



VICTOR STAFF REPORT

Decision Item Agenda Documentation

PREPARATION DATE: April 17, 2019

MEETING DATE: April 24, 2019

SUBMITTING DEPARTMENT: Administration

DEPARTMENT DIRECTOR: Olivia Goodale

PRESENTER: Olivia Goodale, City Administrator

SUBJECT: Ordinances Regarding General Business License Provisions, Use of Public Sidewalks, and Streets Sidewalks, and Parkways

Re: Applicable Victor Values:

- Culturally Historic Sustainable Connected to Nature
 Small Town Feel Family Friendly Administrative Need

STATEMENT/PURPOSE: The purpose of this item is for Council to consider for final approval three ordinances 1) repealing and replacing Chapter 1 of Title 3 relating to General Business License Provisions, 2) repealing Title 4, Chapter 1, Section 5 regarding Use of Public Sidewalks, and 3) amending Title 6 Chapter 8 regarding Streets, Sidewalks, and Parkways.

BACKGROUND/ALTERNATIVES: Chapter 1 of Title 3 of the City of Victor Municipal Code relating to General Business License Provisions should be updated because the current Chapter is unclear and incomplete, making it hard to interpret for both staff and local business license holders. City Council held a work session on this ordinance and directed staff to bring it forward for adoption as presented along with the associated public hearing establishing renewal late fees and associated ordinances resulting from folding Section 4-1-5 regarding use of public sidewalks into the General Business License Provisions.

Ordinance O540: Below please find a spreadsheet describing the proposed changes as a result of Ordinance O540.

Section #	Section Name	Change
Section Listing		Changed order of sections
3-1- 1:	Purpose	No change
3-1- 2:	Definitions	Named and added definitions
3-1- 3:	License Required	Addressed multiple business locations
3-1- 4:	Exceptions	Deleted exceptions addressed in other areas
3-1- 5:	Fees	Addressed non-refundable fee; pro-rating of initial application fee; Not For Profit fee; renewal late fee; additional inspection fees*

3-1- 6:	Application for License	Corrected review and approval process
3-1- 7:	Expirations and Renewals	New section
3-1- 8:	Refusals; Appeals	Additional time given to make an appeal and hold a hearing; findings required
3-1- 9:	Exhibition	No change
3-1-10:	Change of Location or Ownership	Allows for change of ownership or location. Replaces non-transferable provision.
3-1-11:	Notification Required	New section
3-1-12:	Revocation of License; Hearing	Corrects revocation process so that Council does not both revoke the license and hear an appeal for the same
3-1-13:	Penalty	Updated to include civil and criminal liability
3-1-14:	Sidewalk Sales	Incorporated Section 4-1-5.D, Sidewalk Sales; removed the allowance for sidewalk sales outside of the downtown area

Ordinance O541: Ordinance O541 repeals section 4-1-5 of the Municipal Code regarding use of public sidewalks because Ordinance O540 folds sidewalk sales into general business license provisions, a more intuitive location within the code. This Ordinance does remove the allowance for sidewalk sales outside of the downtown area. Attached please the current Section 4-1-5.

Ordinance O542: Ordinance O542 relocates the section of code providing news racks as an exception to obstructions on sidewalks and another section regulating sidewalk snow removal to Title 6, Chapter 8 – Streets, Sidewalks, and Parkways, previously listed in Section 4-1-5 and repealed by Ordinance O540. Title 6, Chapter 8 is a more intuitive location within the code for these topics. The language relating to sidewalk snow removal was updated to remove applicability only to the Central Business Zone as that zone no longer exists.

City Council has several options to proceed:

1. Approve the ordinances as presented or amended.
2. Continue the item.
3. Other.

[ATTACHMENTS](#)

Ordinances

Current Chapter 1 of Title 3

Current Section 4-1-5, Use of Public Sidewalks

[FISCAL IMPACT](#)

Fiscal impact is minimal but includes the cost to publish the Ordinance summary.

[STAFF IMPACT](#)

Staff impact includes processing the ordinances for permanent records, and updating the municipal code online and in hard copy.

LEGAL REVIEW

Complete

RECOMMENDATION

Staff recommends that Council approve the Ordinances as presented.

SUGGESTED MOTIONS:

Ordinance O540: I move to waive first reading in full of Ordinance O540 an Ordinance of the City of Victor Repealing and Replacing Chapter 1 of the Title 3 of the Victor City Code Regarding General Business License Provisions, to read it by title only, and to waive the second and third Ordinance readings.

[General vote]

I move to further approve Ordinance O540 and its summary, and to direct the City Clerk to publish the summary.

[Roll call vote]

Ordinance O541: I move to waive first reading in full of Ordinance O541 an Ordinance of the City of Victor Repealing Title 4 Chapter 1 Section 5 of the Victor City Code Regarding Use of Public Sidewalks, to read it by title only, and to waive the second and third Ordinance readings.

[General vote]

I move to further approve Ordinance O541 and its summary, and to direct the City Clerk to publish the summary.

[Roll call vote]

Ordinance O542: I move to waive first reading in full of Ordinance O542 an Ordinance of the City of Victor Amending Title 6, Chapter 8 of the Victor City Code Regarding Streets, Sidewalks, and Parkways, to read it by title only, and to waive the second and third Ordinance readings.

[General vote]

I move to further approve Ordinance O542 and its summary, and to direct the City Clerk to publish the summary.

