

## CHAPTER XVIII LICENSES AND TAXES

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### 18-1 BUSINESS LICENSES.\*

#### 18-1.1 Short Title.

This section may be cited as the "Business License Ordinance." (Ord. #1981-64, §1; SFCC 1981, §9-4-1)

## 18-1.2 Definitions.

As used in this section:

*Antique dealer* means a person whose primary business is buying and selling pieces of furniture, or decorative objects made at least one hundred (100) years ago.

*Artist/artisan* means any individual who displays or offers for sale his or her own hand-crafted products.

*Business* means any commercial activity or enterprise for financial gain, benefit, advantage or livelihood.

*Distress merchandise sale* means any offer to sell to the public, or sale to the public, of goods, wares or merchandise on the implied or direct representation that such sale is in anticipation of the termination of a business at its present location or that the sale is being held other than in the ordinary course of business. Distress merchandise sales shall include but are not limited to any sale advertised either specifically or in substance as a "fire sale," "smoke and water damage sale," "adjustment sale," "liquidation sale," "creditor's sale," "insolvent sale," "trustee's sale," "bankrupt sale," "save us from bankruptcy sale," "insurance salvage sale," "mortgage sale," "assignee's sale," "adjuster's sale," "must vacate sale," "quitting business sale," "receiver's sale," "loss of lease sale," "forced out of business sale," "removal sale," "change of ownership sale," "new location sale," or "everything must go."

*Itinerant food vendor* means any person associated with organizations that have been issued a city special use permit, and who offers for sale, occasionally or temporarily, food products, or samples, in the city.

*Itinerant vendor* means any person with no established business location within the geographical boundaries of the city who brings into the city food products, stocks or samples of goods, wares and merchandise or goods crafted primarily of manufactured materials and processes and/or made by someone other than the vendor, and offers the same for sale, or who offers services, on private property of another person.

*Massage* means the practice, for compensation, of full body massage by hand through the use of any mechanical apparatus incorporating nonspecific stretching techniques, the use of oil rubs, heat lamps, salt glows, hot and cold packs, tubs, showers, or cabinet baths, steam baths and mineral water. Variations of the following procedures are employed: touch, stroking, friction, kneading, vibration, percussion and gymnastics, or any combination of equipment; masseurs or masseuses shall not diagnose or treat classified diseases, nor practice spinal or other joint manipulation, nor prescribe medicine or drugs.

*Massage parlor* means a place of business where massage is performed, which employs two (2) or more persons.

*Person* means any individual, estate, trust, receiver, cooperative association, association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity.

*Sexually oriented business* means an adult arcade, adult bookstore or adult video store, adult cabaret, escort agency, adult motel, adult motion picture theater, adult newsrack, or adult performance and encounters (live) business. See further definitions in Section 14-39 SFCC 1987. (Ord. #1981-64, §2; Ord. #1982-38, §1; SFCC 1981, §9-4-2; Ord. #1987-51, §1; Ord. #1990-5, §1; Ord. #1998-10, §17; Ord. #2000-9, §1; Ord. #2002-35, §1; Ord. #2007-17, §1; Ord. #2009-33, §25)

**18-1.3 Reserved.\***

**18-1.4 License Application; Information Required.**

A. Applicants for licenses under this section shall file with the city a sworn application in writing, on a form to be furnished by the city, which shall include, but is not limited to the following:

- (1) Name;
- (2) Address;
- (3) Current state revenue division taxpayer identification number or evidence of application for a current state revenue division taxpayer identification number;
- (4) A brief description of the nature of the business;
- (5) Proof of insurance coverage, when applicable; and
- (6) Proof of bond, when applicable.

B. In addition to the information required in paragraph A, the following businesses shall also include the following information with their applications:

- (1) Carnival operators shall submit a copy of their special use permit, as required by subsection 18-7.2 SFCC 1987;
- (2) Circus operators shall submit a copy of their special use permit, as required by subsection 18-7.2 SFCC 1987;
- (3) Itinerant vendors seeking to conduct sales as defined under subsection 18-5.1 SFCC 1987 shall submit a copy of their petition as approved by the governing body, as required in subsection 18-5.1 SFCC 1987;
- (4) Jewelry auction operators, as defined in subsections 18-5.1 through 18-5.23 SFCC 1987, shall provide information required by subsections 18-5.12 and 18-5.14 SFCC 1987, including a notarization of the application;
- (5) Mobile home park operators shall submit a copy of their certificate of occupancy;
- (6) Private day-care nurseries, facilities and kindergarten operators, when approval is required by the board of adjustment, as per the provisions of Section 14-6.2 SFCC 1987(B)(4)\*, shall include a sworn affidavit stating that they have received such approval; and
- (7) Septic tank cleaners shall submit a sworn affidavit stating that they have conformed to the requirements set forth in subsection 22-4.9 SFCC 1987.
- (8) Flea market operators shall submit:
  - (a) A copy of a current certificate of occupancy. The certificate of occupancy shall be reissued annually; and
  - (b) A sworn affidavit stating that they have conformed to the requirements set forth in subsection 14-6.2 SFCC 1987(C)(4)\*.
- (9) Alarm installation companies and monitoring companies, as defined in subsection 20-5.4 SFCC 1987, shall provide information required by subsection 20-5.8 SFCC 1987.  
(Ord. #1981-64, §4; Ord. #1982-28, §3; SFCC 1981, §9-4-4; Ord. #1987-48, §9; Ord. #1998-10 §18; Ord. #2009-33, §26)

\***Editor's Note:** Reference numbers have been changed to agree with Revised Chapter 14, adopted December 31, 2001.

**18-1.5 Payment of License Fees Required; Assessments; Protest.**

A. On or before March 15 of each year, all businesses engaging in a type of business enumerated as requiring business licenses under this section shall apply for a business license for that year. These businesses shall include payment with the application and show proof of insurance and bond, if the business is so required.

B. Upon payment of the business license fee, the city shall issue a business license to the applicant unless refused pursuant to Section 3-28-2 NMSA 1978.

C. Any business may protest the amount of the business license fee assessment by filing a written protest with the city clerk, on or before March 15. The finance committee shall give the protesting business no less than five (5) days notice of a hearing, at which time the protest shall be heard by the finance committee.

D. The finance committee shall have the same authority and power as that of the governing body as contained in subsection 18-1.6 SFCC 1987.

E. Any business which must have a business license as enumerated in this section, which begins operations after March 15, shall apply to the city for a business license prior to engaging in business.  
(Ord. #1981-64, §5; SFCC 1981, §9-4-5; Ord. #1996-11, §1)

**18-1.6 Denial or Revocation of License; Hearing.**

A. For the purpose of regulation and when deemed in the public interest, the governing body may refuse to grant a license but no license shall be refused until the person seeking the license has been given the opportunity to be heard by the governing body. After such hearing, the majority of the governing body at the hearing may still refuse to grant a license. The license applicant shall be given not less than five (5) days notice of the hearing.

B. When a person is guilty of violating a regulation relating to the granting of a license, or in the judgment of the governing body the public welfare requires a license be revoked, the governing body may revoke the license.

C. The procedures set forth in subsection 20-24.5 SFCC 1987, shall govern revocation of licenses for special police and detectives insofar as those procedures conflict those set out herein.  
(Ord. #1981-64, §6; SFCC 1981, §9-4-6)

**18-1.7 Notice of Violation; Penalty.**

A. If a person required to secure a business license and pay a business license fee is in violation of this section or any provision of SFCC 1987 or is operating in a manner contrary to the public welfare, the city shall:

- (1) Send the person a notice of violation specifically stating the nature of the violation; or
- (2) If there are past due fees, ordering that the past due fees plus a penalty which is double the amount due, be paid immediately.

B. The notice may further state that if the fee and penalty are not paid, and if the provisions of this section or other provisions of SFCC 1987 are not complied with or that the operation contrary to the public welfare is not discontinued within fifteen (15) days after receipt of the notice, the person shall appear before the finance committee to show cause why the business should not be closed. The notice shall set a date, time and place of the hearing by the finance committee.  
(Ord. #1981-64, §7; SFCC 1981, §9-4-7; Ord. #1996-11, §2)

**18-1.8 Enforcement; Hearing; Cease and Desist Order.**

A. If, at the hearing before the finance committee, the person fails to show cause why the business should not be closed, the finance committee shall issue a cease and desist order closing the business. Such cease and desist order shall prevent the owner or operator of the business from conducting any business in the building, structure, or on the land, until the terms of this section have been complied with.

B. The hearing before the finance committee shall not be less than thirty (30) days after the notice provided in subsection 18-1.7 of this section is mailed.

C. An appearance may be made by counsel and the person charged with violating this section may present evidence and call witnesses to show cause why his license should not be denied or revoked.

D. Any persons aggrieved by the decision of the finance committee may submit to the governing body a written petition for appeal. Such petition for appeal shall:

- (1) Be submitted to the city clerk's office within thirty (30) days of the date the action appealed was taken by the finance committee.
- (2) Set forth that such proceedings or assessments were in error in whole or in part, specifying the grounds of the appeal.
- (3) Be included on the agenda of the next possible regularly scheduled meeting of the governing body, during the evening session. Verbal or written notice shall be given to the appellant at least five (5) calendar days prior to the meeting of the governing body.  
(Ord. #1981-64, §8; SFCC 1981, §9-4-8; Ord. #1996-11, §3)

**18-1.9 Penalty.**

Any person who violates the provisions of this section or fails to comply with any of its requirements shall be liable for the amount of the license fee, in addition to a penalty which is double the amount due and shall be subject to revocation or denial of the license as set forth in Section 3-38-2 NMSA 1978. (Ord. #1981-64, §9; SFCC 1981, §9-4-9)

**18-1.10 Itinerant Businesses; Notice of Violation; Penalty.**

Persons operating itinerant businesses required to pay a business license fee, who are in violation of this section, may be served a written notice of violation by a uniformed police officer, specifically stating the nature of the violation and ordering that the past due fee, plus a penalty, which is double the amount due, be paid immediately, and that he discontinue operation until he is in compliance. (Ord. #1981-64, §10; SFCC 1981, §9-4-10)

**18-1.11 Alternate Enforcement Procedure.**

A. This section shall be enforced by the city attorney as other municipal regulations are enforced.

B. In addition, if any business is conducted in violation of this section or any ordinance, the city attorney shall institute any appropriate action or proceedings to:

- (1) Prevent the conduct of the business;
- (2) Restrain, correct or abate the violation; or
- (3) Prevent the occupancy of the building, structure or land on which the business is located.

