability to deliver the pledge according to the terms of the ticket as originally issued, but shall relieve him from any other liability to the pledgor of the ticket. (Ord. O-89-61 § 1 (part), 1989).
5.24.200  **Seizure of counterfeit or reportedly lost pawn ticket-Seizure of counterfeit or fraudulent identification.**

A. If a ticket is presented to a pawnbroker which purports to be one issued by him but which is found to be counterfeit or which has been reported to him as lost, stolen or destroyed, the pawnbroker may seize and retain the same without any liability whatsoever to the holder thereof. Upon such occasion, the pawnbroker shall immediately notify the Police Department. The Police Department shall then place a hold order on the pawn ticket so seized, as set out in Section 5.24.250, and pledged property, identified in said pawn ticket, shall be held by the pawnbroker until such time as the lawful disposition of the pledged property is either agreed upon, determined by a court action, or directed by ordinance or statute, or the hold order is either ordered released by the Police Department or has expired.

B. If a pawnbroker has reason to believe a customer is exhibiting counterfeit or fraudulent identification, the pawnbroker or his employee, acting in good faith and upon probable cause based upon reasonable grounds therefor, may seize such identification without incurring civil or criminal liability as a result of such seizure, provided the pawnbroker immediately gives such identification to the Police Department. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 13, 1998; Ord. O-89-61 § 1 (part), 1989).

5.24.210  **Interest rates-Commission.**

No pawnbroker shall ask, demand, or receive any greater rate of interest, commission, and compensation than the total rate of one-fifth of the original purchase price for each month, plus the original purchase price. The pawnbroker may charge the customer for any transaction fee imposed by Section 5.24.370. No other charges shall be made by the pawnbroker upon renewal of any contracts for purchase or at any other time. In the event any such charges are made, the contract shall be void. Any contract for the payment of commissions by the customer for making a contract for purchase on tangible personal property shall be null and void. (Ord. O-2005-9 § 6, 2005; Ord. O-98-50 § 14, 1998; Ord. O-89-61 § 1 (part), 1989).

5.24.220  **Intermediate payments-Receipts.**

The pawnbroker shall accept intermediate payments, without penalty, upon contracts for purchase which have not yet matured when presented with the pawn ticket, and shall treat the amount tendered as a payment upon the existing contract for purchase. A receipt showing the date and the amount of the payment shall be given for all moneys received on account of or in payment of the contract for purchase, and the date and amount of each such payment shall be entered upon the proper serially numbered stub in the bound book required to be kept by Section 5.24.140 at the time of each such payment. The total amount of money presented shall be applied against the amount of indebtedness. In no event shall any late charges, collection fees or other such service charges be deducted from the amount of the payment tendered to the pawnbroker. (Ord. O-89-61 § 1 (part), 1989).

5.24.230  **Property held-Time limit-Sale of unredeemed articles.**

A. The pawnbroker shall hold tangible personal property purchased by him through a purchase transaction for thirty days following the date of purchase, during which time such property shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.
B. The pawnbroker shall hold all tangible personal property pledged as security on a contract for purchase in his possession during the term of the contract for purchase, plus a period of ten days following the maturity date of the contract for purchase, during which time such goods shall be held separate and apart from any other tangible personal property and shall not be changed in form or altered in any way.

C. If the pledgor fails or neglects to cancel the contract for purchase by repayment of the balance of the principal and payment of all accrued interest charges, the pawnbroker shall mail a notice to the pledgor after the maturity date of the contract for purchase to the address designated in the books and records. The notice shall give the number of the pawn ticket, a description of the property pledged, and shall notify the pledgor that the contract for purchase must be canceled within ten days from the date of the notice, and specify the date, and that upon his failure to cancel the contract for purchase by that date, the pledged property shall be deemed forfeited to the pawnbroker and the right of the pledgor to cancel the contract for purchase shall be terminated. Such notice shall be in the form substantially as follows:

Lakewood, Colorado, _______________ 20______.

To: (Name)

(Street address)

(City, State, Zip Code)

You are hereby notified to cancel the contract for purchase on or before ten days from the above date, to wit: (Date), or the pledged property will be forfeited to the pawnbroker under the contract for purchase and your rights to the pledged property will thereafter be terminated. Your pawn ticket is No. ________, the property pledged by you as security is described as follows:

(general description of property)

(Pawnbroker)

(Pawnbroker's address)

D. The pawnbroker shall retain in his records the original notice, in its unopened envelope, if returned to the pawnbroker. If notwithstanding the notice the person making the contract for purchase fails to cancel the contract for purchase within the ten-day period designated in the notice, all right, title and interest of the pledgor to the pledged property shall be forfeited to the pawnbroker who shall acquire title to the property, and the debt become satisfied. (Ord. O-98-50 § 15, 1998; Ord. O-89-61 § 1 (part), 1989).
5.24.240  **Sale of articles represented by pawn tickets transferred to pawnbroker.**

Any tangible personal property deposited with a pawnbroker as security for a contract for purchase represented by a pawn ticket which has been transferred to the pawnbroker in accordance with Section 5.24.160 may be sold by the pawnbroker thirty days after such transference and appropriate notification to the Police Department. (Ord. O-2019-24 § 4, 2019; Ord. O-89-61 § 1 (part), 1989).

5.24.250  **Hold order.**

Any authorized agent of the Police Department may order a pawnbroker to hold any tangible personal property deposited with or in the custody of any pawnbroker for purposes of further investigation by the Police Department. A hold order shall be effective upon verbal notification to the pawnbroker by an authorized agent of the Police Department and shall be for a period of ninety days. The hold order may be extended for an additional period of ninety days by the Police Department for good cause. Written notice by facsimile of the hold order shall be provided to the pawnbroker within seventy-two hours of the verbal notification, unless the end of the seventy-two hour period falls on a Saturday, Sunday or holiday, in which event the written notification of the hold order shall be provided to the pawnbroker on the following Monday or the next business day following a holiday. A hold order shall supersede the provisions of Sections 5.24.230 and 5.24.240, and no sale or other disposition may be made of any tangible personal property deposited with or in the custody of the pawnbroker while the hold order remains in effect. Any sale or other disposition of the property after the pawnbroker has been notified by the Police Department of a hold order shall be unlawful and a violation of this provision. (Ord. O-2019-24 § 4, 2019; Ord. O-2005-9 § 7, 2005; Ord. O-98-50 § 16, 1998; Ord. O-89-61 § 1 (part), 1989).

5.24.260  **No deficiency or offsets permitted.**

The pawnbroker shall look to the property pledged for payment of the contract for purchase and in no event shall the pawnbroker look to the personal credit of the pledgor. No set-off shall be allowed the pawnbroker against the surplus or deficit arising out of another contract for purchase between the parties. In no event shall any deficiency balances be collected by the pawnbroker and in the event that such an attempt is made, the entire transaction shall be void. (Ord. O-89-61 § 1 (part), 1989).

5.24.270  **Unlawful transactions.**

A. It is unlawful for any pawnbroker, his employee, agent, or any other person acting on his behalf to make a contract for purchase, acquire a pawn ticket by transfer, or make a purchase transaction with the following:

1. Any person under eighteen years of age;
2. Any person under the influence of alcohol, or any narcotic drug, stimulant or depressant;
3. Any person known by such pawnbroker to have been convicted of a felony, without first notifying the Police Department;
4. Any person appearing to the pawnbroker to be in an abnormal mental state;
5. Any person whose actions would give the pawnbroker probable cause to believe the tangible personal property, which is the subject of a contract for purchase or purchase transaction with that customer was obtained illegally;
6. Any person in possession of tangible personal property, which is the subject of a contract for purchase or purchase transaction, with an identification number thereon which is obscured. For the purposes of this subsection the term "identification number" means a serial or motor number placed by the manufacturer or owner upon an article as a permanent individual identifying mark and "obscure" means to destroy, remove, alter, conceal or deface so as to render illegible by ordinary means of inspection.

B. With respect to a contract for purchase, no pawnbroker may permit any customer to become obligated on the same day in any way under more than one contract for purchase agreement with the pawnbroker which would result in the pawnbroker obtaining a greater amount of money than would be permitted if the pawnbroker and customer had entered into only one contract for purchase covering the same tangible personal property.


5.24.280 Unlawful to pawn certain items.
It is unlawful for any pawnbroker to accept in pledge, buy, sell, or display in his place of business any throwing star, any brass or metallic knuckles, any nunchaku, blackjack, or billy club, property with missing or altered serial numbers, or any other property which is illegal to possess. (Ord. O-2017-15 § 1, 2017; Ord. O-89-61 § 1 (part), 1989).

5.24.290 Safekeeping-Insurance.
Any pawnbroker licensed and operating under the provisions of this chapter shall provide a safe place for the keeping of pledged property received by him, and shall have sufficient insurance on the pledged property held by him for the benefit of the pledgor to pay fifty percent of the real value thereof in case of fire, theft, or other casualty loss, which policy shall be deposited with the City Manager or designee prior to approval of the license. Neither the pawnbroker nor surety shall be relieved from their responsibility by reason of such fire, theft, or other casualty loss, nor from any other cause, save full performance. (Ord. O-2019-24 § 4, 2019; Ord. O-89-61 § 1 (part), 1989).

5.24.300 Accepting lost or stolen articles.
A pawnbroker who accepts in pledge any tangible personal property as security for a contract for purchase from one who is not the owner thereof, obtains no title in the property either by reason of a pledgor's failure to cancel the contract for purchase or by transference of the pawn ticket to the pawnbroker by the pledgor thereof. Ignorance of the fact that the pledged property was lost or stolen shall not be construed to affect the question of title; and if the pawnbroker shall sell such article to a third person, he shall remain liable to the original owner in any appropriate legal action. The lawful owner may, upon proving his ownership of the lost or stolen property claim the same from the pawnbroker or recover the same by means of any appropriate legal action. (Ord. O-89-61 § 1 (part), 1989).
5.24.310 Seized property held by Police-Administrative hearing to determine possession.

A. When stolen property which was seized from the pawnbroker, without the written consent of the pawnbroker, his employee, agent, or any other person acting on his behalf, and held by the Police Department as evidence is no longer needed as evidence and there is no court order which concerns its disposition, the Police Department shall notify the pawnbroker, the person claiming to be the lawful owner of the property, and any other person who has notified the Police Department in writing of his claim of an interest in the property, of the right to an administrative hearing to determine who is entitled to possession of the stolen property. Such notice shall be sent by the Police Department to such persons by certified mail, return receipt requested. A request for an administrative hearing shall be filed in writing with the Police Department within fourteen days after the date the notice was mailed by the Police Department. The written request must include the person’s current address and a daytime telephone number, or in the case of a pawnbroker, his business address and telephone number.

B. In the event no request for a hearing regarding possession of the property in question is received by the Police Department within the time set out above, the Police Department shall return the property to the person claiming to be the lawful owner of such property, not to the pawnbroker. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 18, 1998).

5.24.315 Conduct of hearing regarding right to possession of seized property.

A. A hearing to determine the right to possession shall be conducted before a hearing officer designated by the City Manager within seventy-two hours of the Police Department's receipt of a written request for a hearing, unless the person requesting the hearing waives the right to a speedy hearing. Weekends and holidays are to be excluded from the calculation of the seventy-two hour period.

B. The hearing shall be conducted in an informal manner and shall not be bound by formal rules of evidence. The hearing officer may receive all or any part of the evidence in written form. The person demanding the hearing shall carry the burden of establishing by a preponderance of the evidence that such person has the right to possession of the property. The City does not warrant title to the disputed property by its decision.

C. At the conclusion of the hearing, the hearing officer shall prepare a written decision stating who is entitled to possession of the property. A copy of the written decision shall be mailed first class mail, postage prepaid, to the pawnbroker, the person claiming to be the lawful owner of the property, and to any person known to claim an interest in the property. The decision of the hearing officer shall be final and any appeal shall be to the Jefferson County District Court. The property shall be returned to the person determined to have the right to possession within thirty days after the date of the hearing officer’s decision or at such time as any appeals have been exhausted. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 19, 1998).

5.24.320 Liability for pledged property.

A pawnbroker shall be liable for the loss of pledged property or part thereof, or for injury thereto, whether caused by fire, theft, burglary, or otherwise, as a result of his failure to exercise reasonable care in regard to it. A pawnbroker shall not be liable, in the absence of an expressed agreement to the contrary, for the loss of or injury to pledged property which could not have been avoided by the exercise of due care. Nothing herein shall affect the right of the pledgor to insurance proceeds on such property. (Ord. O-89-61 § 1 (part), 1989).
   A. No license shall be valid for any location other than the location for which it is issued, except as hereinafter provided.
   B. Removal of a pawnbroker's place of business shall be permitted under the same license in accordance with the following procedure:
      1. A pawnbroker wishing to move his place of business within the city shall give written notice thereof to the City Clerk no less than thirty days prior to the date of relocation.
      2. The City Clerk shall enter an order permitting the change and amend the license accordingly if she finds the licensee has the right to possession of the proposed location and the location is reasonably accessible to the existing customers. If the City Clerk does not so find, she shall issue an order denying the pawnbroker such permission and notify the pawnbroker of the reason for the denial.
      3. If permission is denied, the pawnbroker may within ten days following notice of denial file a written request for review thereof with the City Clerk. The denial shall then be reviewed by the City Manager or designee, who shall have authority to affirm or reverse the denial.
      4. In the event the City Clerk approves the relocation, the pawnbroker shall mail written notice to each customer with whom the pawnbroker has an existing contract for purchase. Such notices shall be mailed at least fifteen days prior to the date of relocation. Any undelivered notice returned to the pawnbroker shall be retained in the records of the pawnbroker in the unopened envelope. The pawnbroker shall file an affidavit of mailing with the City Clerk together with a sample copy of the notice of relocation. (Ord. O-2019-24 § 4, 2019; Ord. O-89-61 § 1 (part), 1989).

5.24.340 Investigation-Right of entry.
   A. For the purpose of investigating violations of this chapter, any authorized agent of the Police Department may at any reasonable time investigate the business and examine the books, accounts, papers, and records of any licensed pawnbroker or any person, partnership, or corporation which engages in the business of pawnbroking within the city.
   B. Application for or acceptance of a license by a pawnbroker under the terms and provisions of this chapter shall constitute a continuing consent to entry by any authorized agent of the Police Department upon the pawnbroker's premises for the purpose of investigating the business and examining the books, accounts, papers, and records used therein, at any time during the term of the license, during regular business hours or whenever the pawnbroker, his employee, or agent is upon the premises, without compliance with the provisions of Chapter 1.12 of this code. Willful failure or refusal by the pawnbroker, his agent, or employee to permit entry upon the premises by any authorized agent of the Police Department as provided herein, after presentation of credentials and demand for entry, is a violation of this provision and shall be grounds for revocation of the pawnbroker's license. (Ord. O-2019-24 § 4, 2019; Ord. O-89-61 § 1 (part), 1989).

5.24.350 Hours.
   Pawnbroker establishments may be open for business only between the hours of 8:00 o'clock a.m. and 9:00 o'clock p.m. It shall be unlawful for a pawnbroker establishment to be open for business during any time other than the hours set forth herein. (Ord. O-98-50 § 20, 1998).
5.24.360 Videotape and photograph requirements.

Every pawnbroker shall videotape all transactions, including those which do not result in a contract for purchase or purchase transaction. The face of each customer who enters into a purchase transaction or contract for purchase shall be digitally photographed. The videotape and photograph shall be in a format approved by the Police Department and of such quality that it clearly displays an identifiable frontal image of the customer. Any such videotape shall be kept by the pawnbroker for a minimum of ninety (90) days and shall be subject to police review. If the videotape contains photographic evidence, it shall be held for one hundred and eighty (180) days. (Ord. O-2019-24 § 4, 2019; Ord. O-2007-28 § 3, 2007; Ord. O-98-50 § 21, 1998).

5.24.370 Transaction Fee.

A. Every pawnbroker shall pay to the City a transaction fee for each transaction involving a contract for purchase or purchase transaction. A transaction is limited to three (3) items of tangible personal property per ticket. The transaction fee shall be set by city council resolution.

B. For the purposes of the imposition of said transaction fee, a parcel of articles offered as one item and purchased for one set price shall be considered to be one item of tangible personal property. Tangible personal property with identifying marks on such property, including but not limited to any identification number, serial number, model number, or inscription, shall be individually itemized.

C. Individual components of a stereo or computer system shall be individually itemized. However, when a stereo or computer system is being offered as one item and purchased for one set price, only one transaction fee shall be imposed. (Ord. O-98-50 § 22, 1998).

5.24.380 Recovery of transaction fees, penalty, and interest.

A. All sums of money paid by the purchaser to the pawnbroker as transaction fees imposed by this chapter shall be and remain public money, the property of the city, in the hands of such pawnbroker, and he shall hold the same in trust for the sole use and benefit of the city until paid to the Director of Finance/City Treasurer.

B. 1. If a pawnbroker neglects or refuses to pay any transaction fee as required by this chapter, then the Director of Finance/City Treasurer shall make an estimate, based upon such information as may be available, of the amount of transaction fees due for the period for which the pawnbroker is delinquent and shall add thereto a penalty equal to the sum of fifteen dollars for such failure or ten percent thereof and interest on such delinquent transaction fee at the rate imposed under Section 5.24.400 plus one-half percent per month from the date when due, not exceeding eighteen percent in the aggregate.

2. Promptly thereafter, the Director of Finance/City Treasurer shall give to the delinquent pawnbroker written notice of such estimated transaction fee, penalty, and interest, which notice shall be sent by first-class mail directed to the last address of such pawnbroker on file with the City Clerk’s Office. Such estimate shall thereupon become a notice of deficiency.

C. The Director of Finance/City Treasurer is authorized to waive, for good cause shown, any penalty as provided in this chapter, and any interest imposed in excess of the rate determined pursuant to subsection B. of this section shall be deemed a penalty. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 23, 1998).
5.24.390 **Transaction fee deficiency.**

If the deficiency in payment of the transaction fee occurs without intent to defraud, there shall be added ten percent of the total amount of the deficiency, and interest in such case shall be collected at the rate imposed under Section 5.24.410 on the amount of such deficiency from the time the payment was due, from the pawnbroker, which interest and addition shall become due and payable twenty days after written notice and demand to such pawnbroker by the Director of Finance/City Treasurer. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 24, 1998).

5.24.400 **Interest rate on delinquent transaction fees.**

When interest is required or permitted to be charged under this chapter, the annual rate of interest shall be that rate of interest established by the State Commissioner of Banking pursuant to Section 39-21-110.5 of the Colorado Revised Statutes. (Ord. O-98-50 § 25, 1998).

5.24.410 **Interest on underpayment, overpayment, nonpayment or extensions of time for payment of transaction.**

A. If any amount of a transaction fee is not paid on or before the last date prescribed for payment, then interest on such amount at the rate imposed under Section 5.24.400 shall be paid for the period from such last date to the date paid. The last date prescribed for payment shall be determined without regard to any extension of time for payment and shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy, prior to the last date otherwise prescribed for such payment. In the case of a transaction fee in which the last date for payment shall be deemed to be the date that the liability for the transaction fee arises, and in no event shall such date be later than the date that notice and demand for the transaction fee is made by the Director of Finance/City Treasurer.

B. Interest prescribed under this section and Sections 5.24.380(B) and 5.24.390, shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as the transaction fee to which such interest is applicable.

C. If any portion of a transaction fee is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the transaction fee so satisfied for any period during which, if the credit had not been made, interest would have been allowed with respect to such overpayment. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 26, 1998).

5.24.420 **Other remedies.**

No provision of this chapter shall preclude the city from utilizing any other lawful penalties or other remedies applicable to the collection of transaction fees. The Director of Finance/City Treasurers shall have the authority to make a compromise settlement of any claim for transaction fees due under this chapter. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 27, 1998).

5.24.430 **Review by District Court.**

If the pawnbroker is aggrieved at the final decision of the hearing officer, then he may proceed to have same reviewed by the District Court. The procedure of review shall be in accordance with Colorado Rules of Civil Procedure 106. (Ord. O-98-50 § 28, 1998).
5.24.440  **Penalty.**

It shall be unlawful for any person to violate a provision of this Chapter. A person is criminally liable for conduct constituting an offense which he performs or causes to occur in the name of or on behalf of a pawnbroker to the same extent as if such conduct were performed or caused by him in his own name or behalf. Violators shall be subject to the penalties set forth in Chapter 1.16 of the Lakewood Municipal Code. (Ord. O-98-50 § 29, 1998).

5.24.450  **Rules and regulations.**

Rules and regulations may be promulgated by the City of Lakewood to further effectuate the terms of this chapter. (Ord. O-2019-24 § 4, 2019; Ord. O-98-50 § 30, 1998).

5.24.460  **Location of Pawnbroker Businesses.**

A. The business premises of a pawnbroker business shall not be located within one (1) mile of the business premises of another pawnbroker business. This restriction shall apply to all pawnbroker business licenses issued under this Chapter 5.24 after the effective date of this Ordinance O-2005-13, which date is May 15, 2005. This restriction shall not apply to the renewal of an existing pawnbroker business license nor shall it apply to the issuance of a pawnbroker license for an applicant who has received a City of Lakewood building permit prior to the effective date of this ordinance for a structure in which a pawnbroker business shall be located.

B. For the purpose of this subsection, the distance between pawnbroker businesses shall be measured in a straight line, without regard to intervening structures, objects, or City limits, from the closest exterior wall of one pawnbroker business to the closest exterior wall of the other pawnbroker business. (Ord. O-2019-24 § 4, 2019; Ord. 2005-13 § 1, 2005).
Chapter 5.25
CREMATORIES

Sections:
5.25.010 Crematories.
5.25.020 Standards.
5.25.030 Operations.
5.25.040 Licenses/permits required.
5.25.050 Appeal of license application denial.
5.25.060 Suspension or revocation of license.
5.25.070 Compliance and enforcement.

5.25.010 Crematories
A. Definitions
1. Annual Service: Means inspection, maintenance and repair of every system in a Crematory, including but not limited to electronics, burners, refractory, processing station, gas and air settings, and gas pressures. Annual Service also includes Operator instruction, training and certification.
2. Crematory: Any equipment, machine, device, contrivance or other article, and all appurtenances, used for the destruction or reduction by fire of human and/or animal bodies, body parts, and tissues.
3. Continuous Opacity Monitor and Recorder: A device installed in the crematory outlet stack, which provides the operator with an audible alarm signal when the opacity has exceeded a preset limit. The instrument continuously records opacity conditions electronically, on a medium acceptable to the City, allowing a determination when limits have been exceeded.
4. Day(s): As used in this Chapter, the words "day" or "days" means a calendar day or days.
5. Opacity: The degree to which an air pollutant obscures the view of an observer, expressed in percentage of obscuration or the degree (expressed in percent) to which transmittance of light is reduced by the air pollutant.
6. Operator: Any person operating a crematory furnace.
7. Owner: Any person having an ownership interest of any kind in a crematory. The term "Owner" includes each and every natural person having any ownership interest in any entity that owns a crematory.

5.25.020 Standards
A. Opacity. No person shall cause or allow the discharge, release, dispersal or escape into the atmosphere from any Crematory, for more than 60 continuous seconds, of any air emission that is a shade darker or density darker than 20 percent opacity. Prima facie evidence of a violation of this standard will consist of:
1. Results from a Continuous Opacity Monitor and Recorder; or
2. Visual determinations of opacity as determined by a Qualified Observer using the United States Environmental Protection Agency's Method 9 for the Visual Determination of the Opacity of Emissions from Stationary Sources, 40 C.F.R. Part 60, Appendix A-4, Method 9, with the exception that a violation will occur if five consecutive visual determinations are taken at fifteen second intervals and each is in excess of 20 percent opacity.

B. Construction. All Owners shall ensure that all existing crematories and newly constructed crematories shall comply with City of Lakewood building and fire codes and the air quality laws of the City of Lakewood, the State of Colorado and the United States.

C. Annual Service. All crematory furnaces within the City of Lakewood shall receive Annual Service by the manufacturer. Written evidence of the Annual Service shall be required in order to obtain the annual operating license required below. (Ord. O-2019-24 § 4, 2019; Ord. O-2002-25 § 1, 2002).

5.25.030 Operations.

A. Any Owner of a Crematory shall properly install and maintain in calibration, in good working order and operation, a Continuous Opacity Monitor and Recorder that continuously records opacity at all times during the cremation process and cool down periods. The Continuous Opacity Monitor shall meet or exceed the recommended specifications of the manufacturer of the Crematory to which the Continuous Opacity Monitor will be attached. The Continuous Opacity Monitor and Recorder shall also emit an audible alarm whenever the opacity standard is exceeded, which alarm shall not stop until the opacity limitation is met. All crematories existing in the City of Lakewood at the time this ordinance is enacted shall comply with the requirements in this subparagraph within 120 days of the effective date of this ordinance. Compliance with this subparagraph shall be a condition of receiving an annual license as is required under section 5.25.040 below.

B. The Continuous Opacity Monitor and Recorder shall be calibrated and maintained by the Owner in accordance with the manufacturer's specifications and shall be calibrated at least once each month. Written records of each calibration shall be kept by the Owner and submitted monthly to the City's Environmental Manager simultaneously with the monthly submission of electronic records of the Continuous Opacity Monitor and Recorder as provided below. The opacity meter shall be located after (downstream of) all control equipment, prior to the stack exit, and prior to dilution with ambient air. All readings from the Continuous Opacity Monitor and Recorder shall be recorded electronically using a method, and on a medium, acceptable to the City of Lakewood. Unless required more frequently by the Environmental Manager, all original daily electronic records of the crematory's Continuous Opacity Monitor and Recorder shall be delivered to the City's Environmental Manager monthly, within seven (7) days after the end of each calendar month. Data shall be stored, and delivered to the City of Lakewood, in a format compatible with the City of Lakewood's computer system. The Owner shall sign a written, notarized certification under oath, in form acceptable to the City of Lakewood, of the accuracy and truth of the original electronic records of the Continuous Opacity Monitor and Recorder at the time of each such submission.

C. The Owner shall maintain written records showing the number of cremations per day, the weight of each body (or portions thereof) cremated, and time of day of each cremation ("Cremation Records"). The Owner shall sign a written, notarized certification under oath, in form acceptable to the City of Lakewood, of the accuracy and truth of the Cremation Records. The sworn certification and the Cremation Records shall be submitted to the City's Environmental Manager simultaneously with the monthly submission of records of the Continuous Opacity Monitor and Recorder.
D. The Operator must be trained and annually certified by the manufacturer of the furnace. A trained, certified Operator must be physically present, and in active supervisory control, at all times during the cremation process and cool down periods.

E. The Operator shall immediately notify the City’s Environmental Manager, by telephone or fax, each time the opacity standard is exceeded and immediately take corrective action to stop the violation. In addition, no later than 11:00 a.m. on the next business day after each instance in which the opacity standard is exceeded, the Owner shall submit to the City’s Environmental Manager a written report describing in detail the cause of the exceedance, corrective measures taken, and the actions the Owner will implement to prevent a reoccurrence of the exceedance. The written report shall contain a signed, notarized certification under oath, in form acceptable to the City of Lakewood, of the accuracy and truth of the written report.

F. The Owner shall keep all electronic and written records required by this ordinance for at least three years. The records shall be kept in a place which is reasonably safe from destruction or theft and shall be open to inspection by the City of Lakewood.

G. It shall be unlawful to submit false information, records, certifications, reports or statements to the City of Lakewood, or to change, alter, deface in any way, discard or destroy the records of the Continuous Opacity Monitor and Recorder, the Cremation Records, or reports that the opacity standard has been exceeded.

H. It shall be unlawful to tamper with, or in any way impede or interfere with the operation of, the Continuous Opacity Monitor and Recorder. (Ord. O-2019-24 § 4, 2019; Ord. O-2002-25 § 1, 2002).

5.25.040 Licenses/permits required

A. License Required. It shall be unlawful to operate a crematory without the Owner first having obtained from the City of Lakewood's Public Works Department an annual license to do so. No license shall be issued without the written concurrence of the City’s Environmental Manager. License fees for the operation of a crematory shall be established, and from time to time may be changed, by resolution of the City Council. All crematories existing within the City of Lakewood at the time this ordinance is enacted shall obtain a license within 150 days of the effective date of this ordinance.

B. Initial License Issuance. Any person who wishes to obtain a license to operate a crematory shall demonstrate to the City of Lakewood that the crematory will be located, constructed and will operate in compliance with all applicable laws and regulations. An applicant for a license shall submit to the Public Works Department such information as it may reasonably require concerning the issuance and good standing of all necessary state or federal air permits, the structure and components of the crematory, the methods and procedures to be used to operate and control the crematory, hours of operation, anticipated emissions, emission control equipment, preventative maintenance program, training of the operator(s), regulatory and statutory compliance history, past and present locations of any other crematories owned or operated, location and surroundings, zoning, and such other information as may be reasonably required by the Public Works Department. The City of Lakewood may, in its sole discretion, place operating or other conditions on the issuance of a license. The City of Lakewood, in its sole discretion, may deny a license to operate a crematory to any person, or for any crematory, that: a) has not demonstrated to the City of Lakewood that the crematory is located, constructed, or will operate in compliance with all applicable laws and regulations; b) has failed to submit to the City of Lakewood any information reasonably required; or c) has a record of violating, or noncompliance with, laws and regulations applicable to the operation of a crematory in another location(s).
C. Reissuance of License. An applicant for reissuance of a license shall submit to the Public Works Department such information as it may reasonably require concerning the issuance and good standing of all necessary state or federal air permits, the structure and components of the crematory, the methods and procedures to be used to operate and control the crematory, hours of operation, anticipated emissions, emission control equipment, written proof of Annual Service within the preceding twelve (12) months, preventative maintenance program; training of the operator(s), regulatory and statutory compliance history, and such other information as may be reasonably required by the Public Works Department. The City of Lakewood may, in its sole discretion, place operating or other conditions on the reissuance of a license. The City of Lakewood, in its sole discretion, may deny reissuance of a license to operate a crematory to any person, or for any crematory, that: a) has not demonstrated to the City of Lakewood that the crematory is located, constructed, or operates in compliance with all applicable laws and regulations; or b) has violated any provisions of this Chapter in the preceding twelve (12) months; or c) has failed to pay within 30 days any fine imposed under this ordinance.

D. Processing of License Application. The Public Works Department shall approve, approve with conditions, or deny, an application for an annual license within 60 days from the time the application is deemed complete by the City of Lakewood. A denial shall be in writing, contain a description of the reasons for the denial, and shall be sent to the applicant by certified mail, return receipt requested, at the address specified in the application. An applicant shall have 30 days from mailing of a denial within which to correct the deficiencies. If the needed corrections are not made within the allowed period, the denial of the application shall be deemed final. If the applicant corrects the deficiencies to the reasonable satisfaction of the City of Lakewood, the denial shall be retracted and the application shall be approved. All applications for an annual license must be submitted sufficiently in advance of applicable deadlines, or license expiration dates, to permit the process described in this paragraph to fully take place before the expiration of the applicable deadline or license expiration date.

E. Change of Control. Any person who purchases or otherwise acquires control of a crematory shall notify the City of Lakewood in writing of the change of ownership or control, including in the notice the effective date of the change as well as the name, address and telephone number of the new owner or person in control. This notice shall be provided to the City’s Environmental Manager no less than ten (10) days after the effective date of the change in ownership or control.

F. Submission of Plans and Specifications. The Owner shall submit to the Public Works Department detailed plans and specifications before any crematory is constructed, modified, remodeled, extended or enlarged. The Public Works Department must approve the plans and specifications in writing before any such work is commenced. An appeal from any order (or the failure to issue an order when one is called for), requirement, decision or determination made by the City Building Official or his authorized representatives or other administrative officials shall be subject to the requirements and procedures of Chapter 14.12 of the City of Lakewood Municipal Code.

G. Appeal. In the event a license application is denied, or conditions are placed on the issuance of a license, by the Public Works Department, the applicant may appeal the decision as set forth in Section 5.25.050. (Ord. O-2019-24 § 4, 2019; Ord. O-2002-25 § 1, 2002).
5.25.050 Appeal of license application denial.

A. In the event that the Public Works Department denies a license application, or places conditions on the issuance of a license, an applicant shall have the right to a quasi-judicial hearing before the City Manager or designee for the purpose of appealing the Department's administrative decision. A written request for a hearing shall be made to the City Manager or designee within ten (10) days of the mailing date of the Department's written findings and decision denying the license application. The hearing shall be conducted within fourteen (14) days of the City Manager's or designee's receipt of the written request for a hearing unless a later date is requested by the applicant.

B. Upon receipt of a timely request for a hearing, the City Manager or designee shall schedule a hearing and notify the applicant of the date, time, and place of the hearing. Such notification shall be made by the City of Lakewood by telephone and a written notice shall also be mailed or delivered to the applicant at the applicant's address shown in the application. An applicant may be represented at the hearing by an attorney or other representative. An applicant or the City of Lakewood may request a continuation or postponement of the hearing date.

C. At the hearing, the City Manager or designee shall hear and consider such evidence and testimony presented by the City of Lakewood, the applicant, or any other witnesses presented by the City of Lakewood or the applicant which are relevant to the stated reason and basis for the Department's denial of the license application. The City Manager or designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

D. Not less than fourteen (14) days following the conclusion of the hearing, the City Manager or designee shall send a written order by certified mail, return receipt requested, to the applicant at the address as shown on the application. The order shall include findings of fact and a final decision concerning the approval or denial of the application. In the event that the City Manager or designee concludes that the application is approved, such approval shall constitute approval by the Department, and the applicant may seek issuance of a license in accordance with this Chapter.

E. The order of the City Manager or designee made pursuant to this section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the City Manager's or designee's decision shall be final upon the earlier of the date of the applicant's receipt of the order or four (4) days following the date of mailing. (Ord. O-2019-24 § 4, 2019; Ord. O-2002-25 § 1, 2002).

5.25.060 Suspension or revocation of license.

A. The City Manager or designee may suspend, revoke, modify, or place conditions on the continuation of a license upon a finding that the Licensee has violated any of the provisions of this Chapter.

B. Nothing in this Chapter shall prohibit the City of Lakewood from taking any other enforcement action provided for by the Lakewood Municipal Code, the laws of the State of Colorado, or of the United States.

C. A licensee shall be entitled to a quasi-judicial hearing before the City Manager or designee if the City of Lakewood seeks to suspend, revoke, modify or place conditions on a license based on a violation of this Chapter.
1. When there is probable cause to believe that a licensee has violated or permitted a violation of this Chapter to occur, the City Attorney may file a written complaint with the City Manager or designee setting forth the circumstances of the violation.

2. The City Manager or designee shall send a copy of the complaint by certified mail, return receipt requested, to the licensee at the address as shown on the license application, together with a notice to appear before the City Manager or designee for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the licensee's license should not be suspended, revoked, modified or subjected to new conditions. Such hearing shall be held on a date not less than fourteen (14) days following the date of mailing of the complaint and notice to the licensee. A licensee may be represented at the hearing by an attorney or other representative.

D. At the hearing, the City Manager or designee shall hear and consider such evidence and testimony presented by the City of Lakewood enforcement officers, the City of Lakewood, the licensee, or any other witnesses presented by the City Lakewood or the licensee which are relevant to the violations alleged in the complaint. The City Manager or designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

E. The City Manager or designee shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued not less than fourteen (14) days following the conclusion of the hearing. If the City Manager or designee determines that a violation did occur which warrants suspension, revocation, modification or conditioning of the license pursuant to this section, he shall also issue an order suspending, revoking, modifying or placing conditions on the license. A copy of the findings, conclusion, and order shall be mailed to the licensee by certified mail, return receipt requested, at the address shown on the license application.

F. For purposes of any appeal to the District Court, the City Manager's or designee's decision shall be final upon the earlier of the date of the applicant's receipt of the findings, conclusion, and order or four (4) days following the date of mailing of the City Manager's or designee's decision. The order of the City Manager or designee shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4).

G. In the event of suspension, revocation, modification, conditioning, or cessation of business, no portion of the license fee shall be refunded.

H. Any person whose license is suspended, revoked, modified or conditioned under this section shall be required to pay the costs including, but not limited to, attorney fees, expert witness and/or consultant fees, incurred by the City of Lakewood to enforce this ordinance. (Ord. O-2019-24 § 4, 2019; Ord. O-2002-25 § 1, 2002).

5.25.070 Compliance and enforcement

A. Inspections and Enforcement Authority. The City of Lakewood, through its Environmental Manager, or designee, and/or Code Enforcement Officers, shall conduct inspections, investigations, tests and/or audits of all crematories in the City of Lakewood at such times and under such circumstances as the City of Lakewood deems necessary. The Environmental Manager, or designee, and/or Code Enforcement Officers, are authorized to issue citations for violations of this ordinance. It shall be unlawful to hinder, prevent or refuse
B. to permit any inspection, investigation, test and/or audit performed in connection with the provisions of this ordinance. In the event that entry into a crematory for the purpose of inspection or investigation is denied, the City of Lakewood may apply to the Municipal Court or the State District Court for a warrant to permit the entry, inspection or the collection of evidence.

C. Violations. Any failure to comply with this Chapter shall constitute a violation of this ordinance. Each incident, and each day, of non-compliance shall be separate violations. Each violation of this ordinance shall be punishable by the penalties set forth in Section 1.16.020. Additionally, violations of this ordinance are declared to be a nuisance within the meaning of Chapter 9.80 of the Lakewood Municipal Code.

Costs and Charges. Any person who violates this ordinance shall be required to pay the costs and expenses incurred by the City of Lakewood in any civil action to enforce this ordinance including, but not limited to, attorney, expert witness and consultant fees. Such costs and expenses may be collected by the City of Lakewood in any civil action brought to enforce this ordinance or separately in any action at law. (Ord. O-2019-24 § 4, 2019; Ord. O-2017-16 § 6, 2017; Ord. O-2002-25 § 1, 2002).
Chapter 5.26
Concrete and Asphalt Plants

Sections:
5.26.010 Definitions.
5.26.030 License Required.
5.26.040 Transfer of License.
5.26.050 Appeals of Licensing Decision.
5.26.060 Suspension or Revocation of License.
5.26.070 Compliance and Enforcement.
5.26.080 Administrative Regulations Authorized.

5.26.010 Definitions.
Air Pollutant: One or more air pollutants defined by Colorado Revised Statutes § 25-7-103(1.5), as such statutory definition may be amended.
Application: A written application for a Concrete or Asphalt Plant license in a form approved by the City of Lakewood and including all supporting documentation and the Site Plan as described by section 5.26.030(C) and 5.26.030(D).
Asphalt Batch Plant (or Asphalt Plant): A facility used for the production of a mixture composed of aggregates and bituminous material that may include, but is not necessarily limited to one or more of the following: asphalt and aggregate, aggregate feeders, asphalt heater drum burners, loading facilities, material storage piles, vehicles and vehicular traffic, lime silos, fuel handling equipment, and fuel storage equipment.
City: The City of Lakewood, Colorado.
Concrete Batch Plant (or Concrete Plant): A facility used for the production of a mixture composed of aggregates, portland cement and water and which may include, but is not necessarily limited to one or more of the following: conveyor systems, feed hoppers, augers, silos, weigh hoppers, mixers, baghouses, elevated storage bins, storage piles, vehicles and vehicular traffic, fuel handling equipment, and fuel storage equipment.
Day: A twenty-four hour period of time from midnight to midnight, or other twenty-four hour period established in writing by the Department of Public Works.
Department: Public Works Department of the City of Lakewood, Colorado.
Director: The Director of Public Works or designee unless otherwise specified.
Emissions: The discharge or release into the atmosphere of one or more Air Pollutants.
Environmental Manager: The authorized person responsible for managing the Office of Environmental Management as established by Chapter 1.25 of the Lakewood Municipal Code.
Opacity: The degree to which an Air Pollutant obscures the view of a Qualified Observer, expressed in percentage of obscuration or the degree (expressed in percent) to which transmittance of light is reduced by the air pollutant.
Owner or Operator: Any person who owns, leases, operates, controls or supervises a Concrete or Asphalt Batch Plant (or part thereof) or the land on which such a plant is located.
Person: A natural person, joint venture, joint stock company, partnership, association, club, corporation, limited liability entity in any form, business, trust, organization or a manager, lessee, agent, servant, officer or employee of any of them.
5.26.010

Plant: All of the concrete or asphalt production activities, equipment, buildings, and facilities that are located on one or more contiguous or adjacent properties.

Qualified Observer: A person trained and certified to observe Opacity in accordance with the United States Environmental Protection Agency Method 9, 40 CFR Part 60, Appendix A-4, Method 9, as amended.

Site Plan: A document or group of documents containing sketches, text, drawings, maps, photographs and other material intended to present and explain certain elements of a proposed development, including but not limited to physical design, siting of building and structures, interior vehicular and pedestrian access, the provision of improvements and the interrelationship of these elements. A Site Plan shall be prepared in accordance with plan preparation criteria established by the City of Lakewood for Asphalt or Concrete Plants, which plan preparation criteria are attached as Exhibit A.


A. Emissions from Concrete or Asphalt Batch Plants.
   1. Emissions from a Concrete or Asphalt batch plant shall not exceed the following standards:
      a. Twenty percent (20%) opacity during normal operation of the plant. For purposes of this section, “normal operation” shall mean all periods of operation other than daily initial startup of the plant or adjustment of air pollution control equipment.
      b. Thirty percent (30%) opacity during periods of initial daily startup or adjustment of air pollution control equipment.
      c. Opacity percentages for (a) and (b) above shall be measured by a Qualified Observer using the United States Environmental Protection Agency’s Method 9 for the Visual Determination of the Opacity of Emissions from Stationary Sources, 40 CFR Part 60, Appendix A-4, Method 9, as such standards may be amended.
   2. Compliance with the Emission provisions of this ordinance will be determined by a Qualified Observer from or retained by the City, Jefferson County, or the State of Colorado.
   3. Emissions from material handling (i.e., loading; unloading, storage, transfer or hauling) shall be controlled at all times by the periodic or routine application of water to the surface of materials unless natural moisture is sufficient to control such Emissions.

B. Operations.
   1. Hours of Operation: The hours of operation of any Concrete or Asphalt Plant, including all ancillary activities including, but not limited to the operation of equipment or truck engines or any plant equipment producing noise, but excepting on-site security operations, shall occur only as follows:
      a. October 1 to May 31 between the hours of 6:00 a.m. and 9:00 p.m., Monday through Saturday, and between 7:00 a.m. and 9:00 p.m. on Sunday.
      b. June 1 to September 30 between the hours of 5:00 a.m. and 9:00 p.m., Monday through Saturday, and between 7:00 a.m. and 9:00 p.m. on Sunday.
      c. Applications for any temporary exemption from the provisions of this section shall be made to the City Manager or designee. In approving or denying a temporary exemption, consideration shall be given to effective dates, hours of operation, type of noise, location, loudness, equipment noise characteristics and public health, safety and welfare. Any temporary exemption approved hereunder may provide for, without limitation, a public
information program prior to operation under the exemption, restrictions on effective dates, hours of operation, type of noise, location, loudness and equipment type relating to that particular activity giving rise to the relief requested. The City Manager shall promptly notify the City Council of each temporary exemption approved.

2. Truck Routes: The Owner or Operator of any Concrete or Asphalt Plant shall submit to the City of Lakewood for approval a map showing pre-designated routes for all Transport Trucks traveling north, east, south and west between the plant and the nearest arterial street. The intent of this section is to control the route between the nearest arterial street and the plant, taking into consideration that the routes may be different depending on travel direction. The route maps shall restrict to the greatest extent possible the routing of Transport Trucks so as to eliminate or minimize routes that traverse residential neighborhoods, that unreasonably and adversely impact residential dwelling units, or that damage or degrade public streets from repetitive heavy weights or the spillage of materials from Transport Trucks. No plant operations shall commence until the City of Lakewood has approved the truck route map as conforming to the requirements of this section. Once the route map is approved by the City of Lakewood, all Transport Trucks shall travel the approved routes as shown on the route map unless a temporary diversion is necessary to avoid emergency or hazardous conditions along the approved route. The Owner or Operator shall promptly contact the Director in the event of any circumstance necessitating a diversion from the route map.

3. Surface Paving and Drainage: All areas of any Concrete or Asphalt Plant site on which Transport Trucks, customers, or employee-owned vehicles park, travel, maneuver, load or unload shall be paved with asphalt or concrete in accordance with City of Lakewood approved construction and pavement designs prepared by a Colorado-licensed professional engineer specializing in the geo-technical field. Such designs shall use the design parameters specified in the City Engineering Regulations, Construction Specifications and Design Standards and shall consider the anticipated traffic volume and vehicle types traversing such paved areas.
   a. The City Engineer is authorized to impose reasonable restrictions on the use of paved areas to ensure that any concrete or asphalt pavement remains undamaged by improper use. Such restrictions may include, but shall not be limited to, prohibiting use of specified paved areas by Transport Trucks, limiting access to specified paved areas by vehicles exceeding a specified weight, or requiring directional signage to prevent improper use of specified paved areas.
   b. All areas of the Concrete or Asphalt Plant shall include City of Lakewood approved engineered plans for grading, curb and gutter, pipes, swales or other similar drainage works, all designed and built in accordance with the Lakewood Engineering Regulations, Design Standards and Construction Specifications. These drainage works shall direct rainfall and other surface water to a stormwater detention/water quality control pond. Specific areas of the plant site may be exempted from this requirement by the City Engineer if the City Engineer determines it is physically infeasible to direct water from such areas to a stormwater detention/water quality control pond.

4. Tracking of Dirt, Mud, and Materials on Public Streets: Concrete and Asphalt Plants shall employ measures to limit the tracking, carrying, or depositing of aggregates, fillers, dirt, dust, mud, sludge, or other materials associated with the Concrete or Asphalt Plant upon any public street or thoroughfare.
a. All Transport Trucks and equipment leaving a Concrete or Asphalt Plant shall be completely rinsed of asphalt, concrete, aggregates, fillers, dirt, dust, mud, sludge, or other Plant materials prior to leaving the site.

b. All liquid residues resulting from the cleaning of Transport Trucks and equipment as required by section 5.26.020 B 4a shall be directed to an impervious process holding basin(s) approved by the City.

(i) Such process basin(s) shall be hydraulically separate from the stormwater detention/water quality control facilities which are required by section 5.26.020 B 3b above and by other ordinances and regulations of the City of Lakewood.

(ii) All liquids from such process basin(s) shall either be recycled through the plant or discharged to the sanitary sewer system. The process basin(s) shall be designed, maintained and operated to meet applicable statutory and regulatory standards for discharge from such basin(s).

(iii) All residual material from process basins shall be collected and disposed of or recycled, all in accordance with applicable laws and regulations.

(iv) After issuance of a license from the City of Lakewood per section 5.26.030, records evidencing proper disposition of residue material must be maintained on-site in a place that is reasonably safe from theft or destruction and made available upon reasonable request for City of Lakewood inspection. The record retention time shall be three (3) years for all records created after issuance of a license by the City of Lakewood.

c. Notwithstanding 5.26.020 B.3.b. and 5.26.020 B.4.b., the functions of a stormwater detention/water quality control pond and liquid residue process holding basin(s) may, with the approval of the City of Lakewood, be combined into a single facility where it can be demonstrated to the City of Lakewood that such a single facility will meet the discharge and water quality requirements provided for in 5.26.020 B.3.b. and 5.26.020 B.4.b.

5. Sweeping of Public Roads and Plant Pavement: If, on public roadways, there are visible tracks or deposits of aggregates, fillers, dirt, dust, mud, sludge, or any other material associated with the operation of a Concrete or Asphalt Plant along the travel path of vehicles exiting the plant site, all such public road(s)) shall be swept by the Owner or Operator at least once each day of operation or more often as reasonably required by the City to remedy and remove the tracking and deposit of aggregates, fillers, dirt, dust, mud, sludge, or any other material associated with the operation of a Concrete or Asphalt plant. The paved areas of the plant premises shall also be swept at least once each day of operation or more often as reasonably required by the City of Lakewood during plant operation hours when airborne dust from paved surfaces is crossing the property line of the plant premises. All such sweeping shall be done by a commercial grade mechanical, vacuum or regenerative air sweeper that uses water for controlling dust and is capable of removing caked-on debris from a paved surface with rotating brooms and which has an onboard storage hopper for debris that can be dumped off-site or into a truck. The Owner or Operator shall keep a daily written log of sweeping activities. The record retention time for the written log shall be one month for all sweeping records created after issuance of a license by the City of Lakewood.

C. Permits Required.

The Owner or Operator of any Concrete or Asphalt Plant shall obtain and shall maintain valid and current all federal, state, and local permits, authorizations, and certifications required for the operation of the Concrete or Asphalt Plant including, but not limited to Stormwater Industrial Discharge Permit(s), Process Water Industrial Permit(s), Air Permit(s) and Construction Permit(s).
5.26.020

D. Site Plan Required.

All Concrete or Asphalt Plant sites shall be improved in complete conformance with a City of Lakewood-approved Site Plan (as defined by section 5.26.010) and meeting the requirements of this Chapter, the Zoning Ordinance, the Lakewood Engineering Regulations, Construction Specifications and Design Standards and other applicable ordinances and regulations of the City. To obtain a license to operate a Concrete or Asphalt Plant from the City of Lakewood, the Owner or Operator shall meet all of the following requirements:

1. Obtain City of Lakewood approval of a Site Plan for the Concrete or Asphalt Plant in accordance with this Chapter.
2. Construct all site improvements shown on the City of Lakewood approved Site Plan.
3. Obtain final approval by the City of Lakewood of the constructed improvements.


A. License Required for All Concrete or Asphalt Plants. It shall be unlawful to operate a Concrete or Asphalt Plant without the Owner or Operator first having obtained a license issued by the Public Works Department with the written concurrence of the City’s Environmental Manager. License fees for the operation of a Concrete or Asphalt plant shall be established, and from time to time may be changed, by resolution of the City Council.

B. License Conditions and Requirements Authorized. The City of Lakewood may impose conditions and requirements on the issuance of a license that are reasonably necessary to ensure the operation of the Concrete or Asphalt Plant in accordance with this Chapter, the Zoning Ordinance, the Lakewood Engineering Regulations, Design Standards and Construction Specifications, other applicable ordinances and regulations of the City of Lakewood and state and federal laws and regulations.

