

**TOWN OF DE BEQUE ORDINANCE NO. 533**

**SERIES 2023**

AN ORDINANCE AMENDING THE DE BEQUE MUNICIPAL CODE TO ADOPT UPDATED AND COMPREHENSIVE BUSINESS LICENSING PROVISIONS, REPEALING INCONSISTENT PROVISIONS, AND CLARIFYING EXEMPTIONS.

The following describes the intent and purpose of this ordinance:

- a. The Town of De Beque (the Town) possesses the authority to license, regulate, and tax businesses and occupations within the Town pursuant to C.R.S. § 31-15-501(1)(c) and other applicable law.
- b. It is the intent of the Town that all persons doing business within the Town do so in a manner that is lawful and protective of public health, safety, and welfare.
- c. It is the intent of the Town that all persons doing business within the Town adhere to applicable zoning, building, and health codes, and that businesses remit all applicable taxes, including sales taxes, to taxing authorities.
- d. Recent changes in Colorado law require that local governments streamline sales tax and business licensing for businesses that have no physical presence or only incidental physical presence in local taxing jurisdictions.
- e. The Town currently maintains a contractor licensure provision under Chapter 5.04. Because the Town has limited personnel and expertise administering contractor licensure, it concludes that Chapter 5.04 as written should be repealed, it being understood that contractors doing Business in the Town are subject to business licensure under this amended Chapter 5.04.
- f. The Town currently maintains licensure provisions for peddlers, solicitors, and transient merchants pursuant to Chapter 5.12. Changes to state law have made these provisions out of date. It is the intention of the Town that those persons previously regulated under Chapter 5.12 will be regulated under Chapter 5.04 to the extent provided in this ordinance.
- g. The Town expresses the policy that business license fees reflect, as much as possible, the minimum amounts necessary to defray costs to the Town of administering the licensing program. Business license fees are not intended to be a general tax on business.

Therefore, the Town hereby repeals existing Chapters 5.04 and 5.12 of the of the De Beque Municipal Code and replaces those chapters with the following new Chapter 5.04:

#### CHAPTER 5.04 GENERAL BUSINESS LICENSING

##### 5.04.010 Definitions

A. The following definitions apply to this Chapter:

1. Applicant. The term "Applicant" means the person or entity applying for a business license under this Chapter.
2. Business. The term "Business" means any enterprise carried out by a person, firm, or legal entity (*e.g.*, a corporation, limited liability company, partnership, trust, joint venture, or other entity) for the purpose of economic gain or profit, except that the acts of a person providing labor or services for an employer shall not be within this definition.
3. Business in the Town. The term "Business in the Town" means performing or providing services involving a physical presence, including selling, leasing, renting, delivering, or installing tangible personal property, real property, products, or services for use or consumption within the Town of De Beque. The term Business in the Town includes, but is not limited to: i) maintaining a building, store, office, warehouse, facility, or similar business premises within the Town; ii) sending employees, agents, contractors, or sales persons into the Town to solicit business, or to install, repair, or assist in the use of products or provide services; iii) maintaining one or more employees, agents, or salespersons within the Town; iv) owning, leasing, renting, or exercising control over real or personal property sales within the Town; v) a retailer who makes more than one delivery or engages in more than one transaction within the Town in any twelve (12) month period; or vi) making retail sales sufficient to meet the definition of economic nexus as set forth in Chapter 4.08.
4. Incidental Physical Presence. The term "Incidental Physical Presence" means, with respect to Business in the Town, any combination of activities that occurs infrequently and is not regularly scheduled within the ordinary course of an individual or entity's business activities.
5. Licensee. The term "Licensee" means the person or entity holding a business license issued under this Chapter.
6. Licensing Official. The term "Licensing Official" means the Town Manager, Town Clerk, or a designee charged with administering this Chapter.
7. Premises. The term "Premises" means the location within the Town where a business licensed under this Chapter is carried out.

5.04.020 Business License Required: Exemptions

A. Except as provided in this Chapter, any person wishing to conduct Business in the Town, on either a temporary or permanent basis, shall first apply for and obtain a business license, paying in advance the full amount of the business license fee. It is unlawful to conduct Business in the Town without first obtaining a business license, except as otherwise provided in this Chapter.

B. Persons who engage in business and who have either, i) no physical presence in the Town, or ii) an incidental physical presence within the Town will be issued a business license by the Town for no additional cost, provided that the person has a State Standard Retail License (if applicable) issued pursuant to C.R.S. § 39-26-103 and the person is not otherwise subject to license denial under this Chapter.

C. The following are exempt from licensure under this Chapter: i) seasonal stands selling fresh farm products; ii) occasional businesses operated by persons under eighteen (18) years of age, (e.g., children's food or drink stands); iii) occasional or informal sales that are not a part of a person's regular trade, business, or profession, (e.g., garage sales, that are conducted no more than five (5) days in any calendar year); iv) oil and gas operations or facilities; v) enterprises regulated by the Colorado Public Utilities Commission; vi) incidental business activities undertaken by charitable or non-profit organizations (e.g., a church bake sale, fundraiser, or the like).

