

TOWN OF SAN ANSELMO

ORDINANCE NO. 937

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF SAN ANSELMO, REPEALING CHAPTER 1 OF TITLE 6 OF THE SAN ANSELMO MUNICIPAL CODE, CURRENTLY ENTITLED "BUSINESS LICENSING" AND ENACTING IN ITS PLACE A NEW CHAPTER 1 OF TITLE 6 OF THE SAN ANSELMO MUNICIPAL CODE

The San Anselmo Town Council does hereby ordain as follows:

Section 1. Chapter 1 of Title 6 of the San Anselmo Municipal Code, currently entitled "Business Licensing" is hereby repealed, and there is hereby enacted in their place a new Chapter 1 of Title 6, entitled "Business Licenses", which is to read as set forth in "Exhibit A," hereto attached and incorporated by reference.

Section 2. The foregoing ordinance was read and introduced at a regular meeting of the San Anselmo Town Council on December 22, 1992, and was thereafter duly adopted at a regular meeting of the Town Council held on January 12, 1993, by the following vote:

AYES: Breen, Chignell, Zaharoff, Chignell

NOES: (None)

ABSENT: (None)

ABSTAIN: Yarish



MAYOR GUS KANIS

ATTEST:



CAROLINE FOSTER, TOWN CLERK

EXHIBIT A
CHAPTER 1. BUSINESS LICENSES

Section 6-1.01 Definitions.

For purposes of this chapter, unless it is plainly evident from the context that a different meaning is intended, the following terms used in this chapter are defined as follows:

(a) "Business" means all professions, trades, occupations, gainful activities, and all and every kind of calling, whether or not carried on for profit in the Town.

(b) "Town" means the Town of San Anselmo.

(c) "Collector" means the Town Administrator, or his/her designee.

(d) "Gross Receipts" means the total amount of the sale price of all sales and the total amount charged or received for the performance of any act or service of whatever nature for which a charge is made or credit allowed, whether such act or service is done as a part on in connection with the sale of materials, good, wares, or merchandise. Gross receipts, as used in this chapter, shall mean the gross receipts of the year preceding the beginning of the annual license period.

Included in gross receipts shall be all receipts, cash, credits, and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever. Excluded from gross receipts shall be:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold;

3. Any tax required by laws to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of property returned by purchases upon rescission of the contract of sale as is refunded either in cash or by credit;
5. Amounts collected for others where the business is acting as an agent or trustee, to the extent that such amounts are paid to those for whom collected and provided the agent or trustee has furnished the collector with the names and addresses of the others and the amounts paid to them;
6. That portion of gross receipts which has been the measure of a license tax paid to any other entity for sales transacted outside the incorporated area of the Town, provided it fairly represents an apportionment of the taxable activity conducted in the taxing jurisdictions.

(e) "Peddler" means any hawker, vendor or other person who goes from house to house or from place to place or in or along the streets within the Town selling and making immediate delivery or offering for sale and immediate delivery any goods, wares, merchandise or any thing of value in his/her possession to persons other than manufacturers, wholesalers, jobbers or retailers in such commodities.

(f) "Person" means all domestic and foreign corporations, associations, syndicates, joint stock corporations, partnerships of every kind, clubs, merchandise, business, or common-law trust, societies and individuals transacting and carrying on any business in the Town other than as an employee.

(g) "Retail trade" means every business conducted for the purpose of selling or offering to sell any goods, wares, or merchandise, other than as a part of a "wholesale business" as defined in subsection (j) of this section.

(h) "Solicitor" means a person engaged in soliciting, canvassing, or taking orders from house to house or from place to place or by telephone or by any other means of communication for any goods, wares, merchandise, or any article to be delivered in the future or for services to be performed in the future or making, manufacturing, or repairing any article whatsoever for future delivery or for subscriptions to periodicals or tickets of admission to entertainment or memberships in any clubs.

(i) "Sworn statement" means an affidavit sworn to before a person authorized to take oaths or a declaration or certification made under penalty of perjury.

(j) ""Wholesale and manufacturing trade" means every business conducted solely for the purpose of selling or manufacturing goods, wares or merchandise in wholesale lots for resale.

Section 6-1.02 Business License Required.

Subject to the provisions of this chapter, there is imposed upon all business transacted in the Town, a business license tax in the amounts provided in this chapter.