C. License Application - Existing Asphalt or Concrete Plant. All Concrete or Asphalt Plants existing within the City of Lakewood at the time this ordinance is enacted shall submit and process an Application for a license in accordance with the following procedure:

1. Within 10 days after the effective date of this ordinance, the Owner or Operator shall contact, schedule, and meet with the City of Lakewood for pre-planning and discussion of the submission requirements of an Application as set forth in this Section 5.26.030 (C).
2. Within 75 days after meeting with the City of Lakewood in accordance with C1 above, the Owner or Operator shall submit all documentation and information identified below. The City of Lakewood may, at its discretion and upon a finding that such information is not required for the processing of an application for licensure of an existing Concrete or Asphalt Plant, waive or modify one or more identified Application submittal requirements. Any waiver of modification shall be effective only if made in writing by the City of Lakewood and any such waiver(s) shall be applicable only to the application under consideration.

   a. An Application in a form approved by the City of Lakewood which shall include identification, address, and contact information for the Owner or Operator of the Concrete or Asphalt Plant;
   b. Payment of all application or processing fees imposed for the application;
c. A title commitment dated not less than one (1) month from the date of application submittal evidencing the ownership and encumbrances of the property upon which all operations associated with the Concrete or Asphalt Plant are located;

d. Evidence that any necessary state and federal permits are current and valid for the Concrete or Asphalt Plant;

e. A route map illustrating the routes of Transport Trucks to and from the Concrete or Asphalt Plant as described in detail in Section 5.26.020 B 2;

f. An operational plan specifying the hours and days of operation, a sweeping plan for public roads and plant pavement specifying equipment for such sweeping, shift arrivals and departures, staffing requirements, and general security measures. Documentation pertaining to security measures may be marked as “confidential”;

g. Listing of the names and addresses of all Concrete or Asphalt Plants within Colorado owned or operated by the Owner or Operator of the Concrete or Asphalt Plant;

h. A summary description of all prior violations, within the previous three years, of federal, state and local laws or regulations for the asphalt or concrete plants listed as required in g) above pertaining to zoning, land use, environment or environmental protection, business licensing and plant operations. The Owner or Operator shall include a written explanation of the procedures or methods to be employed at the existing Concrete or Asphalt Plant to avoid or prevent similar violations as those experienced at the asphalt or concrete plants listed;

i. A detailed Site Plan prepared in accordance with the plan preparation criteria established by the City of Lakewood for Asphalt or Concrete Plants, which plan preparation criteria are attached as Exhibit A; and

j. Any other information or documentation reasonably required by the City of Lakewood to demonstrate or ensure conformance with the requirements and standards of this Chapter, the City of Lakewood Municipal Code, the City Engineering Regulations, Construction Specifications and Design Standards, the City building, fire, and safety codes, and with the air quality and hazardous waste laws of the State of Colorado and the United States.

3. Within 15 days after receiving an Application, the City of Lakewood shall mail written comments to the Owner or Operator via certified mail, return receipt requested, detailing specific deficiencies in the Application, if any, and identifying the corrective actions which must be taken by the Owner or Operator to remedy such deficiencies.

4. Within 15 days following receipt of the City of Lakewood’s written comments, the Owner or Operator shall correct all noted deficiencies in the Application in the manner specified by the City of Lakewood’s written comments and shall return the corrected Application to the City of Lakewood for further review. Failure of the Owner or Operator to timely correct cited deficiencies shall result in the denial of the Application.

5. Within 15 days following receipt of the corrected Application, the City of Lakewood shall conditionally approve a complete and properly corrected Application where the City of Lakewood finds that the Concrete or Asphalt Plant is operating or will operate in compliance with this Chapter and any applicable law or regulation following completion of the site plan improvements as provided in this Chapter. In addition to any other conditions necessary to ensure conformance with this Chapter and applicable law, the City of Lakewood’s conditional approval shall include a condition that all improvements illustrated in the approved Site Plan and other associated studies and reports shall be constructed within 240 days after the effective date of this ordinance. The City of Lakewood may administratively deny a license to operate a Concrete or Asphalt Plant where the City of Lakewood
finds that: (a) the Owner or Operator failed to demonstrate to the City of Lakewood that the Concrete or Asphalt Plant will operate in compliance with this Chapter or any applicable law or regulation; (b) the Owner or Operator failed to submit to the City of Lakewood any information reasonably required; or (c) the Owner or Operator has a record of violation or noncompliance with laws and regulations applicable to the operation of a Concrete or Asphalt Plant located in the City of Lakewood or of a Concrete or Asphalt Plant in another location. Any denial shall be in writing, contain a description of the reasons for the denial, and shall be sent to the Owner or Operator by certified mail, return receipt requested, at the Owner’s or Operator’s address as specified in the Application. An Owner or Operator shall have thirty (30) days from the date of mailing of a denial within which to correct all cited deficiencies. If the needed corrections are not made within the allowed period, the denial of the Application shall be deemed final.

6. Within 10 days following City of Lakewood’s conditional approval of the application, the Owner or Operator shall begin construction of the improvements shown in the Site Plan and shall complete all such improvements to the satisfaction of the City of Lakewood within 240 days after the effective date of this ordinance.

7. The City of Lakewood may enter into a written agreement with an Owner or Operator to extend the deadline for completion of improvements or phase the construction and completion of required improvements. Any such extension or phasing of construction shall be approved by the City of Lakewood only when the Owner or Operator demonstrates to the City of Lakewood by competent evidence that: (a) the extension or phasing is necessary due to circumstances beyond the control of the Owner or Operator; and (b) reasonable efforts have been employed by the Owner or Operator to obtain the license without undue delay; and (c) the delay in completion or phasing of completion of improvements will not significantly impair the health and safety of the public.

8. Upon completion of all improvements shown or described on the site plan and other associated studies and reports, and approval of such improvements by the City of Lakewood, an unconditional license shall be issued.

D. License Application - New Concrete or Asphalt Plant.

1. Application Requirements. Any Owner or Operator who wishes to obtain a license to operate a new Concrete or Asphalt Plant shall demonstrate to the City of Lakewood that the Concrete or Asphalt Plant will be located, constructed, and operated in compliance with this Chapter and with all applicable laws and regulations. An Owner or Operator for a license shall submit to the Public Works Department the following documentation or information:
   a. An Application in a form approved by the City of Lakewood which shall include identification, address, and contact information for the Owner or Operator, of the proposed Concrete or Asphalt Plant;
   b. Payment of all application or processing fees imposed for the application;
   c. A title commitment dated not less than one (1) month from the date of application submittal evidencing the ownership and encumbrances of the property upon which all operations associated with the proposed Concrete or Asphalt Plant will be located;
   d. Evidence that any necessary state and federal permits are current and valid or will be obtained prior to construction of the Concrete or Asphalt Plant;
   e. A route map illustrating the routes of Transport Trucks to and from the Concrete or Asphalt Plant as described in detail in Section 5.26.020 B 2;
   f. An operational plan specifying the hours and days of operation, a sweeping plan for public roads and plant pavement specifying equipment for such sweeping, shift arrivals and departures, staffing requirements, and general security measures. Documentation pertaining to security measures may be marked as "confidential";
g. Listing of the names and addresses of all Concrete or Asphalt Plants within Colorado owned or operated by the Owner or Operator of the proposed Concrete or Asphalt Plant;

h. A summary description of all prior violations of federal, state and local laws or regulations, within the previous three years, for the asphalt or concrete plants listed as required in g) above pertaining to zoning, land use, environment or environmental protection, business licensing and plant operations. The Owner or Operator shall include a written explanation of the procedures or methods to be employed at the proposed Concrete or Asphalt Plant to avoid or prevent similar violations as those experienced at the asphalt or concrete plants listed;

i. A detailed Site Plan prepared in accordance with plan preparation criteria required by the City for Asphalt or Concrete Plants, which plan preparation criteria are attached as Exhibit A; and

j. Any other information or documentation reasonably required by the City of Lakewood to demonstrate or ensure conformance with the requirements and standards of this Chapter, the Lakewood Municipal Code, the City Engineering Regulations, Construction Specifications and Design Standards, the City of Lakewood building, fire, and safety codes, and with the air quality and hazardous waste laws of the State of Colorado and the United States.

2. Application Completeness Review. Upon receipt of an Application, the Public Works Department shall determine whether the application submitted constitutes a complete application. Such determination shall be made within forty-five (45) days of the City of Lakewood’s receipt of the Application and within the 45 days the City of Lakewood shall notify the Owner or Operator in writing of the completeness of the Application and shall provide specific information regarding any deficiencies identified.

3. Application Review. The Public Works Department shall administratively approve, approve with conditions, or deny an application for issuance of a new license within 30 days from the date the Application is deemed complete by the City of Lakewood. Any approval or conditional approval shall include a condition that all improvements illustrated in the approved Site Plan or described in the approved Application shall be constructed by the Owner or Operator and approved by the City of Lakewood prior to issuance of a license. The City of Lakewood may administratively deny a license to operate a Concrete or Asphalt Plant where the City of Lakewood finds that: (a) the Owner or Operator failed to demonstrate to the City of Lakewood that the Concrete or Asphalt Plant will operate in compliance with this Chapter or any applicable law or regulation; (b) the Owner or Operator failed to submit to the City of Lakewood any information reasonably required; or (c) the Owner or Operator has a record of violation or noncompliance with laws and regulations applicable to the operation of a Concrete or Asphalt Plant located in the City of Lakewood or of a Concrete or Asphalt Plant in another location. Any denial shall be in writing, contain a description of the reasons for the denial, and shall be sent to the Owner or Operator by certified mail, return receipt requested, at the Owner’s or Operator’s address as specified in the Application. An Owner or Operator shall have thirty (30) days from the date of mailing of a denial within which to correct all cited deficiencies. If the needed corrections are not made within the allowed period, the denial of the Application shall be deemed final. If the Owner or Operator corrects the deficiencies to the reasonable satisfaction of the City of Lakewood and in accordance with this Chapter, the denial shall be retracted and such application shall be approved. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-6 § 1, 2004).
5.26.040 Transfer of License

Any person who purchases or otherwise acquires control of a Concrete or Asphalt Plant shall notify the City of Lakewood in writing of the change of ownership or control, including in the notice the effective date of the change as well as the name, address and telephone number of the new Owner or Operator. Such notice shall be provided to the City’s Environmental Manager no more than ten (10) days after the effective date of the change in ownership or control. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-6 § 1, 2004).


A. Appeal Hearing. An Owner or Operator shall have the right to a quasi-judicial hearing before the City Manager or designee for the purpose of appealing the Department’s administrative decision(s). A written request for a hearing shall be made to the City Manager or designee within ten (10) days of the mailing date of the Department’s written findings and decision denying or conditioning the license application. The hearing shall be conducted within fourteen (14) days of the City Manager’s or designee’s receipt of the written request for a hearing unless a later date is requested by the Owner or Operator. During the appeal process for an existing Asphalt or Concrete Plant, the plant may continue in operation provided, at a minimum, it remains in compliance with all state and federal laws and requirements.

B. Scheduling. Upon receipt of a request for a hearing, the City Manager or designee shall schedule a hearing and notify the Owner or Operator of the date, time, and place of the hearing. Such notification shall be made by a written notice and shall be mailed or delivered to the Owner or Operator at the Owner’s or Operator’s address shown in the application. An Owner or Operator may be represented at the hearing by an attorney or other representative. An Owner, Operator, or the City of Lakewood may request a continuation of the hearing date.

C. Conduct of Hearing. At the hearing, the City Manager designee shall hear and consider such evidence and testimony presented by the City of Lakewood, the Owner or Operator, or any other witnesses presented by the City of Lakewood or the Owner or Operator which are relevant to the stated reason and basis for the Department’s denial or conditioning of the license application. The City Manager or designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

D. Written Order. Not more than fourteen (14) days following the conclusion of the hearing, the City Manager or designee shall send a written order by certified mail, return receipt requested, to the Owner or Operator at the address as shown on the application. The order shall include findings of fact and a final decision concerning the approval or denial of the application. In the event that the City Manager or designee concludes that the application is approved or condition removed, such approval shall constitute approval by the Department, and the Owner or Operator may seek issuance of a license in accordance with this Chapter.

E. Appeal of Order. The order of the City Manager or designee made pursuant to this section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the City Manager’s or designee’s decision shall be final upon the earlier of the date of the Owner’s or Operator’s receipt of the order or four (4) days following the date of mailing. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-6 § 1, 2004).
5.26.060. Suspension or Revocation of License.

A. Suspension or Revocation. The City Manager or designee may suspend, revoke, modify, or place conditions on the continuation of a license upon a finding that the Licensee has violated any of the provisions of this Chapter, the Zoning Code, the Lakewood Engineering Regulations, Design Standards and Construction Specifications, other applicable ordinances and regulations of the City of Lakewood, or state or federal laws or regulations. During the appeal process, the Asphalt or Concrete Plant may continue in operation provided, at a minimum, it remains in compliance with all state and federal laws and requirements.

B. Other Enforcement Authorized. Nothing in this Chapter shall prohibit the City of Lakewood from taking any other enforcement action provided for by the Lakewood Municipal Code, the laws of the State of Colorado, or of the United States.

C. Hearing on Suspension or Revocation. A licensee shall be entitled to a quasi-judicial hearing before the City Manager or designee if the City of Lakewood seeks to suspend, revoke, modify or place conditions on a license based on a violation of this Chapter.

1. When there is probable cause to believe that a licensee has violated or permitted a violation of this Chapter or other laws to occur, the City Attorney may file a written complaint with the City Manager or designee setting forth the circumstances of the violation.

2. The City Manager or designee shall send a copy of the complaint by certified mail, return receipt requested, to the licensee at the address as shown on the license application, together with a notice to appear before the City Manager or designee for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the licensee's license should not be suspended, revoked, modified or subjected to new conditions. Such hearing shall be held on a date not less than fourteen (14) days following the date of mailing of the complaint and notice to the licensee. A licensee may be represented at the hearing by an attorney or other representative.

D. Conduct of Hearing. At the hearing, the City Manager or designee shall hear and consider such evidence and testimony presented by the City of Lakewood enforcement officers, the City of Lakewood, the licensee, or any other witnesses presented by the City Lakewood or the licensee that is relevant to the violations alleged in the complaint. The City Manager or designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

E. Written Findings. The City Manager or designee shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued not more than fourteen (14) days following the conclusion of the hearing. If the City Manager or designee determines that a violation did occur which warrants suspension, revocation, modification or conditioning of the license pursuant to this section, he shall issue an order suspending, revoking, modifying or placing conditions on the license. A copy of the findings, conclusion, and order shall be mailed to the licensee by certified mail, return receipt requested, at the address shown on the license application.
F. Appeals. For purposes of any appeal to the District Court, the City Manager’s or designee’s decision shall be final upon the earlier of the date of the Owner’s or Operator’s receipt of the findings, conclusion, and order or four (4) days following the date of mailing of the City Manager’s or designee’s decision. The order of the City Manager or designee shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4).

G. No Refund and Costs of Enforcement. In the event of suspension, revocation, modification, conditioning, or cessation of business, no portion of the license fee shall be refunded. Any person whose license is suspended, revoked, modified or conditioned under this section shall be required to pay the costs including, but not limited to, attorneys' fees, expert witness and/or consultant fees, incurred by the City of Lakewood to enforce this ordinance. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-6 § 1, 2004).


A. Inspections and Enforcement Authority. The City of Lakewood, through its Environmental Manager, or designee, Police Agents and/or Code Enforcement Officers, shall conduct inspections or investigations of all Concrete and Asphalt Plants in the City of Lakewood during regular business hours. The Environmental Manager, or designee, Police Agents and/or Code Enforcement Officers, are authorized to issue citations for violations of this ordinance. It shall be unlawful to hinder, prevent or refuse to permit any inspection or investigation in connection with the provisions of this ordinance. In the event that entry into a Concrete or Asphalt plant for the purpose of inspection or investigation is denied, the City of Lakewood may apply to the Municipal Court or the State District Court for a warrant to permit the entry, inspection or the collection of evidence.

B. Violations. Any failure to comply with this Chapter shall constitute a violation of this ordinance. Each incident, and each day, of non-compliance shall be separate violations. Each violation of this ordinance shall be punishable by the penalties set forth in Section 1.16.020. Additionally, violations of this ordinance are declared to be a nuisance within the meaning of Chapter 9.80 of the Lakewood Municipal Code.

C. Injunctions. The City of Lakewood may pursue injunctive relief for any violation of this Chapter as may be permitted by law.

Costs and Charges. Any person who violates this Ordinance shall be required to pay the costs and expenses incurred by the City of Lakewood in any civil action to enforce this ordinance including, but not limited to, attorneys' fees, expert witness and/or consultant fees. Such costs and expenses may be collected by the City of Lakewood in any civil action brought to enforce this ordinance or separately in any action at law. (Ord. O-2019-24 § 4, 2019; Ord. O-2017-16 § 7, 2017; Ord. O-2004-6 § 1, 2004).

5.26.080 Administrative Regulations Authorized.

The Director is authorized to promulgate administrative forms, guidelines, and criteria necessary to implement the provisions of this Chapter. (Ord. O-2004-6 § 1, 2004).
Chapter 5.28

SOLICITORS AND PEDDLERS

Sections:

5.28.010 Notice prohibiting solicitors.

5.28.010 Notice prohibiting solicitors.

Every resident of the city shall have the right to post a notice or notices upon his property, including but not limited to apartments, condominium units and detached residences, to the effect that peddlers, solicitors and hawkers shall not enter the premises or solicit or attempt to solicit orders or sales from the occupant or occupants thereof. Any person who shall go in or upon any place so posted without previous invitation so to do from the occupant or occupants thereof, for the purpose of soliciting orders for the sale of, or selling, goods, wares, merchandise, services, magazines, contracts, policies of insurance, stocks, bonds, rights, or anything of value, is guilty of an unlawful act. (Ord. O-82-133 § 1, 1982).
Chapter 5.29

COMMERCIAL WASTE HAULERS

Sections:
5.29.010 Definitions.
5.29.020 License Required.
5.29.030 License Not Required.
5.29.040 Application.
5.29.050 License Fee.
5.29.060 Insurance Required.
5.29.070 Hours of Operation.
5.29.080 Disposal.
5.29.090 Report of Changes.
5.29.100 Transferability.
5.29.110 Sanctions.

5.29.010 Definitions.
A. As used in this Chapter, the following words and terms shall be defined as follows:

“Commercial waste hauling” is the provision of a service of collecting, transporting or disposing of waste for another for a fee, by a private entity, on a regular or periodic basis, but shall not be construed to include the hauling, transporting, collecting or disposing of trash or waste by a construction contractor, which activity is directly associated with construction or excavation activities.

“Waste” includes all discarded matter from the preparation of food, all condemned food products, and all refuse and discarded matter from the handling, storage, preparation and sale of produce, and all substances which are discarded from dwellings, rooming houses, hotels, clubs, restaurants, boarding houses, eating places, shops, stores or other places of business, recreation, or residence. Septage, sewage, materials collected for reuse or recycling, and/or byproducts of waste water and/or water treatment facilities, shall not be defined as waste for the purposes of this Ordinance. (Ord. O-2014-6 § 1, 2014).

5.29.020 License Required.
A. It shall be unlawful for any Commercial Waste Haulers to operate within the City of Lakewood, Colorado, without a Commercial Waste Hauler License. (Ord. O-2014-6 § 1, 2014).

5.29.030 License Not Required.
A. The following persons or entities are not required to obtain a Commercial Waste Hauler License:

1. A Civic, community, benevolent or charitable nonprofit organization that collects, transports and markets materials for resource recovery solely for the purpose of raising funds for a civic, benevolent or charitable activity;

2. A person who transports waste or recyclable materials produced by such person;

3. A property owner or agent thereof who transports waste or recyclable materials left by a tenant upon such owner’s property, so long as such property owner does not provide waste
collection service for compensation for tenants on a regular or continuing basis;
4. A demolition or construction contractor or landscaper who produces and transports waste in the course of such occupation, where the waste produced is merely incidental to the particular demolition or construction work being performed by such person.
B. A copy of the Commercial Waste Hauler License must be kept in each Licensee’s vehicle while operating in the City of Lakewood.
C. Licensee’s vehicles must meet all state and federal motor vehicle safety requirements. (Ord. O-2014-6 § 1, 2014).

5.29.040 Application.
All applicants for a Commercial Waste Hauler License shall file an application for such license with the City Clerk on forms to be provided by the City Clerk. Each applicant will include name and address of headquarters and provide the number of trucks operating in the City of Lakewood, location of the disposal sight and other information as required by the City Clerk. (Ord. O-2019-24 § 4, 2019; Ord. O-2014-6 § 1, 2014).

5.29.050 License Fee.
The annual license fee of fifty dollars ($50.00) shall be payable to the City of Lakewood at the time an initial application for a Commercial Waste Hauler License is filed or at the time a renewal application is filed. Each license issued pursuant to this chapter shall be for a period of one year from the date of issuance, and an application for renewal shall be filed not less than thirty days (30) prior to the expiration of the period for which the license is issued. The City Manager or designee shall have the authority to set and change the license fee. (Ord. O-2019-24 § 4, 2019; Ord. O-2014-6 § 1, 2014).

5.29.060 Insurance Required.
A. Licensees are required to maintain the following levels of insurance and a copy of the insurance certificate shall be provided to the City Clerk:
   1. All motor vehicles used in the operation of the licensed business shall be insured under the laws of the State of Colorado.
   2. The Licensee shall at all times have Comprehensive General Liability Insurance with a minimum combined single limit of liability for bodily injury and property damage of one million dollars ($1,000,000.00) per occurrence and in the aggregate.
   3. The City of Lakewood shall be named as additional insured.
   4. Failure to maintain such insurance or to provide such evidence on request shall be cause for immediate revocation of the license. (Ord. O-2014-6 § 1, 2014).

5.29.070 Hours of Operation.
No Licensee shall operate any trash compacting mechanism on any motor vehicle nor engage in any trash, rubbish or garbage collection activity between the hours of ten (10) p.m., and seven (7) a.m., when such compacting or collection activities takes place within 300 ft of a residential use area or hotel. (Ord. O-2014-6 § 1, 2014).

5.29.080 Disposal.
Licensee’s must dispose of trash in a state or federally approved site or facility and the disposal shall meet all federal, state, county or City of Lakewood laws, rules, regulations and

5.29.090 Report of Changes.
The licensee shall report any relocation or change in ownership to the City of Lakewood within thirty (30) days of the change. (Ord. O-2019-24 § 4, 2019; Ord. O-2014-6 § 1, 2014).

5.29.100 Transferability.
Commercial Waste Hauler Licenses are not transferable. (Ord. O-2014-6 § 1, 2014).

5.29.110 Sanctions.
It shall be unlawful for any person to violate a provision of this Chapter. It shall be a violation of this Chapter for any person, firm or entity to engage in any commercial waste hauling within the City of Lakewood without first having obtained a Commercial Waste Hauler License. (Ord. O-2014-6 § 1, 2014).
Chapter 5.32
UTILITIES-B & O TAX

Sections:
5.32.010 Findings
5.32.015 Levy of tax.
5.32.020 Definitions.
5.32.025 Amount of tax.
5.32.030 Payment of tax.
5.32.035 Inspection of records.
5.32.040 Failure to pay; Interest on late payment; Penalty
5.32.050 Hearings and Appeals.

5.32.010 Findings.
The City Council of the City of Lakewood hereby finds:
A. Providers of basic local exchange service are currently subject to a business and occupation tax upon the business and occupation of providing basic local exchange service within the City of Lakewood and to the residents of the City of Lakewood. The City of Lakewood enacted such a tax in 1969 and has continuously maintained such tax.
B. The City of Lakewood recognizes that although the business of providing basic local exchange service was once a monopoly service under state law, it is now a competitive service under both state and federal law.
C. The City of Lakewood recognizes that multiple companies now provide basic local exchange service within Lakewood and more are likely to do so in the future.
D. There may be significant differences in the size of the basic local exchange service providers operating within the City of Lakewood, and the City of Lakewood's business and occupation tax should reflect such differences.
E. A business and occupation tax on providers of basic local exchange service should be uniform and nondiscriminatory and should not create barriers to entry into the business of providing basic local exchange service within Lakewood.
F. The business and occupation tax set forth in this chapter recognizes the difference in size of the providers of basic local exchange service that may operate within Lakewood and is uniform, nondiscriminatory and does not create barriers to entry.
G. The business and occupation tax set forth in this chapter is not a new tax, the extension of an existing tax or an increase in a tax, but is the reduction of an existing tax to new entrants in order to eliminate a potential barrier to the entry of new providers into the business of providing basic local exchange service within Lakewood and, further, intends to use definitions for the service subject to the business and occupation tax consistent with state and federal law.
H. The tax provided in this chapter neither increases nor reduces the amount of the tax levied against the incumbent provider of basic local exchange service.
I. This tax is nondiscriminatory to all providers of basic local exchange service because it is based upon the relative number of lines each company provides within Lakewood.
5.32.015 Levy of tax.
There is hereby levied a tax on and against each person engaged in the business or occupation of providing basic local exchange service within the City of Lakewood. (Ord. O-2015-3 § 13, 2015; Ord O-96-43 § 1 (part), 1996).

5.32.020 Definitions.
The following words and phrases as used in this section shall have the following meanings for the purpose of calculating the tax:

“Basic local exchange service” is the service that provides: (a) A local dial tone; (b) local usage necessary to place or receive a call within an exchange area; and (c) access to emergency, operator and interexchange telecommunications services. Basic local exchange service is also intended to be analogous to “telephone exchange service” as that term is defined in federal law, namely, service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or comparable service provided through a system of switches, transmission equipment or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service. The provision of cellular, mobile radio or any wireless voice service to any business, person or entity shall be deemed basic local exchange service for the purpose of determining the applicability of this business and occupation tax.


5.32.025 Amount of tax.
The amount of the tax levied shall be as follows:

A. Effective January 1, 2016, the tax rate shall be the 2014 monthly line charge adjusted by the percentage change in the U.S. Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index. This adjustment shall be based upon the August 2015 report of such index.

B. Each year thereafter the prior year’s monthly rate shall be adjusted by the percentage change in the U.S. Bureau of Labor Statistics Consumer Price Index for Denver-Boulder, all items, all urban consumers, or its successor index based upon the August report of the prior year. The new rate shall be effective on the following January 1.

C. The amount of tax levied against each basic local exchange provider shall be the monthly per line charge multiplied by the provider’s number of lines having a service address located within the City Ord. O-2019-24 § 4, 2019; for the reporting period. (Ord. O-2019-24 § 4, 2019; Ord. O-2015-3 § 13, 2015; Ord. O-96-43 § 1 (part), 1996).
5.32.030 **Payment of tax.**


5.32.035 **Inspection of records**

The City of Lakewood and its officers, agents or representatives shall have the right at all reasonable hours and times to examine the books and records of basic local exchange service companies that are subject to the provisions of this chapter and to make copies of the entries or contents thereof. (Ord. O-2015-3 § 13, 2015; Ord O-96-43 § 1 (part), 1996).

5.32.040 **Failure to pay; Interest on late payment; Penalty**

A. In any case in which a basic local exchange provider fails to remit the tax to the City of Lakewood within the time required by this chapter, there shall be added as a penalty ten percent (10%) of the total unremitting amount, but not less than fifteen dollars ($15.00), and interest in such cases shall be collected at the rate established by the State Commissioner of Banking pursuant to C.R.S. § 39-21-110.5 plus one-half percent (0.5%) per month, or fraction thereof, not exceeding eighteen percent (18%) in the aggregate, on the unremitting amount from the time the return was due to the date the tax is remitted, which interest and addition shall become due and payable within twenty (20) days after written notice and demand by the City Manager, and such interest shall be assessed, collected and paid in the same manner as the tax itself.

B. Payment of part but less than all of the unremitting amount, including interest, or interest and penalty, shall first be applied to the penalty, if any, second to accrued interest, and last to the tax itself.

C. If any basic local exchange service provider subject to the provisions of this chapter fails to remit the taxes as herein provided, the full amount thereof, plus interest and penalties as set forth in this section, shall be due and collected from such provider and is declared to be a debt due and owing to the City of Lakewood by such provider. The City Attorney, upon request of the City Manager, shall commence and prosecute to final judgment and determination in any court of competent jurisdiction an action to collect such debt in the name of the City of Lakewood. (Ord. O-2019-24 § 4, 2019; Ord. O-2015-3 § 13, 2015; Ord. O-96-43 § 1 (part), 1996: Ord. O-76-51 § 1 (part), 1976: Ord. 5 § 4, 1969 Series).

5.32.050 **Hearings and Appeals.**

A. Hearings by Finance Director/City Treasurer.

1. If any person contests any decision, deficiency notice or denial of refund received from the Finance Director/City Treasurer, such person may apply to the Finance Director/City Treasurer by petition in writing within thirty (30) days after such decision, deficiency notice or denial of refund is mailed to the person for a hearing, in which petition such person shall set forth the reasons why, and the amount by which, such tax should be reduced or the amount of the refund requested should be granted or the decision overturned. The Finance Director/City Treasurer shall notify the petitioner in writing of the time and place set for such hearing. After the hearing, the hearing officer shall make such order in the matter as is just and lawful and shall furnish a copy of such order to the petitioner.
2. Every decision of the hearing officer shall be in writing, and notice thereof shall be mailed to the petitioner within thirty (30) days after the hearing, and all such decisions shall become final and all amounts due shall be paid upon the expiration of thirty (30) days after notice of the decision shall have been mailed to the petitioner.

B. Review by District Court. If the petitioner is aggrieved by the final decision of the hearing officer, the petitioner may proceed to have such final decision reviewed by the District Court in accordance with C.R.C.P 106(a)(4). (Ord. O-2019-24 § 4, 2019; Ord. O-2015-3 § 13, 2015; Ord. O-2011-1 § 9, 2011).
Chapter 5.38

LAKEWOOD LIQUOR LICENSING AUTHORITY

Sections:
5.38.001 Purpose.
5.38.010 Definitions.
5.38.020 Licensing authority established.
5.38.025 Elimination of Distance Restriction for Hotel and Restaurant Licenses
5.38.030 Applications for new licenses.
5.38.040 Appearance before the licensing authority.
5.38.050 Investigation.
5.38.060 Public hearing.
5.38.070 Decision-New applications.
5.38.080 License renewals.
5.38.090 Change in management.
5.38.100 Optional Premises Liquor License
5.38.110 Alcohol Beverage Tasting
5.38.120 Special events permits.
5.38.130 Notice of Show Cause Hearing.
5.38.140 City liquor fee policy and purpose.
5.38.150 Fines in lieu of suspension.
5.38.160 Appeal of decision

5.38.001 Purpose.
Pursuant to the authority conferred by Articles 3, 4 and 5 of Title 44, Colorado Revised Statutes (“C.R.S.”), as amended, this chapter is enacted for the purpose of promoting the health, safety and welfare of the present and future inhabitants of the City of Lakewood by regulating, controlling and licensing the sale of fermented malt beverages and malt, vinous and spirituous liquors. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-87-7 § 1 (part), 1987).

5.38.010 Definitions.
As used in this chapter, the following words and terms shall be defined as follows:
A. “Applicant” means and includes:
   1. If an individual, that person making an application for a license under this chapter;
   2. If a partnership, the partners owning ten percent (10%) or more of the partnership which is making application for a license under this chapter;
   3. If a corporation, the president, vice-president, secretary, treasurer, the directors, manager and each stockholder owning ten percent (10%) or more of the stock of the corporation.
   4. If a limited liability company, it’s managing members and all members who hold ten percent (10%) or more interest in the LLC.
B. “Authority” means the Liquor Licensing Authority of the City.
C. “City Clerk” means the City Clerk or designee.
D. “Inspector” means the Liquor License Inspector.
E. “Investigator” means a member of the Police Department.
F. “Licensee” means the individual or entity to which a license is granted under this chapter.
G. “Manager” includes the person who manages, directs, supervises, oversees and administers the acts and transactions of and the acts of employees of the establishments governed by this chapter.

All other words and phrases used in this chapter shall have the meanings attached by the Colorado Statutes regulating the sale and service of fermented malt beverages and liquor, or if not otherwise defined by law, as used in their common, ordinary and accepted sense and meaning. (Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-89-35 § 1, 1989; Ord. O-87-7 § 1 (part), 1987).

5.38.020 Licensing authority established.
A. The Authority, previously established by City of Lakewood ordinance, shall be continued. The Authority shall have and is vested with the authority to grant or refuse licenses for the sale at retail of fermented malt, malt, vinous or spirituous liquors, as provided by law; conduct investigations as are authorized by law; and to suspend or revoke such licenses for cause in the manner provided by law. The Authority shall have all powers of a local licensing authority as set forth in Articles 3, 4 and 5 of Title 44, C.R.S., as amended.
B. The Authority shall consist of a Hearing Officer chosen by the City Council from a list of qualified persons compiled by the City Clerk.
C. The Authority may adopt reasonable fines and rules and regulations, governing its internal operations, and for carrying out the provisions of this chapter, in conformity with applicable statutes, ordinances and the City of Lakewood’s home rule charter.
D. The City Clerk shall serve as the official secretary of the Authority. The City Clerk may attend, but shall not be required to, the meetings of the Authority. The City Clerk, shall be responsible for posting and/or publishing all public notices as required by the Liquor Code. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-2008-10 § 1, 2008; Ord. O-96-3 § 1, 1996; Ord. O-87-7 § 1 (part), 1987).

5.38.025 Elimination of Distance Restriction for Hotel and Restaurant Licenses
Pursuant to C.R.S. § 44-3-313(1)(d)(III), Hotel and Restaurant licenses are hereby exempt from the distance restrictions imposed by C.R.S. § 44-3-313(1)(d)(I), as amended. (Ord. O-2019-7 § 1, 2019; Ord. O-2017-12 § 1, 2017).

5.38.030 Applications for new licenses.
A. The City Clerk shall receive all applications for licenses and, upon receipt of all license and occupation fees required by law and this chapter, shall issue licenses granted by the Authority.
B. All applications for new licenses for the sale of alcohol liquors at retail shall be filed with the City Clerk and shall be subject to the provisions of this Chapter and Articles 3 and 4 of Title 44, C.R.S., as amended. The City Clerk shall accept no application that is not complete in every detail. If any application is deposited with the City Clerk and found upon examination to contain any omission or error, it shall be returned to the applicant for completion or correction without further action either by the Clerk or the Authority. All licenses granted, except Special Event Permits, shall be valid for a period of one (1) year from the date of issuance unless revoked or suspended. No application shall be deemed complete unless accompanied by the following:
   1. All items required by statute.
2. Payment in full of City and State license fees and an additional fee for the actual and necessary expenses of processing the application, conducting a public hearing, investigating, and publishing and posting the required notices of such hearing.
3. Evidence from the City of Lakewood that the location of the proposed licensed establishment meets the requirements of the City of Lakewood’s zoning ordinance.
4. Copies of any agreement that confers a power of authority upon any party to manage, operate or supervise the affairs of the proposed licensed establishment and the acts of such party’s employee, whether such a contract or agreement is presently in effect or whether it is intended to become effective following issuance of a license.
5. An affidavit stating that the proposed licensed establishment is not located within five hundred feet (500’) of any public or parochial school or the principal campus of any college, university or seminary, as computed by direct measurement from the nearest property line of the land used for school purposes to the nearest portion of the building in which the liquor is to be sold, using a route of direct pedestrian access. The requirements of this subsection shall not apply to Hotel and Restaurant license applications.
6. If the applicant is applying for a Retail Liquor License or a Liquor-Licensed Drugstore License, an affidavit stating that the proposed licensed establishment is not located within 1,500 feet of another retail liquor license for off-premises sales. The distance shall be determined by a radius measurement that begins at the principal doorway of the proposed licensed establishment and ends at the principal doorway of the closest other retail licensed establishment.
7. Any petitions signed by parties in interest which demonstrate the needs of the neighborhood and the reasonable requirements of the neighborhood regarding issuance of the license are to be submitted to the City Clerk fifteen (15) days prior to the public hearing on the application. The fifteen-day requirement may be waived by the City Clerk for good cause.
8. Any other information, document or form the Authority deems necessary to carry out its duties as set forth in Title 44, Articles 3, 4 and 5, C.R.S., as amended, and all applicable regulations.
9. Other provisions in this section notwithstanding, where an applicant pursuant to a previous application under this chapter has submitted material, and if all such material is complete, current and in the possession of the City Clerk, the City Clerk may waive its resubmission.


5.38.040 Appearance before the Authority.
A. Upon acceptance of a completed application, the City Clerk shall schedule a public hearing upon the application to be heard not less than thirty (30) days from the date the application is accepted. The date of acceptance of the application by the City Clerk shall be deemed to be the date of filing of the application for the purposes set forth in the Colorado Revised Statutes. No application shall be accepted unless it is complete in all respects.
B. The applicant and its representative, if any, shall attend the public hearing on the application.
C. The City Clerk shall, at the time the application is accepted, set the boundaries of the neighborhood considered affected by the proposed licensed establishment. The applicant shall
have the opportunity at that time to give any evidence as to the propriety of the proposed
O-2016-14 § 2, 2016).

5.38.050 Investigation.
A. Such person or persons, as the City Clerk shall designate, shall be the Inspector, who
shall perform those inspection duties set forth in this chapter and such other duties as the City
Clerk may reasonably direct.
B. After the application has been accepted, the Investigator shall proceed with the
investigation of the applicant and the Inspector shall proceed with the inspection of the
premises.
C. The application is considered complete and accepted after the applicant(s) have been
photographed and fingerprinted. The following individuals shall present themselves to the
Lakewood Police Department to be photographed and fingerprinted:
  1. If the applicant is a natural person, that person.
  2. If the applicant is a partnership, those partners who have a ten percent (10%) or
     more financial interest in the partnership.
  3. If the applicant is a corporation, both the officers and directors, together with any
     person owning more than ten percent (10%) of the stock thereof.
  4. If the applicant is a limited liability company, the manager and those members having
     more than a ten percent (10%) interest in the company.
  5. Irrespective of the identity of the applicant, the manager of the proposed licensed
     establishment.
D. The Police Department shall conduct background investigations of the individuals
identified above, and for this purpose such individuals shall provide all information necessary for
the investigation. Where a partner or corporate officer, director or stockholder, member or
manager lives at such a distance from the city that travel would impose undue expense or
inconvenience, the Chief of Police or designee shall have the discretion to make other suitable
arrangements to obtain the necessary photographs, fingerprints and information. Where a
background investigation has been previously made of any individual identified in this section
either by the Police Department or another law enforcement agency, the Chief of Police or
designee shall have the discretion to use such investigation and may waive the finger printing
and photographing required by this section.
E. The Police Department shall acquire additional information as necessary to properly
carry out the provisions of Title 44, Articles 3, 4 and 5, C.R.S., as amended, the rules and
regulations promulgated thereunder by the Colorado Department of Revenue, the ordinances of
the City, and the rules and regulations of the Authority.
F. Any reports of the results of any investigation conducted by any City of
Lakewood department shall be delivered by the respective departments or officials to the City
Clerk. Not less than five (5) days prior to the date of the hearing on the application, the report of
the findings based on the investigation shall be mailed by the City Clerk to the applicant and,
upon request, to other interested parties. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-7 § 1, 2019;
(part), 1987

5.38.060 Public hearing.
A. The Authority shall establish procedures for all public hearings in conformity with the
laws of the state and ordinances and resolutions of the City of Lakewood.
B. The City Attorney’s Office and the applicant shall have the power to issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of any hearing which the Authority is authorized to conduct. It is unlawful for any person to fail to comply with any such properly issued subpoena.

1. Subpoenas shall be served in accordance with the Colorado Rules of Civil Procedure.
2. Upon failure of any witness to comply with such subpoena, the City Attorney may petition any judge of the Lakewood Municipal Court, setting forth that due notice had been given of the time and place of attendance of the witness and that service of the subpoena was proper, and requesting the court, after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify, or to produce books, records or other evidence, under penalty of punishment for contempt in the event of willful failure to comply with such order.

C. The City Clerk shall have the power to administer oaths. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016)

5.38.070 Decision-New applications.
Following the public hearing on new applications, the Authority shall render its decision no later than thirty (30) days thereafter; provided, however, that the Authority may continue the hearing to a date certain as may be required to gather necessary facts and evidence and to permit witnesses to testify, and the time limited herein shall run from the date of conclusion of the hearing, as continued. (Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-87-7 § 1 (part), 1987).

5.38.080 License renewals.
All renewal applications for fermented malt, malt, vinous and spirituous liquor licenses shall be submitted to the City Clerk on the prescribed forms no later than forty-five (45) days prior to the date upon which the license expires, except that the City Clerk, for good cause, may waive the time requirement set forth in this section. The forms shall be accompanied by all required fees and such additional materials as the Authority deems necessary to carry out the provisions of the Colorado Beer and Liquor Code, this chapter and all applicable regulations. No renewal application shall be accepted by the City Clerk which is not complete in every detail. No renewal shall be granted unless all applicable fees and taxes have been paid by the licensee. The City Clerk may administratively approve and issue all license renewals. If The City Clerk fails to approve a renewal, it shall be set for a public hearing before the Authority. (Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-87-7 § 1 (part), 1987).

5.38.090 Change in management.
A. Where any manager of a licensed establishment is changed, and the Authority has not previously approved such person as a manager, the licensee shall, within thirty (30) days of such change, file with the City Clerk the prescribed forms for a change of manager. A new manager of a Club, Hotel and Restaurant, Lodging and Entertainment or Tavern licensee shall present him/herself to the Police Department for photographing, fingerprinting and background investigation.

B. The City Clerk shall thereafter administratively approve a change of manager for any licensed establishment unless the Police Department recommends that the proposed manager be disapproved. In such event, the decision concerning such manager’s application shall be made by the Authority at a public hearing. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-2009-11 § 1, 2009; Ord. O-89-35 §§ 14, 15, 1989; Ord. O-87-
5.38.100  Optional Premises Liquor License

The following standards for the issuance of optional premises licenses or for optional premises for a Hotel and Restaurant license are adopted pursuant to the provisions of C.R.S. § 44-3-310, as amended. The standards adopted herein shall be considered in addition to all other standards applicable to the issuance of licenses under the Colorado Liquor Code for an optional premises license or for an optional premises for a Hotel and Restaurant license. These two (2) types of licenses for optional premises will collectively be referred to as “optional premises” in these standards unless otherwise provided.

A. An optional premises may be approved only when such premises is located on or adjacent to an outdoor sports and recreational facility and a fee is charged for the use of such facility as defined in C.R.S. § 44-3-103(33), as amended. The types of outdoor sports and recreational facilities which may be considered for an optional premises license include the following:
   1. Country club;
   2. Golf course and driving ranges;
   3. Ice skating areas;
   4. Swimming pools;
   5. Cultural centers, amphitheaters, and similar facilities.

B. There are no restrictions on the minimum size of the outdoor sports and recreational facilities eligible for an optional premises license. However, the Authority may consider the size of the particular outdoor sports and recreational facility in relationship to the number of optional premises requested for such facility.

C. There are no restrictions on the number of optional premises any single licensee may have on its outdoor sports or recreational facility. However, any applicant requesting approval of more than one (1) optional premises shall demonstrate the need for each optional premise in relationship to the outdoor sports or recreational facility and its guests. (Ord. O-89-59 § 1 (part), 1989)

D. When submitting an application for the approval of an optional premises, an applicant shall also submit the following information:
   1. A map or other drawing illustrating the outdoor sports or recreational facility boundaries and the approximate location of each optional premises requested.
   2. A legal description of the approximate area within which the optional premises will be located.
   3. A description of the method used to identify the boundaries of the optional premises when it is in use and how the licensee will ensure alcohol beverages are not removed from such premises.
   4. Proof of the applicant's right to possession of the optional premises.
   5. A description of the provisions made for storing malt, vinous and spirituous liquors in a secured area on or off the optional premises for future use on the optional premises.
   6. A description of the provisions made to control the dispensing of alcohol beverages to minors or visibly intoxicated individuals.

E. Pursuant to C.R.S. § 44-3-310(3), as amended, no alcohol beverages may be served on the optional premises until the licensee has provided written notice to the State and the Authority, at least forty-eight hours (48) prior to serving alcohol beverages on the optional premises. Such notice must contain the specific days and hours during which the optional premises are to be used. In this regard, there is no limitation on the number of days a licensee may specify in each such notice. (Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-
5.38.110 Alcohol Beverage Tasting Permit

Alcohol beverage tastings, as defined in this chapter, are permitted within the City of Lakewood only following approval of an application for an alcohol beverage tastings permit and subject to the limitations set forth in this Chapter and C.R.S. § 12-47-301(10), as amended.

A. Application for alcohol beverage tastings permit.

1. A retail liquor store or liquor-licensed drugstore licensee desiring to conduct alcohol beverage tastings must submit a permit application or permit application renewal for that purpose in accordance with this section of this Chapter.

2. An alcohol beverage tastings permit shall be valid for the period of the then-existing liquor license, and the permit may be renewed at the time of any liquor license renewal.

3. An application for an alcohol beverage tastings permit must be submitted to the City Clerk no later than ten (10) days prior to the date of the first alcohol beverage tasting requested in the application or at the time of license renewal, whichever occurs first.

4. At a minimum, the application must include the following information:
   a. The name of the licensee and location of the premises of the retail liquor store or liquor-licensed drugstore.
   b. A written plan to establish how the applicant will conduct tastings in compliance with the provisions of state statute and the City's Municipal Code, and without creating a public safety risk to the neighborhood. The licensee shall include diagrams.
   c. Schedule of the specific dates and times of requested alcohol beverage tastings for the period of the permit. Such schedule shall conform to all requirements imposed by Section D below.
   d. Following approval of a tastings permit and the tastings schedule by the City of Lakewood, the licensee may amend such schedule by delivering to the City Clerk, at least seventy-two (72) hours prior to an unscheduled event, a notice of amendment of the City of Lakewood-approved schedule.
   e. A copy of a current certificate of training for individuals who will conduct alcohol beverage tastings.
   f. Any other information requested by the City Clerk reasonably necessary to ensure compliance with the requirements of this section, state law or applicant regulation.

B. Application fee. The application fee for an annual tasting permit shall be $100 and shall be paid to the City at the time of application.

C. Decision on application. The City Clerk shall approve, approve with restrictions, deny or refer to the Authority the application for alcohol beverage tastings.

1. The City Clerk may deny an alcohol beverage tastings application if the application fails to establish that the applicant is able to conduct alcohol beverage tastings in compliance with this C.R.S. § 44-3-301(10), as amended, or if such alcohol beverage tastings create or threaten to create a public safety risk to the neighborhood. A decision to deny an application shall be made in writing and shall be provided to the applicant within five (5) business days of the date of the decision. The City Clerk may deny an alcohol beverage tastings application if the licensee has violated the Colorado Liquor Code during the twelve (12) months immediately preceding the date of the application. If such violation has occurred, the City Clerk shall have discretion to approve or deny the application based upon the following criteria:
   a. The length of time the licensee has been in business;
   b. The number of previous violations by the licensee, if any;
   c. The degree of cooperation with police and City of Lakewood officials in relation to the violation;
d. Whether the licensee's staff has attended alcohol awareness training, the number of people who have attended, and the number of times attended;

e. Whether the licensee has a process in place on the licensed premises to prevent similar future violations;

f. Whether the violation was committed by the owner or a person with a majority interest in the license or by employees of the licensee;

g. Any other circumstances provided by the licensee or others which may guide the City Clerk in determining sanctions whether to approve the application.

2. Approval of an application for alcohol beverage tastings shall also constitute approval of the schedule for tastings submitted with the application unless such schedule fails to conform to all applicable requirements.

D. Alcohol Beverage Tasting Regulations. The following regulations shall apply to all alcohol beverage tastings:

1. Tasting permits issued during the term of a current license shall be valid for the period of the then-existing liquor license. All other tasting permits shall be issued concurrent with the retail liquor store license and shall be valid for the term of said license.

2. No tasting may be conducted unless the licensee has provided written notice to the City Clerk at least seventy-two (72) hours in advance stating the specific days and hours on which the tasting(s) shall occur. There shall be no limitation on the number of days which a licensee may specify in each notice. However, no notice may specify any date which is beyond the current license period.

3. The size of an individual alcohol sample shall not exceed one (1) ounce of malt or vinous liquor or one-half (1/2) ounce of spirituous liquor. The licensee shall not serve more than four (4) individual samples to a patron during an alcohol beverage tasting.

4. Alcohol beverage tastings shall be conducted only during operating hours in which the licensee, upon whose premises the tastings occur, is permitted to sell alcohol beverages, and in no case earlier than 11:00 a.m. or later than 7:00 p.m. Alcohol beverage tastings may be no longer than five (5) hours, which must run consecutively.

5. The licensee shall prohibit patrons from leaving the licensed premises with an unconsumed alcohol sample.

6. The licensee shall promptly remove all open and unconsumed alcohol beverage samples from the licensed premises or shall destroy the samples immediately following the completion of the alcohol beverage tastings.

7. The licensee shall not serve any person under twenty-one (21) years of age or who is visibly intoxicated.

8. Alcohol samples shall be in open containers and shall be provided to a patron free of charge.

9. Alcohol beverage tastings may occur on no more than four (4) of the six (6) days of a week from a Monday to the following Saturday, not to exceed a total of one hundred four (104) days each calendar year.

10. No manufacturer of spirituous or vinous liquors shall induce a licensee through free goods or financial or in-kind assistance to favor the manufacturer's products being sampled at a tasting. The licensee shall bear the financial cost and all other responsibility for a tasting.

11. The alcohol used in alcohol beverage tastings shall be purchased through a licensed wholesaler, licensed brewpub or winery licensed pursuant to C.R.S. § 44-3-301(10)(c)(II), as amended.
12. A copy of the state certified training certificate(s) and the alcohol beverage tasting schedule must be available for inspection by the Authority representative or Police Department at all times during business hours.

13. A licensee conducting a tasting shall be subject to the same revocation, suspension, and enforcement provisions as otherwise apply to the licensee.

E. Inspection of the Licensed Premises. The licensed premises, including any places of storage where alcohol beverages are stored or dispensed, shall be subject to inspection by the State or City Clerk and investigators, or peace officers, during all business hours and all other times of apparent activity, for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by licensees, access shall only be required during business hours. Where any part of the licensed premises consists of a locked area, upon demand to the licensee, such area shall be made available for inspection without delay; and upon request by authorized representatives of the City Clerk or peace officers, such licensee shall open said area for inspection.

F. Appeal. A denial of the application may be appealed to the Authority. Said appeal shall be filed with the City Clerk within ten (10) days after the City Clerk’s decision. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-2008-9 § 1, 2008).

5.38.120 Special event permits.

The Authority shall establish a procedure to issue special event permits for sale by the drink only of fermented malt, malt, spirituous or vinous liquors as set forth in Title 44, Article 5 C.R.S., as amended, and the regulations promulgated thereunder. An application for a special event permit shall be accompanied by payment of all fees. When an event is held on municipal premises, proof of insurance acceptable to the City of Lakewood and naming the City of Lakewood as an additional insured must be filed with the application. The City Clerk may administratively approve the issuance of special event permits. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-97-71 § 2, 1997; Ord. O-87-7 § 1 (part), 1987)

5.38.130 Notice of Show Cause Hearing.

When the Authority issues an order to show cause why a license should not be suspended or revoked, the Authority shall give the licensee reasonable advance notice of the time and place of the hearing, nature thereof, the authority and jurisdiction under which it is to be held, and the violation(s) alleged in the complaint. Such notice shall be mailed to the licensee by first-class mail by the City Clerk and shall be served personally on the licensee at the last address furnished to the City of Lakewood by the licensee. At least ten (10) days prior to the hearing, the licensed premises shall be posted with a sign prepared and posted by the City Clerk, which contains notice of the hearing date, time and location. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-96-42 § 1, 1996)

5.38.140 City liquor fee policy and purpose.

A. The City Council finds, determines and declares that considering the nature of the business of selling fermented malt, malt, vinous and spirituous liquors and the relationship of such business to the municipal welfare, as well as the relationship thereof to the expenditures required of the City of Lakewood, and a proper, just and equitable distribution of the tax burdens within the City of Lakewood and all other matters properly to be considered in relation thereto, the classification of such business as a separate occupation is reasonable, proper, uniform,
non-discriminating and necessary for a just and proper distribution of the tax burdens within the City of Lakewood.