[Roll call vote]

THE CITY OF VICTOR, IDAHO
ORDINANCE 0540

AN ORDINANCE OF THE CITY OF VICTOR, IDAHO REPEALING AND REPLACING CHAPTER 1 OF TITLE 3 OF THE VICTOR CITY CODE REGARDING GENERAL BUSINESS LICENSE PROVISIONS; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF VICTOR, COUNTY OF TETON, STATE OF IDAHO:

SECTION 1. The following Chapter 1 of Title 3 of the Victor City Code shall be repealed and replaced and be enforced as follows:

CHAPTER 1

GENERAL LICENSE PROVISIONS

SECTION:

- 3-1- 1: Purpose
- 3-1- 2: Definitions
- 3-1- 3: License Required
- 3-1- 4: Exceptions
- 3-1- 5: Fees
- 3-1- 6: Application for License
- 3-1- 7: Expirations and Renewals
- 3-1- 8: Refusals; Appeals
- 3-1- 9: Exhibition
- 3-1-10: Change of Location or Ownership
- 3-1-11: Notification Required
- 3-1-12: Revocation of License; Hearing
- 3-1-13: Penalty
- 3-1-14: Sidewalk Sales

3-1-1: **PURPOSE:** The purpose of this Chapter is to protect the health, safety and welfare of this citizens of this City.

3-1-2: **DEFINITIONS:** In construing the provisions of this chapter, the following definitions shall apply:

BUSINESS OR OCCUPATION: All activities, trades, and pursuits conducted or engaged in, including, without limitation, wholesale businesses, retail businesses, personal service businesses and professions, Short-Term Rental Business, Long-Term Rental Business, Contractors, and

businesses conducted as home occupations in any and all situations where suppliers, vendors, customers, clients, and/or members of the general public visit or frequent the premises where the business or occupation is conducted which operate more than fourteen (14) days per year.

CITY: The city of Victor, Idaho.

CITY ADMINISTRATOR: The city administrator of the city of Victor, Idaho.

CITY ATTORNEY: The city attorney of the city of Victor, Idaho.

CITY CLERK: The city clerk of the city of Victor, Idaho, or his/her designee acting as the licensing officer.

CITY COUNCIL: The city council of the city of Victor, Idaho.

CONTRACTOR: A Person that provides goods or services to another Person under terms specified in a contract (written or oral), who is not a W-2 employee of such other Person.

DOWNTOWN AREA: Includes Main Street from 252 South Main Street to Cedron Road; Center Street from 185 West Center to North Agate Street; Depot Way; Cedron Road from 20 Cedron Road to Main Street; and East Aspen Street from Main Street to 26 East Aspen.

LONG-TERM RENTAL BUSINESS: A Person that owns and/or manages three or more premises rented to third parties for periods longer than 30 days.

MAYOR: The mayor of the city of Victor, Idaho.

NOT FOR PROFIT BUSINESS: Any organization exempt from taxation as provided by 26 USC 501 and meeting all the requirements for the exemption provided by 26 USC 503.

PERSON: Any individual, firm, partnership, company, corporation, joint venture, association, or other business entity.

PLANNING AND ZONING ADMINISTRATOR: The planning and zoning administrator of the city of Victor, Idaho.

PREMISES: All real property and structures where any business or occupation is conducted.

PUBLIC STREET OR PLACE: Sidewalk, street, alley, highway, public right of way, park, parking lot, or other place owned in fee by the City or in, on or over which an easement exists in the name of or held by the City, or which exists for the benefit and use of the public.

SHORT-TERM RENTAL BUSINESS: A Person who owns and/or manages one or more residences at different premises rented to third parties for periods less than 30 days.

3-1-3: **LICENSE REQUIRED:** No Person shall engage in, prosecute or carry on a Business or Occupation within the City unless and until a business license is obtained in conformance with this Chapter. A business license shall be required for each separate premises located within the City in which any person is engaged in any Business or Occupation. Any person conducting such a Business or Occupation shall apply for the required business license by filling out an application provided by the City Clerk.

3-1-4: **EXCEPTIONS:** The provisions of this Chapter shall not apply to:

- A. Court Order: Any sales under court order;
- B. Garage Sales: Garage, yard, or similar sales by individuals at their residence not exceeding twice in one calendar year; which sales shall not include business inventory;
- C. Newspaper Subscriptions: The sale, distribution, and delivery of a newspaper subscription;
- D. Contributions: Contribution solicitation where the person being solicited to contribute personally knows the identity of the person soliciting the contribution, the name of the group or organization he/she represents and the nature of the services performed or offered by the group or organization;
- E. Fund Raising: The occasional sale of admission to a function of their school by local students, or fund raising or community events sponsored by local service clubs or the local government;
- F. Franchises: A business granted a franchise by this city, pursuant to the terms of Idaho Code sections 50-239 and 50-330; or
- G. Refreshment Stands: Small children’s refreshments stand.

3-1-5: **FEES:**

- A. A nonrefundable business license fee shall be paid by each applicant at the time of making application for any business license. The license shall be issued annually and shall be pro-rated on a monthly basis for the first year’s application. The fee for a business license and annual renewal shall be set as per the City Fee and Fines Schedule which may change from time to time by resolution approved by the City Council. Receipt of payment does not constitute approval of a business license application.
- B. Any Not For Profit Business shall be exempt from payment of the license fee required by this Section, but shall be required to obtain a business license and annual renewal of said license and shall be subject to all other provisions of this Chapter.
- C. Any licenses not renewed by January 30 of each year shall be delinquent and a late fee as set as per the City Fee and Fines Schedule shall be imposed the last day of each month until renewed.
- D. If, as a result of an inspection of a business, the inspector deems it appropriate to have additional technical inspections conducted in order to maintain health, safety and welfare conditions, the business shall be responsible for the actual costs associated with the inspections.

3-1-6: **APPLICATION FOR LICENSE:**

- A. Application Review: All applications for business licenses shall be made to and approved by the City Clerk. An application for or renewal of a business license must be submitted

and approved before the business can begin operations. All first-year licenses shall be reviewed by the Planning and Zoning Administrator and any other local, state, or federal agencies deemed appropriate by the City Administrator or designee.

