

SECTION 5-1

BUSINESS REGISTRATION/BUSINESS LICENSE

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PURPOSE.

This ordinance is hereby enacted to provide for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the Village and its inhabitants.

5-1-1 DEFINITIONS.

“**Business**” means the activity of making, buying, or selling goods or providing services in exchange for money; work that is part of a job; and the amount of activity that is done by a store, company, factory, etc.

5-1-2 BUSINESS REGISTRATION REQUIRED.

Pursuant to Section 3-38-3 N.M.S.A. (1978 Comp.), all persons, firms, corporations or associations of any character engaged in any business other than those requiring a business license as set forth in 5-1-4 and not otherwise exempt by law shall, before commencing business, and annually thereafter on or before the sixteenth (16th) day of March, secure business registration from the Village of Bosque Farms under the procedures hereinafter set forth, and shall pay a business registration fee, in advance, at the rate of Thirty-five Dollars (\$35.00) per year for each location where such business is conducted. In the event that any business registration fee due hereunder for renewal shall not be paid by the sixteenth (16th) day of March, or any applicable business registration fee is not paid before commencement of business, a penalty in the amount of \$10.00 per year shall be added to the registration fee. The business registration fee will not be prorated for business conducted for a portion of the year.

5-1-3 LICENSE REQUIRED.

Pursuant to Sections 3-38-1 through 3-38-6 N.M.S.A. (1978 Comp.), all persons, firms, corporations or associations of any character engaged in any of the various pursuits, businesses or occupations listed in Section 5-1-4 and not otherwise exempt by law shall, before commencing business, and annually thereafter before the sixteenth (16th) day of March, secure a license from the Village under the procedures hereinafter set forth, and shall pay a license fee, in advance, at the rate set in Section 5-1-4 for each location where such business is conducted. In the event that any license fee due hereunder for renewal shall not be paid by the sixteenth (16th) day of March, or any applicable license fee is not paid before commencement of business a penalty in the amount of \$10.00 shall be added in addition to the registration fee.

5-1-4 BUSINESS LICENSE FEES.

The following pursuits, businesses or occupations are hereby required to be licensed and the fees set forth are required to be paid to the Village for each place of business conducted by the same person, firm, corporation or association.

A. Itinerant or traveling shows, circuses, carnivals, wrestling or boxing exhibitions, operatic and theatrical or other public exhibitions, at the rate of \$25.00 per day; provided, however, that if any shows shall not be operated in a permanent building and shall use locations requiring cleaning after the conclusion thereof, a deposit of \$300.00 in cash, cashier's check, or other certified funds (no checks) shall be made with the Village to be refunded if the Village Office certifies that such temporary location has been satisfactorily cleaned of refuse and debris deposited there as result of such performance.

B. Fortune tellers, clairvoyants, palmists, and similar trades, whether the same be a principle business or pursuit, or incidental to another at the rate of \$25.00 for the first day and at the rate of \$10.00 for each succeeding day.

C. Itinerant vendors of all kinds, who sell merchandise or services of any character, whether delivery be made by them or not, or who shall temporarily bring into the Village stocks of goods, wares, or merchandise and offer the same at public auction or private sale, or who shall offer to perform services

for a period of time less than 2 weeks, at the rate of \$25.00 per day for the term of the license to: (1) traveling salesmen or drummers taking orders for merchandise to be delivered to retail dealers only; (2) any person selling fruits, farm or garden produce of his own raising; (3) sales of merchandise or services within markets or flea markets having a single location used as a market or flea market for 3 or more vendors on a regular basis; and providing further, however, that nothing herein shall be construed to be a repeal of Section 7-3-5 of the Code of the Village of Bosque Farms which prohibits certain door-to-door sales.

D. Street stands, except where conducted for charity, at the rate of \$50.00 per year; provided, however, that this Section shall not apply to garage sales.

E. Regulated Business. Any Regulated Business as defined in the Village of Bosque Farms Comprehensive Zoning Ordinance 10-1-11 H. shall pay a yearly one thousand dollar (\$1,000) business licensing fee. (Revised 10/15/15)

5-1-5 APPLICATION-BUSINESS REGISTRATION OR LICENSE PROCEDURE

It shall be the duty of all persons prior to engaging in any business described in Section 5-1-2 or 5-1-3 herein, to obtain an application therefore from the Village Clerk/Administrator or designated Business License Official of the Village of Bosque Farms which application shall contain information concerning the name of the person, firm, corporation or association undertaking the business, a complete address, both in the Village and elsewhere, of such person, firm, corporation or association, together with a description of the nature of the business to be conducted, which application shall also comply with Section 5-1-7, and contain information sufficient to show compliance with all other ordinances of the Village, and return said application with all information and payment of the fee imposed in Section 5-1-2 or 5-1-3 herein.

5-1-6 VILLAGE CLERK/ADMINISTRATOR TO PROVIDE REGISTRATON/LICENSE

It shall be the duty of the VillageClerk/Administrator or designated the Business License Official to provide suitable business registrations or licenses to be furnished to all applicants, and each business registration or license shall be prominently displayed at the place of business for which it is issued.