B. There is hereby levied and assessed for each year an annual City of Lakewood liquor occupation fee upon the business of selling malt, vinous and spirituous liquors in the City of Lakewood. Said fees shall be set by City Council resolution.

C. The City of Lakewood shall impose those fees necessary to defray the costs of processing the documentation of the activities of licensed establishments as allowed by law including, but not limited to, fees for a new license, a transfer of location or ownership, a renewal of a license, for late renewal, modification of premises, and a change in corporate name or trade name. Said fees shall be adopted by City Council resolution. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-97-71 § § 3, 4, 1997; Ord. O-97-42 §§ 1, 2, 1997; Ord. O-87-7 § 1 (part), 1987)

5.38.150  Fines in lieu of suspension.

The Authority is empowered to impose fines in lieu of the suspension of a license to sell alcohol beverages as provided for in C.R.S. § 44-3-601(3)(a), as amended. (Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016; Ord. O-87-56 § 1, 1987)

5.38.160  Appeal a decision.

Except as otherwise provided in this Chapter, any appeal of a decision made pursuant to this chapter, shall be in accordance with the provisions in C.R.S. § 44-3-802, as amended. (Ord. O-2019-7 § 1, 2019; Ord. O-2016-14 § 2, 2016).
5.41.010

Chapter 5.41

NON-ALCOHOLIC DANCE CLUBS

Sections:

5.41.010 Purpose.
5.41.020 Definitions.
5.41.030 License required – Fee-Display.
5.41.040 Application.
5.41.050 Application fee.
5.41.060 Determination of completed application.
5.41.070 Investigation.
5.41.080 Issuance; denial.
5.41.090 Renewal.
5.41.100 Unlawful acts.
5.41.110 Right of entry.
5.41.120 Suspension and revocation.
5.41.130 Term of license.
5.41.140 Appeals
5.41.150 Exemptions.
5.41.160 Transferability–Change of ownership–Change of corporate structure
5.41.170 Manager–Change of manager.
5.41.180 Nonconforming use.
5.41.190 Enforcement.
5.41.200 Severability.

5.41.010 Purpose.

A. The City Council hereby finds and declares that the operation of non-alcoholic dance clubs within the City of Lakewood requires regulation. To advance the public health, safety, and welfare, it is necessary to license and regulate what are commonly referred to as teen clubs and after-hours clubs by establishing a non-alcoholic dance club license.

B. To provide a place where teenagers and young adults can socialize with each other but not be subject to the potentially detrimental influences of older adults, it is necessary to restrict admission to a non-alcoholic dance club, prior to the hour of midnight, to those persons who have reached the ages of sixteen to twenty. After midnight, persons who have reached eighteen years of age could remain until four o’clock (4:00) a.m. while juvenile patrons would have to exit the premises of the non-alcoholic dance club.

C. The City of Lakewood does not currently regulate nightclubs and places of entertainment that do not serve alcoholic beverages. After-hours non-alcoholic dance clubs customarily attract large numbers of patrons at late hours, some of whom have been consuming alcoholic beverages and who come to such clubs only after liquor-licensed establishments have closed. As a result, non-alcoholic dance clubs generate a disproportionate number of police calls, create traffic, noise, and parking problems, negatively impacting nearby businesses and residences and generally requiring increased levels of City of Lakewood services. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-34 § 1, 2004).
5.41.020 Definitions.
As used in this chapter, the following words and terms shall be defined as follows:
“Authority” or “Licensing Authority” means the Lakewood Liquor and Fermented Malt Beverage Licensing Authority.
“City Clerk” means the City Clerk of the City of Lakewood or designee.
"Licensed premises" means the premises specified in an application for a license under this Chapter, which are owned or in possession of the licensee, within which such licensee is authorized to conduct a non-alcoholic dance club.
“Manager” includes the person or those persons who manage, direct, supervise, oversee, or administer the acts or transactions of employees or agents of the establishments governed by this Chapter.
"Non-alcoholic dance club" means a building, a part of a building, room, or premises, wherein in consideration of payment of an admission fee or other monetary gain, persons are admitted and music, whether live or recorded, vocal or instrumental and a dance floor or dance area is provided, but which is not licensed to serve or dispense alcoholic beverages.
"Person" means a natural person, partnership, association, company, corporation or organization or a manager, agent, servant, officer or employee thereof. (Ord. O-2004-34 § 1, 2004).

5.41.030 License required – Fee - Display.
A. No person shall be permitted to operate a non-alcoholic dance club in the City of Lakewood without a valid license as required by this Chapter.
B. The annual license fee for operating a non-alcoholic dance club shall be payable to the City Clerk at the time an initial application for a license is filed or at the time a renewal application is filed. The license fee is in addition to any application fee required by this Chapter. Annual license fees shall be nonrefundable unless an application is denied. The fee shall be five hundred dollars. In the future, all fees will be set by city council resolution.
C. Such license shall be prominently displayed at all times upon the premises for which the license was issued. (Ord. O-2004-34 § 1, 2004).

5.41.040 Application.
A. All applicants for a non-alcoholic dance club shall file a completed application for such license with the City Clerk on forms to be provided by the City Clerk. Each individual applicant, partner of a partnership, officer or director of a corporation, and manager of a limited liability company and all business managers, shall be named in each application form, and each of them shall be photographed and fingerprinted by the Police Department.
B. Each application for a non-alcoholic dance club license shall contain the following information and be accompanied by the following documents:
1. If the applicant is:
a. An individual, the individual shall state his legal name and any aliases and submit satisfactory proof that he is eighteen (18) years of age or older; if a foreign national, the individual shall submit satisfactory proof of legal status;
b. A partnership, the partnership shall state its complete name and the names of all partners, whether the partnership is general or limited, and provide a copy of the partnership agreement, if any;
c. 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 of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado, the names and capacities of all officers, directors, and the name of the registered corporate agent and the address of the registered office for service of process;
d. A limited liability company, the company shall state its complete name, the date of its formation, evidence that the company is in good standing under the statutes of the State of Colorado, or in the case of a foreign company, evidence that it is currently authorized to do business in the State of Colorado, and the name of the manager and registered agent and the address of the registered office for service of process.

2. Whether the applicant or any of the other individuals required to be listed in the application or any manager has been arrested or convicted of any criminal acts involving alcohol or narcotics or dangerous drugs or any crimes of moral turpitude and, if so, the criminal act involved, the date and place of the arrest, the conviction, and the disposition;

3. Whether the applicant or any of the other individuals required to be listed in the application or any manager are sex offenders required to register with local law enforcement agencies in accordance with § 18-3-412.5, C.R.S.;

4. Whether the applicant or any of the other individuals required to be listed in the application or any manager has previously operated or is currently operating or has been or is currently an officer, director, manager, partner, member, principal owner and/or employee of a legal entity which is operating or has operated an unlicensed non-alcoholic dance club and, if so, the name and location of the unlicensed club and whether such club has ever been declared a public nuisance, as well as the date and jurisdiction of such declaration as a public nuisance;

5. Whether the applicant or any of the other individuals required to be listed in the application or any manager has previously operated or is currently operating or has been or is currently an officer, director, manager, partner, member, principal owner and/or employee of any legal entity which has had a previous license under this Chapter or any other similar non-alcoholic dance club ordinance from another city or county denied, suspended, revoked, or declared a public nuisance, and, if so, the name and location of the club for which such license was denied, suspended, revoked, or declared a public nuisance, as well as the date of such denial, suspension, revocation, or declaration of public nuisance;

6. Whether the applicant or any of the other individuals required to be listed in the application or any manager holds any other licenses under this Chapter or other similar non-alcoholic dance club licenses from another city or county, and, if so, the names and locations of such other businesses;

7. Whether the applicant or any of the other individuals required to be listed in the application or any manager has previously operated or is currently operating or is currently an officer, director, manager, partner, member, principal owner and/or employee of any legal entity with an interest in a liquor licensed premise and if so, the name and location of the liquor licensed premises and whether such license has ever been denied, suspended, revoked, or declared a public nuisance, as well as the date of such denial, suspension, revocation, or declaration of public nuisance;

8. The location of the proposed non-alcoholic dance club, including a legal description of the property, street address, and telephone number(s), if any;

9. Satisfactory proof of the applicant's ownership or right to possession of the premises wherein the non-alcoholic dance club will be operated;
10. If the building wherein the non-alcoholic dance club will be operated is in existence, complete plans and specifications for the interior of the building;

11. Provide evidence from the Planning Department that the proposed location of such business complies with the locational requirements of the zoning ordinance;

12. The applicant's mailing address and residential address; and

13. The applicant's social security number, his federally issued tax identification number, and his date of birth.

C. Each application for a non-alcoholic dance club shall be verified by the oath or affirmation of the applicant or the applicant's authorized agent. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-34 § 1, 2004).

5.41.050 Application fee.

A. Each applicant, whether an individual, partnership, limited liability company, or corporation, shall pay an application fee at the time of submitting any application to the City Clerk. An application-processing fee shall be five hundred dollars. In the future, all fees will be set by city council resolution. Such application fee shall be nonrefundable.

B. Each applicant shall pay an application investigation fee in the amount then charged by the Colorado Department of Public Safety for each person who will be investigated as required by the Chapter. (Ord. O-2004-34 § 1, 2004).

5.41.060 Determination of completed application.

A. Not more than ten (10) days following submission of an application, the City Clerk shall review the application for completeness and conformance with the application requirements of Section 5.41.040. The City Clerk shall not accept for filing any application that is not complete in every detail. If an omission or error is discovered by the City Clerk, the application shall be rejected by the City Clerk and returned to the applicant together with a written explanation of the omission or error without further action by the City Clerk. Any application rejected by the City Clerk due to an omission or error may be resubmitted to the City Clerk when the omission or error has been remedied. For the purposes of this Chapter, the date the City Clerk determines that an application is complete and in conformance with the application requirements of Section 5.41.040 in every detail, shall be the date the application is deemed filed with the City Clerk.

B. All applicants shall promptly notify the City Clerk in writing in the event that any information contained in an application has changed or any information is discovered by the applicant to be incorrect in any way from what is stated on the application, and every applicant shall have the continuing duty to promptly update and supplement such information during the term of any non-alcoholic dance club license issued to the applicant. The failure to notify the City Clerk in accordance with this section within thirty (30) days from the date of such change or discovery, by supplementing or updating the application on file with the City Clerk, shall be grounds for revocation of any application approval or, where a license has been issued, for the suspension or revocation of an issued non-alcoholic dance club license. (Ord. O-2004-34 § 1, 2004).
5.41.070 **Investigation.**
A. Without undue delay following the City Clerk's determination that an application is complete, the City Clerk shall transmit the application to the Police Department for investigation of the background of each individual applicant and each of the other individuals required to be listed in the license application, and to investigate the accuracy of the information provided in the application. The investigation is intended to provide an opportunity to determine whether the application is in conformance with the requirements of this Chapter based on information and resources available to the City of Lakewood and to determine if any applicant or those individuals required to be listed in the license application has been convicted of any criminal act specified in Section 5.41.040 of this Chapter. The results of such investigation shall not be interpreted or construed as constituting an affirmation or verification by the City of Lakewood that the information contained in the application is factually correct or accurate.

B. The investigation required by this section should be completed within thirty (30) days after the application is submitted to the Police Department. The Police Department shall promptly forward the application and its completed investigation to the City Clerk for administrative review. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-34 § 1, 2004).

5.41.080 **Issuance; denial.**
A. An application with completed background investigation shall be administratively approved or denied by the City Clerk. If, after investigation and review, the City Clerk finds that:
1. The individual applicant, or each of the officers, directors, managers, partners, members, and/or principal owners of the applicant, and the applicant's manager are eighteen (18) years of age or older; and
2. The individual applicant, or each of the officers, directors, managers, partners, members, and/or principal owners of the applicant, and the applicant's manager has not been convicted of any criminal acts involving alcohol or narcotics or dangerous drugs or any crimes of moral turpitude;
3. The individual applicant, or each of the officers, directors, managers, partners, members, and/or principal owners of the applicant and the applicant's manager has neither operated nor been an officer, director, manager, partner, member, principal owner and/or employee of any legal entity which has operated a non-alcoholic dance club or liquor licensed premises whose license has been suspended or revoked, within five (5) years preceding the date of the license application whether by the City of Lakewood or any other jurisdiction; and
4. The individual applicant, or each of the officers, directors, managers, partners, members, and/or principal owners of the applicant, and the applicant's manager is not a sex offender required to register with local law enforcement agencies pursuant to § 18-3-412.5, C.R.S.; and
5. The applicant has submitted proof satisfactory to the Licensing Authority of the applicant's ownership or right to possession of the premises wherein the non-alcoholic dance club will be operated; and
6. The building wherein the non-alcoholic dance club will be operated currently is or will be, as reflected in the required plans and specifications, in compliance with all applicable ordinances, rules and regulations of the state of Colorado and the City of Lakewood; and
7. The applicant did not knowingly make a false statement or knowingly give false information in connection with the application; and
8. The individual applicant, or each of the officers, directors, managers, partners, members, and/or principal owners of the applicant and the applicant’s manager has neither operated nor been an officer, director, manager, partner, member, principal owner and/or employee of any legal entity which has operated a non-alcoholic dance club or liquor licensed premises which was determined to be a public nuisance under state, federal or local law within five (5) years prior to the date of application; and

9. The corporate or limited liability company applicant is in good standing or authorized to do business in the State of Colorado; and

10. The applicant is not overdue in payment to the City of Lakewood of taxes, fees, fines, or penalties assessed against him or imposed against him in relation to a non-alcoholic dance club;

Then the City Clerk shall, within fifteen (15) days of receipt of the application from the Police Department, administratively approve the issuance of a non-alcoholic dance club license to the applicant for use at the location identified in the license application as the licensed premises.

B. The applicant may present written documentation to the City Clerk regarding his criminal history, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant’s last criminal conviction and the consideration of the application for a license.

C. If, after investigation and review, the City Clerk determines that any of the criteria set forth in Subsection A. of this Section have not been established to his or her satisfaction, the City Clerk may deny the application. The City Clerk shall prepare written findings of fact stating the reasons or basis for the denial. A copy of the City Clerk’s findings shall be sent by certified mail, return receipt requested, to the address of the applicant as shown in the application within ten (10) days after the date of the City Clerk’s denial.

D. Until a certificate of occupancy has been issued for the building or structure in which the non-alcoholic dance club is to be located, no non-alcoholic dance club license shall be issued by the City Clerk.


5.41.090 Renewal.

A. As a prerequisite to renewal of an existing license issued pursuant to this Chapter, the applicant must pay the annual license fee and file a completed renewal application with the City Clerk not less than forty-five (45) days prior to the date of the license expiration. The City Clerk may waive the timely filing requirement where the licensee demonstrates in writing that the failure to timely file is not solely the result of the applicant’s negligence; provided that no renewal application shall be accepted by the City Clerk from any licensee after the license for which renewal is requested has expired.

B. A license that is under suspension may be renewed in accordance with this Section provided that such renewal shall not modify, alter, terminate, or shorten the period or term of the suspension. The suspension of a license shall not extend the term of the license or otherwise relieve the licensee from timely seeking renewal of the license in accordance with this Section. The City Clerk may administratively renew a license.

C. Upon its own motion or upon complaint, the Licensing Authority may conduct a public hearing on a renewal application. No such hearing shall be held until notice thereof has been sent by U.S. mail to the last address provided by the Licensee to the Licensing Authority and hand delivered to the licensed premises.
D. Prior to any renewal hearing, the Police Department shall provide to the Licensing Authority a report detailing any violation of federal, state or local laws which have occurred on the licensed premises, or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises, within the previous twelve (12) months.

E. After hearing, the Licensing Authority shall grant an application for renewal if all the criteria of Section 5.41.080 (A) of this Chapter continue to be met.

F. The Licensing Authority may deny a renewal application if violations of this Chapter or of any other state, federal or local law, have occurred on the licensed premises, or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises, within the previous twelve (12) months.

G. The Licensing Authority is authorized to place reasonable conditions and restrictions on any license at the time of renewal. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-34 § 1, 2004).

5.41.100 Unlawful acts.

A. It shall be unlawful for any person to:

1. Operate a non-alcoholic dance club without a valid license as required by this Chapter or to fail to display such license in a prominent place within the licensed premises so as to be readily available for inspection;

2. Operate a non-alcoholic dance club between the hours of four o'clock (4:00) a.m. and twelve o'clock (12:00) p.m. (noon);

3. Admit, or permit or otherwise facilitate the admittance into any non-alcoholic dance club, a customer or patron who is younger than sixteen (16) years old or older than twenty (20) years old between the hours of twelve o'clock (12:00) p.m. (noon) and twelve o'clock (12:00) a.m. (midnight);

4. Admit, or permit or otherwise facilitate the admittance into any non-alcoholic dance club or allow to be upon or remain within any non-alcoholic dance club, a customer or patron who is younger than eighteen (18) years old after twelve o'clock (12:00) a.m. (midnight);

5. Sell, serve, give away, dispose of, exchange or deliver or permit the sale, serving, giving or procuring of any narcotics or dangerous drugs or fermented malt beverages, or malt, vinous, or spirituous liquors within the licensed premises or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises;

6. Admit or allow to be admitted into any non-alcoholic dance club, persons in a number that exceeds the maximum occupancy of the licensed premises, as determined by the fire department having jurisdiction;

7. Operate or permit the operation of a non-alcoholic dance club in violation of Chapter 9.52 of the Lakewood Municipal Code, concerning noise;

8. Operate or permit the operation of a non-alcoholic dance club when the licensee or a manager is not physically present within the licensed premises;

9. Allow or permit any employee, customer, or patron to engage in a public display of indecency in violation of the Colorado Criminal Code or allow or permit any employee, customer, or patron to engage in acts of prostitution or negotiations for acts of prostitution within the licensed premises or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises;

10. Allow or permit any disorderly conduct or other criminal activity within the licensed premises or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises;
11. Admit or allow to be admitted into any non-alcoholic dance club, any person who is visibly intoxicated or visibly under the influence of drugs as a drug is defined in Section 12-22-303 (7), C.R.S.; or
12. Fail to immediately report to the Police Department any disorderly conduct, any other criminal activity, or violations of this Chapter occurring within the licensed premises or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-34 § 1, 2004).

5.41.110 Right of entry.
A. The application for a non-alcoholic dance club license shall constitute consent of the licensee and his agents or employees to permit the Police Department or any other agent of the City of Lakewood or appropriate fire district to conduct routine inspections, from time to time of the licensed non-alcoholic dance club during the hours such club is conducting business.

B. It shall be unlawful to hinder, prevent or refuse to permit any lawful inspection or investigation authorized under the terms of this Chapter. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-34 § 1, 2004).

5.41.120 Suspension and revocation.
A. The Licensing Authority may suspend or revoke a license upon a finding that:
1. The licensed premises has been inactive for at least three (3) months;
2. In the case of a non-alcoholic dance club license approved for a facility which had, at the time of such approval, not been completed, such licensed premises has not been placed in operation within six (6) months of the license approval;
3. A disturbance or criminal activity has occurred upon the licensed premises or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises;
4. The licensee or manager knowingly made a false statement or knowingly gave false information in connection with an application for a license or a renewal of a license;
5. The licensee, manager, or employee knowingly violated or knowingly allowed or permitted a violation of any provision of this Chapter;
6. A manager or employee of the licensed establishment is under the age of eighteen (18) years;
7. The licensee, in the case of a corporation or limited liability company, is not in good standing or authorized to do business in the State of Colorado;
8. The licensee is delinquent in payment to the City of Lakewood or State for any taxes or fees; or
9. Any person has allowed or permitted any violation of state, federal or local law, including the provisions of this Chapter, within the licensed premises or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the license premises.

B. Nothing in this Chapter shall prohibit the City of Lakewood from taking any other enforcement action provided for by local laws and regulations, the laws of the State, or of the United States.
C. A licensee shall be entitled to a quasi-judicial hearing before the Licensing Authority if the Licensing Authority seeks to suspend or revoke a license based on a violation of this Chapter.

1. When there is probable cause to believe that a Licensee has violated or permitted a violation of these provisions, state law, federal law, or local law, the City Attorney may file a written complaint with the Licensing Authority setting forth the circumstances of the violation.
2. The Licensing Authority shall send to the Licensee a copy of the complaint together with a notice of hearing before the Licensing Authority by U.S. mail to the last address provided by the Licensee to the Licensing Authority and by hand delivery to the licensed premises. The notice of hearing shall be conspicuously posted on the exterior of the licensed premises for a period of ten (10) days prior to date of the hearing. The notice shall direct the Licensee to appear before the Licensing Authority for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the operator’s license should not be suspended or revoked. Such hearing shall be held on a date not less than thirty (30) days following the date of mailing of the complaint and notice to the licensee.

D. At the hearing, the Licensing Authority shall hear and consider such evidence and testimony presented by the City Attorney, the operator, or any other witness, which is relevant to the violations, alleged in the complaint. The Licensing Authority shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

E. The Licensing Authority shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued not less than ten (10) days following the conclusion of the hearing. If the Licensing Authority determines that a violation did occur which warrants suspension or revocation of the license pursuant to this section, it shall also issue an order suspending or revoking the license. A copy of the findings, conclusion, and order shall be hand delivered or mailed to the licensee by certified mail, return receipt requested, at the address as shown on the license application.

F. For purposes of any appeal to the District Court, the Licensing Authority’s decision shall be final upon the earlier of the date of the applicant’s receipt of the findings, conclusion, and order or four (4) days following the date of mailing of the Licensing Authority’s decision. The order of the Licensing Authority shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4).

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

H. The Licensing Authority is authorized to place reasonable restrictions and conditions on any license as a result of disciplinary proceedings under this Section. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-34 § 1, 2004).

5.41.130 Term of license.
A. Any license issued under this Chapter shall be valid for a period of one (1) year from the date of issuance. (Ord. O-2004-34 § 1, 2004).

5.41.140 Appeals
A. In the event that the City Clerk denies an application or denies a transfer of ownership, an applicant shall have the right to a quasi-judicial hearing before the Licensing Authority for the purpose of appealing the City Clerk’s administrative decision. A written request for a hearing shall be made to the City Clerk within thirty (30) days of the date of the mailing of the City Clerk’s written findings and decision denying the application.
The hearing shall be conducted within thirty (30) days of the City Clerk’s receipt of the written request for a hearing unless the applicant requests a later date.

B. Upon receipt of a timely request for a hearing, the Licensing Authority shall schedule a hearing and notify the applicant of the date, time, and place of the hearing. The Licensing Authority may make such notification by telephone provided that a written notice shall also be mailed or delivered to the applicant at the applicant’s address shown in the application. An attorney may represent an applicant at the hearing. An applicant or the Licensing Authority may request a continuation or postponement of the hearing date.

C. At the hearing, the Licensing Authority shall hear and consider such evidence and testimony presented by the applicant, or any other witnesses presented by the City Attorney, which is relevant to the stated reason and basis for the denial of the application. The Licensing Authority shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

D. Not less than ten (10) days following the conclusion of the hearing, the Licensing Authority shall send a written order by certified mail, return receipt requested, to the applicant at the address as shown on the application. The order shall include findings of fact and a final decision concerning the approval or denial of the application. In the event that the Licensing Authority concludes that the application is approved, the applicant may seek issuance of a license in accordance with these provisions.

E. The order of the Licensing Authority made pursuant to this section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the Licensing Authority’s decision shall be final upon the earlier of the date of the applicant’s receipt of the order or four (4) days following the date of mailing. (Ord. O-2004-34 § 1, 2004).

5.41.150 Exemptions.

A. The following establishments or facilities are exempt from the terms of this Chapter:

1. Publicly-owned facilities, including the City of Lakewood recreation centers and community centers, public libraries, and public schools;
2. Any liquor licensed premises; or

B. An establishment that would otherwise be subject to the provisions of this Chapter is exempt when one of the following events is held at such establishment. This exemption shall be temporary and shall only apply during the period of time that one of the events listed below is being conducted in the establishment:

1. Events organized and operated by a charitable, civic, political, patriotic, religious, educational, recreational, fraternal, or cultural organization which is tax exempt pursuant to Section 501 (c) of the Internal Revenue Code of 1986, as amended; or
2. Dances, proms, and other social gatherings intended for students, organized and operated by a public or private elementary, middle, high school, college, or university. (Ord. O-2004-34 § 1, 2004).
5.41.160 Transferability - Change of ownership - Change of corporate structure.

A. Licenses issued under this Chapter shall not be transferable except as provided herein. Any change in the partners of a partnership or in officers or directors of a corporate licensee or manager of a limited liability company holding a non-alcoholic dance club license shall result in termination of the license of the partnership or corporation, unless such licensee, within thirty (30) days of any such change, files a written notice of such change accompanied by the application fee as required by this Chapter. Any such change shall be reported on forms provided by the City Clerk and shall require the names of all new partners of a partnership, officers, and directors of a corporation, and the manager of a limited liability company and any information as required by Section 5.41.040. The City Clerk shall administratively approve or deny such transfer upon the same terms as provided for in this Chapter for the approval or denial of a non-alcoholic dance club license.

B. 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.

C. 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 business or business entity and each geographical location. (Ord. O-2004-34 § 1, 2004).

5.41.170 Manager - Change of manager.

A. A registered manager shall be on the premises of a non-alcoholic dance club at all times that the business is open to the public. It shall be unlawful for any person to work as a manager in a non-alcoholic dance club without first registering with the City Clerk. A non-alcoholic dance club may have more than one registered manager.

B. The licensee shall pay a nonrefundable investigation fee in the amount then charged by the Colorado Department of Public Safety and a manager registration fee in the amount of seventy-five dollars. In the future, all fees will be set by city council resolution. Such registration fee shall be nonrefundable.

C. In the event a licensee changes the manager of a non-alcoholic dance club, the licensee shall immediately report such change and shall register the new manager on forms provided by the City Clerk within thirty (30) days of such change.

D. Failure of a licensee to report such a change or failure of the manager to meet the standards and qualifications as required in Section 5.41.080 shall be grounds for termination of the license. (Ord. O-2004-34 § 1, 2004).

5.41.180 Nonconforming Use.

A. Any establishments that exist within the City of Lakewood on the adoption date of this Chapter and that meet the definition of "non-alcoholic dance club" as provided herein are lawful uses that were not regulated prior to the adoption of this Chapter and may continue to exist and operate as legal nonconforming uses after the adoption date of said ordinance only if they otherwise comply with the provisions of this Chapter and the Lakewood Zoning Ordinance.

B. Any establishment that constitutes a nonconforming use pursuant to this Section may be continued if:
1. The owner thereof submits a complete application for a non-alcoholic dance club license within thirty (30) days of the effective date of this Chapter; and
2. The establishment is issued a non-alcoholic dance club license pursuant to this Chapter and otherwise complies with the provisions of this Chapter within three (3) months of the effective date of said ordinance. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-34 § 1, 2004).

5.41.190  Enforcement.
A. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.
B. Nothing herein contained shall prevent or restrict the City of Lakewood from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.
C. All remedies and penalties provided for in this Chapter shall be cumulative and independently available to the City of Lakewood, and the City of Lakewood shall be authorized to pursue any and all remedies to the full extent allowed by law. (Ord. O-2019-24 § 4, 2019; Ord. O-2004-34 § 1, 2004).

5.41.200  Severability.
Should any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Chapter or application thereof to any person or circumstance, be declared unconstitutional or invalid for any reason, such decision shall not effect the validity of the remaining portions of this Chapter, or its application to any other person or circumstance, and to this end, the provisions of this Chapter are declared to be severable. (Ord. O-2004-34 § 1, 2004).
Chapter 5.44
CABLE SYSTEMS

Sections:
5.44.010 Short title.
5.44.020 Definitions.
5.44.030 Purpose and characteristics.
5.44.040 Franchise-Required.
5.44.050 Franchise-Breach.
5.44.060 Nature of grant.
5.44.070 Rights limited.
5.44.080 Minimum Contents of Every Franchise.
5.44.090 Franchise-Bid request and Application Process.
5.44.100 Franchise-Applicant Review Process.
5.44.110 Franchise-Hearing-Notice-Grant or Denial.
5.44.120 Non-CFAR Franchise Applications.
5.44.130 Franchise-Renewal.
5.44.140 Applications for modification of Franchise.
5.44.150 Transfers and Transactions affecting ownership or control of Franchise facilities.
5.44.160 Prohibition of discriminatory or preferential practices.
5.44.170 Franchise-Annual fee.
5.44.180 Franchise-Fee not exclusive.
5.44.190 Franchise-Fee payment failure action.
5.44.200 Franchise-Compliance required.
5.44.210 Violation liability.
5.44.220 Penalties.
5.44.230 Section headings.

5.44.010 Short title.
The ordinance codified in this chapter shall be known as the Lakewood ordinance for regulation of cable systems. (Ord. O-2011-23 § 1, 2011; Ord. O-72-97 § 1, 1972).

5.44.020 Definitions.
As used in this chapter, the following words and terms shall be defined as follows:
“Affiliated Entity” or “Affiliate” shall mean any person or entity that is owned or controlled by, or under common ownership or control with, a Cable Operator, and provides any Cable Service or Other Service.
“Applicant” means an applicant for a cable franchise pursuant to the provisions of the Competitive Franchise Application Rule (“CFAR”) set forth in Part 76 of Title 47 of the Code of Federal Regulations, §76.41, and includes the Parent Corporation, its subsidiaries and Principals.
“Cable Operator” or “Operator” shall mean any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.
“Cable Service” shall mean (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For purposes of this definition, "video programming" is programming provided by, or generally considered comparable to programming provided by a television broadcast station; and "other programming service" is information that a Cable Operator makes available to all subscribers generally.

"Cable system" or "system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment, that is designed to provide Cable Service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

1. A facility that serves only to retransmit the television signals of one or more television broadcast stations;
2. A facility that serves subscribers without using any Public Rights-of-Way;

A reference to a Cable System includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics, and other equipment necessary to operate the Cable System.

"City" means the City of Lakewood, Colorado, its departments, divisions, and agencies, and all the territory within its existing and future territorial corporate limits.

"Franchise" refers to the authorization granted by the City of Lakewood to an Operator of a Cable System under this Chapter giving the Operator the non-exclusive right to occupy the space, or use facilities upon, across, beneath, or over any Public Rights-of-Way in the City of Lakewood, or to provide a specified Cable Service within a Franchise Area. Any Franchise shall be issued in the form of an ordinance, and must be accepted by the Franchisee to become effective in the time and manner specified in the City Charter, Lakewood Municipal Code, or the Franchise ordinance. Such Franchise shall not include or be a substitute for:

1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City of Lakewood required by the ordinances and laws of the City of Lakewood;
2. Any permit, agreement, or authorization required in connection with operations on, or in a specific part of, the public streets or property, including, by way of example and not limitation, street cut permits;
3. Any permits or agreements for occupying any property of the City of Lakewood other than Public Rights-of-Way or property of private entities to which access is not specifically granted by the Franchise including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the City of Lakewood or a private entity; or
4. The right to place devices in the Public Rights-of-Way, such as pay telephones, for end-user use in terminating or originating transmissions.

"Franchise agreement" means the separate agreement by which the franchise is granted to the franchisee, as required by this chapter.
“Franchise Area” means the area of the City of Lakewood that a Franchisee is authorized to serve by the terms of its Franchise Agreement or by operation of law.

"Franchise" means all Persons, holding a Franchise granted by City of Lakewood ordinance.

“Operator,” when used with reference to a Cable System, refers to a Person who has ownership of any part of such Cable System or has control over the use of any part of such Cable System through a lease, swap, rental or other similar bargained for arrangement.

“Parent Corporation” includes any entity with ownership or control of the Applicant.

“Person” means and includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City of Lakewood, unless the City of Lakewood department provides Telecommunications Service as defined herein.

"Public Rights-of-Way” means any public street and easement which, under the City Charter, the Lakewood Municipal Code, City of Lakewood ordinances, and applicable laws, the City of Lakewood has authority to grant Franchises, permits, or licenses for use thereof or has regulatory authority thereover, and as may be more specifically defined in the Franchise, license, or permit granting any right to or use thereof, excluding railroad rights-of-way. Public Rights-of-Way for the purpose of this Chapter does not include buildings, parks, poles, similar facilities, or property owned by or leased to the City of Lakewood, including, by way of example and not limitation, structures in the Public Rights-of-Way such as utility poles and light poles. For the purposes of this chapter, it shall also include any utility easement dedicated to the City of Lakewood.


5.44.030 Purpose and characteristics.

In order to enable the City of Lakewood to treat Persons providing similar Cable Services similarly, as may be appropriate to comply with applicable law and considering differences in circumstances, and to comply with requirements of federal law, the City of Lakewood requires individual Franchises for Persons who provide Cable Services in the City of Lakewood. No Franchise shall be exclusive. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011)

5.44.040 Franchise-Required.

A. The City Council from the City of Lakewood may grant to any Person, other than as stated herein, a nonexclusive Franchise to install, construct, operate and maintain a Cable System within the City of Lakewood limits. The award of such Franchises shall be made pursuant to the procedures, terms and conditions set forth in this chapter, and only to such Persons who offer to provide a Cable System under and pursuant to the terms and conditions of this chapter.

B. It shall be unlawful for any person to install, construct, operate or maintain a Cable System on streets within all or any part of the City of Lakewood without first obtaining a Franchise under and pursuant to the terms and provisions of this chapter. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011)

5.44.050 Franchise Breach.

A breach by a Franchisee of any material provision of a Franchise Agreement, in addition to constituting a breach of contract, constitutes a violation of this chapter. The cost of any
litigation incurred by the City of Lakewood to enforce this chapter or a Franchise granted pursuant hereto, or a Franchise Agreement, or in relation thereto, or in relation to the cancellation or termination of a Franchise, shall be reimbursed to the City of Lakewood by the Franchisee. Such costs shall include filing fees, costs of depositions, discovery, and expert witnesses, all other expenses of suit, and a reasonable attorney’s fee. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011; Ord. O-72-97 § 3(2), 1972).

5.44.060 Nature of grant.

A Franchise shall not convey title, equitable or legal, in the Public Rights-of-Way. The right granted is only the right to occupy those portions of the Public Rights-of-Way to which the City of Lakewood has the right to grant access, for the purposes and for the period stated in the Franchise, and, subject to the limitations in this section and elsewhere in this subtitle, the right may not be subdivided or subleased. Every Franchise shall be interpreted in a manner that conforms to the requirements of Article VIII of the Lakewood City Charter. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011)

5.44.070 Rights limited.

A Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City of Lakewood has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide a Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011)

5.44.080 Minimum Contents of Every Franchise.

In addition to satisfying the other applicable requirements of this Chapter, every Franchise for a Cable System shall contain the following provisions:

A. The Franchise shall provide that neither the granting of any Franchise, nor any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City of Lakewood as may exist at the time the Franchise is issued or thereafter be obtained.

B. The Franchise shall only authorize occupancy of the Public Rights-of-Way to provide the Services and for the purposes described in the Franchise.

C. A Franchise shall be a privilege that is held in the public trust and personal to the original Franchisee. The Franchise shall ensure that no Transfer of the Franchise may occur, directly or indirectly, without the prior consent of the City of Lakewood; except as contemplated by Section 5.44.150, or as otherwise expressly provided in this Chapter.

D. A Franchise shall ensure that any Person placing a Cable System in the Public Rights-of-Way will not unlawfully discriminate in hiring, in contracting, or in the provision of Services.

E. The Franchise shall be nonexclusive and for a specified term set forth in the Franchise. No Franchise granted hereunder, nor any renewal thereof, shall be for a term of more than fifteen years, unless the Council determines that a longer period would be in the City of Lakewood’s interest. A renewal may be granted pursuant to Section 5.44.130 hereof.

F. A Franchisee shall at all times be subject to and shall comply with all applicable federal, state and local laws and regulations. Further, a Franchisee shall at all times be subject to all lawful exercise of the City of Lakewood’s police power including, but not limited to, all rights the City of Lakewood may have regarding zoning, supervision of construction, control of rights-of-way, customer service and consumer protection.
G. A Franchise shall require continuous and uninterrupted service to the public in accordance with the terms of the Franchise throughout the entire period thereof.

H. At the expiration of the term for which a Franchise is granted or upon the termination and cancellation as provided therein, the franchisee shall be required to remove at its own expense any and all portions of the Cable System from the public rights-of-way within the City of Lakewood.

I. A Franchisee shall indemnify and hold harmless the City of Lakewood at all times during the term of the Franchise and will be responsible for all damages and penalties which the City of Lakewood may be legally required to pay as a result of granting the Franchise. In the case suit is filed against the City of Lakewood either independently or jointly with the Franchisee to recover for any claim or damages, the Franchisee, upon notice to it by the City of Lakewood, shall defend the City of Lakewood against the action and, in the event of a final judgment being obtained against the City of Lakewood, either independently or jointly with the Franchisee solely by reason of the acts of the Franchisee, the Franchisee will pay the judgment and all costs and hold the City of Lakewood harmless therefrom.

J. A Franchisee shall have no recourse whatsoever against the City of Lakewood or its officers, boards, commissions, agents or employees for any loss, cost, expense or damage arising out of any provision or requirement of a Franchise or because of its enforcement.

K. Such other terms as are required to be included by the City Charter.

L. The Franchise shall contain such further conditions or provisions as may be included in a request for proposal and/or negotiated between the City of Lakewood and the Franchisee, except that no such conditions or provisions shall be such as to conflict with any provisions of this Chapter or other law. In case of such conflict, or ambiguity between any terms or provisions of the Franchise Agreement and this Chapter, the words of this Chapter shall control. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011; Ord. O-84-82 § 2, 1984; Ord. O-72-97 § 6(2), 1972).

5.44.090 Franchise-Bid request and Application Process.

A. An application may be filed by any Person on that Person’s own initiative or in response to a request for proposals. The City Manager is authorized to issue requests for proposals from time to time.

B. Instructions.

1. An Applicant for a competitive cable Franchise shall include the requisite information set forth below, in writing, in its Franchise application, in addition to any information required by 47 C.F.R. §76.41 and applicable state and local laws and the application fee set by resolution of the City Council. For purposes of this Section, a competitive cable Franchise shall mean a Franchise in an area currently served by another cable operator or cable operators in accordance with 47 U.S.C. 541(a)(1).

2. The City of Lakewood shall accept and review only those applications that include complete responses to every requirement of this Section. Submission of an application that does not include the requisite information set forth in this Section and the application fee shall not commence the time period for granting or denying the application set forth in 47 C.F.R. §76.41(d). The Applicant shall submit additional or updated information as necessary to ensure the requisite information provided is complete and accurate throughout the City of Lakewood’s review of the application.

3. Applications shall be made to the City Manager.

4. Upon request, the City of Lakewood will promptly provide access to documents or information in its possession or control that are necessary for the completion of this application, provided that the
Applicant does not otherwise have access to such documents or information and that such documents or information are subject to disclosure under Colorado open records laws.

C. Requisite Application Information:
   1. Identification and Ownership Information. The application shall include:
      a. The name, address, telephone number and web site (if applicable) of the Applicant and the proposed Franchisee (if different from Applicant), and
      b. The name, address, primary telephone number and primary e-mail address of all individual(s) authorized to represent the Applicant before the City of Lakewood during its consideration of the Franchise(s) requested, including the Applicant’s primary contact and any additional authorized contacts.
   2. Business Structure.
      a. If a corporation, the Applicant shall provide
         1. A list all officers and members of the Board of Directors, their principal affiliations and their addresses;
         2. A certificate of good standing indicating that the Applicant is licensed to do business in the State of Colorado; and
         3. A statement indicating whether the Applicant is directly or indirectly controlled by another corporation or legal entity. If so, Applicant shall attach an explanatory statement and respond to subsections 1.a. and b above concerning the controlling corporation.
      b. If a partnership, the Applicant shall
         1. Describe the structure of the partnership and the interests of general and limited partners; and
         2. State whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, Applicant shall attach an explanatory statement and respond to subsections 1.a. and b, or 2.a above, as applicable, concerning the controlling entity.
      c. If a limited liability company, the Applicant shall
         1. Describe the structure of the entity and the interests of members;
         2. A list all officers and members of the Board of Directors, their principal affiliations and their addresses;
         3. A certificate of good standing indicating that the Applicant is licensed to do business in the State of Colorado; and
         4. State whether the Applicant is controlled directly or indirectly by any corporation or other legal entity. If so, Applicant shall attach an explanatory statement and respond to subsections 1.a. and b, or 2.a above, as applicable, concerning the controlling entity.
      d. If any other form of legal entity other than a corporation, partnership or limited liability company, the Applicant shall describe the structure of the entity and the interests of its owners, and provide additional information that approximates the kind of information for the entities described in subsections a, b and c above.
   3. Experience.
      a. Current Franchises. An Applicant shall list all Cable Systems in which it or any Affiliate owns more than five percent of the system. If an Applicant owns more than five Cable Systems in Colorado as well as Cable Systems in other states, it need only list the Cable Systems in Colorado. For each system Applicant shall include name of system, address, communities served, number of subscribers, number of homes passed, date of system award, duration (start and end date) of franchise, status of construction, and percent of penetration of
homes passed as of most recently available date (indicate date).

b. Potential Franchises. An Applicant shall list communities where it or any Affiliate currently has a formal or informal request pending for an initial franchise, the renewal of a franchise, or the approval of a transfer of ownership. If an Applicant has such requests pending for more than five Cable Systems in Colorado as well as for Cable Systems in other states, it need only list the pending requests in Colorado. The Applicant shall include the name of communities, date of application, and date of expected action.

4. Management Structure. Every application for a competitive franchise shall include a management/organizational chart, showing the management structure of the Applicant.

D. Legal Qualification

1. Media Cross-Ownership.

a. Section 613 of the Cable Communications Policy Act of 1984, 47 U.S.C. §533 (a), and applicable FCC rules prohibit certain forms of media cross-ownership. An Applicant shall state whether it or an Affiliate directly or indirectly owns, operates, controls or has an Interest in any of the following, or whether the Applicant holds or operates any company or business operating jointly with any of the following:

   1. A national broadcast television network (such as ABC, CBS or NBC, etc.).
   2. A television broadcast station whose predicted Grade B contour, computed in accordance with Section 73.684 of the FCC's rules, overlaps in whole or in part the City’s service area, or an application for license to operate such a station.
   3. A telecommunications or telephone company whose service area includes any portion of the City of Lakewood’s service area.

b. If the response to any of Subsections 1-3 above is affirmative, the Applicant shall state the name of the Applicant or Affiliate, the nature and percentage of ownership or Interest and the company that is owned or in which the Interest is held.

2. Franchise Violations.

a. An Applicant shall state whether it or any Affiliate has been found in violation by a court, regulatory authority or franchising authority of any franchise ordinance or agreement, contract or regulation governing a Cable System. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

3. Other Violations.

a. An Applicant shall state whether it has been found in violation by a regulatory authority of any other type (e.g. utility) of franchise or similar ordinance, agreement, permit, contract or regulation. If so, the Applicant shall identify the judicial or administrative proceeding, giving the date, name of tribunal and result or disposition of that proceeding.

E. Financial Qualifications

1. Unless SEC Forms 10K and 10Q are available on the EDGAR database, Applicants with existing operations shall provide audited financial statements, including statements of income, balance sheets and cash flow statements, together with any notes necessary to the understanding of the financial statements for the last three fiscal years for the Applicant and any Parent Corporation.
5.44.090

2. Applicants that are new (start-up) entities shall provide pro forma projections for the next five fiscal years, if available, but at a minimum the next three fiscal years from the date of the application.

F. Technical Qualifications, Planned Services and Operations
   1. The application shall describe the Applicant’s planned initial and proposed Cable Services geographic area, including a map of all areas proposed to be served and proposed dates for offering Service to each area. The application shall additionally state whether the Applicant proposes to provide Cable Services to the entire Franchise Area, and if so, a proposed timetable for meeting that goal;
   2. If the Applicant has or asserts existing authority to access the public right of way in any of the initial or proposed Service areas listed in Section F.1 above, the Applicant shall state the basis for such authority or asserted authority and attach the relevant agreements or other documentation of such authority;
   3. The Applicant shall describe with particularity its planned residential Cable Services, including basic cable services, other cable programming service tiers, and any additional pay-per-view, on-demand or digital services; and the projected rates for each category or tier or Service;
   4. The Applicant shall describe with particularity its planned system technical design, upstream and downstream capacity and speed, distribution of fiber, planned count of households per residential node, and any other information necessary to demonstrate that the Applicant’s technology will be deployed so as to be able to successfully offer Cable Services in the proposed locations;
   5. The Applicant shall describe with particularity its planned non-residential Cable Services;
   6. The Applicant shall describe its planned construction and extension or phase schedule, as applicable, including system extension plans or policy; and describe the current status of the Applicant’s existing or proposed arrangements with area utilities, including pole attachments, vault, or conduit sharing agreements as applicable;
   7. The Applicant shall describe its plan to ensure that the safety, functioning and appearance of property and convenience and safety of other persons not be adversely affected by installation or construction of the Applicant’s facilities, and that property owners are justly compensated for any damages caused by the installation, construction, operation or removal of the facilities;
   8. The Applicant shall describe its plan to comply with the subscriber privacy protections set forth in 47 U.S.C. §551, and the privacy protections of the City of Lakewood’s local cable customer service standards.

G. Affidavit of Applicant. Each application shall be accompanied by an affidavit substantially in the form set forth below:
   This application is submitted by the undersigned who has been duly authorized to make the representations within on behalf of the Applicant and certifies the representations are true and correct.
   The Applicant recognizes that all representations are binding on it, that all application commitments are enforceable, and that material misrepresentations or omissions, or failure to adhere to any such representation may result in a denial of an application by the City of Lakewood.
The Applicant shall comply with all applicable local laws. Consent is hereby given to the City of Lakewood, and its representatives to make inquiry into the legal, character, technical, financial and other qualifications of the Applicant by contacting any persons or organizations named herein as references, or by any other appropriate means.

Name of Applicant’s Authorized Representative: ________________

Affiant’s Signature: ________________

Official Position: ________________

Date: ________________

STATE OF COLORADO )

) ss.

COUNTY OF ________________ )

Subscribed and sworn to before me this ___ day of ________, 20__.

WITNESS MY HAND AND OFFICIAL SEAL.

My Commission expires: ________________

__________________________________________

NOTARY PUBLIC

H. Open Records/Confidentiality

The City of Lakewood will treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Applicant makes the City of Lakewood aware of such confidentiality. An Applicant shall be responsible for clearly and conspicuously stamping the word “Confidential” on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the City of Lakewood receives a demand under the Colorado Open Records Act from any Person for disclosure of any information designated by an Applicant as confidential, or believes for any other reason that it may be legally required to disclose such information, the City of Lakewood will, so far as consistent with applicable law, advise the Applicant and provide it with a copy of any written request demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction and to the extent permitted by applicable law, the City of Lakewood will deny access to any Applicant books and records marked confidential as set forth above to any Person.

I. Application Fee and Publication Expenses

1. The City of Lakewood shall, by resolution, set an application fee sufficient to cover the reasonable cost of processing applications under this ordinance. Every application for a new Franchise shall be accompanied by the application fee.

2. Upon request of the Applicant, the City of Lakewood may reduce or waive the application fee. In
evaluating such a request, the City of Lakewood will consider the following factors: (1) the size of the proposed franchise area; (2) the number of potential subscribers in the proposed franchise area; (3) the financial hardship to the Applicant (including any Parent Corporation or Affiliate); and (4) other information relevant to the cost of processing the application and/or the Applicant’s ability to pay the fee.

3. In addition, an Applicant that is awarded a Franchise shall pay to the City of Lakewood a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of a Franchise. Such payment shall be made by delivery of payment to the Director of Finance/City Treasurer within 30 days after the City of Lakewood furnishes the Franchisee with a written statement of such expenses.

4. No Franchise shall become effective until all required fees and costs are paid. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011)

5.44.100 Franchise-Applicant Review Process.

A. Acceptance of application. Within ten business days of receipt of an application for a new Franchise, the City of Lakewood shall review the application to ensure all requisite information is included in the application. If the application is not complete, the City of Lakewood will notify the Applicant in writing, listing the requisite information that is required to complete the application. If the application is complete, the City of Lakewood will notify the Applicant in writing that all requisite information has been received.

B. Staff review. The City of Lakewood staff shall review all completed applications based on the review criteria set forth herein. If, during the review of an application, staff reasonably requires additional information from the Applicant, staff will promptly request the information from the Applicant, in writing, along with a notification that the time period for granting or denying the application set forth in 47 C.F.R. § 76.41(d) will be tolled until such information is received by the City of Lakewood. After completing the review, staff shall provide an analysis of the application to the City Council.

C. Franchise negotiations. Upon acceptance of a complete application, the City of Lakewood shall commence the process for negotiating a Franchise agreement with the Applicant. Within the time period set forth in 47 C.F.R. § 76.41(d), the City of Lakewood shall attempt to negotiate a cable franchise agreement with the Applicant, and within that time period, schedule the application and any proposed franchise for public hearing as set forth in Section 5.44.110. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011)

5.44.110 Franchise-Hearing-Notice-Grant or Denial.

A. The City Council shall hold a public hearing before acting on the application, affording participants a process substantially equivalent to that required by 47 U.S.C. §546(c)(2) governing renewal of cable franchises. (Ord. O-72-97 § 5(3), 1972).

B. Review criteria. The City of Lakewood may deny an application if, based on the information provided in the application and/or any terms of a proposed Franchise agreement:

1. The Applicant does not have the financial, technical, or legal qualifications to provide Cable Service; or

2. The Applicant will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; or

3. The Applicant’s proposed terms do not comply with applicable federal, state, and local laws, policies and regulations, including, but not limited to, relevant existing contractual obligations of the City of Lakewood
C. Grant or denial of Franchise application. If the City of Lakewood finds that it is in the public interest to grant a Franchise considering the criteria set forth above, the City of Lakewood may adopt a Franchise ordinance setting forth the terms and conditions of the Franchise, which Franchise shall become effective upon satisfaction of conditions precedent to effectiveness, and when signed and accepted by the Applicant. If the City of Lakewood denies a Franchise, it will cause a written explanation of the denial to issue, which may be in any appropriate form. Without limiting its authority to deny an application for a Franchise, the City of Lakewood specifically reserves the right to reject any application that is incomplete. Nothing in this Section shall be construed in any way to limit the discretion and legislative authority of the City Council in making decisions relative to the granting, denial, or renewal of a Franchise.

D. Appeal. Any Applicant whose application is denied by the City of Lakewood may file an appeal with the District Court in Jefferson County, Colorado, within thirty (30) days of the City’s final action to deny the application. Such appeal shall be considered pursuant to Rule 106 of the Colorado Rules of Civil Procedure. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011)

5.44.120 Non-CFAR Franchise Applications
Notwithstanding any other provisions of this ordinance, any competitive cable services franchise Applicant may elect to submit a cable franchise application to the City of Lakewood and/or engage in cable franchise negotiations without regard to the application of the FCC Competitive Franchise Application Rule, 47 C.F.R. § 76.41 (“CFAR”). In such cases, the City of Lakewood will negotiate the terms of a competitive cable franchise without regard to 47 C.F.R. §76.41 and the other provisions of this ordinance. Agreement by any Applicant to negotiate a franchise without regard to 47 C.F.R. §76.41 and the other provisions of this ordinance shall not be deemed by the City to effect a waiver of any Applicant’s right under applicable law to trigger application of 47 C.F.R. §76.41 and this ordinance, where applicable. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011)

5.44.130 Franchise-Renewal.
A. A franchise may be renewed by the City of Lakewood upon application of the Franchisee. Such an application may be submitted not more than one hundred eighty days nor less than one hundred twenty days before expiration of the current Franchise, and the City of Lakewood may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time. An application for renewal will be considered under any legal criteria permitted by applicable law, and may be denied for failure to meet such criteria, and/or failure to comply with the obligations of the current Franchise.