- B. Each application shall contain, but not necessarily be limited to the following information:
1. Name and address of applicant;
 2. Address of business, both mailing and street;
 3. A brief description of the business activity;
 4. When the applicant proposes to peddle any food or product for human consumption, certification by the state health department shall be required prior to issuance of a license;
 5. A floor plan of the premises in which the business is to be conducted;
 6. A site plan of the property on which the business is to be located;
 7. A copy of a State of Idaho Sales Tax Permit, if applicable; and
 8. A copy of any other State of Idaho or Federally required occupational permits or licenses.

If any of the requirements in this Section are not provided to the City, a business license shall not be issued. If any of the requirements in this Section lapse, are cancelled or are not current during the term of an existing business license, such license shall not be renewed and may be suspended until such time the requirements of this Section can be met.

- C. Requirements: The City Clerk may deny approval of a license in the event Business or Occupation, or the property on which the business or Occupation is conducted, fails to comply with all provisions of the City of Victor City Code or any other City, county, state, or federal law, rule, ordinance, or regulation.
- D. Issuance: Approved licenses shall be signed by the Mayor and attested by the City Clerk under corporate seal. Approved licenses shall be issued by the City Clerk within fourteen (14) business days from receipt of a complete application unless inspections are required. In the event inspections are required, the license will be reviewed and issued in good faith time.

3-1-7: EXPIRATION AND RENEWALS:

- A. All annual licenses shall expire on the thirty-first day of December each year. It is the duty of each license to renew and maintain a valid license in conformance with the requirements of this Chapter. The City Clerk shall mail a renewal notice to all license holders. Provided, a failure to send such notice or the failure of the licensee to receive it shall not excuse the licensee from a failure to obtain a new license, or renewal thereof, nor shall it be a defense in an action for the operation without a license.

3-1-8: **REFUSALS; APPEALS:**

- A. Written Appeal: Any person adversely affected by the denial of any business license application or renewal thereof may appeal the decision of the City Clerk to the City Council for the purpose of having the City Council review of the action of the City Clerk. Any appeal shall be made within ten (10) business days from the date of written notification of refusal of the City Clerk to issue a license. The appeal must be in writing and set forth in concise language explaining the reasons such license should not have been refused.

- B. Hearing: The appeal shall be heard by the City Council within thirty (30) days after receipt of the written request unless the parties agree in writing to a different time frame. The City Clerk shall notify the appellant of the date, time, and location of the hearing. The City Council may affirm, reverse, or modify the decision of the City Clerk. The City Council shall affirm the City Clerk's decision unless the City Council finds the decision is: a) clearly erroneous; b) arbitrary, capricious or an abuse of discretion; or c) not supported by substantial evidence in the record as a whole. The City Clerk shall transmit a copy of the City Council's decision and findings to the appellant and the applicant in writing within forty-eight (48) hours following the hearing, and any other person or entity who has requested a copy in writing.

3-1-9: **EXHIBITION:** The license issued to the business shall be exhibited in a conspicuous place or kept on the person and exhibited at any time upon request.

3-1-10: **CHANGE OF LOCATION OR OWNERSHIP:** The location and/or ownership of any licensed Business or Occupation may be changed upon approval of a new application in accordance with Section 3-1-6 of this Chapter. There shall be no charge for an application made solely for a change of location and/or ownership. However, the business shall be responsible for any actual costs for required inspections associated with a change of location.

3-1-11: **NOTIFICATION REQUIRED:** Any licensee who ceases operations entirely or at a branch location shall notify the City Clerk in writing that the business or branch is no longer in operation.

3-1-12: **REVOCAION OF LICENSE; HEARING:**

- A. The City Administrator may suspend or revoke a license when the license holder commits one or more of the following acts or omissions:
 - 1. Fraud, misrepresentation or false statement contained in the application for license;
 - 2. Fraud, misrepresentation or false statement made in the course of conducting the business or trade;
 - 3. Conviction of any crime, felony and/or misdemeanor involving business, individual partners or stock holders of business, or applicant;
 - 4. Conducting business in an unlawful manner or in such a manner as to constitute a breach of peace or to constitute a menace to health, safety or general welfare of the public; or

5. Any violation of this Chapter.

B. When any of the acts or omissions as enumerated herein are committed by a license holder and the City Administrator deems that such license shall be suspended or revoked, the procedure shall be:

1. The licensee shall be notified by the City Clerk, in writing, sent via certified mail to the address listed on the application; such notice shall be sent at least seven (7) days prior to the action contemplated, setting forth with particularity the reasons therefor;
2. Upon receipt of the notice, the license holder may appeal the suspension or revocation to the City Council for the purpose of having the City Council review the action of the City Administrator. Such appeal shall be in writing and shall be made to the City Clerk within ten (10) business days from the date of receipt of the suspension or revocation notice; failure on the part of the licensee to appeal the suspension or revocation in writing and within the specified time period shall be deemed a waiver of a right to a hearing;
3. Hearing: The appeal shall be heard by the City Council no later than twenty one (21) days after the date of written notice of intent to revoke. The City Clerk shall notify the appellant of the hearing, which notice shall specify the date, time and place of hearing, and which shall be mailed to the address set forth in the license application. If, after such public hearing, the City Council determines that one or more of the grounds for suspension or revocation exists, the license shall continue to be suspended or revoked. The City Clerk must notify the appellant of the City Council's determination in writing within forty-eight (48) hours following the hearing.

3-1-13: PENALTY:

A. Civil Liability: The City Attorney shall, at the direction of the City Council, institute civil suit in the name of the City to enforce compliance with the provisions of this Chapter by injunctive relief, declaratory relief or other civil remedy. The City shall be entitled to recover its costs and attorney fees from the other party upon prevailing in any such civil action. No civil judgment, or any act by the City or the violator shall bar or prevent a criminal prosecution for each and every violation of this Chapter.