(a) It is unlawful for any person to commence, transact, engage in, or carry on any business in the Town without first having obtained a valid license and paid the license tax, or without complying with any and all applicable provisions to this chapter. Compliance with such requirements shall not be construed to be a condition precedent to engaging in any business or corporation within the Town where the imposition of such a condition precedent would be contrary to law.

(b) When any person shall by use of signs, circulars, cards, telephone book, or newspapers, advertise, hold out, or represent that he/she is in business in Town, or when any person holds an active license or permit issued by a governmental agency indicating that

he/she is in business in Town, and such person fails to deny by a sworn statement given to the collector that he/she is not conducting a business in Town, after being requested to do so by the collector, then these facts shall be considered prima facie evidence that he/she is conducting a business in Town.

6-1.03 Intent--Revenue Measure.

The ordinance codified in this chapter is enacted solely to raise revenue for general governmental purposes in accordance with Revenue and Taxation Code Section 7284 and is not intended to license or tax for regulation.

6-1.04 License Subject to Other Regulations and Fees.

(a) Persons required to pay a license tax for transacting or carrying on any business under this chapter shall not be relieved from the payment of any fees for the privilege of carrying on any similar or related activity required under any other ordinance of the Town and shall remain subject to the regulatory provisions of other ordinances.

(b) No person shall be entitled to a business license, and the collector shall not issue a business license to any person commencing business, unless and until said person shall have complied with all applicable Town ordinances.

(c) No license shall be issued covering any food or drink dispensing establishment or restaurant, until the applicant has obtained clearance from the Marin County Department of Public Health.

6-1.05 Proportionality.

Nothing contained in this chapter shall be deemed to impose a tax which does not fairly reflect that portion of the taxed activity actually carried on within the Town.

6-1.06 License and Penalties Constitute Debt to Town.

The amount of any license tax and penalty imposed by the provisions of this chapter shall be deemed a debt to the Town. Any action may be commenced in any court of competent jurisdiction for the amount of any delinquent license tax and penalties.

6-1.07 Application Procedure.

Every person required to have a license under the provisions of this chapter shall make application for the same to the collector providing such information and in such manner as may be required by the collector.

6-1.08 Statement of Gross Receipts.

In all cases where the amount of the license tax to be paid is measured by gross receipts, the applicant for a license shall furnish to the collector a sworn statement setting forth such information as is required and as may be necessary to determine the amount of the license tax to be paid by the applicant.

Upon making application for the first license to be issued hereunder, or for a newly established business, a person shall estimate the gross receipts for the period to be covered by the license to be issued. Such estimate, if accepted by the collector as reasonable, shall be used in determining the amount of license tax to be paid by the applicant.

The applicant for renewal of a license shall submit to the collector a sworn statement setting forth such information concerning the applicant's business and a copy of the first page of the applicant's State/Federal tax return filed during the preceding year and/or any other relevant information as may be required by the collector to enable her/him to ascertain the amount of the license tax to be paid by the applicant.

6-1.09 Separate License for Each Place or Type of Business.

A separate license must be obtained for each branch establishment or location of the business transacted and carried on and for each separate type of business at the same location and each license shall authorize the licensee to transact and carry on only the business licensed thereby at the location or in the manner designed in such license; provided that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this chapter shall not be deemed to be separated places of business or branch establishments; and provided further that any person conducting two or more types of business at the same location and under the same management, or at different locations, but which businesses use a single set or integrated set of books and records may, at the licensee's option, pay only one tax calculated on all gross receipts of the businesses under the schedule that applies to the type of business of such person which requires the highest payment on such gross receipts, except that a license fee of \$5.00 for each additional branch, location, or type of business shall be paid upon issuance.

6-1.10 Information Confidential.

The collector or any of his/her authorized representatives shall not disclose in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person required to obtain a license or pay a license tax under the provisions of this chapter or divulge the amount or source of income, profits, losses, expenditures, or any particular thereof set forth in any statement or application, or permit any statement or application, or copy of either, or any other document relating thereto which contains specific information as to the amount or source of income or expenditures of any person obtaining a license, to be seen or examined by any person. Nothing in this section shall be construed to prevent the disclosure to, or auditing of accounts of the collector, federal or state officials, or a grand jury or court of law upon subpoena or in a proceeding to determine the existence or amount of any license tax liability of the particular licensee. The disclosure of the names and addresses of persons to whom license

have been issued and the general type of their business, together with general statistics regarding business taxes collected or business done in the Town, is not prohibited.

6-1.11 Failure to File Statement.