5.44.140 Applications for modification of Franchise.
A. An application for modification of a Franchise shall include, at minimum, the following information:

1. The specific modification requested;
2. The justification for the requested modification, including the impact of the requested modification on subscribers and others, and the financial impact on the Applicant if the modification is approved or disapproved, demonstrated through submission of pro forma
financial statements or similar financial documentation, or other evidence of the impacts on subscribers;

3. Any other information that the Applicant believes is necessary for the City of Lakewood to make an informed determination on the application for modification; and

4. A declaration of the Applicant or Applicant’s authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with the requirements of applicable law.

B. A request for modification submitted pursuant to 47 U.S.C. § 545 shall be considered in accordance with the requirements of that section.

C. Public meetings. An Applicant shall be notified of any public meetings held in connection with the evaluation of its application and shall be given a reasonable opportunity to be heard. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011)

5.44.150 Transfers and Transactions affecting ownership or control of Franchise facilities.

A. City of Lakewood approval required. No Transfer shall occur without prior written notice to and approval of the City Council. The granting of approval for a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

B. Application.

1. The Franchisee shall promptly notify the City of any proposed Transfer involving a Cable System.

2. At least 120 calendar days prior to the contemplated effective date of a Transfer involving a Cable System, the Franchisee shall submit to the City of Lakewood an application for approval of the Transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the Transferee subject to applicable law, and on the potential impact of the Transfer on Subscriber rates and service. At a minimum, the following information must be included in the application, provided that, a Franchisee is not required to duplicate information that it submits to the City of Lakewood to comply with its obligations under federal or state law:

   (a) All information and forms required by FCC Form 394 and any other form that may be promulgated under federal law, or, the equivalent of such forms if no longer required by federal law or if Operator elects not to utilize such forms, any contracts or other documents that relate to the proposed transaction or other documents, schedules, or exhibits that would have been provided to the City of Lakewood under FCC form 394;

   (b) Any shareholder reports or filings with the Securities and Exchange Commission (“SEC”) that discuss the transaction;

   (c) Other information necessary to provide a complete and accurate understanding of the financial position of the Cable System before and after the proposed Transfer; and

   (d) Complete information regarding any potential impact of the Transfer on Subscriber service.

3. For the purposes of determining whether it shall consent to a Transfer, the City of Lakewood, or its agents, may inquire into all qualifications of the prospective Transferee and such other matters subject to applicable law as the City of Lakewood may deem necessary to determine whether the Transfer is in the public interest and should be approved, denied, or conditioned as provided under Section C below. The Franchisee and any prospective transferees shall assist the City of Lakewood in any
such inquiry, and if they fail to do so, the request for Transfer may be denied.

C. Determination by City Lakewood. In making a determination as to whether to grant, deny, or grant subject to conditions an application for a Transfer of a Franchise under this section, the City of Lakewood shall consider the legal, financial, and technical qualifications of the transferee to operate the Cable System; any potential impact of the Transfer on Subscriber services; whether the incumbent Cable Operator is in compliance with its Franchise and this subtitle and, if not, the proposed transferee’s commitment to cure such noncompliance; whether the transferee owns or controls any other Cable System in the City of Lakewood, and whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the City of Lakewood; and whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the public, or the City of Lakewood’s interest under this subtitle, the Franchise, or other applicable law.

D. Transferee’s agreement. No application for a Transfer of a Franchise, subject to this section, shall be granted unless the transferee agrees in writing that it will abide by and accept all lawful terms of this subtitle and the Franchise, and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this subtitle and the Franchise for all purposes, including renewal, unless the City of Lakewood, in its sole discretion, expressly waives this requirement in whole or in part.

E. Approval does not constitute waiver. Approval by the City of a Transfer of a Franchise, pursuant to this section, does not constitute a waiver or release of any of the rights of the City of Lakewood under this subtitle or a Franchise, whether arising before or after the date of the Transfer.

F. Exception for intra-company Transfers. Notwithstanding the foregoing, a Franchise may provide that Transfers to Affiliates of a Franchisee shall be excepted from the requirements of this section where (1) the Affiliate is wholly-owned and managed by an entity that will guarantee the performance under a Franchise or provide other adequate assurance acceptable to the City of Lakewood; and (2) the transferee Affiliate:

1. Notifies the City of Lakewood of the Transfer at least 60 days before it occurs and, at that time provides the agreements and warranties required by this section, describes the nature of the Transfer, and submits complete information describing who will have direct and indirect ownership and control of the Cable System after the Transfer;
2. Warrants that it has read, accepts, and agrees to be bound by each and every term of the Franchise and related amendment, regulations, ordinances, and resolutions then in effect;
3. Agrees to assume all responsibility for all liabilities, acts, and omissions known and unknown, of its predecessor Franchisees for all purposes, including renewal;
4. Agrees that the Transfer shall not permit it to take any position or exercise any right which could not have been exercised by its predecessor Franchisees;
5. Warrants that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the Franchisee (the warranty to be based on comparing the burdens upon and resources that will be available to the transferee compared to its predecessors), or otherwise adversely affect the ability of the Franchisee to perform;
6. Warrants that the Transfer will not in any way adversely affect the City of Lakewood or Subscribers (including by increasing rates);
7. Notifies the City of Lakewood that the Transfer is complete within five business days of the date the Transfer is complete; and
8. Agrees that the Transfer in no way affects any evaluation of its legal, financial, or technical qualifications that may occur under the Franchise or applicable law after the Transfer, and does not directly or indirectly authorize any additional Transfers. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011)

5.44.160 Prohibition of discriminatory or preferential practices.
The Franchisee shall not, in its rates or charges, or in making available the Services or facilities of its system, or in its rules or regulations, or in any other respect, make or grant preferences or advantages to any subscriber or potential subscriber to the system, or to any user or potential user of the system; and shall not subject any such persons to any prejudice or disadvantage. This provision shall not be deemed to prohibit promotional campaigns to stimulate subscriptions to the system or other legitimate uses thereof. (Ord. O-2011-23 § 1, 2011)

5.44.170 Franchise-Annual fee.
During the term of any franchise granted pursuant to this chapter, the franchisee shall pay to the city, for the use of its streets, public places and other facilities, as well as the maintenance, improvements and supervision thereof, an annual franchise fee in an amount equal to five percent of the annual gross subscriber revenues received by it from cable operations conducted within the city, or in such other amount that may be mutually agreed to by the parties. This payment shall be in addition to any other tax or payment owed to the city by the franchisee. (Ord. O-2011-23 § 1, 2011; Ord. O-72-97 § 8(2), 1972).

5.44.180 Franchise-Fee not exclusive.
No acceptance of any payment shall be construed as a release or as an accord and satisfaction of any claim the City of Lakewood may have for further or additional sums payable as a franchise fee under this chapter or any Franchise, or for the performance of any other obligation hereunder. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-23 § 1, 2011; Ord. O-72-97 § 8(4), 1972).

5.44.190 Franchise-Fee payment failure action.
Failure to pay any fees required by Sections 5.44.160 and 161 may result in automatic suspension of the franchise granted, and reinstatement thereof may be had only upon resolution by the City Council, and payment of the delinquent fee or fees plus any interest or penalties as may be required by the resolution. (Ord. O-2011-23 § 1, 2011; Ord. O-83-94 § 17, 1983; Ord. O-72-97 § 8(5), 1972).

5.44.200 Franchise-Compliance required.

5.44.210 Violation liability.
All persons, including officers of any franchisee, causing, participating in or permitting any violation of any provision of this chapter shall be severally or jointly liable therefor. (Ord. O-2011-23 § 1, 2011; Ord. O-72-97 § 9(2), 1972).
5.44.220 Penalties.
For failure to pay franchise fee when due, pursuant to Section 5.44.490, a Franchisee shall pay a late penalty of two percent per month of the amount due and prorated for each day, or part thereof, that the violation continues. (Ord. O-2011-23 § 1, 2011; Ord. O-83-94 § 18, 1983: Ord. O-76-56 § 16, 1976: Ord. O-72-97 § 10(3), 1972).

5.44.230 Section headings.
Chapter 5.47

ADULT BUSINESSES

Sections:
5.47.010 Findings of fact.
5.47.020 Legislative intent.
5.47.030 Definitions.
5.47.040 Location of adult businesses.
5.47.050 License required-Fee.
5.47.060 License application.
5.47.070 Determination of completed application.
5.47.080 Application fee.
5.47.090 Investigation.
5.47.100 Approval of license or denial of application.
5.47.110 Appeal of application denial.
5.47.120 Issuance of license.
5.47.130 Term of the license.
5.47.140 License renewal.
5.47.150 Suspension of license.
5.47.160 Revocation of license.
5.47.170 Display-Transferability-Change of ownership-Change of corporate structure.
5.47.180 Manager-Change of manager.
5.47.190 Time limits for entertainment.
5.47.200 Standards of conduct.
5.47.210 Age restrictions.
5.47.220 Entertainer requirement.
5.47.230 Entertainer license.
5.47.240 Lighting requirements.
5.47.250 Right of entry.
5.47.260 Signage and exterior.
5.47.270 Nonconforming use.
5.47.280 Enforcement.
5.47.290 Severability.

5.47.010 Findings of fact.
The City Council finds:

A. There are a substantial number of adult businesses in the Denver metropolitan area that require regulation in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizenry.

B. The City Council and staff have conducted a review of land use studies concerning the secondary effects of adult businesses in other cities including, but not limited to:
   1. Phoenix, Arizona
   2. Tucson, Arizona
   3. Garden City, California
4. Los Angeles, California  
5. Denver, Colorado  
6. Indianapolis, Indiana  
7. New York, New York - two studies  
8. Oklahoma City, Oklahoma  
9. Amarillo, Texas  
10. Austin, Texas  
11. Houston, Texas  

C. Regulation of adult businesses furthers substantial governmental interests and is necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred. This history of criminal activity has included prostitution, narcotics and liquor law violations, violent crimes against persons including sexual assaults, and property crimes.  

D. Adult businesses are frequently used for unlawful and unhealthful sexual activities, including prostitution and sexual liaisons of a casual nature. Sexual acts, including masturbation and oral and anal sex, occur at adult businesses, especially those which provide private or semi-private booths or rooms for viewing films, videos, or live sexually oriented entertainment. Such activities may result in spreading communicable diseases such as syphilis, gonorrhea, and human immunodeficiency virus (HIV).  

E. The concern over sexually transmitted diseases, including HIV, is a legitimate health concern of the City of Lakewood which demands reasonable regulation of adult businesses in order to protect the health and well-being of the citizens.  

F. Adult businesses have a deleterious effect on both neighboring businesses and surrounding residential areas causing an increase in crime and a decrease in property values.  

G. It is recognized that adult businesses have serious objectionable characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area.  

H. The City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizens; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; deter the spread of urban blight and protect the citizens from increased crime.  

I. The City Council recognizes the possible harmful effects on children and minors exposed to the effects of adult businesses which includes those encountered when children walk through or visit in the immediate neighborhood of such businesses.  

J. It is necessary to have a manager on the premises of adult businesses at all times that such establishments are offering adult entertainment so that there will be an individual responsible for the overall operation of the establishment, including the actions of patrons, entertainers, and other employees.  

K. The license fees required are necessary as nominal fees designed to help defray the substantial expenses incurred by the City of Lakewood in regulating adult businesses and are related to the actual costs of said regulation.  

L. Removal of doors on viewing booths in adult businesses will advance the substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult arcades and theaters and will facilitate enforcement of this Chapter and other federal, state, and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety, and welfare.
M. Preventing prostitution and the spread of sexually transmitted diseases are clearly within the City of Lakewood’s police powers. Prohibiting physical contact between entertainers and patrons at an adult business, prohibiting entertainers from soliciting payment of gratuities from patrons, and the direct payment of gratuities to entertainers by patrons are a reasonable and effective means of addressing these legitimate governmental interests. It is not the intent of the City of Lakewood to place any impermissible burden on any constitutionally protected expression or expressive conduct by the enactment or enforcement of such regulations.

N. Requiring sufficient lighting in adult businesses will advance the substantial governmental interest in curbing illegal sexual activity on the premises of adult businesses, and will facilitate enforcement of the provision of this Chapter and other federal, state, and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety, and welfare.

O. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of adult businesses, and by entertainers employed by such businesses, will facilitate the enforcement of the provisions of this Chapter and other federal, state, and local laws, and will thereby further the substantial government interest in protecting the public health, safety, and welfare. A person who recently has been convicted of a sexually related crime is not an appropriate person to operate or entertain in an adult business. The fact that an applicant, manager, or an entertainer has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in conduct in contravention of this Chapter.

P. Barring such individuals from operating, owning, or entertaining in an adult business for a period of years serves as a deterrent to and prevents the commission of sexually related criminal acts, including conduct which leads to the transmission of sexually transmitted diseases.

Q. Restricted hours of operation will further prevent the adverse secondary effects of adult businesses.

R. Locational criteria alone do not adequately protect the health, safety, and general welfare of the citizens and thus certain requirements with respect to the licensing and operation of adult businesses are in the public interest.

S. Licensing is a legitimate and reasonable means of accountability to ensure that the operators of an adult business comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation. It is necessary to license the officers, directors and managers of corporate entities because of the control such persons have over the operation and management of the business.


5.47.020 Legislative intent.

It is the intent and purpose of this Chapter to regulate the time, place, and manner in which adult entertainment is presented in adult businesses to promote the health, safety, and general welfare of the citizens of the City of Lakewood, and to establish reasonable and uniform
5.47.020

regulations to prevent the deleterious location and concentration of adult businesses within the City of Lakewood, thereby reducing or eliminating the adverse secondary effects of adult businesses, and not to prohibit adult entertainment or to curtail constitutionally protected freedom of expression. Additionally, it is the purpose of this Chapter to clarify various provisions of the current Lakewood ordinance regulating adult businesses. (Ord. O-2019-24 § 4, 2019; Ord. O-99-14 § 1, 1999; Ord. O-93-15 § 1 (part), 1993).

5.47.030 Definitions.
For the purposes of this Chapter, the words and phrases used herein, unless the context otherwise indicates, shall have the following meaning:

“Adult arcade” means any commercial establishment or private club 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 or fewer persons per machine at any one time, are used to regularly show films, motion pictures, video cassettes, slides, or other photographic reproductions or mechanically, electronically, chemically, or digitally reproduced visual materials characterized by an emphasis upon the depiction, display or exhibition of specified sexual activities or specified anatomical areas.

“Adult bookstore,” “adult novelty store” or “adult video store” means a commercial establishment which devotes a significant or substantial portion of its business to any one (1) or more of the following:

A. 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 photographic reproductions or mechanically, electronically, chemically, or digitally reproduced visual materials which are characterized by an emphasis upon the depiction, display or exhibition of specified sexual activities or specified anatomical areas;

B. The sale or rental of instruments, devices, or paraphernalia which are designed for use or marketed primarily for engaging in specified sexual activities;

C. A significant or substantial portion of its business is shown by characteristics including, but not limited to, some or all of the following:
   1. A significant or substantial portion of its stock in trade consists of the items listed in A. and/or B. above; or
   2. A significant or substantial portion of its revenues is derived from the rental or sale of items listed in A. and/or B. above; or
   3. A significant or substantial portion of its floor space, shelf space or storage space is devoted to the items listed in A. and/or B. above; or
   4. A significant or substantial portion of its advertising is devoted to the items listed in A. and/or B. above.

“Adult business” means an adult arcade, adult bookstore, adult cabaret, adult novelty store, adult video store, nude model studio, adult motel, adult motion picture theater, or sexual encounter center.

“Adult cabaret” means a nightclub, bar, restaurant, concert hall, auditorium, or other commercial establishment or private club which regularly features or presents live adult entertainment.

“Adult entertainment” means any exhibition, display, or dance which involves the exposure to view of specified anatomical areas.

“Adult motel” means a hotel, motel or similar commercial establishment which:
A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions or mechanically, electronically, chemically, or digitally reproduced visual materials which are characterized by an emphasis upon the depiction, display or exhibition of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproduction; or
B. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
C. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

"Adult motion picture theater" means any commercial establishment or private club, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions or mechanically, electronically, chemically, or digitally reproduced visual materials are regularly shown characterized by an emphasis upon the depiction, display or exhibition of specified sexual activities or specified anatomical areas. Any establishment meeting the definition of an adult arcade is not an adult motion picture theater.

"Child Care Facility" means any facility, by whatever name known, licensed by the State of Colorado and maintained for compensation, for the whole or any part of a day, for the care of five (5) or more children under the age of sixteen (16) years who are not related to the owner, operator or manager thereof.

"Church" means a location where organized religious services and associated activities such as religious classes, child care, and committee and office work are regularly conducted.

"Community Center" means a building or other structure which is city owned or used by the city that provides services to the community and is open to the general public.

"Entertainer" means a person who performs, dances, or otherwise entertains while nude or semi-nude in an adult business regardless of whether or not said person is paid a salary, wage, or other compensation for said performance.

"Nude model studio" means any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas, is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. Nude Model Studio shall not include a proprietary school licensed by the State of Colorado or a college, junior college or university supported entirely or in part by public taxation, 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 a business in a structure:
A. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
B. Where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
C. Where no more than one (1) nude or semi-nude model is on the premises at any one time.

"Nudity" or a "state of nudity" means the display of specified anatomical areas.

"Park" means a park, reservation, playground, beach, recreation area, bikeway, trail, greenbelt, or other area in the City of Lakewood owned or used by the City of Lakewood and devoted to active or passive recreation, including developed and undeveloped land.
“Performance” means a play, motion picture, dance, or other exhibition performed before an audience.

“Recreational Center” means land, buildings, structures or equipment used in recreational activities, owned or operated by a government agency.

“School” means an institution for instruction. Schools are classified by the type of instruction provided and by student grade level.

A. College/University: A school providing higher education beyond grade 12, which offers either a two-year or four-year degree in specific disciplines;

B. K-12: A school, public or private, which meets State standards for providing instruction for students between five (5) and twenty-one (21) years of age, including, but not limited to, vocational schools and special education schools.

“Semi-nude” means a state of dress in which clothing covers no more than the genitals, pubic region, or any portion of the female breast below the top of the areola, as well as portions of the body covered by supporting straps or devices.

“Sexual encounter center” means a business or commercial establishment or private club that offers, for the purpose of sexual arousal, gratification, or abuse, for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort and engage in specified sexual activities or expose specified anatomical areas. This definition does not apply to any actions in compliance with Chapter 5.52 of the Lakewood Municipal Code or any treatment or examination of another person for a bona fide medical purpose when such treatment or examination is conducted in a manner substantially consistent with reasonable medical practices.

“Specified anatomical areas” means and includes any of the following:

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 areola; or

B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

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

“Specified sexual activities” means and includes any of the following:

A. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts;

B. Sex acts, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy;

C. Flagellation, mutilation or torture for purposes of sexual arousal, gratification, or abuse;

D. Human genitals in a state of sexual stimulation, arousal, or tumescence; or

5.47.040  Location of adult businesses.

A. It is unlawful to operate or cause to be operated an adult business in any location except as provided in the Lakewood Zoning Ordinance.

B. It is unlawful to operate or cause to be operated an adult business within seven hundred fifty (750) feet of the property line of the following, whether located inside or outside the municipal boundaries:
   1. A church;
   2. A school or child care facility;
   3. A public park, recreational center, or community center; or
   4. A lot zoned for residential use.

C. It is unlawful to cause or permit the operation of an adult business within one thousand (1,000) feet of another adult business or a massage parlor as defined by Section 5.52.020 of this Lakewood Municipal Code. The distance between any two (2) such businesses shall be measured in a straight line, without regard to intervening structures or objects, from and to the closest exterior wall of the structure in which the adult business is located.

D. It is unlawful to cause or permit the operation or maintenance of more than one (1) adult business in the same building, structure, or portion thereof.

E. For the purpose of Subsection B. of this Section, the distance between an adult business and the premises of a church, school, child care facility, public park, recreational center, community center, residential district, or a residential lot shall be measured in a straight line, without regard to intervening structures, objects or City limits, from the closest exterior wall of the structure in which the adult business is located to the property line of such uses.

F. An adult business lawfully operating is not rendered a nonconforming use by the subsequent location of a church, school, child care facility, public park, recreational center, community center, residential district, or a residential lot within seven hundred fifty (750) feet 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. (Ord. O-2019-24 § 4, 2019; Ord. O-99-14 § 1, 1999; Ord. O-93-15 § 1 (part), 1993).

5.47.050  License required—Fee.

A. No person shall conduct or operate an adult business without first having obtained an adult business license as required by this Chapter. Each applicant shall pay a license fee of five hundred dollars ($500.00).

B. In the event an application for an adult business license is withdrawn prior to issuance or is denied, the license fee shall be refunded in full to the applicant. The license fee is in addition to any application fee required by this Chapter. (Ord. O-99-14 § 1, 1999; Ord. O-97-14 § 4, 1997; Ord. O-93-15 § 1 (part), 1993).

5.47.060  License application.

A. All applicants for an adult business license shall file a completed application for such license with the City Clerk on forms to be provided by the City Clerk. Each individual applicant, partner of a partnership, officer or director of a corporation, and manager of a limited liability company and all business managers, shall be named in each application form, and each of them shall be photographed and fingerprinted by the Police Department within ten (10) days of the applicant requesting such photograph and fingerprinting.
B. The completed application shall contain the following information and shall be accompanied by the following information or documents:
1. If the applicant is:
   a. An individual, the individual shall state his legal name and any aliases and submit satisfactory proof that he is eighteen (18) years of age or older;
   b. A partnership, the partnership shall state its complete name and the names of all partners, whether the partnership is general or limited, provide a copy of the partnership agreement, if any, and submit satisfactory proof that each partner is eighteen (18) years of age or older;
   c. 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 of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado, the names and capacity of all officers and directors, satisfactory proof that they are eighteen (18) years of age or older, and the name of the registered corporate agent and the address of the registered office for service of process;
   d. A limited liability company, the company shall state its complete name, the date of its formation, evidence that the company is in good standing under the statutes of the State of Colorado, or in the case of a foreign company, evidence that it is currently authorized to do business in the State of Colorado, and the name of the manager, satisfactory proof that the manager is eighteen (18) years of age or older, and the name of the registered agent and the address of the registered office for service of process.
2. State whether the applicant or any other individual listed pursuant to Subsection A. of this Section has previously operated or is currently operating or has been employed at an unlicensed adult business as defined in this Chapter or has had a previous adult business license under this Chapter or other adult business ordinances, resolutions or other regulations from another city or county denied, suspended or revoked, or declared a public nuisance, including the name and location of the adult business for which the permit was denied, suspended, revoked, or declared a public nuisance, as well as the date of the denial, suspension, revocation or declaration as a public nuisance. Additionally, state whether the applicant or any other individuals listed pursuant to Subsection A. of this Section has been a partner in a partnership or an officer or director of a corporation or manager of a limited liability company of an adult business whose license has previously been denied, suspended, revoked, or declared a public nuisance including the name and location of the adult business for which the license was denied, suspended, revoked, or declared a public nuisance as well as the date of the denial, suspension, revocation, or declaration as a public nuisance. State whether the applicant or any other individual listed pursuant to Subsection A. of this Section holds any other licenses under this Chapter or other similar adult business ordinance from another city or county and, if so, the names and locations of such other permitted businesses;
3. State the location of the proposed adult business, including a legal description of the property, street address, and telephone number(s), if any;
4. Provide proof of the applicant’s right to possession of the premises wherein the adult business will be conducted;
5. State the applicant’s mailing address and residential address;
6. State the applicant’s social security number and/or his federally issued tax identification number;
7. Provide a floor plan of the 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 (1) of the managers’ station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. The floor plan shall designate exits, entrances, doors, walls and 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 floor plan shall also demonstrate that it complies with Section 5.47.200. The 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 (6) inches. The diagram shall designate the place at which the license will be conspicuously posted and the location of any stage. A manager’s station is not required, and need not be shown on the floor plan, for an adult motion picture theater, adult motel, adult bookstore, adult novelty store, or adult video store;

8. Provide a current improvement location certificate and straight-line drawing prepared by a land surveyor, prepared within thirty (30) days prior to the application. Additionally, said document shall depict the property lines and the structures containing any adult business or massage parlor within one thousand (1,000) feet of the closest exterior wall of the structure in which the applicant business will be located and depicting the property line of any church, school, child care facility, public park, recreational center, community center, residential district, or a residential lot within seven hundred fifty (750) feet from the closest exterior wall of the structure in which the applicant business will be located;

9. Provide evidence from the Planning Department that the proposed location of such business complies with the locational requirements of the zoning ordinance. Said evidence shall be supplied by the Planning Department within ten (10) days of the applicant requesting such information.

10. Provide a verified affidavit that the proposed adult business and its location comply with and conform to all requirements of this Chapter;


5.47.070 Determination of completed application.

A. Not more than ten (10) days following submission of an application, the City Clerk shall review the application for completeness and conformance with the application requirements of Section 5.47.060. The City Clerk shall not accept for filing any application that is not complete in every detail. If an omission or error is discovered by the City Clerk, the application shall be rejected by the City Clerk and returned to the applicant together with a written explanation of the omission or error without further action by the City Clerk. Any application rejected by the City Clerk due to an omission or error may be resubmitted to the City Clerk when the omission or error has been remedied. For the purposes of this Chapter, the date the City Clerk determines that an application is complete and in conformance with the application requirements of Section 5.47.060 in every detail shall be the date the application is deemed filed with the City Clerk.
B. All applicants shall promptly notify the City Clerk in writing in the event that any information contained in an application has changed or any information is discovered by the applicant to be incorrect in any way from what is stated on the application, and every applicant shall have the continuing duty to promptly update and supplement such information during the term of any adult business license issued to the applicant. The failure to notify the City Clerk in accordance with this section within thirty (30) days from the date of such change or discovery, by supplementing or updating the application on file with the City Clerk, shall be grounds for revocation of any application approval or, where a license has been issued, suspension or revocation of an issued adult business license. (Ord. O-99-14 § 1, 1999).

5.47.080 Application fee.
Each applicant, whether an individual, partnership, limited liability company, or corporation, shall pay the following application fees at the time of submitting any application to the City Clerk:
A. An application processing fee of one hundred fifty dollars ($150). Such application fee shall be nonrefundable.
B. An application investigation fee in the amount then charged by the Colorado Department of Public Safety for each person who will be investigated as required by this Chapter. Such application investigation fee shall be nonrefundable following a determination by the City Clerk that the application is complete in accordance with Section 5.47.070. The application investigation fee shall be refunded upon written request by the applicant in the event that the applicant withdraws its application prior to the City Clerk’s determination that the application is complete. (Ord. O-99-14 § 1, 1999; Ord. O-97-14 § 6, 1997; Ord. O-93-15 § 1 (part), 1993).

5.47.090 Investigation.
A. Without undue delay following the City Clerk’s determination that an application is complete, the City Clerk shall transmit the application to the Police Department for investigation of the background of each individual applicant, the partners of a partnership, the officers and directors of a corporation, and the manager of a limited liability company, and manager of the adult business, and to investigate the accuracy of the information provided in the application. The investigation is intended to provide an opportunity to determine whether the application is in conformance with the requirements of this Chapter based on information and resources available to the City of Lakewood and to determine if any applicant or those listed in Subsection A. of Section 5.47.060 or manager has been convicted of a specified criminal act. The results of such investigation shall not be interpreted or construed as constituting an affirmation or verification by the City of Lakewood that the information contained in the application is factually correct or accurate.
B. The City Clerk may cause to be conducted any other investigation deemed necessary by the City Clerk to determine the application’s conformance with any requirement of this Chapter including, but not limited to, an investigation of the proposed adult business location’s conformance with the Lakewood Zoning Ordinance, Lakewood Subdivision Regulations, or other applicable laws. (Ord. O-2019-24 § 4, 2019; Ord. O-99-14 § 1, 1999; Ord. O-97-14 § 7, 1997; Ord. O-93-15 § 1 (part), 1993).
5.47.100 Approval of license or denial of application.

A. A completed license application filed with the City Clerk shall be administratively approved or denied by the City Clerk within thirty (30) days of the date of the filing of the application. The City Clerk shall deny a license application if:

1. The applicant, or partner or corporate officer or director or manager of a limited liability company is under the age of eighteen (18) years;
2. The application or any investigation performed by the City of Lakewood demonstrates or establishes that the proposed adult business fails to conform to any requirement of this Chapter, the Lakewood Zoning Ordinance, Lakewood Subdivision Regulations, or other applicable law;
3. The applicant knowingly made a false statement or knowingly gave false information in connection with the application;
4. The individual applicant or a director or officer of a corporation, partner of a partnership, or manager of a limited liability company or manager of the adult business has had an adult business license revoked or suspended within five (5) years prior to the application;
5. The individual applicant or a director or officer of a corporation, or partner of a partnership or manager of a limited liability company or manager of the adult business has operated an adult business which was determined to be a public nuisance under state, federal or local law within five (5) years prior to the application;
6. A corporate applicant or limited liability company applicant is not in good standing or authorized to do business in the State of Colorado;
7. The individual applicant, manager, director or officer of a corporation, partner of a partnership, or manager of a limited liability company has been convicted of a specified criminal act for which:
   a. Less than two (2) years have elapsed since the date of the conviction or the date of release from confinement or supervision, whichever is the later date, if the conviction is of a misdemeanor offense; or
   b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement or supervision, whichever is the later date, if the conviction is of a felony offense; or
   c. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement or supervision whichever is the later date, if the convictions are of two or more misdemeanors. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant. For the purposes of this subsection, “convicted” includes having pleaded guilty or nolo contendere to a specified criminal act or any offense for which the factual basis involved one of the specified criminal acts. “Convicted” includes persons who have received a deferred judgment and sentence or a deferred adjudication for a specified criminal act or any offense for which the factual basis involved one of the specified criminal acts; or
8. The applicant is overdue in payment to the City of Lakewood of taxes, fees, fines, or penalties assessed against him or imposed against him in relation to an adult business.

B. In the event that the City Clerk approves a license application, the City Clerk shall make a written finding that the application conforms to the requirements of this Chapter based on the information available and the investigation performed by the City of Lakewood. The City Clerk may make additional findings as deemed necessary to identify the City Clerk’s basis for approval.
The written finding(s) shall be sent by certified mail to the address of the applicant as shown in the application within ten (10) days after the date of the City Clerk’s approval. Nothing in this Chapter shall prevent or preclude the City Clerk from revoking such approval where it is discovered that the application contained or included a false or incorrect statement or false or incorrect information which would otherwise constitute sufficient grounds or basis for the denial of the application. Approval of a license application shall not constitute issuance of an adult business license. Issuance of a license shall be made only in accordance with Section 5.47.120. The decision of the City Clerk to approve a license application shall not be construed as a quasi-judicial act but shall be a final administrative decision of the City of Lakewood.

C. The City Clerk’s approval of a license application shall be valid for one (1) year following the date of approval. Failure to obtain the issuance of the license pursuant to Section 5.47.120 within such one-year period shall require the submission of a new application.

D. In the event that the City Clerk denies a license application, the City Clerk shall prepare written findings of fact stating the reasons or basis for the denial. A copy of the City Clerk’s findings shall be sent by certified mail, return receipt requested, to the address of the applicant as shown in the application within ten (10) days after the date of the City Clerk’s denial. The City Clerk’s decision to deny a license application shall become a final administrative decision of the City on the fourteenth (14th) day following the date of the denial unless the applicant files a timely request for appeal to the City Manager or designee as provided by Section 5.47.110. (Ord. O-2019-24 § 4, 2019; Ord. O-2003-15 § 4, 2003; Ord. O-99-14 § 1, 1999; Ord. O-97-14 § 8, 1997; Ord. O-93-15 § 1 (part), 1993).

5.47.110 Appeal of application denial.

A. In the event that the City Clerk denies a license application, an applicant shall have the right to a quasi-judicial hearing before the City Manager or designee for the purpose of appealing the City Clerk’s administrative decision. A written request for a hearing shall be made to the City Manager or designee within ten (10) days of the date of the mailing of the City Clerk’s written findings and denial of the license application. The hearing shall be conducted within ten (10) days of the City Manager’s or designee’s receipt of the written request for a hearing unless a later date is requested by the applicant.

B. Upon receipt of a timely request for a hearing, the City Manager or designee shall schedule a hearing and notify the applicant of the date, time, and place of the hearing. Such notification may be made by the City of Lakewood by telephone provided that a written notice shall also be mailed or delivered to the applicant at the applicant’s address shown in the application. An applicant may be represented at the hearing by an attorney or other representative. An applicant or the City of Lakewood may request a continuation or postponement of the hearing date.

C. The City Manager or designee shall have the power to administer oaths, issue subpoenas to require the presence of persons, 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 City Manager or designee conducts. It is unlawful for any person to fail to comply with any subpoena issued by the City Manager or designee. 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 City Attorney or the applicant may:
1. Petition any judge of the Municipal Court of the City, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting 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 willful failure to comply with such order of court; or

2. Petition the District Court in and for the county, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting 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.

D. At the hearing, the City Manager or designee shall hear and consider such evidence and testimony presented by the City of Lakewood, the applicant, or any other witnesses presented by the City of Lakewood or the applicant which are relevant to the stated reason and basis for the City Clerk’s denial of the license application. The City Manager or designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

E. Not less than ten (10) days following the conclusion of the hearing, the City Manager or designee shall send a written order by certified mail, return receipt requested, to the applicant at the address as shown on the application. The order shall include findings of fact and a final decision concerning the approval or denial of the application. In the event that the City Manager or designee concludes that the application is approved, such approval shall constitute approval by the City Clerk, and the applicant may seek issuance of a license in accordance with this Chapter.

F. The order of the City Manager or designee made pursuant to this section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal, the City Manager’s or designee’s decision shall be final upon the earlier of the date of the applicant’s receipt of the order or four (4) days following the date of mailing.

G. To facilitate prompt judicial review of any appeal from the City Manager or designee to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4), the City shall agree to an expedited briefing schedule in which each of the deadlines otherwise required for filing of the opening brief, answer brief and reply brief are shortened by at least ten (10) days. The City shall proffer to the applicant a joint motion to the court requesting prompt judicial attention to, and acceleration of, the appeal in accordance with Colorado Rules of Civil Procedure 106(a)(4)(VIII). (Ord. O-2019-24 § 4, 2019; Ord. O-2004-20 § 1, 2004; Ord. O-2003-15 § 5, 2003; Ord. O-99-14 § 1, 1999).
5.47.120 Issuance of license.

A. No license shall be issued by the City Clerk after approval of an application until such time as the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the provisions of this Chapter and other applicable codes of the City or State, and then only after inspection of the premises and certification by the Police Department that the applicant has complied with the plans and specifications approved by the City with the application. Such inspection of the premises shall be made within ten (10) days after the City Clerk receives written notification from the applicant that the applicant desires inspection of the premises and the issuance of a license.

B. If the licensed business premises has been closed or inactive for at least one (1) year, the City Clerk may revoke or elect not to renew the license. (Ord. O-99-14 § 1, 1999).

5.47.130 Term of the license.

All licenses issued pursuant to this Chapter shall be valid for the entire calendar year in which the license is issued unless revoked. Each license term shall expire on December 31 of the calendar year for which the license is issued unless the license is renewed for the next subsequent calendar year. No proration of any application or license fee or any other requirement shall be permitted for any application or license filed or issued after January 1 of any calendar year. (Ord. O-99-14 § 1, 1999).

5.47.140 License renewal.

A. Renewal of an existing license issued pursuant to this Chapter shall be granted upon the payment of the annual licensing fee and the filing of a completed renewal application with the City Clerk not less than forty-five (45) days prior to the date of license expiration (December 31). The City Clerk may waive the timely filing requirement where the licensee demonstrates in writing that the failure to timely file is not solely the result of the applicant’s neglect; provided that no renewal application shall be accepted by the City Clerk from any licensee after December 31 of the calendar year in which the license expires.

B. A license that is under suspension may be renewed for the next calendar year in accordance with this section provided that such renewal shall not modify, alter, terminate, or shorten the period or term of the suspension. The suspension of a license shall not extend the term of the license or otherwise relieve the licensee from timely seeking renewal of the license in accordance with this section. (Ord. O-99-14 § 1, 1999; Ord. O-93-15 § 1 (part), 1993).

5.47.150 Suspension of license.

A. The City Manager or designee may suspend a license for a period not to exceed six (6) months upon a finding of any of the following factors:

1. Two (2) or more disturbances have occurred within a six (6) month period upon the licensed premises or upon any parking areas, sidewalks, access ways or grounds within the immediate neighborhood of the licensed premises involving a patron or customer, manager, employees, or the licensee;

2. The licensee, manager, or any employees thereof illegally offered for sale or illegally 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 or dangerous drugs or fermented malt beverages, or malt, vinous or spirituous liquors;
3. The licensee or manager, as required by Section 5.47.180, is not upon the licensed premises at all times that the adult business is open for business or at all times when the business premises is occupied by any employee, agent, invitee, or other person;
4. Adult entertainment was offered at the licensed establishment or the adult business was open for business during hours prohibited by this Chapter;
5. The licensee, manager, or employee has allowed or permitted patrons to engage in public displays of indecency or has allowed or permitted 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;
6. The licensee or manager knowingly made a false statement or knowingly gave false information in connection with an application for a license or a renewal of a license;
7. The licensee, manager, or employee knowingly violated or knowingly allowed or permitted a violation of any provision of this Chapter;
8. A manager or employee of the licensed establishment is under the age of eighteen (18) years.
9. The licensee, in the case of a corporation or limited liability company, is not in good standing or authorized to do business in the State of Colorado;
10. The licensee is delinquent in payment to the City or State for any taxes or fees past due;
11. The licensee, manager, or employee has allowed the specified sexual activities to occur within the licensed premises; or
12. The licensee or manager knowingly allowed or permitted the performance, exhibition, or display of live adult entertainment by any person not licensed as an entertainer under Section 5.47.230.

B. Nothing in this Chapter shall prohibit the City of Lakewood from taking any other enforcement action provided for by the Lakewood Municipal Code, the laws of the State, or of the United States.

C. A licensee shall be entitled to a quasi-judicial hearing before the City Manager or designee if the City of Lakewood seeks to suspend a license based on a violation of this Chapter.
1. When there is probable cause to believe that a licensee has violated or permitted a violation of this Chapter to occur upon the licensed premises, or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises, the City Attorney may file a written complaint with the City Manager or designee setting forth the circumstances of the violation.
2. The City Manager or designee shall send a copy of the complaint by certified mail, return receipt requested, to the licensee at the address as shown on the license application, together with a notice to appear before the City Manager or designee for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the licensee’s license should not be suspended. Such hearing shall be held on a date not less than fourteen (14) days following the date of mailing of the complaint and notice to the licensee.

D. The City Manager or designee shall have the power to administer oaths, issue subpoenas to require the presence of witnesses, 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 City Manager or designee conducts. It is unlawful for any person to fail to comply with any subpoena
issued by the City Manager or designee. 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 City Attorney or licensee may:

1. Petition any judge of the Municipal Court of the City of Lakewood, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting 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 willful failure to comply with such order of court; or

2. Petition the District Court in and for the county, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting 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.

E. At the hearing, the City Manager or designee shall hear and consider such evidence and testimony presented by the Police Department or other enforcement officers, the City of Lakewood, the licensee, or any other witnesses presented by the City of Lakewood or the licensee which are relevant to the violations alleged in the complaint. The City Manager or designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

F. The City Manager or designee shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued not less than ten (10) days following the conclusion of the hearing. If the City Manager or designee determines that a violation did occur which warrants suspension of the license pursuant to this section, he shall also issue an order suspending the license. A copy of the findings, conclusion, and order shall be hand delivered or mailed to the licensee by certified mail, return receipt requested, at the address as shown on the license application.

G. For purposes of any appeal to the District Court, the City Manager’s or designee’s decision shall be final upon the earlier of the date of the applicant’s receipt of the findings, conclusion, and order or four (4) days following the date of mailing of the City Manager’s or designee’s decision. The order of the City Manager or designee shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). Any suspension ordered by the City Manager or designee may be stayed and held in abeyance following the filing of a complaint for judicial relief and until a final conclusion of the matter by the District Court. To facilitate prompt judicial review of any appeal to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4), the City of Lakewood shall agree to an expedited briefing schedule in which each of the deadlines otherwise required for filing of the opening brief, answer brief and reply brief are shortened by at least ten (10) days. The City of Lakewood shall proffer to the applicant a joint motion to the court requesting prompt judicial attention to, and acceleration of, the appeal in accordance with Colorado Rules of Civil Procedure 106(a)(4)(VIII).

5.47.160 Revocation of license.
A. The City Manager or designee may revoke any license granted pursuant to this Chapter upon a finding that either:
1. Two (2) or more violations of the provisions warranting suspension contained in Section 5.47.150 have been found to exist during a two (2) year period; or
2. The licensee, or an employee of the licensee, operated the adult business during a period of time when the adult business license was suspended.
B. Nothing in this Chapter shall prohibit the City of Lakewood from taking any other enforcement action provided for by the Lakewood Municipal Code, the laws of the State, or of the United States.
C. Where the City of Lakewood seeks to revoke a license, a licensee shall be entitled to notice, a quasi-judicial hearing before the City Manager or designee, and the right to appeal conducted in the same manner as a hearing for suspension as provided by Section 5.47.150. (Ord. O-2019-24 § 4, 2019; Ord. O-99-14 § 1, 1999).

5.47.170 Display-Transferability-Change of ownership-Change of corporate structure.
A. Any adult business license issued pursuant to the terms of this Chapter shall be prominently displayed at all times upon the premises for which the license was issued.
B. Licenses issued under this Chapter shall not be transferable except as provided herein. Any change in the partners of a partnership or in officers or directors of a corporate licensee or manager of a limited liability company holding an adult business license shall result in termination of the license of the partnership or corporation, unless such licensee, within thirty (30) days of any such change, files a written notice of such change accompanied by the application fee and an investigation fee as required by this Chapter. Any such change shall be reported on forms provided by the City Clerk and shall require the names of all new partners of a partnership, officers, and directors of a corporation, and the manager of a limited liability company and any information as required by Section 5.47.060. Approval or denial by the City 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.
C. 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.
D. 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 business or business entity and each geographical location. (Ord. O-99-14 § 1, 1999; Ord. O-97-14 § 10, 1997; Ord. O-93-15 § 1 (part), 1993).
5.47.180 Manager-Change of manager.

A. A registered manager shall be on the premises of an adult business at all times that adult entertainment is being provided, performed, featured, shown or presented. An adult business may have more than one registered manager. It shall be unlawful for any person to work as a manager of an adult business without first registering with the City Clerk. No manager shall work in an adult business who has been convicted of a specified criminal act within the time frames set forth in Subsection 5.47.100 A. (7) and as so defined.

B. In the event a licensee changes the manager of an adult business, the licensee shall immediately report such change and register the new manager on forms provided by the City Clerk within ten (10) days of such change. (Ord. O-99-14 § 1, 1999; Ord. O-97-14 § 11, 1997; Ord. O-93-15 § 1 (part), 1993).

5.47.190 Time limits for entertainment.

It shall be unlawful for an adult business, except an adult motel, to be open for business or for the licensee or any employee of a licensee to allow patrons upon the licensed premises during the following time periods:

1. On any Tuesday through Saturday from 2:00 a.m. until 7:00 a.m.;
2. On any Monday, other than a Monday which falls on January 1, from 12:00 a.m. until 7:00 a.m.;
3. On any Sunday from 2:00 a.m. until 8:00 a.m.;
4. On any Monday which falls on January 1, from 2:00 a.m. until 7:00 a.m. (Ord. O-99-14 § 1, 1999; Ord. O-93-15 § 1 (part), 1993).

5.47.200 Standards of conduct.

A. The following standards of conduct must be adhered to in any adult arcade and in any adult business which offers, conducts, or maintains live adult entertainment:

1. No employee or entertainer or patron shall be unclothed or in such attire, costume or clothing so as to expose to view any portion of specified anatomical areas, except upon a stage at least eighteen (18) inches above the immediate floor level and removed at least six (6) feet 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-quarter (1/4) inch thick and have no openings between the entertainer and any patrons. The stage shall be fixed and immovable.

2. No employee, entertainer or patron shall engage in specified sexual activities nor shall any employee or entertainer encourage or allow or permit any person upon the premises to engage in specified sexual activities.

3. There shall be posted and conspicuously displayed in the common areas of each place offering adult entertainment a list of food and drink prices.

4. 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 (1) or more containers to receive tips. Any physical contact between a patron and an entertainer is strictly prohibited.

5. An adult business that provides tip boxes shall conspicuously display in the common area of the premises one (1) or more signs in letters at least one (1) inch high to read as follows:
ADULT ENTERTAINMENT IS REGULATED BY THE CITY OF LAKEWOOD: All 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 strictly prohibited.

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

7. It is the duty of the licensee of the premises to ensure that at least one (1) employee is on duty and situated in the manager’s station, from which there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose excluding restrooms, at all times that any patron is present inside the premises.

8. 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.

9. 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. If the premises has two (2) or more managers’ 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 (1) of the managers’ stations. The view required in this subsection must be by direct line of sight from a manager’s station. Any person occupying a manager’s station shall be clearly visible from any of the interior locations of the premises described herein excluding restrooms. The use of electronic viewing devices, video cameras, photographic equipment, or any other remote viewing devices does not constitute a direct line of sight. A manager’s station may not exceed thirty-two (32) square feet of floor area and no single dimension of a manager’s station shall exceed eight (8) feet. A manager’s station shall be unlocked and be readily accessible for the purpose of routine inspections as provided for in this Chapter.

10. No alteration to the configuration or location of a manager’s station may be made without the prior approval of the City Clerk.

11. It shall be the duty of the licensee, and it shall also be the duty of any manager, agents and employees present in the premises, to ensure that the view area specified in Subsection 9 of this Section 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.

12. A viewing room of less than one hundred fifty (150) square feet for an Adult Arcade shall not be occupied by more than one (1) person at any one time.

13. Viewing rooms must be separated from other viewing rooms by a solid, uninterrupted physical divider which is a minimum of one-quarter (1/4) inch thick and serves to prevent physical contact between patrons.

14. No person shall make or attempt to make an opening of any kind between viewing rooms.

15. The licensee shall, during each business day, regularly inspect the wall between the viewing rooms to determine if any openings or holes exist.

5.47.210 Age restrictions.

Admission to adult businesses is restricted to persons of the age of eighteen (18) years or older. This minimum age limitation also applies to any employees, agents, servants, or independent contractors working on the premises. (Ord. O-2003-15 § 9, 2003; Ord. O-99-14 § 1, 1999; Ord. O-97-14 § 13, 1997; Ord. O-93-15 § 1 (part), 1993).

5.47.220 Entertainer requirement.

No person shall appear, be featured, be shown, or be presented while nude or semi-nude in any commercial establishment or private club unless licensed as an entertainer pursuant to this Chapter. (Ord. O-99-14 § 1, 1999).

5.47.230 Entertainer license.

A. Each entertainer to be employed in an adult business shall be required to obtain an Entertainer License. Each applicant shall pay an application processing fee of twenty-five dollars ($25.00). Such application fee shall be nonrefundable.

B. Said applicant shall pay an application investigation fee in the amount then charged by the Colorado Department of Public Safety.

C. An applicant for an Entertainer License shall submit on a form to be provided by the City Clerk or designee the following information:

1. The applicant’s name or any other names (including “stage” names) or aliases used by the individual;
2. Age, date, and place of birth;
3. Height, weight, hair and eye color;
4. Present residence address and telephone number;
5. Present or intended business address and telephone number;
6. State driver’s license or government issued photo identification card;
7. Social Security number; and
8. Acceptable written proof that the individual is at least eighteen (18) years of age.

Each applicant shall be photographed and fingerprinted by the Police Department within ten (10) days of the applicant requesting such photograph and fingerprinting. Any fees for the photographs and fingerprints shall be paid by the applicant.

Provide a statement detailing the license or permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying jurisdiction, and describe in full the reasons for the denial, revocation, or suspension.

State whether the applicant or any person pursuant to Subsection A. of this section has been arrested for a specified criminal act, the date of the arrest, and the location of the offense.
D. The City Clerk or designee shall refer the Entertainer License for an investigation to be made of such information as is contained on the application. The application process shall be completed within ten (10) days from the date the completed application is filed. After the investigation, the City Clerk or designee shall issue a license unless the report from the Police Department finds that one or more of the following findings is true:

1. That the applicant has knowingly made a false statement or knowingly gave false information in connection with the application;
2. That the applicant is under eighteen (18) years of age;
3. That the applicant has been convicted of a specified criminal act within the time frames set forth in Subsection 5.47.100 A.(7) and as so defined;
4. That the Entertainer License is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by this Chapter;
5. That the applicant has had an Entertainer License revoked or suspended within two (2) years of the date of the current application.

E. Each entertainer shall display said entertainer license upon demand by a police officer.

F. The Entertainer License may be revoked for a violation of any of the provisions of this Chapter.

G. Where the City of Lakewood seeks to revoke a license, a licensee shall be entitled to notice, a quasi-judicial hearing before the City Manager or designee, and the right to appeal conducted in the same manner as a hearing for suspension as provided by Section 5.47.150. Where the City of Lakewood seeks to deny a license, a licensee shall be entitled to notice, a quasi-judicial hearing before the City Manager or designee, and the right to appeal conducted in the same manner as a hearing for suspension as provided by Section 5.47.150, including the right to prompt judicial review as set forth in Section 5.47.115. (Ord. O-2019-24 § 4, 2019; Ord. O-2003-15 § 10, 2003; Ord. O-99-14 § 1, 1999).

5.47.240 Lighting requirements.

A. All off-street parking areas and premise 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 (1) footcandle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the adult business to help ensure the personal safety of patrons and employees and to reduce the incidence of vandalism and other criminal conduct.

B. The premises of all adult businesses, except adult motion picture theaters and adult motels, 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) footcandles of light as measured at the floor level.

C. 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 (1) footcandle of light as measured at the floor level.

D. The illumination described above shall be maintained at all times that any patron is present in the premises. In the event of a power failure, the adult business shall stop operating immediately and all patrons shall be cleared from the premises. The premises shall not be reopened until the minimum illumination level can be assured. (Ord. O-99-14 § 1, 1999; Ord. O-93-15 § 1 (part), 1993).
5.47.250 Right of entry.

The application for an adult business license shall constitute consent of the licensee and his agents or employees to permit the Lakewood Police Department or any other agent of the City of Lakewood to conduct routine inspections, from time to time and at least four times a year, of any licensed adult business during the hours the establishment is conducting business. (Ord. O-2019-24 § 4, 2019; Ord. O-99-14 § 1, 1999; Ord. O-93-15 § 1 (part), 1993).

