

CITY OF HOBBS

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND CHAPTER 5.04 AND CHAPTER 5.20 OF THE HOBBS MUNICIPAL CODE IN THEIR ENTIRETY.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF HOBBS, NEW MEXICO, that the following Chapters of the Hobbs Municipal Code be and is hereby amended in their entirety.

Chapter 5.04 - BUSINESS REGISTRATION

5.04.010 - Short title.

This chapter may be cited as the "Business Registration Ordinance." It is declared that the registration of each place of business conducted within the City as set out in this chapter and as authorized by Section 3-38-3 of the New Mexico Statutes Annotated is conducive to the promotion of the health and general welfare of the City.

5.04.020 - Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Engaging in business" means persons operating, conducting, doing, carrying on, causing to be carried on or pursuing any business, profession, occupation, trade or pursuit for the purpose of profit and who are required to obtain a State taxpayer identification number.

"Mobile business activity" means a person possessing a valid business registration engaging in business within the City but at a location which is not their place of business.

"Mobile business activity unit" Any publicly or privately owned vending stand, vending trailer, mobile food vehicle, or any other device designed for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise.

"Person" means any individual, male or female, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity engaging in a business, profession, occupation, trade or pursuit.

"Place of business" means a location where business is primarily conducted in a non-temporary structure within the City.

5.04.030 - Imposition of business registration fee.

There is imposed on each place of business located in the City an annual business registration fee of twenty-five dollars (\$25.00) for each calendar year. The fee is imposed pursuant to Section 3-38-3 of the New Mexico Statutes Annotated as it now exists or is amended, and shall be known as the "business registration fee." Proof of place of business, as defined in this chapter, may be required by the City Clerk

at the City Clerk's discretion as a condition of issuance of a business registration. The required proof may include production of a utility bill or a New Mexico driver's license. The business registration fee may not be prorated for business conducted for a portion of the year.

#### 5.04.031 - Imposition of mobile business activity fee.

In addition to the business registration fee, there is imposed an annual mobile business activity fee of one hundred dollars (\$100.00) for each calendar year for those persons who engage in mobile business activity. The mobile business activity fee may not be prorated for mobile business activity that occurs only once in any calendar year and/or for only a limited number of days in any calendar year.

#### 5.04.040 - Exemption.

No business registration fee or mobile business activity fee shall be imposed on any business which is licensed under City ordinance or otherwise exempted by law.

#### 5.04.050 – Locations of mobile business activity units.

Mobile business activity units shall be allowed on private property wherein 75% of property within the block is either vacant or utilized for commercial, providing no unit shall occupy a lot occupied by a residential structure. The unit shall be compliant with the required setback of the thoroughfare it is accessed from. Mobile business activity units, excluding ice cream\snow cone trucks and\or pushcarts, are prohibited in primarily residential areas. A permanent connection to Municipal or Franchisee utilities negates the mobile status of the unit and is not allowed. Temporary connections may be permitted providing the site and any structure or unit located thereon are in full compliance with all commercial development rules, regulations and permitting requirements.

#### 5.04.060 - Application to do business.

All persons proposing to engage in business within the municipal limits of the City shall apply for and pay a business registration fee for each outlet, branch or location within the municipal limits of the City prior to engaging in business.

#### 5.04.070 - Renewal.

Prior to January 31st of each year, any person with a place of business in the City and subject to this chapter shall apply and pay the fee for renewal of business registration with the City Clerk.

#### 5.04.080 - Late fee.

There shall be imposed upon each delinquent registration fee a late fee in the amount of ten dollars (\$10.00) in the event a new business does not pay the registration fee before it commences business or the annual renewal fee is not paid prior to January 31st.

#### 5.04.090 - Required information.

Any person filing an application for issuance or renewal of any business registration shall include in the application a current taxpayer identification number or evidence of application for such current revenue division taxpayer identification number as issued by the revenue division of the State Department of Taxation and Revenue and any other information required by the City Clerk.

#### 5.04.100 - City Clerk to keep register.

The City Clerk shall keep a register in which shall be entered the date of each registration, the date of expiration of the registration, name of the person to whom such registration certificate has been issued and the amount of the fee paid therefor. It shall be the duty of the City Clerk to also issue, sign and deliver to the person paying the registration fee an appropriate receipt and a certificate of registration showing date of registration, to whom issued, the date of expiration thereof, the purpose or occupation for which the certificate of registration was issued and the amount of the fee paid.

#### 5.04.110 - Transfer—Authority of holder's agents.

A business registration and mobile business activity license issued under this chapter shall not be transferable nor given to any person nor an employee or agent of the holder, the authority to conduct business pursuant to the business registration or mobile business activity license.

#### 5.04.120 - Enforcement.

This chapter may be enforced by appropriate legal or administrative action brought to prevent the conduct of business, restraining, correcting or abating the violation of this chapter, to prevent the occupancy of a building, structure or land on which the business is located, or to withhold the issuance of permits or inspections as appropriate.

#### 5.04.130 - Penalties.

Any person convicted of a violation of any provision of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

## Chapter 5.20 - TEMPORARY VENDORS

### 5.20.010 - Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Mobile business activity unit" Any publicly or privately owned vending stand, vending trailer, mobile food vehicle, or any other device designed for the purpose of displaying, exhibiting, carrying, transporting, storing, selling or offering for sale any food, beverages, goods, wares or merchandise.

"Temporary" means any such business transacted or conducted in the City for which definite arrangements have not been made for the hire, rental or lease of premises for a term of at least thirty (30) days in or upon which such business is to be operated or conducted.

