CHAPTER FOUR: BUSINESS ACTIVITIES

Subchapter One: Business Registration and Registration Tax

4.01.010 Purpose.

The purpose of this ordinance is to provide for the establishment and levying of registration taxes for the transaction and carrying on of certain businesses, trades, professions, callings and occupations in the Town of Colma. This ordinance is enacted solely to raise revenue for municipal purposes, and is not intended for regulation.

[*History*: ORD. 281, 1/12/83; ORD. 591, 1/9/02]

4.01.020 Definitions.

For purposes of this ordinance, the following words and phrases shall have the respective meanings shown:

"Business" means professions, trades, occupations and all and every kind of callings carried on for profit or livelihood.

"Do Business" or "Doing Business." A person or entity shall be deemed to be doing business in the Town of Colma if said person or entity has a fixed place of business in the Town or said person or entity is repeatedly and successively transacting, engaging in, or carrying on any business within the Town other than for a specific job, task or assignment of a limited duration or description. Signs, circulars, cards, telephone listings, newspapers, advertisements, or other representations that a person or entity is in business in the Town shall constitute substantial evidence that said person or entity is doing business with the Town of Colma. The failure of a person or entity to deny by sworn statement given to the Tax Collector or the designated representative thereof that said person or entity is not doing business within the Town, after such statement is requested by the Tax Collector or the designated representative thereof, shall constitute substantial evidence that said person or entity is doing business within the Town of Colma.

"Tax Collector" means the City Clerk or other person designated to fill that position by resolution of the City Council.

"Fixed Place of Business" means the premises occupied in the Town of Colma for the particular purpose of conducting a business thereat and regularly keep open for that purpose.

"Employee" means all persons engaged in the operation, work or conduct of any business, whether as owner, any member of the owner's family, partner, agent, manager, solicitor and any and all other persons employed or working in said business.

[*History*: ORD. 281, 1/12/83; ORD. 369, 5/11/88; ORD. 591, 1/9/02]

4.01.030 Registration and Tax Required.

No person shall transact, engage in, or do any business within the city without first having procured a license from the city to so do and having paid the tax hereinafter prescribed, and having complied with any and all applicable regulations concerning the use and occupancy of the premises from which the business is to be conducted.

[*History*: ORD. 281, 1/12/83; ORD. 591, 1/9/02]

4.01.040 Exclusions and Exemptions.

(a) *Interstate Commerce and State Law.* Nothing in this ordinance shall be deemed or construed to cast an undue burden upon a person or entity's right to engage in commerce with foreign nations or among several states. Nothing in this ordinance shall be deemed or construed to interfere with other rights protected by the United States Constitution nor shall this ordinance apply in any way to conflict with statutes or regulations of the United States of America or the State of California.

(b) *Event Exemptions.* The Tax Collector may grant an exemption to fund-raising events, exhibits, entertainment, lectures or meetings held for the exclusive benefit of any association, society or corporation organized and operating for any charitable, religious, educational or scientific purpose.

(c) *Categorical Exemptions:* Notwithstanding anything to the contrary herein, the following businesses, trades or professions shall be exempt from the provisions of this ordinance and shall not be required to register and pay a business registration tax:

(1) A corporation organized and operating under section 501(c)(3) of the Internal Revenue Code;

(2) A Vending Vehicle, as that term is defined in section of Section 4.04.010(g) of the Colma Municipal Code, provided said vending vehicle has fully complied with Subchapter Four of Chapter Four of this Code and provided further that said vending vehicle does not operate out of a fixed place of business in the Town of Colma;

(3) A Small Family Day Care Home, as that term is defined in California Health and Safety Code Section 1596.78;

(4) Taxi cab, provided that the taxi cab is not operating from a fixed place of business within the Town of Colma.

