

CITY OF MORIARTY  
ORDINANCE NO: 2007-01

**AN ORDINANCE IMPOSING A BUSINESS LICENSE FEE, PROVIDING FOR THE  
REGULATION OF CERTAIN BUSINESSES; REPEALING ORDINANCE #130 IN GENERAL**

**ARTICLE 1 – GENERAL PROVISIONS**

**SECTION 1 – DEFINITIONS**

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

*Business* means any profession, trade or occupation and all and every kind of calling whether or not carried on for profit.

*Non-profit business* shall mean those corporations for which a Certificate of Incorporation or a Certificate of Authority under the New Mexico Non-Profit Corporation Act has been issued by the New Mexico Public Regulatory Commission or those organizations exempt from the federal income tax pursuant to section 501(c)(3) of the United States Internal Revenue Code as amended or renumbered; provided, however, the term “non-profit business” shall not include an “unrelated trade or business” of such organizations as the latter term is defined in section 513 of the United States Internal Revenue Code , as amended or renumbered. In order to qualify as a non-profit business under this Ordinance, the corporation shall register with the City and provide proof of its non-profit status to the City.

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

*Place of business* means any location, building or portion thereof or premises in which or from which a business is carried on. The term includes but is not limited to an office, warehouse, yard, location where books and records are kept, the location from which business is solicited.

**SECTION 2 – PURPOSE**

The City Council finds and declares that the licensing and regulation of the businesses enumerated in this Article are conducive to the promotion of the health, general welfare and safety of the public.

**SECTION 3 – LICENSE REQUIRED**

It shall be unlawful for any person to engage in the following businesses, professions or trades as defined in Section 4 of the ordinance within the corporate limits of the City of Moriarty without first obtaining a license as resolved herein and pursuant to Section 3-38-1 NMSA 1978 as amended. Provided, however, that no non-profit business shall be required to obtain any license unless otherwise required under Ordinance 2007-01.

**SECTION 4 – LICENSE FEE IMPOSED ON LISTED BUSINESSES**

The stated license fees are imposed upon the following businesses when conducted within the city, in lieu of and not in addition to the registration fee assessed pursuant to ORDINANCE NO: 129-B. Provided, however, that no non-profit business shall be required to pay any license fee otherwise required under Ordinance 2007-01. Every business shall pay in advance (for each location) the respective amount hereinafter set forth (fees are annual unless otherwise noted):

Amusement Halls	\$25.00
Auctions, per event	\$25.00
Carnival or circus, except kiddie ride carnivals, per day*If recognized by Moriarty City Council as being sponsored by a sanctioned non-profit organization, the fee for carnivals and circuses shall be \$15.00 per day	\$100.00
Fairs, cattle shows, horse shows, rodeos, auto shows, dog shows, etc	\$25.00
Itinerant Vendor	\$25.00
Outdoor concerts, Traveling Exhibitions for profit, per day	\$100.00
Transient Vendor – per day	\$ 15.00
Wholesalers	\$25.00

**ARTICLE 2 – AMUSEMENT HALLS**

**SECTION 1 - DEFINITION**

*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. Pool rooms and billiard parlors not having more than three mechanical or electronic amusement devices shall not be defined as an amusement hall for the purposes of this Ordinance.

**ARTICLE 3 - ITINERANT VENDOR LICENSING**

**SECTION 1 – DEFINITION**

*Itinerant Vendor* means any person engaged or employed in any business of retailing to consumers by going from house to house, place to place or from street to street, and there soliciting, selling or offering to sell, or exhibiting for sale, (by sample, by catalogue, or otherwise), or taking orders for future delivery of any goods, wares or merchandise, or for services to be performed in the future.

Examples of Itinerant Vendor include but not limited to the following: door to door sales; Schwans Trucks; Hot Dog & Ice Cream Carts; construction service trades such as electricians, plumbers, etc that are not registered as required by Ordinance #129-B.

**SECTION 2- APPLICATION REQUIREMENT**

It is unlawful for any itinerant vendor to engage in business within the limits of the city without first obtaining a license therefore in compliance with the provisions herein set forth. All itinerant vendors shall apply to the city on a form supplied by the City.

### SECTION 3 – LOCATION/OPERATION OF ITINERANT VENDOR

Itinerant Vendors may operate in all areas of the City. However, no vendor shall enter any premises or attempt to solicit, sell, offer to sell or exhibit for sale where the owner or occupant of such premises has indicated his desire not to be contacted for sales or solicitations by the placing of a “no solicitors” or “no peddlers” sign on those premises, visible to persons approaching or entering onto the premises.

## ARTICLE 4- TRANSIENT VENDOR LICENSING

### SECTION 1 – STATEMENT OF POLICY

The City of Moriarty recognizes that Transient Vendors operate a legitimate business under the law. Nonetheless, inherent in the operation of that business are unique regulatory concerns for the City. For example, Transient Vendors often attempt to sell their products from private property which can provoke unnecessary confrontations between the vendors and landowners, thereby consuming valuable police resources. Additionally, unlike Itinerant Vendors, who often sell products on behalf of established entities, Transient Vendors sell products they own. The transient nature of their business makes subsequent prosecutions for any potentially fraudulent sale more difficult and more of a burden on police resources. Transient Vendors, by setting up stalls on streets, in parking lots, and on sidewalks, can cause traffic, safety and aesthetic problems for the City, and can require additional garbage collection activity. Finally, the transient nature of their business requires that licensing be on a daily basis. For all these reasons, the City finds that added costs and regulatory burden caused by Transient Vendors requires a daily license fee to defray the additional costs of promoting safety, regulating traffic, and maintaining the aesthetic values of the City.