C. In addition to the remedies provided in paragraphs A and B of this subsection, the business license fee may be collected and Chapter 3, Article 38 NMSA 1978 shall be enforced by the city attorney by suit in district court or under such other regulation or ordinance or authority as the governing body may provide. (Ord. #1981-64, §11; SFCC 1981, §9-4-11)

**18-1.12 Lien Created.**

There is hereby created a lien on the personal property of each business licensed; such lien is in favor of the city and enforced pursuant to Section 3-38-6 NMSA 1978. (Ord. #1981-64, §12; SFCC 1981, §9-4-12)

**18-1.13 Record of Licenses.**

The city clerk, in conjunction with the appropriate city office, shall keep a record of all business licenses issued, including the names of the license holders, the date issued, the amount paid and other relevant information. (Ord. #1981-64, §13; SFCC 1981, §9-4-13)

**18-1.14 Savings Clause.**

This section does not apply to offenses committed prior to the effective date of the Business License Ordinance. Offenses committed prior to the effective date of this section are punishable as provided by the regulation in force at the time the offense was committed. Nothing in this section shall be construed as adversely affecting any prior obligations incurred under the former Sections 9-4-1 through 9-4-21 SFCC 1981. (Ord. #1981-64, §51; SFCC 1981, §9-4-14)

**18-1.15 Annual Review.**

It is the desire of the governing body that the city staff responsible for the administration of this section, review the amounts collected and report to the governing body annually as to any changes in the cost of administering this section. (Ord. #1981-64, §52; SFCC 1981, §9-4-15)

**18-2 BUSINESS REGISTRATION FEE.**

**18-2.1 Short Title.**

This section may be cited as the "Business Registration Ordinance". (Ord. #1981-63, §1; SFCC 1981, §9-4A-1)

**18-2.2 Definition.**

As used in this section:

*Business* means an activity or enterprise for financial gain, benefit, advantage or livelihood.

(Ord. #1981-63, §2; SFCC 1981, §9-4A-2)

**18-2.3 Imposition of Fee.**

There is imposed on each place of business conducted in the city and not licensed pursuant to Section 3-38-1, NMSA 1978, and Section 18-1, Business Licenses, an annual business registration fee in the amount of thirty-five dollars (\$35.00). The fee is imposed pursuant to Section 3-38-3, NMSA 1978, and shall be known as the "business registration fee". The business registration fee may not be prorated for businesses for a portion of the year. (Ord. #1981-63, §5; SFCC 1981, §9-4A-3; Ord. #1987-4, §1; Ord. #1993-19, §1)

**18-2.4 Application; Required.**

Any person proposing to engage in business after the effective date of this section, shall apply to the city for a certificate of occupancy and pay a business registration fee of thirty-five dollars (\$35.00), for each outlet, branch, location, or person doing business in the municipal limits of the city, prior to engaging in business, unless such person is required to pay for and obtain a business license, as specified in Section 18-1, Business Licenses. (Ord. #1981-63, §6; SFCC 1981, §9-4A-4; Ord. #1987-4, §2; Ord. #1993-19, §2)

**18-2.5 Renewal of Business Registration.**

Prior to March 16 of each year, any person engaging in a business within the city and subject to the business registration fee shall apply for renewal of his business registration with the city. (Ord. #1981-63, §5; SFCC 1981, §9-4A-5)

**18-2.6 Taxpayer Identification Number Required.**

Any person filing an application for issuance or renewal of a business registration shall include in the application his current taxpayer identification number from the state taxation and revenue department, revenue division, or evidence of his application for a current revenue division taxpayer identification number, provided that the person is required to file for same. (Ord. #1981-63, §6; SFCC 1981, §9-4A-6)

**18-2.7 Penalty.**

Any person who violates the provisions of the Business Registration Ordinance or fails to comply with any of its requirements shall be liable for the amount of the registration fee, in addition to a ten dollar (\$10.00) late fee. (Ord. #1981-63, §7; SFCC 1981, §9-4A-7; Ord. #1987-4, §3; Ord. #1993-19, §3)

**18-2.8 Notice of Violations.**

A. If a person who is required to pay a business registration fee and register the business, fails to register or pay the fee, the city shall send the person a notice of violation:

- (1) Specifically stating the nature of the violation; and
- (2) Ordering that the past due registration fee plus a late fee of ten dollars (\$10.00) be paid immediately.

B. The notice shall further state that the city will order the person to appear before the finance committee to show cause why the business should not be closed if the fees are not paid within fifteen (15) days after receipt of the notice.  
(Ord. #1981-63, §8; SFCC 1981, §9-4A-8; Ord. #1987-4, §4; Ord. #1993-19, §4; Ord. #1996-11, §4)

#### **18-2.9 Hearing; Time for Compliance after Division.**

A. If the business is not registered or the registration fee is not paid by the deadline date set forth in the notice of violation, then the city shall send a notice to such person ordering them to appear before the finance committee to show cause why the city should not issue a cease and desist order closing the business.

B. The hearing before the finance committee shall not be less than thirty (30) days after the notice is mailed, and the notice shall include the date of the hearing. An appearance may be made by counsel, and the person charged with violating this section may present evidence and call witnesses to prove that there was no violation of this section.

C. If, at the hearing before the finance committee, the person fails to show cause why the business should not be closed, the finance committee shall issue a cease and desist order closing the business. Such cease and desist order shall prevent the owner or operator of the business from conducting any business in the building structure, or on the land, until the terms of this section have been complied with.

D. Any persons aggrieved by the decision of the finance committee may submit to the governing body a written petition for appeal. Such petition for appeal shall:

- (1) Be submitted to the city clerk's office within thirty (30) days of the date the action appealed was taken by the finance committee.
- (2) Set forth that such proceedings or assessments were in error in whole or in part, specifying the grounds of the appeal.

(3) Be included on the agenda of the next possible regularly scheduled meeting of the governing body, during the evening session. Verbal or written notice shall be given to the appellant at least five (5) calendar days prior to the meeting of the governing body.  
(Ord. #1981-63, §9; SFCC 1981, §9-4A-9; Ord. #1996-11, §5)

#### **18-2.10 Record of Businesses Registered.**

The city clerk, in conjunction with the appropriate city office, shall keep a record of all businesses registered, including the names of the owners of the businesses, the date issued, the amount paid and other relevant information. (Ord. #1981-63, §10; SFCC 1981, §9-4A-10)

#### **18-2.11 Temporary Provision.**

Nothing in this section shall affect the collection of occupation taxes under Section 18-1, SFCC 1987 due and payable prior to July 1, 1981. Any taxpayer who has paid an occupation tax for a full 1981 calendar year shall not be required to pay a business registration fee for conducting the same business in the city from the effective date of this section through December 31, 1981. (Ord. #1981-63, §11; SFCC 1981, §9-4A-11)

#### **18-2.12 Annual Review.**

It is the desire of the governing body that the city staff responsible for the administration of this section review the amounts collected and report to the governing body annually as to any charges in the cost of administering this section. (Ord. #1981-63, §12; SFCC 1981, §9-4A-12)

### **18-3 SOLICITATION. \***

**\*Editor's Note:** Prior ordinance history includes portions of 1973 Code §§19-6(21) and 19-27; SFCC 1981 §§9-6-1-9-6-4 and Ordinance Nos. 1956-35, 1974-25 and 1974-39.

#### **18-3.1 Short Title.**

Article 18-3 SFCC 1987 shall be cited as the "Solicitation Ordinance." (Ord. #2010-23, §7)

#### **18-3.2 Legislative Findings.**

A. The governing body is concerned for the health, safety, peace and welfare of the citizens of the city of Santa Fe.

B. Current city of Santa Fe laws consider the practice of going onto property by commercial solicitors or itinerant vendors a nuisance.

C. The Supreme Court of the United States and other federal courts have determined that door-to-door solicitation is commercial speech, protected under the First Amendment to the Constitution of the United States.

D. The Supreme Court also established a test for governmental regulation of commercial speech. In part, the test requires that "The governmental interest must be substantial, such as the need to (i) protect privacy, (ii) prevent crime and/or (iii) for consumer protection, Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980); 100 S. Ct. 2343.

E. The governing body recognizes the First Amendment protection door-to-door solicitors have; however, the governing body further recognizes the need to protect the health, safety, peace and welfare of the citizens of Santa Fe.

F. This Solicitation Ordinance balances the First Amendment protection of commercial solicitors and the health, safety, peace and welfare of the citizens of Santa Fe.  
(Ord. #2010-23, §8)

### **18-3.3 Purpose.**

The purpose of this Article is to regulate solicitation on private property within the city of Santa Fe while protecting the health, safety and welfare of the residents of the city. (Ord. #2010-23, §9)

### **18-3.4 Definitions.**

As used in Section 18-3 SFCC 1987:

*Charitable* means the purpose of an organization which (i) has received a letter of determination approving tax exempt status under Title 26 of the United States Code Section 501(c)(3); or the purpose of a school organization, club or team, recognized and affiliated with a public or private school, having a program with annual campaigns to support the public or private school club.

*Chief of police* means the city's chief of police or the chief's designee.

*Office* means the city's accounts receivable office.

*Person* means any individual.

*Political* means on behalf of a political party or candidate or for the purpose of influencing legislation or personal belief.

*Religious* means on behalf of an established religion which means a particular system of faith and worship recognized and practiced by a particular church, sect or denomination.

#### *Solicitation*

A. Means the act of any person traveling by foot, vehicle or any other type of conveyance who goes on private property to:

- (1) Request, either directly or indirectly, money, credit, funds, contributions, personal property or anything of value;
- (2) Take or attempt to take orders for the sale of any goods, wares, merchandise or services of any kind, or description for future delivery or for services to be performed in the future, either in person or by distributing flyers and leaflets;
- (3) Sell and make immediate delivery of any goods, wares, merchandise or services of any kind or description; or
- (4) Communicating or otherwise conveying ideas, views or beliefs or otherwise disseminating oral or written information to a person willing to directly receive such information, provided that such information is of a commercial nature.

B. Does not mean the following:

- (1) A person communicating or otherwise conveying ideas, views or beliefs or otherwise disseminating oral or written information to a person willing to directly receive such information, provided that such information is of a political, religious or charitable nature;
- (2) A person seeking to influence the personal belief of the occupant of any residence regarding any political or religious matter;
- (3) A person seeking to obtain, from an occupant of any residence, an indication of the occupant's belief in regard to any political or religious matter;
- (4) A person conducting a poll, survey or petition drive in regard to any political matter;
- (5) A person carrying, conveying, delivering or transporting dairy products, newspapers or other goods to regular customers on established routes or to the premises of any person who had previously ordered such products or goods and is entitled to receive the same; and
- (6) A person whose business is to solicit dealers or permanent merchants in the usual course of business.

*Solicitor* means any person, whether a resident of the city or not, engaged in solicitation.

(Ord. #2010-23, §10)

### **18-3.5 Solicitation for Charitable, Religious or Political Purposes Exempt.**

Solicitation for charitable, religious or political purposes is exempt from the licensing provisions set forth in subsection 18-3.6 SFCC 1987; however, the organization or person, if the solicitation is not on behalf of an organization, is required to comply with the provisions set forth in paragraphs 18-3.11 B., C., and D. SFCC 1987. (Ord. #2010-23, §11)

### **18-3.6 License Required.**

A. Except as set forth in subsection 18-3.5 SFCC 1987 above, it is unlawful for any person to engage in solicitation within the city without a valid solicitation license issued by the city of Santa Fe.

B. Licenses are not assignable or transferable.

(Ord. #2010-23, §12)

### **18-3.7 License Application.**

A. The application for a license shall be available at the city's accounts receivable office and shall include the following information:

(1) The name, permanent residence address of the applicant, date of birth, social security number, a brief description of the applicant and a photograph of the applicant;

(2) The applicant shall present a valid identification card issued by a state within the United States of America;

(3) Complete employment history for the past ten years;

(4) Disclosure of any criminal convictions, infraction or misdemeanor citations received, including any municipal code violations and criminal or civil cases pending. This shall include any cases dismissed or expunged pursuant to state law;

(5) A statement that the person is not currently under investigation for any crimes related to solicitation or other criminal offense including, but not limited to, violent crimes, sexual assault, possession of controlled substances, theft, fraud or burglary;

(6) Name and addresses of employer if applicable;

(7) Requested time and place to solicit within the city; and

(8) Such other information as the office may require.

