

CITY OF ANTHONY, NEW MEXICO

BUSINESS TO BE LICENSED

ORDINANCE NO. 2010-016

AN ORDINANCE TO ADOPT UNIFORM PROVISION FOR LICENSE APPLICATION, FOR THE PAMENT OF LICENSE FEES AND FOR THE ISSUANCE, DURATION, EFFECT, POSTING, AND REVOCATION OF LICENSES.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CIT OF ANTHONY, NEW MEXICO

Whereas, the state law reference- Authority to license or regulate businesses, NMSA 1978, § 3-38-1; authority to regulate sales of merchandise, NMSA 1978, § 3-18-12.

**ARTICLE 1. - IN GENERAL**

**SECTION 1-1-1. - DEFENITIONS**

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

***Amusement hall*** means any arcade, building or premises having as its primary business the providing of mechanical or electronic amusement devices, including but not limited to the following: pinball machines, electronic or video games of skill or chance, claw or scoop machines, jukeboxes, or coin-operated table games. Pool rooms and billiard parlors not having more than three mechanical or electronic amusement devices shall not be defined as an amusement hall for the purposes of this chapter.

***Business*** means any profession, trade or occupation and all and every kind of calling whether or not carried on for profit, except those organizations exempt from the federal income tax pursuant to section 501(c)(3) of the United States Internal Revenue Code as amended or renumbered; provided, however, the term "business" shall include the phrase "unrelated trade or business" of such organizations as the latter term is defined in section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.

***Communitywide event*** means a community celebration which, by longstanding custom or by mayoral proclamation, is characterized by outdoor and indoor retail special sales throughout the community. It includes but is not limited to Freedom Days, the Totah Festival, and the Balloon Rally.

***Conduct; carry on*** means engage in, carry on, own, maintain, manage or operate any business, trade, art, profession, calling, employment, occupation or any commercial, industrial or professional pursuit, vocation or enterprise in this city.

***Extended hours of operation*** means the period of time from 12:00 a.m. until 6:00 a.m.

***Garage sale*** means a sale involving the offering for sale of multiple items of personal property on property occupied as a residence.

***Garage Sale or Yard Sale*** means a general sale open to the public conducted from or on a residential premise in any residential district, or from a temporarily arranged site elsewhere within the City of Anthony, New Mexico, for the purpose of disposing of personal property.

***Kiddie ride carnival and exhibits*** means any carnival and exhibits consisting exclusively of rides and exhibits for children with no amusement devices other than such rides and with no games of chance or skill and not operating past the hour of 10:00 p.m.

**Outdoor special event** means a temporary sales event of not more than three days by an individual business or group of businesses held outdoors and adjacent to the building from which the sales are normally conducted. The term includes but is not limited to tent sales, parking lot sales, or outdoor clearance sales.

**Place of business** means any location, building or portion thereof or premises in which or from which a business is carried on. The term includes but is not limited to an office, warehouse, yard, location where books and records are kept, the location from which business is solicited.

**Rummage sale** means the sale of used goods and hand-crafted goods donated to or by a church, school, or fraternal organization or preschool exempt from taxation as nonprofit, conducted on the premises of the entity involved.

**Sidewalk sale** means a sale which is conducted not more than two times per year adjacent to the business building from which the sale is conducted, limited to three days in duration, and capable of being conducted without undue disruption of pedestrian or vehicular traffic.

**Special event** means an event for business or community promotion sponsored by one or more businesses or organizations for a period not to exceed one week, where the promoter provides adequate parking, private patrol officers or police protection, and a list of participants to the city clerk. The term includes arts and crafts fairs, producers' or farmers' markets and the like, and outdoor sales at communitywide events. The term does not include outdoor special events or sidewalk sales as defined in this section.

**Temporary outside display and sale** means the display or sale of goods or merchandise not in or from an enclosed permanent building to be conducted for a period of five days or less.

**State law reference**—Authorization for business registration, NMSA 1978, § 3-38-3.

## **ARTICLE 2. – REGISTRATION**

### **SECTION. II-2-1. – REQUIRED; UNLAWFUL CONDUCT; PENALTIES.**

- (a) It shall be unlawful for any person to engage in, conduct or carry on any business or occupation within the city without first registering the business or occupation or obtaining a license therefore and without first paying the fees, in compliance with this chapter.
- (b) It shall be unlawful for any person to knowingly file an application for issuance or renewal of any business registration or business license on which any of the information required by section II-2-2 has been falsified.
- (c) Any person violating this section shall be punished by a fine not exceeding \$500.00 or imprisonment for a term not exceeding 90 days or by both such fine and imprisonment. Except where otherwise provided, every day any violation of this section.
- (d) The remedies provided in this section are not exclusive, and if any person engages in business in the city without obtaining the required registration or license for such business, the city may proceed in any manner authorized by law, including specifically but not limited to the procedures set forth in NMSA 1978, §§ 3-38-5 and 3-38-6.

