

## Chapter 5.04

### LICENSES\*

#### Sections:

- 5.04.010 Collection and disposition of license taxes.
- 5.04.040 Business license administration.
- 5.04.070 Payment of license tax in advance.
- 5.04.080 Terms of issuance.
- 5.04.100 Disposition of funds collected.
- 5.04.110 Permit for assignment or transfer.
- 5.04.120 Exhibition of municipal licenses.
- 5.04.130 Liability.
- 5.04.140 Recovery of unpaid fees.
- 5.04.150 Affidavit of attachment.
- 5.04.155 Delegation of duties by town council.
- 5.04.160 Scope.
- 5.04.162 Definitions.
- 5.04.165 Evidence of doing business.
- 5.04.167 Constitutional apportionment.
- 5.04.170 Businesses licensed--Designated--Fees.
- 5.04.190 Rules and regulations.
- 5.04.200 Appeal.
- 5.04.210 Delinquent taxes--Penalty.

5.04.010 Collection and disposition of license taxes. All licenses imposed by this code upon any business transacted and carried on in the town, and upon any shows, exhibitions or lawful games carried on therein, shall be issued, and the license taxes upon the same collected, disposed of and accounted for as in this chapter provided. (Prior code §6100).

5.04.040 Business license administration. The town manager or the town manager's designee shall collect all business license taxes, shall issue business licenses annually, and shall maintain a record of licenses issued. (Ord. 587 §2, 2004; Ord. 424 §5(part), 1980; prior code §6103).

5.04.070 Payment of license tax in advance. All license taxes shall be payable to the collector in advance, at his office in the town hall, and every person required by this chapter to procure a license and pay a license tax must procure the license and pay the tax without any prior tender of the license or prior demand for the tax. If any such license tax is not so paid when it falls due as herein provided, the collector shall add and collect twenty-five percent thereof to the amount of the license tax as a penalty for nonpayment. If any such license tax is

---

\* For statutory provisions authorizing a town to license businesses, see Gov. C.A. §37101. See also, Bus. & Prof. C.A. §§16000--16003.

not paid within thirty days after it becomes due, the collector as license collector shall add forty percent thereof to the amount of the license tax as a penalty for nonpayment. (Ord. 424 §5(part), 1980; prior code §6106).

5.04.080 Terms of issuance. All licenses shall be issued for the period of one year, commencing on the first day of January. The full amount of the license tax shall be paid for the year during which it first became due and payable, and no allowance shall be made for any portion of the year that may have elapsed prior to the time the license tax first became due. (Ord. 587 §3, 2004; Ord. 424 §1, 1980; Ord. 397 §1, 1978; Ord. 294 §1, 1969; prior code §6107).

5.04.100 Disposition of funds collected. All licenses collected under the provisions of this code shall, unless herein otherwise expressly provided, be placed to the credit of the general fund. (Prior code §6109).

5.04.110 Permit for assignment or transfer. No license granted or issued under any of the provisions of this code shall be in any manner assignable or transferable, or authorize any person other than is therein mentioned or named to do business or authorize any other business than is therein mentioned or named to be done or transacted, or at any place other than is therein mentioned or named, without permission from the collector endorsed thereon. The collector shall, at the time of granting such permission, immediately record such change or transfer upon the proper register and notify the clerk thereof. (Ord. 424 §5(part), 1980; prior code §6110).

5.04.120 Exhibition of municipal licenses. Every person having a municipal license shall conspicuously exhibit it at all times, while in force, at his place of business, and shall produce it when applying for a renewal or when requested by the collector or any of his deputies. (Ord. 424 §5(part), 1980; prior code §6111).

5.04.130 Liability. Every person now or hereafter liable to pay any license, license tax or fee, under this code shall be liable in a civil action in the name of the town, for the amount of the license, license tax, or fee. (Prior code §6112).

5.04.140 Recovery of unpaid fees. The amount of any license, license tax, or fee required to be paid by the provisions of this code, and now or hereafter remaining unpaid by the person liable to pay it, shall be, and be deemed a debt due the town. The collector is authorized and empowered to direct suit to be brought by the town attorney, and upon such direction or request, the town attorney is authorized and required to bring suit in the name of the town for the recovery of the amount of the license, license tax or fee, against any person liable to pay it. (Ord. 424 §5(part), 1980; prior code §6113).