B. Criminal Liability: A person who violates any provision of this Chapter or operates any business or occupation for which a license is required by this chapter without having first obtained a license, as herein provided, shall be guilty of a misdemeanor, punishable by a fine as established from time to time by resolution of the City Council and published in the City Fee and Fines Schedule plus costs of prosecution, or imprisonment for not more than thirty (30) days, or both such fine and imprisonment, which penalty shall be in addition to any other penalties provided in this Chapter. Each day that a violation of this chapter occurs shall be deemed a separate offense.

3-1-14: SIDEWALK SALES: Notwithstanding Sections 4-1-5 A. thru C. of Title 4, any licensed Business or Occupation may place tables, racks, stands, carts or other structures within a public sidewalk located within the Downtown Area for the purpose of selling or

displaying goods, wares, merchandise, food or beverages, subject to the following restrictions and standards set forth in this Section:

- A. The displayed goods, wares, merchandise, food or beverages must be of the same type of product normally sold within the Premises. The point of sale of displayed goods, wares, merchandise, food or beverages must occur inside the licensed Premises.
- B. Merchandise, tables, racks, stands, carts or other structures placed within a public sidewalk located within the Downtown Area shall confine such placements within an area extending from the store front toward the street line, and shall insure that a minimum of five (5) feet of continuous sidewalk passage is provided to pedestrians in the front of their property and merchandise display.
- C. No such structure shall project on or over or be located in any part of any public street or alley; nor shall any such structure rest upon the public sidewalk in any area where a public alley or private driveway exits into a public street.
- D. No such structure shall be placed within three (3) feet of any marked crosswalk, street light pole, utility pole, traffic sign pole, fire call box, police call box or other emergency facility, designated bus stop or designated loading or unloading zone.

(Ord. O540 § 1, 2019)

SECTION 2. All ordinances, resolutions or parts thereof in conflict herewith are hereby repealed, rescinded and annulled.

SECTION 3. This ordinance shall be in full force and effect from and after its passage, approval and publication, according to law.

PASSED BY THE COUNCIL OF THE CITY OF VICTOR, IDAHO, this 24th day of April 2019.

APPROVED BY THE MAYOR OF THE CITY OF VICTOR, IDAHO, this 24th day of April 2019.

ATTEST:

Jeff Potter, Mayor

Michelle Smith, City Clerk

**NOTICE AND PUBLISHED SUMMARY
OF ORDINANCE PURSUANT TO I.C. § 50-901(A)**

CITY OF VICTOR ORDINANCE NO. O540

AN ORDINANCE OF THE CITY OF VICTOR, IDAHO AMENDING CHAPTER 1 OF TITLE 3 OF THE VICTOR CITY CODE REGARDING GENERAL BUSINESS LICENSE PROVISIONS; AND ESTABLISHING AN EFFECTIVE DATE.

The principal provisions of this ordinance amendment are as follows:

- 3-1- 1: Purpose - The purpose of this Chapter is to protect the health, safety and welfare of this citizens of this City.
- 3-1- 2: Definitions - Establishes definitions relating to general business license provisions.
- 3-1- 3: License Required- Establishes circumstances under which a business license is required.
- 3-1- 4: Exceptions – Establishes exceptions to Chapter requirements.
- 3-1- 5: Fees- Establishes that a business license fee shall be non-refundable and pro-rated, there shall be no fee for Not For Profit Business license applications, establishes a late fee, and provides that additional inspection costs are paid by the business.
- 3-1- 6: Application for License- Establishes application requirements, process, and issuance.
- 3-1- 7: Expirations and Renewals - Establishes that all annual licenses shall expire on December 31st of each year and must be renewed.
- 3-1- 8: Refusals; Appeals- Establishes application denial, appeal, and hearing process.
- 3-1- 9: Exhibition – Requires issued licenses to be displayed.
- 3-1-10: Change of Location or Ownership- Establishes application requirements for licensed businesses changing location or ownership and related charges.
- 3-1-11: Notification Required- Requires notification from closing businesses.
- 3-1-12: Revocation of License; Hearing- Establishes revocation of license, appeal, and hearing process.
- 3-1-13: Penalty- Establishes civil liability and criminal liability.
- 3-1-14: Sidewalk Sales- Establishes standards for sales occurring on sidewalks by licensed businesses.

A full text of this ordinance is available for inspection at Victor City Hall, City of Victor, 32 Elm Street, Victor, Idaho. This Ordinance shall become effective upon passage and publication.

City of Victor
Mayor and City Council
By: Michelle Smith, City Clerk

First Reading: April 24, 2019
Adopted after first reading pursuant to Idaho Code § 50-902

**STATEMENT OF VICTOR CITY ATTORNEY
AS TO ADEQUACY OF SUMMARY OF ORDINANCE NO. O540**

The undersigned, Herbert J. Heimerl III, City Attorney of the City of Victor, Idaho, hereby certifies that he is the legal advisor of the City and has reviewed a copy of the attached Ordinance No. O540 of the City of Victor, Idaho, and has found the same to be true and complete and provides adequate notice to the public pursuant to Idaho Code § 50-901A(3).

DATED this 24th day of April, 2019.

Herbert J. Heimerl III
City Attorney

THE CITY OF VICTOR, IDAHO
ORDINANCE O541

AN ORDINANCE OF THE CITY OF VICTOR, IDAHO REPEALING TITLE 4 CHAPTER 1 SECTION 5 OF THE VICTOR CITY CODE REGARDING USE OF PUBLIC SIDEWALKS; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF VICTOR, COUNTY OF TETON, STATE OF IDAHO:

SECTION 1. The following Section 5 of Chapter 1 of Title 4 of the Victor City Code shall be repealed as follows:

4-1-5: **USE OF PUBLIC SIDEWALKS:** Repealed (Ord. O541 § 1, 2019)

SECTION 2. All ordinances, resolutions or parts thereof in conflict herewith are hereby repealed, rescinded and annulled.