5-1-7 APPLICANT SHALL PROVIDE INFORMATION.

No business registration or license shall be issued hereunder unless the applicant for a business registration or license shall furnish to the Village Clerk/Administrator or Business License Official a current New Mexico Taxpayer Identification Number or evidence of application for a current taxpayer identification number pursuant to Section 3-38-4(c), N.M.S.A. (1978 Comp.)

5-1-8 DENIAL OF A BUSINESS REGISTRATION OR LICENSE.

After a person has made application to the Village for business registration or licensure, the application may be denied for any of the following reasons:

A. The applicant does not meet the qualifications for business registration or licensure as provided under this Ordinance.

- B. For a new application, nonpayment of a returned check for the required registration or license fees at the time the application is made. For a business registration or license renewal application, nonpayment of the required registration or license fees plus penalty three (3) months after it is due.
- C. False or incomplete information given on the application.
- D. Noncompliance with any requirement or condition set by the Village Governing Body, Planning and Zoning Commission or Clerk/Administrator under a conditional use permit, special use permit, home occupation permit or other special exception.
- E. Noncompliance with any city, state or federal statutes or any Health Department regulations governing the applicant's proposed business.
- F. Any other reason expressly provided for in this Ordinance.

5-1-9 REASONS FOR REVOCATION.

A. An existing business registration or license may be revoked for any of the following reasons:

- 1.) The registration or license does not now meet the qualifications for a registration or license as provided under this Ordinance.
- 2.) False or incomplete information given on an application.
- 3.) Substantial violations of the terms and conditions on which a registration or license was issued.
- 4.) The registrant or licensee has violated or is violating any provision of this Ordinance or provision of the Ordinances of the Village of Bosque Farms, state or federal statutes or regulations governing the registrant's or licensee's business.
- 5.) The registrant or licensee has obtained or aided another person to obtain registration or licensure by fraud or deceit.
- 6.) Conviction of infractions of or offenses under such an ordinance or law.
- 7.) Wrongful behavior of a substantial character and of a public concern in relation to the registered or licensed activity.
- 8.) When reasonably necessary in the interests of protection of the public health, safety, peace or welfare.
- 9.) The registrant or licensee has failed to pay property taxes, the utility tax or sales tax.

10.) The registrant or licensee has refused authorized representatives of the Village to make an inspection or has interfered with such representatives while in the performance of his or her duty in making such inspection.

11.) The registrant or licensee is not complying with a requirement or condition set by the Village Governing Body, Planning and Zoning Commission or Administrator under a conditional use permit, special use permit, home occupation permit or other special exception.

12.) Violation of this Ordinance by the agents or employees of registrant or licensee and violations of any other laws by the agents or employees committed while acting as an agent or employee of the registrant or licensee; or

13.) Any other reason expressly provided for in this Ordinance.

B. The Governing Body may revoke any business registration or license issued under this ordinance after it has been issued, when any one or more of the following grounds are found to exist:

1.) Illegal issuance of the business registration or license.

2.) Issuance of the business registration or license without authority or power.

3.) Issuance under an unauthorized ordinance or under an ordinance illegally adopted.

4.) Issuance in violation of an ordinance.

5.) When the business registration or license is procured by fraud or false representation of facts.

6.) When issued through mistake or inadvertence.

7.) When the business registration or license application contains false or misleading statements, evasions or suppression of material facts.

5-1-10 ENFORCEMENT

A. The Business License Official shall have the authority without a hearing, to deny a registration or license for the reasons provided for in this Ordinance.

B. The Business License Official shall have the authority to revoke a business registration or license or an alcohol license without a hearing, for reasons provided for in this Ordinance. However, the revocation shall not take effect until the time period for appealing the decision as set forth in this Ordinance below has passed.

C. The Business License Official may, on its own initiative or in response to complaints from the general public or any Village department or division, investigate and gather evidence of violations of this Ordinance or other circumstances which may give rise to a denial or revocation.

5-1-11 PROCEDURE FOR REVOCATION.

The Business License Official shall cause written notice to be given by personal service or registered mail to the registrant or licensee of his or her decision to revoke a registration or license, the reason for such decision, that operation of a business or the sale of alcohol after the effective date of the revocation is a misdemeanor, the registrant's or licensee's right to appeal the Business License Official's decision and the appeal procedure.

5-1-12 APPEAL PROCEDURE.

A. Appeals of the Business License Official's decision to deny or revoke a registration or license may be made by filing a written notice of appeal with the Village of Bosque Farms within 15 days of receipt of the notice of denial or revocation.

B. The notice of appeal shall be in writing and shall set forth with specificity the reason for which the appeal is taken.

5-1-13 HEARING.

A. The hearing shall be at a time, place and day set by the Governing Body of the Village of Bosque Farms, but not later than seven (7) working days after receipt of the notice of appeal.

B. At the hearing, the Business License Official shall present the reasons for the decision to deny or revoke the registration or license.

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

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

E. Any oral or documental evidence may be received, but the Governing Body shall exclude all privileged, irrelevant, immaterial, or unduly repetitious evidence.

