

**Pawn Shop Broker Requirements - Steven Jentzsch, Investigator,  
Division of Consumer Protection**

Mr. Jentzsch presented our group with the new law governing Pawn Shop and Secondhand businesses. The State of Utah has created a Central Database that requires all Pawn Shops and Secondhand businesses to list items received on the State Central Database. The reason for the new Central Database is to identify property which may have been stolen. Mr. Jentzsch explained the difference between a Second Hand Merchandise Dealer and a Pawn Shop Dealer. Mr. Jentzsch asked our group to help his office identify businesses in our cities that are Second Hand Dealers. If you have any questions, you may contact Mr. Jentzsch at 801-530-6443.

**Conversion to the new Sales Tax Accounting Numbering System -  
Wendy Gianchetta, Project Business Analyst, Utah State Tax  
Commission**

Wendy Gianchetta, with the Utah State Tax Commission provided information regarding the new implementation of sales tax numbers. The implementation schedule will take effect March, 2008. All taxpayers' sales tax accounts will receive a new identification number. This number will replace the current six-digit number (a12345) with a 14 digit number that identifies the taxpayer and also the tax type (10070033-002-STC, 10070033-002-STR). Our cities/counties/towns will continue to receive monthly sales tax distribution reports. The disbursement of funds will occur in the same manner as before. USTC resources are available at [taxmaster@utah.gov](mailto:taxmaster@utah.gov); tax questions at 801-297-2200 or 1-800-662-4335; sales tax questions 801-297-7705 or 1-800-662-4335 ext 7705.

**Constitutional Law/Case Law - Gary L. Johnson of the Law Firm Richards,  
Brandt Miller**

Mr. Gary Johnson, explained the types of business protected by the First Amendment. Mr. Johnson, discussed several cases with our group addressing First Amendment rights. The first case was Dr. John's Inc. v. City of Roy. The second case referred to an artist's right to sell his or her original work. The third case was the regulation of Billboard Advertisers. The fourth case was the problem of cars for sale on public streets. Other Utah cases were also discussed.

Mr. Johnson reminded our offices to review our ordinances. In the first case, the number one argument from Dr. John's was whether Roy's ordinance was too narrowly tailored to serve a significant government interest. Mr. Johnson told all Licensing Officials if their city/county or town does not have a SOB ordinance they should get a copy of Roy's Ordinance.

The second case discussed was White v. City of Sparks NV. Mr. White sets up an easel on city sidewalks and sells his paintings to people who pass by. Mr.

White believes his paintings convey, among other messages, that human beings are driving their spiritual brothers and sisters (the various animals of the world) into extinction. The City of Sparks, NV, prohibits the sale of merchandise in its parks and limits sales in the redevelopment area known as “Victorian Square” to those vendors having permits under Spark’s code. For vendors without permits Sparks makes limited exceptions allowing the display of merchandise in its parks and Victorian Square as well as the sale (in both spaces) of items that have received the pre-approval of city employees through a First Amendment exception to the vendor-permitted ordinance (“First Amendment exception” or “pre-approval policy”). According to the City, to gain such pre-approval, an item must be submitted to the city and determined by the City Official to convey an expression of obvious religious, political or philosophical message.

Mr. White brought a facial challenge to Sparks’ vendor-permitting scheme. Mr. White asked the District Court to rule that all art is protected and exempt from licensing. The District Court concluded that Sparks’ pre-approval policy constituted an unconstitutional prior restraint because it failed to include objective criteria for approving or rejecting a piece of artwork. Sparks appealed. The Ninth Circuit Court reviewed the case and held that First Amendment using the *Gaudiya Vaishnava Soy’c v City and County of San Francisco* case. The court concluded that so long as it is the artist’s self expression, a painting will be protected under the First Amendment because it expresses the artist’s perspective. The Ninth Circuit stated that the degree of the First Amendment protection is not diminished merely because the protected expression is sold rather than given away.