(d) *Exclusions.* The following is a non-exclusive list of businesses, trades or professions that are excluded from the provisions of this chapter by virtue of the definition of "doing business," and shall not be required to register or pay a business registration tax:

(1) Contractors and subcontractors not based in Colma, not soliciting repeated work in Town, and just working on a single, one-time construction project within the Town of Colma;

(2) Instructors and teachers hired by the Town to provide specialized classes or counseling; and

(3) Any person or entity possessing a franchise granted by the Town.

[*History*: ORD. 281, 1/12/83; ORD. 591, 1/9/02]

4.01.050 Procedures.

(a) *How to Register.* The owner or operator of each business doing business in the Town of Colma must register with the Town by providing in a sworn statement or declaration under penalty of perjury the following information on a form to be provided by the Tax Collector:

(1) The exact nature or kind of business being registered;

(2) The place where such business is to be carried on and, if the same is not to be carried on at any permanent place of business, the places of residence of the owners of same;

(3) In the event the registration is for a person doing business under a fictitious name, the registration shall set forth the names and places of residence of those owning said business;

(4) In the event the registration is for a corporation or partnership, the registration shall set forth the names and places of residence of the officers and partners thereof;

(b) *Time to Register.* The owner or operator of each business to which this ordinance applies must file a registration statement within thirty days of first becoming covered by this ordinance, and not later than January 31 each year thereafter.

(c) *Town to Issue Certificate.* Upon receipt of the prescribed registration statement and registration tax, the Tax Collector shall issue to such person a Certificate of Registration which shall contain the following information:

(1) The name of the person or entity to whom the registration is issued;

(2) The business registered;

(3) The place where such business is to be transacted and carried on;

(4) The date of the expiration of such registration; and

(5) Such other information as may be necessary for the enforcement of the provisions of this chapter.

(d) *Posting and Keeping the Certificate of Registration.* Each registrant transacting and carrying on business at a fixed place of business in the Town shall keep the Certificate of Registration posted in a conspicuous place upon the premises where such business is carried on.

(e) *Display of Certificate.* Each registrant transacting and carrying on business but not operating in a fixed place of business in the Town shall keep the Certificate of Registration upon his person at all times while transacting and carrying on the business for which it is issued. When a Certificate of Registration is issued pursuant to this ordinance for a vehicle used to do business within the Town of Colma, said Certificate of_Registration shall be kept in or about the said vehicle, when said vehicle is engaged in doing business within the Town.

(f) *Tax Payment Due; Delinquent Dates.* All registration taxes due hereunder shall be paid in advance, in the lawful money of the United States of America, at the office of the City Clerk of the Town of Colma, and shall be due and payable, and delinquent as follows:

(1) Daily registration, due on its effective date and delinquent at 5:00 p.m. on the due date;

(2) Three-month registration, due on the first day of the period for which the certificate is sought and delinquent on the fifth (5th) day after the certificate is due;

(3) Annual registration, due on the first day of January and delinquent at 5:00 p.m. on January 31.

(g) *Pro-Rated Tax.* Where the initial registration is issued other than at the beginning of the calendar year, the amount of the registration tax shall be prorated to December 31 next ensuing; provided, however, that the amount of the registration tax in that case shall be no less than one-half (½) of the amount required for an annual registration applicable to the registrant.

(h) *Refunds.* In the event the registrant relinquishes its annual Certificate of Registration prior to the end of the period for which a registration tax has been paid and a Certificate of Registration issued, a refund may be made by the Tax Collector. Such refund shall only be made upon submission by the registrant of written statement indicating a relinquishment of the certificate and accompanied by all copies of the certificate and facsimiles thereof issued to him by the Tax Collector. The refund shall include repayment of taxes paid for the period during which the business will not be in operation. A request for refund must be made within the time limits specified in Chapter One, Subchapter 14 of the Colma Municipal Code.

(i) *Registration Period.* No registration certificate shall be issued for a period of more than twelve (12) months. No annual certificate shall be issued for any period beyond December 31.