B. The application shall include the signature of the applicant acknowledging that the information contained in the application is true and correct to the best of the applicant's knowledge; that the applicant consents to a criminal background check at the expense of the applicant; and that the applicant will comply with all provisions of Section 18-3 and all applicable city, state and federal laws. The applicant's signature shall be notarized.

C. The application shall be submitted to the office at least fifteen (15) calendar days prior to the time the solicitor requests to engage in solicitation.

D. An application fee, as established by resolution of the governing body, shall be paid at the time the application is submitted.

E. The applicant shall maintain, at all times, accurate application information with the city. If there is any change, or modification to the information provided on the initial application, the applicant shall give written notification of such change to the office within two (2) weeks of the change. (Ord. #2010-23, §13)

#### **18-3.8 Criminal Background Check.**

A. Upon the request of the city's accounts receivable office, the chief of police shall initiate the criminal background check of prospective solicitors.

B. The chief of police is authorized to receive criminal history record information from any agency or department of the state of New Mexico or the United States government.

C. The office shall not issue a license to a person who refuses to consent to or cooperate in the securing of a criminal background check subject to the provisions of this section.

D. The office shall not issue a license to a person that the chief of police has received a criminal background check revealing a conviction for any felony offense or serious misdemeanor including, but not limited to, violent crimes, sexual assault, possession of controlled substances, theft, fraud or burglary. Such person shall be disqualified from receiving a license.

E. The office shall promptly notify a person whose criminal background check reveals a disqualifying criminal conviction. (Ord. #2010-23, §14)

#### **18-3.9 Renewal; Revocation.**

A. All licenses granted under the provisions of this section shall be valid for up to one (1) year and may be renewed thereafter, unless sooner revoked.

B. Prior to the expiration of a license and upon application for renewal of the license, the city's accounts receivable office shall determine if the solicitor has acted in compliance with the applicable provisions of this section and conditions of the license.

(1) If determined to have been in substantial compliance, the license shall be renewed upon payment of any applicable renewal fee.

(2) If a determination has been made that the solicitor is not in substantial compliance with this section, the license shall not be renewed and no other license shall be issued to the solicitor within one (1) year of the date of the determination.

C. Renewal fees shall be established by resolution of the governing body.

D. The office may revoke any license granted under the provisions of this section for any of the following reasons:

(1) The applicant provided false, misleading or misrepresented information in procuring license;

(2) The applicant or any person who worked on behalf of or with the applicant failed to comply with the requirements, regulations, laws and conditions of approval applicable to the license;

(3) The applicant or any person who worked on behalf of or with the applicant is convicted of violating any federal, state or local law while in the course of operating under the license; or

(4) The activities for which the license was granted were or are being conducted in a manner that is detrimental to the public health, safety, peace or welfare of the citizens of Santa Fe.

E. The office shall promptly notify a person whose license has not been renewed or has been revoked in writing certified mail to the last known address



filed.

F. When a license is revoked, no other license for solicitation shall be issued under the provisions of this section to the same applicant within one (1) year of the date of revocation.  
(Ord. #2010-23, §15)

### **18-3.10 Appeal; Hearing Officer.**

A. The applicant aggrieved by a decision of the city's accounts receivable office to deny an application for or renewal of a license or revocation of a license shall have thirty (30) calendar days from the receipt of a notice by the office to appeal such decision to a hearing officer appointed by the city manager.

B. The appeal shall be filed on forms provided by the office together with any applicable fee established by resolution of the governing body.

C. The appeal request shall set forth the appellant's reasons for asserting the decision was in error or in violation of any city of Santa Fe ordinance or other applicable law.

D. A hearing officer appointed by the city manager shall conduct a formal hearing within thirty (30) days of the receipt of the appeal. The office shall give written notice by certified mail to the appellant at least ten (10) days prior to the hearing.

E. The hearing officer shall make a decision on the basis of the preponderance of evidence presented at the hearing. The hearing officer shall render a decision within thirty (30) days after the date of the hearing. The hearing officer shall affirm or reverse the decision of the office.

F. The hearing officer's decision shall be final.

G. The failure of an appellant to appear at the appeal hearing shall extinguish the appeal.  
(Ord. #2010-23, §16)

### **18-3.11 Solicitation Operating Requirements.**

A. All persons who engage in solicitation that are required to obtain a license shall comply with the following:

(1) Carry a photo identification and a copy of a valid license issued pursuant to this section; and if soliciting on behalf of another, carry written authorization to act on behalf of such third party and carry a copy of the license issued to such third party; and

(2) Immediately present a solicitation license, identification and authorization to act on behalf of a third party, if applicable, to any person approached for said solicitation and to any law enforcement official.

B. It is unlawful for any person to go upon, ring the bell, knock on the door of or attempt to gain admission to the premises of any residence in the city where the owner, adult occupant or other person in control of the property has expressed an objection to such activity either by explicit instructions, oral or written, or by posting a sign or decal bearing the words "No Solicitation" or similar words, unless prior to such entry, bell ringing or knocking, such person has been requested or invited by the owner or adult occupant or other person in control of the premises to be there for such purpose. The sign or decal may be one provided by the city or otherwise. Activities related to a service requested by the owner or occupant of the property and undertaken in the ordinary course of business, including but not limited to mail delivery, deliveries of utility notices, telephone directory deliveries, regular newspaper deliveries, work order notices and service inquiries, are presumed to be requested or invited for the purpose of this section.

C. No person shall engage in abusive solicitation. Such abusive activity shall mean to do one or more of the following while soliciting or immediately thereafter:

(1) Coming closer than three feet (3') to the person solicited unless and until the person solicited indicates that the person wishes to make a purchase or otherwise receive the solicitation;

(2) Blocking or impeding the passage of the person solicited;

(3) Repeating the solicitation after the person solicited has indicated an objection to the solicitation;

(4) Following the person solicited by proceeding behind, ahead or alongside such person after the person has indicated an objection to the solicitation;

(5) Threatening the person solicited with physical harm by word or gesture;

(6) Abusing the person solicited with words which are offensive and inherently likely to provoke an immediate violent reaction; or

(7) Touching the solicited person without the solicited person's consent.

D. It is unlawful for any person, while soliciting, to go upon, ring the bell, knock on the door of or attempt to gain admission to the premises of any residence, dwelling or apartment in the city after 8:00 p.m. or earlier than 10:00 a.m., unless such person has been requested or invited by the owner or adult occupant of the premises to be thereupon for such purposes.

(Ord. #2010-23, §17)

### **18-3.12 Not an Endorsement.**

A license granted under this section is not an endorsement by the city of the solicitor or of any goods, wares, merchandise, services or information that may be sold or distributed by the solicitor, and it is unlawful for any person to represent that such an endorsement has been made. (Ord. #2010-23, §18)

### **18-3.13 Public Education.**

The city shall engage in a continuing program to explain and requirements of the Solicitation Ordinance to the citizens of Santa Fe. (Ord. #2010-23, §19)

#### **18-3.14 Enforcement.**

A. The applicant or solicitor shall be responsible for the conduct of all persons acting with or on the behalf of the applicant or solicitor while in the course of operating under the license. All persons found working, helping, volunteering or in any way assisting in the activities for which the license was granted shall be considered employees of the applicant or solicitor. Any act or omission of any person acting with or on the behalf of the applicant or solicitor constituting a violation of the provisions of this section shall be deemed the act or omission of the applicant or solicitor for purposes of determining whether the applicant's or solicitor's license shall be granted, denied, renewed or revoked.

B. Any violation of this section shall be cause for revocation of a solicitation license and the violator will be ineligible to receive a new license for a period of one (1) year.

C. The police department may issue a citation or file a complaint against any person who violates any provision of the Solicitation Ordinance. Any person who violates any provision of the Solicitation Ordinance is guilty of a petty misdemeanor and is subject to the provisions of Section 1-3 SFCC 1987. Each violation is a separate and distinct offense.

(Ord. #2010-23, §20)

#### **18-4 SECONDHAND DEALERS, PAWNBROKERS AND JUNK DEALERS.**

##### **18-4.1 Definitions.**

A. As used in this section:

*Junk dealer* means a person engaged in the business of purchasing or selling secondhand or cast-off material of any kind, which is commonly known as and is hereinafter designated and referred to as "junk" such as old iron, copper, brass, lead, zinc, tin, steel and other metals, metallic cables, wires, ropes, cordage, bottles, bagging, rags, rubber, paper and other like materials.

*Pawnbroker* means a person engaged in the business of lending money on the deposit or pledge of personal property or who purchases personal property with an expressed or implied agreement or understanding to sell it back at a stipulated price. If a pawnbroker also purchases used merchandise for resale, he must do so in accordance with the provisions of this section.

*Person* means any individual, partnership, corporation, firm or association or any combination thereof.

*Secondhand dealer* means a person whose primary business is conducting a secondhand store or dealing in secondhand goods, other than used car dealers and merchants taking furniture, appliances and like items, whether or not such person, in addition to or in connection with such secondhand business keeps in stock for retail, goods, wares or merchandise.

B. Any business defined herein which deals with or purchases gold, silver or platinum is subject to the specific requirements set forth in this article for these items.

(SFCC 1981, §9-7-1; Ord. #1982-38, §4)

**Editor's Note:** For state law as to used merchandise generally, see Secs. 57-9-1 through 57-9-5 NMSA 1978. For state law as to junk dealers, see Secs. 57-7-1 through 57-7-7 NMSA 1978. For authority of city to license and regulate secondhand stores, see Sec. 3-18-24 NMSA 1978.

##### **18-4.2 License Required.**

It is unlawful for a person to engage in any business coming under the provisions of this section without first obtaining a license therefor as required by Section 18-2, Business Licenses. (SFCC 1981, §9-7-2; Ord. #1981-64, §33)

**Editor's Note:** For state law as to authority of city to require licenses, see Sec. 3-18-24 NMSA 1978.

##### **18-4.3 Applicant for Pawnbroker's License.**

An applicant for a license as a pawnbroker must be of good moral character and shall not have been convicted of any felony or crime involving moral turpitude. A license shall be denied to any applicant whose license was revoked for cause or who was a partner, officer, director, trustee, manager or stockholder of any corporation or unincorporated association the license of which was revoked for cause. (Ord. #1968-13, §2; Code 1973, §20-2; SFCC 1981, §9-7-3)

##### **18-4.4 Investigation of Applicant.**

Any application for license as a pawnbroker shall be referred to the police department for investigation as to the qualifications of the applicant and as to the truth of all statements in the application. In making their investigation, the police shall use current methods of police inquiry, including, without limitation, fingerprints and photographs. The police shall, as soon as practical, make their report to the city clerk who shall grant the license only if the report is favorable. The applicant may appeal a denial of his application to the governing body, as provided in Section 18-1, Business Licenses. (Ord. #1968-13, §3; Code 1973, §20-3; Ord. #1981-64, §34; SFCC 1981, §9-7-4)

##### **18-4.5 Bond Required.**

Before a license can be granted, a person seeking a license as a pawnbroker must execute and deliver a bond to the city clerk to be approved by the clerk and the city attorney in the penal sum of five thousand dollars (\$5,000) with a corporate surety authorized by the laws of the state to write surety bonds therein and conditioned for the conduct of such pawnbroker business according to the law and for the true and faithful observance of applicable provisions of the Santa Fe City Code of 1987 and ordinances pertaining thereto; such bond shall be for the benefit of the city and of every person damaged by breach of any condition thereof. (Ord. #1968-13, §4; Code 1973, §20-4; SFCC 1981, §9-7-5)

##### **18-4.6 Daily Report.**

A. It is the duty of every person engaged in the business of a pawnbroker to furnish an accurate and complete record each business day to the police department on forms to be furnished by the city, of all property received or purchased during the preceding business day.

