

**ORDINANCE NO. JUN-06-049**  
**GOVERNING THE LICENSURE, PERMITTING AND REGULATING**  
**THE ACTIVITIES OF BUSINESSES; FLEA MARKETS;**  
**AND, MERCHANTS IN MCKINLEY COUNTY**

Whereas, McKinley County is economically dependent on wholesale and retail business activities; and,

Whereas, McKinley County has a direct and substantial interest in protecting the vitality of its economy by assuring that unscrupulous businesses are identified and subject to legal process for the adjustment of wrongs done the public; and,

Whereas, McKinley County has an interest in protecting its sources of revenue derived from gross receipts and property taxes; and,

Whereas, certain businesses fail to collect, report, and pay the appropriate gross receipts taxes; and,

Whereas certain businesses fail to abide by the provisions of law requiring payment of minimum wages, unemployment insurance, liability insurance, worker's compensation and other overhead costs, to the detriment of competing law-abiding businesses;

THEREFORE, BE IT ORDAINED by the Board of Commissioner of McKinley County as follows:

  
325750 07/11/2006 02:14P OR  
1of7 B27 P845 R 0.00 D 0.00  
McKinley County Jacqueline Sloan - County Clerk

## 1. DEFINITIONS

As used in this Ordinance:

A. "Business" shall mean any retail or wholesale enterprise at which merchandise, inventory, or goods are offered for sale, resale, trade exchange, or barter. "Business" shall not include dwelling units for rental or lease, any licensed liquor establishment, or any trade or profession subject to licensure and actually licensed under the provisions of Chapters 36, 56, 58, 59, 59A, 60, 61, 62, 63, 64, or 65, of the New Mexico Statutes Annotated, 1978 compilation, as the same are now or may subsequently be codified; provided this exemption shall apply only to those transactions actually licensed, and shall not apply to sideline or subsidiary transactions not so licensed.

B. "Person" shall mean any individual, marital community, corporation, joint venture, estate, partnership, or other entity recognized by law, excluding, however, agencies, enterprises, or subdivisions of the United States Government, the State of New Mexico, the City of Gallup, McKinley County, or the Zuni or Navajo Tribe of Indians in their corporate capacities, and further excluding any entity which is exempt from collecting and paying gross receipts taxes under sections 7-9-13 through 7-9-24 1978. Exemptions from the operation of this ordinance under sections 7-9-13 through 7-9-24 N.M.S.A. 1978 shall be an affirmative defense.

C. "McKinley County" shall mean any area within McKinley County which is not within the boundaries of an incorporated city or town.

D. "Flea Market" shall mean any location where persons gather to conduct retail sales without a permanent fixed location or premises, whether rented or owned by the individual seller or within a right-of-way.

E. "Vendor" shall mean any person or entity who offers items for sale at a Flea Market

## 2. LICENSE

A. No person shall operate business in McKinley County without a license or permit to do so.

B. Licenses and permits for businesses shall be issued by the County Clerk of McKinley County. Prior to issuing any licenses, or permit the Clerk of McKinley County shall first receive a completed application for the same, the forms for which shall be provided by the Clerk. The form of the application shall be the same as that set forth in Exhibit A appended hereto (which form may be amended by McKinley County from time to time). The application shall be accompanied by the fee set forth in paragraph 2D of this Ordinance. No license or permit shall be issued unless each applicable provision of the same shall be filled out completely. A business licensed or permitted under this Ordinance shall keep the information set forth in the application current and up to date by providing current information in writing to the Clerk of McKinley County.

C. Each license or permit shall be valid for a period of one year or less and ending on the thirty-first day of December of each year, unless revoked as provided below. Each licensee or permittee shall at all times display the license while engaging in any business covered under this Ordinance. A license or permit shall be valid anywhere

  
325750 07/11/2006 02:14P OR  
3of7 B27 P847 R 0.00 D 0.00  
McKinley County Jacqueline Sloan - County Clerk

in McKinley County, provided, a duplicate license or permit shall be displayed at each location at which a licensee or permittee does business. The cost for a duplicate license or permit shall be ten dollars (\$10.00).

D. Each license shall cost seventy-five (\$75.00) annually or each part thereof. Anyone doing business at a "Flea Market" (i.e. Vendors) would be charged a permit fee of twenty-five dollars (\$25.00) per year and the permit would be limited to Flea Markets or rights-of-way only. (Vendors at a Flea Market or within rights-of-way must obtain a Flea Market Permit). Licenses or permits would be renewed annually effective January 1 of each year, payable by January 31 of each year.