5.47.260 Signage and exterior.

A. Notwithstanding any other City Ordinance, Lakewood Municipal Code, or regulation to the contrary, it shall be unlawful for the owner or operator of any adult business or any other person to erect, construct, or maintain any sign for the adult business other than one allowed on the property which is in conformance with the Lakewood Zoning Ordinance and Article 17 of Title 17 of the Lakewood Municipal Code.

B. Signs shall contain no photographs, silhouettes, drawings or pictorial representations of any manner.

C. It shall be unlawful for the owner of operator of an adult business to allow exterior portions of the adult business to be painted any color other than shades of brown, beige, tan or grey. Substitutes may be proposed by the owner or operator which may be accepted by the City; provided however, the use of high intensity colors, primary colors, metallic colors, black or fluorescent colors shall be prohibited. This provision shall not apply to any adult business if the following conditions are met:

1. The adult business is a part of a commercial multi-unit center; and
2. The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the adult business are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

D. No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the public sidewalk in front of the building. (Ord. O-2019-24 § 4, 2019; Ord. O-99-14 § 1, 1999).

5.47.270 Nonconforming use.

A. On the adoption date of this Ordinance O-99-14, there exist within the City six (6) uses and locations which meet the definition of adult bookstore, adult novelty store or adult video store. These six (6) uses are located at

Las Vegas Video
1569 Wadsworth Boulevard, and
95 South Sheridan Boulevard

Christal's
6401 West Alameda

Fascinations Love Shack
10550 West Colfax Avenue
5.47.280 Enforcement.

A. If any person fails or refuses to obey or comply with or violates any of the provisions of this Ordinance, such person upon conviction of such offense shall be punished the penalties set forth in Section 1.16.020. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.

B. Nothing herein contained shall prevent or restrict the City of Lakewood from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

C. All remedies and penalties provided for in this Chapter shall be cumulative and independently available to the City of Lakewood, and the City of Lakewood shall be authorized to pursue any and all remedies to the full extent allowed by law. (Ord. O-2019-24 § 4, 2019; Ord. O-2017-16 § 8, 2017; Ord. O-99-14 § 1, 1999).
5.47.290 Severability.

Should any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter or application thereof to any person or circumstance, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Chapter, or its application to any other person or circumstance, and, to this end, the provisions of this Chapter are declared to be severable. (Ord. O-99-14 § 1, 1999; Ord. O-93-15 § 1 (part), 1993).
Chapter 5.48

ALARM SYSTEMS

Sections:

5.48.010 Definitions.
5.48.020 Administrative service charges.
5.48.030 Establishment of administrative procedures and regulations.
5.48.040 Appeals.

5.48.010 Definitions.

The following definitions shall apply to this chapter:

“Administrative service charge” means the fee imposed by the Police Department on alarm users whose alarms have reported an excessive number of false alarms.

“Alarm” or “alarm system” means a device or assembly of devices intended to signal the presence of a crime having just occurred, occurring at present, or about to occur, and designed to cause police to respond. The alarm or alarm system may be electrical, electronic, or mechanical in nature, and may signal by visual or audible means. The term alarm or alarm system includes burglar alarms, holdup, or robbery alarms, panic alarms, and local alarms.

Alarm or alarm system as used here excludes alarms intended to detect and report fires, gases, humidity, or other conditions not directly related to a criminal act. Also excluded are portable alarm devices utilized by the Police Department.

“Alarm user” means any person, organization, firm, business, corporation, or other entity on whose premises an alarm or alarm system is operating. Any of the above who operate an alarm or alarm system on a motor vehicle or strictly as an internal notification device with no intent to cause police response are exempted from this definition and shall not be deemed alarm users.

“Automatic dialer alarm” means a device that sends over telephone circuits a prerecorded voice message or coded signal indicating the presence of a burglary, robbery, or other crime.

“Burglar alarm” means an alarm or alarm system intended to report an unlawful entry or attempted entry into a building, structure, or other protected area.

“Central alarm station” means an office or other control facility to which alarms or alarm systems are connected, where human operators monitor the alarms and dispatch police and/or alarm company employees to reported alarms.

“Department” means the Lakewood Police Department.

“Direct alarm” is an alarm with a connection to a monitoring device installed within the Police Department communications center.

“Excessive number of false alarms” means any and all false alarms over and above the number three received by the Department within a twelve-month period.

“False alarm” means the activation of an alarm system when a situation requiring police response does not actually exist. Such activation may be caused by malfunction or failure of alarm equipment, error, and/or negligence by the alarm user or his agents and/or employees, or improper alarm installation. Exempted from this definition are alarms activated by forces beyond the user’s control such as those caused by atmospheric conditions, such as very high winds, lightning strikes, or floods. Also exempted are alarms caused by the failure of telephone lines or circuits off the premises of the alarm user.
“Local alarm” means an alarm that emits an audible or visual signal in or at the premises where the alarm is installed. A strictly local alarm does not directly transmit an alarm signal to a police facility or central alarm station, but rather relies on someone to hear or see it and take action.

“Panic alarm” means an alarm activated to indicate an emergency situation in which life or property is in danger and immediate police response is desired. This term does not refer to fire alarms or alarms activated to indicate the presence of a medical emergency.

“Robbery alarm” means an alarm activated to indicate the occurrence of a robbery or holdup. (Ord. O-93-64 §§ 53-57, 1993; Ord. O-84-117 § 1 (part), 1984).

5.48.020  Administrative service charges.

A. There shall be, except as hereafter noted, an administrative service charge of thirty dollars imposed on the alarm user for the fourth false alarm caused within a period of twelve months. For the fifth such false alarm, there shall be, except as hereafter noted, an administrative service charge of fifty dollars imposed on the alarm user. For any false alarms, except as hereafter noted, over five within a period of twelve months, an administrative charge of seventy-five dollars shall be imposed on the alarm user. Moneys received via these administrative service charges shall be deposited in the city’s general fund.

B. An administrative service charge shall not be levied against an alarm user, when it is determined that such "excessive" alarm was activated:
   1. By extreme weather or atmospheric conditions and could not reasonably have been prevented by the alarm user; or
   2. By the failure of telephone lines or circuits off the premises of the alarm user; or
   3. Intentionally in the reasonable and honest belief of a person that a crime had occurred, was occurring, or was about to occur.

C. The Chief of Police or designee are authorized to waive an administrative service charge, if the alarm user demonstrates extraordinary circumstances.

D. The fee for an "excessive" alarm shall be due upon receipt by the alarm user of a notice sent by the Police Department.

E. After the Police Department has received six false alarms at the same location within any 365 day period, the Police Department shall notify the alarm user via a certified letter with a return receipt that the Police Department will cease responding to alarm calls within ten days after the postmarked date on the letter. Police response shall be reinstated upon payment in full of the administrative service charges and submission of documentation to the Police Department of such repairs or changes to operation and functioning of alarms which are sufficient to prevent future false alarms.

F. Ten days after the postmark on the certified letter, police agents may no longer respond to alarms from the alarm user unless the Police Department first receives a telephone call from a person confirming the need for police response. Police agents may respond to any robbery alarm or panic alarm received from the alarm user or any alarm received from a financial institution. (Ord. O-2019-24 § 4, 2019; Ord. O-98-59 § 1, 1998; Ord. O-93-64 §§ 58, 59, 1993; Ord. O-84-117 § 1 (part), 1984).

5.48.030  Establishment of administrative procedures and regulations.

The Chief of Police is authorized to adopt such procedures and regulations not inconsistent with this chapter, as he deems necessary to aid in the enforcement and administration of this chapter. (Ord. O-93-64 § 60, 1993: Ord. O-84-117 § 1 (part), 1984).
5.48.040 Appeals.

Any person, organization, firm, or other entity aggrieved by the enforcement of any element of the ordinance codified in this chapter may appeal the action taken, in an administrative appeal hearing held by the Chief of Police or designee under rules adopted by the Chief of Police. A request for such an appeal must be made in writing to the Chief of Police within seven days of the occurrence of the action complained about. In the event that the alarm user appeals the police department’s decision to not respond to future alarms, the appeal must be made in writing to the Chief of Police within seven days of the postmarked date on the notification letter mailed to the alarm user. The Police Department shall continue to respond to any alarms received from the alarm user pending the outcome of the administrative appeal if the alarm user pays to the Police Department the administrative service charges which are still owed as an appeal bond. No part of this bond may be waived or suspended. Should the alarm user prevail in whole or in part on appeal, as much of the bond as is appropriate shall be returned to the user by the Police Department when the appeal is final. The decision of the Chief of Police in such administrative appeal hearing shall be final. (Ord. O-2019-24 § 4, 2019; Ord. O-98-59 § 2, 1998; Ord. O-93-64 § 61, 1993: Ord. O-84-117 § 1 (part), 1984).
Chapter 5.50
ELECTRIC AND GAS FRANCHISE

Sections:

I. Definitions
  5.50.010 Short Title.
  5.50.020 Definitions.

II. Grant of Franchise
  5.50.030 Grant of Franchise.
  5.50.040 Conditions and Limitations.
  5.50.050 Effective Date and Term.

III. City Police Powers
  5.50.060 Police Powers.
  5.50.070 Regulation of Streets or Other City Property.
  5.50.080 Compliance with laws.

IV. Franchise Fee
  5.50.090 Franchise Fee.
  5.50.100 Remittance of Franchise Fee.
  5.50.110 Franchise Fee Payment not in Lieu of Permit or Other Fees.

V. Administration of Franchise
  5.50.120 City Designee.
  5.50.130 Company Designee.
  5.50.140 Coordination of Work.

VI. Supply, Construction and Design
  5.50.150 Purpose.
  5.50.160 Supply.
  5.50.170 Service to City Facilities.
  5.50.180 Restoration of Service.
  5.50.190 Obligations Regarding Company Facilities.
  5.50.200 Excavation and Construction.
  5.50.210 Restoration.
  5.50.220 Relocation of Company Facilities.
  5.50.230 New or Modified Service Requested by City.
  5.50.240 Service to New Areas.
  5.50.250 City not Required to Advance Funds.
  5.50.260 Technological Improvements.

VII. Reliability
  5.50.270 Reliability.
  5.50.280 Franchise Performance Obligations.
  5.50.290 Reliability Reports.
VIII. Company Performance Obligations
5.50.300 New or Modified Service to City Facilities.
5.50.310 Adjustments To Company Facilities.
5.50.320 Third Party Damage Recovery.

IX. Billing and Payment
5.50.330 Billing for Utility Services.
5.50.340 Payment To City.

X. Use of Company Facilities
5.50.350 City Use of Company Electric Distribution Poles.
5.50.360 Third Party Use of Company Facilities.
5.50.370 City Use of Company Transmission Rights of Way.
5.50.380 Emergencies.

XI. Undergrounding of Overhead Facilities
5.50.390 Underground Electrical Lines in New Areas.
5.50.400 Underground Conversion at Expense of Company.
5.50.410 Undergrounding Performance.
5.50.420 Audit of Underground Fund.
5.50.430 Cooperation with Other Utilities.
5.50.440 Planning and Coordination of Undergrounding Projects.

XII. Purchase or Condemnation
5.50.450 Municipal Right to Purchase or Condemn.

XIII. Municipally Produced Utility Service.
5.50.460 Municipally Produced Utility Service.

XIV. Environment and Conservation
5.50.470 Environmental Leadership.
5.50.480 Conservation.
5.50.490 Continuing Commitment.
5.50.500 PUC Approval.

XV. Transfer of Franchise
5.50.510 Consent of City Required.
5.50.520 Transfer Fee.

XVI. Continuation of Utility Service
5.50.530 Continuation of Utility Service.

XVII. Indemnification and Immunity
5.50.540 City Held Harmless.
5.50.550 Immunity.
XVIII. Breach
5.50.560  Non-Contestability.
5.50.570  Breach.

XIX. Amendments
5.50.580  Proposed Amendments.
5.50.590  Effective Amendments.

XX. Equal Opportunity
5.50.600  Economic Development.
5.50.610  Employment.
5.50.620  Contracting.
5.50.630  Coordination.

XXI. Miscellaneous
5.50.640  No Waiver.
5.50.650  Successors and Assigns.
5.50.660  Third Parties.
5.50.670  Notice.
5.50.680  Examination of Records.
5.50.690  List of Utility Property.
5.50.700  Payment of Taxes and Fees.
5.50.710  Conflict of Interest.
5.50.720  Certificate of Public Convenience and Necessity.
5.50.730  Authority.
5.50.740  Severability.
5.50.750  Force Majeure.
5.50.760  Earlier Franchises Superseded.
5.50.770  Titles Not Controlling.
5.50.780  Applicable Law.
5.50.790  Payment of Expenses Incurred by City in Relation to Franchise Agreement.

I. Definitions
5.50.010  Short title.
      The ordinance codified in this chapter shall be known as the Lakewood electric and gas franchise ordinance. (Ord. O-2009-44 § 1; Ord. O-89-87 § 1 (part), 1989).

5.50.020  Definitions.
      For the purpose of this franchise, the following words and phrases shall have the meaning given in this Chapter. When not inconsistent with context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and "may" is permissive. Words not defined in this Article shall be given their common and ordinary meaning.
      "City" refers to the City of Lakewood, a municipal corporation of the State of Colorado.
      "City Council" or "Council" refers to the legislative body of the City.
“Clean Energy” refers to energy produced from Renewable Energy Resources, eligible energy sources, and by means of advanced technologies that cost-effectively capture and sequester carbon emissions produced as a by-product of power generation. For purposes of this definition, “cost” means all those costs as determined by the PUC.

“Company” refers to Public Service Company of Colorado d/b/a Xcel Energy and its successors and assigns including affiliates or subsidiaries that undertake to perform any of the obligations under this franchise.

“Company Facilities” refers to all facilities of the Company reasonably necessary to provide gas and electric service into, within and through the City of Lakewood, including but not limited to plants, works, systems, substations, transmission and distribution structures, lines, equipment, pipes, mains, conduit, transformers, underground lines, gas compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, gas regulator stations, street lights, wire, cables and poles.

“Distribution Facilities” refers to those lines designed to operate at the utility’s distribution voltages in the area defined in the Company’s tariffs including substation transformers that transform electricity to a distribution voltage and also includes other equipment within a transforming substation which is not integral to the circuitry of the utility’s transmission system. Distribution Facilities shall not include facilities that are exclusively used to provide street lighting service.

“Electric Gross Revenues” refers to those amounts of money which the Company receives from the sale or delivery of electricity in the City of Lakewood, after adjusting for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Electric Gross Revenues” shall exclude any revenue for the sale or delivery of electricity to the City of Lakewood as a customer of the Company.

“Energy Conservation” refers to the decrease in energy requirements of specific customers during any selected time period, resulting in a reduction in end-use services.

“Energy Efficiency” refers to the decrease in energy requirements of specific customers during any selected period with end-use services of such customers held constant.

“Force Majeure” refers to the inability to undertake an obligation of this franchise due to a cause that could not be reasonably anticipated by a party or is beyond its reasonable control after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, terrorist’s acts, acts of governmental authority, acts of God, floods, epidemics, quarantines, labor disputes, unavailability or shortages of materials or equipment or failures or delays in delivery of materials. Neither the City of Lakewood nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to a Force Majeure condition.

“Gross Revenues” refers to those amounts of money which the Company receives from the sale of gas and electricity within the City of Lakewood under rates authorized by the Public Utilities Commission, as well as from the transportation of gas to its customers within the City of Lakewood and those amounts of money, excluding expense reimbursements, which the Company receives from the use of Company facilities in Streets and Other City of Lakewood Property (unless otherwise preempted by applicable federal or state law), as adjusted for refunds, net write-offs of uncollectible accounts, corrections, or regulatory adjustments. Regulatory adjustments include, but are not limited to, credits, surcharges, refunds, and pro-forma adjustments pursuant to federal or state regulation. “Gross Revenues” shall exclude
any revenues from the sale of gas or electricity to the City of Lakewood or the transportation
of gas to the City of Lakewood as a customer of the Company.

“Other City Property” refers to the surface, the air space above the surface and the area
below the surface of any property owned or controlled by the City of Lakwood or hereafter
held by the City of Lakwood, that would not otherwise fall under the definition of “Streets”, but
which provides a suitable location for the placement of Company facilities as specifically
approved in writing by the City of Lakewood.

“Private Project” refers to any project which is not covered by the definition of Public
Project.

“Public Project” refers to (1) any public work or improvement within the City of Lakewood
that is wholly or beneficially owned by the City of Lakwood; or (2) any public work or
improvement within the City of Lakewood where fifty percent (50%) or more of the funding is
provided by any combination of the City of Lakewood, the federal government, the State of
Colorado, any Colorado county, the Urban Drainage and Flood Control District, or the
Regional Transportation District, but excluding all other entities established under Title 32 of
the Colorado Revised Statutes.

“Public Utilities Commission” or “PUC” refers to the Public Utilities Commission of the
State of Colorado or other state agency succeeding to the regulatory powers of the Public
Utilities Commission.

“Public Utility Easement” refers to any easement over, under, or above public or private
property, dedicated to the use of public utility companies for the placement of utility facilities,
including but not limited to Company Facilities. Public Utility Easement shall not include any
easement that is located within Streets or Other City of Lakewood Property.

“Renewable Energy Resources” refers to wind; solar; geothermal; biomass from nontoxic
plant matter consisting of agricultural crops or their byproducts, urban wood waste, mill
residue, slash, or brush, or from animal wastes and products of animal wastes, or from
methane produced at landfills or as a by-product of the treatment of wastewater residuals;
new hydroelectricity with a nameplate rating of ten megawatts or less, and hydroelectricity in
existence on January 1, 2005, with a nameplate rating of thirty megawatts or less; fuel cells
using hydrogen derived from a Renewable Energy Resource; and recycled energy produced
by a generation unit with a nameplate capacity of not more than fifteen megawatts that
converts the otherwise lost energy from the heat from exhaust stacks or pipes to electricity
and that does not combust additional fossil fuel, and includes any eligible renewable energy
resource as defined in § 40-2-124(1)(a), C.R.S., as the same shall be amended from time to
time.

“Residents” refers to all persons, businesses, industries, governmental agencies, including
the City of Lakewood, and any other entity whatsoever, presently located or to be hereinafter
located, in whole or in part, within the territorial boundaries of the City of Lakewood.

“Streets” or “City Streets” refers to the surface, the air space above the surface and the
area below the surface of any City of Lakewood-dedicated streets, alleys, bridges, roads,
lanes, public easements (excluding any easements the terms of which do not permit the use
thereof by public utilities), and other public rights-of-way within the City of Lakewood, which
are primarily used for motorized vehicle traffic. Streets shall not include Public Utility
Easements.

“Supporting Documentation” refers to all information reasonably required in order to allow
the Company to design and construct any work performed under the provisions of this
franchise. Supporting Documentation may include, but is not limited to, construction plans, a
description of known environmental issues, the identification of critical right of way or
easement issues, the final recorded plat for the property, the date the site will be ready for the Company to begin construction, the date electric service and meter set are needed, the date gas service and meter set are needed, and the name and contact information for the City of Lakewood’s project manager.

“Tariffs” refers to those tariffs of the Company on file and in effect with the PUC.

“Transmission Facilities” refers to those lines and related substations designed and operating at voltage levels above the utility’s voltages for Distribution Facilities, including but not limited to related substation facilities such as transformers, capacitor banks, or breakers that are integral to the circuitry of the Company’s transmission system.

“Utility Service” refers to the sale of gas or electricity to Residents by the Company under rates approved by the PUC, as well as the delivery of gas or electricity to Residents by the Company. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

II. Grant of Franchise

5.50.030 Grant of franchise.

A. Grant. The City of Lakewood hereby grants to the Company, subject to all conditions, limitations, terms, and provisions contained in this franchise, the non-exclusive right to make reasonable use of City Streets and Other City of Lakewood Property.

1. to provide Utility Service to the City of Lakewood and to its Residents under tariffs on file with the PUC; and

2. to acquire, purchase, construct, install, locate, maintain, operate, and extend into, within and through the City of Lakewood all Company Facilities reasonably necessary for the generation, production, manufacture, sale, storage, purchase, exchange, transmission, transportation and distribution of Utility Service within and through the City of Lakewood.

B. Street Lighting And Traffic Signal Lighting Service. The rights granted by this franchise encompass the nonexclusive right to provide street lighting service and traffic signal lighting service as directed by the City of Lakewood, and the provisions of this franchise shall apply with full and equal force to street lighting service and traffic signal lighting service provided by the Company. Wherever reference is made in this franchise to the sale or provision of Utility Service, these references shall be deemed to include the provision of street lighting service and traffic signal lighting service. Street lighting service and traffic signal lighting service within the City of Lakewood shall be governed by this franchise, any separate agreements between the Company and the City of Lakewood executed on or after the effective date of this franchise, and Tariffs on file with the PUC. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.040 Conditions and limitations.

A. Scope of Franchise. The grant of this franchise shall extend to all areas of the City of Lakewood as it is now or hereafter constituted that are within the Company’s PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than the provision of Utility Service.

B. Subject to City of Lakewood Usage. The right to make reasonable use of City of Lakewood Streets to provide Utility Service to the City of Lakewood and its Residents under the franchise is subject to and subordinate to any City of Lakewood usage of said Streets.

C. Prior Grants Not Revoked. This grant is not intended to revoke any prior license, grant, or right to use the Streets and such licenses, grants or rights of use are hereby affirmed. Such rights shall, however, be governed by the terms of this franchise.
D. Franchise Not Exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City of Lakewood reserves the right to make or grant a franchise to any other person, firm, or corporation. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989)

5.50.050 Effective date and term.
A. Term. This franchise shall take effect on January 16, 2009, and shall supersede any prior franchise grants to the Company by the City of Lakewood. This franchise shall terminate on January 15, 2030, unless extended by mutual consent. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

III. City Police Powers

5.50.060 Police powers. The City of Lakewood shall have the right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City of Lakewood considers making any substantive changes in its local codes or regulations that in the City of Lakewood’s reasonable opinion will significantly impact the Company’s operations in the City of Lakewood’s Streets and Other City of Lakewood Property, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company’s non-compliance with any applicable local requirements. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.070 Regulation of streets or other city property. The Company expressly acknowledges the City of Lakewood’s right to enforce regulations concerning the Company’s access to or use of the Streets, including requirements for permits. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).


IV. Franchise Fee

5.50.090 Franchise fee. A. Fee. In partial consideration for the franchise, which provides for the Company’s use of City of Lakewood Streets, which are valuable public properties acquired and maintained by the City of Lakewood at great expense to its Residents, and in recognition that the grant to the Company of the use of City of Lakewood Streets is a valuable right, the Company shall pay the City of Lakewood a sum equal to three percent (3%) of all Gross Revenues. To the extent required by law, the Company shall collect this fee from a surcharge upon City of Lakewood residents who are customers of the Company.

B. Obligation in Lieu of Fee. In the event that the franchise fee specified herein is declared void for any reason by a court of competent jurisdiction, unless prohibited by law, the Company shall be obligated to pay the City of Lakewood, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as partial consideration for use of the City of
Lakewood Streets. To the extent required by law, the Company shall collect the amounts agreed upon through a surcharge upon Utility Service provided to City of Lakewood Residents.

C. Changes in Utility Service Industries. The City of Lakewood and the Company recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this franchise, the Company agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the City of Lakewood, the Company will cooperate with and assist the City of Lakewood in modifying this franchise to assure that the City of Lakewood receives an amount in franchise fees or some other form of compensation that is the same amount of franchise fees paid to the City of Lakewood as of the date that such initiatives and changes adversely impact franchise fee revenues.

D. Utility Service Provided to the City of Lakewood. No franchise fee shall be charged to the City of Lakewood for Utility Service provided directly or indirectly to the City of Lakewood for its own consumption, including Street Lighting Service and traffic signal lighting service, unless otherwise directed by the City of Lakewood. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989)

5.50.100 Remittance of franchise fee.

A. Remittance Schedule. Franchise fee revenues shall be remitted by the Company to the City as directed by the City of Lakewood in monthly installments not more than 30 days following the close of each month.

B. Correction of Franchise Fee Payments. In the event that either the City of Lakewood or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City of Lakewood, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Subsection 5.50.100 D of this franchise; otherwise, the error shall be corrected in the next monthly payment. However, if the error results in an overpayment of the franchise fee to the City of Lakewood, and said overpayment is in excess of Five Thousand Dollars ($5,000.00), credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error.

C. Audit of Franchise Fee Payments.

1. Every three (3) years commencing at the end of the third year of this franchise, the Company shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the City. Such audit shall be limited to the previous three (3) calendar years. The Company shall provide a written report to the City Manager containing the audit findings.

2. If the City of Lakewood disagrees with the results of the audit, and if the parties are not able to informally resolve their differences, the City of Lakewood may conduct its own audit at its own expense, and the Company shall cooperate fully, including but not necessarily limited to, providing the City of Lakewood's auditor with all information reasonably necessary to
complete the audit.

3. If the results of a City of Lakewood audit conducted pursuant to subsection C (2) concludes that the Company has underpaid the City of Lakewood by two percent (2%) or more, in addition to the obligation to pay such amounts to the City of Lakewood, the Company shall also pay all costs of the City of Lakewood’s audit.

D. Fee Disputes. Either party may challenge any written notification of error as provided for in Subsection 5.50.100 B of this franchise by filing a written notice to the other party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party’s notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

E. Reports. Upon written request by the City of Lakewood, but not more than once per year, the Company shall supply the City of Lakewood with reports, in such formats and providing such details as reasonably requested by the City of Lakewood, of all suppliers of utility service that utilize Company Facilities to sell or distribute utility service to Residents and the names and addresses of each such supplier. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-93-64 § 62, 1993; Ord. O-89-87 § 1 (part), 1989).

5.50.110 Franchise fee payment not in lieu of permit or other fees.

Payment of the franchise fee does not exempt the Company from any other lawful tax or fee imposed generally upon persons doing business within the City of Lakewood, including any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the City of Lakewood, except that the franchise fee provided for herein shall be in lieu of any occupation, occupancy or similar tax for the use of City of Lakewood Streets. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-93-64 § 63, 1993; Ord. O-89-87 § 1 (part), 1989).

V. Administration of Franchise

5.50.120 City designee.

The City Manager shall be the official having full power and authority to administer the franchise. The City Manager may also designate one or more City representatives to act as the primary liaison with the Company as to particular matters addressed by this franchise and shall provide the Company with the name and telephone numbers of said City of Lakewood representatives. The City Manager may change these designations by providing written notice to the Company. The City of Lakewood’s designee shall have the right, at all reasonable times, to inspect any Company Facilities in City of Lakewood Streets and Other City of Lakewood Property. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.130 Company designee.

The Company shall designate a representative to act as the primary liaison with the City of Lakewood and shall provide the City of Lakewood with the name, address, and telephone number for the Company’s representative under this franchise. The Company may change its designation by providing written notice to the City of Lakewood. The City of Lakewood shall use this liaison to communicate with the Company regarding Utility Service and related service needs for City facilities. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).
5.50.140 Coordination of work.

A. The Company agrees to meet with the City of Lakewood’s designee upon written request for the purpose of reviewing, implementing, or modifying mutually beneficial procedures for the efficient processing of Company bills, invoices and other requests for payment.

B. The Company agrees to coordinate its activities in City Streets with the City of Lakewood. The City of Lakewood and the Company will meet annually upon the written request of the City of Lakewood designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect City of Lakewood Streets. The City of Lakewood and Company shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the City of Lakewood will be assured that all provisions of this franchise, building and zoning codes, and City of Lakewood air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

VI. Supply, Construction and Design

5.50.150 Purpose.

The Company acknowledges the critical nature of the municipal services performed or provided by the City of Lakewood to the Residents which require the Company to provide prompt and reliable Utility Service and the performance of related services for City facilities. The City of Lakewood and the Company wish to provide for certain terms and conditions under which the Company will provide Utility Service and perform related services for the City of Lakewood in order to facilitate and enhance the operation of City of Lakewood facilities. They also wish to provide for other processes and procedures related to the provision of Utility Service to the City. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.160 Supply.

Subject to the jurisdiction of the PUC, the Company shall take all reasonable and necessary steps to provide a sufficient supply of gas and electricity to Residents at the lowest reasonable cost consistent with reliable supplies. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.170 Service to city facilities.

A. Transport Gas. To the extent the City of Lakewood is or elects to become a gas transport customer of the Company, the Company shall transport natural gas purchased by the City of Lakewood for use in City of Lakewood facilities pursuant to separate contracts with the City.

B. Charges to the City of Lakewood. No charges to the City of Lakewood by the Company for Utility Service (other than gas transportation which shall be subject to negotiated contracts) shall exceed the lowest charge for similar service or supplies provided by the Company to any other similarly situated customer of the Company. The parties acknowledge the jurisdiction of the Colorado PUC over the Company’s regulated intrastate electric and gas rates. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).
5.50.180  Restoration of service.

A. Notification. The Company shall provide to the City of Lakewood daytime and nighttime telephone numbers of a designated Company representative from whom the City of Lakewood designee may obtain status information from the Company on a twenty-four (24) hour basis concerning interruptions of Utility Service in any part of the City of Lakewood.

B. Restoration. In the event the Company’s gas system or electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if the Company elects not to restore such system. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.190  Obligations regarding company facilities.

A. Company Facilities. All Company Facilities within City of Lakewood Streets shall be maintained in good repair and condition.

B. Company Work within the City of Lakewood. All work within City of Lakewood Streets performed or caused to be performed by the Company shall be done:

1. in a high-quality manner;
2. in a timely and expeditious manner;
3. in a manner which minimizes inconvenience to the public;
4. in a cost-effective manner, which may include the use of qualified contractors; and
5. in accordance with all applicable laws, ordinances, and regulations

C. No Interference with City of Lakewood Facilities. Company Facilities shall not interfere with any City of Lakewood facilities, including water facilities, sanitary or storm sewer facilities, communications facilities, or other City of Lakewood uses of the Streets or Other City of Lakewood Property. Company Facilities shall be installed and maintained in City of Lakewood Streets and Other City of Lakewood Property so as to minimize interference with other property, trees, and other improvements and natural features in and adjoining the Streets in light of the Company’s obligation under Colorado law to provide safe and reliable utility facilities and services. Company facilities may not be installed on any Other City of Lakewood Property without obtaining permission from the City of Lakewood.

D. Permit and Inspection. The installation, renovation, and replacement of any Company Facilities in the City of Lakewood Streets or Other City of Lakewood Property by or on behalf of the Company shall be subject to permit, inspection and approval by the City of Lakewood. Such inspection and approval may include, but shall not be limited to, the following matters: location of Company Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of City of Lakewood Streets or Other City of Lakewood Property. The Company agrees to cooperate with the City of Lakewood in conducting inspections and shall promptly perform any remedial action lawfully required by the City of Lakewood pursuant to any such inspection.

E. Compliance. The Company and all of its contractors shall comply with the requirements of all municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. The Company shall assure that its contractors working in City of Lakewood Streets or Other City of Lakewood Property hold the necessary licenses, registrations and permits required by law. Whenever the Company proposes to make curb and pavement cuts, or to excavate, dig or perform any other construction activities in City of Lakewood Streets and Other City of
Lakewood Property, the Company and the City of Lakewood shall meet at the City of Lakewood's request to discuss the placement of poles and other similar facilities in order to mitigate adverse impacts of such activities within the City of Lakewood.

F. Increase in Voltage. The Company shall reimburse the City of Lakewood for the cost of upgrading the electrical system or facility of any City of Lakewood building or facility that uses Utility Service where such upgrading is solely caused or occasioned by the Company’s decision to increase the voltage of delivered electrical energy. This provision shall not apply to voltage increases required by law, including but not limited to a lawful order of the PUC, or voltage increases requested by the City of Lakewood.

G. As-Built Drawings. Upon written request of the City of Lakewood designee, the Company shall provide within 14 days of project completion, on a project by project basis, as-built drawings of any Company Facility installed within the City of Lakewood Streets or contiguous to the City of Lakewood Streets. As used in this Section, as-built drawings refers to the facility drawings as maintained in the Company’s geographical information system or any equivalent Company system. The Company shall not be required to create drawings that do not exist at the time of the request, but the foregoing shall not be construed to affect any obligation to prepare drawings pursuant to any separate agreement. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.200 Excavation and construction.

The Company shall be responsible for obtaining, paying for, and complying with all applicable permits for all construction, excavation, maintenance and repair work done by the Company and its contractors including, but not limited to, excavation, traffic control, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the City of Lakewood. Although the Company shall be responsible for obtaining and complying with the terms of such permits when performing relocations requested by the City under Section 5.50.220 of this franchise and undergrounding requested by the City of Lakewood under Section 5.50.410 of this franchise, the City of Lakewood will not require the Company to pay the fees charged for such permits. Upon the Company submitting a construction design plan, the City of Lakewood shall promptly and fully advise the Company in writing of all requirements for restoration of City of Lakewood Streets in advance of Company excavation projects in City Lakewood Streets based upon the design submitted. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.210 Restoration.

When the Company performs any work in or affecting the City of Lakewood Streets or Other City of Lakewood Property or any landscaping or improvements therein, it shall, at its own expense, promptly remove any obstructions therefrom, repair any damage, and restore such City of Lakewood Streets or Other City of Lakewood Property and landscaping and improvements therein to a condition that meets applicable City standards. If weather or other conditions do not permit the complete restoration or repair required by this Section, the Company may with the approval of the City of Lakewood, temporarily restore the affected City of Lakewood Streets or Other City of Lakewood Property, provided that such temporary restoration is at the Company’s sole expense and provided further that the Company promptly undertakes and completes the required permanent restoration or repair when the weather or other conditions no longer prevent such permanent restoration or repair. If the Company fails to promptly restore or repair the City of Lakewood Streets or Other City of Lakewood Property and landscaping and improvements therein as required by this Section, the City of Lakewood may, upon giving fourteen (14) days’ written notice to the Company, restore such City of Lakewood Streets or Other City of Lakewood Property and landscaping and improvements therein 5-142 (Lakewood 10-12-2019)
Lakewood Streets or Other City of Lakewood Property, remove the obstruction therefrom or repair the damage; provided however, City of Lakewood actions do not interfere with Company Facilities. The Company shall be responsible for the actual cost incurred by the City of Lakewood to restore or repair such City of Lakewood Streets or Other City of Lakewood Property and landscaping and improvements therein or to remove any obstructions therefrom. The City shall not perform work on Company Facilities. Upon request of the City of Lakewood, the Company shall restore the City of Lakewood Streets or Other City of Lakewood Property to a better condition than existed before the work was undertaken, provided that the City of Lakewood shall be responsible for any additional costs of such restoration. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.220 Relocation of company facilities.

A. Relocation Obligation. The Company shall temporarily or permanently remove, relocate, change or alter the position of any Company Facility in City of Lakewood Streets or in Other City of Lakewood Property at no cost or expense to the City of Lakewood whenever such removal, relocation, change or alteration is necessary for the completion of any Public Project. Any City of Lakewood-required removal, relocation, change or alteration of Company Facilities located in any Company owned property or any private easement or Public Utility Easement shall be at no cost to the Company. For all relocations, the Company and the City of Lakewood agree to cooperate on the location and relocation of the Company Facilities in the City of Lakewood Streets or Other City of Lakewood Property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the City of Lakewood’s direction, if the City requests that the same Company Facility be relocated within two years, the subsequent relocation shall not be at the Company’s expense unless said subsequent relocation is necessary to remedy public health and safety concerns not reasonably foreseeable by the City of Lakewood at the time of the prior relocation. Nothing provided herein shall prevent the Company from recouping its relocation costs and expenses from third parties.

B. Private Projects. The Company shall not be responsible for the expenses of any relocation required by Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation.

C. Relocation Performance. The relocations set forth in Section 5.50.220 of this franchise shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the City designee requests, in writing, that the relocation commence, or the date when the Company is provided all Supporting Documentation. The Company shall receive an extension of time to complete a relocation where the Company’s performance was delayed due to Force Majeure or the failure of the City of Lakewood to provide adequate Supporting Documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City of Lakewood may also grant the Company reasonable extensions of time for good cause shown and the City of Lakewood shall not unreasonably withhold any such extension.

D. City Revision of Supporting Documentation. Any revision by the City of Lakewood of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise.

E. Completion. Each such relocation shall be complete only when the Company actually
relocates the Company Facilities, restores the relocation site in accordance with Section 6.7 of this franchise or as otherwise agreed with the City of Lakewood, and removes from the site or properly abandons on site all unused facilities, equipment, material and other impediments.

F. Scope of Obligation. The relocation obligation set forth in this Section shall only apply to Company Facilities located in City of Lakewood Streets or Other City of Lakewood Property. The obligation shall not apply to Company Facilities located on property owned by the Company in fee, or to Company Facilities located in privately-owned easements or Public Utility Easements, unless such Public Utility Easements are on or in City of Lakewood-owned property.

G. Underground Relocation. Underground facilities shall be relocated underground. Above ground facilities shall be placed above ground unless the Company is paid for the incremental amount by which the underground cost would exceed the above ground cost of relocation, or the City of Lakewood requests that such additional incremental cost be paid out of available funds under Section 5.50.390 to 5.50.440 of this franchise.

H. Coordination.
   1. When requested in writing by the City of Lakewood designee or the Company, representatives of the City of Lakewood and the Company shall meet to share information regarding anticipated projects which will require relocation of Company Facilities in City of Lakewood Streets. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City of Lakewood for any Public Project.
   2. The City of Lakewood shall make reasonable best efforts to provide the Company with two (2) years advance notice of any planned street repaving. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the street within the two-year period if practicable.

I. Proposed Alternatives or Modifications. Upon receipt of written notice of a required relocation, the Company may propose an alternative to or modification of the Public Project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of Company Facilities. The City of Lakewood shall in good faith review the proposed alternative or modification. The acceptance of the proposed alternative or modification shall be at the sole discretion of the City. In the event the City of Lakewood accepts the proposed alternative or modification, the Company agrees to promptly compensate the City Lakewood for all additional costs, expenses, or delay that the City Lakewood reasonably determines resulted from the implementation of the proposed alternative. Unless otherwise agreed by the City Lakewood, the presentation of a proposed alternative or modification shall not be deemed good cause for any extension of time to complete the relocation. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.230 New or modified service requested by city.

The conditions under which the Company shall install new or modified Utility Service to the City of Lakewood as a customer shall be governed by this franchise and the Company’s PUC tariffs. Under no circumstances will the Company install any street lights within City of Lakewood Streets or Other City of Lakewood Property without the express written direction from the City of Lakewood Representative. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1; Ord. O-89-87 § 1 (part), 1989).

5.50.240 Service to new areas.

If the territorial boundaries of the City of Lakewood are expanded during the term of this
franchise, the Company shall, to the extent permitted by law, extend service to Residents in the expanded area at the earliest practicable time if the expanded area is within the Company's PUC-certificated service territory. Service to the expanded area shall be in accordance with the terms of the Company's PUC tariffs and this franchise, including the payment of franchise fees. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.250 City not required to advance funds.
Upon receipt of the City of Lakewood’s authorization for billing and construction, the Company shall extend Company Facilities to provide Utility Service to the City of Lakewood as a customer, without requiring the City of Lakewood to advance funds prior to construction. The City of Lakewood shall pay for the extension of Company Facilities once completed in accordance with the Company’s extension policy on file with the PUC. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.260 Technological improvements.
The Company shall use its best efforts to incorporate, as soon as practicable, technological advances in its equipment and service within the City of Lakewood when such advances are technically and economically feasible and are safe and beneficial to the City of Lakewood and its Residents. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

VII. Reliability

5.50.270 Reliability.
The Company shall operate and maintain Company Facilities efficiently and economically and in accordance with the high standards and best systems, methods and skills consistent with the provision of adequate, safe, and reliable Utility Service. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.280 Franchise performance obligations.
The Company recognizes that, as part of its obligations and commitments under this franchise, the Company shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.290 Reliability reports.

VIII. Company Performance Obligations

5.50.300 New or Modified service to city facilities.
In providing new or modified Utility Service to City of Lakewood facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each project requested by the City of Lakewood within a reasonable time. The Parties agree that a reasonable time shall not exceed one hundred eighty (180) days from the date upon which the City of Lakewood
designee makes a written request and provides the required Supporting Documentation for all Company Facilities other than traffic facilities. The Company shall be entitled to an extension of time to complete a project where the Company’s performance was delayed due to Force Majeure. Upon request of the Company, the City of Lakewood designee may also grant the Company reasonable extensions of time for good cause shown and the City of Lakewood shall not unreasonably withhold any such extension.

B. City Revision of Supporting Documentation. Any revision by the City of Lakewood of Supporting Documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding new or modified service to City of Lakewood facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under the franchise. The Company shall promptly advise the City of Lakewood of any claimed extension under this provision, including the estimated length of the claimed extension and the revised date by which the installation or modification is estimated to be completed.

C. Completion/Restoration. Each such project shall be complete only when the Company actually provides the service installation or modification required, restores the project site in accordance with the terms of the franchise or as otherwise agreed with the City of Lakewood and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.310 Adjustments to company facilities.

The Company shall perform adjustments to Company Facilities, including manholes and other appurtenances in Streets and Other City of Lakewood Property, to accommodate City of Lakewood street maintenance, repair and paving operations at no cost to the City of Lakewood. In providing such adjustments to Company Facilities, the Company agrees to perform as follows:

A. Performance. The Company shall complete each requested adjustment within a reasonable time, not to exceed thirty (30) days from the date upon which the City of Lakewood makes a written request and provides to the Company all information reasonably necessary to perform the adjustment. The Company shall be entitled to an extension of time to complete an adjustment where the Company’s performance was delayed due to Force Majeure. Upon request of the Company, the City of Lakewood may also grant the Company reasonable extensions of time for good cause shown and the City of Lakewood shall not unreasonably withhold any such extension.

B. Completion/Restoration. Each such adjustment shall be complete only when the Company actually adjusts the Company Facility to accommodate the City of Lakewood operations in accordance with City of Lakewood instructions and, if required, readjusts, following City paving operations.

C. Coordination. As requested by the City of Lakewood or the Company, representatives of the City of Lakewood and the Company shall meet regarding anticipated street maintenance operations which will require such adjustments to Company Facilities in Streets or Other City of Lakewood Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).
5.50.320 Third party damage recovery.

A. Damage To Company Interests. If any individual or entity damages any Company Facilities that the Company is responsible to repair or replace, the City of Lakewood will notify the Company of any such incident and will provide to the Company within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity, except that this provision shall not be construed to require any disclosure prohibited by state open records or criminal justice records statutes, or other law.

B. Damage To City of Lakewood Interests. If any individual or entity damages any Company Facilities for which the City of Lakewood is obligated to reimburse the Company for the cost of the repair or replacement of the damaged facility, the Company will notify the City of Lakewood of any such incident and will provide to the City of Lakewood within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity, except that this provision shall not be construed to require any disclosure prohibited by law applicable to the Company.

C. Meeting. The Company and the City of Lakewood agree to meet periodically, upon written request of either party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging Company Facilities. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

IX. Billing and Payment

5.50.330 Billing for utility services.

A. Unless otherwise provided in its tariffs, the rules and regulations of the PUC, or the Public Utility Law, the Company shall render bills monthly to the offices of the City of Lakewood for Utility Service and other related services for which the Company is entitled to payment and for which the City of Lakewood has authorized payment.

B. Billings for service rendered during the preceding month shall be sent to the person(s) designated by the City of Lakewood and payment for same shall be made as prescribed in this agreement and the applicable tariff on file and in effect from time to time with the PUC.

C. The Company shall provide all billings and any underlying support documentation reasonably requested by the City of Lakewood and in an editable and manipulatable electronic format that is acceptable to the Company and the City of Lakewood.

D. The Company agrees to meet with the City of Lakewood designee at least annually for the purpose of developing, implementing, reviewing, and/or modifying mutually beneficial and acceptable billing procedures, methods, and formats which may include, without limitation, electronic billing and upgrades or beneficial alternatives to the Company’s current most advanced billing technology, for the efficient and cost effective rendering and processing of such billings submitted by the Company to the City of Lakewood. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; (Ord. O-89-87 § 1 (part), 1989).

5.50.340 Payment to city.

In the event the City of Lakewood determines after written notice to the Company that the Company is liable to the City of Lakewood for payments, costs, expenses or damages of any nature, and subject to the Company’s right to challenge such determination, the City of Lakewood may deduct all monies due and owing the City of Lakewood from any other amounts currently due and owing the Company. Upon receipt of such written notice, the
Company may request a meeting between the Company's designee and a designee of the City of Lakewood to discuss such determination. The City of Lakewood agrees to attend such a meeting. As an alternative to such deduction, the City of Lakewood may bill the Company for such assessment(s), in which case, the Company shall pay each such bill within thirty (30) days of the date of receipt of such bill. If the Company challenges the City determination of liability, the City of Lakewood shall make such payments to the Company pursuant to the Company's tariffs until the challenge has been finally resolved. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

X. Use of Company Facilities

5.50.350 City use of company electric distribution poles.

The City of Lakewood shall be permitted to make use of Company electric distribution poles in the City of Lakewood at no cost to the City of Lakewood for the placement of City equipment or facilities necessary to serve a legitimate police, fire, emergency, public safety or traffic control purpose. The Company may allow the use of electric distribution poles for other purposes at the Company's sole discretion. The City of Lakewood will notify the Company in advance and in writing of its intent to use Company facilities and the nature of such use unless it is impracticable to provide such advance notice because of emergency circumstances, in which event the City of Lakewood will provide such notice as soon as practicable. The City of Lakewood shall be responsible for costs associated with modifications to Company electric distribution facilities to accommodate the City's use of such Company electric distribution facilities and for any electricity used. No such use of Company electric distribution facilities shall be required if it would constitute a safety hazard or would interfere with the Company's use of Company electric distribution facilities. Any such City of Lakewood use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.360 City Use of Street Lighting and Traffic Signal Lighting Poles.

The City of Lakewood shall be allowed to use the Company's street lighting and traffic signal lighting poles in the future for legitimate police, public safety or traffic control purposes under the terms and conditions set forth in the Company's PUC tariffs and any subsequent agreements that may be entered between the parties, but must obtain prior written approval of the Company. No such use shall be allowed if the Company determines in good faith that the City of Lakewood's use of specific street lighting or traffic signal lighting poles creates a safety hazard or interferes with the Company's use of its Utility Facilities. The City of Lakewood shall be responsible for paying the Company's reasonable costs of determining whether the proposed use of street lighting and traffic signal lighting poles creates a safety hazard or interferes with Company Utility Facilities.

The City of Lakewood shall not be required to remove its existing signs, equipment or facilities from street lighting or traffic signal lighting poles, unless the Company determines after consultation with the City of Lakewood that attachment of specific equipment or facilities on specific poles creates a safety hazard or interferes with the Company's use of its Utility Facilities. If after such determination the City of Lakewood is required to remove its existing equipment or facilities from those poles, the Company shall allow the City of Lakewood ten (10) days from the date of written notice, including by electronic mail, within which to remove its equipment or facilities. If the City of Lakewood fails to remove the equipment or facilities, the Company may perform the removal at the City of Lakewood's sole expense. (Ord. O-
5.50.360


5.50.370  City use of company transmission rights of-way.

The Company shall offer to grant to the City of Lakewood use of transmission rights-of-way which it now, or in the future, owns in fee within the City of Lakewood for the purposes set forth in and pursuant to the provisions of the Park and Open Space Act of 1984, on terms comparable to those offered to other municipalities, provided that the Company shall not be required to make such an offer in any circumstance where such offer would constitute a safety hazard or interfere with the Company's use of the transmission right-of-way. City of Lakewood use of transmission rights-of-way may include use for trails, parks and open space. In order to exercise this right, the City of Lakewood must make specific written request to the Company for any such use. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.380  Emergencies.

Upon written request, the Company shall assist the City of Lakewood in developing an emergency management plan. In the case of any emergency or disaster, the Company shall, upon oral request of the City of Lakewood, make available Company Facilities for emergency use during the emergency or the disaster period. Such use of Company Facilities shall be of a limited duration and will only be allowed if the use does not interfere with the Company's own use of Company Facilities. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XI. Undergrounding of Overhead Facilities

5.50.390  Underground electrical lines in new areas.

The Company shall, upon payment to the Company of the charges provided in its tariffs or their equivalent, place all newly constructed electrical distribution lines in newly developed areas of the City of Lakewood underground in accordance with applicable laws, regulations and orders. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.400  Underground conversion at expense of company.

A. Underground Fund. The Company shall budget and allocate an annual amount, equivalent to one percent (1%) of the preceding year’s Electric Gross Revenues (the “Fund”), for the purpose of undergrounding existing overhead distribution facilities in the City of Lakewood, as may be requested by the City of Lakewood Designee. Except as provided in Subsection 5.50.220G, Sections 5.50.150 to 5.50.260, no relocation expenses which the Company would be required to expend pursuant to Article 6 of this franchise shall be charged to this allocation.

B. Unexpended Portion And Advances. Any unexpended portion of the Fund shall be carried over to succeeding years and, in addition, upon request by the City of Lakewood, the Company agrees to advance and expend amounts anticipated to be available under the preceding paragraph for up to three (3) years in advance. Any amounts so advanced shall be credited against amounts to be expended in succeeding years. Any funds left accumulated under any prior franchise shall be carried over to this franchise. The City of Lakewood shall have no vested interest in monies allocated to the Fund and any monies in the Fund not expended at the expiration or termination of this franchise shall remain the property of the Company. At the expiration or termination of this franchise, the Company shall not be
required to underground any existing overhead facilities under this Article, but may do so in its sole discretion.

C. System-wide Undergrounding. If, during the term of this franchise, the Company should receive authority from the PUC to undertake a system-wide program or programs of undergrounding its electric distribution facilities, the Company will budget and allocate to the program of undergrounding in the City of Lakewood such amount as may be determined and approved by the PUC, but in no case shall such amount be less than the one percent (1%) of annual Electric Gross Revenues provided above.

D. City Requirement To Underground. In addition to the provisions of this Article, the City of Lakewood may require any above ground Company Facilities to be moved underground at the City of Lakewood’s expense. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.410 Undergrounding performance.

Upon receipt of a written request from the City of Lakewood, the Company shall underground Company Facilities pursuant to the provisions of this Article, in accordance with the procedures set forth in this Section. Any work on the customer’s side of the meter that may be caused by an undergrounding project pursuant to this Article shall not be included within the scope of an undergrounding project for the purposes of this Section and shall not be the responsibility of the Company.

A. Estimates. Promptly upon receipt of an undergrounding request from the City of Lakewood and the Supporting Documentation necessary for the Company to design the undergrounding project, the Company shall prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the City of Lakewood to review and, if acceptable to the City of Lakewood, the City of Lakewood will issue a project authorization. At the City of Lakewood’s request, the Company will provide all documentation which forms the basis of the estimate. The Company will not proceed with any requested project until the City of Lakewood has provided a written acceptance of the Company estimate.

