MIDVALE CITY

ORDINANCE NO. 2014-O-10

AN ORDINANCE AMENDING MIDVALE CITY MUNICIPAL CODE
CHAPTER 5.04 DENIAL, SUSPENSION OR REVOCATION OF A LICENSE

WHEREAS, the City Council desires to amend Midvale Municipal Code Chapter 5.04 Denial, Suspension or Revocation of a License; and

WHEREAS, the City Council finds that a hearing officer can expeditiously schedule and impartially hear appeals; and

WHEREAS, the City Council finds it in the City’s best interest to allow the City’s appointed hearing officer to hear business license denial, suspension, or revocation hearings; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of Midvale City, Utah as follows:

Section 1. The City Council desires to amend Midvale Municipal Code Chapter 5.04 Denial, Suspension, or Revocation of a License as set forth in Exhibit A.

Section 2. This Ordinance is hereby adopted and retroactively enacted to September 1, 2014.

PASSED AND APPROVED this 18th day of November, 2014.

[SEAL]

VOTING:
Stephen Brown  Yea ☑ Nay
Paul Glover  Yea ☑ Nay
Paul Hunt  Yea ☑ Nay
Wayne Sharp  Yea ☑ Nay

ATTEST:

Roni L. Andreason, MMC
City Recorder

Published this 30th day of November, 2014.
Chapter 5.04

DENIAL, SUSPENSION OR REVOCATION OF A LICENSE

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5.04.010 Denial of business license or alcoholic beverage license.
After a person has made application to the city for a business license or alcoholic beverage license, the application shall be denied if any of the following criteria apply:

A. The applicant does not meet the qualifications for a licensee as provided under this title.
B. For a new application, nonpayment of a returned check for the required license fees, fines and/or penalties at the time the application is made. For a business license renewal application, nonpayment of the required license fees, fines and/or penalties if applicable under Section 5.02.100.
C. One of the reviewing departments or divisions of the city provided for in this title has disapproved the application pursuant to any applicable provision of the city code.
D. False or incomplete information given on the application.
E. The licensee is not complying with a requirement or condition set by the planning commission or planning and zoning division, if applicable, under a conditional use permit or administrative conditional use permit; if applicable, granting a variance; by the city council or board of adjustment; or by agreement.
F. Noncompliance with any city, state or federal statutes or any health department regulations governing the applicant’s proposed business.
G. Any other reason expressly provided for in this title. (Ord. 10/28/20030-12 (part), 2003: Ord. 12-09-97G (part), 1997)

5.04.020 Reasons for suspension or revocation.
An existing business license or alcoholic beverage license shall be suspended or revoked if any of the following criteria apply:

A. The licensee does not now meet the qualifications for a licensee as provided under this title;
B. False or incomplete information was given on an application;
C. The licensee has violated or is violating any provision of this title or provision of the city code, state or federal statutes or regulations governing the licensee’s business;
D. The licensee has obtained or aided another person to obtain a license by fraud or deceit;
E. The licensee has failed to file the appropriate documents with the State Tax Commission distributing the local portion of sales tax to Midvale City;

F. The licensee has refused authorized representatives of the city to make an inspection or has interfered with such representatives while in the performance of their duty in making such inspection;

G. The licensee is not complying with a requirement or condition set by the planning commission or planning and zoning division, if applicable, under a conditional use permit or administrative conditional use permit; if applicable, granting a variance or special exception; by the city council or board of adjustment; or by agreement;

H. Violation of this title by the agents or employees of a licensee and violations of any other laws by the agents or employees committed while acting as an agent or employee of the licensee; or


5.04.030 Enforcement.
A. The license administrator shall have the authority, without a hearing, to deny a license for the reasons provided for in this chapter.

B. The license administrator shall have the authority to suspend or revoke a license without a hearing, for reasons provided for in this chapter. However, the suspension or revocation shall not take effect until the time period for appealing the decision as set forth in this chapter below has passed.

C. The license administrator may, on his or her own initiative or in response to complaints from the general public or any city department or division, investigate and gather evidence of violations of this title or other circumstances which may give rise to a denial, suspension or revocation. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97G (part), 1997)

There is created the license hearing board of Midvale City consisting of the members of the Midvale City council. A hearing officer shall be appointed by the city council. The license hearing board hearing officer shall have authority to hear evidence in and decide business license matters referred to the hearing officer and, after such hearing, shall submit its recommendations in writing to the office of the city administrator. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97G (part), 1997)

5.04.050 Procedure for denial, suspension or revocation.
A. In the event of a denial, suspension or revocation, the license administrator shall notify the applicant/licensee by letter sent certified mail within two days of the decision to deny, suspend or revoke.

B. The notification letter shall include the following information:

1. Name of applicant/licensee;
2. Reason for denial/suspension/revocation including indication of city, state or federal law violated;
3. Explanation of right of applicant/licensee to appeal the decision of the license administrator;
4. Time frames and process for appeal;
5. Indication that if the applicant/licensee chooses not to appeal within the specific time frame, the decision of the license administrator shall be considered final and the applicant licensee will be expected to comply immediately; and

C. The applicant/licensee shall have the right to appeal the decision of the license administrator to the license hearing board. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97G (part), 1997)
D. Said appeal shall be in writing and submitted within fifteen days of the date of mailing of the certified letter notifying the applicant/licensee of the denial/suspension/revocation.