(j) *Two or More Businesses at a Location.* In the event a person or entity engages in two or more businesses at one location within the Town, each business must be separately_registered and must pay a registration tax;

(k) *Duplicate Certificate of Registration.* A duplicate Certificate of Registration may be issued by the Tax Collector to replace any Certificate previously issued which has been lost or destroyed, upon the registrant filing a declaration under penalty of perjury attesting to such fact, and at the time of such filing of such declaration paying to the Tax Collector the sum of $2.00.

(l) Transfer of Certificate of Registration. No Certificate of Registration issued under any provision of this ordinance shall be in any manner transferred or assigned, nor shall such Certificate authorize any person, other than the person named in the Certificate, to carry on the business therein named, or to transact such business in any place other than the place or location therein named, without express approval of the Tax Collector, which approval shall not be unreasonably withheld, and payment of a fee of $5.00 for each assignment or transfer by the person requesting such transfer or assignment.

[*History*: ORD. 281, 1/12/83; ORD. 591, 1/9/02]

4.01.060 Enforcement.

(a) *Police Inspection.* All duly appointed and qualified police officers of the Town are hereby appointed inspectors and, in addition to their various duties as police officers, are hereby required to examine all places of business and persons to ascertain whether or not such places of business and persons have a proper and sufficient Certificate of Registration, and they shall have and exercise the power:

(1) To make arrests for violation of any provision of this ordinance;

(2) To enter any place of business for which a Certificate of_Registration is required and to demand the exhibition of such certificate for the current term by any person engaged or employed in the transaction of such business, and a failure to exhibit such certificate constitutes a violation of this ordinance and shall subject such person to the penalty herein provided;

(3) To cause complaints to be filed against all persons violating any of the provisions of this ordinance;

(4) To report to the Tax Collector all persons carrying on business who are not registered pursuant to the provisions of this ordinance.

(b) *Delinquent Taxes.* To all delinquent taxes there shall be added a penalty of ten per cent (10%) of the amount of tax due for the period, and an additional ten per cent (10%) for each month delinquent thereafter, providing that the amount of any penalty shall in no event exceed fifty per cent (50%) of the registration tax due.

(c) *Tax and Penalty a Debt.* The amount of any registration tax and penalty imposed by the provisions of this ordinance shall be deemed a debt to the Town of Colma, and any person carrying on any business without first having procured a Certificate of Registration from the Town to do so shall be liable to an action in the name of the Town in any court of competent jurisdiction for the amount of the registration tax and penalties imposed upon such business.

(d) *Mistake.* In no case shall any mistake made by the Town in stating the amount of a registration tax prevent or prejudice the collection by the Town of what shall be actually due from anyone carrying on a business subject to a registration tax under this ordinance.

(e) *Misdemeanor.* Any person who carries on a trade, calling, business, profession or occupation specified in this ordinance without Certificate of Registration as required shall be deemed guilty of a misdemeanor, which shall be punishable as set forth in section 1.05.010 et seq.

(f) *Violation a Nuisance.* Violations of any of the provisions of this ordinance are hereby declared to be a public nuisance.

[*History*: ORD. 281, 1/12/83; ORD. 591, 1/9/02, ORD. 643, 4/12/06]

4.01.070 Tax Rate.

All persons or entities doing business in the Town of Colma must pay, at the time of registration, the Business Registration Tax below. Any dispute regarding the applicable categories shall be resolved by the Tax Collector with said decision being subject to appeal as set forth in section 4.01.070.

(a) Christmas Tree Lots shall pay a tax of $10 for up to three months per year;

(b) All other business shall pay a tax of $25 per year.

[*History*: ORD. 281, 1/12/83; ORD. 591, 1/9/02]

4.01.080 Appeal.

Any decision made by the Tax Collector with respect to this_ordinance may be appealed by any interested party to the city council in accordance with the procedures set forth in section 1.02.140 of the Colma Municipal Code.

