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ORDINANCE NO. 93-9

AN ORDINANCE REQUIRING BUSINESS REGISTRATION, PROVIDING PENALTIES AND FEES AND REPEALING AN ORDINANCE DATED JULY 1, 1979, FILED IN BOOK 260/PAGES 1157-1160.

I

"This ordinance may be cited as the "Business Registration Ordinance.

II

DECLARATION OR PURPOSE

The Board of County Commissioners for the County of Torrance hereby declare that the licensing or regulation of a business not otherwise exempt by law is conducive to the promotion of the health and general welfare of the County and that a license fee is imposed on each person, firm, corporation or association engaged in business for each place of business conducted by said person, firm, corporation or association for the purpose of regulation.

III

TAX IMPOSED

A. There is imposed a Business Registration Fee on every person doing business or engaging in business within the County of Torrance and serving gross receipts other than within an incorporated municipality within said county.

B. The occupation tax is at the rate of \$25.00 per annum on all persons doing business or engaging in business.

IV

PRESUMPTION OF TAXABILITY

To prevent evasion of the Business Registration Fee and to aid in its administration, it is presumed that all gross receipts of a person doing business or engaging in business

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within the County are subject to the business registration fee. Any person engaging solely in transactions specifically exempt under the provisions of the Business Registration Fee shall not be required to apply for a permit under this ordinance.

V

DEFINITIONS

AS USED IN THIS ORDINANCE:

A. "Person" means any individual, 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.

B. "Gross Receipts" means money or the value of other consideration received from selling property, from leasing property, from renting property, or from performing within the county, and include any type of time-price differential and receipts from sales of tangible property handled on consignment.

C. "Engaging in a Business or Doing Business" means operating, conducting, doing, caring on, causing to be carried on, or pursuing any business profession, occupation, trade, or pursuit with the purpose of direct or indirect benefit.

D. "Commission" means the Board of County Commissioners of the County of Torrance, State of New Mexico.

E. "County" means the County of Torrance.

F. "Bank" means any National Banking Association, State Bank or Bank holding company.

G. "Financial Corporation" means any savings and loan association, or any incorporated savings and loan company trust company, mortgage banking company, consumer finance company, or other financial corporation.

H. "Selling Property, Leasing Property, Renting Property, or performing Services by Every Person Doing Business Within The County" Means all such transaction by any person within the county no matter where the property or services are delivered, except within incorporated municipalities with the county.

VI

EXEMPTION

Gross receipts shall not include the following:

A. Gross receipts of any bank or financial corporation to the extent that they are derived from revenue produced by an activity or service reasonably related or incidental to the

accomplishment of bank or financial corporation functions. Gross receipts derived from activities or services not reasonably related or incidental to the accomplishment of bank or financial corporation functions are subject to the Business Registration Fee.

B. Gross receipts arising from transactions listed as sales for internal accounting purposes only, where the goods or merchandise are transferred from one department to another within the same business organization, both departments being under the same ownership.

C. Gross receipts of systems and utilities to the extent that they are derived from operation under a franchise from the county and a franchise fee paid to the county.

D. Gross receipts derived from the sale of vegetables, fruits, meats, livestock or other produce raised and sold in unprocessed form by the grower or producer thereof. Gross receipts from selling dairy products at retail are not exempted from the Business Registration Fee.

E. Gross receipts from the isolated or occasional sale of, leasing of, or rental of property or service by a person who is neither regularly engaged nor holding himself out as engaged in the business or selling, leasing or rental of the same or similar property or service.

F. Gross receipts of nonprofit schools, colleges, universities, hospitals, religious or charitable organizations when the gross receipts are derived as a result of activities within the conduct of their regular educational, hospital, religious, or charitable functions.

G. Gross receipts of nonprofit entities derived from the operation of hospital, infirmaries or sanitariums and facilities designed and used for providing accommodation for retired elderly persons.