SECTION 3. This ordinance shall be in full force and effect from and after its passage, approval and publication, according to law.

PASSED BY THE COUNCIL OF THE CITY OF VICTOR, IDAHO, this 24th day of April, 2019.

APPROVED BY THE MAYOR OF THE CITY OF VICTOR, IDAHO, this 24th day of April, 2019.

ATTEST:

Jeff Potter, Mayor

Michelle Smith, City Clerk

**NOTICE AND PUBLISHED SUMMARY
OF ORDINANCE PURSUANT TO I.C. § 50-901(A)**

CITY OF VICTOR ORDINANCE NO. O541

**AN ORDINANCE OF THE CITY OF VICTOR, IDAHO REPEALING TITLE 4
CHAPTER 1 SECTION 5 OF THE VICTOR CITY CODE REGARDING USE OF PUBLIC
SIDEWALK; AND ESTABLISHING AN EFFECTIVE DATE.**

A full text of this ordinance is available for inspection at Victor City Hall, City of Victor, 32 Elm Street, Victor, Idaho. This Ordinance shall become effective upon passage and publication.

City of Victor
Mayor and City Council
By: Michelle Smith, City Clerk

First Reading: April 24, 2019
Adopted after first reading pursuant to Idaho Code § 50-902

**STATEMENT OF VICTOR CITY ATTORNEY
AS TO ADEQUACY OF SUMMARY OF ORDINANCE NO. O541**

The undersigned, Herbert J. Heimerl III, City Attorney of the City of Victor, Idaho, hereby certifies that he is the legal advisor of the City and has reviewed a copy of the attached Ordinance No.O541 of the City of Victor, Idaho, and has found the same to be true and complete and provides adequate notice to the public pursuant to Idaho Code § 50-901A(3).

DATED this 24th day of April, 2019.

Herbert J. Heimerl III
City Attorney

THE CITY OF VICTOR, IDAHO
ORDINANCE O542

AN ORDINANCE OF THE CITY OF VICTOR, IDAHO AMENDING TITLE 6 CHAPTER 8 OF THE VICTOR CITY CODE REGARDING STREETS, SIDEWALKS, AND PARKWAYS; AND ESTABLISHING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF VICTOR, COUNTY OF TETON, STATE OF IDAHO:

SECTION 1.

CHAPTER 8

STREETS, SIDEWALKS AND PARKWAYS

SECTION:

6-8-01	Definitions
6-8-02	Obstructions
<u>6-8-03</u>	<u>Exceptions</u>
6-8-0 <u>43</u>	Property Abutting Street
6-8-0 <u>54</u>	Illegal Obstructions
6-8-0 <u>65</u>	Application To Be Filed
6-8-0 <u>76</u>	Conditions Of Permit Granted
6-8-0 <u>87</u>	<u>Severability Sidewalk Snow Removal</u>
<u>6-8-09</u>	<u>Severability</u>

6-8-1: **DEFINITIONS:** For the purposes of this Ordinance the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the present include the future, words in the plural number include the singular, and words in the singular number include the plural number.

Encroach. The use, intrusion, enclosure or occupation of a street, sidewalk, parkway or the unused portion of a street.

Obstruction. Any obstacle or thing impeding, or inconveniencing or rendering dangerous, public travel upon and along a street, alley, sidewalk, or Parkway.

Parkway. That portion of public right-of-way situated between the curb line of any street and the property line of property abutting and adjoining any street. In the absence of a curb, the curb line of a street shall be deemed to be the edge of that portion of public right-of-way maintained and open to the use of the public for purposes of vehicular travel.

Person. Any person, firm, partnership, association, corporation, company or organization of any kind.

Sidewalk. The portion of the parkway of a street set aside and intended for the use of pedestrians.

Street. Highways, roads, alleys and bridges dedicated, purchased or otherwise acquired for the public, including the unimproved or unused portion thereof, maintained and open to use by the public.

6-8-2: **OBSTRUCTIONS:** It shall be unlawful for any person, except as provided by this Ordinance:

- A. To cause, create or maintain any Obstruction.
- B. To erect or maintain poles, wires, pipes or structures upon or below the surface of any street, alley, sidewalk, or Parkway.

6-8-3: **EXCEPTIONS:** The provisions of the Chapter shall not apply to:

A. News Racks. News racks, news vending machines and newsstands may be installed, used or maintained upon public sidewalks subject to the following restrictions and standards:

- 1. Definitions: For the purposes of this section a “news rack” is any structure, stand, platform, stall, box, booth or other structure or device used for the distribution of newspapers, magazines or other printed news media.
- 2. Encroachment on Public Streets Prohibited: No person shall install, use or maintain any news rack which projects onto, into or over any part of the roadway of any public street or alley, or which rests wholly or in part, upon or over any portion of such roadway.
- 3. Interference with Public Uses Prohibited: No person shall install, use or maintain any news rack which in whole or in part rests upon, in or over any public sidewalk when such installation, use or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other government use, or when such news rack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, the ingress into or egress from any crosswalk, residence, place of business, or any legally parked or stopped vehicles, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other public structures or objects installed at said location.