### SECTION 2 - DEFINITION

*Transient Vendor* is a person engaged in the sale or distribution of goods, food or services, from any nonpermanent stand, structures, display racks or from vehicles situated on public or private property or in commercial parking lots. Any person so engaged shall be considered a Transient Vendor regardless of the operation of such activity and regardless of whether the person operates a business at a permanent location within the city, with the following exceptions:

1. Any business operating at a permanent location which temporarily displays its products or wares on land immediately adjacent to its own land shall not be considered a Transient Vendor, even if the display encroaches upon the City’s property or right of way.
2. Any person or business which sells goods, food, or services at a Special Event shall not be considered a Transient Vendor .
3. Any person or business which would otherwise be considered a Transient Vendor, but which is entirely engaged in the selling or distribution of written material, shall instead be considered an Itinerant Vendor and shall obtain the necessary license and pay the necessary fee provided for in that section.
4. Any person conducting garage sales, as allowed by the Comprehensive Zoning Ordinance shall not be considered a Transient Vendor.
5. Any church, school, sports team or similar group holding a fundraising event shall not be considered a Transient Vendor

Examples of Transient Vendor include but not limited to the following: Green chili vendor; Christmas tree sales; temporary firework stands or displays, etc.

*Special Event* is any privately or publicly sponsored advertised activity that takes place in a City Park or any other property owned by the City of Moriarty to which the general public is invited for the purpose of recreation, culture or entertainment, and at which food or beverages may be available.

### SECTION 3- APPLICATION REQUIREMENTS

It is unlawful for any transient vendor to engage in business within the limits of the city without first obtaining a license therefore in compliance with the provisions herein set forth. All transient vendors shall apply to the city on a form supplied by the City.

*Transient Vendors shall also provide:*

- (1) Written permission from the owner or management of the property of the proposed location of the transient vendor operation.
- (2) Transient vendors selling food or drink shall first be required to obtain any permit or approval from the New Mexico Environment Department which that department deems necessary.

### SECTION 4- LOCATION/OPERATION OF TRANSIENT VENDORS

Transient Vendors are conducting a retail commercial activity and therefore the location must be compatible with the Moriarty Zoning Table of Land Uses. Transient Vendors shall not engage in business on public or city property without the express written consent of the City, if consent is granted, the business shall comply with insurance requirements of the City.

The City finds that operation of Transient Vendors at nighttime presents a potentially dangerous condition, both for the vendors and the motoring public. Therefore, Transient Vendors may operate only from dawn until dusk of each day, and shall not store, park or leave any stand at any other time on any public property or land.

Facilities and equipment used by Transient Vendors shall be constructed and used in a safe manner.

Transient Vendors shall keep the area of operation and adjacent area free of debris and shall clean the area thoroughly upon ceasing operations. Transient Vendors dispensing good or drink items shall provide at least one trash container for use by patrons.

Transient vending operations shall be permitted only at locations where they do not obstruct visibility of motorists at street, alley or driveway intersections. Only one Vendor per contiguous lot, per property owner, will be allowed. A vendor may not locate any apparatus, (1) within five feet of any doorway except in the case of transient vending operations conducted by businesses adjacent thereto, or (2) within 15' of a fire hydrant.

Transient vending facilities located in parking lots shall be located 15' from any traffic or fire lane and shall be situated to minimize pedestrian traffic across such lanes.

## ARTICLE 5 – APPLICATION

Applicants for licenses under this ordinance must file with the Clerk, a sworn application in writing, on a form to be furnished by the Clerk, which shall include, but is not limited to the following information:

- A. name;
- B. address;

- C. current revenue division taxpayer identification number or evidence of application for a current revenue division identification number;
- D. a brief description of the nature of the business;
- E. written permission from property owner, when applicable

**ARTICLE 6 – BUSINESS LICENSE FEES- ASSESSMENT-ISSUANCE OF LICENSE**

On or before March 1<sup>st</sup> of each year, all businesses engaging in a type of business enumerated under Article 1, Section 4 of this ordinance shall apply for a business license for that year and include payment with the application.

Upon payment of the business license fee, the Clerk shall issue a business license to the applicant.

Any business may protest the business license fee assessment by filing a written protest with the City Clerk on or before March 1<sup>st</sup>. The City Council shall give the protesting business no less than 5 days notice of a hearing at which time the protest shall be heard by the Council.

Any business, which must have a business license per this ordinance, and which begins operation after March 1 of the calendar year, shall apply to the City Clerk for a business license prior to engaging in business.

**ARTICLE 7- ENFORCEMENT**

The municipality may enforce payment of the Business License Fee by filing a charge of violation of this Ordinance in municipal court, as well as by any of the other means provided in Section 3-38-5 NMSA 1978.

**ARTICLE 8 – REPEAL OF CONFLICTING ORDINANCES**

All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

**ARTICLE 9 – EFFECTIVE CLAUSE**

The ordinance shall take effect after passage or publication as provided by law.

**ADOPTED THIS 26<sup>th</sup> DAY OF June, 2007.**

  
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Adan M. Encinias, Mayor

ATTEST:  
  
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Linda Focher, City Clerk

