City of Las Cruces®
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Council Action and Executive Summary

Item # 4 **Ordinance/Resolution#** 2707

For Meeting of March 3, 2014 (Ordinance First Reading Date)

For Meeting of March 17, 2014 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE TO REPEAL LAS CRUCES MUNICIPAL CODE 1997, ARTICLE IV, BUSINESS REGISTRATION AND LICENSING, DIVISION 1, *GENERALLY,* SECTIONS 16-96 THROUGH 16-125, AND DIVISION 2, *BUSINESS REGISTRATIONS,* SECTIONS 16-126 THROUGH 16-165; AND, TO ENACT A NEW LAS CRUCES MUNICIPAL CODE 1997, SECTIONS 16-96 THROUGH 16-165.

PURPOSE(S) OF ACTION:

To enact new business registration ordinances.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Monica Campbell	**Department/Section:** Legal/City Attorney	**Phone:** 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In September 2013 the City received notice of a lawsuit entitled *Texico Conference of Seventh Day Adventists, et al. v. City of Las Cruces*, United States District Court, District of New Mexico, Cause No. 13-cv-855. The lawsuit alleged that the City's business registration ordinances (LCMC 1997, Sec. 16-96, et seq.; and LCMC 1997, Sec. 16-126, et seq.) were unconstitutional under state and federal constitutions. The Plaintiffs and their attorneys brought to the attention of City staff that parts of the Business Registration and Licensing ordinance were capable of being ambiguously interpreted.

More specifically, the current ordinance is uncertain as to its application to churches and other non-profit organizations. The Plaintiffs, in the Complaint for Declaratory and Injunctive Relief, stated vagueness and ambiguity in the ordinance which results in civil rights and constitutional violations such as significant delays in the right to religious speech and association, no time limit for approval or denial of a business registration application, no provision for the due process of a timely administrative hearing, and no appeal or review in the event a business registration application is denied. In addition, it was contended the City Clerk had unconstitutional authority to require any information the Clerk desired from an applicant.

(Continue on additional sheets as required)

The repeal of the current Business Registration and Licensing ordinance means that the City will be rid of various ambiguities which may contain possible constitutional violations.

More specifically, a new ordinance will provide definitions that are non-ambiguous, detail the status of non-profit organizations, and require any non-profit individual, group, entity or organization to notify the City of its location and activities to ensure compliance with applicable fire, building and other City codes and ordinances. It further specifies the City's public safety in use of buildings by any business, profit or non-profit.

During conferences and settlement discussions the parties in the litigation, subject to City Council approval, reached a proposed agreement to enact a new Business Registration and Licensing ordinance. The City Council approved settlement of the above litigation and the enactment of a new Business Registration and Licensing ordinance during a closed meeting held on January 6, 2014.

SUPPORT INFORMATION:

1. Ordinance.
2. Attachment "A", changes to business registration ordinances in legislative format.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
N/A	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____ for FY__.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

(Continue on additional sheets as required)

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will enact a new Business Registration and Licensing ordinance as approved by the City Council during the closed meeting on January 6, 2014.
2. Vote "No"; this will mean that no new business registration ordinances will be enacted which could compromise the agreed-to settlement of the lawsuit.
3. Vote to "Amend"; this could compromise the agreed-to settlement of the lawsuit.
4. Vote to "Table"; this could compromise the agreed-to settlement of the lawsuit.

REFERENCE INFORMATION:

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

COUNCIL BILL NO. 14-022
ORDINANCE NO. 2707

AN ORDINANCE TO REPEAL LAS CRUCES MUNICIPAL CODE 1997, ARTICLE IV, BUSINESS REGISTRATION AND LICENSING, DIVISION 1, *GENERALLY,* SECTIONS 16-96 THROUGH 16-125, AND DIVISION 2, *BUSINESS REGISTRATIONS,* SECTIONS 16-126 THROUGH 16-165; AND, TO ENACT A NEW LAS CRUCES MUNICIPAL CODE 1997, SECTIONS 16-96 THROUGH 16-165.