(Ord. O542 § 1, 2019)

6-8-~~43~~: **PROPERTY ABUTTING STREET:** Any owner or occupant of property abutting and adjoining any street may upon and within the Parkway of such street:

- A. Improve, adorn or plant shrubs, bushes, grass or vegetation; and place, install and maintain any object, substance or matter in lieu of shrubs, bushes, grass or vegetation. Provided such owner or occupant shall first file an application for a permit with the City, as set forth below, who shall have exclusive jurisdiction and supervision over any planting of shrubs, bushes, grass or vegetation, or the installation and maintenance of objects, substances or matters in lieu of shrubs, bushes, grass or vegetation upon and within the parkway of a street. All permits as herein provided shall comply with the provisions of the Victor City Code.
[Note: the planting of trees on Parkways is governed by chapter 4 of this title]
- B. Place a snow pole made out of fiberglass or other flexible materials and the same is installed without the use of rebar or concrete. The owner of such snow pole assumes all risk of injury to and damage of such snow pole regardless if such injury or damage is caused by the City of Victor.
- C. Place a mail box so long as no portion of such mailbox in closer than three feet to the edge of that portion of public right-of-way maintained and open to the use of the public for purposes of vehicular travel. The owner of such mailbox assumes all risk of injury to and damage of such mailbox regardless if such injury or damage is caused by the City of Victor.

6-8-~~5~~: **ILLEGAL OBSTRUCTIONS:** If any encroachment or obstruction has been placed, installed, erected and maintained, or a use made and maintained for private or business purposes, upon a street, sidewalk or parkway without prior permission and consent, the Director of the Department of Public Works may require immediate removal thereof. If such encroachment or obstruction or use has not been removed, or commenced to be removed, and diligently prosecuted, prior to the expiration of ten (10) days from such notification, by the person who caused or owns or controls the encroachment, or obstruction, or use, the Director must commence proper action to abate the same as a nuisance, and if judgment is recovered in favor of the City, the owner, occupant or person maintaining such nuisance may, in addition to having the same abated, be charged twenty dollars (\$20.00) for every day such nuisance remained after notice as well as all costs.

6-8-~~65~~: **APPLICATIONS TO BE FILED:** A person seeking to encroach, obstruct or use a street, sidewalk or parkway, including the unused or unimproved portion of a street, must file an application with the Director of Public Works. The application shall include plans and specifications of sufficient clarity to indicate the nature and extent of the proposed obstruction, encroachment, or use of the street, sidewalk or parkway by which to demonstrate that relevant provisions of the Victor City Code and other relevant laws, ordinances, rules, regulations and orders will be complied with, the legal description of the property abutting the street, sidewalk or parkway upon or within which such encroachment, obstruction or the use shall be or is intended to be performed, and any

other additional information necessary to make a fair determination of whether to allow or permit the encroachment, obstruction or use.

6-8-76: **CONDITIONS OF PERMIT GRANTED:** A permit granted pursuant to the provisions of this chapter shall be subject to the following conditions:

- A. The person to whom a permit is given or granted shall acquire no property or contractual right in and to the street, sidewalk or parkway and such permit may be revoked whenever the Council deems it necessary as a proper police measure.
- B. The person to whom a permit is issued shall comply with all laws, orders and regulations of the City and with any direction of any public officer, pursuant to law, which shall impose any duty upon such person, and such person shall at his sole expense obtain all licenses or permits which may be required.
- C. The person to whom a permit is issued shall indemnify and save and hold harmless the City from and for any and all losses, claims, actions and judgments for damages or injuries to persons or property and losses and expenses caused or incurred by the permittee, its servants, agents, employees, guests and business invitees. In addition, the permittee shall maintain and keep in full force and effect liability insurance in which the City shall be named as a named insured in amounts established by the Council. The limits of insurance shall not be deemed a limitation of the permittee's covenant to indemnify and save and hold harmless City.
- D. Upon revocation of any permit given or granted, or in case of any disturbance or damage to pavement, sidewalk or other surface or structure, permittee shall, at its own expense, and in the manner required by the City, replace and restore such in a condition acceptable to the City.

6-8-86-8-7: SIDEWALK SNOW REMOVAL: ~~_____~~ It shall be unlawful for any person or persons, firm or corporation owning or occupying premises adjacent to a sidewalk to suffer or permit snow or other rubbish or debris to be or remain on the sidewalks adjacent to their respective premises for more than twenty-four (24) hours after the same falls, is placed, or in any manner comes to be upon their respective sidewalks. (Ord. O542 § 1, 2019; Ord. 08-0827-1)

6-8-9: SEVERABILITY: If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect

SECTION 2. All ordinances, resolutions or parts thereof in conflict herewith are hereby repealed, rescinded and annulled.

SECTION 3. This ordinance shall be in full force and effect from and after its passage, approval and publication, according to law.

PASSED BY THE COUNCIL OF THE CITY OF VICTOR, IDAHO, this 24th day of April, 2019.

APPROVED BY THE MAYOR OF THE CITY OF VICTOR, IDAHO, this 24th day of April, 2019.

ATTEST:

Jeff Potter, Mayor

Michelle Smith, City Clerk

**NOTICE AND PUBLISHED SUMMARY
OF ORDINANCE PURSUANT TO I.C. § 50-901(A)**

CITY OF VICTOR ORDINANCE NO. 0542

AN ORDINANCE OF THE CITY OF VICTOR, IDAHO AMENDING TITLE 6 CHAPTER 8 OF THE VICTOR CITY CODE REGARDING STREETS, SIDEWALKS, AND PARKWAYS; AND ESTABLISHING AN EFFECTIVE DATE.

The principal provisions of this ordinance amendment are as follows: To add a section providing news racks as an exception to obstructions on sidewalks and to add a section regulating sidewalk snow removal.

A full text of this ordinance is available for inspection at Victor City Hall, City of Victor, 32 Elm Street, Victor, Idaho. This Ordinance shall become effective upon passage and publication.

City of Victor
Mayor and City Council
By: Michelle Smith, City Clerk

First Reading: April 24, 2019
Adopted after first reading pursuant to Idaho Code § 50-902

**STATEMENT OF VICTOR CITY ATTORNEY
AS TO ADEQUACY OF SUMMARY OF ORDINANCE NO. 0542**

The undersigned, Herbert J. Heimerl III, City Attorney of the City of Victor, Idaho, hereby certifies that he is the legal advisor of the City and has reviewed a copy of the attached

Ordinance No.O542 of the City of Victor, Idaho, and has found the same to be true and complete and provides adequate notice to the public pursuant to Idaho Code § 50-901A(3).