F. If the denial or revocation appealed from is based on a finding by the Planning and Zoning Commission or Administrator, New Mexico Construction Industries Division (NMCID), Fire Department, Health Department, or Police Department that the business was or would be in violation of any applicable ordinances or regulations, then that finding shall be conclusive on the Governing Body and the Governing Body's decision may be based only on whether the registration or license was properly denied or revoked because of the Planning and Zoning Commission's or Administrator's, NMCID's, Fire Department's, Health Department's, or Police Department's finding.

G. If the denial or revocation appealed is based on a determination by the Business License Official that grounds existed pursuant to this Ordinance; the Governing Body may examine the factual nature of the grounds and determine whether such grounds are sufficient to sustain the decision of the Business License Official.

H. The Governing Body does not have the authority to waive compliance with applicable provisions of the Business Registration/Business License ordinance, nor can the Governing Body extend deadlines set forth in the ordinance or change the substance or form of the ordinance.

5-1-14 DECISION OF THE GOVERNING BODY.

The Governing Body, after hearing all the evidence, shall announce its decision at the time of the hearing. The Governing Body may affirm or reverse the decision of the Business License Official. The decision shall be in writing and shall be based only upon findings of fact. The Business License Official shall cause written notice to be given by personal service or registered mail to the appellant the findings of the hearing.

5-1-15 APPEAL OF GOVERNING BODY'S DECISION.

Any decision of the Governing Body may be appealed by the applicant, registrant, licensee, or Village to the District Court within thirty (30) days of the written finding of fact. Review by the District Court shall be limited to the appeal record made before the Governing Body.

5-1-16 REGISTRATON OR LICENSING AFTER REVOCATION.

A. A person, whose registration or license has been finally revoked, after all available hearings, shall be revoked indefinitely.

B. Any and all conditional use permits, special use permits, home occupation permit or other special exceptions shall be revoked or deemed invalid upon revocation of business registration or license.

5-1-17 VALIDITY OF BUSINESS REGISTRATION OR LICENSE OR ALCOHOL LICENSE DURING APPEAL.

Throughout the administrative appeal process as outlined above, a registrant or licensee holding a revoked registration or license may continue to operate his or her business or to sell alcohol in accordance with federal, state and local laws pending final decision on the appeal, or until the time for appeal has passed, whichever occurs first.

5-1-18 PENALTIES.

In addition to the revocation of the business registration or license, any person violating any of the provisions of this Ordinance shall, upon conviction, be subject to a fine not exceeding \$500.00 (five hundred dollars) or imprisonment for a period not exceeding 90 (ninety) days, revocation of registration or license to conduct business in the Village of Bosque Farms, or all such fine, imprisonment and revocation of registration or license. Each subsequent offense after conviction shall be prosecuted and treated as a separate offense.

5-1-19 SEPARATE REGISTRATION OR LICENSE FEES.

Separate registration or license fees shall be imposed upon and a separate registration or license issued for each place of business conducted by the same person, firm, association or corporation.

-1-20 TRANSFER OF REGISTRATION OR LICENSE.

Registrations or licenses issued shall not be transferable without the consent of the Governing Body and shall not be transferable in any event unless the stock of merchandise covered thereby shall remain intact and in the same location within the Village. A proposed transferee must meet all the requirements set forth herein for registration or licensure.

5-1-21 REGISTRATION OR LICENSE FEES REFUNDED - EXCEPTION.

No registration or license fees paid hereunder shall be refunded except in cases where the registration or license issued is revoked by the Village of Bosque Farms in furtherance of the public interest and only those daily fees which were paid in advance and which were unused at the time of revocation shall be refunded.

5-1-22 LIEN AND PRIORITY.

The registration or license fee fixed as hereinbefore provided shall be and constitute a lien in favor of the Village upon the personal property of the person, firm, corporation or business used in connection with said business, from the time that such registration or license fee is fixed. The lien may be enforced as provided in Sections 3-38-1 through 3-38-6 N.M.S.A. (1978). Such lien shall have priority over any lien or encumbrance whatsoever, except the lien of state and county taxes, and no property of any person, firm, corporation or business shall be exempt from levy and sale or execution issued for the collection a judgment for any such fee. No sheriff, receiver, assignee, master or other officer shall sell the property of any person, firm, corporation or business subject to such registration or license fee, under process for order of court, without first ascertaining from the Village Clerk/Administrator the amount of any registration or license due, owing or unpaid, it shall be the duty of such officer first to pay the amount thereof out of the proceeds of such sale before making payment of money to the judgment creditor or other person at whose instance such sale is had.

5-1-23 SEVERABILITY.

If any action, subsection, paragraph, phrase or other portion of this Ordinance shall be declared invalid for any reason whatsoever by a court of competent jurisdiction, then such decision shall not affect the validity or enforceability of the remaining portions of this Ordinance.

5-1-24 EFFECTIVE DATE.

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

PASSED, APPROVED AND ADOPTED THIS 15TH DAY OF MAY 2014.

Wayne Ake, Mayor Pro-Tem

(SEAL)

ATTEST:

Gayle A. Jones, Clerk/Administrator