B. Each item shall be listed on a separate form. The report shall include:

- (1) The name of the item;
  - (2) A description of the item, including make and model, if any;
  - (3) Serial numbers and other identifying marks;
  - (4) The date, time and type of transaction;
  - (5) The name and address of the person offering the item;
  - (6) A description of the person offering the item, including age, sex, complexion, hair color, approximate height and weight, and date of birth;
  - (7) The type of identification used by the person offering the item and identifying number of said identification. If the person presents a driver's license, the report shall also indicate the state of issuance; and
  - (8) Other information which may be required.
- (Ord. #1968-13, §6; Code 1973, §20-6; SFCC 1981, §9-7-6)

#### **18-4.7 Transfer of Pawnbroker's License.**

A pawnbroker's license may not be transferred to another location without the prior consent of the governing body. A license is not assignable or transferable to any other person. If the licensee sells, transfers or assigns the business, the succeeding owner shall obtain a new license. Any change in the members of a partnership, ten percent (10%) or more of the membership of an association, or ten percent (10%) or more of the voting stock of a corporation holding a pawnbroker's license will constitute a change in ownership of the business. (Ord. #1968-13, §13; Code 1973, §20-13; SFCC 1981, §9-7-7)

#### **18-4.8 When Junk Dealer Required to Obtain Secondhand Dealer License.**

Every junk dealer who, in addition to, or in connection with his junk business, carries on a regular secondhand business, or keeps in stock for retail any substantial quantity of new personal property for the sale of which either a license or an occupation tax is imposed shall, notwithstanding the license paid by him as a junk dealer, be subject to and shall pay the license or occupation tax as is prescribed for the particular business so conducted. (SFCC 1981, §9-7-8)

#### **18-4.9 Record of Business Transactions.**

A. It is the duty of every person engaged in the business of secondhand dealer, pawnbroker or junk dealer in the city to provide a well-bound book to be kept at his place of business in which a record of all transactions had by the person shall be kept. The record shall contain:

- (1) An accurate and complete description of every article taken in as a pledge or purchased, including serial numbers, if any;
- (2) An accurate and complete description of the person from whom the goods were received or purchased; and
- (3) The name of the person and his house and street address.

B. The record book shall be open at all times to the inspection of any member of the police department, county sheriff, state police or any person authorized by the chief of police.

(Ord. #1968-13, §5; Code 1973, §20-5; SFCC 1981, §9-7-9)

**Editor's Note:** For state law requiring records, see Sec. 57-7-2 NMSA 1978. For state law providing for inspection of records, see Sec. 57-9-4 NMSA 1978. See also Sec. 3-18-24 NMSA 1978.

#### **18-4.10 Time Period for Retaining Purchased Goods.**

A. No pawnbroker, secondhand dealer or junk dealer shall sell or remove from his place of business any secondhand goods other than furniture and household goods purchased by him until the same have been in his possession for not less than five (5) working days.

B. All gold, silver and platinum shall be retained by secondhand dealers, pawnbrokers and junk dealers in the form in which purchased for a period of five (5) working days.

(SFCC 1981, §9-7-10)

**Editor's Note:** For relevant state law, see Ch. 323, Laws 1981.

#### **18-4.11 Business Hours.**

Secondhand dealers, pawnbrokers and junk dealers may operate their businesses only between the hours of 6:00 a.m. and 7:00 p.m. each day and shall keep their businesses closed to the public at all other times. (Ord. #1968-13, §12; Code 1973, §20-12; SFCC 1981, §9-7-11)

#### **18-4.12 Premises to be Kept in Sanitary Condition.**

A. The place where articles are kept or stored by secondhand dealers, pawnbrokers and junk dealers within the city shall at all times be kept in a sanitary condition.

B. The place of business of any person coming under the provisions of this article shall at all reasonable times be open to inspection by the chief of police, the county sheriff or the public health officers of the state, district, county or city.

(SFCC 1981, §9-7-12)

#### **18-4.13 Location of Secondhand and Junk Dealers Restricted.**

A. No secondhand dealer shall, by virtue of his license, keep more than one (1) store, shop, house or place of buying, receiving or selling secondhand goods or articles, but he may have or keep, under and by virtue of a single secondhand dealer's license, more than one (1) place for storage purposes.

B. No junk dealer shall store or hold junk at any location in the city other than that specified in his license.  
(SFCC 1981, §9-7-13)

**18-4.14 Furnishing of False Information.**

It is unlawful for any secondhand dealer, pawnbroker or junk dealer to falsify any record required under the provisions of this section or for a licensee or any other person to furnish false information in connection with the sale, pledge or exchange of any goods. (Ord. #1968-13, §7; Code 1973, §20-7; SFCC 1981, §9-7-14)

**18-4.15 Accepting Property from Minors or Other Persons Restricted.**

It is unlawful for any secondhand dealer, pawnbroker or junk dealer in the city to:

A. Buy or accept property as a pledge from any minor without the written consent of the parent or guardian of the minor to so deliver or dispose of the property; or

B. Knowingly buy or accept property as a pledge from any person who is at the time intoxicated, an habitual drunkard, under the influence of narcotic or other incapacitating drugs, a thief or an associate of thieves, a receiver of stolen property or a person convicted of a felony.  
(Ord. #1968-13, §9; Code 1973, §20-9; SFCC 1981, §9-7-15)

**18-4.16 Marked Property.**

It is unlawful for any secondhand dealer, pawnbroker or junk dealer to buy any property or receive the same as a pledge, if the property is distinctly and plainly marked as being the property of any person other than the party offering to sell or pledge the same, unless the party offering to sell or pledge the same shows satisfactory evidence in writing that he is the lawful owner of the property or has been granted permission by the owner to pledge the property. Failure to require such written evidence shall be prima facie evidence of guilty knowledge on the part of the licensee, his agents or employees that the party offering to pledge or sell the same is not the rightful owner thereof and shall be sufficient cause for revocation of the license of the licensee by the city after notice and public hearing held before the governing body, as provided in Section 18-1, Business Licenses. (Ord. #1968-13, §10; Code 1973, §20-10; Ord. #1981-64, §35; SFCC 1981, §9-7-16)

**18-4.17 Applicability of Section to Existing Businesses.**

The provisions of this section shall apply to any person presently licensed as a secondhand dealer, pawnbroker or junk dealer by the city. (Ord. #1968-13, §14; Code 1973, §20-14; SFCC 1981, §9-7-17)

**18-4.18 Duties of Agents and Employees.**

The requirements of this section shall apply to any agent or employee of the persons engaged in the businesses defined in this section. (Ord. #1968-13, §11; Code 1973, §20-11; SFCC 1981, §9-7-18)

**18-4.19 Confiscation of Stolen Property.**

A. The police department has the right to confiscate from a licensee any item which has been reported as being stolen or which the police department has reason or probable cause to believe has been stolen. The officer confiscating the property shall give a receipt therefor containing sufficient information to identify adequately the item taken.

B. The officer confiscating suspect property from a licensee shall proceed without delay to determine whether the item actually was stolen. Should it be determined that the property was stolen, the item may be retained as evidence or returned to its rightful owner; otherwise the property shall be returned to the licensee. As a condition of licensing, licensees shall cooperate fully with the police department in its efforts to recover stolen property, and to this end shall render all reasonable aid and assistance.  
(Ord. #1968-13, §8; Code 1973, §20-8; SFCC 1981, §9-7-19)

#### **18-4.20 Violations of Section.**

A. Any person, or his agents or employees, who violates any provision of this section, shall, on conviction, be punished as provided in Section 1-3, SFCC 1981.

B. Violation of this article shall constitute sufficient cause for revocation of the secondhand dealer's, pawnbroker's or junk dealer's license.

(Ord. #1968-13, §15; Code 1973, §20-16; SFCC 1981, §9-7-21)

#### **18-5 SALES AND AUCTIONS.**

##### **18-5.1 Distress Merchandise Sale License.**

A. *License.* It shall be unlawful for any person to advertise or conduct a distress merchandise sale without having first obtained a license to do so in accordance with this section.

B. *Application.* Any person desiring to conduct a distress merchandise sale within the city shall make a written application verified under oath to the finance department at least fifteen (15) days prior to the date on which the sale is to commence unless the merchandise to be sold consists of perishable goods, or goods damaged by smoke, fire or water in which case the fifteen (15) day time period is not applicable. The application shall contain the following information:

- (1) The name and address of the owner of the goods, wares or merchandise to be sold;
- (2) A description of the place where such sale is to be held;
- (3) The nature of the occupancy of the place where such sale is to be held, whether by lease or otherwise, and the effective date of the termination of the occupancy of the premises;
- (4) The commencement and termination dates of the distress merchandise sale;
- (5) A full and complete statement of the facts regarding the reasons why the distress merchandise sale is being conducted, the manner in which the sale is to be conducted, the means to be employed in advertising the sale, together with the content of any proposed advertisement or advertising themes, or copies thereof;
- (6) If a defunct business is involved, the name and address of the defunct business, and the owner or former owner thereof;
- (7) A complete and detailed inventory of the goods, wares and merchandise including goods received on consignment to be offered at the distress merchandise sale, the terms and conditions of the acquisition of the property, the amount and description of the goods, wares or merchandise to be sold and the location of the goods, wares and merchandise at the time of the filing of the application;
- (8) A statement that the applicant has not in contemplation of the distress merchandise sale ordered, purchased or received on consignment any goods, wares or merchandise for the purpose of selling them at the sale within ninety (90) days prior to the filing of the application;
- (9) A statement that no goods will be added to the inventory after the application is made or during the sale; and
- (10) A statement that the applicant or its principal officers or agents have not been convicted of a violation of the Distress Sales Act [57-10-1 to 57-10-12 NMSA 1987] or this section or had a license issued under the Act or this section revoked within five (5) years of the filing of this application.

C. *Examination and Investigation; Grounds for Denial of License.* The city may upon the filing of an application investigate the applicant and examine the applicant's affairs in relation to the proposed sale and may examine the inventory and records of the applicant. A license shall not be issued if it is found that:

- (1) The applicant has held a sale subject to regulation under the Distress Sales Act [57-10-1 to 57-10-12 NMSA 1978] or this section at the location described in the application, within three (3) years from the date of the application;
- (2) The application states that the applicant or any of its principal officers or agents have been convicted of a violation of the Distress Sales Act or this section or has had a license issued under the act or this section revoked within five (5) years of the filing of the application;
- (3) The inventory submitted with the application includes goods, wares or merchandise purchased or held on consignment by the applicant or added to the applicant's stock in contemplation of such sale and for the purpose of selling the stock at the distress merchandise sale. Any unusual addition to the stock of goods, wares or merchandise which is made within ninety (90) days prior to the filing of the application shall be prima facie evidence that the addition was made in contemplation of the sale and for the purpose of selling the goods at the sale;
- (4) The applicant, in ticketing the goods, wares or merchandise for sale has misrepresented the original retail price or value thereof;
- (5) The advertisement or advertising themes are false, fraudulent, deceptive or misleading in any respect;
- (6) The sales methods to be used by the applicant in conducting the sale will work a fraud upon the purchasers;
- (7) The information set forth in the application is insufficient;
- (8) Representations made in the application are false; or
- (9) The applicant has acquired bankrupt stock or other distress sale merchandise from another area within six (6) months of the application.