DATED this 10th day of April, 2019.

Herbert J. Heimerl III
City Attorney

CHAPTER 1

GENERAL LICENSE PROVISIONS

SECTION:

- 3-1- 1: Purpose
- 3-1- 2: Definitions
- 3-1- 3: License Required
- 3-1- 4: Fees
- 3-1- 5: Application for License
- 3-1- 6: Refusals; Appeals
- 3-1- 7: License Nontransferable
- 3-1- 8: Exhibition
- 3-1- 9: Exceptions
- 3-1-10: Revocation of License; Hearing
- 3-1-11: Penalty

3-1-1: **PURPOSE:** The purpose of this chapter is to protect the health, safety and welfare of this citizens of this city. (Ord. 94-10047, 10-4-1994)

3-1-2: **DEFINITIONS:** Any business which operates more than seasonally (3months) on a fixed location and private property.

3-1-3: **LICENSE REQUIRED:** No person or business shall engage in, prosecute or carry on a Permanent or Temporary business or vocation within the City unless and until a business license is obtained in conformance with this chapter. (Ord. 94-1004, 10-4-1994,)

3-1-4:

FEES:

- A. Permanent Business: The fee for a permanent business shall set as per the City Fee and Fines Schedule as established by Victor City Council by resolution. Such rate of charge shall be subject to change by the City Council from time to time. An annual renewal fee shall also be established by resolution, without interruption of business for more than sixty (60) days or allotted time for sickness or repairs of said business.
- B. Temporary Business: The fee for a temporary business shall be set as per the City Fee and Fines Schedule as established by Victor City Council

by resolution, renewable every eight (8) months. (Ord. 94-1004, 10-4-1994)

3-1-5: APPLICATION FOR LICENSE:

- A. Approval and Signatures: All applications for licenses shall be made to the city clerk/treasurer. All licenses shall be approved and signed by the Planning and Zoning Administrator, city fire chief, mayor and attested by the city clerk/treasurer under corporate seal. (Ord. 10-1110, 11-10-10)
- B. Contents: Licenses shall contain, but not necessarily be limited to the following information:
 - 1. Name and address of applicant.
 - 2. Address of business, both mailing and street.
 - 3. A brief description of the business activity.
 - 4. State whether it is permanent or temporary.
 - 5. Social security and/or driver's license number of applicant.
 - 6. When the applicant proposes to peddle any food or product for human consumption, certification by the state health department shall be required prior to issuance of a license. (Ord. 94-1004, 10-4-1994)
 - 7. A floor plan of the premises in which the business is to be conducted. (Ord. 10-1110, 11-10-10)
 - 8. A site plan of the property on which the business is to be located. (Ord.10-1110, 11-10-10)
- C. Requirements: The district fire chief, the planning and zoning commission, or the mayor may deny approval of a license in the event a Permanent or Temporary Business, or the property on which the Permanent or Temporary Business is conducted, fails to comply with all provisions of the City of Victor City Code or any other city, county, state, or federal law, rule, ordinance, or regulation. (Ord. 10-1110, 11-10-10)

3-1-6: REFUSALS; APPEALS:

- A. Review by City Council: Within five (5) days, excluding weekends and legal holidays, from the refusal of the city clerk/treasurer to issue a license, the applicant for a license may appeal to the city council for the purpose of having the city council review of the action of the city clerk/treasurer.

- B. Written Appeal: The appeal by the license or the applicant whose license has been refused must be in writing and set forth in concise language the reasons such license should not have been refused.
- C. Hearing: After the filing thereof, the city council shall hear the appeal at the next regularly scheduled city council meeting. The decision of a majority of the city council shall be final as to the issuance of the license. The council must report to the applicant in writing within forty eight (48) hours following the hearing of its decisions. (Ord. 94-1004, 10-4-1994)

3-1-7: **LICENSE NONTRANSFERABLE:** No license issued shall be transferable to any persons other than mentioned on license applications. Any business selling or leasing to another person shall be required to apply for a new license. (Ord. 94-1004, 10-4-1994)

3-1-8: **EXHIBITION:** The license issued to the business shall be exhibited in a conspicuous place or kept on the person and exhibited at any time upon request. (Ord. 94-1004, 10-4-1994)

3-1-9: **EXCEPTIONS:** The provisions of this chapter shall not apply to:

- A. Court Order: Any sales under court order/
- B. Garage Sales: A personal garage or yard sale.
- C. Traveling Salespersons: Traveling salespersons, commercial travelers or the like who exclusively or primarily sell to or solicit orders for future delivery from local retailers, local businesses, local governments, local schools or wholesale firms.
- D. Farmers' Markets: The sale of farm or garden products, i.e., farmers' markets.
- E. Newspaper Subscriptions: The sale of a newspaper subscription in which the seller is a person engaged in both the delivery and sale of the newspaper.
- F. Contributions: Contribution solicitation where the person being solicited to contribute personally knows the identity of the person soliciting the contribution, the name of the group or organization he/she represents and the nature of the services performed or offered by the group or organization.
- G. Fund Raising: The occasional sale of admission to a function of their school by local students, or fund raising or community events sponsored by local service clubs or the local government.
- H. Political Groups: Any political group seeking funds or membership.

- I. Telephone Book Solicitation: Any telephone book solicitation of information.
- J. Franchises: A business granted a franchise by this city, pursuant to the terms of Idaho Code sections 50-239 and 50-330.
- K. Refreshment Stands: Small children's refreshments stand. (Ord. 94-1004, 10-4-1994)
- L. Sales of services, goods, wares or merchandise at any event sponsored or sanctioned by the City of Victor and with fees established by the City Council resolution: or
- N. Sales under the issuance of a valid exposition license.