If any person subject to the tax imposed by this chapter fails to submit information required by the collector necessary to determine the license tax due and payable, or if the collector is not satisfied with the information supplied and statement filed, the collector may determine the amount of license tax due from such person by means of such information as is available.

If such determination is made, the collector shall give a notice of the amount so assessed by serving it personally or by depositing it in the United State Post Office, postage prepaid addressed to the person so assessed at the person's last known address.

6-1.12 License Tax--Persons with Fixed Place of Business in the Town.

	<u>Gross Receipts</u>	<u>Amount.</u>
\$	0. --	7,500.
	7,501. --	15,000.
	15,001. --	25,000.
	25,001. --	50,000.
	50,001. --	100,000.
	100,001. --	250,000.
	250,001. --	500,000.
	500,001. --	750,000.
	750,001. --	1,000,000.
	1,000,001. --	2,000,000.
	2,000,001. --	3,000,000.
		\$15.00.
		30.00
		45.00
		60.00
		100.00
		150.00
		300.00
		450.00
		600.00
		800.00
		1,200.00

<u>Gross Receipts.</u>		<u>Amount.</u>
3,000,001. --	4,000,000.	1,500.00
4,000,001. --	5,000,000.	2,100.00
5,000,001. --	10,000,000.	3,000.00
10,000,001. --	25,000,000.	4,500.00
25,000,000. --	and over.	4,500. +.01%

CLASSIFICATIONS

Accounting, auditing and bookkeeping services
Arts and crafts
Amusement and recreation services, including motion pictures
Architectural services
Automobile repair and services
Beauty shops, barbers, hairstylists, manicurists
Engineering services
Financial services
Insurance brokers and services
Landscape and horticultural services
Laundry, dry cleaning and garment services
Legal services
Management and public relations services
Manufacturing
Medical and health services
Privately owned and operated schools
Real estate agents, brokers, managers and services
Restaurant and retail trade
Services to buildings
Wholesale trade

6-1.13 License Tax--Persons without Fixed Place of Business in the Town.

Every person who does not have a fixed place of business within the Town and is not otherwise licensed or classified by this chapter, who delivers any service by the use of vehicles in the Town, except general and special construction contractors, shall pay a license tax as follows:

<u>Capacity</u>	<u>Rate per Vehicle.</u>
Not exceeding 1/2 ton	\$22.50
Over 1/2 ton to 1 ton	37.50
Over 1 ton to 1 1/2 ton	75.00
Over 1 1/2 ton to 2 ton	112.50
Over 2 ton to 3 ton	150.00
Over 3 ton	225.00

Every person who does not have a fixed place of business within the Town who engages in business within the Town and is not subject to the provisions of this section shall pay a license tax at the same rate prescribed in Section 6-1.12 for a fixed place of business within the Town, based on the gross receipts derived from the business transacted in the Town.

6-1.14 License Tax--Flat Rate.

Every person transacting and carrying on the business enumerated in this section shall pay a license tax as follows:

(a) Auctioneers. Auctioneers without a fixed place of business in the Town, \$500.00 per year, or at the option of the licensee, \$50.00 per day;

(b) Carnivals, Fairs. \$400.00 for the first day and \$300.00 for each additional day;

(c) Christmas Tree Lots. Every person engaged in the business of selling or offering for sale Christmas trees at retail shall pay a business license tax of \$45.00 per year;

(d) Circuses. \$750.00 for the first day and \$563.00 per day for each additional day;

(e) Commercial Leased Property. Every owner of commercial property who leases such property shall pay an annual fee of \$0.02 per square foot or a minimum of \$50.00 per year per lease, up to a maximum of \$200.00 per year;

(f) Commercial Photography and Filming. On Town roads or other Town property, or on private property in Town, as follows:

<u>Persons Employed at Location</u>	<u>Rate per Day</u>
1 - 3.	\$150.00
4 - 6.	300.00
7 - 9.	600.00
10 and over.	900.00

Traffic control costs or any additional costs as required by the police and fire department shall be paid entirely by the applicant;

(g) Contractors. Every contractor who works in Town but whose business is not in Town shall pay a quarterly fee of \$30.00 prior to beginning any work in Town. This section shall refer to all contractors or subcontractors who perform such short term services in Town, like builders, electricians, plumbers, landscapers, tree cutting and trimming, painting, etc. Every contractor whose business is located within the Town limits shall pay an annual business license fee of \$100. In addition, a contractor shall pay a gross receipts license tax at the time of taking out each permit in the Building Department at the rate of fifty cents (\$.50) per One Thousand and no/100ths (\$1,000.00) Dollars (or part thereof), computed on the amount for which the permit is issued;