H. Gross receipts from dues and registration fee of nonprofit serial, fraternal, political, trade, business, labor, or professional organizations.

I. Gross receipts of employees from wages, salaries, commission or from any other form of remuneration for personal services.

VII

APPLICATION FOR REGISTRATION

A. Prior to engaging in any business within the county and outside of incorporated municipalities, any person proposing to engage in a business shall file an application to do business with the County Clerk or other designee of the Commission.

B. All persons engaged in business within the county and outside of any incorporated municipality at the time of the effective date of this ordinance shall file an application pursuant to this ordinance within thirty (30) days after the effective date of this ordinance with the County Clerk or other designee of the Commission.

C. Separate application shall be filed for each place of business conducted by the same person, firm, corporation or association.

D. Each application to do business shall include the name of the owners of the business, the trade or business, name, address or the place of business or evidence of application for a current revenue division taxpayer identification number, and such other information as the Commission or County Clerk with approval of the Commission may prescribe.

E. Whenever any person shall, after filing an application to do business shall move his place of business from the address named in the application or change the name of the business and whenever there is a change in the ownership or such business, such person shall notify the County Clerk of the change of address or name or ownership.

F. For purposes of the Ordinance and for listing classification in the application to do business, the business classifications which shall be used are:

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|------------------|--------------|------------|
| 1. Manufacturing | 4. Retail | 7. Service |
| 2. Utility | 5. Banking | |
| 3. Wholesale | 6. Financial | |

VIII

COLLECTION AND PAYMENT

A. The Business Registration Fee is due and payable for each calendar quarter or portion thereof that a person is engaging in a business or doing business and deriving gross receipts therefrom. The Business Registration Fee rate is \$6.25 per calendar quarter or portion thereof, payable in annual installments of \$25.00.

For purpose of paying the Business Registration fee for the year in which this ordinance is enacted, the registration fee

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shall be due thirty (30) days after the effective date of the ordinance and shall be delinquent forty-five (45) days after the effective date. In all succeeding years, the registration fee shall be due for the entire year on July 1st, and delinquent on the first day of August.

B. Any person who discontinues engaging in a business or doing business within a calendar year shall not be entitled to any refund of registration fee paid for that year, or if the registration fee has not been paid for that year, a reduction in the rate due. However, if another person takes over an on-going business, the registration fee for that calendar year shall be no greater than the then existing annual rate.

C. No person shall engage in a business without first paying a registration fee.

IX

DISCLOSURE OF INFORMATION

A. It is unlawful for any county official, employee, or agent to reveal to any person other than another county official, employee or agent engaged in county tax administration, or an employee of the New Mexico Bureau of Revenue, any information about a taxpayer acquired as result of his affiliation or employment with the county. No county official or employee charged with keeping such information shall be required to produce it in any action or proceeding except under subpoena or other court order.

X

LICENSES

A. Upon payment of the Business Registration Fee, the County Clerk, or member of his/her staff shall issue a signed and sealed license to the business.

B. Each person shall post the license in their place of business.

XI

NOT A LICENSE

No action taken under the provisions of this ordinance shall be construed as authorizing either the conduct or continuance of any business in an unlawful manner or in an unlawful location.

XII

FALSE STATEMENTS

A. In addition to the business registration fee, any person failing to pay the Business Registration Fee in Full by August 1st, is declared to be delinquent and a penalty of Two Dollars (\$2.00) per month is hereby imposed upon such delinquent person for each month or fraction thereof during which such delinquency continues. The penalty for delinquent Business Registration Fees for the year in which this ordinance is enacted shall be imposed forty-five (45) days after the effective date of this ordinance at the rate of two dollars (\$2.00) per month or fraction thereof that the delinquency continues.

1. The County in any action or proceeding under the provisions of 3-38-1 through 3-38-12, and 4-27-1, N.M.S.A. 1978 in which it is a party, or

2. Any party to an action or proceeding under the provisions of 3-38-1 through 3-38-12, and 4-37-1, N. M. S. A. 1978 when the information is directly involved in the action or proceeding. In either event, the court may require the production of and may admit in evidence only so much of the information as is pertinent of the action or proceeding.