**SECTION II-2-2. – APPLICATION**

Any person filing an application for issuance or renewal of any business registration or business license shall include in the application the following information:

- (1) The exact nature or kind of business for which a license is requested.
- (2) The form of business enterprise under which the business is to be conducted, i.e., sole proprietorship, partnership, limited partnership or corporation.
- (3) The place where such business is to be carried on and, if the business is not to be carried on at any permanent place of business, the places of residence of the owners of the business.
- (4) The name, other than the name of the applicant, under which the business will be operating, if any.
- (5) The time of operation during the full 24-hour period.
- (6) The names and places of residence of all owners of the business; if the owner is a corporation or partnership, the application shall state the names and places of residence of the officers or general partners thereof.
- (7) The applicant's current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number.
- (8) Such further information as the clerk may deem necessary to enable him to issue the certificate applied for.

**SECTION II-2-3 APPLICATION TO DO BUSINESS.**

Any person proposing to engage in business within the city limits shall apply for and pay a business registration fee for each outlet, branch or location or place of business within the city prior to engaging in business.

**SECTION II-2-4 IMPOSITION OF BUSINESS REGISTRATION FEE.**

There is imposed on each place of business conducted in the city a business registration fee of \$35.00, pursuant to NMSA 1978, § 3-38-3.

**SECTION II-2-5 EXEMPTION; TWO OR MORE BUSINESS.**

- (a) No business registration fee shall be imposed on any business which is licensed under Article 3 of this chapter pursuant to NMSA 1978, § 3-38-1.
- (b) Any person who operates under the same name two or more businesses, one or more of which requires a business license under Article 3 of this chapter and one or more of which does not require a business license, shall obtain a separate registration or license and shall pay a separate fee for each such business.

**SECTION II-2-6. - TRANSFERABILITY.**

No registration issued pursuant to this article shall be transferable from one business to another, or from one person conducting a business to a succeeding person conducting the same business.

**SECTION II-2-7. - Renewal.**

Before **January 1** of each year, any person with a place of business in the city and subject to this chapter shall apply for renewal of the business registration or business license with the city clerk.

**SECTION II-2-8. - Late fees.**

If any person fails to obtain the appropriate registration or license pursuant to this chapter or fails to renew an existing registration or license, this person shall pay a late fee in an amount not to exceed that permitted by state statute. This surcharge shall be in addition to all other fees imposed by this chapter.

**SECTION II-2-9. - Display.**

The city clerk shall provide a suitable certificate of registration or license to be furnished to each place of business coming within the terms of this chapter, and such certificate of registration or license shall be prominently displayed at the place of business for which such registration or license is issued. Solicitors and similar licensees shall carry the license on their person while engaging in the business for which such license is issued.

**SECTION II-2-10. - Duplicates.**

A duplicate certificate of registration or license may be issued by the city clerk to replace any such registration or license issued under this chapter which has been lost or destroyed if the person to whom it was issued files a sworn statement attesting to the fact of such loss or destruction and pays a duplicate fee of \$5.00.

**ARTICLE 3. – LICENSE**

**SECTION III-3-1. - Purpose.**

The governing body of the City of Anthony, NM finds and declares that the licensing and regulation of the businesses enumerated in this article are conducive to the promotion of the health, general welfare and safety of the public.

**SECTION III-3-2. - Applicability of Article 2.**

All sections of Article 2 of this chapter, except sections II-2-3 through II-2-5 and II-2-6 and any other section which by its terms can apply only to businesses subject to registration fees and not subject to licensing pursuant to this article, shall apply in full force and effect to businesses which are licensed under this article.

**SECTION III-3-3. - Required.**

All persons engaged in the pursuits, businesses and occupations enumerated in this article shall, before commencing business and thereafter annually before **January 1**, secure a license from the city under the procedures set forth in this chapter and shall pay the license fees set forth in this article in connection with each such pursuit, business or occupation.

**SECTION III-3-4. – GARAGE SALES**

Garage sales or Yard sales during sidewalk sales, as defined in section 1-1-1, are exempt from the license fees unless five (5) or more Garage Sales are held during a calendar year. A calendar year begins January 1, and ends December 31.

Garage sales may only be held between hours of 7:00 a.m and 5 p.m.

Illegal Signs, Disposition. Signs found within the City of Anthony, New Mexico which are unlawfully posted upon utility poles, regulatory signs or posts are not allowed, are hereby declared nuisance to public safety, as they detract from driving public's attention to traffic signals as well as other vehicular and pedestrian traffic.