The third case involved regulated billboards advertisements. *Covenant Media of S. Carolina v. City of N. Charleston* explains the policy the City of North Charleston had in place regulating billboard advertisement. The Ninth District Court noted that sign ordinances are unconstitutional if they impose greater restrictions on non-commercial speech than on commercial speech or if they regulate non-commercial speech based on content. Because the City of North Charleston did not process the applicants request in a timely manner this constituted a unconstitutional prior restraint.

The fourth case explained the sale of cars on public streets. In *Pagan v Fruchey*, Mr. Pagan was parking his car on the public street in front of his house with a “For Sale” sign in the window. The City of Glendale Ohio said he could not park his car on the public street. Mr. Pagan took the city to court. The court simply concluded that there was no evidence at all to support the need for the enactment of Glendale’s Ordinance.

## **Interstate Commerce Trends with the 21<sup>st</sup> Amendment and Nexus - Mark Arnold**

Municipalities are missing out on huge amounts of tax revenue not collected on internet sales. The Supreme Court has instructed Congress to fix the problem, but the court has reserved the final word on the subject.

Commerce Clause: Congress has the right to regulate all interstate and foreign commerce, including trade with Indian Tribes. Wherever the Federal Government regulates interstate commerce, states cannot interfere. States are allowed to regulate other areas of interstate commerce, as long as they do not over burden the process.

First question you should ask to analyze: which authority am I using as the licensing authority? (Regulatory or Taxing) The rules change depending on which one you use. Case #1 Taxation Power: 1. Nexus, 2. Cannot discriminate within class of business, 3. The tax must be fairly apportioned - internal/external consistency.

Case #2 Regulatory Power: 1. The purpose of regulation must be a legitimate governmental purpose, 2. Must be rationally related to purpose #1, 3. We can discriminate between two different ways of selling.

Case #3 This was discriminatory because interstate truckers would pay more than the in-state truckers.

21<sup>st</sup> Amendment: States have absolute power in regulating alcohol (it seems to contradict the commerce clause which gives absolute power to the Federal Government).

## **Code Enforcement/Revocation or Denial of a Business License/Process for Obtaining a Business License/Psychic & Tarot Card Readers - Panel Discussion, Brent Winslow**

The Panel Group gave us information regarding business license regulations. They explained to us how we need to follow our code when regulating and licensing businesses. When sending notices make sure all the information is current. Sending notices of non-compliance should allow time for response to the charge. It is important to document all conversations when regulating a business.

Psychic & Tarot Card Readers are in our community. Carol Emery shared her experience with the group regarding Psychic & Tarot Card Readers. Most Psychic & Tarot Card Reader work in cycles; they will monitor each other and contact our offices if a new business in the same profession is moving to town.

## **Fire Inspection Requirements - Brent Speth, Inspector for Logan City**

Fire Inspector Brent Speth reviewed the definition of creating a business and becoming a business owner. He showed a DVD illustrating how quickly a fire in a business can destroy not only the structure but the equipment and, potentially, human lives. Fires have far reaching effects such as financial, emotional, and long term stress.

Cities become involved with fire prevention to protect the health, safety, and welfare of the community. Mr. Speth stressed the importance of having a fire inspection program in place. If your city/county or town does not have its own Fire Department, Mr. Speth suggested contracting with a neighboring jurisdiction. He also offered examples of a program where businesses do a self inspection using a list of requirements provided by the Fire Department. The business owner then signs the list in the presence of a Notary taking an oath that the inspection was completed.

Mr. Speth emphasized education as the essential tool to promoting compliance. He then reviewed items examined during a routine fire inspection. Fire prevention will not prevent all fires, but will greatly reduce them.

## **Building Department Requirements - Cathryn Nelson, Permit Technician, Herriman City Building Department**

Cathryn Nelson explained to our group the history of Building Codes and the purpose for Building Codes. Building Codes reduce potential hazards, provide standards in construction, contribute to community well-being, provide safety to Fire Fighters and Emergency Personnel and lower construction costs (IRC).