B. Nothing contained herein shall be construed to:

1. prohibit delivery to a person or his authorized representative, a copy of any return or report filed in connection with his tax;

2. prohibit the publication of statistics prepared so as to prevent the identification of a particular taxpayer's report or return and its content;

3. prohibit inspection by the attorney general or other legal representative of the state, county, or municipality or the report or return of any person by or against whom action or proceeding is contemplated or has been instituted as authorized in 3-38-1 through 3-38-12, and 4-37-1, N.M.S.A. 1978;

4. prohibit inspection by the attorney general or an authorized representative of his consumer protection division, of the report or return or other information on file, of any person, firm, partnership, or corporation, by or against whom action, proceedings, or investigation is contemplated or has been instituted as authorized in 57-12-1 through 57-12-16 N.M.S.A. 1978 as amended.

C. Reports, statements, and returns shall be preserved for three years. Any person violating any of the provisions of this section shall be punished by a fine not exceeding Three Hundred Dollars or by imprisonment not exceeding ninety days or both; and if the offender be an officer or employee of the county, he shall be dismissed from office in the county for a period of five years.

XIII
PENALTY

This ordinance is penal in nature, and any person who willfully fails to pay the Business Registration Fee as provided for herein shall be guilty of a misdemeanor per violation and subject to a fine not exceeding Three Hundred Dollars (300.00), or subject to imprisonment not to exceed ninety (90) days, or both such fine and imprisonment.

XIV
REMEDIES

The conviction and punishment of any person for a violation shall not excuse or exempt such person from the payment of any tax due or unpaid at the time of such conviction and nothing herein shall prevent a criminal prosecution of any violation of the provisions of this ordinance. All remedies prescribed or Liens created hereunder or under the provisions of the laws of New Mexico for collection and enforcement of the Business Registration Fee shall be cumulative and the use of one or more remedies by the County shall not bar the use of any other remedy for the purpose of enforcing the provision of this ordinance or any liens created by the laws of New Mexico. The registration fee fixed by this ordinance shall be a lien in favor of the county upon the personal property of the person used in connection with such person's occupation from the time such

registration fee fixed, and such lien shall be imposed, collected, enforced and paid as provided by the Laws of New Mexico relating to Business Registration Fee Liens. No property of any person shall be exempt from levy and sale on execution issued for the collection of a judgment for any tax imposed by this ordinance.

XV
SEVERABILITY

The Commission hereby declares that if any exemption granted by this ordinance be held invalid, it is the intent of the Commission that the unaffected remainder of the ordinance be continued in force and that the businesses theretofore enjoying such exemption shall thenceforth, from the effective date of the declaration of invalidity, be liable for the rate of fee under III of this ordinance.

This ordinance does not apply to taxes or fee the liability for payment of which was incurred prior to its effective date, or to any act done prior thereto. The payment, collection, or enforcement of such taxes is to be accomplished according to the provisions of appropriate ordinances previously in force and in every manner as though this ordinance had not been enacted.

ADOPTED this 12th day of October, 1993.

STATE OF NEW MEXICO
County of Torrance
I hereby certify that this instrument was
filed for record on the 12 day
of Oct A.D. 19 93
at 9:39 o'clock A. M. and duly
recorded in book 266 at page 4101-4108
Witness my hand and Seal of office
Carla Clayton
County Clerk, Torrance Co., N.M.
Paula Rodriguez Deputy

BOARD OF COUNTY COMMISSIONERS
Torrance County, New Mexico

Bill Williams
Bill Williams, Chairman

Bill Carter
Bill Carter, Member

Roy Spencer
Roy Spencer, Member

ATTEST:
Carla Clayton
Carla Clayton, County Clerk