The City Council is informed that:

WHEREAS, in September 2013 the City received notice of a lawsuit entitled *Texico Conference of Seventh Day Adventists, et al. v. City of Las Cruces*, United States District Court, District of New Mexico, Cause No. 13-cv-855; and

WHEREAS, the lawsuit alleged that the City's business registration ordinances (LCMC 1997, Sec. 16-96, et seq.; and LCMC 1997, Sec. 16-126, et seq.) were unconstitutional under state and federal constitutions; and

WHEREAS, the Plaintiff and its attorneys brought to the attention of City staff that a portion of the business registration ordinance sections were capable of being ambiguously interpreted; and

WHEREAS, during conferences and settlement discussions the parties reached an agreement to enact new business registration ordinances that would enhance or add definitions, comply with applicable fire, building, and other city codes and ordinances, and specify the status of non-profit organizations; and

WHEREAS, the City Council approved the settlement of the above litigation and the enactment of new business registration ordinances during a closed meeting held on January 6, 2014.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT Article IV, Division I of LCMC 1997, consisting of Sections 16-96, 16-97, 16-98, and 16-99, and Sections 16-100 through 16-125; and, Article IV, Division II, consisting of Sections 16-126, 16-127, 16-128, 16-129, 16-130, 16-131, 16-132, 16-133, 16-134, 16-135, 16-136, 16-137, 16-138, and Sections 16-139 through 16-165 be and the same hereby are repealed.

(II)

THAT a new Article IV, Division I of LCMC 1997, consisting of Sections 16-96, 16-97, 16-98, and 16-99, and Sections 16-100 through 16-125, is hereby enacted as follows:

ARTICLE IV. BUSINESS REGISTRATION AND LICENSING

DIVISION I. GENERALLY

Sec. 16-96. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Amusement hall means any arcade building or premises having as its primary business the providing of mechanical or electronic amusement devices, including but not limited to the following: pinball machines, electronic or video games of skill or chance, claw or scoop machines, jukeboxes, or coin-operated table games. Any establishment having less than three mechanical or electronic amusement devices shall not be defined as an amusement hall for the purpose of this article.

Business means any commercial activity or enterprise for financial gain, benefit, advantage or livelihood, whether or not such financial gain, benefit, advantage or

livelihood actually is earned or realized. *Business* does not include individuals, entities, groups or organizations exempted under Section 16-128(6) and that comply with Section 16-139 or Section 16-140.

Business license means the authorization to conduct specific types of businesses as listed and described in Division 3 [Businesses to be Licensed] of this article.

Business registration means the authorization to conduct a business from a permanent physical location, as described in Division 2 [Business Registration] of this article.

Canvasser, solicitor or peddler means persons who sell either goods or services or goods for the purpose of resale without a permanent physical location within the city. This shall include door-to-door sales. This does not include the activities of persons who sell solely to other businesses.

Communitywide event means a community celebration which, by longstanding custom or by mayoral proclamation, is characterized by outdoor and indoor retail special sales throughout the community. It includes but is not limited to the Whole Enchilada Fiesta, the Renaissance Art Fair, Arte de Picante and the Fourth of July celebration.

Conduct; carry on means engage in, carry on, own, maintain, manage or operate any business, trade, profession, employment, occupation or any commercial, industrial or professional pursuit, vocation or enterprise in this city.

Kiddy ride carnival and exhibits means any carnival or exhibits consisting exclusively of rides and exhibits for children with no amusement devices other than such rides, nor games of chance or skill, and not operating past the hour of 10:00 p.m.

Outdoor special event means a temporary sales event of not more than three days by an individual business or group of businesses held outdoors and adjacent to the building from which the sales are normally conducted.

Part-time artist means any individual that practices any of the fine arts for a limited duration as a means to supplement income (amount not to exceed $1,000.00 per annum). The term includes only fine arts associated with painting, sculpting, and music.

Place of business means the premises, whether it be a personal residence, main business location or an outlet, branch or other location thereof, temporary or otherwise, to which the public is expressly or impliedly invited for the purpose of transacting business. In the event there is no such location, but the business is transacted or service provided at the location of the buyer, then the general sales area within the city shall be considered a *Place of business*.

Red tag means a notice located on a business establishment to notify the general public that the business or building is hazardous to the health, safety and welfare of the occupant or the community. Business may not be conducted until the public hazard is removed from the premises, or a hearing is held to consider the revocation of a permit.