D. Additionally, the following activities are not subject to licensure under this Chapter: i) political campaigns seeking to promote, oppose, or raise funds for any candidate, initiative, or matter of public concern; ii) petitioning activities seeking signatures for any ballot question or referendum; or iii) solicitations for the benefit of any non-profit cause, religious faith, or charity.

5.04.030 Application, Submittals, Approval

A. Persons wishing to obtain a business license shall submit an application to the Town containing the following:

1. The name and address of the applicant, telephone number, email address, trade name, and type of business entity of the applicant (with proof of entity status, e.g., *Secretary of State proof of incorporation*);

2. The premises address;

3. A description of the type of business;
  4. A copy of the applicant's Colorado standard retail license;
  5. Any other information deemed necessary by the licensing official to process the application, including, but without limitation, information concerning municipal code compliance, zoning compliance for the business premises, parking compliance, hours of operation, health code compliance, building code compliance, fire code compliance, access requirements, and any other state, federal, or Town licensure requirements.
- B. A business license application shall be executed by the applicant or its authorized agent, who shall certify that all statements contained in the application are true and correct to the best of the applicant's knowledge, information, and belief.
- C. An application is complete when the application form and all supplemental information required by the Town are provided by the applicant, the document is signed, and the applicable business license fee is paid to the Town. If the licensing official determines that an application is incomplete the licensing official will promptly notify the applicant in writing of the material(s) that must be submitted.
- D. Except as provided in Section 5.04.050(B), a complete application shall be approved or denied within ten (10) business days of submittal of a complete application.

5.04.040 Grounds for License Denial

- A. An application under this Chapter may be denied if the licensing official determines that one or more of the following apply:
1. False, inaccurate, or misleading statements are made in the application or in supporting documents;
  2. There are uncured ordinance violations at the premises that are the subject of the application, including but not limited to, violations of zoning, building, health code, or fire code provisions;
  3. Any federal, state, or local permits or licenses necessary for the lawful operation of the business have expired, been revoked, or denied; *e.g.*, sales tax licenses;

4. The applicant failed to pay any applicable Town fees, fines, or charges owing with respect to the subject business premises; or

5. The use proposed for the business premises would be a violation of zoning provisions.

B. A license for a person doing business who either does not have a physical presence in the Town, or who has only an incidental physical presence in the Town may be denied if the Town has previously revoked a business license held by that person due to a violation of Town ordinances.

C. If a license is denied the licensing official shall notify the applicant in writing of the action and the reasons for the denial. The license fee is nonrefundable in the event of a denial.

5.04.050 General Performance Standards

A. An applicant who wishes to operate more than one business from a single premises within the Town may do so, provided that: i) all businesses and business activities are properly disclosed in the application and approved by the licensing official; and ii) a separate business license is issued for each business. An applicant who operates the same business from more than one premises within the Town may operate under a single license, provided that all business locations are properly disclosed in the application and approved by the licensing official.

B. New business license applications shall be reviewed by the licensing official for conformity with applicable planning and zoning ordinances. Where a license applicant may require further planning or zoning review, the licensing official shall not issue the license until such time as the applicant has obtained all necessary planning or zoning approvals. Planning and zoning review is not required at the time of license renewal unless there has been a change to the nature of the business or the licensed premises.

C. Every business licensee is responsible for operating at all times in compliance with applicable planning or zoning ordinances of the Town.

D. Every business licensee shall pay when due all applicable taxes and fees owing to the Town.

E. Business licenses shall be displayed prominently at all licensed premises.

F. All businesses licensed under this Chapter shall operate subject to, and in compliance

with, applicable federal, state, and local laws, building codes, fire codes, wastewater permits, food service permits, and the terms and conditions of the business license. All businesses licensed under this Chapter shall at all times have a valid certificate of occupancy for all licensed business premises.

G. If the business license applicant is not the owner of the location where the business is to be located the applicant shall submit a written consent form executed by the record property owner.

H. Licenses issued under this Chapter shall continue on a year-to-year basis, expiring and commencing on December 31 and January 1 of each year, respectively.

5.04.060 License Fees

A. If applicable, business license fees are due and payable at the time of application and, thereafter, no later than January 15 of each calendar year, or the next business day thereafter. Business license fees are calculated at the rate established by the Board of Trustees from time to time by resolution. If a licensee operates from multiple business premises, the license fee shall be the approved fee multiplied by the total number of business premises. Failure to pay annual license fees is grounds for revocation.

B. Business license fees not paid within (30) days of the due date are subject to a late fee equal to fifty percent (50%) of the amount due. Commencing sixty (60) days from the date the business license fee is due, all unpaid fees shall accrue interest at the rate of eight percent (8%) per annum until paid in full.