D. *Issuance of License; Conditions.* If the application complies with the provisions of the Distress Sales Act [57-10-1 to 57-10-12 NMSA 1978] or this section and the license fee as set forth below has been paid, a license shall be issued to advertise and conduct the sale described in the application subject to the

following conditions:

- (1) The sale shall be held at the place named in the application;
- (2) The sale shall be held by the licensee for a period of not more than ninety (90) days following the date set forth in the license;
- (3) Only goods, wares and merchandise included in the inventory attached to the application shall be displayed on the premises and sold at the sale;
- (4) The license shall be prominently displayed at the location of the sale at all times; and
- (5) The licensee shall keep suitable books at the sale location that shall be open for inspection by the city during normal business hours.

E. *License Fee.* The fee shall be fifty dollars (\$50.00) or one-fourth of one percent (1/4 of 1%) of the inventory cost value of the goods, wares or merchandise to be sold at the sale, whichever is more, to a maximum of two hundred dollars (\$200).

F. *Renewal of License.* If during the period that the license is in effect it appears to the city that all of the goods in the original inventory have not been sold, the city may upon application and for good cause shown extend the license for a period not to exceed thirty (30) days.

G. *Revocation of License.* The license shall be revoked if the city finds the following:

- (1) Violation of any provision of the Distress Sales Act or this section;
- (2) Violation of any condition of the license;
- (3) Material misstatement in the application for the license;
- (4) Failure to include in the inventory required by the Distress Sales Act or this section all the goods, wares or merchandise being offered for sale;
- (5) Offering or permitting to be offered at the sale any goods, wares or merchandise not included in the inventory attached to the application;
- (6) Failure to keep suitable records of the sale;
- (7) Making or permitting to be made any false or misleading statements or representations in advertising the sale or in displaying, ticketing or pricing goods, wares or merchandise offered for sale; or
- (8) Any fraudulent practice in the conduct of the sale authorized by the license.

H. *Confidentiality Requirements.* The filing of an application for a license, the contents of the application and the issuance of the license shall be confidential information and no disclosure thereof shall be made except that which is necessary in the administration of the Distress Sales Act or this section. However, disclosure of the abovementioned information may be made with the consent of the applicant. The filing of the application and the issuance of the license shall not be confidential after public notice of the proposed sale has been given by the applicant.

(Code 1953, §21-1; Code 1973, §27-11; SFCC 1981, §9-9-1; Ord. #2002-35, §2)

#### **18-5.2 Penalty.**

Any violation of subsection 18-5.1 SFCC 1987 is punishable by a fine of not more than three hundred dollars (\$300.) or by imprisonment for a term of not more than ninety (90) days, or by both such fine and imprisonment. In addition, the provisions of subsection 18-5.1 may be enforced through appropriate civil action. (Code 1953, §21-1; Code 1973, §27-12; Ord. #1981-64, §38; SFCC 1981, §9-9-2; Ord. #2002-35, §§4, 5)

#### **18-5.3 Applicability of Distress Sales Licenses.**

Subsection 18-5.1 SFCC 1987 shall not apply to any sale conducted by a public officer as a part of his or her official duties, to any sale for which an accounting must be made to a court of law, to any sale conducted pursuant to an order of a court of law, or to seasonal sales, clearance sales or similar special sales of nondistress merchandise. (Code 1953, §21-3; Code 1973, §27-13; SFCC 1981, §9-9-3; Ord. #2002-35, §§6, 7)

#### **18-5.4 Auction of Jewelry, Watches, Semiprecious or Precious Stones or Metals.**

It is unlawful for any person to sell, dispose of or offer for sale in the city at public auction, or cause or permit to be sold, disposed of or offered for sale at public auction within the city, any jewelry, diamonds or other precious or semiprecious stones, watches, clocks, gold, silverware, plated ware or any other precious metals, whether the same is his own property or whether the sale is made by or through him as agent or employee of the owner, or in any other capacity, without first complying with the provisions of subsections 18-5.4 through 18-5.23 SFCC 1987. (Code 1953, §21-5; Code 1973, §27-15; SFCC 1981, §9-9-4)

**Editor's Note:** For state law as to auction sales of jewelry, see Secs. 61-16-1 through 61-16-17 NMSA 1978.

#### **18-5.5 Misrepresentation by Auctioneers.**

It is unlawful for any person acting as auctioneer to make any material misrepresentation or suppression of fact concerning the goods to be auctioned pursuant to subsections 18-5.4 through 18-5.23, including the quality, quantity, character, present condition, value, cost or selling price. (Code 1953, §21-6; Code 1973, §27-16; SFCC 1981, §9-9-5)

#### **18-5.6 By-Bidding, Capping, Boosting Prohibited.**

It is unlawful for any person to act as by-bidder, "capper" or "booster", at any auction held pursuant to subsections 18-5.4 through 18-5.23, or to offer to make any false bid or to offer any false bid to buy or pretend to buy any goods sold or offered for sale at any such auction. (Code 1953, §21-7; Code 1973, §27-17; SFCC 1981, §9-9-6)

**18-5.7 Description and Designation of Bidder.**

It is the duty of the auctioneer to make a reasonable description of the person making the bid at the time each bid is announced and to point to or otherwise designate the position of the bidder on the premises. (Code 1953, §21-8; Code 1973, §27-18; SFCC 1981, §9-9-7)

**18-5.8 Tags to be Attached to Sale Articles.**

The person whose goods are being sold at public auction pursuant to subsections 18-5.4 through 18-5.23 shall attach to each article sold the selling price when it amounts to ten dollars (\$10.00) or more. The tag shall contain in plain and legible writing or printing a full, complete and accurate description of the article sold, including its kind and quality and the retail price for which it was being offered for sale prior to the time of the beginning of the auction. Where diamonds, precious stones and semiprecious stones are sold at auction, the tag shall not only contain a full, complete and accurate description of the same, stating its size, grade, quality and the retail price for which it was being offered for sale prior to the time of the beginning of the auction, but shall also contain a statement of the weight of such diamond, precious stone or semiprecious stone. (Code 1953, §21-9; Code 1973, §27-19; SFCC 1981, §9-9-8)

**18-5.9 Location of Auction Sale Restricted.**

No auction sale shall be held or conducted pursuant to subsections 18-5.4 through 18-5.23 on any vacant lot, street or public place in the city. (Code 1953, §21-10; Code 1973, §27-20; SFCC 1981, §9-9-9)

**18-5.10 Excepted Sales.**

Subsections 18-5.4 through 18-5.23 shall not apply to judicial sales; sales made by executors or administrators; sales by trustees, mortgagees or assignees under the terms of any instrument given to secure a bonafide indebtedness under which he exercises the power of sale; sales made by or in behalf of licensed pawnbrokers of unredeemed pledges; sales of unclaimed freight or express as provided by law; sales by sheriffs, constables or other officers as provided by law; nor to any other particular kind of auction sale expressly authorized by the laws of the state or the United States. (Code 1953, §21-11; Code 1973, §27-21; SFCC 1981, §9-9-10)

**18-5.11 License Required.**

It is unlawful for any person to sell, dispose of or offer for sale in the city at public auction or cause or permit to be sold, disposed of or offered for sale at public auction within the city, jewelry, diamonds, other precious or semiprecious stones, watches, clocks, gold, silverware, plated ware, or any other precious metals whether they are his own property or whether the sale is made by or through him as agent or employee of the owner, or in any other capacity, without first obtaining a business license issued by the city, as provided in Section 18-1, Business Licenses. (Code 1953, §21-12; Code 1973, §27-22; Ord. #1981-64, §39; SFCC 1981, §9-9-11)

**Editor's Note:** For state law authorizing city to license and regulate business activities, see Sec. 3-38-1 NMSA 1978.



### **18-5.12 Application for License.**

A. Any person desiring to hold an auction sale of any of the goods described in subsection 18-5.11 shall apply to the city for a license. The application shall be in writing, signed and sworn to before a notary public of the county, stating the name of the applicant; his residence; the street and number of the proposed place of sale; the length of time for which the license is desired; the ownership of the property to be sold; whether the applicant was previously engaged in a like or similar business, designating the place where such business was conducted and the length of time conducted. The applicant shall furnish the city with such further evidence as may be required of him.

B. In the case of an individual, any affidavit under this section shall be made by him; in the case of a firm, it shall be made by one of the partners; in the case of a corporation, it shall be made by the president, general manager, secretary or treasurer. (Code 1953, §21-13; Code 1973, §27-23; Ord. #1981-64, §40; SFCC 1981, §9-9-12)

### **18-5.13 License Fee.**

Before any license is issued under subsections 18-5.13 through 18-5.23, the applicant shall pay to the city a license fee of one hundred dollars (\$100) per day, as prescribed in Section 18-1, Business Licenses. (Code 1953, §21-14; Code 1973, §27-24; Ord. #1981-64, §41, SFCC 1981, §9-9-13)

**Editor's Note:** See subsection 18-1.3 SFCC 1987 for license fee for auctions.

### **18-5.14 Inventory of Items to be Auctioned.**

Any application for a license under subsections 18-5.11 through 18-5.23, and Section 18-1, Business Licenses, shall have attached to it a sworn, itemized inventory of all diamonds and diamond-set jewelry, watches, silverware and silver-plated ware or other precious metals to be auctioned, giving the wholesale cost of each article and showing the kind and character. No diamonds, diamond-set jewelry, watches, gold or silverware, silver plated ware or other precious metals mentioned in subsections 18-5.11 through 18-5.23 shall be sold at auction, except those referred to and included in the inventory. (Code 1953, §21-15; Code 1973, §27-25; Ord. #1981-64, §42; SFCC 1981, §9-9-14)

### **18-5.15 Bond Required.**

Any person desiring a license under subsections 18-5.11 through 18-5.23 and Section 18-1, Business Licenses, shall furnish a bond to the city, duly executed by the applicant as principal and two (2) or more good and solvent persons who reside in the county or a good and solvent surety company authorized to do business in the state and having an agent in the county, as sureties, in the principal sum of five thousand dollars (\$5,000), which bond shall be payable to the city, to be approved by the city clerk and city attorney and conditioned that the principal shall pay all loss and damage which may lawfully be claimed against him on account of any material misrepresentation of fact or any material suppression of fact concerning the goods to be auctioned at any such sale or which may grow out of violation of any of the provisions of subsections 18-5.4 through 18-5.23, and any person sustaining any loss or damage may bring suit in any court of competent jurisdiction in the county to recover the same. The provisions of the bond shall be construed liberally in favor of any person sustaining such loss or damage. All remedies on or under such bond shall be in addition to and cumulative of all other remedies the parties may have at law or in equity for recovery of any such losses or damages. Cumulative recoveries may be had on the bond to the full amount thereof. (Code 1953, §21-16; Code 1973, §27-26; Ord. #1981-64, §43; SFCC 1981, §9-9-15)

### **18-5.16 Term of License.**

A license issued under subsections 18-5.11 through 18-5.23 and Section 18-1, Business Licenses, shall be for the period of time designated in the application; provided that no license shall be issued for a longer period than fifteen (15) days from the date thereof. (Code 1953, §21-17; Code 1973, §27-27; Ord. #1981-64, §44; SFCC 1981, §9-9-16)