Rummage sale means the sale of used goods or hand-crafted goods donated to or by a church, school or fraternal organization or preschool exempt from taxation as nonprofit, conducted on the premises of the entity involved.

Small business means any business who employs 20 or less employees, including home occupations.

Special event means a single event for business or community promotion sponsored by one or more businesses or organizations for a period of more than one day and not to exceed two weeks, where the promoter or promoters provides adequate parking, private patrol officers or police protection, and a list of participants to the Community Development Department. The term includes arts and crafts fairs, producers' or farmers' markets, and the like, and outdoor sales at special events.

Temporary outside displays and sales means the display or sale of goods or merchandise not in or from an enclosed permanent building to be conducted for no more than 21 days at a single location one time in a calendar year. The restricted time period does not apply to fireworks sales during allowable sales periods. Fireworks are permitted to be sold from temporary outside display and sales areas during the time period defined by Sections 11-147(b) and (e).

Tent sales or activities means those under a canopy, temporary structure, enclosure or shelter constructed of fabric or pliable material. Tents, canopies and temporary membrane structures shall not be used for a period of more than 21 days at a single location one time in a calendar year. This only includes tent sales that would reduce the number of parking spaces available.

Yard sales means the sale of household personal property at sales identified as yard sales, garage sales, moving sales, etc., which are permitted no more than three times per year as provided in Chapter 38. There is no charge for this type of outdoor sale.

Sec. 16-97. Revocation of license.

(a) If a person is required to obtain a license or registration as provided in this article and has violated any of the sections of this article or any other city ordinance relating thereto or whenever, in the judgment of the City Manager, the public welfare shall require it, any license issued to such person by the city may be revoked. If a business has a red tag and the building is deemed hazardous to the health, safety and welfare of the occupant or the community, business shall not be conducted during the appeal process unless and until the public hazard has been eliminated from the premises.

(b) No such license shall be revoked until the Community Development

Department Director or his/her designee notifies the holder of the license in writing that the revocation is pending and will become final in 30 days, unless the revocation is stayed by filing a request for a hearing with the Community Development Department to appeal the decision. The City Council will act as the board for hearing such license hearing appeals. If no appeal request is filed within the 30-day notification period, the revocation decision shall become final.

Sec. 16-98. Effect of other licensing provisions.

Whenever other licensing provisions of this Code differ from the provisions of this article, the provisions in this Code applicable to the specific type of license addressed shall take precedence.

Sec. 16-99. Violation and penalty.

The violation of any section of this article shall be punishable as provided in Section 1-10.

Secs. 16-100—16-125. Reserved.

(III)

THAT a new Article IV, Division II, consisting of Sections 16-126, 16-127, 16-128, 16-129, 16-130, 16-131, 16-132, 16-133, 16-134, 16-135, 16-136, 16-137, 16-138, 16-139, 16-140 and Sections 16-141 through 16-165 be enacted to read as follows:

DIVISION 2. BUSINESS REGISTRATION

Sec. 16-126. Purpose.

The purpose of this division is to provide for the necessary regulation and registration of lawful businesses being conducted within the City of Las Cruces to protect the public health, safety, and welfare of the people of the City of Las Cruces.

Sec. 16-127. Fees.

(a) Business registration fees shall not be prorated.

(b) There is required on each place of business within the city a business registration fee of $35.00 per year.

Sec. 16-128. Exemptions.

No business registration fee, and in the case of subsection (6) below, no business registration requirement, shall be imposed on the following:

(1) Any business which is licensed as a business pursuant to NMSA 1978, § 3-38-1 and as listed in the schedule in Division 3 [Businesses to be Licensed] of this article. Any person who operated under the same name two or more businesses, one or more of which requires a business license and one or more of which does not require a business license, shall obtain a separate registration or license and shall pay a separate fee for each business.

(2) Those businesses otherwise exempt by law.

(3) A person who is a sanctioned and registered athletic official who officiates for any association or organization which regulates any public school activity and whose rules and regulations are approved by the State Board of Education.

(4) A business which has no place of business location inside the boundaries of the city, even though the business may do business within the city.

(5) A part-time artist whose prior year proceeds from the sale of their artwork through consignment with other licensed businesses does not exceed $1,000.00.