Building Codes regulate new construction of a structure, remodeling of an existing structure and new USE or OCCUPANCY of an existing structure. The Fire Code regulates any existing structures. Insurance companies have been a force in pressuring governments to adopt building codes. The approach to modern day codes is proactive rather than reactive.

What kind of work requires a building permit? The addition of, removal of, or alteration to the Framing, Electrical, Mechanical, Plumbing or Accessibility of a building. A change of Use and Occupancy references: Handicap accessibility (ramps, restrooms), Fire sprinkler requirements, Seismic upgrade (for earthquake protection), Number of parking places, Location of Parking, Number of occupants, Age of occupants, Number of exits, Number of restrooms, Emergency escape routes, Construction of fire separation walls and more. Cathryn recommended that the Building Department review all business license applications.

**Immediate Secure Care & Residential Treatment Centers -  
Ken Stettler, Director of Office of Licensing, Utah Department of Human  
Services**

The Department of Human Services regulates facilities and programs including Foster Care, Adoption Agencies, Outdoor Wilderness Programs, Division of Services for People with Disabilities programs and Youth Facilities.

Youth Facilities may include residential facilities and intermediate secure care. Secure care requires strict mechanical security, alarms, locks etc. This also requires a higher level of Clinical Care.

The State Department recognizes local business licenses and requires local consent and clearance prior to them granting a license. The State will review the building for compliance. The State requires the applicant to submit the purpose, description of services, polices and procedures prior to approval. A probationary license is issued and will be pulled if the conditions of the probationary license are not met. Information may be obtained at [www.hslic.utah.gov](http://www.hslic.utah.gov).

**Understanding the Basics of Home Child Care Licensing -  
Lynette Rasmussen, Director of Office for Work & Family Life, State Office  
of Child Care**

A presentation was given by the Utah Department of Workforce Service-Office of Work and Family Life, Office of Child Care in reference to Quality Child Care and Family Child Care. Lynette Rasmussen, explained how family child care enhances our communities and who regulates Child Care. The types of family child care homes are defined in 3 groups Family Group: 2 caregivers, 9 to 16 children unrelated to caregivers, for less than 24 hours a day. Family: 1 caregiver, 5 to 8 children unrelated to caregivers, for less than 24 hours a day. Residential Certificate: 1 caregiver, 5 to 8 children. Other agencies that regulate Child Care are Local Fire Departments, Cities or Counties, and the County Health Department.

Lynette addressed the myths that a municipality might have when granting a license. She indicated that child care businesses do not increase traffic, noise, water usage and that there are oversights and regulations that a provider is required to up hold. She explained how a person can become a Family Child Care Provider and some of the barriers that occur such as duplication of inspections. Family homes are required by the Bureau of Child Care Licensing to have a County Health Inspection, a BCI criminal background check, and fingerprints are also required. Some cities lack the definition as to what family child care is. This is especially apparent in regards to family group child care which is 9-16 children and 2 caregivers.

Lynette recommended to our group that we have a clear definition as to what Family Child Care and Family Group Child Care are and that zoning and regulatory ordinances be consistent with state regulatory laws; that we clearly define and be consistent when regulating and that we assign appropriate business license classifications and fees. The mission of the State is to support children and families by working collaboratively with providers, employers, agencies and communities throughout Utah to ensure the availability of quality affordable child care. Lynette's office will appreciate any assistance. Lynette Rasmussen may be reached at 801-526-4341 or [lrasmussen@utah.gov](mailto:lrasmussen@utah.gov)

**IRS Tax Center - Jody K. Stamback, Sr. Governmental Liaison & Debra B. Mardanlou**

Mr. Stamback and Ms. Mardanlou asked all cities to consider adding a Tax Center link to their city websites. There is no fee associated with this service. The Tax Center provides links within your website to tax information for small businesses such as starting a new business and filing tax returns. The information available is beneficial to new and existing businesses. It is easy to set up and use. The IRS will help cities by monitoring and updating the Tax Center. Contact Mr. Stamback at 801-799-6852 or Debra Mardanlou at 801-799-6713.