### **18-5.17 Issuance of License.**

The city may issue a license to any person upon compliance by such person with the terms of subsections 18-5.4 through 18-5.23 and Section 18-1, Business Licenses. (Code 1953, §21-18; Code 1973, §27-28; Ord. #1981-64, §45; SFCC 1981, §9-9-17)

### **18-5.18 Appeal if License is Denied.**

The city may deny a license and the applicant, in such an event, shall be granted a hearing, as provided by Section 18-1, Business Licenses. (Ord. #1981-64, §46; SFCC 1981, §9-9-18)

### **18-5.19 Revocation of License by Governing Body.**

The governing body may at any time it may see fit, for good cause shown, revoke any license granted as provided by Section 18-1, Business Licenses. (Code 1953, §21-20; Code 1973, §27-30; Ord. #1981-64, §47; SFCC 1981, §9-9-19)

### **18-5.20 Revocation of License by Court.**

In addition to any penalty that may be imposed for any violation of subsections 18-5.4 through 18-5.23, the court in which the conviction of the violation is had may revoke the license under which the person was acting; it shall thereafter be unlawful for any person whose license is revoked to hold any auction in the city of goods covered by the provisions of subsections 18-5.4 through 18-5.23. No such revocation shall operate to prohibit or disqualify the person whose license was revoked from making application to the city for a new license. (Code 1953, §21-21; Code 1973, §27-31; SFCC 1981, §9-9-20)

### **18-5.21 Applications and Inventories to be Filed.**

The city shall keep on file the application and inventory referred to in subsections 18-5.11 through 18-5.23 as a part of the public record. (Code 1953, §21-22; Code 1973, §27-32; Ord. #1981-64, §48; SFCC 1981, §9-9-21)

### **18-5.22 Index of Licensees.**

The city shall keep an index of the persons to whose licenses have been issued under subsections 18-5.11 through 18-5.23. (Code 1953, §21-23; Code 1973, §27-33; Ord. #1981-64, §49; SFCC 1981, §9-9-22)

### **18-5.23 Inspection and Investigation of Goods.**

The city may inspect and investigate any part or all of the goods coming within the purview of subsections 18-5.4 through 18-5.23 before issuing the license provided for in subsections 18-5.11 through 18-5.23, or at any time thereafter while such license is in existence. (Code 1953, §21-24; Code 1973, §27-34; SFCC 1981, §9-9-23)

### **18-5.24 Sales and Auctions in Residential Districts.**

Subsections 18-5.24 through 18-5.28 are adopted for the express purpose of providing harmony and adequate open spaces for traffic, on- and off-street parking within residential areas and to provide for a distribution of population, parking and traffic which will tend to create conditions favorable to health, safety, convenience, prosperity and general welfare. (Ordained as Code 1973, §27-35 by Ord. #1974-7, §1; SFCC 1981, §9-9-24)

### **18-5.25 Definitions.**

As used in subsections 18-5.25 through 18-5.28:

*Goods* means any goods, wares, merchandise or other personal property capable of being the object of a sale regulated hereunder.

*Person* means any person who is occupying any home or mobile home located within a residential district of the city and who conducts a sale as defined herein.

*Sale of goods* means the selling of goods in bulk within a residential area of the city, commonly known as home or mobile home, garage, patio and yard sales and other associated sales activities held in such a manner as to reasonably cause the public to believe that the person conducting the sale will cease the selling of goods at the place of sale upon disposal of the stock of goods on hand.

(Ordained as Code 1973, §27-36 by Ord. #1974-7, §2; SFCC 1981, §9-9-25)

### **18-5.26 Exemptions.**

The provisions of subsections 18-5.24 through 18-5.28 shall not apply to or affect the following persons:

A. Persons acting pursuant to an order or process of a court of competent jurisdiction;

B. Persons acting in accordance with their powers and duties as public officials;

C. Duly licensed auctioneers, selling at auction; and

D. Any duly licensed bona fide merchant of the city conducting a seasonal or a special sale ordinarily conducted by merchants or to any bona fide merchant who is closing out his stock of goods and advertises such sale to that effect or to a bona fide merchant whose stock of goods has been damaged by fire, smoke, water or otherwise and who advertises as such.

(Ordained as Code 1973, §27-37 by Ord. #1974-7, §3; SFCC 1981, §9-9-26)

### **18-5.27 Regulations for Sales and Auctions in Residential Districts.**

Sellers shall conform to the following regulations:

A. Proper Advertising. Each seller shall refrain from employing any untrue, deceptive or misleading advertising;

B. Adherence to Advertising. Each seller shall conduct the sale in strict conformity with any advertising or holding out incidental thereto;

C. Time period. The selling period pertaining to the sale of goods as defined herein shall not exceed five (5) consecutive days;

D. Interval between sales. To refrain from selling goods at the same location stated in the advertisement, there shall be an interval of at least ninety (90) days from the last day of the original selling period.

(Ordained as Code 1973, §27-38 by Ord. #1974-7, §4; SFCC 1981, §9-9-27)

### **18-5.28 Violations and Penalties.**

Any person violating any of the provisions of subsection 18-5.24 through 18-5.28 shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not exceeding one hundred dollars (\$100). Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such. (Ordained as Code 1973, § 27-39 by Ord. #1974-7, § 5; SFCC 1981, § 9-9-28)

## **18-6 TAXICABS.**

Part I General Provisions

### **18-6.1 Short Title.**

This section may be cited as the "City Taxicab Act". (SFCC 1981, §9-12-1)

**Editor's Note:** For state law as to motor carrier regulations, see Sec. 65-2-1 et seq., NMSA 1978.

### **18-6.2 Definitions.**

As used in this section:

*Certificate* means a certificate of public convenience and necessity, issued by the city, authorizing the holder to conduct a taxicab business within the corporate limits of the city.

*Manifest* means a daily record prepared by a taxicab driver of all trips made by him showing time and place of origin, destination, number of passengers, and the amount of fare of each trip.

*Owner* means the person who holds legal title to a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee, or lessee or mortgagor shall be deemed the owner for the purpose of the City Taxicab Act.

*Rate card* means the card issued by the city for display in each taxicab which contains the rates of fare then in force.

*Taxicab* means a passenger-type motor vehicle operated for hire in transporting passengers or personal property on the streets and within the corporate limits of the city, and having a normal seating capacity of not more than twelve (12) persons; provided, however, that motor vehicles such as funeral vehicles, ambulances or buses shall not be considered to be taxicabs.

*Taximeter* means a mechanical or electronic device or instrument by which the charge for hire is mechanically calculated and on which such charge shall be

indicated by means of figures.

*Waiting time* means the time a taxicab is not in motion from the time of acceptance of a passenger to the time of discharge, but does not include any time the taxicab is not in motion if due to any cause other than the request, act or fault of a passenger.

*Zone fare system* means a system wherein the fare is determined by the number of zones crossed between origin and destination. A zone is determined by arbitrary geographical boundaries following the city street patterns.  
(Ordained as Code 1973, §33-1 by Ord. #1979-26; SFCC 1981, §9-12-2)

**18-6.3 Property Left in Taxicab.**

Every driver of a taxicab, immediately upon the termination of a fare, shall make a reasonable search of the taxicab for any property lost, or left therein. Such property, unless sooner claimed or delivered to the owner, shall be taken to the police station and deposited with the officer in charge within twenty-four (24) hours after the finding thereof, with such brief particulars as will enable the police department to identify the owner of the property. (Ordained as Code 1973, §33-2, by Ord. #1979-26; SFCC 1981, §9-12-3)

**18-6.4 Ownership of More than One Taxicab.**

The provisions of this section do not prohibit any person from owning or operating more than one (1) taxicab; provided that separate licenses are obtained for each

taxicab operated under the provisions of the City Taxicab Act; and provided further, that the drivers thereof comply with all requirements imposed by the owners and first secure taxicab driver's identification cards pursuant to this section. (Ord. #1955-19, §10; Code 1973, §33-3; Ord. #1979-26; Ord. #1980-43, §1; SFCC 1981, §9-12-4)

#### **18-6.5 Inspection and Condition of Taxicabs; Filing of Reports.**

A. Vehicles operated under a taxicab license shall be required to procure safety inspections for each vehicle each six (6) months or as required by the state. In addition, the city manager shall have the right to require a special inspection of any taxicab at any time. Such inspection shall normally be performed under the supervision of the city manager, and, upon completion, the operator shall be presented with a written memorandum listing the nature of the defects discovered. If defects are found, the owner shall not utilize the vehicle for hire until such defects are repaired to the satisfaction of the city manager.

B. All vehicles so operated as taxicabs shall at all times be kept in good condition of repair, in good mechanical order, clean and sanitary. Each licensee shall report completion of required repairs to the city manager.

C. The report of all inspections of taxicabs required under the City Taxicab Act shall be filed with the city manager. (Ord. #1955-19, §§5, 25; Code 1973, §§33-4, 33-5; Ord. #1979-26; Ord. #1980-43, §§2, 3; SFCC 1981, §9-12-5)

#### **18-6.6 Report of Accidents.**

If any licensed taxicab is involved in a collision or accident, notice thereof shall be given to the city manager or to such other official as the governing body may direct and an inspection shall be made of such taxicab before it can be again used in service, if the amount of damage exceeds one hundred dollars (\$100). (Ord. #1955-19, §5; Code 1973, §33-6; Ord. #1979-26; Ord. #1980-43, §4; SFCC 1981, §9-12-6)

#### **18-6.7 Schedule of Charges; Posting of Schedule in Taxicabs.**

A. No person owning, operating or controlling any motor vehicle used as a taxicab within the city shall charge any rate of fare except in accordance with a fare schedule, based on a zone fare system or taximeter system, approved by the governing body. Additional rates may also be charged for the following:

- (1) Each additional passenger, except that babies-in-arms and the first child under school age shall not be charged; and
- (2) Waiting time.

B. No fare in excess of or less than the approved rate of fares shall be charged by a taxicab driver.

C. Pets on a leash may only be carried at the discretion of the taxicab driver, and when carried will be charged the same as an additional passenger, except seeing-eye dogs.

D. A printed schedule of governing body approved fares shall be placed in each taxicab so as to be plainly visible to all passengers.

E. No charge shall be made for any bags, suitcases or ordinary traveling baggage. The handling, by the taxicab driver, of heavy trunks, foot lockers, large boxes, furniture items, bicycles, wheel chairs, or other such related items may be charged at an approved rate.

F. The owner shall maintain a written manifest of trips made for hire by each vehicle. This manifest shall contain the number of the vehicle, the name of the driver operating the vehicle, the date and time of each trip, the point of origin and termination of each trip, and the total fee charged. Such record shall be kept on file for a period of at least one (1) year, and shall be made available for inspection by duly qualified law enforcement officers, the city manager or his delegated representative.

(Ord. #1955-19, §22; Ord. #1962-12, §1; Ord. #1972-1; Code 1973, §33-7; Ord. #1974-8, §1; Ord. #1979-26; Ord. #1980-43, §5; SFCC 1981, §9-12-7)

#### **18-6.8 Taximeters.**

A. Those taxicabs which charge in accordance with a metered system shall have affixed thereto a taximeter and no person shall operate or permit to be operated any taxicab unless the taximeter has been first inspected, tested and approved by the city manager or his designated representative; provided, that on wheel or road tests, with respect to distance computed or actually traveled, no tolerance in deficiency and no tolerance in excess of two percent (2%) may be allowed. A fee of five dollars (\$5.00) shall be charged for each inspection. No person shall operate or permit to be operated a taxicab equipped with a taximeter not having the case sealed and the cover and gear intact.