(h) Living Accommodations. Every person transacting or engaged in the operation of a hotel, motel, apartment, rooming house, autocourt, house or portion of a house for rent, room for rent, second unit for rent, or other living accommodations shall pay an annual fee of \$50.00 per dwelling unit unless that unit is a registered rent control unit, then the annual fee is \$10.00;

(i) Omnibus Business. \$50.00 per year for any business activity being conducted in Town which does not logically fit into a specific category described by Sections 6-1.12, 6-1.13 and 6-1.14 of this code;

(j) Peddlers or Solicitors. \$25.00 per day, \$150.00 per quarter or \$500.00 per year;

(k) Post Office Box Businesses. \$50.00 per year for those businesses not located in Town, but transacting business via a post office box in Town;

(l) Real Estate agents, brokers, managers and services not located in Town. A business license tax of \$45.00 shall be paid by the brokerage firm once for every property of real estate sold in San Anselmo.

(m) Taxicab. \$60.00 per vehicle per year.

6-1.15 Business Classification Not Specified.

The license tax applicable to a business not expressly set forth in this chapter shall be that license fee applicable to the business expressly set forth in this chapter which, in the opinion of the collector, is most nearly comparable.

6-1.16 Payment--Due Date.

Unless otherwise specifically provided, the following shall apply:

(a) An annual license tax under the provisions of this chapter shall be due and payable in advance on the fifteenth (15th) day of April each year. If the 15th day of April falls on a Saturday or Sunday, the due date shall be the first business day after the 15th;

(b) A license tax covering a new operation commencing on January 1st to March 31st shall pay the entire business tax; from April 1st to June 30th shall pay 75 percent (75%) of the license tax; from July 1st to September 30th shall pay 50 percent (50%) of the license tax, and from October 1st to December 31st shall pay 25 percent (25%) of the license tax;

(c) A flat rate license tax shall be payable in advance of the business activity; and

(d) The collector is not required to send a renewal, delinquency, or other notice or bill to any person subject to the provisions of this chapter; and failure to send such notice or bill shall not affect the validity of any license tax or penalty due under the provisions of this chapter.

6-1.17 Penalties.

(a) For failure to pay an annual license tax when due, the collector shall add a penalty of 10 percent of said license tax on the sixteenth (16th) day of April following the due date thereof, or the first business day after the 15th of April if the 15th of April falls on a Friday or Saturday, and 10 percent on the first day of each month thereafter while the fee remains unpaid; provided that the amount of such penalty to be added shall in no event exceed 50 percent of the amount of the license tax due;

(b) Any flat rate license tax which has not been paid by 4:30 p.m. on the day due shall have added to the amount thereof a penalty of 25 percent;

(c) If any person has failed to apply for and secure a valid license to operate a business, the business license tax due shall be that amount due and payable from the first date on which the person was engaged in business in the Town together with applicable penalties;

(d) Where an audit or inspection of the books or records of a business reveals that the amount of license tax paid for any license tax period is less than the amount which was actually due pursuant to this chapter, it shall be deemed for the purposes of this section that, to the extent of such deficiency, there was a failure to pay a license tax when due. Penalties as provided in this section shall be assessed from the date when said deficiency was required to be paid pursuant to this chapter;

(e) Should court action be required to collect any license tax or penalties, the defendant shall be liable for cost of suit, including attorney's fees. The penalties shall be added to the license tax and the same shall become due and payable and collected along with the delinquent license tax; and

(f) Any person who violates any of the provisions of this chapter or knowingly or intentionally misrepresents to any officer or employee of the Town any material fact in procuring a license provided for in this chapter shall be deemed guilty of a misdemeanor or an infraction and, upon conviction thereof, shall be punishable in accordance with the law.

6-1.18 Exemption--Generally.

Nothing in this chapter shall be deemed or construed to apply to any person transacting and carrying on any business exempt by virtue of the Constitution or applicable statutes of the United States, or of the State of California.

Any person claiming an exemption pursuant to this chapter shall file a sworn statement with the collector stating the facts upon which exemption is claimed and shall furnish such information and verification as may be

required. In the absence of such statement substantiating the claim, such person shall be liable for the payment of the license tax imposed by this chapter.

The collector, after giving notice and a reasonable opportunity for hearing to a licensee, may revoke any license granted pursuant to the provisions of this action upon information that the licensee is not entitled to the exemption as provided in this chapter.