(6) Subject to the notification requirement in Section 16-139 or 16-140, any individual, group, entity, or organization recognized as non-profit under the Internal Revenue Code, including without limitation, churches, temples, synagogues, mosques,

and other places of worship.

Sec. 16-129. Term.

A business registration is effective until the last day of the month one year from the initial application approval or the renewal date. Renewal is required within six weeks of the expiration date, without penalty.

Sec. 16-130. Application.

Any person filing an application for issuance or renewal of any business registration or license shall include the following information:

(1) The exact nature or kind of business for which a registration or license is requested.

(2) The form of business enterprise under which the business is to be conducted, i.e. sole proprietorship, partnership, limited partnership or corporation.

(3) The place where such business is to be carried on, and if the business is not to be carried on at any permanent place of business, the places of residences of the owners of the business.

(4) The name, other than the name of the applicant, under which the business will be operating, if any.

(5) The time of operation during the full 24-hour period and days of the week.

(6) The names of all owners of the business; if the owner is a corporation or partnership, the application shall state the names of the president, chief executive officer, or general partners thereof only.

(7) The applicant's current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number.

(8) Square footage of the building, number of employees, average number of

occupants, and such similar information that the City of Las Cruces Development Department may require to enable it to issue or renew a business registration or license.

Sec. 16-131. Application to do business; initial application fee payment.

Any person proposing to engage in business within the city limits shall apply for and pay a registration fee for each place of business within the city limits prior to engaging in business.

Sec. 16-132. Transferability.

No registration issued pursuant to this division shall be transferable from one business to another, nor from one person conducting the same business. A family-owned business, transferred to an immediate family member, is an exception and may be transferred during the calendar year.

Sec. 16-133. Renewal period; notice of renewal.

Any business subject to renewal provisions of this section, shall complete the renewal application and submit the required fee within the specified renewal period. The renewal period shall be six weeks prior to the date of expiration of each registration.

The Community Development Department shall mail notice of renewal six weeks prior to expiration date of the registration, typically the 15th day of the month or the next available business day.

Sec. 16-134. Late registration or renewal; penalty.

Any business that fails to obtain the appropriate registration pursuant to the terms of this chapter, or fails to renew an existing registration shall pay a late fee of $10.00. This penalty shall be in addition to all other fees imposed by this article. No business registration shall be issued until the person applying for such registration has paid all prior registration fees due the city.

Sec. 16-135. Display.

The Community Development Department shall provide a suitable certificate of registration or license to be furnished to each place of business included in this article. Such certificate of registration shall be displayed at the place of business for which such registration or license is issued. Solicitors and similar licensees shall carry the license on their person while engaging in the business for which such license is issued.

Sec. 16-136. Duplicates.

A duplicate certificate of registration or license may be issued by the Community Development Department to replace any such registration or license issued which has been lost or destroyed, if the person to whom it was issued files a sworn statement attesting to the fact of such loss or destruction and pays a duplication fee of $5.00.

Sec. 16-137. Proper business location; relocation.

No registration or license shall be issued unless and until the application for such registration or license provides the Community Development Department with the address of the proposed location from which business will be conducted. The Community Development Department shall cause inspection of the facilities, and buildings at the location shall meet all applicable building and fire codes and zoning restrictions currently in force within the city. Businesses shall not be permitted to open until all city department inspections are complete and approved and fees have been paid. The Community Development Department may issue a temporary registration or license to a business while the applicant is bringing the location to current building, zoning or fire code requirements, i.e., parking lot delay. Registration may be revoked if the applicant cannot correct the deficiency. If a business relocates during a currently paid registration time frame, a $10.00 processing fee will be charged to review the new

location, excluding home occupation businesses relocating from one residence to another within the city limits. Such relocation will not change the renewal date for the business.

Sec. 16-138. Offenses; penalties; procedure not exclusive.

(a) It shall be unlawful for any person to engage in, conduct or carry on any business or occupation within the city without first registering the business or occupation or obtaining a license thereof, and without first paying the fees required.

(b) It shall be unlawful for any person to knowingly file an application for issuance or renewal of any business registration or license on which any of the information required has been falsified.