B. Every taximeter shall be so affixed that the amount of the fare determined shall be plainly visible to passengers and after sundown shall be illuminated by a suitable light. Taximeters shall be examined at least once a year, and the city manager or his designated agents shall keep a record of all such inspections and approvals and disapprovals.

C. The taximeter shall be used at all times. When any taxicab is in use transporting a passenger, the flag on the taximeter shall be down and shall be thrown up when the passenger is delivered to his destination. Immediately on payment the flag shall be thrown up on the taximeter. (SFCC 1981, §9-12-8)

#### **18-6.9 Establishing or Changing Fare Schedule.**

Prior to establishing or changing the fare schedule, the taxicab business must file with the city manager a fare schedule along with expense and revenue comparisons and proposed zone fare map and give thirty (30) days' notice before the fare goes into effect. The governing body is authorized, however, to reject any fare filed which is not in keeping with established regulations. The governing body may also allow the changes to go into effect upon shorter notice or modify the requirements with respect to filing of the fare schedule if necessary in special situations. Any action by the governing body shall be taken at a regularly scheduled council meeting. (Ordained as Code 1973, §33-8 by Ord. #1979-26; Ord. #1980-43, §6; SFCC 1981, §9-12-9)

#### **18-6.10 Insurance.**

A. Before any owner's license for a taxicab shall be issued, the owner shall file with the city clerk an insurance policy issued by an insurance company licensed to do business in this state and approved by the city attorney providing insurance coverage for each and every taxicab owner, operated or leased by the applicant for an owner's license. Such policy of insurance shall be in the sum of at least ten thousand dollars (\$10,000) for injury to one (1) person, or twenty thousand dollars (\$20,000) for injury to more than one (1) person, and five thousand dollars (\$5,000) property damage in any one (1) accident caused through the operation of

a taxicab of the applicant.

B. Such policy of insurance shall contain a provision for a continuing liability to the full amount, notwithstanding any recovery on the policy and that until the policy is revoked as herein provided, the insurance company will not be relieved from liability on account of nonpayment of premium, failure to renew license at the end of the year or any act or omission of the named insured.

C. Any insurance company whose policy has been so filed pursuant to this section may file a notice in the office of the city clerk of its intention to terminate and cancel the policy and give notice thereof to the named licensee. Ten (10) days after such filing, the licensee or owner shall cease to operate or cause to be operated within the city the taxicab and the license issued shall be automatically revoked and liability on such policy shall cease and terminate; provided, that the liability of the insurance company for any act or omission of the licensee or owner occurring prior to the effective date of cancellation shall not be discharged or impaired. (Ord. #1955-19, §6; Code 1973, §33-9; Ord. #1979-26; Ord. #1980-43, §7; SFCC 1981, §9-12-10)

**Editor's Note:** For state law as to insurance requirements, see Sec. 62-2-52 NMSA 1978.

#### **18-6.11 Owner's Name on Taxicab.**

Every taxicab licensed under this section shall have a sign on the main panel of each front door of the vehicle, in letters one and one-half inches (1 1/2") in height, indicating the name of the owner, or the name under which the owner conducts his business, the business telephone number, and shall also have displayed a number on each of the vehicles, the vehicles to be numbered in a series of consecutive numbers. (Ord. #1955-19, §7; Code 1973, §33-10; Ord. #1979-26; Ord. #1980-43, §8; SFCC 1981, §9-12-11)

#### **18-6.12 Revocation of License, Card; Surrender; Appeal.**

A. The governing body may revoke any owner's license or driver's identification card for:

- (1) Incompetency;
- (2) Violation of any of the laws of the United States or of the state constituting a felony;
- (3) Violation of any ordinance of the city relating to reckless driving, driving while intoxicated, leaving the scene of an accident causing death or injuries to persons or damage to property;
- (4) Commission of any offense involving moral turpitude;
- (5) Other unlawful activity; or
- (6) For any other causes the governing body deems sufficient.

B. Upon revocation, the owner's license or driver's identification card shall be surrendered to the city clerk. Any person who shall refuse to surrender his license or card after written notice from the governing body shall be deemed guilty of violating the provisions of issuance of the license or card.

C. Any person aggrieved by any ruling or decision of the governing body may appeal by petition to the district court of the county within ten (10) days from the date of revocation. (Ord. #1955-19, §23; Code 1973, §33-11; Ord. #1979-26; Ord. #1980-43, §9; SFCC 1981, §9-12-12)

### **Part II Owner's License**

#### **18-6.13 Certificate of Public Convenience and Necessity Prerequisite to Issuance of License.**

Any person applying for an owner's license shall have secured from the governing body a certificate stating that public convenience and necessity require the operation of the taxicab. (Ord. #1955-19, §24; Code 1973, §33-13; Ord. #1979-26; Ord. #1980-43, § 11; SFCC 1981, §9-13-1)

#### **18-6.14 Determination of Public Convenience and Necessity by Governing Body.**

In determining public convenience and necessity, the governing body shall consider the number of taxicabs then operating in the city; the need of the public for additional service; the financial responsibility of the applicant; the number, kind, type and equipment of those taxicabs for which licenses are asked; the traffic conditions in the city; and such other facts as the governing body deems relevant. (Ord. #1955-19, §24; Code 1973, §33-14; Ord. #1979-26; Ord. #1980-43, §12; SFCC 1981, §9-13-2)

#### **18-6.15 Owner's License Required.**

It is unlawful for any person to engage in the taxicab business in the city without an owner's license for each taxicab as provided in this section. (Ord. #1955-19, §2; Code 1973, §33-12; Ord. #1979-26; Ord. #1980-43, §10; SFCC 1981, §9-13-3)

#### **18-6.16 Renewal of Existing License.**

The governing body shall not refuse to renew an existing owner's license merely on the ground of lack of convenience or necessity. (Ord. #1955-19, §24; Code 1973, §33-15; Ord. #1979-26; Ord. #1980-43, §13; SFCC 1981, §9-13-4)

#### **18-6.17 Application; Investigation; Approval or Rejection.**

Application for an owner's license under this section shall be made under oath and in writing to the city clerk on forms to be furnished by the clerk and shall state the applicant's full name; residence; the number of vehicles proposed to be used in the business; the financial status of the applicant; the experience of the applicant in the transportation of passengers; the location of proposed depots and terminals; and the color scheme or insignia to be used to designate the vehicles. If the applicant is a corporation, the officers of the corporation and the majority or principal stockholder shall be required to submit the same information and meet the same requirements of an individual applicant. The governing body may require such additional information as it deems necessary and shall make such inquiry as it deems necessary in regard to the applicant and his qualifications. (Ordained as Code 1973, §33-16 by Ord. #1979-26; SFCC 1981, §9-13-5)

#### **18-6.18 Issuance Prohibited to Certain Persons.**

No owner's license shall be issued at any time to any person who has not attained the age of twenty-one (21) years; or who has been convicted, within the preceding twelve (12) months, of a felony as defined by the laws of the United States or the state; of the violation of any ordinance of the city pertaining to major driving offenses, such as reckless driving, driving while intoxicated, failure to stop after an accident causing death, personal injuries or damage to property; of any criminal offense

involving moral turpitude; or who is addicted to the use of intoxicating liquors or narcotics. (Ord. #1955-19, §3; Code 1973, §33-17; Ord. #1979-26; Ord. #1980-43, §14; SFCC 1981, §9-13-6)

#### **18-6.19 License Fee.**

Before the city clerk shall issue an owner's license as provided in the City Taxicab Act, the applicant shall pay to the city clerk the following annual fees:

A. Ten dollars (\$10.00) for the right to engage in the taxicab business; and

B. Twenty-five dollars (\$25.00) for each vehicle operated under the license.

(Ord. #1955-19, §4; Code 1973, §33-18; Ord. #1979-26; Ord. #1980-43, §15; SFCC 1981, §9-13-7)

#### **18-6.20 Term of License; No Proration of Fee.**

An owner's license extends from January 1 through December 31, and the full license fee shall be paid for any part of such year. (Ord. #1955-19, §4; Code 1973, §33-19; Ord. #1979-26; Ord. #1980-43, §16; SFCC 1981, §9-13-8)

#### **18-6.21 Transfer of License.**

A. An owner's license may not be transferred between persons or corporations.

B. An owner's license may be transferred from one (1) vehicle to another of the same ownership with the approval of the city manager and in accordance with subsection 18-6.22 of this chapter.

(Ord. #1955-19, §8; Code 1973, §33-20; Ord. #1979-26; Ord. #1980-43, §17; SFCC 1981, §9-13-9)

#### **18-6.22 Transfer of License upon Death of Holder.**

Upon the death of any person holding an owner's license, the city manager may, upon receipt of satisfactory evidence of such death and at the request of the deceased's personal representative, authorize the city clerk to transfer the license to the person in whose name title to the taxicab operated pursuant to the owner's license shall be vested by reason of such death. In no event, however, shall any such transfer be made unless and until the transfer and transferee comply in all respects with the terms and provisions of this section. (Ord. #1955-19, §24; Code 1973, §33-21; Ord. #1979-26; Ord. #1980-43, §18; SFCC 1981, §9-13-10)

#### **18-6.23 Transfer of Taxicabs between Licensees.**

Any person holding an owner's license issued under this section, upon the approval of the city manager, may transfer the ownership of his taxicab to another person holding an owner's license issued under this section. (Ord. #1955-19, §24; Code 1973, §33-22; Ord. #1979-26; Ord. #1980-43, §19; SFCC 1981, §9-13-11)

#### **18-6.24 Transfer of License to Another Vehicle.**

Upon the furnishing of evidence that a taxicab licensed under this section is no longer to be used as such, the city manager may authorize the city clerk to transfer the owner's license for use on another taxicab. (Ord. #1955-19, §24; Code 1973, §33-23; Ord. #1979-26; Ord. #1980-43, §20; SFCC 1981, §9-13-12)

#### **18-6.25 Owner's License, Transfer Fee.**

For every transfer of an owner's license issued under the City Taxicab Act, the city treasurer shall collect from the applicant for such transfer a fee of five dollars (\$5.00) for each taxicab involved in such transfer. (Ord. #1955-19, §24; Code 1973, §33-24; Ord. #1979-26; Ord. #1980-43, §21; SFCC 1981, §9-13-13)

#### **18-6.26 License, Issuance of Card.**

When an owner's license is granted for a particular taxicab, there shall be delivered to the licensee a card of such size and form as may be determined by the city clerk. Such card shall contain the official license number of the taxicab and shall be signed by the city clerk and mayor. (Ord. #1955-19, §8; Code 1973, §33-25; Ord. #1979-26; Ord. #1980-43, §22; SFCC 1981, §9-13-14)

#### **18-6.27 Display of Owner's License.**

The license card referred to in subsection 18-6.26 shall be affixed in a place in the taxicab to which it was issued so that such card is visible to any passenger. (Ord. #1955-19, §9; Code 1973, §33-26; Ord. #1979-26; Ord. #1980-43, §23; SFCC 1981, §9-13-15)