5.04.150 Affidavit of attachment. The town attorney or collector, on behalf of the town, may make the necessary affidavit for an attachment. In case of a recovery by the plaintiff, twenty-five dollars damages shall be added to the judgment as costs to be collected from the defendant. (Ord. 424 §5(part), 1980; prior code §6114).

5.04.155 Delegation of duties by town council. The town council may, by resolution, delegate to any officer of the town the duties and functions under this chapter to the director of public works or any other officer named herein. (Ord. 424 §2, 1980; Ord. 300 §1, 1969).

5.04.160 Scope. It is unlawful for any person to engage in, conduct, transact, or carry on, within the town, any business, trade, occupation, or calling specified in this title, unless a license therefor first has been procured from the town, and the license tax imposed thereon has been paid. (Ord. 251 §1(part), 1966: prior code §6200).

5.04.162 Definitions. As used in this chapter:

"Business" means and includes professions, trades and occupations and all and every kind of calling whether or not carried on for profit.

"Collector" means the town manager or other town official acting as the town manager's designee.

"Gross receipts" mean and include the total of amounts actually received or receivable from sales and the total amounts actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise. Included in "gross receipts" shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from "gross receipts" shall be the following:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of property returned by purchasers upon rescission of the contract of sale as is refunded either in cash or by credit;
5. Amounts collected for others where the business is acting as an agent or trustee to the extent that such amounts are paid to those for whom collected, provided the agent or trustee has furnished the collector with the names and addresses of the others and the amounts paid to them;
6. That portion of the receipts of a general contractor which represent payments to subcontractors, provided that such subcontractors are licensed under this chapter, and provided the general contractor furnishes the collector with the names and addresses of the subcontractors and the amounts paid each subcontractor;
7. Receipts of refundable deposits, except that refundable deposits forfeited and taken into income of the business shall not be excluded;
8. As to a real estate agent or broker, the sales price of real estate sold for the account of others except that portion which represents commission or other income to the agent or broker.

"Person" means and includes all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, Massachusetts business, or common law trusts, societies, and individuals transacting and carrying on any business in the town, other than as an employee.

"Sale" means and includes the transfer, in any manner or by any means whatsoever, of title to property for a consideration; the serving, supplying, or furnishing for a consideration of any property; and a transaction whereby the possession of property is transferred and the seller retains the title as security for the payment of the price shall likewise be deemed a sale. The foregoing definitions shall not be deemed to exclude any transaction which is or which, in effect, results in a sale within the contemplation of law.

"Sworn statement" means an affidavit sworn to before a person authorized to take oaths, or a declaration or certification made under penalty of perjury. (Ord. 587 §4, 2004; Ord. 424 1980).

5.04.165 Evidence of doing business. When any person shall by use of signs, circulars, cards, telephone book, or newspapers, advertise, hold out, or represent that he is in business in the town, or when any person holds an active license or permit issued by a governmental agency indicating that he is in business in the town, and such person fails to deny by a sworn statement given to the collector that he is not conducting a business in the town, after being requested to do so by the collector, then these facts shall be considered prima facie evidence that he is conducting a business in the town. (Ord. 424 §5(part), 1980: Ord. 294 §3, 1969).

5.04.167 Constitutional apportionment. (a) The license taxes provided for by this chapter shall be applied so as not to cause an undue burden on interstate commerce or be in violation of the equal protection and due process clauses of the Constitutions of the United States and the state of California.

(b) In any case where a license tax is believed by an applicant to be in violation of any constitutional provision, the applicant may apply to the collector for an adjustment. Such application may be made before, at, or within six months after payment of the tax.

