

**ORDINANCE 2010- #496**

**AN ORDINANCE OF THE TOWN OF DOLORES, COLORADO AMENDING CERTAIN SECTIONS OF THE DOLORES MUNICIPAL CODE CONCERNING BUSINESS LICENSES.**

WHEREAS, the Town of Dolores requires that any business engaged in the retail sale of items whether as only a retail sale or as a part or portion of a service, possess a current and valid Town of Dolores business license; and

WHEREAS, the Board of Trustees for the Town of Dolores would like to expand the requirement of possessing a valid Town of Dolores business license to all businesses and merchants doing business in the Town of Dolores; and

WHEREAS, such licensing procedure will assist the Town of Dolores in determining the character and business responsibility of the applicant; and

WHEREAS, the Town of Dolores may use such information when necessary to determine trends in business activities and better understand the business environment of the Town.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF DOLORES, COLORADO THAT THE DOLORES MUNICIPAL CODE, TITLE 5 LICENSES, PERMITS AND BUSINESS REGULATIONS, CHAPTER 5.16 TRANSIENT MERCHANTS SHALL BE REPEALED IN ITS ENTIRETY AND ADDED TO THE AMENDMENTS IN CHAPTER 5.04 CONTAINED HEREIN TO CLARIFY AND CONSOLIDATE THE REQUIREMENTS FOR BUSINESS LICENSING.**

1. Recitals. The foregoing recitals are incorporated herein as findings and determinations of the Town of Dolores Board of Trustees.

2. Amendments.

Chapter 5.04

Business Licenses

Sections:

- 5.04.010 Required
- 5.04.020 Definitions
- 5.04.030 Licensing of business in annexed property
- 5.04.040 Special events business license
- 5.04.050 Massage parlor license
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- 5.04.190 Violation - Penalty

**5.04.010 Required.**

A. It shall be unlawful for any person or entity to conduct, engage in or establish a business or place of business in the Town, including a home occupation, without having first obtained a business license. Additionally, certain businesses or business activities defined in this Article shall be subject to special supplemental licensing requirements. A separate business license shall be required for each place of business and, unless otherwise specifically provided on the license, a business license shall expire on December 31 of the year in which it was issued, unless sooner revoked.

B. In addition, there is adopted hereto a fee schedule which is incorporated by reference in this section and attached hereto as a part of the ordinance codified in this section.

**5.04.020 Definitions.**

- (a) **Business** means any activity engaged in with the object of financial or other gain, benefit, advantage or profit, either direct or indirect, including, by way of example, the sale, supply or delivery of goods or services, and including such activities conducted by home occupations and professions and nonprofit organizations.
- (b) **Business license** means a license issued pursuant to the terms of this Article and includes peddler, solicitor and transient merchant licenses, general business licenses, special event business licenses, and tree service and massage parlor licenses.
- (c) **General business license** means a license issued to engage in a business not subject to the special licensing requirements applicable to specific businesses or business activities identified in this Article.
- (d) **Home occupation** means an occupation, vocation or business engaged in business from a residence in accordance with the regulations governing home occupations in Chapter 17 of this Code and shall include website and internet based businesses.
- (e) **Massage parlor** shall have that meaning as provided under the Colorado Massage Parlor Code, Section 12-48.5-103, C.R.S.
- (f) **Nonprofit business or organization** means a business or organization that has been lawfully established in accordance with the Colorado Revised Nonprofit Corporation Act and/or which has received nonprofit tax exempt status under the Internal Revenue Code by the Internal Revenue Service, U.S. Department of the Treasury.
- (g) **Peddler** means any person, whether a resident of the Town or not, who goes from house to house, from place to place, or from street to street by foot or by vehicle, conveying or transporting goods, wares or merchandise and offering or exposing the same for sale, or making sales and delivering articles or services to purchasers.
- (h) **Retailer or retail business** means a person or business engaged in the sale of tangible personal property, goods or services to a consumer or user, and not for resale.
- (i) **Sales tax license** means the license required by the Colorado Department of Revenue for persons or businesses conducting retail sales or a retail sales business.
- (j) **Solicitor** means any person, whether a resident of the Town or not, traveling either by foot or

vehicle from place to place, from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares, merchandise or personal property of any nature whatsoever for future delivery, or for services to be performed or furnished in the future, whether or not such person has, carries or exposes for sale a sample of the subject of such sale, or whether he or she is collecting advance payments on such sales or not.