"Temporary vendor" means all persons, as well as their agents or employees, who do not maintain a valid business registration with the City Clerk and who engage in the temporary or transient business in the City of selling, or offering for sale, any goods or merchandise, or exhibiting the same for sale or who for the purpose of taking orders for the sale thereof and who for the purpose of carrying on such business or conducting such exhibits, either hire, rent, lease or occupy any room or space in any building, tent, structure, motor vehicle or other enclosure in the City or any other place whether enclosed or not within the City, in, on, through or from which any goods or merchandise may be sold, offered for sale, or exhibited for sale for the purpose of taking orders for the sale thereof.

"Transient" means such business of any such temporary vendor as may be operated or conducted by persons or by their agents or employees who have their headquarters in places other than the City, or who move stocks of goods or merchandise or samples thereof into the City with the purpose or intention of removing them or the unsold portion thereof away from the City before the expiration of thirty (30) days.

### 5.20.020 - Required.

It is unlawful for any temporary vendor to sell, offer for sale, exhibit for sale or exhibit for the purpose of taking orders for the sale thereof, any goods or merchandise in the City without first obtaining a license therefor from the City. A person which falls within the definition of a temporary vendor as defined in this chapter shall not be relieved from complying with the provisions of this chapter merely by reason of associating temporarily with any local dealer, trader, merchant or other person.

### 5.20.030 - Application.

- A. Any person desiring a license required by this chapter shall make application therefor to the City Clerk at least five (5) days prior to the date of contemplated sale or exhibit in the City, which application shall be in the form of an affidavit stating the full name and address of the applicant, the location of his or her principal office and place of business, the applicant's current State Revenue Division taxpayer identification number or evidence of an application for the same, and such other information as the City Clerk finds necessary for the administration of this chapter. If the applicant is a corporation, the application shall give the names and addresses of its officers and, if a partnership, the partnership name and the names and addresses of all partners.
- B. The application shall be accompanied by a statement showing the kind and character of the goods or merchandise to be sold, offered for sale or exhibited.

#### 5.20.040 - Fee.

Before any license is issued under this chapter, the applicant therefor shall pay to the City Clerk a fee of five hundred dollars (\$500.00) which sum shall be compensation to the City for the services required of it by this chapter and to enable the City to partially defray the expenses of administering and enforcing the provisions of this chapter.

#### 5.20.050 - Issuance.

The City Clerk shall issue to any applicant a temporary vendor's license authorizing him or her to sell and exhibit for sale his or her goods and merchandise if such applicant has fully complied with all provisions of this chapter.

#### 5.20.060 - Display.

Each license issued under this chapter shall be prominently displayed in a conspicuous place on the premises where the sale or exhibit is being conducted and shall remain so displayed so long as any goods or merchandise are being sold or exhibited.

#### 5.20.070 - Transfer—Authority of holder's agents.

A license issued under this chapter shall not be transferable nor given to any promoter or vendor not listed in the application for the license authority to sell or exhibit goods or merchandise as a temporary vendor, either by agent or clerk or in any other way than his or her own proper person, but any person having obtained such a license may have the assistance of one (1) or more persons in conducting the sale or exhibit, who shall have authority to aid the principal, but not to act for or without him or her.

#### 5.20.080 - Term.

A temporary vendor's license issued under this chapter shall continue and be in force for a period not to exceed seven consecutive days for the sale of goods or merchandise between the hours of 8:00 a.m. and 8:00 p.m., which license shall expire at 8:00 p.m. on the seventh day. The fee required shall not be prorated or refunded.

#### 5.20.090 – Locations of mobile business activity units.

Mobile business activity units shall be allowed on private property wherein 75% of property within the block is either vacant or utilized for commercial, providing no unit shall occupy a lot occupied by a residential structure. The unit shall be compliant with the required setback of the thoroughfare it is accessed from. Mobile business activity units, excluding ice cream\snow cone trucks and/or pushcarts, are prohibited in primarily residential areas. A permanent connection to Municipal or Franchisee utilities negates the mobile status of the unit and is not allowed. Temporary connections may be permitted providing the site and any structure or unit located thereon are in full compliance with all commercial development rules, regulations and permitting requirements.

5.20.100 - Exemptions.

This chapter shall not be applicable to:

- A. Ordinary commercial travelers who sell or exhibit for sale goods or merchandise to parties engaged in the business of buying, selling or utilizing such goods or merchandise;
- B. Vendors of farm produce, poultry, stock or agricultural products in their natural state, including Christmas trees;
- C. Sale of goods or merchandise donated by the owners thereof, the proceeds of which are to be applied to any charitable or philanthropic purpose;
- D. Hobby shows, including but not limited to gun, coin, rock, stamp and mineral shows, where such shows are sponsored by or associated with the corresponding local hobby organization;
- E. A person holding a valid business registration under Chapter 5.04, whose principal place of business is within the City, and who is subject to the business gross receipts tax under Chapter 5.08.

5.20.111 - Fee to be in lieu of occupation tax.

The license fee assessed in Section 5.20.050 shall be in lieu of, and shall excuse such temporary vendor from the payment of, any other license, occupation fees or taxes.

5.20.112 - Penalty.

Anyone found guilty of violating the provisions of this chapter shall be punished by a fine of up to five hundred dollars (\$500.00) or imprisonment of up to ninety (90) days, or by both such fine and imprisonment.

PASSED, ADOPTED AND APPROVED this \_\_\_ day of \_\_\_\_\_, 2018.

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SAM D. COBB, Mayor

ATTEST:

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JAN FLETCHER, City Clerk