B. Performance. The Company shall complete each undergrounding project requested by the City of Lakewood within a reasonable time, not to exceed 240 days from the later of the date upon which the City of Lakewood designee makes a written request or the date the City of Lakewood provides to the Company all Supporting Documentation. The Company shall have 120 days after receiving the City of Lakewood’s written request to design project plans, prepare the good faith estimate, and transmit same to the City of Lakewood Designee for review. If City of Lakewood approval of the plans and estimate has not been granted, the Company’s good faith estimate will be void 60 days after delivery of the plans and estimate to the City of Lakewood Designee. If the plans and estimate are approved by the City of Lakewood, the Company shall have 120 days from date of the City of Lakewood Designee’s authorization of the underground project, plus any of the 120 unused days in preparing the good faith estimate to complete the project. At the Company’s sole discretion, if the good faith estimate has expired because the City of Lakewood Designee has not approved the same within 60 days, the Company may extend the good faith estimate or prepare a new estimate using current prices. The Company shall be entitled to an extension of time to complete each undergrounding project where the Company’s performance was delayed due to a Force Majeure condition. Upon written request of the Company, the City of Lakewood may also grant the Company reasonable extensions of time for good cause shown and the City of Lakewood shall not unreasonably withhold any such extension.

C. City of Lakewood Revision of Supporting Documentation. Any revision by the City of Lakewood of Supporting Documentation provided to the Company that causes the Company
to substantially redesign and/or change its plans regarding an undergrounding project shall be
deemed good cause for a reasonable extension of time to complete the undergrounding
project under the franchise. The Company shall promptly advise the City of Lakewood of any
claimed extension under this provision, including the estimated length of the claimed
extension and the revised date by which the undergrounding project is estimated to be
completed.

D. Completion/Restoration. Each such undergrounding project shall be complete only
when the Company actually undergrounds the designated Company Facilities, restores
the undergrounding site in accordance with Section 5.50.210 of this franchise, or as otherwise
agreed with the City of Lakewood, and removes from the site or properly abandons on site
any unused facilities, equipment, material and other impediments.

E. Report of Actual Costs. Upon completion of each undergrounding project, the
Company shall submit to the City of Lakewood a detailed report of the Company's actual cost
to complete the project and the Company shall reconcile this total actual cost with the
accepted cost estimate. The report shall be provided within 120 days after completion of the
project and written request from the City of Lakewood.

F. Audit of Underground Projects. The City of Lakewood may require that the Company
undertake an independent audit of up to two (2) undergrounding projects in any calendar year.
The cost of any such independent audit shall reduce the amount of the Fund. The Company
shall cooperate fully with any audit and the independent auditor shall prepare and provide to
the City of Lakewood and the Company a final audit report showing the actual costs
associated with completion of the project. If a project audit is required by the City of
Lakewood, only those actual project costs confirmed and verified by the independent auditor
as reasonable and necessary to complete the project shall be charged against the Fund
1989).

5.50.420 Audit of underground fund.

Upon written request, every three (3) years commencing at the end of the third year of this
franchise, the Company shall cause an independent auditor to investigate and determine the
correctness of the charges to the underground fund. Such audits shall be limited to the
previous three (3) calendar years. The independent auditor shall provide a written report
containing its findings to the City of Lakewood and the Company. The Company shall
reconcile the Fund consistent with the findings contained in the independent auditor's written
report. The Company shall pay the costs of the audit and investigation. (Ord. O-2019-24 § 4,

5.50.430 Cooperation with other utilities.

When undertaking an undergrounding project the City of Lakewood and the Company
shall coordinate with other utilities or companies that have their facilities above ground to
attempt to have all facilities undergrounded as part of the same project. When other utilities or
companies are placing their facilities underground, to the extent the Company has received
prior written notification, the Company shall cooperate with these utilities and companies and
undertake to underground Company facilities as part of the same project where financially,
technically and operationally feasible. The Company shall not be required to pay for the cost
of undergrounding the facilities of other companies or the City. (Ord. O-2019-24 § 4, 2019;
Planning and coordination of undergrounding projects.

The City of Lakewood and the Company shall mutually plan in advance the scheduling of undergrounding projects to be undertaken according to this Article as a part of the review and planning for other City of Lakewood and Company construction projects. The City of Lakewood and the Company agree to meet, as required, to review the progress of the current undergrounding projects and to review planned future undergrounding projects. The purpose of such meetings shall be to further cooperation between the City of Lakewood and the Company in order to achieve the orderly undergrounding of Company Facilities. Representatives of both the City of Lakewood and the Company shall meet periodically to review the Company's undergrounding of Company Facilities and at such meetings shall review:

A. Undergrounding, including conversions, Public Projects and replacements which have been accomplished or are underway, together with the Company's plans for additional undergrounding; and


XII. Purchase or Condemnation

Municipal right to purchase or condemn.

A. Right and Privilege of City of Lakewood. The right and privilege of the City of Lakewood to construct, purchase, or condemn any Company Facilities located within the territorial boundaries of the City of Lakewood, and the Company's rights in connection therewith, as set forth in applicable provisions of the constitution and statutes of the State of Colorado relating to the acquisition of public utilities, are expressly recognized. The City of Lakewood shall have the right, within the time frames and in accordance with the procedures set forth in such provisions, to purchase Company Facilities, land, rights-of-way and easements now owned or to be owned by the Company located within the territorial boundaries of the City of Lakewood. In the event of any such purchase, no value shall be ascribed or given to the rights granted under this franchise in the valuation of the property thus taken.

B. Notice of Intent to Purchase or Condemn. The City of Lakewood shall provide the Company no less than one (1) year's prior written notice of its intent to purchase or condemn Company Facilities. Nothing in this Section shall be deemed or construed to constitute a consent by the Company to the City of Lakewood's purchase or condemnation of Company Facilities. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XIII. Municipally Produced Utility Service

Municipally produced utility service.

A. City of Lakewood Reservation. The City of Lakewood expressly reserves the right to engage in the production of Utility Service to the extent permitted by law. The Company agrees to negotiate in good faith long term contracts to purchase City of Lakewood -generated power made available for sale, subject to applicable statutory requirements and consistent with PUC requirements. The Company further agrees to offer transmission and delivery services to the City that are required by judicial, statutory and/or regulatory directive and that are comparable to the services offered to any other customer with similar generation facilities.

B. Franchise Not To Limit City’s Rights. Nothing in this franchise prohibits the City of
Lakewood from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XIV. Environment and Conservation

5.50.470 Environmental leadership.

The City of Lakewood and the Company agree that sustainable development, environmental excellence and innovation shall form the foundation of the Utility Service provided by the Company under this franchise. The Company agrees to continue to actively pursue reduction of carbon emissions attributable to its electric generation facilities with a rigorous combination of energy conservation and energy efficiency measures, Clean Energy measures, and promoting and implementing the use of Renewable Energy Resources on both a distributed and centralized basis. The Company shall continue to cost-effectively monitor its operations to mitigate environmental impacts; shall meet or exceed the requirements of environmental laws, regulations and permits; shall invest in cost-effective environmentally-sound technologies; shall consider environmental issues in its planning and decision-making; and shall support environmental research and development projects and partnerships in our communities through various means, including but not limited to corporate giving and employee involvement. The Company shall continue to explore ways to reduce water consumption at its facilities and to use recycled water where feasible. The Company shall continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds with transmission and distribution lines. On or before December 1 of each year, the Company shall provide the City of Lakewood a written report describing its progress in carbon reduction and other environmental efforts, and the parties shall meet at a mutually convenient time and place for a discussion of such. In meeting its obligation under this section, the Company is not precluded from providing existing internal and external reports that may be used for other reporting requirements. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.480 Conservation.

The City of Lakewood and the Company recognize and agree that energy conservation programs offer opportunities for the efficient use of energy and possible reduction of energy costs. The City of Lakewood and the Company further recognize that creative and effective energy conservation solutions are crucial to sustainable development. The Company recognizes and shares the City of Lakewood’s stated objectives to advance the implementation of cost-effective Energy Efficiency and Energy Conservation programs that direct opportunities to Residents to manage more efficiently their use of energy and thereby create the opportunity to reduce their energy bills. The Company commits to offer programs that attempt to capture market opportunities for cost-effective energy efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy according to current and future Demand Side Management (“DSM”) programs. In doing so, the Company recognizes the importance of (i) implementing cost-effective programs the benefits of which would otherwise be lost if not pursued in a timely fashion; and (ii) developing cost-effective programs for the various classes of the Company’s customers, including low-income customers. The Company shall advise the City of Lakewood
and its Residents of the availability of assistance that the Company makes available for investments in energy conservation through newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information about these programs on the Company’s website. Further, the Company will designate a conservation representative to act as the primary liaison with the City of Lakewood who will provide the City of Lakewood with information on how the City of Lakewood may take advantage of reducing energy consumption in City of Lakewood facilities and how the City of Lakewood may participate in energy conservation and energy efficiency programs sponsored by the Company. As such, the Company and the City of Lakewood commit to work cooperatively and collaboratively to identify, develop, implement and support programs offering creative and sustainable opportunities to Company customers and Residents, including low-income customers and Residents. The Company agrees to help the City of Lakewood participate in Company programs and when opportunities exist to partner with others, such as the State of Colorado, the Company will help the City of Lakewood pursue those opportunities. In addition, and in order to assist the City of Lakewood and its Residents’ participation in Renewable Energy Resource programs, the Company shall:

A. notify the City of Lakewood regarding all eligible Renewable Energy Resource programs;
B. provide the City of Lakewood with technical support regarding how the City of Lakewood may participate in Renewable Energy Resource programs; and
C. advise Residents regarding eligible Renewable Energy Resource programs.

Notwithstanding the foregoing, to the extent that any Company assistance is needed to support Renewable Energy Resource Programs that are solely for the benefit of Company customers located within the City of Lakewood, the Company retains the sole discretion as to whether to incur such costs. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.490 Continuing commitment.

It is the express intention of the City of Lakewood and the Company that the collaborative effort provided for in this Article continue for the entire term of this agreement. The City of Lakewood and the Company also recognize, however, that the programs identified in this Article may be for a limited duration and that the regulations and technologies associated with energy conservation are subject to change. Given this variability, the Company agrees to maintain its commitment to sustainable development and Energy Conservation for the term of this agreement by continuing to provide leadership, support and assistance, in collaboration with the City of Lakewood, to identify, develop, implement and maintain new and creative programs similar to the programs identified in this agreement in order to help the City of Lakewood achieve its environmental goals. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.500 PUC approval.

Nothing in this Article shall be deemed to require the Company to invest in technologies or to incur costs that it has a good faith belief the PUC will not allow the Company to recover through the ratemaking process. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).
XV. Transfer of Franchise

5.50.510 Consent of City required.

The Company shall not transfer or assign any rights under this franchise to an unaffiliated third party, except by merger with such third party, or, except when the transfer is made in response to legislation or regulatory requirements, unless the City of Lakewood approves such transfer or assignment in writing. Approval of the transfer or assignment shall not be unreasonably withheld. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.520 Transfer fee.

In order that the City of Lakewood may share in the value this franchise adds to the Company’s operations, any transfer or assignment of rights granted under this franchise requiring City of Lakewood approval, as set forth herein, shall be subject to the condition that the Company shall promptly pay to the City of Lakewood a transfer fee in an amount equal to the proportion of the City of Lakewood’s then-population provided Utility Service by the Company to the then-population of the City and County of Denver provided Utility Service by the Company multiplied by one million dollars ($1,000,000.00). Except as otherwise required by law, such transfer fee shall not be recovered from a surcharge placed only on the rates of Residents. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XVI. Continuation of Utility Service

5.50.530 Continuation of utility service.

In the event this franchise is not renewed at the expiration of its term or is terminated for any reason, and the City of Lakewood has not provided for alternative utility service, the Company shall have no right to remove any Company Facilities or discontinue providing Utility Service unless otherwise ordered by the PUC, and shall continue to provide Utility Service within the City of Lakewood until the City of Lakewood arranges for utility service from another provider. The Company further agrees that it will not withhold any temporary Utility Services necessary to protect the public. The City of Lakewood agrees that in the circumstances of this Franchise, the Company shall be entitled to monetary compensation as provided in the Company’s tariffs on file with the Public Utilities Commission and the Company shall be entitled to collect from Residents and shall be obligated to pay the City of Lakewood, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City of Lakewood’s Streets. Only upon receipt of written notice from the City of Lakewood stating that the City of Lakewood has adequate alternative Utility Service for Residents and upon order of the PUC shall the Company be allowed to discontinue the provision of Utility Service to the City of Lakewood and its Residents. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XVII. Indemnification and Immunity

5.50.540 City held harmless.

The Company shall indemnify, defend and hold the City of Lakewood harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of or
arising from the grant of this franchise, the exercise by the Company of the related rights, or from the operations of the Company within the City of Lakewood, and shall pay the costs of defense plus reasonable attorneys’ fees. The City of Lakewood shall (a) give prompt written notice to the Company of any claim, demand or lien with respect to which the City of Lakewood seeks indemnification hereunder and (b) unless in the City of Lakewood’s judgment a conflict of interest may exist between the City of Lakewood and the Company with respect to such claim, demand or lien, shall permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to the City of Lakewood. If such defense is assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. If such defense is not assumed by the Company or if the City of Lakewood determines that a conflict of interest exists, the parties reserve all rights to seek all remedies available in this franchise against each other. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City of Lakewood harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or intentional act or failure to act of the City of Lakewood or any of its officers or employees. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.550 Immunity.

Nothing in this Section or any other provision of this agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the City of Lakewood may have under the Colorado Governmental Immunity Act (§24-10-101, C.R.S., et. seq.) or of any other defenses, immunities, or limitations of liability available to the City of Lakewood by law. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XVIII. Breach

5.50.560 Non-contestability.

The City of Lakewood and the Company agree to take all reasonable and necessary actions to assure that the terms of this franchise are performed. The Company reserves the right to seek a change in its tariffs including but not limited to the rates, charges, terms, and conditions of providing Utility Service to the City of Lakewood and its Residents, and the City of Lakewood retains all rights that it may have to intervene and participate in any such proceedings. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.570 Breach.

A. Notice/Cure/Remedies. Except as otherwise provided in this franchise, if a party (the “breaching party”) to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a “breach”), the other party (the “non-breaching party”) may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach. If the breaching party does not remedy the breach within the time allowed in the notice, the non-breaching party may exercise the following remedies for such breach:

1. specific performance of the applicable term or condition; and

2. recovery of actual damages from the date of such breach incurred by the non-breaching party in connection with the breach, but excluding any consequential damages.

B. Termination of Franchise by City of Lakewood. In addition to the foregoing remedies, if the Company fails or refuses to perform any material term or condition of this franchise (a
“material breach”), the City of Lakewood may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach. If the Company does not remedy the material breach within the time allowed in the notice, the City of Lakewood may, at its sole option, terminate this franchise. This remedy shall be in addition to the City of Lakewood’s right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide Utility Service to the City of Lakewood and its Residents until the City of Lakewood makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from Residents and shall be obligated to pay the City of Lakewood, at the same times and in the same manner as provided in the franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the City of Lakewood Streets.

C. Company Shall Not Terminate Franchise. In no event does the Company have the right to terminate this franchise.

D. No Limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XIX. Amendments

5.50.580 Proposed amendments.
At any time during the term of this franchise, the City of Lakewood or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this Section shall be deemed to require either party to consent to any amendment proposed by the other party. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.590 Effective amendments.
No alterations, amendments or modifications to this franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XX. Equal Opportunity

5.50.600 Economic development.
The Company is committed to the principle of stimulating, cultivating and strengthening the participation and representation of persons of color, women and members of other under-represented groups within the Company and in the local business community. The Company believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. The Company is also committed to the principle that the success and economic well-being of the Company is closely tied to the economic strength and vitality of the diverse communities and people it serves. The Company
believes that contributing to the development of a viable and sustainable economic base among all Company customers is in the best interests of the Company and its shareholders. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.610  Employment.
A. The Company is committed to undertaking programs that identify, consider and develop persons of color, women and members of other under-represented groups for positions at all skill and management levels within the Company.
B. The Company recognizes that the City of Lakewood and the business community in the City of Lakewood, including women and minority owned businesses, provide a valuable resource in assisting the Company to develop programs to promote persons of color, women and members of under represented communities into management positions, and agrees to keep the City of Lakewood regularly advised of the Company’s progress by providing the City of Lakewood a copy of the Company’s annual affirmative action report upon the City of Lakewood’s written request.
C. In order to enhance the diversity of the employees of the Company, the Company is committed to recruiting diverse employees by strategies such as partnering with colleges, universities and technical schools with diverse student populations, utilizing diversity-specific media to advertise employment opportunities, internships, and engaging recruiting firms with diversity-specific expertise.
D. The Company is committed to developing a world-class workforce through the advancement of its employees, including persons of color, women and members of under represented groups. In order to enhance opportunities for advancement, the Company will offer training and development opportunities for its employees. Such programs may include mentoring programs, training programs, classroom training, and leadership programs.
E. The Company is committed to a workplace free of discrimination based on race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability or any other protected status in accordance with all federal, state or local laws. The Company shall not, solely because of race, creed, color, religion, sex, age, national origin or ancestry or handicap, refuse to hire, discharge, promote, demote or discriminate in matters of compensation, against any person otherwise qualified, and further agrees to insert the foregoing provision or its equivalent in all agreements the Company enters into in connection with this franchise.
F. The Company shall identify and consider women, persons of color and other under represented groups to recommend for its Board of Directors, consistent with the responsibility of boards to represent the interests of the Shareholders, customers and employees of the Company. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.620  Contracting.
A. It is the Company’s policy to make available to minority and women owned business enterprises and other small and/or disadvantaged business enterprises the maximum practical opportunity to compete with other service providers, contractors, vendors and suppliers in the marketplace. The Company is committed to increasing the proportion of Company contracts awarded to minority and women owned business enterprises and other small and/or disadvantaged business enterprises for services, construction, equipment and supplies to the maximum extent consistent with the efficient and economical operation of the Company.
B. The Company agrees to maintain and continuously develop contracting and community outreach programs calculated to enhance opportunity and increase the
participation of minority and women owned business enterprises and other small and/or disadvantaged business enterprises to encourage economic vitality. The Company agrees to keep the City regularly advised of the Company's programs.

C. The Company shall maintain and support partnerships with local chambers of commerce and business organizations, including those representing predominately minority owned, women owned and disadvantaged businesses, to preserve and strengthen open communication channels and enhance opportunities for minority owned, women owned and disadvantaged businesses to contract with the Company. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.630 Coordination.

City of Lakewood agencies provide collaborative leadership and mutual opportunities or programs relating to City of Lakewood based initiatives on economic development, employment and contracting opportunity. The Company agrees to review Company programs and mutual opportunities responsive to this Article with these agencies, upon their request, and to collaborate on best practices regarding such programs and coordinate and cooperate with the agencies in program implementation. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

XXI. Miscellaneous

5.50.640 No waiver.

Neither the City of Lakewood nor the Company shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.650 Successors and assigns.

The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Sections 5.50.510 and 5.50.520 of this franchise. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.660 Third parties.

Nothing contained in this franchise shall be construed to provide rights to third parties. (Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.670 Notice.

Both parties shall designate from time to time in writing representatives for the Company and the City of Lakewood who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent as follows:
To the City:

Mayor of Lakewood
City of Lakewood
480 S. Allison Pkwy
Lakewood, CO 80226

and

City Manager
City of Lakewood
480 S. Allison Pkwy
Lakewood, CO 80226

With a copy to:

City Attorney
City of Lakewood
480 S. Allison Pkwy
Lakewood, CO 80226

To the Company:

Regional Vice President, Customer and Community Services
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201

With a copy to:

Legal Department
Public Service Company of Colorado
P.O. Box 840
Denver, Colorado 80201


5.50.680 Examination of records.
A. The Parties agree that any duly authorized representative of the City of Lakewood and the Company shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other party involving any activities related to this franchise. All such records must be kept for a minimum of four (4) years. To the extent that either Party believes in good faith that it is necessary in order to monitor compliance with the terms of this franchise to examine confidential books, documents, papers, and records of the other Party, the Parties agree to meet and discuss providing confidential materials, including but not limited to providing such materials subject to a reasonable confidentiality agreement which effectively protects the confidentiality of such materials.

B. PUC Filings. Upon written request, the Company shall provide the City of Lakewood copies of all applications, advice letters and periodic reports, together with any accompanying non-confidential testimony and exhibits, filed by the Company with the Colorado Public
Utilities Commission.

C. Information. Upon written request, the Company shall provide the City Manager designee with:

1. a copy of the Company’s or its parent company’s consolidated annual financial report, or alternatively, a URL link to a location where the same information is available on the Company’s web site;

2. subject to legitimate security concerns, maps or schematics indicating the location of specific Company Facilities, including gas or electric lines, located within the City of Lakewood, to the extent those maps or schematics are in existence at the time of the request and related to a specific, ongoing project of the City of Lakewood; and

3. a copy of any report required to be prepared for a federal or state agency detailing the Company’s efforts to comply with federal and state air and water pollution laws. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.690 List of utility property.

The Company shall provide the City of Lakewood, upon request not more than every two (2) years, a list of utility related property owned or leased by the Company within the City of Lakewood. All such records must be kept for a minimum of four (4) years. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.700 Payment of taxes and fees.

A. The Company shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against this agreement ("Impositions"), provided that Company shall have the right to contest any such impositions and shall not be in breach of this Section so long as it is actively contesting such impositions.

B. The City of Lakewood shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable tariffs on file and in effect from time to time with the PUC. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.710 Conflict of interest.

The parties agree that no official, officer or employee of the City of Lakewood shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or contract for services any official, officer or employee of the City of Lakewood to the extent prohibited by law, including ordinances and regulations of the City of Lakewood. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009; Ord. O-89-87 § 1 (part), 1989).

5.50.720 Certificate of public convenience and necessity.

The City of Lakewood agrees to support the Company’s application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009).
5.50.730 Authority.
Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this agreement on behalf of the parties and to bind the parties to its terms. The persons executing this agreement on behalf of each of the parties warrant that they have full authorization to execute this agreement. The City of Lakewood acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009).

5.50.740 Severability.
Should any one or more provisions of this franchise be determined to be unconstitutional, illegal, unenforceable or otherwise void, all other provisions nevertheless shall remain effective; provided, however, to the extent allowed by law, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft one or more substitute provisions that will achieve the original intent of the parties hereunder. (Ord. O-2009-44 § 1, 2009).

5.50.750 Force majeure.
Neither the City of Lakewood nor the Company shall be in breach of this franchise if a failure to perform any of the duties under this franchise is due to Force Majeure, as defined herein. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009).

5.50.760 Earlier franchises superseded.
This franchise shall constitute the only franchise between the City of Lakewood and the Company for the furnishing of Utility Service, Street Lighting Service and traffic signal lighting service and it supersedes and cancels all former franchises between the parties hereto. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009).

5.50.770 Titles not controlling.
Titles of the paragraphs herein are for reference only, and shall not be used to construe the language of this franchise. (Ord. O-2009-44 § 1, 2009).

5.50.780 Applicable law.
Colorado law shall apply to the construction and enforcement of this franchise. The parties agree that venue for any litigation arising out of this franchise shall be in the District Court for Jefferson County, State of Colorado. (Ord. O-2009-44 § 1, 2009).

5.50.790 Payment of expenses incurred by City in relation to franchise agreement.
The Company shall pay for expenses reasonably incurred by the City of Lakewood for the adoption of this franchise, including the publication of notices, publication of ordinances, and photocopying of documents. (Ord. O-2019-24 § 4, 2019; Ord. O-2009-44 § 1, 2009).
Chapter 5.51

MEDICAL MARIJUANA BUSINESS

Sections:
5.51.010 Purpose.
5.51.020 Definitions.
5.51.030 License required.
5.51.035 Restrictions on Medical Marijuana Business.
5.51.040 Location of Medical Marijuana Business.
5.51.045 Relocation.
5.51.050 Application and Application Fee.
5.51.060 Investigation of Application.
5.51.070 Approval or denial of application.
5.51.080 Appeal of application denial.
5.51.090 License fee.
5.51.100 Terms of the license.
5.51.110 Renewal.
5.51.120 Denial of renewal suspension or revocation of license.
5.51.130 Transferability.
5.51.140 Managers.
5.51.150 Unlawful acts.
5.51.160 Ventilation.
5.51.170 Security requirements for licensed premise.
5.51.180 Right of entry.
5.51.190 Required warnings to be posted.
5.51.200 Duties of license.
5.51.210 Signage.
5.51.220 Penalty.
5.51.230 Reasonable procedures.

5.51.010 Purpose.
A. It is the purpose of this Chapter to adopt reasonable regulations governing the operation of medical marijuana dispensaries, referred to herein as "Medical Marijuana Centers" and medical marijuana cultivation facilities, referred to herein as "Optional Premises Cultivation Operations" consistent with the provisions of Amendment 20, Article 43.3 of Title 12 of the Colorado Revised Statutes (the "Colorado Medical Marijuana Code"), and the implementing regulations issued by the Colorado Department of Public Health and Environment (5 CCR 1006-2) and the Colorado Department of Revenue (1 CCR 212), as amended from time to time. The objectives of this Chapter include, but are not limited to:
1. Requiring that any Medical Marijuana Business be operated in a safe manner that does not endanger the public welfare;
2. Mitigating potential negative impacts that Medical Marijuana Businesses might cause on surrounding properties and persons; and
3. Establishing a non-discriminatory mechanism by which the City can control, through appropriate regulation, the location and operation of Medical Marijuana Businesses within the City.
B. Nothing in this Chapter allows a person to:
   1. Engage in conduct that endangers others or causes a public nuisance;
   2. Possess, cultivate, grow, use, or distribute marijuana that is otherwise illegal under applicable law; or
   3. Engage in any activity related to the possession, cultivation, growing, use, or distribution of marijuana that is not otherwise permitted under the laws of the City or the State of Colorado.

C. The provisions in this Chapter that are different from state law are consistent with the City of Lakewood’s responsibility to protect the public health, safety, and welfare as authorized by Section 12-43.3-305(3), C.R.S., and by the home rule authority granted to the City of Lakewood by Article XX of the Colorado Constitution and the Charter of the City of Lakewood. The City intends that both state law and this Chapter apply within the City of Lakewood. Where this Chapter conflicts with state law, this Chapter shall govern on all matters authorized in the Colorado Medical Marijuana Code and on all matters of local concern.

D. Adoption of this Chapter is not intended to waive or otherwise impair or limit any portion of the local option available to the City of Lakewood under Section 12-43.3-106, C.R.S. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.020 Definitions.

A. Except as set forth below, terms used in this Chapter shall have the definitions found in C.R.S. 12-43.3-101, et seq.

   “Amendment 20” means the voter-initiated amendment to the Colorado Constitution adopted November 7, 2000, codified as Section 14 of Article 18 to the Colorado Constitution.

   “Applicant” means a person who is making an application for a Medical Marijuana Center license or an Optional Premises Cultivation Operation license under this Chapter.

   “City” means the City of Lakewood, Colorado.

   “City Manager” means the City Manager of the City of Lakewood or designee.

   “Colorado Medical Marijuana Code” means Article 43.3 of Title 12, C.R.S.

   “License” means a license to operate a Medical Marijuana Center or an Optional Premises Cultivation Operation issued by the City pursuant to this Chapter.

   “Licensee” means the person to whom a license has been issued pursuant to this Chapter.

   “Medical Marijuana Business” means an Optional Premises Cultivation Operation or Medical Marijuana Center.

   “Medical Marijuana Care-Giver Facility” means a business licensed by the City pursuant to Ordinance O-2010-1 to sell and dispense medical marijuana subject to the requirements of Amendment 20 and which license expires on June 30, 2011 and cannot be renewed.

   “Medical Marijuana Center” means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business that distributes medical marijuana to patients or primary caregivers, but who is not a primary caregiver.

   “Optional Premises Cultivation Operation” means a licensed medical marijuana business that:
   1. Is under the identical ownership as the Licensed Medical Marijuana Center;
   2. Produces and harvests medical marijuana plants for a medical use for distribution by such Medical Marijuana Center; and
   3. Is located in the same facility as the licensed premises of the owner’s Medical Marijuana Center. (Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).
5.51.030 License Required.
A. A Medical Marijuana Business may only be operated if:
1. A Medical Marijuana Care-giver Facility license was issued by the City of Lakewood at
the same location on or before the effective date of this Chapter or an application for a
Medical Marijuana Care-giver Facility license was submitted to the City of Lakewood on or
before July 1, 2010 and the decision of the City Clerk was still pending as of the effective date
of this Chapter; and
2. A Medical Marijuana Business license is issued by the City of Lakewood pursuant to
and after the effective date of this Chapter; and
3. A Medical Marijuana Center license or a Medical Marijuana Center license and an
Optional Premises Cultivation license is issued by the State of Colorado pursuant to the
Colorado Medical Marijuana Code.
B. A separate license shall be required for each Medical Marijuana Center and each
Optional Premises Cultivation Operation. The requirement to obtain a Medical Marijuana
Business license is in addition to the requirement to obtain a sales tax license and any other
license required by the City of Lakewood. No sales tax license may be issued for a Medical
Marijuana Center until a license has been issued pursuant to this Chapter.
C. The requirement to obtain a Medical Marijuana Center license shall apply regardless of
whether or not the applicant had previously applied for or obtained a Medical Marijuana Care-
giver Facility License, and regardless of whether or not the Medical Marijuana Care-giver
Facility has commenced operation prior to the effective date of this Chapter. Any previously
licensed Medical Marijuana Care-giver Facility and any Medical Marijuana Center that
commenced doing business before the effective date of this Chapter that does not or cannot
meet the licensing requirements set forth in this Chapter shall not be issued a Medical
Marijuana Center license and must cease operation immediately upon denial of a Medical
Marijuana Center license regardless of whether an appeal of the denial is filed.
D. Medical Marijuana-Infused Products Manufacturing facilities, as defined in Section 12-
43.3-404, C.R.S. are hereby prohibited within the City of Lakewood in accordance with
Section 12-43.3-106, C.R.S. and no such license shall be available in the City of Lakewood.

5.51.035 Restrictions on Medical Marijuana Business.
Any Medical Marijuana Business for which a license is issued under this Chapter shall be
subject to the following restrictions:
A. A building or structure containing a Medical Marijuana Business may be repaired, but it
may not be structurally altered unless the building, structure, or a portion thereof, is declared
unsafe by the City of Lakewood building inspector, in which case the building, structure, or
portion thereof declared unsafe may be strengthened, altered, or restored to a safe condition.
B. No Medical Marijuana Business may be enlarged, extended or expanded. An
extension or expansion shall include any increase in the floor area of the building or structure
of the licensed premises of the Medical Marijuana Care-giver Facility.
C. If a Medical Marijuana Business discontinues operation for a period of one hundred
twenty (120) days or more, regardless of any intent to resume operations, any future use of
the building or structure shall not be for a Medical Marijuana Business. The City Manager
may, in his or her sole discretion, extend the one hundred twenty (120) day period if he or she
finds that extenuating circumstances exist. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-5 § 1,
2011; Ord. O-2010-1 § 1, 2010).

(Lakewood 10-12-2019) 5-165
5.51.040 Location of Medical Marijuana Business.

A. It shall be unlawful to operate or to cause or permit the operation of a Medical Marijuana Business:
   1. In any location that does not comply with the Lakewood Zoning Ordinance, except that any business for which the City of Lakewood had issued a sales tax license for a Medical Marijuana Care-giver Facility prior to the effective date of this Ordinance 0-2010-1 for a location that is not in a zone district in which a Medical Marijuana Center is a permitted use may continue to operate as a legal non-conforming use subject to the provisions of Article 16 of Title 17 of the Lakewood Municipal Code;
   2. Within three-quarters (3/4) of a mile of any other licensed Medical Marijuana Center;
   3. Within one thousand (1,000) feet of any elementary, middle or high school, or any athletic facilities associated with such schools, regardless of the jurisdiction in which the school is located;
   4. From a moveable, mobile or transitory location. A Medical Marijuana Business shall be permitted to operate only from a fixed location.

B. For the purposes of this Section, the minimum distance shall be measured in a straight line, without regard to intervening structures, from the nearest property line of one Medical Marijuana Business to the nearest property line of the parcel on which the structure of another Medical Marijuana Business is located, or to the nearest property line of the parcel on which the school or athletic facility is located, whichever is applicable. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.045 Relocation.

A. After a license for a Medical Marijuana Center and/or Optional Premises Cultivation Operation has been issued by the City of Lakewood and the State of Colorado pursuant to the Colorado Medical Marijuana Code, the licensee may be allowed to apply for a relocation of the Medical Marijuana Business. The licensee may only relocate from a location for which a Medical Marijuana Care-giver Facility license was issued by the City of Lakewood on or before the effective date of this Chapter or an application for a Medical Marijuana Care-giver Facility license was submitted to the City of Lakewood on or before July 1, 2010 and the decision of the City Clerk was still pending as of the effective date of this Chapter.

B. If the licensee has been issued a license for both a Medical Marijuana Center and an Optional Premises Cultivation Operation, both licensed businesses must be relocated to the same facility.

C. No Medical Marijuana Business may be relocated to a new location that results in any increase in the floor area of the building or structure of the licensed premises of the Medical Marijuana Care-giver Facility.

D. If the application to relocate a Medical Marijuana Business is to a building that is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect’s drawing of the building to be constructed.

E. The application to relocate a Medical Marijuana Business shall include written verification from the City of Lakewood that the location requirements imposed by this Chapter and the Lakewood Zoning Ordinance have been met.

F. At the time of submitting any application for relocation to the City Clerk, each applicant shall pay an application processing fee of two thousand dollars ($2,000.00). In the future, all fees will be set by City Council resolution. Such application fee shall be nonrefundable.
G. The Police Department will conduct a Crime Prevention through Environmental Design (CPTED) evaluation to address any security concerns regarding the exterior of the facility. A police agent trained in conducting CPTED evaluations shall conduct the review. The purpose of the CPTED review is to create an environment that impedes criminal activity by improving lighting, mitigating obstructions caused by such things as trees, bushes, fences, and dumpsters that create blind spots or hiding spots, and using security cameras to monitor the property. The Police Department shall promptly forward the results and recommendations of the CPTED evaluation to the City Clerk for administrative review.

H. An application for relocation shall be administratively approved or denied by the City Clerk pursuant to the criteria set forth in Section 5.51.070 within thirty (30) days after submittal of the application. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.050 Application and Application Fee.

A. All applicants for a Medical Marijuana Business license shall file a completed application for such license with the City Clerk on forms to be provided by the City of Lakewood and/or the Colorado Department of Revenue. Such applications must be submitted to the City of Lakewood on or before June 1, 2011. Said applications must fulfill and meet all the requirements of Amendment 20, the Colorado Medical Marijuana Code and any implementing regulations, and this Chapter, as amended from time to time. The City of Lakewood shall have the authority to investigate the background of the applicant and all individuals required by the Colorado Medical Marijuana Code to undergo a background investigation.

B. All applicants shall file at the time of application the floor plans and specifications for the interior of the premises of the Medical Marijuana Business that were submitted to the Colorado Department of Revenue.

C. Any application for an Optional Premises Cultivation license must be filed at the same time the application for the associated Medical Marijuana Center license is filed.

D. The City Clerk shall not accept any application that is not complete in every detail including the submission of fingerprints. If the City Clerk discovers an omission or error, the application shall be rejected and returned to the applicant for completion or correction without further action by the City Clerk. All fees shall be returned with the application. For the purposes of this Chapter, the date the City Clerk accepts an application that is complete in every detail shall be considered the filing date. A separate application shall be submitted for each Medical Marijuana Center and each Optional Premises Cultivation License.

E. Each individual applicant for a Medical Marijuana Center license shall pay an application processing fee of three thousand dollars ($3,000) at the time of submitting such application to the City Clerk. Each individual applicant for a Optional Premises Cultivation Operation license shall pay an application processing fee of five hundred dollars ($500) at the time of submitting such application to the City Clerk. In the future, all fees required by this Chapter will be set by City Council resolution. Such application fee shall be nonrefundable, unless the application is returned for being incomplete. The City Clerk shall be authorized to reduce the application fee if any part of the Investigation of Application has been conducted on the same applicant in accordance with Section 5.51.060 within one year prior to the application date.

F. Applications for a Medical Marijuana Business License shall only be accepted for locations that were currently licensed by the City of Lakewood as a Medical Marijuana Caregiver Facility on or before the effective date of this Chapter or for any location for which a Medical Marijuana Care-giver Facility license application was submitted to the City by July 1,

5.51.060 Investigation of Application.
A. When a complete application for a license has been accepted for filing, the required individuals have been fingerprinted and photographed, and the license fee has been paid, the City Clerk shall transmit the application to the Police Department. In addition to any investigations required under state law, the Police Department will do the following:

1. Investigate the background of each individual applicant and each of the other individuals required to be listed in the license application, and investigate the accuracy of all the information submitted as a part of the application. The investigation required by this section should be completed within ninety (90) days from the date the application is submitted to the Police Department. Failure to complete the investigation within ninety (90) days shall not constitute approval of the application. The Police Department shall promptly forward the application and its completed investigation to the City Clerk for administrative review; and

2. Conduct a Crime Prevention through Environmental Design (CPTED) evaluation to address any security concerns regarding the exterior of the facility. A police agent trained in conducting CPTED evaluations shall conduct the review. The purpose of the CPTED review is to create an environment that impedes criminal activity by improving lighting, mitigating obstructions caused by such things as trees, bushes, fences, and dumpsters that create blind spots or hiding spots, and using security cameras to monitor the property. The Police Department shall promptly forward the results and recommendations of the CPTED evaluation to the City Clerk for administrative review.

B. Concurrent Review. The City Clerk may request that the state licensing authority conduct a concurrent review of a license application pursuant to Section 12-43.3-302(5)(a), C.R.S. of the Colorado Medical Marijuana Code, and may withhold final review and action on the locally-filed application until the state licensing authority’s concurrent review is concluded and the results thereof are communicated to the City Clerk. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.070 Approval or Denial of Application.
A. An application with completed background investigation shall be administratively approved or denied by the City Clerk. This license shall not be effective until the license has been issued to the applicant by the City Clerk. An application shall be approved and a license shall be issued unless the City Clerk or designee finds that the applicant or any of the individuals required by Section 5.51.050 to undergo a background investigation:

1. Knowingly made a false statement or knowingly gave false information in connection with the application;

2. Is prohibited by Section 12-43.3-307, C.R.S. to be a licensee;

3. Will operate the Medical Marijuana Business as a business prohibited by local or state law, statute, rule or regulation;

4. Has had a Medical Marijuana Business license, care-giver certificate, or similar local or state license or approval revoked or suspended within five (5) years of the date of the current application; or

5. Has failed to comply with the results of the CPTED evaluation unless the City Clerk finds good cause to grant the applicant up to an additional ninety (90) days time to implement CPTED requirements; or
5.51.080 Appeal of Application Denial.

A. Written Findings. In the event that the City Clerk denies a license application, the City Clerk shall prepare written findings of fact stating the reasons or basis for the denial. A copy of the City Clerk’s findings shall be sent by certified mail, return receipt requested, to the address of the applicant as shown in the application. If no appeal is filed with the City Manager within fourteen (14) days of the mailing, the denial of the license application shall become a final administrative decision of the City of Lakewood.

B. Appeal Hearing. In the event that the City Clerk denies a license application, an applicant shall have the right to a quasi-judicial hearing before the City Manager for the purpose of appealing the City Clerk’s administrative decision. Any request for a hearing must be made in writing to the City Manager within fourteen (14) days of the date of the mailing of the City Clerk’s written findings and denial of the license application. The written request for a hearing must set forth all grounds relied upon for the appeal. The hearing shall be conducted within thirty (30) days of the City Manager’s receipt of the written request for a hearing unless the City Clerk grants an extension for good cause not to exceed an additional thirty (30) days. Any further extension may only be granted by the City Manager.

C. Closure of Business Pending Appeal. Upon denial of the license application by the City Clerk, the business shall be deemed unlicensed and must cease operation during the pendency of the appeal.

D. Scheduling. Upon receipt of a timely request for a hearing, the City Manager shall schedule a hearing and notify the applicant of the date, time, and place of the hearing. The City of Lakewood may make such notification by telephone provided that a written notice shall also be mailed or delivered to the applicant at the applicant’s address shown in the application. An attorney or other representative may represent an applicant at the hearing. An applicant or the City of Lakewood may request a continuation or postponement of the hearing date from the City Manager.

E. Subpoenas. The City Manager shall have the power to administer oaths, issue subpoenas to require the presence of persons, 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 City Manager conducts. It is unlawful for any person to fail to comply with any subpoena issued by the City Manager. 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 City Attorney or the applicant may:

1. Petition any judge of the Municipal Court of the City of Lakewood, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting 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 willful failure to comply
with such order of court; or
2. Petition the District Court in and for Jefferson County, setting forth that due notice has
been given of the time and place of attendance of the witness and the service of the
subpoena, requesting 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.
F. Conduct of Hearing. At the hearing, the City Manager shall hear and consider such
evidence and testimony presented by the City of Lakewood, the applicant, or any other
witnesses called by the City of Lakewood or the applicant which evidence is relevant to the
stated reason and basis for the City Clerk’s denial of the license application. The City
Manager shall conduct the hearing in accordance with quasi-judicial proceedings and shall
permit the relevant testimony of witnesses, cross-examination, and presentation of relevant
documents and other evidence. The formal rules of evidence shall not apply. The hearing
shall be recorded stenographically or by electronic recording device. Any person requesting a
transcript of such record shall pay the reasonable cost of preparing the record.
G. Written Order. Within fourteen (14) days following the conclusion of the hearing, the
City Manager shall send a written order by delivery confirmation, to the applicant at the
address as shown on the application. The order shall include findings of fact and a final
decision concerning the approval or denial of the application. In the event that the City
Manager concludes that the application is approved, such approval shall constitute approval
by the City Clerk, and the applicant may seek issuance of a license in accordance with this
Chapter.
H. Appeal of Order. The order of the City Manager made pursuant to this section shall be
a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil
Procedure 106(a)(4). For purposes of any appeal, the City Manager’s decision shall be final
upon the date on which the applicant receives the order or four (4) days after the date of
mailing, whichever is earlier. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-5 § 1, 2011; Ord. O-
2010-1 § 1, 2010).

5.51.090 License Fee.
The license fee for any license issued pursuant to this Chapter shall be payable to the City
Clerk at the time an initial license application is filed or at the time a renewal application is
filed. The license fee is in addition to any application fee required by this Chapter. The
license fee shall be nonrefundable unless an application is denied. The fee for a Medical
Marijuana Center license shall be two thousand five hundred dollars ($2,500.00). The fee for
an Optional Premises Cultivation Operation license shall be five hundred dollars ($500.00). In
the future, all fees required by this Chapter will be set by City Council resolution. (Ord. O-
2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.100 Term of the License.
A Medical Marijuana Business license shall be valid for a period of two (2) years from date of
issuance, unless revoked or suspended. (Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).
5.51.110 Renewal.

A. As a prerequisite to renewal of an existing license issued pursuant to this Chapter, the applicant must pay the biennial license fee and file a completed renewal application with the City Clerk at least forty-five (45) days prior to the date of the license expiration. The City Clerk may waive the timely filing requirement where the licensee demonstrates, in writing, that the failure to timely file is not solely the result of the licensee's negligence; provided that no renewal application shall be accepted by the City Clerk from any licensee after the license for which renewal is requested has expired.

B. A license that is under suspension may be renewed in accordance with this Section provided that such renewal shall not modify, alter, terminate, or shorten the period or term of the suspension. The suspension of a license shall not extend the term of the license or otherwise relieve the licensee from timely seeking renewal of the license in accordance with this Section. The City Clerk may administratively renew a license. (Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.120 Denial of Renewal, Suspension or Revocation of License.

A. Denial of Renewal, Suspension or Revocation. The City Manager may deny renewal of, suspend, revoke, modify, or place conditions on the continuation of a Medical Marijuana Business license upon a finding that the licensee:

1. Has violated any of the provisions of this Chapter;
2. Has violated the Colorado Medical Marijuana Code, the administrative regulations issued by the Colorado Department of Public Health and Environment found at 5 CCR 1006-2, the administrative regulations issued by the Colorado Department of Revenue found at 1 CCR 212, or the statutes and administrative regulations implementing Amendment 20, as are amended from time to time;
3. Has operated the Medical Marijuana Business in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the Medical Marijuana Center is located. Evidence to support such a finding includes but is not limited to the occurrence of disturbances upon the licensed premises or upon any parking areas, sidewalks, access ways or grounds within the immediate neighborhood of the licensed premises involving a patient or customer, manager, employee, or the licensee;
4. Has violated City, state, or federal law or regulation regarding the possession, distribution, or cultivation of controlled substances, other than a federal law or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20;
5. Has failed to comply with the results of the CPTED evaluation regarding the exterior of the facility; or
6. Has allowed or permitted any other person to violate any of the provisions of this Chapter or engage in criminal conduct on the premises.

B. Other Enforcement Authorized. A licensee shall be entitled to a quasi-judicial hearing before the City Manager if the City seeks to deny renewal, suspend, revoke, modify, or place conditions on a license based on a violation of this Chapter.

1. When there is probable cause to believe that a licensee has violated or permitted a violation of this Chapter or other law, the City Attorney may file a written complaint with the City Manager setting forth the circumstances of the violation.
2. The City Manager shall send a copy of the complaint by delivery confirmation to the licensee at the address as shown on the license application, together with a notice to appear before the City Manager for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the licensee's license should not be suspended. Such hearing shall be held on a date within thirty (30) days following the date of mailing of the complaint and notice to the licensee unless the City Clerk grants an extension for good cause not to exceed an additional thirty (30) days. Any further extension may only be granted by the City Manager. A licensee may be represented at the hearing by an attorney or other representative.

C. Conduct of Hearing. At the hearing, the City Manager shall hear and consider such evidence and testimony presented by the Police Department or other enforcement officers, the City of Lakewood, the licensee, or any other witnesses called by the City of Lakewood or the licensee, which evidence is relevant to the violations alleged in the complaint. The City Manager shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The formal rules of evidence shall not apply. The hearing shall be recorded either stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record. Subpoenas may be issued in accordance with the provisions of Section 5.51.080.

D. Written Findings. The City Manager shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued within fourteen (14) days following the conclusion of the hearing. If the City Manager determines that a violation which warrants denial of renewal, suspension, revocation, modification, or conditioning of the license pursuant to this section did occur, he or she shall also issue an order suspending, revoking, modifying, or placing conditions on the license. A copy of the findings, conclusion, and order shall be hand delivered or mailed to the licensee by delivery confirmation, at the address as shown on the license application.

E. Appeal. The order of the City Manager shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the City Manager’s decision shall be final either on the date the applicant receives the findings, conclusion, and order or four (4) days following the date of mailing of the City Manager’s decision, whichever is earlier.

F. No Refund and Costs of Enforcement. In the event of suspension, revocation, modification, conditioning, or cessation of business, no portion of the license fee shall be refunded. Any person whose license is suspended, revoked, modified, or conditioned under this Section shall be required to pay the costs incurred by the City of Lakewood to enforce this Chapter, including but not limited to attorneys’ fees, expert witness and/or consultant fees.

5.51.130 Transferability.

A. A license issued under this Chapter shall not be transferable except as provided in this Section and under the Colorado Medical Marijuana Code. For a transfer of ownership, a license holder shall apply to the City of Lakewood on a form to be provided by the Colorado Department of Revenue and/or by the City of Lakewood.
B. Said applicant or any of the individuals required by the Colorado Medical Marijuana Code to undergo a background investigation shall submit a completed application for a Medical Marijuana Business license. A report shall be required for the transfers of capital stock of any corporation regardless of size.

C. At the time of submitting any application for transfer of ownership to the City Clerk, each applicant shall pay an application processing fee of one thousand dollars ($1,000.00). In the future, all fees will be set by City Council resolution. Said application fee shall be nonrefundable.

D. An application with completed background investigation shall be administratively approved or denied by the City Clerk pursuant to the criteria set forth in Section 5.51.070. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.140 Managers.

A. Each licensee shall manage the licensed premises himself or herself or employ a separate and distinct manager on the premises and shall report the name of the manager to the City of Lakewood. The licensee shall include the name of the manager on the license application.

B. The licensee shall report any change in manager to the City of Lakewood within thirty (30) days of the change.

C. An application with completed background investigation shall be administratively approved or denied by the City Clerk pursuant to the criteria set forth in Section 5.51.070 within thirty (30) days after submittal of the application.

D. At the time of submitting any application for a change in manager to the City Clerk, each applicant shall pay an application processing fee of seventy-five dollars ($75.00) plus an application investigation fee in the amount then charged by the Colorado Department of Public Safety. In the future, all fees will be set by City Council resolution. Such application fee shall be nonrefundable. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.150 Unlawful acts.

A. It shall be unlawful for a person to:

1. Consume or allow any other person to consume, inhale, or ingest any marijuana or product containing marijuana or alcoholic beverages or a controlled substance on, or within, the premises of a Medical Marijuana Business; or

2. With knowledge, to permit or fail to prevent the use of his or her registry identification by any other person for the unlawful purchasing of medical marijuana;

B. It is unlawful for a person licensed pursuant to this article to:

1. Dispense more than the amount of medical marijuana permitted under the provisions of Amendment 20 and/or the Colorado Medical Marijuana Code or the enabling administrative regulations;

2. Distribute, sell, or transfer any marijuana or any product containing marijuana to anyone other than a registry patient, a primary caregiver, or a person licensed pursuant to the Colorado Medical Marijuana Code;

3. Store or display any marijuana or product containing marijuana outdoors, or in a manner in which it is visible from a public sidewalk or right of way;

4. Sell, serve, or distribute medical marijuana at any time other than between the hours of 8:00 a.m. and 7:00 p.m. Monday through Sunday;

5. Sell or allow any person to consume alcohol on the premises of a Medical Marijuana
Business;
6. Violate any of the provisions of Amendment 20, or the statutes or administrative regulations implementing Amendment 20 or the Colorado Medical Marijuana Code, or the enabling administrative regulations, as are amended from time to time;
7. Employ any person under the age of twenty-one (21) years old;
8. Offer for sale or solicit an order for medical marijuana in person except within the licensed premises;
9. Buy medical marijuana from a person not licensed to sell as provided in the Colorado Medical Marijuana Code;
10. Sell medical marijuana except in the permanent location specifically designated in the license for sale;
11. Have on the licensed premises medical marijuana or marijuana paraphernalia that show evidence of the medical marijuana having been consumed or partially consumed;
12. Offer anything of value to a physician for making patient referrals to the licensed Medical Marijuana Center;
13. Fail to report a transfer as required by Section 5.51.130; or
14. Fail to report the name of or a change in managers as required by Section 5.51.140.
(Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.160 Ventilation.
A Medical Marijuana Business shall be equipped with a proper ventilation system that filters out the odor of marijuana so that the odor is not capable of being detected by a person with a normal sense of smell at the exterior of the Medical Marijuana Center or any adjoining business, parcel, or tract of real property. (Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.170 Security Requirements for Licensed Premise.
All Medical Marijuana Businesses shall comply with the security requirements for the licensed premises as set forth in the Colorado Medical Marijuana Code and enabling regulations. (Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.180 Right of Entry.
The application for a Medical Marijuana Business license shall constitute consent of the licensee and his agents or employees to permit the Police Department or any other authorized agent of the City of Lakewood to conduct routine inspections, from time to time, of any licensed Medical Marijuana Center to ensure compliance with the requirements of this Chapter, the Colorado Medical Marijuana Code, or any other applicable law, rule or regulation. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.190 Required Warnings to be Posted.
There shall be posted in a conspicuous location in each Medical Marijuana Business a legible sign containing the following warnings:
A. A warning that the use of medical marijuana may impair a person’s ability to drive a motor vehicle or operate machinery, and that it is illegal under state law to drive a motor vehicle or to operate machinery when under the influence of, or impaired by, marijuana;
B. A warning that possession and distribution of marijuana is a violation of federal law; and
5.51.190

C. A warning that it is unlawful for a person to consume or allow any other person to consume, inhale, or ingest any marijuana or product containing marijuana or alcoholic beverages or a controlled substance on, or within, the premises of a Medical Marijuana Business. (Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.200 Duties of Licensee.
Each licensee shall:
A. Post the license in a conspicuous location on the premises of the Medical Marijuana Business that may be readily seen by persons entering the premises;
B. Comply with all of the terms and conditions of the license;
C. Comply with all of the requirements of this Chapter;
D. Comply with all other applicable City of Lakewood ordinances;
E. Comply with all state laws and administrative regulations pertaining to the medical use of marijuana, including, but not limited to, Amendment 20; the Colorado Medical Marijuana Code; Section 18-18-406.3, C.R.S.; and the enabling administrative regulations; and
F. Comply with all applicable federal laws, rules, or regulations, other than a federal law, rule or regulation concerning the possession, sale or distribution of marijuana that conflicts with Amendment 20. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.210 Signage.
No licensee shall display a sign for the Medical Marijuana Business establishment that contains the word “marijuana,” "cannabis," or any other word or phrase commonly understood to refer to marijuana, unless such word or phrase is immediately preceded or followed by the word "medical" in substantially similar size print or font. (Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.220 Penalty.
A. Any person violating any provision of this Chapter shall be punished pursuant to Chapter 1.16 of the Lakewood Municipal Code. Each violation or act of non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered a separate and distinct offense.
B. All remedies and penalties provided for in this Chapter shall be cumulative and independently available to the City of Lakewood, and the City of Lakewood shall be authorized to pursue any and all remedies to the full extent allowed by law.
C. Nothing herein contained shall prevent or restrict the City of Lakewood from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or act of non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages. (Ord. O-2019-24 § 4, 2019; Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).