(k) ***Special business event or fund-raising event*** means a special event occurring at one (1) or more locations and at which more than one (1) business, transient merchant or individual engages in the sale of tangible personal property, goods or services, whether conducted for profit or to raise funds for a nonprofit organization, e.g., craft shows and swap meets.

(l) ***Transient merchant*** means any person, whether as owner, agent, consignee or employee, and whether a resident of the Town or not, who engages in a temporary business of selling and delivering goods, wares, services or merchandise within the Town and who, in furtherance of such purpose, hires, leases, uses or occupies any building, structure, motor vehicle, trailer, tent, hotel room, lodging house, apartment, shop or storefront, or any street, alley or other place within the Town for the exhibition and sale of such goods, wares, services and merchandise.

#### **5.04.030 Licensing of business in annexed property**

In the event that any business, trade or occupation is being conducted on property at the time of the annexation of such property to the Town, and the person carrying on or engaging in the business, trade or occupation is doing so lawfully and in conformance with all existing laws and statutes governing such property, the conduct of such business, trade or occupation may be continued upon and subsequent to the annexation of the property to the Town; provided that the applicable license fee is paid within ten (10) days of annexation. In subsequent calendar years, the business must conform to all licensing requirements contained in this Article.

#### **5.04.040 Special events business license**

(a) Any person or organization conducting or sponsoring a special business or fund-raising event must apply for and obtain a special events business license from the Town and pay the fee therefor. Applications for a license shall be made on forms provided by the Town Clerk. No special events business license for an event occurring on Town-owned property or right-of-way shall be issued without the applicant or person or organization sponsoring the event having first obtained a permit from the Town to use or occupy the Town-owned property as required by Title 12, Chapter 12.06 of this Code.

(b) Applications for a special events business license must be submitted not less than sixty (60) days prior to the date of the special event and must identify the name and address of each person or organization sponsoring the event. Applications must be accompanied by a written plan describing, at a minimum, the manner in which the special event shall be conducted, including, without limitation, (i) a description of all proposed activities and any booths or other structures to be constructed or utilized, (ii) a list of all transient merchants and other businesses participating in the special event, and (iii) whether a street closure will be necessary.

(c) Applications for a special event business license shall be approved or denied by the Town Manager. No license shall be issued for an event on Town-owned property or right-of-way without written verification that the licensee has and shall continue to maintain general liability insurance sufficient to insure and indemnify the Town against any injury to person or property that might arise from or during the event. Insurance coverage shall be in amounts not less than those recovery limits set forth in the Colorado Government Immunity Act, Section 24-10-114, C.R.S., or any successor statute thereto.

(d) All licensees shall inform each person or organization intending to make, or making, any retail sale at the special event of their duty to secure a Colorado sales tax license and to collect and remit the appropriate sales taxes, unless the event sponsor or organizer elects to collect and remit such taxes under its own sales tax license, if any.

(e) Where the event sponsor or organizer elects to collect sales taxes under its own sales tax license, said sponsor or organizer shall submit to the Town Clerk within thirty (30) days after the conclusion of the special event a written financial report reflecting, at a minimum, total sales of goods and/or services generated at the special event and the total sales tax revenues collected. Compliance with the reporting requirements in this Subsection shall be in addition to any required sales tax reporting due to the Colorado Department of Revenue.

(f) Any transient merchant or business authorized by the event sponsor to participate in a licensed special event shall be exempt from having to obtain an individual business license to conduct business at such event.

#### **5.04.050 Massage parlor license.**

(a) Notwithstanding any other provision in this Article, no person, corporation, business or other entity shall operate a massage parlor within the Town without first having obtained a license as required under the Colorado Massage Parlor Code. Applications for a massage parlor license shall be made on forms furnished by the Town Clerk and shall be accompanied by a nonrefundable application fee as may be established by the Board of Trustees.