(c) Any person violating this section shall be notified by Codes Enforcement that they are in violation of this section.

(d) A notice may be placed on the entrance of any business stating that the business is in violation of the business registration ordinance, to notify the public on the status of the business.

(e) A red tag of the business can be issued, if the building is deemed hazardous to the health, safety and welfare of the occupants or the community.

(f) The remedies provided in this section are not exclusive, and if any person engages in business in the city without obtaining the required registration or license for such business, the city may proceed in any manner authorized by law, including specifically but not limited to the procedures set forth in NMSA 1978, §§ 3-38-5 and 3-38-6.

Sec. 16-139; Non-profits; notification required.

(a) Any individual, group, entity or organization recognized as non-profit under

the Internal Revenue Code and not required to register as a business under Section 16-128(6) shall within seven days of taking occupancy of any physical structure, other than a personal residence, not otherwise subject to the notice, registration or licensing requirements of this Chapter, provide the following information to the Community Development Department on the form available for such notification;

(1) The name of the individual, group, entity or organization;

(2) The address of the individual, group, entity or organization;

(3) Dates and times of operation;

(4) Point of contact for the group, entity or organization; and

(5) The basis for claiming non-profit status.

(b) The notification required under this section shall be made on a one-time basis, unless:

(1) such individual, group, entity, or organization changes physical locations, in which event notification shall be provided within seven days of that change in location unless that new location is otherwise subject to the notice, registration or licensing requirements of this Chapter; or

(2) such individual, group, entity or organization commences a substantially new activity or enterprise in the location, in which event supplemental notification shall be provided within 30 days of the commencement of such new activity or enterprise. However, to the extent that the non-profit would have to pay gross receipts tax for the activity or enterprise, then the entity would have to register that specific activity or enterprise as a business.

(c) The purpose for the non-profit providing the information described is to allow the City of Las Cruces to ensure that the structure occupied by the notifying non-

profit and the activities conducted within such structure comply with applicable fire, building, and other city codes and ordinances.

Sec. 16-140; Existing non-profits; compliance required.

Any individual group, entity, or organization recognized as non-profit under the Internal Revenue Code and not required to register as a business under Section 16-128(6) that presently occupies a physical structure not otherwise subject to registration or licensing requirements of this Chapter, shall within 180 days following the adoption of Section 16-139 comply with the notification requirement set forth in Section 16-139.

Secs. 16-141—16-165. Reserved.

(IV)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED on this _____ day of _____, 20____.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Levatino: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

City Attorney

Attachment "A"

ARTICLE IV. BUSINESS REGISTRATION AND LICENSING

DIVISION I. GENERALLY

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mayoral proclamation, is characterized by outdoor and indoor retail special sales throughout the community. It includes but is not limited to the Whole Enchilada Fiesta, the Renaissance Art Fair, Arte de Picante and the Fourth of July celebration.

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Red tag means a notice located on a business establishment to notify the general public that the business or building is hazardous to the health, safety and welfare of the occupant or the community. Business may not be conducted until the public hazard is removed from the premises, or a hearing is held to consider the revocation of a permit.

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Special event means a single event for business or community promotion sponsored by one or more businesses or organizations for a period of more than one day and not to exceed two weeks, where the promoter or promoters provides adequate parking, private patrol officers or police protection, and a list of participants to the Community Development Department. The term includes arts and crafts fairs, producers' or farmers' markets, and the like, and outdoor sales at special events.

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Yard sales means the sale of household personal property at sales identified as yard sales, garage sales, moving sales, etc., which are permitted no more than three times per year as provided in Chapter 38. There is no charge for this type of outdoor sale.

Sec. 16-97. Revocation of license.

(a) If a person is required to obtain a license or registration as provided in this article and has violated any of the sections of this article or any other city ordinance relating thereto or whenever, in the judgment of the City Manager, the public welfare shall require it, any license issued to such person by the city may be revoked. If a business has a red tag and the building is deemed hazardous to the health, safety and welfare of the occupant or the community, business shall not be conducted during the appeal process unless and until the public hazard has been eliminated from the premises.