E. Said appeal shall contain the following information:

1. Name of applicant/licensee;
2. Set forth with specificity the reasons for which the appeal is taken;
3. Intent to be represented by legal counsel;
4. Availability for a license board officer hearing within the next seven working days of the date of the letter of appeal. (Ord. 10/28/2003O-12 (part), 2003: Ord. 12-09-97G (part), 1997)

5.04.060 Hearing.

A. The hearing shall be at a time, place and day set by the hearing board officer, but not later than seven working days after receipt of the notice of appeal.

B. At the hearing, the hearing board officer or representative from the city attorney’s office shall present the reasons for the decision to deny, suspend or revoke the license.

C. The applicant or licensee, in person or through his or her attorney, may then present any evidence showing reason why the decision was in error.

D. All witnesses shall be sworn to testify truthfully. Either party is entitled to confront and cross-examine any witnesses.

E. Any oral or documented evidence may be received, but the hearing board officer shall exclude all privileged, irrelevant, immaterial, or unduly repetitious evidence.

F. If the denial, suspension, or revocation appealed from is based on a finding by the building division, planning and zoning division, fire department, health department or police department that the business was or would be in violation of their applicable ordinances or regulations, and the division or department in question has fulfilled the procedural requirements in all applicable ordinances, statutes and rules prior to making such finding, then that finding shall be conclusive on the hearing board officer, and the board’s officer’s decision may be based only on whether the license was properly denied, suspended, or revoked because of the building division’s, planning and zoning division’s, fire department’s, health department’s or police department’s finding.

G. If the appeal is based on a decision by the police department to deny, suspend, or revoke a police I.D. card pursuant to failure of requirements as set forth in applicable city ordinances, the factual determinations of the police department shall be conclusive, and the license hearing board officer shall:

1. Uphold the decision if the hearing board officer finds that the police department acted properly to deny, suspend or revoke the police I.D. card based on the factual determinations of the police department.

2. Reverse the decision if the hearing board officer finds that the police department did not act properly to deny, suspend or revoke the police I.D. card based on the factual determinations of the police department, but hold the decision in abeyance for one year on the basis of mitigating circumstances. Such mitigating circumstances may include, but shall not be limited to, the following:
   a. The impact of the decision on a cardholder’s employment possibilities or career, relative to the severity of the reason the I.D. card was denied; or
   b. The cardholder’s completion, or willingness to complete, job skills training related to the cardholder’s position, or approved counseling relative to the violation, not including court ordered counseling.

3. If the decision of the police department is held in abeyance by the hearing board officer, an action by the applicant that would cause the police department to deny, suspend or revoke the I.D. card pursuant to this
section shall immediately reinstate the original decision of the police department and the applicant’s I.D. card shall be automatically denied, suspended or revoked as the case may be.

4. If the applicant appeals the decision of the police department regarding the I.D. card based on a dispute of the department’s factual findings, the applicant must request a review of the decision by the police department. The request shall include a statement explaining which facts are disputed, and proof that the police department’s decision was in error. The police department shall respond to the applicant’s request within thirty days. The response shall uphold the decision and include proof supporting the police department’s findings, or modify the decision based on a review of the application.

H. If the denial, suspension, or revocation appealed from is based on a determination by the license administrator that grounds existed pursuant to this code, the hearing board-officer may examine the factual nature of the grounds and determine whether such grounds are sufficient to sustain the decision of the license administrator.

I. The license hearing board-officer does not have the authority to waive compliance with applicable provisions of the business license ordinances, nor can the hearing board extend deadlines set forth in the ordinances or change the substance or form of the ordinances. (Ord. 10/28/20030-12 (part), 2003: Ord. 12-09-97G (part), 1997)

5.04.070 Decision of the hearing board-officer. The hearing board-officer, after hearing all the evidence, shall announce its decision within seven days from the date of hearing. The hearing board-officer may affirm or reverse the decision of the license administrator. The decision shall be in writing and shall be based only upon findings of fact. The hearing board-officer may designate that the prevailing party draft the findings of fact and order. If the prevailing party drafts the findings of fact and order, the opposing party shall have five days from the day the draft is submitted within which to file objections to the draft. Upon resolution of all objections to the draft, the hearing board-officer shall release the findings of fact and order. (Ord. 10/28/20030-12 (part), 2003: Ord. 12-09-97G (part), 1997)

5.04.080 Appeal of hearing board-officer decision. Any decision of the license hearing board-officer may be appealed by the applicant, licensee or city to the district court within thirty days from when the written decision is made. (Ord. 10/28/20030-12 (part), 2003: Ord. 12-09-97G (part), 1997)

5.04.090  Licensing after revocation. A person whose license has been revoked may not be issued a license for a period of twelve months after the revocation. (Ord. 10/28/20030-12 (part), 2003: Ord. 12-09-97G (part), 1997)

5.04.100 Validity of business license or alcoholic beverage license during appeal. Throughout the appeal process as outlined above, a licensee holding a suspended or revoked business or alcoholic beverage license may continue to operate his or her business in accordance with federal, state and local laws pending final decision on the appeal, or until the time for appeal has passed, whichever occurs first. (Ord. 10/28/20030-12 (part), 2003: Ord. 12-09-97G (part), 1997)

5.04.110 Business owner responsible for concessionaire. For the purposes of business or premises owners who contract out the sale of alcoholic beverages on the business premises to an independent concessionaire, violation by such concessionaire of any provision of this title shall constitute grounds for suspension and/or revocation of the license of business or premises owner. (Ord. 10/28/20030-12 (part), 2003: Ord. 12-09-97G (part), 1997)