(b) An application for a new massage parlor license, or the renewal of an existing license, shall be processed and reviewed in accordance with the procedures and standards set forth in the Colorado Massage Parlor Code, Sections 12-48.5-101, et seq., C.R.S., or any successor statute.

(c) The fee for a new or renewed massage parlor license shall be equal to the maximum amount authorized under the Colorado Massage Parlor Code, or such lesser amount as may be established by the Board of Trustees from time to time.

(d) This Section has been adopted to implement the provisions of the Colorado Massage Parlor Code. In the event of the repeal of the Colorado Massage Parlor Code by the Colorado General Assembly, this Section shall correspondingly be deemed to be repealed and of no further effect.

#### **5.04.060 Peddler, solicitor and transient merchant license; prohibitions**

(a) No peddler, solicitor or transient merchant shall engage in business or operate within the corporate limits of the Town without first having obtained a license from the Town Clerk, except as otherwise provided in this Section.

(b) Applications for a license under this Section shall be filed with the Town Clerk on forms provided therefor. Such applications shall, at a minimum, contain the following information:

- (1) Full name and, if a natural person, physical description and date of birth;
- (2) Permanent and local addresses;
- (3) Brief description of the nature of the business and the goods or services to be sold, solicited or delivered;

- (4) Length of time during which business is to be conducted within the Town;
- (5) Proof of a valid state sales tax license, inclusive of the license number;
- (6) If a vehicle is to be used, a description of the vehicle, including the license plate number and vehicle identification number, and the name and driver's license information for the vehicle operator;
- (7) A statement whether the applicant has been convicted of any crime, including misdemeanors and violations of municipal ordinances, other than traffic violations, including the jurisdiction and nature of the offense and the penalty imposed;
- (8) No license shall be issued under this Section absent the payment of a fee as established by the Board of Trustees.

(c) Transient merchants participating in a licensed special event need not obtain a separate license as otherwise required under this Section if they have previously registered with the event sponsor.

(d) Except as may be otherwise allowed for sponsored special events, every individual who is a peddler, solicitor or transient merchant shall be required to make an individual application and obtain a license, which shall be issued in the individual's name. Any license issued to a firm, association or corporation shall include the name of the authorized representative of the firm, association or corporation, and the name of the individual authorized representative shall appear on the application. No license shall be transferable or be used by any other person than the individual whose name appears thereon and if a firm, association, corporation or other entity is to have more than one (1) representative engaged in business within the Town, then a separate license shall be required for each representative.

(e) It is unlawful for any peddler, solicitor or transient merchant to go uninvited upon any property, or approach any person upon property, that is posted by a sign that states "No Solicitors or Peddlers," or contains some similar warning or prohibition, or to engage in door-to-door sales or solicitations at private residences between the hours of 8:00 p.m. and 9:00 a.m. on the following day.

(f) The following persons, organizations or activities shall be exempt from the licensing requirements contained in this Section:

(1) Self-employed farmers or gardeners that go door-to-door or from place to place to sell and deliver, or offer for sale and delivery, fruits, vegetables or other agricultural produce grown by them; including participants in the farmers market but excluding roadside or other temporary produce stands.

(2) Merchants who have acquired a business license and operate within their established business premises or at a licensed special event.

(3) Organizations or persons engaged in door-to-door political or religious advocacy or religious proselytizing.

(4) Salespersons or merchants engaged in selling products wholesale or delivering services directly to licensed retail businesses.

(5) Door-to-door newspaper delivery and persons delivering goods or services to pre-established residential customers pursuant to a regular schedule over a defined and established route.

#### **5.04.070 Tree service license**

(a) No person shall engage in the business of tree trimming, tree cutting or tree spraying within the corporate limits of the Town without first having obtained a license from the Town

Clerk's office and paid a nonrefundable license fee in an amount established by the Board of Trustees.