(a) *Classification by Tax Collector.* The Tax Collector shall review all applications for business s registration submitted by applicants for business s registration. If the Tax Collector determines that information is inaccurate, the Tax Collector shall notify the applicant in writing of the Tax Collector's determination and intention to amend the application in accordance with the determination made.

(b) *Application.* Any person or entity claiming to be entitled to exemption from payment of any of the d registration fees provided for in this ordinance shall file a verified statement with the Tax Collector, disclosing the character of the business which gives rise to such exemption. Such statement shall contain the name and location of the company or firm which is entitled to the exemption, the name of the nearest local or state manager, if any, and his address, the kind of goods, merchandise or services to be delivered, the place from which the same are to be shipped or forwarded, the method of solicitation or taking orders, the location of any warehouse, factory or plant within the State of California, the method of delivery, the name and location of the residence of applicant and any other facts necessary to establish such claim of exemption. A copy of the order blank, contract, form or other papers used by such person in taking orders shall be attached to the application for the information of the Tax Collector. The person or entity claiming the exemption shall provide additional information in support of its claim upon request of the Tax Collector.

(c) *Opportunity to Respond.* If the applicant disputes the Tax Collector's determination, the applicant must submit, within ten (10) days of receipt of the written notice of determination by the Tax Collector, a written objection to the Tax Collector's determination. Upon receipt of such written objection, the Tax Collector shall consider the merits of the applicant's objection. If the Tax Collector does not receive a written objection within said ten-day period, the determination shall become final and binding on the applicant.

(d) *Notice of Final Determination.* Within five (5) days after receipt of the applicant's written objection, the Tax Collector shall notify the applicant, in writing, whether or not the Tax Collector's intended determination is final.

(e) Appeal. If the applicant filed a written objection within the time limit set forth above and objects to the Tax Collector's final determination, the applicant may appeal the final determination to the City Council by filing a notice of appeal within twenty (20) days after receiving notice of the Tax Collector's final determination. This notice of appeal shall set forth the merits of the applicant's position.

(f) *Hearing.* Upon receipt of the applicant's notice of appeal, the City Council shall set the appeal for hearing on a date not later than thirty (30) days after said notice of appeal was filed. At said hearing the City Council shall hear evidence presented by the applicant supporting its position. The City Council shall promulgate rules and regulations controlling the procedure of said hearing.

(g) *Appeal from Determination of Tax Due.* Within thirty (30) days after the receipt of a determination by the Tax Collector that a specific amount of tax is due and owing, the taxpayer may appeal the Tax Collector's determination. This appeal shall be made by filing a notice of appeal with the City Council within thirty (30) days after the receipt of the determination of the tax due. Within thirty (30) days of receipt of such notice of appeal, the City Council shall set the matter for hearing at which time the Council shall hear evidence in support of the taxpayer's position in accordance with rules and regulations promulgated to control procedure of such a hearing.

[*History*: ORD. 281, 1/12/83; ORD. 521, 12/10/97; ORD.591, 1/9/02]

4.01.090 Compliance with Other Requirements; Gambling Establishments.

(a) A person required to pay a business tax under this ordinance shall not be relieved from the payment of any tax for the privilege of doing such business required under any other provision of the Colma Municipal Code.

(b) A person or entity required to register under this ordinance shall remain subject to the regulatory provisions of other provisions of the Colma Municipal Code, including but not limited to all zoning and land use regulations.

(c) A gambling establishment shall be required to register with the Tax Collector in accordance with the terms of this ordinance, but in lieu of the registration tax imposed herein, the gambling establishment shall pay the taxes set forth in the Cardroom Ordinance (Subchapter 9 of Chapter 4 of the Colma Municipal Code). A gambling establishment shall continue to be subject to regulations specified in the Cardroom Ordinance, (Subchapter 9 of Chapter 4 of the Colma Municipal Code).

[*History*: ORD. 281, 1/12/83; ORD. 591, 1/9/02]