C. All business license fees are non-refundable.

5.04.070 Assignment or Transfer Prohibited: Application Following Sale or Transfer of Business

A. Licenses issued under this Chapter shall not be assigned or transferred to any person or entity not named in the license. Persons who are not named as the licensee shall not conduct business at the licensed premises, nor shall a license issued under this Chapter authorize doing business at any other premises not identified in the license.

B. Upon the sale, conveyance, or transfer of a business or the transfer of an interest in an entity representing fifty one percent (51%) or more of the ownership of the business, the new owner or transferee shall, within thirty (30) days of the completion of the sale or transfer, apply for a new business license.

5.04.080 License Renewal

A license may be renewed automatically in January of each year, provided that: i) the business is in operation; ii) there are no violations of this Chapter or of the terms of the license; and iii) all applicable fees are paid. If the licensing official is not satisfied that these conditions have been met, the licensee will be notified by issuance of a notice of violation, as otherwise provided in Section 5.04.100.

5.04.090 Grounds for Revocation

A. The following shall be grounds for business license revocation:

1. False, inaccurate, or misleading statements made by the applicant in the application for a business license or in any supporting documentation;
2. Ordinance violations, including, but without limitation, violations of this Chapter, violations of zoning/planning, sign, building, health, fire code, or other ordinances by the licensee at the business location which are not corrected within the allotted time period following issuance of notice of violation to the licensee;
3. The expiration, revocation, or denial of any federal, state, or local licenses or permits necessary for the legal operation of the business;
4. Failure by the licensee to pay any Town charges, fees, fines, or assessments that are owing;
5. Failure by the licensee to obtain or maintain a sales tax license, failure to collect or remit sales tax, or violations of the sales or use tax laws, if applicable; or
6. The use of the licensed premises for any unlawful purpose or enterprise, or the maintenance of a public nuisance, as defined by Colorado law.

5.04.100 Revocation Procedure

A. Prior to revocation, the licensing official shall issue a written notice of violation describing the nature of the violation(s) and allowing the licensee a period of not less than (30) days in which to correct or abate same. The abatement period may be extended by the licensing official upon a showing of good cause. The notice shall also inform the licensee that the license will be revoked not less than thirty (30) days from the date of notice if the violation is not corrected within that period.

B. The notice of violation shall be personally served, delivered by certified or first-class U.S. mail, or courier addressed to the last known address of the licensee.

C. The licensee may request a hearing contesting the reasons for revocation by delivering a written request to the licensing official any time prior to the effective date of the license revocation, as stated in the notice of violation. Failure to timely request a hearing shall be a waiver of the right to a hearing. A timely request for a hearing shall result in the revocation being stayed until completion of the hearing.

D. Cure by the licensee of all violations identified in the notice of violation within the cure period shall result in the license continuing in full force and effect.

E. Hearings shall be conducted informally and shall be presided over by a hearing officer designated by the Town. The licensee and the licensing official shall each be permitted to offer any evidence, testimony, or exhibits in support of their respective positions.

F. The decision of the hearing officer shall be issued in writing and delivered to the licensing official and the licensee. In the decision the hearing officer may sustain the revocation of the license, overturn the revocation of the license, or re-issue the license subject to those conditions as may be appropriate based on the evidence and the administrative record.

5.04.110 Judicial Review

A. Persons adversely affected by a final licensing decision under this Chapter may appeal the final decision of the Town by commencing a judicial action in the district court in and for Mesa County pursuant to C.R.C.P. 106 in the manner otherwise provided by law. An appeal under this section shall be filed no later than thirty (30) days from the date of the final action or decision of the Town. The appeal shall be based on review of the administrative record before the Town, which shall promptly assemble and transmit same to the court following filing of the action.

B. The appealing party shall have the burden of proof before the court. The court shall: i) presume that the decision issued under this Chapter is valid; and ii) determine only whether or not the decision is arbitrary, capricious, or illegal.

5.04.120 Enforcement

A. Violations of this Chapter may be punishable or enforced in the manner provided by Colorado law for enforcement of municipal ordinance violations, and/or by civil action to enjoin or abate the violations. Proof of violation of this Chapter shall be sufficient to obtain an injunction, which shall be issued without the posting of bond by the moving party. In the event the Town commences civil enforcement it may recover against the violator the Town's reasonable attorney fees and court costs, together with any other form or type of relief.


B. It is unlawful for any person to operate a business in violation of the provisions of this



Chapter, and any such violation shall be deemed a Class B municipal offense and punishable accordingly. Every day in which a violation of this Chapter occurs shall be deemed a separate and distinct violation.

Approved by the Board of Trustees this 27 day of June, 2023. This ordinance shall take effect thirty (30) days from the date of publication.

TOWN OF DE BEQUE BOARD OF TRUSTEES:

  
Shanelle Hansen, Mayor

6-27-23  
Date

ATTEST:

  
Lisa Rogers, Town Clerk

06/27/2023  
Date



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