6-1.19 Exemption--Nonprofit Corporation, Association, etc.

No business license under this chapter shall be required of any nonprofit institution, corporation, organization or association organized or conducted for nonprofit purposes only, when the receipts derived are to be wholly for the benefit of such organization and not in whole or part for the private gain of any person. This exemption shall not apply to promoters employed by such nonprofit institutions, corporations or associations.

6-1.20 Exemption--Limited Income.

No business license shall be required of a person doing business and drawing social security benefits whose gross receipts do not exceed the maximum income allowed by Title 42, U. S. Code, Section 403(f)(3). Minors and adults over the age of 65 years engaged in a business with gross receipts under \$2,000 per year are not required to obtain a business license.

6-1.21 No License Transferable--Amended License for Changed Location or Owner.

No license issued pursuant to this chapter is transferable; provided that, where a license is issued authorizing a person to carry on a business at a particular place, such license may, upon application therefore and payment of a fee of \$5.00, be amended to authorize the transaction of

such business at some other location to which the business is or is to be moved. Change of ownership must be recorded by filing of application and payment of a \$20.00 fee.

Change in the name of the business must be recorded by filing of application and payment of a \$5.00 fee.

6-1.22 Duplicate License.

A duplicate license may be issued by the collector to replace any license previously issued under this chapter which has been lost or destroyed upon the licensee filing statement of such fact and, at the time of filing such statement, paying to the collector a fee of \$5.00 for a duplicate license.

6-1.23 Refunds.

No license tax collected under the provisions of this chapter shall be refundable in any manner, except that if the licensee shall establish to the satisfaction of the collection that an overpayment of the license tax has been made, and within a period of one year from the day on which the overpayment was made, a claim is filed with the collection for refund of such overpayment, the collector may refund the amount so overpaid.

6-1.24 Posting and Keeping Licenses.

Any licensee transacting and carrying on a business at a fixed place of business in the Town shall keep a license posted in a conspicuous place upon the premises where such business is carried on.

Any licensee transacting and carrying on business but not operating in a fixed place of business in the county shall keep the license upon his/her person at all times while on such business in the Town.

6-1.25 Enforcement.

(a) It shall be the duty of the collector to enforce the provisions of this chapter. The police chief and the fire chief and their respective staffs shall render such assistance as may, from time to time, be required by the collector;

(b) The collector, his/her deputies or any police officer shall have the power and authority to enter, free of charge, and at any reasonable time, any place of business required to be license under this chapter, and demand an exhibition of its license certificate. Any person who has the license certificate in his/her possession or under his/her control who wilfully fails to exhibit the same on demand is guilty of a misdemeanor or an infraction, and upon conviction shall be punished in accordance with the law; and

(c) All persons subject to the provisions of this chapter shall keep complete records of business transactions, including sales receipts, purchases and other expenditures, state and federal income tax returns, including schedules and records included in such returns. Such persons shall retain such records for examination by the collector and maintain them for a period of at least three years. No person required under this section to keep records shall refuse to allow authorized representatives of the collector to examine said records at reasonable times and places.

6-1.26 Appeals.

Any person aggrieved by any decision of the collector with respect to the issuance of or refusal to issue such license may appeal to the Town Council, stating the reason(s) therefor, by filing a notice of appeal with the Town Clerk within ten (10) days of receiving notice of the collector's decision. The Council shall thereupon fix a time and place for a public hearing of such appeal. The Town Clerk shall give notice to the appellant of the time and place of hearing by serving it personally or by depositing it in the United States Post Office, postage prepaid, addressed to the

appellant at his/her last know address. the Town Council shall, after hearing, determine all questions raised by the appeal.

6-1.27 Rules and Regulations.

The collector may adopt rules and regulations which are not inconsistent with the provisions of this chapter, as may be necessary or desirable to supplement or clarify such provisions or aid in their enforcement.

The rules and regulations, if adopted, shall be known as "Business License Rules and Regulations" and shall be placed in written form and numbered consecutively. A copy of the "Business License Rules and Regulations" shall be filed with the Town Clerk of the Town.

6-1.28 Remedies Cumulative.

All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the Town shall not bar the use of any other remedy for the purpose of enforcing the provisions of this chapter.

6-1.29 Severability.

If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter.

The Town Council declares that it would have adopted this chapter and each section, subsection, sentence, clause, phrase or portion there irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions are declared invalid or unconstitutional.