### **3. DUTIES OF THE CLERK OF MCKINLEY COUNTY**

The Clerk of McKinley County shall prepare an index of all businesses licensed or permitted under this ordinance. The index shall be so organized that a license or permit may be located by the name of the business as licensed or permitted any name used by the business which is listed in the application. All information contained in the application for each license, or permit issued by the Clerk of McKinley County and a copy of the license or permit issued to each business, shall be kept on file by the Clerk of McKinley County and be locatable by the use of the index prepared under this paragraph. The information set forth except for the gross receipts and compensating tax number of the licensee, or permittee shall be public record. If an applicant does not have a Gross receipts and compensating tax number, the County Clerk will provide the applicant with a CRS -1 form; Issue a CRS number; and, submit the form and information to the New Mexico Department of Taxation and Revenue. See N.M.S.A. 1978 §7-1-12.

  
325750 07/11/2006 02:14P OR  
4of7 B27 P848 R 0.00 D 0.00  
McKinley County Jacqueline Sloan - County Clerk

#### 4. PROHIBITED ACTS

The following acts are prohibited and are punishable as provided below:

- A. Operating or engaging in business without a license or permit to do so;
- B. Failing to display a license or permit in such manner that it can be easily seen and read by the public, while engaged in business;
- C. Engaging in business under license or permit or purported license or permit when any information shown on the license or permit is incorrect;
- D. Providing false information for the issuance of a license or permit under this Ordinance;
- E. Operating a licensed business under a name not set forth in the application for the license or permit; or
- F. Failure by a licensed business, Flea Market or Vender, to keep information in its application current and up to date.
- G. The violation of this ordinance shall not constitute the basis of an arrest or closure of a business. The ordinance shall be enforced only by the issuance of a summons or citation.
- H. Each day of operation of a business in violation of this ordinance shall constitute a separate offense.

#### 5. AFFIRMATIVE DEFENSE

It shall be an affirmative defense to citations issued or complaints based upon Section 4, subparagraph A, that completed application for a business license or permit with appropriate fee is received at the Office of the Clerk of McKinley County within thirty days after the issuance of the citation or filing of the complaint based thereupon,

  
325750 07/11/2006 02:14P OR  
5of7 B27 P849 R 0.00 D 0.00  
McKinley County Jacqueline Sloan - County Clerk

provided, the duration of any license or permit issued pursuant to such an application shall run from the date of filing of the citation or complaint.

## **6. ENFORCEMENT**

This Ordinance may be enforced and citations issued by:

A. a duly deputized McKinley County Sheriff's Deputy from either the criminal or civil divisions on the standard citation form for said office; or,

B. a duly authorized Deputy County Clerk. If by a Deputy County Clerk, the citation may be on a citation form supplied by the Sheriff's Office, or on a form developed by the County Clerk. Any prosecution of a citation issued by the Clerk's office shall be carried out by the issuing Deputy County Clerk.

## **7. PUNISHMENT**

Violation of this ordinance or any of its provisions shall be a misdemeanor punished by a fine not to exceed three hundred dollars, or incarceration for a period not to exceed ninety days, or both.

## **8. REVOCATION OF LICENSE**

The Board of Commissioners shall be empowered to revoke any license or permit issued under this Ordinance should any licensee or permittee commit three or more violations of this Ordinance within one year. A license shall be revoked only after a hearing by the Board of Commissioners at a regularly scheduled meeting. The Licensee or permittee shall be given not less than two weeks notice of the meeting, time, and location by certified mail to the address shown in the records of the Clerk of the McKinley County concerning said license or permit. Such notice shall be deemed sufficient when mailed in accordance with this section. No new license or permit shall

  
325750 07/11/2006 02:14P OR  
6of7 B27 P850 R 0.00 D 0.00  
McKinley County Jacqueline Sloan - County Clerk

issue to any person or entity which has been revoked, for a period of one year after the last date of any violation forming the basis of the revocation.

**9. EFFECTIVE DATE / REPEALER**

This Ordinance, No. **JUN-06-049** shall become effective thirty (30) days after it is recorded with the County Clerk, and repeals all prior or similar Ordinances covering the same subject matter. This Ordinance, No. **JUN-06-049** specifically repeals Ordinance No. 05-93-015 effective MAY 11, 1993 and recorded in Book 6 Pages 6033-6941 of the records of McKinley County.

PASSED, ADOPTED, AND ORDAINED THIS 27<sup>th</sup> DAY OF JUNE, 2006.

McKINLEY COUNTY BOARD OF COMMISSIONERS



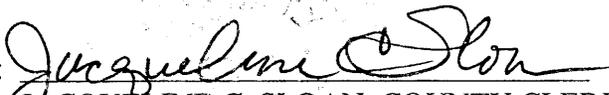
BILLY W. MOORE, CHAIRPERSON



ERNEST C. BECENTI, JR., COMMISSIONER



DAVID DALLAGO, JR., COMMISSIONER

ATTEST:   
JACQUELINE C. SLOAN, COUNTY CLERK



325750 07/11/2006 02:14P OR  
7of7 B27 P851 R 0.00 D 0.00  
McKinley County Jacqueline Sloan - County Clerk