(b) No such license shall be revoked until the Community Development Department Director or his/her designee notifies the holder of the license in writing that the revocation is pending and will become final in 30 days, unless the revocation is stayed by filing a request for a hearing with the Community Development Department to appeal the decision. The City Council will act as the board for hearing such license hearing appeals. If no appeal request is filed within the 30-day notification period, the revocation decision shall become final.

Sec. 16-98. Effect of other licensing provisions.

Whenever other licensing provisions of this Code differ from the provisions of this article, the provisions in this Code applicable to the specific type of license addressed shall take precedence.

Sec. 16-99. Violation and penalty.

The violation of any section of this article shall be punishable as provided in Section 1-10.

Secs. 16-100—16-125. Reserved.

DIVISION 2. BUSINESS REGISTRATION

Sec. 16-126. Purpose.

The purpose of this division is to provide for the necessary regulation and registration of lawful businesses being conducted within the City of Las Cruces to protect the public health, safety, and

welfare of the people of the City of Las Cruces.

Sec. 16-127. Fees.

(a) Business registration fees shall not be prorated.

(b) There is required on each place of business within the city a business registration fee of $35.00 per year.

Sec. 16-128. Exemptions.

No business registration fee, and in the case of subsection (6) below, no business registration requirement, shall be imposed on the following:

(1) Any business which is licensed as a business pursuant to NMSA 1978, § 3-38-1 and as listed in the schedule in Division 3 [Businesses to be Licensed] of this article. Any person who operated under the same name two or more businesses, one or more of which requires a business license and one or more of which does not require a business license, shall obtain a separate registration or license and shall pay a separate fee for each business.

(2) Those businesses otherwise exempt by law.

(3) A person who is sanctioned and registered athletic official who officiates for any association or organization which regulates any public school activity and whose rules and regulations are approved by the State Board of Education.

(4) A business which has no place of business location inside the boundaries of the city, even though the business may do business within the city.

(5) A part-time artist whose prior year proceeds from the sale of their artwork through consignment with other licensed businesses does not exceed $1,000.00.

(6) Subject to the notification requirement in Section 16-139 or 16-140, any individual, group, entity, or organization recognized as non-profit under the Internal Revenue Code, including without limitation, churches, temples, synagogues, mosques, and other places of

worship.

Sec. 16-129. Term.

A business registration is effective until the last day of the month one year from the initial application approval or the renewal date. Renewal is required within six weeks of the expiration date, without penalty.

Sec. 16-130. Application.

Any person filing an application for issuance or renewal of any business registration or license shall include the following information:

(1) The exact nature or kind of business for which a registration or license is requested.

(2) The form of business enterprise under which the business is to be conducted, i.e. sole proprietorship, partnership, limited partnership or corporation.

(3) The place where such business is to be carried on, and if the business is not to be carried on at any permanent place of business, the places of residences of the owners of the business.

(4) The name, other than the name of the applicant, under which the business will be operating, if any.

(5) The time of operation during the full 24-hour period and days of the week.

(6) The names of all owners of the business; if the owner is a corporation or partnership, the application shall state the names of the president, chief executive officer, or general partners thereof only.

(7) The applicant's current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number.

(8) Square footage of the building, number of employees, average number of

occupants, and such similar information that the City of Las Cruces Development Department may require to enable it to issue or renew a business registration or license.

Sec. 16-131. Application to do business; initial application fee payment.

Any person proposing to engage in business within the city limits shall apply for and pay a registration fee for each place of business within the city limits prior to engaging in business.

Sec. 16-132. Transferability.

No registration issued pursuant to this division shall be transferable from one business to another, nor from one person conducting the same business. A family-owned business, transferred to an immediate family member, is an exception and may be transferred during the calendar year.

Sec. 16-133. Renewal period; notice of renewal.

Any business subject to renewal provisions of this section, shall complete the renewal application and submit the required fee within the specified renewal period. The renewal period shall be six weeks prior to the date of expiration each registration.

The Community Development Department shall mail notice of renewal six weeks prior to expiration date of the registration, typically the 15th day of the month or the next available business day.

Sec. 16-134. Late registration or renewal; penalty.

Any business that fails to obtain the appropriate registration pursuant to the terms of this chapter, or fails to renew an existing registration shall pay a late fee of $10.00. This penalty shall be in addition to all other fees imposed by this article. No business registration shall be issued until the person applying for such registration has paid all prior registration fees due the city.

