

STAFF REPORT

To: Board of Supervisors

From: Shari Schapmire, Treasurer-Tax Collector
Michael Makdisi, Deputy County Counsel

Re: Proposed Changes to Mendocino County Code Chapter 6.04, Business Licenses

Mendocino County Code (“MCC”) Chapter 6.04 is the primary local law requires businesses to obtain a Mendocino County business license. Chapter 6.04 law is primarily administered by the Treasurer-Tax Collector (“Department”). The Department, in coordination with County Counsel, requests that the Board of Supervisors amend Chapter 6.04 as highlighted and explained in this report, and as detailed in the red lines. The requested changes help to clarify and articulate which entities are required to obtain a business permit, and specifically exempts County contractors over whom the County already exerts control by way of contract. The requested changes also provide consistency and clarity within the ordinance itself, adds and eliminates provisions to correspond to the manner in which the ordinance is being administered, and also brings the ordinance into consistency with state law.

Highlights and explanations of proposed section specific changes:

Sec. 6.04.030(a) & 6.04.070(d).

We used the phrase “natural person” to replace “person” or “individual” when referring to a human being to distinguish humans from business entities

Sec. 6.04.030 – Definitions.

Sub (a): We added “company” to capture the use of this word currently in 6.04.050(h)

Sub (b): To the “business” definition we added language to clearly articulate its meaning as it is currently applied and removed language to avoid the potential circular reasoning.

Sub (g): To the definition of “transact” or “operate” we removed language that could be interpreted to require more than one license for each business; we also added language to include the common meaning of these words.

Sec. 6.04.040 – License Requirement.

We added the phrase “or operate” to match correspond with the definition, which includes both “transact” and “operate.” We also removed language that could be interpreted in an overly broad, circular manner, and instead drew a clearer line regarding the application of this ordinance by tightening the definitions of “transact or operate” and “business,” which now specifically incorporates the license fees identified in this Chapter.

6.04.050(h). Simplified the language to captures all currently listed entities, but also all business entities not currently listed, which is consistent with all other business category types.

6.04.070(b). Eliminated the Workers Compensation requirement based on changes in State law.

Previously, Labor Code section 3711 required employers applying for business licenses to provide proof of valid workers' compensation insurance, or an exemption thereof. State legislature subsequently removed this requirement. Striking this section will make our local law consistent with State law.

6.04.070(d). Number of licenses required.

We added the word "fixed" for clarity. Eliminating the phrase "business license and" is consistent with the practice of requiring only a single business license for each business. This change does not remove the requirement for each individual to obtain a separate itinerant business permit issued by the Sheriff pursuant to 6.04.080.

6.04.070(f). Accounting.

Eliminated outdated language based on current practices of the Department.

6.04.080(d), (e), (f) and (g).

These sections require permits and licenses to be issued by the Sheriff, separate from and in addition to the County business licenses issued by the Tax Collector. Phrasing was added to these sections to clarify that only a single County business license is required for each business, which is consistent with our practice, but does not affect the separate requirements imposed by these sections to obtain any applicable permit or license issued by the Sheriff.

6.04.090(j). Yard Sales. (exemption)

Yard Sales are currently defined but not otherwise addressed. This added exemption articulates the understanding and practice of the Department in not requiring County business licenses from persons who operate a yard sale as already defined in this Chapter.

6.04.090(k). County Contractors. (exemption)

In considering this change, keep in mind that Chapter 6.04 was enacted pursuant to Business and Professions Code section 16100 for the purpose of regulating, not taxing. (See Bus. & Prof. Code § 16100 compared to Rev. & Tax Code § 7284). Because this is not a tax, the County receives no fiscal benefit from requiring business licenses. With regard to regulation, the County exerts control over County contractors through contractual provisions. Nonetheless, the County must currently take time away from other work to process each application for each required license, even if the County is already controlling that business' activities via contract.

With this in mind, we propose this exemption to relieve County contractors from the requirement of obtaining a County business license for the work they perform pursuant to a County contract. This exemption does have limits. It will not extend to contracting entities with a fixed place of business. Any entity with an established fixed place in the unincorporated territory of Mendocino should already possess a business license. If an entity is establishing a fixed place of business to engage the County, that business will still need to comply with all building and planning laws, which will require clearance from Planning and Building Services prior fulfilling the contract. A business license requirement for County contractors with fixed places of business will ensure that such clearance is obtained.

6.04.090(1). (exemption)

This proposed exemption articulates the current understanding of the Department that each business requires only one County business license. Currently, the code can be interpreted to require separate licenses for each owner, manager or shareholder. With the other changes proposed in this ordinance, this requirement may also extend to employees in the absence of an affirmative exemption such as the one proposed in this section. This exemption does not remove obligation to obtain any required, individual, separate permits/licenses, if applicable, that are issued by the Sheriff pursuant to 6.04.080.

6.04.110. Posting and exhibiting licenses.

The changes in this section clarify the language, and soften the exhibition requirement for entities without a fixed place of business. Such entities will remain obligated to exhibit their license upon request by a County employee, but will no longer risk criminal penalties for not exhibiting it to any non-County employee at any time.

6.04.120. Penalties.

Changing the word “shall” to “may” allows the County to use other legal enforcement mechanisms, such as MCC Ch. 1.08, while maintaining the ability to enforce as stated.