**SECTION III-3-6. - Investigation of applicant.**

Upon receipt of an application for a business license under this article, the city clerk shall determine whether the proposed operation may be carried on without conflict with any city ordinance and may cause such investigation of the applicant as may be necessary to protect the public health, safety and welfare. The clerk may investigate the nature of the proposed business to determine the degree that such business will affect the public health, safety and general welfare; the level of supervision such business may require; the degree to which such business may attract crowds or children; the accessibility of the proprietors of such business when complaints made to the city must be investigated; and the possibility of illegal activity transpiring at the proposed place of business. If, as a result of such investigation, the city clerk determines that the issuance of a business license is in conflict with any ordinance or is not in the interest of the health, safety, general welfare of the public, the application shall be denied.

**SECTION III 0-3-7. - License fee imposed on listed businesses.**

The stated license fees are imposed upon the following businesses when conducted within the city, in lieu of and not in addition to the registration fee assessed pursuant to Article 2 of this chapter (fees are annual unless otherwise noted):

- (1) Temporary outside displays and sales, not meeting the definition of special events, per day \$10.00
- (2) Alarm system business \$50.00
- (3) Amusement halls \$300.00
- (4) Armored cars \$35.00
- (5) Auctions, per event \$25.00
- (6) Body art establishment \$100.00
- (7) Boxing, wrestling or martial arts contests, per performance \$50.00
- (8) Canvassers, solicitors or peddlers, per solicitor, each three months or portion thereof \$50.00
- (9) Carnival, circus or menagerie, except kiddie ride carnivals, per day \$100.00
- (10) Food vending wagons and trucks, per vehicle \$35.00
- (11) Home occupation \$35.00
- (12) Kennels \$35.00
- (13) Kiddie ride carnivals, per day \$30.00
- (14) Massage parlors \$35.00
- (15) Outdoor concerts, exhibitions and amusements for profit, per day \$50.00
- (16) Outdoor special events, per event \$10.00
- (17) Pawnbrokers, as regulated by Article 7 of this chapter \$250.00
- (18) Phrenologists, clairvoyants, palmists and fortunetellers, each three months or portion thereof \$100.00
- (19) Pool rooms, billiard halls and bowling alleys \$35.00
- (20) Private investigators \$35.00
- (21) Private patrol operators \$50.00
- (22) Public dances:
  - a. Per day \$20.00
  - b. Per annum \$500.00
- (23) Sales of seasonal items (Christmas trees, etc.), per event \$30.00
- (24) Secondhand dealers or junk dealers \$35.00
- (25) Shooting galleries or other carnival-type games not associated with a licensed carnival, per day \$50.00
- (26) Special events (license is required of sponsor only), per event \$25.00
- (27) Stores, restaurants, diners, coffee shops, fast food outlets and service stations that operate under extended hours of operation \$50.00
- (28) Taxicabs:
  - a. First four or fewer vehicles \$100.00
  - b. Additional charge for each vehicle \$25.00

**SECTION III -3-8. - Transferability.**

No license issued pursuant to this article shall be transferable from one business to another. A license may be transferred to a succeeding operator of the same business upon the payment of a transfer fee of \$20.00.

**SECTION III -3-9. – Refunds**

No license fees paid under this subchapter shall be refunded except in cases where the license issued is cancelled by the Council of its own motion, in furtherance of the public interest as provided by this subchapter.

**SECTION III -3-10. – Chief of Police to make Inspections**

The Chief of Police is hereby directed and authorized to make periodic inspections of all businesses licensed under the provision of this subchapter, to determine whether all laws of the state and the ordinances of the municipality are being observed, to ascertain whether public order and decency are being maintained, and to investigate complaints arising from the operation thereof.

**SECTION III -3-11. – Clerk to Furnish Information**

It shall be the duty of the Clerk to furnish to any person applying therefore, a certificate showing the amount of all liens, taxes and interest that may be of record in the files of the municipality against any such person or business operating under the provisions of this subchapter.

**SECTION III -3-12. - Revocation.**

When a person is required to obtain a license as provided in this article or a registration as provided in article 2 of this chapter and has violated any article in this chapter or any other city ordinance relating thereto, or has failed to comply with the New Mexico Unfair Practices Act or any other provision of state law pertaining to such business, or whenever in the judgment of the city clerk the public welfare should require it, any such license or business registration issued such person by the city may be revoked.

**State law reference**—Denial or revocation of license, NMSA 1978, § 3-38-2.

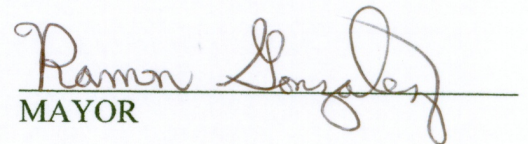
**SECTION III -3-13. - Appeal procedure.**

An applicant for a business license or business registration who has been denied a temporary or permanent license in whole or in part may appeal the city clerk's decision to the administrative review board.

**SECTION III-3-14. EFFECTIVE DATE:**

This ordinance shall become effective five (5) days after publication as provided by law.

PASSED, ADOPTED AND APPROVED THIS November 18, 2010

  
MAYOR

  
ATTEST: CITY CLEK *folwing*