3-1-10: **REVOCAION OF LICENSE; HEARING:**

- A. City Council Authority: The city council shall have the power to revoke any license granted in accordance with this chapter for any of the following reasons:
 - 1. Fraud, misrepresentation or false statement contained in the application for license.
 - 2. Fraud, misrepresentation or false statement made in the course of conducting the business or trade.
 - 3. Conviction of any crime, felony and/or misdemeanor involving business or applicant.
 - 4. Conducting business in an unlawful manner or in such a manner as to constitute a breach of peace or to constitute a menace to health, safety or general welfare of the public.
 - 5. Any violation of this chapter.
- B. Hearing: Prior to any revocation, the licensee shall be granted the opportunity for a public hearing before the city council, which will be held no later than twenty one (21) days after written notice of intent to revoke, which notice shall specify the date, time and place of hearing, and which shall be delivered to the licensee personally or mailed to the address set forth in the license application. If, after such public hearing, the city council determines that one or more of the grounds for revocation exists, it shall revoke the license. (Ord. 94-1004, 10-4-1994)

3-1-11: **PENALTY:** Any person who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as established from time to time by resolution of the City Council and published in the City Fee and Fines Schedule, plus costs

of prosecution, and the defaulter in the payment thereof shall be imprisoned in the common jail for a period equal to the fine at then dollars (\$10.00) per day. (Ord. 94-1004, 10-4-1994)

4-1-5: **USE OF PUBLIC SIDEWALKS:**

- A. It shall be unlawful for any person to obstruct any street, alley or public sidewalk within the City.
- B. It shall be unlawful for any person to store, install, maintain or operate any material, vehicle, structure, fixture, or operate a business upon any public sidewalk or right-of-way planting strip within the City, except as permitted by Section D. of this chapter.
- C. It shall be unlawful to sell, display or advertise the sale of any goods, wares, merchandise, food or beverage upon or from any cart, rack, structure situated upon any public sidewalk or right-of-way planting strip within the City, except as permitted by Section D.
- D. Sidewalk Sales
 - 1. Notwithstanding Sections 4-1-5 A. thru C., goods, merchandise, food and beverages may be sold or displayed from carts or other structures upon public sidewalks subject to the following restrictions and standards set forth in this section.
 - 2. Definition: For the purpose of this section, the term “downtown area” shall mean the Central Business Zone.
 - 3. Sales in Downtown Area: Any licensed merchant or other person conducting a lawful business may temporarily place tables, racks, stands, carts or other structures within a public sidewalk located within the downtown area for the purpose of selling or displaying goods, wares, merchandise, food or beverages, subject to the restrictions set forth in Sub-section 5. of this section.
 - 4. Sales in Other Areas: The City Council may, by resolution duly passed and adopted, declare a day or days during which licensed merchants or other persons conducting a lawful business may place tables, racks, stands, carts or other structures adjacent to a public sidewalk located outside the downtown area for the purpose of selling or displaying goods, wares, merchandise, food or beverages, subject to the restrictions set forth in Section (e) of this section.
 - 5. Standards: Any table, rack, stand, cart or other structure placed within or adjacent to any public sidewalk as permitted by this section shall comply with the following regulations and restrictions:
 - (a) Merchants who temporarily place merchandise, tables, racks, stands, carts or other structures within a public sidewalk located within the Downtown Area shall confine such placements within an area extending from the store front toward the street line, and shall insure that a minimum of 5 feet of continuous sidewalk passage is provided to pedestrians in the front of their property and merchandise display.

(b) City Council authorized sales days outside the downtown area shall require all structures to be placed parallel to the edge of the sidewalk furthest from the public street.

(c) No such structure shall project on or over or be located in any part of any public street or alley; nor shall any such structure rest upon the public sidewalk in any area where a public alley or private driveway exits into a public street.

(d) No such structure shall be placed within three (3) feet of any marked crosswalk, street light pole, utility pole, traffic sign pole, fire call box, police call box or other emergency facility, designated bus stop or designated loading or unloading zone.

(e) Under (b) above, all goods, wares, merchandise, food or beverages shall be placed upon a table, rack, stand, cart, or other permitted structure and shall not be placed directly upon the public sidewalk.

6. Notwithstanding Sections A. thru C., news racks, news vending machines and newsstands may be installed, used or maintained upon public sidewalks subject to the following restrictions and standards:

(a) Definitions: For the purposes of this section a “news rack” is any structure, stand, platform, stall, box, booth or other structure or device used for the distribution of newspapers, magazines or other printed news media.

(b) Encroachment on Public Streets Prohibited: No person shall install, use or maintain any news rack which projects onto, into or over any part of the roadway of any public street or alley, or which rests wholly or in part, upon or over any portion of such roadway.

(c) Interference with Public Uses Prohibited: No person shall install, use or maintain any news rack which in whole or in part rests upon, in or over any public sidewalk when such installation, use or maintenance endangers the safety of persons or property, or when such site or location is used for public utility purposes, public transportation purposes or other government use, or when such news rack unreasonably interferes with or impedes the flow of pedestrian or vehicular traffic, the ingress into or egress from any crosswalk, residence, place of business, or any legally parked or stopped vehicles, or the use of poles, posts, traffic signs or signals, hydrants, mailboxes, or other public structures or objects installed at said location.

7. It shall be unlawful for any person or persons, firm or corporation owning or occupying premises within the Central Business Zone of the City of Victor, to suffer or permit snow or other rubbish or debris to be or remain on the sidewalks adjacent to their respective premises for more than twenty-four (24) hours after the same falls, is placed, or in any manner comes to be upon their respective sidewalks. (Ord. 08-0827-1)