(b) Application for a tree service license shall be made on forms provided therefor by the Town Clerk. Before such license shall be issued, the applicant must file with the Town Clerk proof of insurance issued by an insurance company authorized to do business in the State, which insurance shall provide general liability insurance coverage for property damage, personal injury or death arising from the applicant's operation of vehicles and equipment used in the trimming, cutting or spraying of trees, and which shall be in an amount not less than those judgment limitations set forth in the Colorado Government Immunity Act, Section 24-10-114, C.R.S., or any successor statute thereto. The insurance policy shall include liability coverage for any employee or agent of the licensee engaged in tree trimming, cutting or spraying. Such policy shall also carry an endorsement providing for written ten-day advance notice to the Town of any cancellation or discontinuance of coverage. A license issued under this Section shall be automatically revoked upon receipt by the Town of cancellation of the required insurance policy and notice to the licensee.

#### **5.04.080 Application generally**

A. All applicants for licenses under this chapter shall file an application as required by this chapter and shall pay an application fee, if any shall be required. Application fees shall be set by resolution of the Board of Trustees.

B. All continuously annually licensed individuals, partnerships or corporations under this chapter shall file an updated application with the Town Clerk every third year of renewal of license. If an annual license is not renewed within thirty days of the expiration date of the license, a new application plus all applicable fees shall be required. Licenses for terms of less than one year shall require a new application for each license.  
(Ord. 355 Art. 1 § 7, 1989)

#### **5.04.090 Issuance conditions generally**

A. Licenses shall be granted to persons to engage in or carry on business callings upon payment to the Town Clerk for the use of the Town the sums set forth and established by resolution.

B. Any and all persons receiving any license from the Town shall be subject to the Town ordinances and regulations of the Town which may be in force at the time of the issuance thereof, or which may be subsequently made and ordained by the Board of Trustees and if any person so licensed violates any of the provisions thereof, he shall be liable to be proceeded against for any fine, forfeiture or penalty imposed thereby. In addition, such license may be revoked by the Board of Trustees and any and all license fees paid by him shall in such case be forfeited to the town.  
(Ord. 355 Art. 1 § 2, 1989)

#### **5.04.100 Fees – Partial payment prohibited**

The Town Clerk is prohibited from receiving any less sum at any one time than the amount required by the ordinances and resolutions of the Town to take out a license for the period fixed thereby. No partial payments shall be received upon any license fee or license.  
(Ord. 355 Art. 1 § 8, 1989)

#### **5.04.110 Signing**

All licenses named in this chapter shall be signed by the Town Clerk or a duly appointed representative.

(Ord. 355 Art. 1 § 3, 1989)

#### **5.04.120 Keeping of register**

The Town Clerk shall keep a register in which shall be entered the name of each and every person licensed under this chapter, the date of the license, the purpose and place for which the license is granted, the amount paid therefor and the time such will expire or continue in force.

(Ord. 355 Art. 1 § 5, 1989)

#### **5.04.130 Term**

No license shall be issued at any time for a longer period than one year and in all cases the period or term covered by the license shall be expressed therein.

(Ord. 355 Art. 1 § 6, 1989)

#### **5.04.140 Posting**

It shall be the duty of each and every person to whom a license has been issued to show at any time during the business hours of any day to the marshal or to any officer of the Town upon request. It is unlawful for any person to fail or refuse to show such license when requested by such authority.

(Ord. 355 Art. 1 § 9, 1989)

#### **5.04.150 Assignability**

No license granted under the provisions of this chapter shall be assignable without the written permission of the Town Clerk or Board of Trustees.

(Ord. 355 Art. 1 § 10, 1989)

#### **5.04.160 Revocation**

A. Any license may be revoked by the Board of Trustees when it appears that the licensee has not complied with ordinances regulating his business, trade, profession or calling, when he has practiced fraud, misrepresentation or deceit in obtaining such license or whenever it appears that such business, trade, profession or calling so licensed is against good morals or contrary to the general welfare of the inhabitants of the town. Any and all license fees paid by such licensee shall in such case be forfeited to the town.