(c) The applicant shall, by declaration under penalty of perjury, supporting documents, or sworn testimony, describe the nature of the business and the gross volume or estimated gross volume of the business and other information the collector deems necessary or additional information the applicant may wish to submit in order to properly determine the extent, if any, the tax should be adjusted. The collector shall conduct a hearing and after having obtained the written approval of the town attorney, fix the license tax to be imposed on the applicant in an amount apportioned to the business actually conducted within town limits; if the license tax has already been paid, collector shall order a refund of the amount over the license tax so fixed. Collector's determination shall be in writing and supported by findings of fact. In fixing the license tax to be imposed, the collector may base the license tax upon a percentage of the gross receipts of the business conducted within the town limits or use another measure or method applicable to the particular business to assure the license tax imposed is not only accurately apportioned but uniform with the amount(s) imposed on businesses of like nature. Collector may require an applicant to submit a declaration under penalty of perjury every three months attesting to the gross receipts of the business conducted within the town limits should collector determine the gross receipts measure of the license tax to be the most accurate basis for imposing the tax and such frequent declarations necessary to determine the measure of the tax.

(d) A license tax measured by gross monthly receipts shall be as follows:

<u>Gross Monthly Receipts</u>	<u>License Fee</u>
\$ 1,000 -- \$ 2,000	\$15.00 per quarter plus \$ 7.50 review fee
2,000 -- 4,000	25.00 per quarter plus 10.50 review fee
4,001 -- 10,000	45.00 per quarter plus 16.50 review fee
10,001 - 100,000	75.00 per quarter plus 25.50 review fee.

(Ord. 455 §1, 1985: Ord. 424 §4, 1980).

5.04.170 Businesses licensed--Designated--Fees. Every person who engages in, conducts, transacts or carries on, within the town, any business, trade, occupation or calling herein specified, shall procure a license therefor from the town, and shall pay the license tax thereon hereinafter designated, as follows:

(a) **Persons or Business Entities Having a Fixed Place of Business Within the Town.** Those persons or business entities having a fixed place of business within the town shall pay an annual business license tax apportioned to the actual amount of business transacted within town limits. Collector, in determining the amount of the tax, shall use the gross receipts of the business transacted within the town limits based on the schedule and other applicable provisions set forth in Section 5.04.167. In lieu thereof, any such person or business may elect to pay a flat annual business license tax as specified by resolution adopted by the town council.

(b) **Business Entities or Persons Not Having a Fixed Place of Business Within the Town.** Business entities or persons not having a fixed place of business within the town shall pay an annual business license tax, apportioned to the actual amount of business transacted within town limits. Collector, in determining the amount of tax, shall use the gross receipts of the business transacted within town limits based on the schedule and other applicable provisions set forth in Section 5.04.167. In lieu thereof, any such business entity or person may elect to pay a flat annual business license tax as specified by resolution.

(c) **Exemptions.** Nothing in subsections (a) or (b) of this section shall apply to any person or business entity transacting any business exempted by the Constitution or applicable statutes of either the United States or the state of California from payment to municipal corporations of business license taxes therein prescribed. The following specific exemptions are applicable:

(1) Any physically disabled person exempt from business licenses under any law of the state of California;

(2) Any recognized charitable nonprofit organization recognized as such under Section 5.01(c)(3) of the Internal Revenue Code. (Ord. 455 §§2, 3, 1985; Ord. 449 §1(1), 1985).

5.04.190 Rules and regulations. The collector may make rules and regulations not inconsistent with the provisions of this chapter as may be necessary or desirable to aid in the enforcement of the provisions of this chapter. (Ord. 424 §5(part), 1980; Ord. 294 §4, 1969).

5.04.200 Appeal. Any person aggrieved by any decision of the collector with respect to the issuance or refusal to issue a business license may appeal to the council by filing a notice of appeal with the clerk. The council shall thereupon fix a time and place for hearing the appeal. The clerk shall give notice to the person of the time and place of the hearing by mailing notice, postage paid, to the appellant at his or her last known address. The council shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive portion of this chapter. (Ord. 587 §5, 2004; Ord. 424 §5(part), 1980; Ord. 294 §5, 1969).

5.04.210 Delinquent taxes – Penalty. For failure to pay a license tax when due, the collector shall add a penalty of twenty-five percent of the license tax, except if the license tax is thirty days, or more, overdue, the penalty shall be thirty percent of the license tax. Any person violating any of the provisions of this chapter or knowingly or intentionally misrepresenting to any officer or employee of this town any material fact in procuring the license or permit herein provided for is guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than one hundred dollars or by imprisonment in the county jail for a period of not more than thirty days, or by both such fine and imprisonment. (Ord. 424 §5(part), 1980; Ord. 294 §6, 1969).