5.51.230 Reasonable Procedures.
The City Clerk is hereby authorized to adopt such reasonable policies and procedures as are deemed necessary to implement the provisions of this Chapter. (Ord. O-2011-5 § 1, 2011; Ord. O-2010-1 § 1, 2010).
Chapter 5.52
MASSAGE PARLORS

Sections:
5.52.010 Purpose.
5.52.020 Definitions.
5.52.030 Licensing authority established.
5.52.040 License required-Display.
5.52.050 Application fee.
5.52.060 License application.
5.52.070 Public notice-Posting and publication.
5.52.080 Investigation.
5.52.090 Results of investigation-Decision of authority-Change of financial interest.
5.52.100 Renewals.
5.52.110 Transfer of ownership.
5.52.120 Location of massage parlors.
5.52.130 License term-Fees.
5.52.140 Identity cards.
5.52.150 Suspension-Revocation-Denial of ID card-Hearings.
5.52.160 Persons prohibited as licensees.
5.52.170 Unlawful acts.
5.52.180 Penalty.
5.52.190 Employee apparel.
5.52.200 Right of entry.
5.52.210 Exemptions.
5.52.220 Severability.

5.52.010 Purpose.
This chapter is enacted for the purpose of promoting the health, safety, and welfare of the citizens of the city by regulating and licensing massage parlors. (Ord. O-93-14 § 2 (part), 1993).

5.52.020 Definitions.
As used in this chapter, unless the context otherwise requires, the following words and terms shall be defined as follows:
“License” means a grant to a licensee to operate a massage parlor.
“Licensed premises” means the premises specified in an approved application for a license under this chapter which are owned or in the possession of the licensee and within which such licensee is authorized to carry on the practice of massage.
“Licensing authority” or “authority” means the massage parlor licensing authority of the city.
“Location” means a particular parcel of land that may be identified by an address or by other descriptive means.
“Massage” means a method of treating the body of another for medical, remedial or hygienic purposes, including but not limited to rubbing, stroking, kneading, or tapping with the hand or an instrument or both.

“Massage parlor” means an establishment providing massage, but it does not include training rooms of public or private schools accredited by the state board of education or approved by the division charged with the responsibility of approving private occupational schools, training rooms of recognized professional or amateur athletic teams, or licensed health care facilities. A facility which is operated for the purpose of massage therapy performed by a massage therapist is not a massage parlor. For purposes of this subsection, “massage therapist” means a person who was graduated from a massage therapy school accredited by the state educational board or division charged with the responsibility of approving private occupational schools, or from a school with comparable approval or accreditation from another state with transcripts indicating completion of at least five hundred hours of training in massage therapy. For purposes of this subsection, a massage therapy school may include an equivalency program approved by the state educational board or division charged with the responsibility of approving private occupational schools.

“Person” means a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer, or employee of any of them.

“Premises” means a distinct and definite location which may include a building, a part of a building, a room, or any other definite area contiguous thereto. (Ord. O-93-14 § 2 (part), 1993).

5.52.030 Licensing authority established.

A. There is established a massage parlor licensing authority, which shall have and is vested with the authority to grant or refuse licenses for massage parlors based upon the criteria set forth herein and state law, to conduct investigations, and to suspend or revoke such licenses for cause in the manner provided by this chapter.

B. Hereinafter, the massage parlor licensing authority shall be the Lakewood Liquor and Fermented Malt Beverage Licensing Authority.

C. The authority shall meet as needed.

D. The City Clerk shall receive all applications for licenses, and shall issue all licenses granted by the authority, upon receipt of all fees as are required by this chapter. All public notices required by this chapter shall be accomplished by the City Clerk.

E. The Code Administration Officer in the City Clerk’s Office shall also be the massage parlor inspector, who shall perform routine periodic inspections of the licensed premises and such other duties as the massage parlor licensing authority may reasonably direct. Public notice by posting of signs required by this chapter shall be accomplished by the inspector. (Ord. O-2008-10 § 4, 2008; Ord. O-93-14 § 2 (part), 1993).

5.52.040 License required-Display.

A. It is unlawful for any person to operate a massage parlor within this city unless such person shall have first obtained a massage parlor license from the city.

B. Such license shall be prominently displayed at all times upon the premises for which the license was issued. (Ord. O-93-14 § 2 (part), 1993).
5.52.050 Application fee.

Each applicant, whether an individual, partnership, or corporation, shall pay an application fee of one hundred fifty dollars at the time of filing an application. Such application fee shall be nonrefundable. (Ord. O-93-14 § 2 (part), 1993).

5.52.060 License application.

A. Applications for a license under the provisions of this chapter shall be on forms prepared and furnished by the City Clerk which shall set forth such information as the licensing authority requires to enable the authority to determine whether a license should be granted. Each individual applicant, partner of a partnership, officer, director, and holder of over ten percent of the corporate stock of the corporate applicant, and all managers, shall be named in each application form, and each of them shall be photographed and fingerprinted by the Police Department. Each individual applicant, partnership, and corporate applicant shall also furnish evidence from the Planning Department, Public Works Department that the proposed establishment meets the requirements of the City of Lakewood zoning ordinance, proof of the applicant's right to possession of the premises, complete plans and specifications for the premises, a financial questionnaire, a background investigation report, and consent to release financial information and any other information necessary to complete the investigation of the applicant. Each corporate applicant shall furnish evidence that it is in good standing under the statutes of the State of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado.

B. The City Clerk shall not accept any application that is not complete in every detail. If an omission or error is discovered by the City Clerk, the application shall be rejected and returned to the applicant for completion or correction without further action by the City Clerk. All fees shall be returned with the application. For purposes of this chapter, the date the City Clerk accepts an application which is complete in every detail shall be the filing date.

C. Upon receipt of a complete application for a license to operate a massage parlor, the City Clerk shall set the boundaries of the neighborhood to be considered pursuant to Section 5.52.090(B) of this chapter in determining whether or not to grant said license. (Ord. O-2019-24 § 4, 2019; Ord. O-93-14 § 2 (part), 1993).

5.52.070 Public notice-Posting and publication.

A. Upon receipt of a complete application, except an application for renewal or for transfer of ownership, the licensing authority shall schedule a public hearing upon the application not less than thirty days after the filing date of the application and shall post and publish the public notice thereof not less than ten days prior to such hearing. Public notice shall be given by the posting of a sign in a conspicuous place on the premises for which application has been made and by publication in a newspaper of general circulation in the municipality or county in which the premises are located.

B. Notice given by posting shall include a sign of suitable material, stating the type of license applied for, the date of the application, the date of the hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners, and, if the applicant is a corporation, association, or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary, and manager.
C. Notice given by publication shall contain the same information as that required for signs.

D. If the building in which the massage parlor is to be operated is in existence at the time of the application, any sign posted as required in subsections (A) and (B) of this section shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

E. At the public hearing held pursuant to this section, any party in interest shall be allowed to present evidence and cross-examine witnesses. As used in this chapter, “party in interest” includes the applicant, a resident of the neighborhood under consideration, or the owner or manager of a business located in the neighborhood under consideration.

F. The licensing authority, in its discretion, may limit the presentation of evidence and cross-examination so as to prevent repetitive and cumulative evidence or examination. (Ord. O-93-14 § 2 (part), 1993).

5.52.080 Investigation.

A. When a complete application has been accepted for filing, the required individuals have been fingerprinted and photographed, and the license fee has been paid, the City Clerk shall transmit the application to the Police Department for investigation of the background and financial interest of each individual applicant, each partner holding over ten percent interest of a partnership, each officer, director, and holder of over ten percent of the stock of a corporation of a proposed massage parlor establishment. The Police Department shall also investigate the source of funds for the business. 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.

B. *1* The investigation conducted by the Police Department shall be sufficient to verify the accuracy of all the information submitted as part of the application. The Police Department shall make a recommendation to the licensing authority to approve or deny the license based on its investigation. In investigating the qualifications of any applicant, licensee, or employee or agent of the licensee or applicant, the licensing authority may have access to criminal history record information furnished by criminal justice agencies subject to any restrictions imposed by such agencies. In the event the licensing authority takes into consideration information concerning the applicant's criminal history record, the licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of his application for a license.

2. As used in this subsection (B), “criminal justice agency” means any federal, state, or municipal court or any governmental agency or subunit of such agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

C. No application for a massage parlor license at a particular location by or on behalf of the same person shall be received or acted upon concerning a location for which, within two years preceding, the local licensing authority has refused to approve a license on the ground, in whole or in part, that the licenses already granted for the particular locality were adequate for the reasonable requirements of the neighborhood and the desires of the inhabitants at the time of such refusal. (Ord. O-2019-24 § 4, 2019; Ord. O-93-14 § 2 (part), 1993).
5.52.090 Results of investigation-Decision of authority-Change of financial interest.

A. Not less than five days prior to the date of the hearing, the city shall make known its findings based upon its investigation, in writing, to the applicant and other interested parties. The licensing authority has authority to refuse to issue any license, subject to judicial review.

B. Before entering any decision approving or denying the application, the licensing authority shall consider, except where this chapter specifically provides otherwise, the facts and evidence produced as a result of the investigation, including the reasonable requirements of the neighborhood for the license for which application has been made, the desires of the inhabitants, the number, type, and availability of other massage parlors located in or near the neighborhood under consideration, and any other pertinent matters affecting qualifications of the applicant for the conduct of the business proposed.

C. Any decision of a licensing authority approving or denying an application shall be in writing stating the reasons therefor and shall be made within thirty days after the date of the public hearing, and a copy of such decision shall be sent by certified mail to the applicant at the address shown in the application.

D. No license shall be issued by the licensing authority after approval of an application until the building in which the business is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the provisions of this chapter, and then only after inspection of the premises has been made by the licensing authority to determine that the applicant has complied with the plans and specifications submitted upon application. If the building has not been constructed or placed in operation within one year after approval of the license application or construction of the building has not been commenced within one year after such approval, the licensing authority, in its discretion, may revoke or elect not to renew the license.

E. Any change in the partners holding over ten percent in interest of a partnership or in the officers, directors, or holders of over ten percent of the stock of a corporate licensee holding a massage parlor license shall result in termination of the license of the partnership or corporation, unless such licensee within thirty days after such change, files a written notice of such change with the City Clerk on forms provided by the City Clerk, together with the required fees, fingerprints, and photographs. The Police Department shall thereafter conduct an investigation and make a recommendation as set out in Section 5.52.080.

F. 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 business or business entity and each geographical location. (Ord. O-2019-24 § 4, 2019; Ord. O-93-14 § 2 (part), 1993).

5.52.100 Renewals.

Application for the renewal of an existing license shall be made to the licensing authority not less than forty-five days prior to the date of expiration. The licensing authority may cause a hearing on the application or renewal to be held. No such renewal hearing shall be held by the licensing authority until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing. The licensing authority, in its discretion, may revoke or elect not to renew a license if it determines that the licensed premises have been inactive for at least three months. The licensing authority may also refuse to renew any license for good cause, subject to judicial review. (Ord. O-93-14 § 2 (part), 1993).
5.52.110 Transfer of ownership.

A. Application shall be made to the licensing authority prior to any transfer of ownership on forms prepared and furnished by the licensing authority. In determining whether to permit a transfer of ownership, the licensing authority shall consider the requirements of Section 5.52.160. The licensing authority may cause a hearing on the application for transfer of ownership to be held. No such hearing shall be held by the licensing authority until the notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and written notice of the hearing has been provided the applicant at least ten days prior to the hearing.

B. 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. (Ord. O-93-14 § 2 (part), 1993).

5.52.120 Location of massage parlors.

A. It is unlawful to operate or cause to be operated a massage parlor which is in violation of the Lakewood zoning ordinance.

B. It is unlawful to operate or cause to be operated a massage parlor within seven hundred fifty feet of:
   1. A church;
   2. A school or child care facility, as defined in the Lakewood Zoning Code;
   3. A public park;
   4. A boundary of any residential district;
   5. The property line of a lot devoted to residential use.

C. It is unlawful to cause or permit the operation of a massage parlor within one thousand feet of another massage parlor or an adult business licensed under Title 5, Chapter 47 of the Lakewood Municipal Code.

D. It is unlawful to cause or permit the operation, or maintenance of more than one massage parlor in the same building, structure, or portion thereof.

E. For the purposes of subsections (B) and (C) above, the distance between any two massage parlors shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located. The distance between a massage parlor and the uses listed in (B)(1) through (B)(5) above shall be measured in a straight line, without regard to intervening structures or objects, from the closest point of the property line of such use to the closest exterior wall of the structure in which the massage parlor is located.

F. Any massage parlor lawfully operating on the effective date of this chapter that is in violation of subsections (B) through (E) of this section shall be allowed to continue operating for an amortization period of six months. Six months after this ordinance becomes effective, all massage parlors must comply with subsections (B) through (E) of this section and all other provisions of this chapter.
G. A massage parlor lawfully operating is not rendered a nonconforming use by the subsequent location of a church, a school or child care facility, as defined in the Lakewood Zoning Code, public park, residential district, a residential lot, or adult business within seven hundred fifty feet of the massage parlor; however, if the massage parlor ceases operation for a period of one hundred eighty days or more regardless of any intent to resume operation, it may not recommence operation in that location.

H. No changes of location for a licensed massage parlor shall be allowed. (Ord. O-93-14 § 2 (part), 1993).

5.52.130 License term-Fees.
A. All licenses granted pursuant to this chapter shall be for a term of one year. Said term shall commence on the date the license is issued or renewed.
B. The license fee for a new license shall be three hundred fifty dollars. The annual license renewal fee shall be one hundred fifty dollars.
C. In the event of a suspension, revocation, or cessation of business, no portion of the license fee shall be refunded. (Ord. O-93-14 § 2 (part), 1993).

5.52.140 Identity cards.
A. Every applicant, licensee, agent or employee of said applicant or licensee who administers massages shall, prior to commencing work in or upon the licensed premises, obtain an identity card from the City Clerk and shall carry said identity card at all times while in or upon the licensed premises.
B. The identity card shall include the location of the massage parlor, the name, signature, and photograph of the individual. A fee of fifty dollars shall be charged for each card, said fee to be collected by the City Clerk and used to defray the expenses of providing such identity cards. A separate identity card shall be required for each person for each place of employment.
C. Each applicant for an identity card shall be photographed and fingerprinted by the Police Department and must submit an application form, background investigation report, a copy of a valid picture driver's license or other form of acceptable picture identification, and the required identity card and investigation fees to the City Clerk. Upon receipt of a properly completed application form, acceptable form of identification, and fee, the City Clerk shall transmit the application to the Police Department for investigation of the applicant's background. The City Clerk shall reject any application that is not complete in every detail.
D. Within forty-five days after filing of a properly completed application for an identity card, the City Clerk will either issue the requested identity card or notify the applicant that the Police Department has recommended denial of the identity card. The Police Department may request a reasonable extension of time from the City Clerk if such extension of time is necessary in order to complete its investigation. Notice of denial of an identity card setting out the grounds for denial shall be sent by certified mail to the applicant at the address provided by the applicant. The grounds for denial shall be those set out in this section and Section 5.52.160 herein. In the event of a denial, an applicant shall have the right to a hearing before the licensing authority as set forth in Section 5.52.150.
E. Should any identity card be lost, stolen, or otherwise missing, the person to whom the identity card was issued shall report the missing card to the City Clerk within forty-eight hours of discovery that the identity card is missing. Replacement identity cards shall be issued within five business days of receipt of an application for a replacement identity card. The fee for a replacement card shall be ten dollars. (Ord. O-2019-24 § 4, 2019; Ord. O-93-14 § 2 (part), 1993).
### 5.52.150 Suspension-Revocation-Denial of ID card-Hearings.

A. The licensing authority may suspend or revoke any license granted pursuant to this chapter upon a finding of the following:

1. That repeated disturbances of the public peace involving patrons, agents or employees, or the licensee of the establishment have occurred within the licensed establishment or upon any parking areas, sidewalks, access ways or grounds within the neighborhood of the licensed establishment;

2. That the licensee or any agents or employees thereof are illegally offering for sale or illegally allowing to be sold or consumed upon the licensed premises, or upon any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises, narcotics or dangerous drugs, fermented malt beverages, or malt, vinous or spirituous beverages;

3. That the licensee or any agents or employees thereof permitted patrons to engage in public displays of indecency prohibited by Lakewood Municipal Code Sections 9.50.080 and 9.50.090, or permitted 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 or agent or employee knew or should have known such displays or acts were taking place;

4. That the licensee made a false statement or gave false information in connection with an application for or renewal of a massage parlor license;

5. That the licensee violated or permitted a violation of any provisions of this chapter.

B. Nothing in this chapter shall prohibit the city from taking any other enforcement action provided for by the Lakewood Municipal Code, the laws of the state, or of the United States.

C. A licensee shall be entitled to a hearing before the licensing authority if the City Attorney files a written complaint with the licensing authority seeking to suspend or revoke a license.

1. When there is probable cause to believe that a licensee has committed or has allowed to be committed acts which are grounds for suspension or revocation under this chapter, the City Attorney may file a written complaint with the licensing authority seeking to suspend or revoke a license.

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

3. At the hearing referred to above, the licensing authority shall hear and consider relevant evidence from any witness. Evidence in support of the charges shall be given first, followed by cross-examination of those testifying thereto. The licensee, in person or by counsel, shall then be permitted to give evidence in defense and in explanation, and shall be allowed to give evidence and statements in mitigation of the charges. In the event the licensee is found to have committed the violation charged, evidence and statements in aggravation of the offense shall also be permitted. The licensing authority shall make findings of fact from the evidence as to whether a violation has occurred. If the licensing authority determines that a violation did occur, it shall issue an order within thirty days after the hearing suspending or revoking the licensee's license based on its findings of facts. No suspension shall be for a longer period than six months. A copy of the findings and order shall be mailed to or served on the licensee at the address on the license.
4. The order of the licensing authority made pursuant to subsection (C)(3) above 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 appeal said order in a timely manner shall constitute a waiver of any right a licensee may otherwise have to contest the suspension or revocation of his license.

5. *a.* The licensing authority has the power to administer oaths and issue subpoenas to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing which the licensing authority conducts. It is unlawful for any person to fail to comply with any subpoena issued by the licensing authority. 

   b. 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 City Attorney shall:

   i. Petition any judge of the Municipal Court of the city, 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 willful failure to comply with such order of court; or

   ii. Petition the District Court in and for the county, 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.

D. The City Attorney may act on behalf of the city during hearings before the licensing authority.

E. All hearings held before the licensing authority under this chapter shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the City Clerk, and shall pay all costs of preparing such record. (Ord. O-93-14 § 2 (part), 1993).

5.52.160 Persons prohibited as licensees.

No license provided by this chapter shall be issued to or held by:

A. Any corporation, any of whose officers, directors, or stockholders holding more than ten percent of the stock thereof are not of good moral character;

B. Any partnership, association, or company, any of whose officers, or any of whose members holding more than ten percent interest therein, are not of good moral character;

C. Any person employing, assisted by, or financed in whole or in part by any other person who is not of good character and reputation satisfactory to the licensing authority;

D. Any sheriff, deputy sheriff, police officer, or prosecuting officer or any of the licensing authority’s inspectors or employees;

E. Any person unless he is, with respect to his character, record, and reputation, satisfactory to the licensing authority. (Ord. O-93-14 § 2 (part), 1993).
5.52.170 Unlawful acts.

A. It is unlawful for any person:

1. To operate a massage parlor anywhere within the city without holding a valid Lakewood massage parlor license;

2. To work in or upon the licensed premises of a massage parlor administering massages without obtaining and displaying a valid identity card pursuant to Section 5.52.140 of this chapter;

3. To be in or upon the premises of a massage parlor or to obtain the services provided in a massage parlor by misrepresentation of age or by any other method in any place where massage is practiced when such person is under eighteen years of age, unless such person is accompanied by his parent or legal guardian, or has a physician's prescription for such massage services;

4. To allow the sale, giving, or procuring of any massage services to any person under the age of eighteen years, unless such person is accompanied by his parent or legal guardian, or has a physician's prescription for such massage services;

5. To employ any person under the age of eighteen years in a massage parlor; however, if any person who is not eighteen years of age exhibits a fraudulent proof of age that he is eighteen years of age or older, any action relying on such fraudulent proof of age shall not constitute grounds for the revocation or suspension of any license issued under this chapter for violation of subsection (A)(3) through (5) of this section, unless the person inspecting such proof of age knew or should have known that it was fraudulent;

6. To fail to display at all times in a prominent place on the licensed premises a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter a minimum of one-half inch in height, which shall read as follows:

WARNING

IT IS ILLEGAL FOR ANY PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME UNLESS HE IS ACCOMPANIED BY HIS PARENT OR LEGAL GUARDIAN, OR HAS A PHYSICIAN’S PRESCRIPTION FOR SUCH MASSAGE SERVICES.

IT IS ILLEGAL FOR ANY PERSON TO ALLOW A PERSON UNDER EIGHTEEN YEARS OF AGE TO BE IN OR UPON THESE PREMISES AT ANY TIME, UNLESS HE IS ACCOMPANIED BY HIS PARENT OR LEGAL GUARDIAN, OR HAS A PHYSICIAN’S PRESCRIPTION FOR SUCH MASSAGE SERVICES.

FINES OR IMPRISONMENT MAY BE IMPOSED BY THE COURTS FOR VIOLATION OF THESE PROVISIONS UNDER THE LAKEWOOD MUNICIPAL CODE AND ARTICLE 48.5 OF TITLE 12, COLORADO REVISED STATUTES.

7. To permit any narcotics or dangerous drugs on the licensed premises;

8. To permit any fermented malt beverages, or malt, vinous, or spirituous liquors on the licensed premises;
9. To administer a massage or permit any massage to be administered to a patron whose genitals, anus, or female breasts are exposed during the massage treatment; and no patron of a massage parlor shall knowingly expose his or her genitals, anus, or female breasts during a massage;

10. To intentionally touch or permit any other person to touch the genitals, anus, or female breasts of any other person while on the licensed premises;

11. To engage in, encourage, or request, or to permit any person to engage in, encourage, or request acts of masturbation while on the licensed premises;

12. To interfere with or refuse to permit any inspection of the licensed premises by the Lakewood Police Department or agent of the city.

B. No massage parlor shall be open for business between the hours of twelve midnight and six a.m. (Ord. O-93-14 § 2 (part), 1993).

5.52.180  Penalty.
A. Any person violating any provision of this chapter shall be punished pursuant to Chapter 1.16 of the Lakewood Municipal Code.
B. The penalties provided in this section shall not be affected by the penalties provided in any other section of this chapter but shall be construed to be an addition to any other penalties. (Ord. O-93-14 § 2 (part), 1993).

5.52.190  Employee apparel.
All employees shall wear clothing that covers the pubic area, perineum, buttocks, cleft of the buttocks, and entire chest to four inches below the collar bone and legs not exposed more than six inches above the knees. No transparent clothing shall be permitted. (Ord. O-93-14 § 2 (part), 1993).

5.52.200  Right of entry.
The application for a massage parlor license shall constitute consent of the licensee and his or her agents or employees to permit the Police Department or any other agent of the city to conduct routine inspections of any licensed massage parlor during the hours the establishment is conducting business and at other times during which activity on the premises is in evidence. (Ord. O-2019-24 § 4, 2019; Ord. O-93-14 § 2 (part), 1993).

5.52.210  Exemptions.
The following classes of persons and establishments are exempted from this ordinance:
A. Physicians, osteopaths, physical therapists, chiropodists, chiropractors or podiatrists licensed or registered to practice in this state while performing such services in the practice of their respective professions;
B. Registered nurses and licensed practical nurses who are licensed to practice in this state while performing such services in their usual nursing duties;
C. Barbers and cosmetologists duly licensed under the laws of this state in the course of practice of their usual and ordinary licensed vocation and profession, as defined in C.R.S. Section 12-8-101, et seq.;
D. Hospitals, clinics, nursing and convalescent homes and other similar institutions dedicated to medical or nursing practices licensed under the laws of this state where massage and baths may be given;
E. Massage practiced in an institution of learning established for such instruction under C.R.S., Title 12, Article 59;
F. Training rooms of public and private schools accredited by the State Board of Education or approved by the State Board for Community Colleges and Occupational Education, and training rooms of recognized professional or amateur athletic teams;
G. Health care facilities licensed by the State of Colorado, and not specified in this chapter;
H. Massage therapists as defined in Section 5.52.020 of this chapter. (Ord. O-93-14 § 2 (part), 1993).

5.52.220 Severability.
If any paragraph or subparagraph of this chapter is held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not invalidate the remainder of this chapter and, to this end, the provisions of this chapter are declared to be severable. (Ord. O-93-14 § 2 (part), 1993).
Chapter 5.53
ESCORT SERVICES

Sections:
5.53.010 Purpose
5.53.020 Definitions
5.53.030 License Required for Escort Services
5.53.040 Application
5.53.050 Application Fees
5.53.060 Appeal of Application Denial
5.53.070 Term of the license
5.53.080 License fee
5.53.090 Renewal
5.53.100 Denial of Renewal, Suspension or Revocation of License
5.53.110 Transferability
5.53.120 Display of License
5.53.130 Unlawful Acts.
5.53.140 Right of Entry
5.53.150 Duties of Escort Service
5.53.160 Penalty
5.53.170 Severability
5.53.180 Effective Date

5.53.010 Purpose
This chapter is enacted for the purpose of providing for the orderly regulation and licensing
of escort services in the City by establishing certain minimum standards for the conduct of this
type of business, in order to protect the health, safety, and welfare of the citizens of the City of

5.53.020 Definitions
As used in this chapter, the following words and terms shall be defined as follows:
“Escort” means any person who for a salary, fee, commission, hire, or profit, makes
himself/herself available to the public for the purpose of accompanying other persons for
companionship. Excluded from this definition is any person employed by any business, agency
or person excluded from the definition of “escort service.”

“Escort service” means any business, agency, or person who, for a fee, commission, hire, or
profit, furnishes or arranges for escorts to accompany other persons for companionship.
Excluded from this definition is any business, agency, or person which provides escort services
for at-risk adults as defined in Section 18-6.5-102 (1), C.R.S., when such services are provided
as part of a social welfare and health program for such at-risk adults.

“Escort service runner” means any person who knowingly, for a salary, fee, hire, or profit,
acts in the capacity of an agent for an escort service by contacting or meeting with escort
patrons whether or not said person is employed by such escort service or by another business
or is self-employed.

“Escort patron” means any person who seeks the services of an escort, escort service, or
escort service runner.
“Specified criminal acts” means any crime of moral turpitude and any criminal offense which is included in the definition of “unlawful sexual behavior” under the Colorado Sex Offender Registration Act, 16-22-102, C.R.S. or any offense committed in another state or jurisdiction, including but not limited to a military or federal jurisdiction that, if committed in the state of Colorado, would constitute an offense involving unlawful sexual behavior, or any offense that has a factual basis of one (1) of the offenses specified in the definition of “unlawful sexual behavior.” Specified criminal act also includes any offense involving solicitation for prostitution, prostitution, patronizing a prostitute, pandering, pimping, prostitute making display, keeping a place of prostitution, public indecency, or distribution or possession of obscene materials, and any adult business or massage parlor/therapist violations. (Ord.O-2009-9 § 1, 2009).

5.53.030 License Required for Escort Services

A. **Escort.** It shall be unlawful for any person to hold oneself out to the public as an escort, accept compensation as an escort, or conduct escort services or activities within the City of Lakewood without having first obtained an escort license pursuant to the terms of this chapter.

B. **Escort Service.** It shall be unlawful for any person to operate or manage an escort service within the City without having first obtained an escort services license pursuant to the terms of this chapter.

C. **Escort Service Runner.** It shall be unlawful for any person to represent oneself as an escort service runner, accept compensation as an escort service runner, or conduct escort service runner services or activities without having first obtained an escort service runner license pursuant to the terms of this chapter.

D. **Separate License Required.** Every escort or escort service runner must obtain a separate and distinct license for each escort service for which he/she is employed, including self-employment. (Ord.O-2019-24 § 4, 2019; Ord.O-2009-9 § 1, 2009).

5.53.040 Application

A. All applicants for an escort service license, an escort license, or an escort service runner license shall file a completed application for such license with the City Clerk on forms to be provided by the City Clerk. Each individual applicant, partner of a partnership, officer or director of a corporation, and manager of a limited liability company shall be named in each application form and each of them shall be photographed and fingerprinted by the Police Department. The applicant shall pay any fees for the photographs and fingerprints.

B. Each application for an escort services license, an escort license, or an escort service runner license shall contain the following information verified by oath or affirmation of the applicant and shall be accompanied by the following documents:

1. If the applicant is an individual, the individual shall state:
   a. The applicant’s name or any other names or aliases used by the individual;
   b. The applicant’s date of birth, place of birth, height, weight, color of eyes and hair;
   c. The current residential and business addresses and telephone number of the applicant;
   d. Each residential and business address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each such address;

(Lakewood 10-12-2019) 5-189
e. Current state driver's license or government-issued photo identification card showing proof that the applicant is at least eighteen (18) years of age or other proof of lawful presence in the United States;

f. Applicant's business, occupation and employment history for the five (5) years immediately preceding the date of application;

2. If the applicant is a partnership, the applicant shall state the partnership’s complete name, the names of all partners and whether the partnership is general or limited, and shall provide a copy of the partnership agreement, if any;

3. If the applicant is a corporation, the applicant shall state the corporation’s complete name, the date of its incorporation, evidence that the corporation is in good standing under the statutes of the State of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado, the names and capacities of all officers and directors, and the name of the registered corporate agent and the address of the registered office for service of process;

4. If the applicant is a limited liability company, the applicant shall state the company’s complete name, the date of its formation, evidence that the company is in good standing under the statutes of the State of Colorado, or in the case of a foreign company, evidence that it is currently authorized to do business in the State of Colorado, and the name of the manager and registered agent and the address of the registered office for service of process.

C. Each license application for an escort services license, an escort license or an escort runner license shall contain the following information verified by oath or affirmation of any individual applicant, any of the other individuals required to be listed in the application, or any manager:

1. The license or permit history for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying jurisdiction, and describe in full the reasons for the denial, revocation, or suspension. The applicant shall list any licenses or permits previously or currently held from any other jurisdiction, and if so, the name and jurisdiction that issued such other licenser or permit;

2. Whether the applicant has been arrested for any criminal act, the date of the arrest, and the location of the offense; and

3. The present or intended business address and telephone number of the business premises.

D. Each applicant for an escort services license, an escort license, or an escort runner license shall submit a copy of the applicant’s criminal history from the state of Colorado. The Police Department may require the submission of criminal histories from additional states as warranted.

E. The City Clerk shall not accept any application that is not complete in every detail. If the City Clerk discovers an omission or error, the application shall be rejected and returned to the applicant for completion or correction without further action by the City Clerk. All fees shall be returned with the application. For the purposes of this chapter, the date the City Clerk accepts an application that is complete in every detail, including the receipt of the criminal history from the Colorado Bureau of Investigations, shall be considered the filing date.
F. When a complete application for a license has been accepted for filing, the required individuals have been fingerprinted and photographed, and the license fee has been paid, the City Clerk shall transmit the application to the Police Department for investigation of the background of each individual applicant and each of the other individuals required to be listed in the license application, and to investigate the accuracy of all the information submitted as a part of the application. The investigation required by this section should be completed within ninety (90) days from the date the application is submitted to the Police Department. The Police Department shall promptly forward the application and its completed investigation to the City Clerk for administrative review.

G. An application with completed background investigation shall be administratively approved or denied by the City Clerk. An application shall be approved and a license shall be issued unless the City Clerk or designee finds that one or more of the following is true:

1. That the applicant knowingly made a false statement or knowingly gave false information in connection with the application;
2. That the applicant is under eighteen (18) years of age;
3. That the applicant has been convicted of a specified criminal act or the applicant was arrested for a specified criminal act that was dismissed due to a plea bargain in which the applicant pled guilty to a criminal act in exchange for the dismissal of the specified criminal act;
4. That the escort services license, escort license or escort runner license is to be used for employment in a business or establishment of a business prohibited by local or state law, statute, rule or regulation; or
5. That the applicant has had an escort services license, an escort license, or an escort runner license revoked or suspended within five (5) years of the date of the current application.

H. The applicant may present written documentation to the City Clerk regarding his/her criminal history, including but not limited to evidence of mitigating factors, rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant’s last criminal conviction and the consideration of the application for a license. (Ord.O-2009-9 § 1, 2009).

5.53.050 Application Fees

A. Each applicant, whether an individual, partnership, limited liability company, or corporation, shall pay an application processing fee of fifty dollars ($50.00) at the time of submitting any application to the City Clerk. In the future, all fees will be set by City Council resolution. Such application fee shall be nonrefundable.

B. Each applicant shall pay an application investigation fee in the amount then charged by the Colorado Department of Public Safety for each person who will be investigated as required by this chapter. (Ord. O-2019-24 § 4, 2019; Ord.O-2009-9 § 1, 2009)

5.53.060 Appeal of Application Denial

A. Written Findings. In the event that the City Clerk denies a license application, the City Clerk shall prepare written findings of fact stating the reasons or basis for the denial. A copy of the City Clerk's findings shall be sent by certified mail, return receipt requested, to the address of the applicant as shown in the application within ten (10) days after the date of the City Clerk's denial. The City Clerk's decision to deny a license application shall become a final administrative decision of the City on the fourteenth (14th) day following the date of the denial unless the applicant files a timely request for appeal to the City Manager or designee as provided in this section.
B. Appeal Hearing. In the event that the City Clerk denies a license application, an applicant shall have the right to a quasi-judicial hearing before the City Manager or designee for the purpose of appealing the City Clerk's administrative decision. Any request for a hearing must be made in writing to the City Manager or designee within ten (10) days of the date of the mailing of the City Clerk's written findings and denial of the license application. The hearing shall be conducted within fourteen (14) days of the City Manager's or designee's receipt of the written request for a hearing unless a later date is requested by the applicant.

C. Scheduling. Upon receipt of a timely request for a hearing, the City Manager or designee shall schedule a hearing and notify the applicant of the date, time, and place of the hearing. The City of Lakewood may make such notification by telephone provided that a written notice shall also be mailed or delivered to the applicant at the applicant's address shown in the application. An attorney or other representative may represent an applicant at the hearing. An applicant or the City of Lakewood may request a continuation or postponement of the hearing date.

D. Subpoenas. The City Manager or designee shall have the power to administer oaths, issue subpoenas to require the presence of persons, 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 City Manager or designee conducts. It is unlawful for any person to fail to comply with any subpoena issued by the City Manager or designee. 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 City Attorney or the applicant may:

1. Petition any judge of the Municipal Court of the City of Lakewood, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting 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 willful failure to comply with such order of court; or

2. Petition the District Court in and for Jefferson County, setting forth that due notice has been given of the time and place of attendance of the witness and the service of the subpoena, requesting 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.

E. Conduct of Hearing. At the hearing, the City Manager or designee shall hear and consider such evidence and testimony presented by the City of Lakewood, the applicant, or any other witnesses called by the City of Lakewood or the applicant which are relevant to the stated reason and basis for the City Clerk's denial of the license application. The City Manager or designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.
F. Written Order. Not less than fourteen (14) days following the conclusion of the hearing, the City Manager or designee shall send a written order by certified mail, return receipt requested, to the applicant at the address as shown on the application. The order shall include findings of fact and a final decision concerning the approval or denial of the application. In the event that the City Manager or designee concludes that the application is approved, such approval shall constitute approval by the City Clerk, and the applicant may seek issuance of a license in accordance with this Chapter.

G. Appeal of Order. The order of the City Manager or designee made pursuant to this section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal, the City Manager's or designee's decision shall be final upon the earlier of the date of the applicant's receipt of the order or four (4) days following the date of mailing. (Ord. O-2019-24 § 4, 2019; Ord.O-2009-9 § 1, 2009).

5.53.070 Term of the license

An escort services license, escort license, or escort runners license shall be valid for a period of one year, unless revoked or suspended. (Ord.O-2009-9 § 1, 2009).

5.53.080 License fee

The annual license fee for any license issued pursuant to this chapter shall be payable to the City Clerk at the time an initial license application is filed or at the time a renewal application is filed. The license fee is in addition to any application fee required by this chapter. The license fee shall be nonrefundable unless an application is denied. The fee shall be twenty-five dollars ($25.00). In the future, all fees will be set by City Council resolution. (Ord.O-2009-9 § 1, 2009).

5.53.090 Renewal

A. As a prerequisite to renewal of an existing license issued pursuant to this chapter, the applicant must pay the annual license fee and file a completed renewal application with the City Clerk not less than forty-five (45) days prior to the date of the license expiration. The City Clerk may waive the timely filing requirement where the licensee demonstrates in writing that the failure to timely file is not solely the result of the licensee’s negligence; provided that no renewal application shall be accepted by the City Clerk from any licensee after the license for which renewal is requested has expired.

B. A license that is under suspension may be renewed in accordance with this Section provided that such renewal shall not modify, alter, terminate, or shorten the period or term of the suspension. The suspension of a license shall not extend the term of the license or otherwise relieve the licensee from timely seeking renewal of the license in accordance with this section. The City Clerk may administratively renew a license. (Ord.O-2009-9 § 1, 2009).

5.53.100 Denial of Renewal, Suspension or Revocation of License.

A. Denial of Renewal, Suspension or Revocation. The City Manager or designee may deny renewal, suspend, revoke, modify, or place conditions on the continuation of an escort services license, escort license, or escort runner license upon a finding that the licensee:

1. Has violated any of the provisions of this chapter;
2. Has engaged in a specified criminal act; or
3. Has allowed or has permitted any other person to violate any of the provisions of this chapter or engage in a specified criminal act.
B. **Other Enforcement Authorized.** A licensee shall be entitled to a quasi-judicial hearing before the City Manager or designee if the City of Lakewood seeks to deny renewal, suspend, revoke, modify, or place conditions on a license based on a violation of this chapter.

1. When there is probable cause to believe that a licensee has violated or permitted a violation of this chapter or other laws to occur, the City Attorney may file a written complaint with the City Manager or designee setting forth the circumstances of the violation.

2. The City Manager or designee shall send a copy of the complaint by certified mail, return receipt requested, to the licensee at the address as shown on the license application, together with a notice to appear before the City Manager or designee for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the licensee’s license should not be suspended. Such hearing shall be held on a date not less than fourteen (14) days following the date of mailing of the complaint and notice to the licensee. A licensee may be represented at the hearing by an attorney or other representative.

C. **Conduct of Hearing.** At the hearing, the City Manager or designee shall hear and consider such evidence and testimony presented by the Police Department or other enforcement officers, the City of Lakewood, the licensee, or any other witnesses called by the City or the licensee which are relevant to the violations alleged in the complaint. The City Manager or designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The hearing shall be recorded either stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record. Subpoenas may be issued in accordance with the provisions of Section 5.52.070.

D. **Written Findings.** The City Manager or designee shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued not less than fourteen (14) days following the conclusion of the hearing. If the City Manager or designee determines that a violation did occur which warrants denial of renewal, suspension, revocation, modification, or conditioning of the license pursuant to this section, he shall also issue an order suspending, revoking, modifying, or placing conditions on the license. A copy of the findings, conclusion, and order shall be hand delivered or mailed to the licensee by certified mail, return receipt requested, at the address as shown on the license application.

E. **Appeal.** The order of the City Manager or designee shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the City Manager’s or designee’s decision shall be final upon the earlier of the date of the applicant’s receipt of the findings, conclusion, and order or four (4) days following the date of mailing of the City Manager's or designee's decision.

F. **No Refund and Costs of Enforcement.** In the event of suspension, revocation, modification, conditioning, or cessation of business, no portion of the license fee shall be refunded. Any person whose license is suspended, revoked, modified, or conditioned under this section, shall be required to pay the costs incurred by the City of Lakewood to enforce this ordinance, including but not limited to attorneys’ fees, expert witness and/or consultant fees.

5.53.110 Transferability
A license issued under this chapter shall not be transferable. (Ord.O-2009-9 § 1, 2009).

5.53.120 Display of License
A. Every licensee shall display a valid license in a conspicuous place within the escort service or other place of business so it may be readily seen by persons entering the premises. Every licensed escort or licensed escort runner shall carry or have readily available a city escort photographic identification card at all times while in or upon the licensed premises or while acting as an escort or escort services runner and shall display it upon the demand of a peace officer or a designee of the City Clerk.

B. The photographic identification card shall at all times be the property of the City of Lakewood and must be surrendered upon suspension, revocation, or voluntary termination of the license. (Ord. O-2019-24 § 4, 2019; Ord.O-2009-9 § 1, 2009).

5.53.130 Unlawful Acts.
A. It is unlawful for any escort, escort service runner, or escort patron during or in connection with the provision of escort services to:
   1. Knowingly expose his or her genitals, anus, buttocks, pubic region, or female breasts;
   2. Touch, or to encourage, facilitate, or aid another in touching the genitals, anus, buttocks, pubic region, or female breasts of any person even if completely and opaquely covered; or
   3. Engage in, encourage, or request, or permit any person to engage in, encourage, or request, acts of anal intercourse, cunnilingus, fellatio, masturbation, or sexual intercourse as such terms are defined in Section 9.45.010 of the Lakewood Municipal Code.

B. It shall be unlawful for any person:
   1. To work, to employ, to allow, or to permit any person to act as an escort or escort service runner if the person is not in possession of a valid city escort photographic identification card and license issued pursuant to this chapter;
   2. To interfere with or refuse to permit any inspection of the premises of an escort service by the Police Department or agent of the city acting in compliance with Section 5.53.130;
   3. To allow the provision or procurement of any escort service to or for any person under the age of eighteen (18) years without the written consent of that person’s parent or legal guardian; or
   4. To permit any person under the age of eighteen (18) to be employed in an escort service. If any person who, in fact, is not eighteen (18) years of age exhibits a fraudulent proof of age, reasonable reliance on such fraudulent proof of age may constitute an affirmative defense to any actions seeking the revocation or suspension of any license issued under this chapter or to any criminal action arising because a person is not at least eighteen years of age.

C. For the purposes of this section, “in connection with” means any act which furthers, advances, promotes, or has a continuity of purpose, and may occur before, during, or after the provision of an escort service. (Ord. O-2019-24 § 4, 2019; Ord.O-2009-9 § 1, 2009).
5.53.140 Right of Entry
The Police Department or any other authorized agent of the City of Lakewood may conduct routine inspections of escort services to ensure compliance with the requirements of this chapter. (Ord. O-2019-24 § 4, 2019; Ord.O-2009-9 § 1, 2009).

5.53.150 Duties of Escort Service
A. Every escort service shall refer all prospective escorts or escort service runners to the City Clerk for licensing. Upon termination of employment of any escort or escort service runner with such escort service, the escort service shall notify the City Clerk of such termination within five (5) days.
B. The escort service shall provide to each escort patron a written contract for services as required by Section 12-25.5-112, C.R.S. The contract shall clearly state the names and addresses of the escort and customer, the type of services to be performed, the length of time such services shall be performed, the total amount of money such services will cost the escort patron, and any special terms or conditions relating to the services to be performed. The contract shall include, printed in bold block letters and no smaller than the impression of twelve-point type, the following statement:
“Warning: prostitution is illegal in the State of Colorado. Any person who performs or offers or agrees to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with another person being not his or her spouse in exchange for money or other thing of value commits prostitution. Both parties to an act of prostitution may be punished by both fine and imprisonment. No act of prostitution shall be performed in relation to the services for which you have contracted. This contract is a public record and a copy of it will be transmitted to the Lakewood City Clerk. “
C. Each contract shall be numbered and utilized in numerical sequence by the escort service. The contract shall be signed by the escort patron and a copy furnished to him/her.
D. The escort service shall also retain copies of all such contracts, and one copy of each such contract executed in any calendar month shall be transmitted by the escort service to the City Clerk no later than ten (10) days after the last day of such month. The City Clerk shall treat such contracts so transmitted as open public records. (Ord.O-2009-9 § 1, 2009).

5.53.160 Penalty
A. Any person violating any provision of this chapter shall be punished pursuant to Chapter 1.16 of the Lakewood Municipal Code.
B. The penalties provided in this section shall not be affected by the penalties provided in any other section of this chapter but shall be construed to be in addition to any other penalties. (Ord.O-2009-9 § 1, 2009).

5.53.170 Severability
If any paragraph or subparagraph of this chapter is held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not invalidate the remainder of this chapter and, to this end, the provisions of this chapter are declared to be severable. (Ord.O-2009-9 § 1, 2009).
5.53.180

5.53.180   Effective Date

All persons required by the terms of this chapter to be licensed shall submit a completed license application to the City Clerk within 30 (thirty) days of the effective date of this ordinance. (Ord.O-2009-9 § 1, 2009).
CHAPTER 5.54

NONGOVERNMENTAL RESIDENTIAL FACILITIES FOR THE TREATMENT OR SUPERVISION OF OUT-OF-STATE OFFENDERS

Sections:

5.54.010 Definitions.
5.54.020 Required license.
5.54.030 Operation of nongovernmental residential facilities for the treatment or supervision of offenders.
5.54.040 Employees of the residential facility.
5.54.050 Disclosure and inspection of residential facilities.
5.54.060 Unlawful Acts.
5.54.070 License fee.
5.54.080 License application.
5.54.090 Determination of completed application.
5.54.100 Application fee.
5.54.110 Investigation.
5.54.120 Approval of denial of application.
5.54.130 Appeal of application denial.
5.54.140 Issuance of license.
5.54.150 Term of the license.
5.54.160 License renewal.
5.54.170 Suspension or revocation of license.

5.54.010 Definitions.

The following words and phrases, when used in this chapter, shall have the following meanings:

“Criminal corrective action” means any sentence, suspended sentence, probation, parole, work release, conditional release from prison, jail, or other correctional facilities, deferred judgment, deferred prosecution, criminal diversion program, or similar order, program, condition, or requirement imposed, arranged, or ordered by any referring agency.

“Criminal offense” means any felony, misdemeanor, petty offense, municipal offense, or other criminal offense under the laws of the United States, any state or municipality.

“Person” means a natural person, joint venture, joint stock company, partnership, association, club, corporation, limited liability entity in any form, business, trust, organization or a manager, lessee, agent, servant, officer or employee of any of them.

“Offender” means any adult who has been referred for lodging along with treatment or supervision within the City of Lakewood by any referring agency outside the state of Colorado as a result, condition, requirement, or term of any criminal corrective action.

“Refer” means to commit or place an offender in a residential facility within the City of Lakewood for lodging along with treatment or supervision as part of a criminal corrective action. The term also includes the act of ordering, directing, or sending an offender to a residential facility or ordering, directing, or requiring an offender to contact a residential facility for lodging along with treatment or supervision as part of a criminal corrective action. The term includes the act of providing an offender with the name, address, or phone number of the residential facility.
for the purpose of having the offender gain admission for lodging along with treatment or supervision as part of a criminal corrective action if the residential facility or the offender is required to report the offender's attendance, enrollment, performance, or completion of any treatment or supervision to the referring agency.

“Referring agency” means any court, prison, jail, department of corrections, department of parole, department of probation, district attorney's office, city attorney's office, judge, probation officer, parole officer, diversion officer, prosecutor, or similar governmental body or officer which refers an offender to a residential facility for lodging along with treatment or supervision.

“Residential facility” means a nongovernmental residential facility for the treatment or supervision of offenders located within the City of Lakewood in any building, structure, real property, or other location or place not owned or operated by the United States, the state, the county, or the City, providing lodging along with supervision or treatment for one (1) or more offenders.

“Treatment” means any one or more of the following: psychiatric or psychological testing, evaluation, analysis, therapy, counseling, or the prescription, administration, or monitoring of psychiatric medication; evaluation, testing, treatment, or counseling for drug or alcohol use, addiction, or dependency; sexual offender evaluation, testing, treatment, counseling or therapy; domestic violence evaluation, testing, treatment, counseling or therapy; and peer counseling of any kind. Treatment also includes the act of referring, organizing, planning, scheduling, providing space for, arranging, or transporting any offender for treatment. (Ord. 2005-18 § 1, 2005).

5.54.020    Required license.

License. Any person operating a residential facility shall first obtain a license to operate such a facility as set forth in Section 5.54.080. A separate license shall be obtained for each such location and residential facility. (Ord. 2005-18 § 1, 2005).

5.54.030    Operation of nongovernmental residential facilities for the treatment or supervision of offenders.

A. General requirements.

1. The residential facility shall designate in writing a director who is responsible for the day to day management and operation of the residential facility. In the event that the designated director is discharged, resigns, or otherwise ceases to accept or perform the responsibilities of director, the residential facility shall name a new director, and provide the same in writing to the City Clerk within thirty (30) days.

2. The residential facility shall obtain and maintain liability insurance covering injuries, damages, and losses to employees, offenders, and third persons caused by the acts or omissions of the residential facility's director or employees or offenders with liability limits not less than one million dollars ($1,000,000.00) per person and five million dollars ($5,000,000.00) per incident.