B. Licenses issued under the provisions of this chapter may be revoked or suspended by the Board of Trustees after notice and hearing, for any of the following causes:

1. Fraud, misrepresentation or incorrect statement contained in the application for the license;
2. Fraud, misrepresentation or incorrect statement made in the course of carrying on his business as transient merchant;

3. Any violation of this chapter;
4. Conviction of any crime or misdemeanor;
5. Conducting business in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public;
6. Fraud, misrepresentation or incorrect statement in the application for a charitable solicitation permit;
7. Fraud, misrepresentation or incorrect statement to any person from whom charitable contributions are solicited.

Notice of hearing for the revocation of a license shall be given by the Town Clerk in writing, setting forth specifically the grounds of complaint and the time and place of hearing. Such notice shall be mailed, postage prepaid, to the licensee at his last known address at least five days prior to the date set for hearing, or shall be delivered by a police officer in the same manner as a summons at least three days prior to the date set for hearing.  
(Ord. 355 Art. 1 § 4, Art. 6 § 1, 1989)

#### **5.04.170 Appeals**

Any person aggrieved by the action of the Marshal or the Town Clerk in denial of a permit or license of this chapter may appeal to the Board of Trustees. Such appeal shall be taken by filing with the Town Clerk within fourteen days after notice of the action complained of, a written statement setting forth fully the grounds for an appeal. The Town Clerk shall set a time and place for a hearing on such appeal and notice of such hearing shall be given to the appellant.  
(Ord. 355 Art. 6 § 2, 1989)

#### **5.04.180 Reapplication**

No licensee whose license has been revoked shall make further application until at least one year has elapsed since the last previous revocation.  
(Ord. 355 Art. 6 § 3, 1989)

#### **5.04.190 Violation - Penalty**

The following penalties shall be applicable to Chapters 5.04, 5.08, 5.12, and 5.20.

- A. It is unlawful for any person to violate, disobey, omit, neglect, refuse or fail to comply with or resist enforcement of any section in these chapters, and violation of the same shall be declared to be a misdemeanor, and the violation of any provision of these chapters shall be punished by a fine not exceeding five hundred dollars or jail sentence not to exceed one hundred eighty days, or by both such fine and imprisonment in the discretion of the court. Unless otherwise indicated, each day or portion thereof in violation of these chapters and Ordinance 355 shall constitute a separate offense.
- B. The Town may, in its discretion, also proceed against any violation or violations



of these chapters and Ordinance 355 by any person, partnership, corporation, or other entity, in a civil action for abatement, injunction, damages, specific performance or by a lien foreclosure or through other equitable remedies, and these remedies shall be in addition to the criminal penalties provided in this section.

- C. In case of the amendment of any section or article of these chapters, and Ordinance 355, for which a penalty is not provided, and for which a civil penalty has not been provided, then the general penalty of this chapter shall apply to the section as amended, or in case such amendment contains provisions for which a penalty other than the aforementioned general penalties is provided in another section in the same ordinance, the penalty provided in such other section shall be held to relate to the section that is amended unless such penalty is specifically repealed therein. (Ord. 473 (part), 2007; Ord. 381 § 1(part), 1990)

3. Severability. If any part, section, subsection, clause, phrase, or other portion of this Ordinance is invalidated for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Trustees specifically finds and declares that it would have passed this Ordinance, and each part thereof, regardless of the fact that any one or more parts could be declared invalid.

PUBLIC HEARING. This ordinance shall be considered for second or final reading on the 8<sup>TH</sup> day of February 2010, at the hour of 7:00 p.m. in the Board of Trustees Chambers in Town Hall, Dolores, Colorado, at which time and place all persons may appear and be heard concerning the same.

PASSED, ADOPTED AND APPROVED ON FIRST READING THIS 11TH DAY OF JANUARY, 2010.

TOWN OF DOLORES

ATTEST:

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DUVALL TRUELSEN, MAYOR

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LANA HANCOCK, TOWN CLERK

PASSED, ADOPTED AND APPROVED ON SECOND AND FINAL READING THIS 8TH DAY OF FEBRUARY, 2010

TOWN OF DOLORES

ATTEST:

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DUVALL TRUELSEN, MAYOR

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LANA HANCOCK, TOWN CLERK

APPROVED AS TO FORM:

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MICHAEL F. GREEN, Town Attorney