Sec. 16-135. Display.

The Community Development Department shall provide a suitable certificate of registration or

license to be furnished to each place of business included in this article. Such certificate of registration shall be displayed at the place of business for which such registration or license is issued. Solicitors and similar licensees shall carry the license on their person while engaging in the business for which such license is issued.

Sec. 16-136. Duplicates.

A duplicate certificate of registration or license may be issued by the Community Development Department to replace any such registration or license issued which has been lost or destroyed, if the person to whom it was issued files a sworn statement attesting to the fact of such loss or destruction and pays a duplication fee of $5.00.

Sec. 16-137. Proper business location; relocation.

No registration or license shall be issued unless and until the application for such registration or license provides the Community Development Department with the address of the proposed location from which business will be conducted. The Community Development Department shall cause inspection of the facilities, and buildings at the location shall meet all applicable building and fire codes and zoning restrictions currently in force within the city. Businesses shall not be permitted to open until all city department inspections are complete and approved and fees have been paid. The Community Development Department may issue a temporary registration or license to a business while the applicant is bringing the location to current building, zoning or fire code requirements, i.e., parking lot delay. Registration may be revoked if the applicant cannot correct the deficiency. If a business relocates during a currently paid registration time frame, a $10.00 processing fee will be charged to review the new location, excluding home occupation businesses relocating from one residence to another within the city limits. Such relocation will not change the renewal date for the business.

Sec. 16-138. Offenses; penalties; procedure not exclusive.

(a) It shall be unlawful for any person to engage in, conduct or carry on any business or occupation within the city without first registering the business or occupation or obtaining a license thereof, and without first paying the fees required.

(b) It shall be unlawful for any person to knowingly file an application for issuance or renewal of any business registration or license on which any of the information required has been falsified.

(c) Any person violating this section shall be notified by Codes Enforcement that they are in violation of this section.

(d) A notice may be placed on the entrance of any business stating that the business is in violation of the business registration ordinance, to notify the public on the status of the business.

(e) A red tag of the business can be issued, if the building is deemed hazardous to the health, safety and welfare of the occupants or the community.

(f) The remedies provided in this section are not exclusive, and if any person engages in business in the city without obtaining the required registration or license for such business, the city may proceed in any manner authorized by law, including specifically but not limited to the procedures set forth in NMSA 1978, §§ 3-38-5 and 3-38-6.

Sec. 16-139; Non-profits; notification required.

(a) Any individual, group, entity or organization recognized as non-profit under the Internal Revenue Code and not required to register as a business under Section 16-128(6) shall within seven days of taking occupancy of any physical structure, other than a personal residence, not otherwise subject to the notice, registration or licensing requirements of this Chapter, provide the following information to the Community Development Department on the form available for

such notification;

(1) The name of the individual, group, entity or organization;

(2) The address of the individual, group, entity or organization;

(3) Dates and times of operation;

(4) Point of contact for the group, entity or organization; and

(5) The basis for claiming non-profit status.

(b) The notification required under this section shall be made on a one-time basis, unless:

(1) such individual, group, entity, or organization changes physical locations, in which event notification shall be provided within seven days of that change in location unless that new location is otherwise subject to the notice, registration or licensing requirements of this Chapter; or

(2) such individual, group, entity or organization commences a substantially new activity or enterprise in the location, in which event supplemental notification shall be provided within 30 days of the commencement of such new activity or enterprise. However, to the extent that the non-profit would have to pay gross receipts tax for the activity or enterprise, then the entity would have to register that specific activity or enterprise as a business.

(c) The purpose for the non-profit providing the information described is to allow the City of Las Cruces to ensure that the structure occupied by the notifying non-profit and the activities conducted within such structure comply with applicable fire, building, and other city codes and ordinances.

Sec. 16-140; Existing non-profits; compliance required.

Any individual group, entity, or organization recognized as non-profit under the Internal

Revenue Code and not required to register as a business under Section 16-128(6) that presently occupies a physical structure not otherwise subject to registration or licensing requirements of this Chapter, shall within 180 days following the adoption of Section 16-139 comply with the notification requirement set forth in Section 16-139.

Secs. 16-141—16-165. Reserved.