3. The residential facility shall audit each offender's file no later than sixty (60) days after admission and every six (6) months thereafter to ensure that every duty imposed under this Chapter has been performed and all documentation required by this Chapter is present in the offender's file. A similar audit of each offender's file shall be completed within thirty (30) days after the offender is discharged or expelled from the facility. All such audits shall be documented in the offender’s file.
4. The residential facility shall require each referring agency referring offenders to the facility to sign a written agreement stating that in the event that any offender referred by the referring agency is expelled from the residential facility, the referring agency shall either place the offender in another facility or take the offender into the referring agency's custody, and that failure to do so will result in the residential facility refusing to accept into the residential facility any offenders referred by the referring agency in the future. A copy of each such signed agreement shall be maintained in its files. The residential facility shall require each referring agency referring offenders to the residential facility to sign a written agreement stating that in the event that any offender referred by the referring agency is expelled from the residential facility, the referring agency shall either place the offender in another facility or take the offender into the referring agency's custody, and that failure to do so will result in the residential facility refusing to accept into the residential facility any offenders referred by the referring agency in the future. A copy of each such signed agreement shall be maintained in its files. The residential facility shall require each referring agency referring offenders to the residential facility to sign a written agreement stating that in the event that any offender referred by the referring agency is expelled from the residential facility, the referring agency shall either place the offender in another facility or arrange for the offender to physically report to the probation officer, and that failure to do so will result in the residential facility refusing to accept into the residential facility any offenders referred by the referring agency in the future. A copy of each such signed agreement shall be kept in the residential facility's files.

5. The residential facility shall be operated in accordance with procedures which govern the following:
   a. The acceptance or rejection of offenders to the residential facility;
   b. The discipline and expulsion of offenders who commit crimes while placed in the residential facility, violate the residential facility's rules, do not reasonably respond to treatment, or whose behavior or mental status poses a substantial threat to the welfare of employees or others;
   c. The dissemination of documentation concerning offenders to the offender's referring agency as required in this Chapter;
   d. Procedures for the accounting of all offenders and for contacting referring agencies when any offender is not accounted for;
   e. Procedures for searches, including "pat" searches, room searches, vehicle searches, and personal effect searches, including a provision requiring all offenders to consent in writing to all such searches at the residential facility;
   f. Procedures to ensure that any terms, conditions, limitations, or requirements imposed on the offender by the offender's referring agency, including but not limited to those pertaining to drug and alcohol testing, operation of a motor vehicle, and absence from the residential facility, are obtained from the referring agency, placed in the offender's file, provided to the offender's case manager, and monitored for compliance;

6. No offender placed in a residential facility shall:
   a. Violate any federal, state or local law or regulation of the residential facility or requirement of parole or other requirement for placement in the residential facility.
   b. Possess or use any controlled substance, alcohol or other intoxicants (e.g. paint huffing);
   c. Possess or use any weapon;
   d. Fail to cooperate with all employees of the residential facility, the referring agency, and all treatment and supervision providers;
   e. Fail to comply with the terms of the treatment plan, supervision plan, budget, and any terms, conditions, limitations, or requirements imposed on the offender by the offender's referring agency, including but not limited to those pertaining to drug and alcohol testing, operation of a motor vehicle, and absence from the residential facility.
7. The residential facility shall not permit any offender to leave the physical premises of the residential facility for any purpose, for any period of time, including but not limited to absences for assessment, work, or treatment, in violation of any of the terms, conditions, limitations, or requirements imposed on the offender by the offender’s referring agency, including but not limited to those pertaining to operation of a motor vehicle, and absence from the residential facility. (Ord. 2005-18 § 1, 2005).

5.54.040 Employees of the residential facility.

A. The residential facility shall maintain written job descriptions for all employees of the residential facility including job title, minimum qualifications, responsibilities, duties, and salary ranges. Before hiring any employee, the residential facility shall conduct a background investigation and document the same in the employee's files. The investigation shall verify job qualifications and check for prior criminal record. The residential facility shall not hire offenders nor shall utilize offenders in tasks similar to those tasks performed by employees.

B. The residential facility shall not hire any employee who has a conviction for a criminal offense during the preceding five (5) years, unless the facility first notifies the City Clerk in writing and the City Clerk approves the hiring of the employee in writing. Copies of these notices and approvals shall be kept in the employee's file.

C. If any employee is arrested or charged with any criminal offense, other than traffic offenses carrying less than eight (8) points, the residential facility shall immediately notify in writing the City Clerk of the employee's name, duties and the pending charges.

D. The residential facility shall hire and maintain on staff a sufficient number of case managers to maintain a ratio of at least one (1) full-time case manager for every twenty (20) offenders admitted to the residential facility. Case managers shall manage the treatment, supervision, budget, discipline, and perform all other duties required of case managers under this Chapter. Case managers shall be physically present in the residential facility at least twenty-five (25) hours per week except when on leave. Case managers shall not be assigned administrative or other duties which interfere with their case management duties.

E. No person shall be employed as a case manager or perform any of the duties of a case manager unless he or she meets one (1) or more of the following qualification requirements:
   1. A bachelor's, master's or doctoral degree in social or behavioral sciences, criminal justice, or related fields;
   2. An associate's degree in social or behavioral sciences, criminal justice, or related fields and at least two (2) years of work experience in social work, criminal justice, or closely related fields;
   3. Four (4) years of work experience in social work, criminal justice, or closely related fields; or
   4. A level II or III state alcohol and drug abuse counselor certification if the primary treatment concern for all of the offenders assigned to the case manager is drug or alcohol abuse. (Ord. 2005-18 § 1, 2005).

5.54.050 Disclosure and inspection of residential facilities.

The residential facility shall make all parts of the residential facility, employee files, offender files, administrative files, the policy and procedure manual, rules of conduct for offenders, and all other records and papers physically available for inspection at the residential facility by the City of Lakewood's inspectors during normal business hours for the purpose of evaluating the residential facility's program and determining whether the residential facility is in compliance with this
Chapter. The residential facility shall make employee files, offender files, administrative files, the policy and procedure manual, rules of conduct for offenders, and all other records and papers available for inspection in paper form.

If the residential facility is regulated or assisted by any department or agency of the United States government, the residential facility may redact the identity of each offender from offender files and records pertaining to the diagnosis, prognosis, or treatment for substance abuse, or any education, prevention, training, rehabilitation or research related to the same, before disclosing such records to the City of Lakewood’s inspectors.

The City of Lakewood’s inspectors shall inspect and evaluate every residential facility for the treatment and supervision of offenders and shall take enforcement action for any violation of this chapter. (Ord. O-2019-24 § 4, 2019; Ord. 2005-18 § 1, 2005).

5.54.060 Unlawful Acts.

It shall be unlawful for any person administering, operating, managing, controlling, directing, or in charge of any residential facility for the treatment or supervision of offenders to:

A. Knowingly admit to the residential facility any offender whose admission to the facility or presence in Colorado has been rejected or disapproved by any Colorado state governmental authority;

B. Fail to immediately report the unauthorized absence of any admitted offender to the referring agency and the city police department; or

C. Operate or permit the operation of the residential facility by any employee in violation of this Chapter or any federal, state or local law. (Ord. 2005-18 § 1, 2005).

5.54.070 License fee.

A. No person shall conduct or operate a residential facility without first having obtained a residential facility license as required by this Chapter. Each applicant shall pay an annual license fee in an amount to be determined by City Council. City Council shall authorize such amount by resolution.

B. In the event an application for a license is withdrawn prior to issuance or is denied, the license fee shall be refunded in full to the applicant. The license fee is in addition to any application fee required by this Chapter. (Ord. 2005-18 § 1, 2005).

5.54.080 License application.

A. All applicants for a residential facility license shall file a completed application for such license with the City Clerk on forms to be provided by the City Clerk. Each individual applicant, partner of a partnership, officer or director of a corporation, and manager of a limited liability company and all business managers, shall be named in each application form, and each of them shall be photographed and fingerprinted by the Police Department.

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

1. If the applicant is:
   a. An individual, the individual shall state his legal name and any aliases and submit satisfactory proof that he is twenty-one (21) years of age or older;
   b. A partnership, the partnership shall state its complete name and the names of all partners, whether the partnership is general or limited, and provide a copy of the partnership agreement, if any;
5.54.080

c. 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 of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado, the names and capacity of all officers, directors, and the name of the registered corporate agent and the address of the registered office for service of process;

d. A limited liability company, the company shall state its complete name, the date of its formation, evidence that the company is in good standing under the statutes of the State of Colorado, or in the case of a foreign company, evidence that it is currently authorized to do business in the State of Colorado and the name of the manager and registered agent and the address of the registered office for service of process.

2. State whether the applicant or any other individual listed pursuant to Subsection A. of this Section has previously operated or is currently operating or has been employed at an unlicensed residential facility as defined in this Chapter or has had a previous residential facility license under this Chapter or other residential facility ordinances, resolutions or other regulations from another city or county denied, suspended or revoked, including the name and location of the residential facility for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation. State whether the applicant or any other individual listed pursuant to Subsection A. of this Section holds any other licenses under this Chapter or other similar residential facility ordinance from another city or county and, if so, the names and locations of such other permitted businesses;

3. State the location of the proposed residential facility, including a legal description of the property, street address, and telephone number(s), if any;

4. Provide proof of the applicant’s right to possession of the premises wherein the residential facility will be conducted;

5. State the applicant’s mailing address and residential address;

6. State the applicant’s social security number and/or his federally issued tax identification number;

7. Provide evidence from the Planning Department that the proposed location of such business complies with the locational requirements of the zoning ordinance;

8. Provide a verified affidavit that the proposed residential facility and its location comply with and conform to all requirements of this Chapter;

9. State whether the applicant or any person pursuant to Subsection A of this section has been arrested for a criminal offense, the date of the arrest, and the location of the offense. (Ord. O-2019-24 § 4, 2019; Ord. 2005-18 § 1, 2005).

5.54.090  Determination of completed application.

A. Not more than ten (10) days following submission of an application, the City Clerk shall review the application for completeness and conformance with the application requirements of Section 5.54.080. The City Clerk shall not accept for filing any application that is not complete in every detail. If an omission or error is discovered by the City Clerk, the application will be rejected by the City Clerk and returned to the applicant together with a written explanation of the omission or error without further action by the City Clerk. Any application rejected by the City Clerk due to an omission or error may be resubmitted to the City Clerk when the omission or error has been remedied. For the purposes of this Chapter, the date the City Clerk determines that an application is complete and in conformance with the application requirements of Section 5.54.080 in every detail shall be the date the application is deemed filed with the City Clerk.
B. All applicants shall promptly notify the City Clerk in writing in the event that any information contained in an application has changed or any information is discovered by the applicant to be incorrect in any way from what is stated on the application, and every applicant shall have the continuing duty to promptly update and supplement such information during the term of any residential facility license issued to the applicant. The failure to notify the City Clerk in accordance with this section within thirty (30) days from the date of such change or discovery, by supplementing or updating the application on file with the City Clerk, shall be grounds for revocation of any application approval or, where a license has been issued, suspension or revocation of an issued residential facility license. (Ord. 2005-18 § 1, 2005).

5.54.100 Application fee.
Each applicant, whether an individual, partnership, limited liability company, or corporation, shall pay the following application fees at the time of submitting any application to the City Clerk:

A. An application processing fee of one hundred fifty dollars ($150). Such application fee shall be nonrefundable.

B. An application investigation fee in the amount then charged by the Colorado Department of Public Safety for each person who will be investigated as required by this Chapter. Such application investigation fee shall be nonrefundable following a determination by the City Clerk that the application is complete in accordance with Section 5.54.080. The application investigation fee shall be refunded upon written request by the applicant in the event that the applicant withdraws its application prior to the City Clerk’s determination that the application is complete. (Ord. 2005-18 § 1, 2005).

5.54.110 Investigation.
A. Without undue delay following the City Clerk’s determination that an application is complete, the City Clerk shall transmit the application to the Police Department for investigation of the background of each individual applicant, manager, the partners of a partnership, the officers and directors of a corporation and the manager of a limited liability company and manager of the residential facility and to investigate the accuracy of the information provided in the application. The investigation is intended to provide an opportunity to determine whether the application is in conformance with the requirements of this Chapter based on information and resources available to the City of Lakewood. The results of such investigation shall not be interpreted or construed as constituting an affirmation or verification by the City of Lakewood that the information contained in the application is factually correct or accurate.

B. The City Clerk may cause to be conducted any other investigation deemed necessary by the City Clerk to determine the application’s conformance with any requirement of this Chapter including, but not limited to, an investigation of the proposed residential facility location’s conformance with the Lakewood Zoning Ordinance, Lakewood Subdivision Regulations, or other applicable laws. (Ord. O-2019-24 § 4, 2019; Ord. 2005-18 § 1, 2005).

5.54.120 Approval or denial of application.
A. A completed license application filed with the City Clerk shall be administratively approved or denied by the City Clerk within sixty (60) days of the date of the filing of the application. The City Clerk shall deny a license application if:

1. The application or any investigation performed by the City of Lakewood demonstrates or establishes that the proposed residential facility fails to conform to any requirement of this Chapter, the Lakewood Zoning Ordinance, Lakewood Subdivision Regulations, or other applicable law;
2. The applicant knowingly made a false statement or knowingly gave false information in connection with the application;

3. The individual applicant or a director or officer of a corporation, partner of a partnership, or manager of a limited liability company or manager of the residential facility has had a residential facility license revoked or suspended within five (5) years prior to the application;

4. A corporate applicant or limited liability company applicant is not in good standing or authorized to do business in the State of Colorado;

5. The individual applicant, manager, director or officer of a corporation, partner of a partnership, or manager of a limited liability company has been convicted of a criminal offense for which:

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

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

   c. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement or supervision whichever is the later date, if the convictions are of two or more misdemeanors. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant. For the purposes of this subsection, “convicted” includes having pled guilty or nolo contendere. “Convicted” includes persons who have received a deferred judgment and sentence or a deferred adjudication; or

6. The applicant is overdue in payment to the City of Lakewood taxes, fees, fines, or penalties assessed against him or imposed against him in relation to a residential facility.

B. The City Clerk shall approve a license application if it meets the requirements of this chapter. Nothing in this Chapter shall prevent or preclude the City Clerk from revoking such approval where it is discovered that the application contained or included a false or incorrect statement or false or incorrect information which would otherwise constitute sufficient grounds or basis for the denial of the application. Approval of a license application shall not constitute issuance of a residential facility license. The decision of the City Clerk to approve a license application shall not be construed as a quasi-judicial act but shall be a final administrative decision of the City.

C. The City Clerk’s approval of a license application shall be valid for one (1) year following the date of approval. Failure to obtain the issuance of the license within such one-year period shall require the submission of a new application.

D. In the event that the City Clerk denies a license application, the City Clerk shall prepare written findings of fact and a decision stating the reasons or basis for the denial. A copy of the City Clerk’s findings and decision shall be sent by certified mail, return receipt requested, to the address of the applicant as shown in the application within ten (10) days after the date of the City Clerk’s denial. The City Clerk’s decision to deny a license application shall become a final administrative decision of the City of Lakewood on the fourteenth (14th) day following the date of the decision unless the applicant files a timely request for appeal to the City Manager or his designee as provided by Section 5.54.130. (Ord. O-2019-24 § 4, 2019; Ord. 2005-18 § 1, 2005).
5.54.130 Appeal of application denial.
A. In the event that the City Clerk denies a license application, an applicant shall have the right to a quasi-judicial hearing before the City Manager or designee for the purpose of appealing the City Clerk’s administrative decision. A written request for a hearing shall be made to the City Manager or designee within ten (10) days of the date of the mailing of the City Clerk’s written findings and decision denying the license application. The hearing shall be conducted within ten (10) days of the City Manager’s or designee’s receipt of the written request for a hearing unless a later date is requested by the applicant.
B. Upon receipt of a timely request for a hearing, the City Manager or designee shall schedule a hearing and notify the applicant of the date, time, and place of the hearing. Such notification may be made by the City of Lakewood by telephone provided that a written notice shall also be mailed or delivered to the applicant at the applicant’s address shown in the application. An applicant may be represented at the hearing by an attorney or other representative. An applicant or the City of Lakewood may request a continuation or postponement of the hearing date.
C. At the hearing, the City Manager or designee shall hear and consider such evidence and testimony presented by the City of Lakewood, the applicant, or any other witnesses presented by the City of Lakewood or the applicant which are relevant to the stated reason and basis for the City Clerk’s denial of the license application. The City Manager or designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross-examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.
D. Not less than ten (10) days following the conclusion of the hearing, the City Manager or designee shall send a written order by certified mail, return receipt requested, to the applicant at the address as shown on the application. The order shall include findings of fact and a final decision concerning the approval or denial of the application. In the event that the City Manager or designee concludes that the application is approved, such approval shall constitute approval by the City Clerk, and the applicant may seek issuance of a license in accordance with this Chapter.
E. The order of the City Manager or designee made pursuant to this section shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). For purposes of any appeal to the District Court, the City Manager’s or designee’s decision shall be final upon the earlier of the date of the applicant’s receipt of the order or four (4) days following the date of mailing. (Ord. O-2019-24 § 4, 2019; Ord. 2005-18 § 1, 2005).

5.54.140 Issuance of license.
A. No license shall be issued by the City Clerk after approval of an application until such time as the building in which the business is to be conducted is ready for occupancy.
B. If the licensed business premises has been closed or inactive for at least one (1) year, the City Clerk may revoke or elect not to renew the license. (Ord. 2005-18 § 1, 2005).

5.54.150 Term of the license.
All licenses issued pursuant to this Chapter shall be valid for the entire calendar year in which the license is issued unless revoked. Each license term shall expire on December 31 of the calendar year for which the license is issued unless the license is renewed for the next subsequent calendar year. No proration of any application or license fee or any other requirement shall be permitted for any application or license filed or issued after January 1 of any
calendar year. (Ord. 2005-18 § 1, 2005).

5.54.160 License renewal.
A. Renewal of an existing license issued pursuant to this Chapter shall be granted upon the payment of the annual licensing fee and the filing of a completed renewal application with the City Clerk not less than forty-five (45) days prior to the date of license expiration (December 31). The City Clerk may waive the timely filing requirement where the licensee demonstrates in writing that the failure to timely file is not solely the result of the applicant’s neglect; provided that no renewal application shall be accepted by the City Clerk from any licensee after December 31 of the calendar year in which the license expires.
B. A license that is under suspension may be renewed for the next calendar year in accordance with this section provided that such renewal shall not modify, alter, terminate, or shorten the period or term of the suspension. The suspension of a license shall not extend the term of the license or otherwise relieve the licensee from timely seeking renewal of the license in accordance with this section. (Ord. 2005-18 § 1, 2005).

5.54.170 Suspension or Revocation of license.
A. The City Manager or designee may suspend or revoke a license upon a finding of any of the following factors:
1. 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;
2. The licensee, manager, or employee violated or allowed or permitted a violation of any provision of this Chapter;
3. The licensee, in the case of a corporation or limited liability company, is not in good standing or authorized to do business in the State of Colorado;
4. The licensee is delinquent in payment to the City or State for any taxes or fees past due; or
B. Nothing in this Chapter shall prohibit the City of Lakewood from taking any other enforcement action provided for by the Lakewood Municipal Code, the laws of the State, or of the United States.
C. A licensee shall be entitled to a quasi-judicial hearing before the City Manager or designee if the City of Lakewood seeks to suspend or revoke a license based on a violation of this Chapter.
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 City Attorney may file a written complaint with the City Manager or designee setting forth the circumstances of the violation.
2. The City Manager or designee shall send a copy of the complaint by certified mail, return receipt requested, to the licensee at the address as shown on the license application, together with a notice to appear before the City Manager or designee for the purpose of a hearing to be conducted at a specified date and time and at a place designated in the notice to show cause why the licensee’s license should not be suspended. Such hearing shall be held on a date not less than fourteen (14) days following the date of mailing of the complaint and notice to the licensee.
D. At the hearing, the City Manager or designee shall hear and consider such evidence and testimony presented by the Police Department or other enforcement officers, the City of Lakewood, the licensee, or any other witnesses presented by the City of Lakewood or the licensee which are relevant to the violations alleged in the complaint. The City Manager or designee shall conduct the hearing in conformity with quasi-judicial proceedings and shall permit the relevant testimony of witnesses, cross examination, and presentation of relevant documents and other evidence. The hearing shall be recorded stenographically or by electronic
recording device. Any person requesting a transcript of such record shall pay the reasonable cost of preparing the record.

E. The City Manager or designee shall make written findings of fact from the statements and evidence offered and shall reach a conclusion as to whether the alleged violations occurred. Such written findings and conclusion shall be prepared and issued not less than ten (10) days following the conclusion of the hearing. If the City Manager or designee determines that a violation did occur which warrants suspension or revocation of the license pursuant to this section, he shall also issue an order suspending or revoking the license. A copy of the findings, conclusion, and order shall be hand delivered or mailed to the licensee by certified mail, return receipt requested, at the address as shown on the license application.

F. For purposes of any appeal to the District Court, the City Manager’s or designee’s decision shall be final upon the earlier of the date of the applicant’s receipt of the findings, conclusion, and order or four (4) days following the date of mailing of the City Manager’s or designee’s decision. The order of the City Manager or designee shall be a final decision and may be appealed to the District Court pursuant to Colorado Rules of Civil Procedure 106(a)(4). Any suspension or revocation ordered by the City Manager or designee may be stayed and held in abeyance following the filing of a complaint for judicial relief and until a final conclusion of the matter by the District Court.

G. In the event of suspension or revocation of the license, no portion of the license fee shall be refunded. (Ord. O-2019-24 § 4, 2019; Ord. O-2005-18 § 1, 2005).
Chapter 5.56
Lodging Facility License

Sections:
5.56.010 Definitions.
5.56.020 License required; Licensing Authority Established.
5.56.030 Application for New License.
5.56.040 Application Fee.
5.56.050 Investigation.
5.56.060 Decision – New Applications; Appeal.
5.56.070 Hearings.
5.56.080 License Revocation, Suspension or Nonrenewal.
5.56.090 Manager; Change.
5.56.100 Transferability; Change in ownership.
5.56.110 License renewal.
5.56.120 Severability.

5.56.010 Definitions.
As used in this chapter, the following terms are defined as follows:
A. “Authority” means the Lodging Facility Licensing Authority of the City of Lakewood.
B. “Calls for service” (CFS) means and includes, but is not limited to, any and all calls to law enforcement that result in a representative being dispatched or directed to the lodging facility.
   1. Calls for service includes:
      a. A call to emergency services that results in a response by a law enforcement representative to the lodging facility.
      b. Any police-initiated call for service to the lodging facility that results in a criminal report.
      c. Any call to emergency services or police-initiated call for service within the lodging facility’s surrounding neighborhood regarding activity that results in a criminal report, when such activity is associated with lodging facility staff and/or lodging facility guests and/or visitors.
   2. Calls for service shall not include traffic citations in which the lodging facility property address is used as the location of violation.
C. “Calls for service ratio” means the number of calls for service divided by the number of rooms in service at the lodging facility.
D. “Police Chief” shall mean the chief of police of the Police Department.
E. “City Clerk” means the City Clerk or or designee.
F. “Inspector” means a member of the Police Department.
G. “Investigator” means a member of the Police Department.
H. “License” means the license required pursuant to this chapter.
I. “Licensee” means the individual or entity to which a license is granted under this chapter.
J. “Lodging facility” means a hotel, motel, motor hotel, inn, lodging house or other similar facility that: (i) has lodging rooms; (ii) is located within any commercial or mixed use zone district in the city; and (iii) accommodates one or more guests under any rental agreement, concession, permit, right of access, license to use or other agreement,
whether written or verbal, where the rental period of any lodging room is less than thirty (30) consecutive days.

K. “Lodging room” means and includes any room, guestroom or sleeping accommodation that accommodates one or more guests.

L. “LPD” means the Lakewood Police Department.

M. “Manager” means the person who manages, directs, supervises, oversees and administers the acts and transactions of, and the acts of employees of, a lodging facility.

N. “Owner” means any person that is the record owner of real property as listed with the Jefferson County, Colorado Assessor upon which a lodging facility is located. “Owner” shall also mean any part owner, joint owner or lessor of the whole or part of the land or buildings situated on such real property.

O. “Operator” means any person who is the proprietor of a lodging facility, whether in the capacity of owner, lessee, receiver, sublessee, franchisee, manager or mortgagee in possession thereof, or agent of any aforementioned, who offers and accepts payment for any lodging rooms, or board and lodging, and retains the right of access to, and control of, the lodging facility or lodging room.

P. “Person” means an individual, firm, association, partnership, company, sole proprietorship, corporation or similar entity.

Q. “Significant criminal act” means an act or acts that causes serious bodily injury or death to any person or an act or acts that requires a law enforcement specialized unit or tactical response team. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-2 § 2, 2019).

5.56.020 License required; Licensing Authority Established.

A. It is unlawful for any person to maintain or operate a lodging facility without first obtaining a license from the City Clerk’s Office.

B. All lodging facilities existing within the City of Lakewood upon the effective date of this ordinance shall apply for a license within ninety (90) days of the effective date of this ordinance. All lodging facilities existing within the City of Lakewood upon the effective date of this ordinance that have, based on data provided by the Police Department, 1.89 or more calls for service per room for the previous twelve (12) month period shall meet with representatives from the LPD to discuss measures to mitigate criminal activity occurring on the lodging facility’s premises. Such meeting shall occur before a lodging facility license is granted.

C. Lodging Facility Licensing Authority (hereinafter, the “Authority”) shall have and is vested with the authority to grant or deny licenses; conduct investigations; and suspend or revoke licenses for cause.

D. The Authority shall consist of a Hearing Officer chosen by the City Clerk.

E. The Authority may adopt reasonable fines, rules and regulations, in conformity with applicable statutes, ordinances and the City’s home rule charter, governing its internal operations and for carrying out the provisions of this chapter.

F. The City Clerk shall serve as the official secretary of the Authority, may attend the meetings of the Authority and shall be responsible for posting and/or publishing all public notices. (Ord. O-2019-2 § 2, 2019).

5.56.030 Application for New License.

A. All applicants for a license shall file an application for a license with the City Clerk on forms provided by the City Clerk.

5-210 (Lakewood 10-12-2019)
B. The City Clerk shall accept no application that is not complete in every detail. If any application is deposited with the City Clerk and found, upon examination, to contain any omission or error, it shall be returned to the applicant for completion and correction without further action by the Clerk or Authority. All licenses granted shall be valid for a period of one (1) year from the date of issuance unless revoked or suspended for cause. No application shall be deemed complete unless accompanied by the following:

1. If the applicant is:
   a. An individual, the individual shall state his or her legal name and any aliases;
   b. A partnership, the partnership shall state its complete name and the names of all partners, whether the partnership is general or limited, and provide a copy of the partnership agreement, if any;
   c. 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 of Colorado, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Colorado, the names and capacity of all officers and directors, the name of the registered corporate agent and the address of the registered office for service of process;
   d. A limited liability company, the company shall state its complete name, the date of its formation, evidence that the company is in good standing under the statutes of the State of Colorado, or in the case of a foreign company, evidence that it is currently authorized to do business in the State of Colorado, the name of the manager, and the name of the registered agent and the address of the registered office for service of process.

2. One or more statements as to whether:
   a. The applicant or any other individual listed pursuant to subsection B(1) of this Section has:
      i. Previously operated, is currently operating, or has been employed at a lodging facility;
      ii. Had a previous lodging facility license under this Chapter, or other lodging facility license ordinances, resolutions or other regulations from another city or county, denied, suspended or revoked, or declared a public nuisance, including the name and location of the business for which the license was denied, suspended, revoked, or declared a public nuisance, as well as the date of the denial, suspension, revocation or declaration as a public nuisance.
   b. The applicant or any other individuals listed pursuant to Subsection B(1) of this Section has been a partner in a partnership or an officer or director of a corporation or manager of a limited liability company of a business whose lodging facility license has previously been denied, suspended, revoked, or declared a public nuisance including the name and location of the business for which the license was denied, suspended, revoked, or declared a public nuisance as well as the date of the denial, suspension, revocation, or declaration as a public nuisance.
   c. The applicant or any other individual listed pursuant to Subsection B(1) of this Section holds any other licenses under this Chapter or other similar lodging facility license ordinances from another city or county and, if so, the names and locations of such other licensed businesses;
3. The location of the proposed lodging facility, including a legal description of the property, street address and telephone number;
4. Proof of the applicant’s right to possession of the premises wherein the lodging facility will be;
5. The applicant’s mailing address and residential address;
6. The applicant’s social security number and/or federally issued tax identification number;
7. A floor plan of the lodging facility that specifies the number of rooms contained in the lodging facility. The floor plan need not be professionally prepared;
8. Evidence from the City that the proposed location complies with all requirements of the zoning ordinance;

5.56.040 Application Fee.
The City of Lakewood shall impose fees, adopted by City Council resolution, necessary to defray the costs of processing the documentation of the activities of lodging facilities as allowed by law including, but not limited to, fees for a new license and renewal of a license. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-2 § 2, 2019).

5.56.050 Investigation.
A. Such individual(s) as the Chief of Police may designate shall be the Inspector, who shall perform the inspection duties set forth in this Chapter and such other duties as the Chief of Police may reasonably direct. Prior to any lodging license being approved, denied, suspended or renewed, the Inspector may inspect the premises for conformance with all applicable laws and all orders from the Authority.
B. The City Clerk may cause to be conducted any other investigation deemed necessary by the City Clerk to determine the application’s conformance with any requirement of this Chapter, including, but not limited to, investigation of the proposed lodging facility’s conformance with the Lakewood Zoning Ordinance or other applicable laws.
C. Any reports of the results of any investigation conducted by any City of Lakewood department shall be delivered by the respective departments or officials to the City Clerk. Not less than ten (10) business days prior to the date of the hearing, if any, on the application, the City Clerk shall mail the report of findings based on the investigation to the applicant and, upon request, to other interested parties. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-2 § 2, 2019).

5.56.060 Decision – New Applications; Appeal.
A. An application with a completed investigation shall be administratively approved or denied by the City Clerk within thirty (30) days of the date of the filing of the complete application. The City Clerk shall deny a license application if:
1. The application or any City of Lakewood investigation demonstrates or establishes that the proposed lodging facility fails to conform to any requirement of this Chapter, the Lakewood Zoning Ordinance, Lakewood Subdivision Ordinance, or other applicable law;
2. The applicant knowingly made a false statement or knowingly gave false information in connection with the application;
3. The individual applicant, or a director or officer of a corporation, partner of a partnership, manager of a limited liability company or manager of the lodging facility,
has had a lodging facility license revoked or suspended within five (5) years prior to the application;
4. The individual applicant, or a director or officer of a corporation, partner of a partnership, manager of a limited liability company or manager of the lodging facility, has operated a lodging facility that was determined at any time to be a public nuisance.

B. If the application is based upon the sale of an existing lodging facility, and if the existing lodging facility’s CFS ratio is at or above 1.89 calls for service per room or the lodging facility has other compliance issues, the applicant must provide, as a prerequisite to being granted a license, a remedial plan to reduce the CFS ratio or resolve the other compliance issues. The applicant must reduce the CFS ratio or resolve the issues within 180 days after license is issued or be subject to license suspension or revocation.

C. In the event the City Clerk approves a license application, the City Clerk shall make a written finding that the application conforms to the requirements of this Chapter based on the information available and the investigation performed by the City of Lakewood. The City Clerk may make additional findings as deemed necessary to identify the City Clerk’s basis for approval.

D. In the event the City Clerk denies a license application, the City Clerk shall prepare written findings of fact stating the reasons or basis for the denial. The City Clerk shall, within ten (10) days after the date of the City Clerk’s denial, send a copy of the City Clerk’s findings by certified mail, return receipt requested, to the address of the applicant.

E. In the event the City Clerk denies a license application, the applicant shall have the right to request a public hearing before the Authority. The applicant shall, within ten (10) days of the date of the mailing of the City Clerk’s written findings and denial of the license application, make a written request to the City Clerk for a hearing. The hearing shall be conducted within thirty (30) days of the City Clerk’s receipt of the written request for a hearing unless a later date is requested by the applicant in writing. If the applicant fails to request a public hearing within the allotted time, the City Clerk’s decision to deny a license application shall become final. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-2 § 2, 2019).

5.56.070 Hearings.
A. Notice. When the Authority issues an order to show cause why a license should not be suspended or revoked, the Authority shall give the licensee reasonable advance notice of the time and place of the hearing, nature thereof, the authority and jurisdiction under which it is to be held and the violation(s) alleged in the complaint. The City Clerk shall mail such notice to the licensee by first-class mail and shall cause the notice to be served personally on the licensee at its last known address. At least ten (10) days prior to the hearing, the City Clerk shall prepare and post the licensed premises with a sign that contains notice of the hearing date, time and location.

B. Hearing Procedure. The Authority shall establish procedures for all hearings in conformity with the laws of the state and ordinances and resolutions of the City of Lakewood.

C. Subpoenas.
1. The Lakewood City Attorney’s Office and the applicant shall have the power to issue subpoenas to require the presence of persons and the production of papers, books and records necessary to the determination of any hearing the Authority is
authorized to conduct. It is unlawful for any person to fail to comply with any such properly issued subpoena.

2. Subpoenas shall be served in accordance with the Colorado Rules of Civil Procedure.

3. Upon failure of any witness to comply with such subpoena, the Lakewood City Attorney’s Office may petition any judge of the Lakewood Municipal Court, setting forth that due notice had been given of the time and place of attendance of the witness and that service of the subpoena was proper, and requesting the court, after hearing evidence in support of or contrary to the petition, enter its order compelling the witness to attend and testify, or to produce books, records or other evidence, under penalty of punishment for contempt in the event of willful failure to comply with such order.

D. Oaths. The City Clerk shall have the power to administer oaths.

E. Continuance. The Authority may continue the hearing to a date certain as may be required to gather necessary facts and evidence and to permit witnesses to testify.

F. Decision. The Authority shall render a written decision and order no later than thirty (30) days after the conclusion of the show cause hearing.


5.56.080 License Revocation, Suspension or Nonrenewal.

A. The Authority may suspend, revoke or not renew a license upon a finding of one or more of the following:

1. The lodging facility has outstanding official orders from the Jefferson County Department of Health;
2. The lodging facility has outstanding official orders from West Metro Fire;
3. The calls for service ratio is at or above 1.89 or more calls for service per room for the previous twelve (12) month period;
4. A significant criminal act has occurred on the lodging facility’s premises;
5. The operation of the lodging facility is such that it is or has negatively impacted the health, safety and/or welfare of its guests or the residents or businesses of the neighboring community;
6. The lodging facility is delinquent to the City of Lakewood for any taxes imposed pursuant to Lakewood Municipal Code Chapter 3.01 or 3.03;
7. An investigation performed by the City of Lakewood demonstrates or establishes that the lodging facility fails to conform to any requirement of this Chapter, the Lakewood Zoning Ordinance, Lakewood Subdivision Regulations, or other applicable law;
8. The applicant knowingly made a false statement or knowingly gave false information in connection with the application;
9. The City Clerk determines that the individual applicant, or a director or officer of a corporation, partner of a partnership, manager of a limited liability company or manager of the lodging facility, has had a lodging facility license revoked or suspended within five (5) years prior to the application;
10. The City Clerk determines that the individual applicant or a director or officer of a corporation, partner of a partnership, or manager of a limited liability company or manager of the lodging facility has operated a lodging facility that was determined to be a public nuisance.
B. If the Authority finds a licensee to be in violation of 5.56.070(A)(3), and if it is the licensee's first violation, the Authority shall place the licensee on a twelve (12) month probationary period. The Authority shall impose mandatory restrictions on the licensee to help reduce criminal activity at the lodging facility. (Ord. O-2019-24 § 4, 2019; Ord. O-2019-2 § 2, 2019).

5.56.090 Manager; Change.
A. A registered manager shall be on the premises of a lodging facility at all times. A lodging facility may have more than one registered manager. It is unlawful for any person to work as a manager of a lodging facility without first registering with the City Clerk.
B. In the event a licensee changes the manager of a lodging facility, the licensee shall immediately report such change and register the new manager, on forms provided by the City Clerk, within thirty (30) days of such change. (Ord. O-2019-2 § 2, 2019).

5.56.100 Transferability; Change of ownership.
A. No license under this Chapter shall be transferable to another person or any other group acting as a unit.
B. No license under this Chapter shall be transferred to another hotel name or franchise, or hotel location or building. (Ord. O-2019-2 § 2, 2019).

5.56.110 License renewal.
All license renewal applications shall be submitted to the City Clerk on the prescribed forms no later than forty-five (45) days prior to the date upon which the license expires, except that the City Clerk, for good cause, may waive the time requirement set forth herein. The forms shall be accompanied by all required fees and such additional materials as the City Clerk deems necessary. The City Clerk shall accept no renewal application that is not complete in every way. The City Clerk shall not grant any renewal unless the licensee has paid all applicable fees. The City Clerk may administratively approve and issue all license renewals. In the event the City Clerk fails to approve a renewal application, it shall be set for a public hearing before the Authority. (Ord. O-2019-2 § 2, 2019).

5.56.120 Severability
Should any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter or application thereof to any person or circumstance be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Chapter, or its application to any other person or circumstance, and to this end, the provisions of this Chapter are declared to be severable. (Ord. O-2019-2 § 2, 2019).
Chapter 5.57

COMMERCIAL MICROMOBILITY – PILOT PROGRAM

Sections:
5.57.010 Definitions.
5.57.020 License required.
5.57.030 License application.
5.57.035 Unilateral discretion.
5.57.040 Requirements for license issuance.
5.57.050 License fee and cost.
5.57.060 Device relocation, retrieval and impoundment.
5.57.070 Report of Changes.
5.57.080 Administration and enforcement.
5.57.090 Noncompliance.
5.57.100 Cumulative effect.

5.57.010 Definitions
As used in this Chapter, the following words and terms shall be defined as follows:

“Bicycle” means a vehicle propelled by human power applied to pedals upon which a person may ride and having two tandem wheels or having two parallel wheels and one forward or rear wheel, all of which are more than fourteen inches in diameter.

“Bicyclist” means any person operating a bicycle or an electric assisted bicycle anywhere within the City.

“City” means the City of Lakewood, Colorado.

“City Manager” means the Lakewood City Manager or designee.

“Commercial Micromobility Company” or “Company” means a business, person or other entity that provides bicycles, electric assisted bicycles, EPAMD and/or electric mobility devices within the City for a fee. Commercial Micromobility Company does not include any entity or person that provides five (5) bicycles, electrical assisted bicycles, EPAMD and/or electric mobility devices or fewer within the City as a minor component of its business relationship with Riders, such as landlord for tenants, employer for employees, schools for students and staff, geographically use-restricted to private property, or personally owned and used.

“Commercial Micromobility License” or “License” means a license required under this Chapter 5.57.

“Device” means a bicycle, electric assisted bicycle, EPAMD or electric mobility device.

“Electric Assisted Bicycle” means a vehicle having two tandem wheels or two parallel wheels and one forward or rear wheel, fully operable pedals, an electric motor not exceeding seven hundred fifty (750) watts of power, and a top motor-powered speed of twenty (20) miles per hour.

“Electric Mobility Device” means a device weighing less than 100 pounds, typically with handlebars and an electric motor, that has a maximum speed of twenty (20) miles per hour on a paved level surface when powered solely by the electric motor. Electric mobility device does not include a motorcycle, low-power scooter, toy vehicle, golf car, low speed electric vehicle, wheelchair or any device designed to assist people with mobility impairments who use the pedestrian rights of way.

“Electric Personal Assistive Mobility Device” or “EPAMD” means a self-balancing,
nontandem two-wheeled device, designed to transport only one person, that is powered solely
by an electric propulsion system producing an average power output of no more than seven
hundred fifty (750) watts.


5.57.020 License Required

It is unlawful for any Commercial Micromobility Company to operate or to allow its Devices
to be operated or to locate its Devices within the City without a valid Commercial Micromobility

5.57.030 License Application

A. All applicants for a Commercial Micromobility License Pilot Program shall file an
application with the City Clerk on forms approved by the City Manager and provided by the City
Clerk.

B. The City Manager will establish an initial application deadline. All applications received
by this deadline that are approved shall have a common effective date that will initiate a
prohibition of additional Licenses for a period determined by the City Manager not to exceed
one (1) year. After the initial one-year license period expires, applications from new licensees
may be submitted at any time using the latest City requirements.

C. The application for a License shall include, but not be limited to, the following:

1. The applicant shall identify the types of Devices proposed for use in the City, and detail
why the selected devices are the best fit for the City.

2. The applicant shall submit a proposal that includes the following:
   a. The maximum and minimum number of each type of Device that the applicant will initially
      make available to the public;
   b. A usage-based method for increasing and decreasing the maximum number of each type
      of Device the applicant will make available to the public; and
   c. The recommended maximum number of each type of Device to be initially provided for
      use in the City by all Companies in the aggregate. The City may waive
      this requirement if it
determines, in the City’s sole and absolute discretion, that such information is no longer
necessary.
   d. Method by which applicant will ensure that all riders are 18 years of age or older and are
      in possession of a valid driver’s license.
   e. Geofencing plan that ensures that devices are not ridden in designated dismount zones,
as identified by the City Manager.

3. The applicant shall submit a plan, acceptable to the City Manager, to provide for the
   following:
   a. Education of Riders regarding legal operation and parking of Devices;
   b. Incentives for Riders to properly operate and park Devices; up to and including revocation
      of a Rider’s access to Company’s Devices;
   c. Initial distribution and on-going re-distribution of Devices;
   d. Retrieval of Devices;
   e. Inspection, repair and replacement of Devices as new and safer technologies become
      available;
   f. Methods to make helmets available to all riders;
   g. Establishment of a customer and community feedback system, whereby feedback and
      complaints are addressed.
   h. The sharing of ridership, customer service and safety-related data relating to both
      ridership and devices (e.g., recalls, voluntary or mandatory for device or component of device);
i. Permanently affixing to each Device a weatherproof, permanent sign that identifies the owner of the Device, a unique Device identification number geographically tracked by the Company, and a customer service phone number; and

j. Permanently affix to each Device a head lamp and reflectors that increase visibility during permitted riding hours at times when natural lighting may be insufficient.

4. The applicant shall provide contact information, as determined by the City Manager, which is continuously monitored by a local representative for questions, maintenance issues, complaints, safety concerns or other issue resolution including retrieving Devices.

5. If an applicant’s previous License was revoked or suspended, the applicant shall also demonstrate, in a form or manner satisfactory to the City, that the cause of the revocation or suspension has been remedied and will not reoccur. (Ord. O-2019-27 § 1, 2019).

5.57.035 Unilateral Discretion
The City Manager retains absolute and unilateral discretion to add, delete, or otherwise amend the requirements, standards, and regulations of a License. This discretion includes, but is not limited to, the power to any time, revoke, suspend, modify, or terminate a License or the entire License program at any time. (Ord. O-2019-27 § 1, 2019).

5.57.040 Requirements for License Issuance
A. The City Manager may limit the number of Companies and Licenses for each type of Device. A Company with a previous License, in good standing with the City, will receive a new License upon an approved application before any new Companies to the City are issued Licenses.

B. Each License shall include and be subject to, but not limited to, the following requirements acceptable to the City Manager:

1. Certification for each Device;

2. The minimum number of each type of Device the Company will typically make available to the public during normal operating hours;

3. The maximum number of each type of Device the Company can make available to the public upon initiation of the License term;

4. A usage-based method for increasing and decreasing the maximum number of each type of Device the Company can make available to the public;

5. Maximum time for Device retrieval for each Device that fails an inspection, is improperly parked, is unused for any 48-hour period, causes a verified complaint, or exceeds the Company’s approved maximum number for such Device;

6. Obligations to:
   a. Educate Riders of legal operation and parking of Devices and that the City is neither providing nor approving any Device nor insuring the Company or Riders;
   b. Incentivize Riders to properly operate and park Devices including conditions in which use by particular Riders would be prohibited;
   c. Initially distribute, re-distribute and retrieve Devices;
   d. Inspect and repair Devices;
   e. Encourage Riders to use helmets;
   f. Share data at a frequency and in a format and granularity adequate to verify Company operations meet the intent of the License, and for auditing, police enforcement and infrastructure planning needs of the City;
   g. Permanently affix to each Device a weatherproof, permanent sign that identifies the owner of the Device, a unique Device identification number geographically tracked by the City.
Company and a customer service contact, as determined by the City Manager; and

h. Provide liability and medical insurance coverage meeting the state automotive insurance minimum requirement as part of the rental agreement.

7. The Company’s authorization for the City to relocate or impound any Device improperly parked or otherwise in violation of this chapter;

8. An affirmative obligation by the Company to timely and fully cooperate with the Lakewood Police Department during any investigation of an incident alleged to have involved a Device or Rider associated with the Company;

9. Whether advertising is permitted on any Device;

10. A comprehensive general liability insurance certificate naming the City of Lakewood and its officers and its employees as additional insureds;

11. Company commitment to indemnify, defend and hold harmless the City of Lakewood and its employees from and against all third-party claims and a waiver of liability/release of claims in favor of the City, including from Riders;

12. Acknowledgement of the City’s liability limitations under the Colorado Governmental Immunity Act;

13. Remedies including License modification, License suspension and License revocation for violation of any provision of the License;

14. Payment of applicable License fees and the deposit amount required prior to a License becoming valid;

15. A report of Company operations submitted to the City no later than thirty (30) calendar days following expiration of the License as required by the City Manager; and

16. Signature of an authorized person binding the Company to the License terms.

C. Licenses are not assignable or transferable; with the exception of assignment to a successor entity in the event of a sale of all or substantially all of Licensee’s assets or stock or a reorganization within Licensee’s existing ownership structure.

D. Licenses shall be effective for a period not to exceed 365 calendar days or as determined by the City Manager. (Ord. O-2019-27 § 1, 2019).

5.57.050 - License Fees and Costs

A. The City Manager shall establish a License application fee adequate to recover the average costs of application review and preparing and issuing a License. This fee must be paid upon submission of a License application. The City will not process applications submitted unless the fee has been paid.

B. Each Company shall deposit an amount determined by the City Manager from which the City may deduct its costs associated with the Company’s operation and Devices, including, but not limited to, City responses to public inquiries, Device relocation or retrieval, and Device impoundment.

1. The deposit amount shall be based on the maximum number of Devices the Company is permitted to provide to the public, the Licensee’s performance record in the City and other communities, and other considerations determined by the City Manager to be relevant to the City’s potential costs attributable in part or in whole to the Company.

2. The City Manager shall establish a minimum deposit amount below which the company shall replenish within thirty (30) calendar days of notice from the City the fund to an amount determined by the City Manager.

3. The City shall provide an annual reconciliation to the Company of the deposit amount and costs paid from the deposit amount.

4. The remaining deposit amount shall be returned to the Company following:

a. Expiration of the current License without approval of a License for the immediately
subsequent period;
   b. Submittal of the required operations report; and
   c. Deduction of any amounts necessary to retrieve any of the Company’s Devices remaining
      within the City and any other appropriate costs.
   C. Insufficient funds on deposit with the City shall not relieve any Company of the obligation
      to reimburse the City for costs for which the deposit is intended and may result in, but is not
      limited to, License suspension or revocation.
   D. The City Manager may reduce or waive the deposit requirement for any Company based
      on previous License periods during which use of the deposit was unnecessary or minimal.

5.57.060 - Device Relocation, Retrieval and Impoundment
   A. Any Device not in compliance with the License shall constitute a violation of this chapter.
   B. The City is authorized to relocate or retrieve and impound any Device not in compliance
      with a License. The City shall give notice to the Company of each impounded Device. Such
      notice shall be to any one of the Company’s contacts identified on the License application. The
      Company shall reclaim impounded devices within 30 calendar days of notice from the City.
   C. The City shall deduct from the Company’s funds on deposit with the City all costs and
      fees of such impoundment. To the extent such deposit is inadequate, the Company shall pay to
      the City the remaining amounts due within 30 calendar days of billing, and such amounts shall
      accrue interest after such due date. If not paid within 30 calendar days after billing, such
      amounts, including interest and collection costs, shall be subject to collection by any lawful
      method.
   D. The City may sell, donate, recycle or dispose of any Device, as determined by the City
      Manager, if:
      1. The City impounds a Device that is not reclaimed by the Company within thirty (30)
         calendar days of the date of receipt of the notice provided in subsection B hereof; or
      2. The relevant Company is not identifiable.
   Such action by the City shall not relieve the Company of its obligation to pay costs and fees.

5.57.070 - Report of Changes
   The Company shall report any change in ownership, contact information or location to the
   City within ten (10) calendar days of the change. (Ord. O-2019-27 § 1, 2019).

5.57.080 Administration and Enforcement
   A. Administration. This chapter shall be administered and enforced by the City Manager.
      The City Manager is hereby authorized and directed to promulgate and implement rules,
      regulations and procedures necessary or appropriate for administration and enforcement of this
      Chapter.
   B. Enforcement. The City is hereby authorized to enter into, on or upon any public property
      to examine a Device or parts thereof, to obtain information as to the identity of the owner of any
      Device, to retrieve or relocate any Device and to impound any Device in accordance with the
      provisions of this Chapter. Nothing contained in this Chapter shall be deemed to limit the City
      Manager from entering private property pursuant to permission from the owner or occupant
      thereof.
   C. Appeal. Any Company may appeal any order, decision or determination of the City
      Manager that is directly applicable to such Company in accordance with the following:
      1. The appeal shall be in writing and received by the City Manager within ten (10) calendar
days after delivery of the City Manager’s order, decision or determination or, if the order, decision or determination is not one that is directed at any particular Company, within ninety (90) calendar days after the order, decision or determination has been enacted.

2. The appeal shall include the specific objection to the order, decision or determination being appealed, the bases for the appeal including relevant citations to the City’s Municipal Code, if applicable, and any specific action proposed by the Company to warrant reconsideration.

3. The City Manager shall designate a hearing officer to hear and decide the appeal through an informal hearing held within twenty (20) calendar days of the City’s receipt of the appeal, unless the hearing officer grants additional time for good cause.

4. The hearing officer is authorized to uphold, modify or overturn the City Manager’s order, decision or determination. Such order, decision or determination decision shall remain in effect during the pendency of any appeal.

5. The hearing officer shall render a written decision, which shall be mailed to the appealing Company within fifteen (15) calendar days of the hearing.

6. The decision of the hearing officer shall constitute a final agency action for purposes of any further appeal. (Ord. O-2019-27 § 1, 2019).

5.57.090 – Noncompliance

A. It is unlawful for any person to violate a provision of this Chapter or a provision of a License.

B. Continued operation in compliance with a License shall be a continuing condition of the validity of the License. The City Manager may immediately suspend, modify or revoke a License upon evidence satisfactory to the City Manager of noncompliance by a Company. Suspension, modification or revocation of a License is not an exclusive remedy for any violation of a License. (Ord. O-2019-27 § 1, 2019).

5.57.100 Cumulative Effect

The provisions of this chapter are cumulative and in addition to any and all other procedures, remedies or penalties provided in the City’s municipal code or by state law for the abatement of, or prosecutions for, nuisances. Proceedings under this chapter shall not prejudice or affect any other action, whether civil, criminal, equitable or administrative, for abatement or other remedy of such conditions. Nothing contained herein shall be deemed to invalidate, supersede or render ineffective any other provision of any ordinance of the City. Neither the inclusion, nor the failure to include, under the terms of this chapter, any act or condition otherwise in violation of any provision of this code or other ordinance of the City, is unlawful or constitutes a nuisance, shall be deemed to render such act or condition lawful. (Ord. O-2019-27 § 1, 2019).