### **Part III Driver Identification Card**

#### **18-6.28 Driver's Identification Card Required.**

It shall be unlawful for any person to drive a taxicab without first having obtained a driver's identification card as provided in the City Taxicab Act. (Ord. #1955-19, §2; Code 1973, §33-27; Ord. #1979-26; Ord. #1980-43, §24; SFCC 1981, §9-14-1)

#### **18-6.29 Qualifications of Applicant.**

Each applicant for a driver's identification card under this section shall be:

A. Eighteen (18) years of age or over;

B. Of sound physique, good eyesight, not subject to epilepsy or any other infirmity of body or mind which would affect his ability to properly handle a taxicab;

C. Able to read and speak the English language; and

D. In possession of a state class 5 license.

(Ord. #1955-19, §11; Code 1973, §33-28; Ord. #1979-26; Ord. #1980-43, §25; SFCC 1981, §9-14-2)

#### **18-6.30 Contents of Application.**

Each applicant shall fill out a form to be provided by the city clerk, giving his full name, residence, place of residence for five (5) years previous to moving to his present address, age, height, color of eyes and hair, place of birth, length of time he has resided in the city, whether a citizen of the United States, place of previous employment, whether he has ever been convicted of a felony or misdemeanor, whether he has ever been previously licensed as a driver or chauffeur, and, if so, when and where, and whether his license has ever been revoked, and, if so, for what cause. Such statements shall be signed and sworn to by the applicant and filed with the police department as a permanent record. (Ord. #1955-19, §11; Code 1973, §33-29; Ord. #1979-26; Ord. #1980-43, §26; SFCC 1981, §9-14-3)

### **18-6.31 State Class 5 License Required.**

Each applicant shall produce satisfactory proof that he has been licensed by the state and the current number of such valid class 5 license. (Ord. #1955-19, §11; Code 1973, §33-30; Ord. #1979-26; Ord. #1980-43, §27; SFCC 1981, §9-14-4)

### **18-6.32 Investigation of Applications.**

The investigation of all applications shall be conducted by the police department and when such investigation is completed, the report of such investigation, together with a copy of the application, shall be forwarded by the police department to the city clerk who shall issue such identification card. (Ord. #1955-19, §11; Code 1973, §33-31; Ord. #1979-26; Ord. #1980-43, §28; SFCC 1981, §9-14-5)

### **18-6.33 Issuance of Driver's Identification Card Prohibited to Certain Persons.**

No driver's identification card shall be issued under the City Taxicab Act to any person who within the preceding five (5) years has been convicted of any felony; of a violation of an ordinance involving moral turpitude or reckless driving while intoxicated; or failure to stop after an accident causing death, personal injuries or damage to property, within a period of one (1) year previous to the date of such application. (Ord. #1955-19, §11; Code 1973, §33-32; Ord. #1979-26; Ord. #1980-43, §29; SFCC 1981, §9-14-6)

### **18-6.34 Identification Card Fee.**

The city clerk may grant a driver's identification card in accordance with this section, upon the payment to the city treasurer of a fee of five dollars (\$5.00) and upon approval of the city manager. (Ord. #1955-19, §14; Code 1973, §33-33; Ord. #1979-26; Ord. #1980-43, §30; SFCC 1981, §9-14-7)

### **18-6.35 Issuance of Driver's Identification Card.**

On satisfactory fulfillment by an applicant of the requirements, there shall be issued to the applicant a driver's identification card which shall be in such form as to permit the attachment of the photograph of the card holder and his signature. (Ord. #1955-19, §14; Code 1973, §33-34; Ord. #1979-26; Ord. #1980-43, §31; SFCC 1981, §9-14-8)

### **18-6.36 Temporary Identification Card.**

A temporary driver's identification card may be issued by the city clerk pending the investigation to be conducted as provided in subsection 18-8.32, but such temporary card shall be for a period not to exceed twenty (20) days. (Ord. #1955-19, §11; Code 1973, §33-35; Ord. #1979-26; Ord. #1980-43, §32; SFCC 1981, §9-14-9)

### **18-6.37 Special Emergency Driver's Permit.**

A special emergency driver's permit may be issued by the officer in charge on duty with the police department when the city clerk is not available, on the certificate of an owner that an emergency exists and the city clerk is not available to issue a temporary driver's identification card as provided for in subsection 18-6.36, such permit shall expire one (1) hour after the city clerk's office has been open for business subsequent to the issuance of the emergency permit. (Ord. #1955-19, §11; Code 1973, §33-36; Ord. #1979-26; Ord. #1980-43, §33; SFCC 1981, §9-14-10)

### **18-6.38 Denial of Identification Card for False Information.**

Whenever any applicant for a driver's identification card gives false information pertaining to his police record and such information is ascertained to be false, the applicant shall be refused an identification card. (Ord. #1955-19, §11; Code 1973, §33-37; Ord. #1979-26; Ord. #1980-43, §34; SFCC 1981, §9-14-11)

### **18-6.39 Rules and Regulations for Issuance of Identification Cards.**

The city manager is authorized to establish additional rules and regulations governing the issuance of driver's identification cards not inconsistent with the City Taxicab Act, as may be necessary and reasonable. Such rules and regulations shall become effective upon approval by a resolution passed by the governing body. (Ord. #1955-19, §11; Code 1973, §33-38; Ord. #1979-26; Ord. #1980-43, §35; SFCC 1981, §9-14-12)

### **18-6.40 Photographs of Applicants.**

Each applicant for a driver's identification card shall file with his application three (3) recent photographs of himself of a size which may be easily attached to the card. One of the photographs shall be attached to the driver's card when issued, one on the card and the other shall be filed, together with the application, with the police department. The photograph shall be attached to the card so that it cannot be removed and another photograph substituted without detection. (Ord. #1955-19, §13; Code 1973, §33-39; Ord. #1979-26; Ord. #1980-43, §36; SFCC 1981, §9-14-13)

### **18-6.41 Expiration Date of Identification Card.**

A driver's identification card shall expire two (2) years from the date of issuance unless revoked as provided in this section. (Ord. #1955-19, §14; Code 1973, §33-40; Ord. #1979-26; Ord. #1980-43, §37; SFCC 1981, §9-14-14)

### **18-6.42 Defacing Entries on Identification Card.**

Any person holding a driver's identification card who defaces, removes or obliterates any official entry made on his card shall, in addition to any other punishment imposed by this section, have his identification card revoked at the discretion of the city manager. (Ord. #1955-19, §14; Code 1973, §33-41; Ord. #1979-26; Ord. #1980-43, §38; SFCC 1981, §9-14-15)

### **18-6.43 Display of Identification Card.**

Every driver permitted under this section shall have his driver's identification card, together with his photograph and driver's identification card number, conspicuously displayed to the satisfaction of the city manager so that it may be easily seen both in the day and nighttime by occupants of the taxicab. (Ord. #1955-19, §15; Code 1973, §33-42; Ord. #1979-26; Ord. #1980-43, §39; SFCC 1981, §9-14-16)

### **18-6.44 Renewal of Identification Card.**

The police department may cause the renewal of a driver's identification card issued under this section every two (2) years by appropriate endorsement by the chief of police upon application for renewal and upon payment of a fee of one dollar (\$1.00). (Ord. #1955-19, §15; Code 1973, §33-43; Ord. #1979-26; Ord. #1980-43, §40; SFCC 1981, §9-14-17)

### **18-6.45 Employment of Unlicensed Driver.**

It shall be unlawful for the holder of an owner's license under this section to permit any person to drive a taxicab within the city unless the person so driving shall have first obtained a driver's identification card from the city clerk, as provided in the City Taxicab Act, and unless such driver's identification card has not been suspended or revoked. (Ord. #1955-19, §14, 18; Code 1973, §33-44; Ord. #1979-26; Ord. #1980-43, §41; SFCC 1981, §9-14-18)

### **18-6.46 Records to be Kept.**

The police department shall keep a complete and public record of the issuance of each driver's identification card under this section and of all renewals, suspensions, complaints, violations and revocations thereof, which record shall be filed with the original application for the license. (Ord. #1955-19, §19; Code 1973, §33-45; Ord. #1979-26; Ord. #1980-43, §42; SFCC 1981, §9-14-19)

#### **Part IV Operating Regulations**

##### **18-6.47 Conduct of Drivers.**

It shall be the duty of every person driving a taxicab to conduct himself in a courteous and professional manner. (Ordained as Code 1973, §33-46 by Ord. #1979-26; SFCC 1981, §9-15-1)

##### **18-6.48 Drivers to Comply with State Traffic Laws.**

It shall be the duty of every person driving a taxicab to drive his motor vehicle carefully and in full compliance with all federal, state or local traffic laws, ordinances and regulations or orders of the police department or any of its members and to promptly answer all court notices, traffic violation notices or police notices. (Ord. #1955-19, §17; Code 1973, §33-47; Ord. #1979-26; Ord. #1980-43, §43; SFCC 1981, §9-15-2)

##### **18-6.49 Use of Cab for Unlawful Purposes.**

No person shall drive a taxicab for the purpose of providing transportation for a person when engaged in unlawful undertaking; provided, that the driver has knowledge of such unlawful undertaking. (Ord. #1955-19, §26; Code 1973, §33-48; Ord. #1979-26; Ord. #1980-43, §44; SFCC 1981, §9-15-3)

##### **18-6.50 Free Rides; Use of Front Seats.**

No person shall drive a taxicab for the purpose of transporting a passenger other than in taxi service. No passenger shall be allowed to ride in the front seat with the driver unless the rear seat of the taxicab is occupied and the passenger specifically desires to occupy the front seat. (Ord. #1955-19, §26; Code 1973, §33-49; Ord. #1979-26; Ord. #1980-43, §45; SFCC 1981, §9-15-4)

##### **18-6.51 Refusal of Service.**

No driver may refuse to deliver any orderly passenger to any destination within the city limits reasonably accessible by automobile. (Ord. #1955-19, §26; Code 1973, §33-50; Ord. #1979-26; Ord. #1980-43, §46; SFCC 1981, §9-15-5)

##### **18-6.52 Additional Passengers.**

The owner, taxicab driver or other person representing the owner may transport passengers for hire other than the passenger who first requested the service as a shared ride. (Ordained as Code 1973, §33-51 by Ord. #1979-26; SFCC 1981, §9-15-6)



### **18-6.53 Refusal of Passenger to Pay Legal Fare.**

It shall be unlawful for any person to refuse to pay the legal fare of any of the vehicles mentioned in the city Taxicab Act after having hired the same, and it shall be unlawful for any person to hire any vehicle herein defined with intent to defraud the person from whom it is hired of the value of such service. (Ordained as Code 1973, §33-52 by Ord. #1979-26; Ord. #1980-43, §47; SFCC 1981, §9-15-7)

### **18-6.54 Objectionable Persons.**

The taxicab driver reserves the right to refuse to transport any person who is under the influence of intoxicants or drugs or who is incapable of taking care of himself, or whose conduct is objectionable to other passengers. The above provision does not apply to persons who are sick and accompanied by an attendant or nurse. (Ordained as Code 1973, §33-53, by Ord. #1979-26; SFCC 1981, §9-15-8)

### **18-6.55 Refusal of Unsafe Packages.**

The taxicab driver reserves the right to refuse any package which by reason of the dangerous or other character of its contents is liable, in the judgment of the driver to soil, taint, or otherwise damage other merchandise or the driver's equipment, or which is improperly or insecurely packed or wrapped. (Ordained as Code 1973, §33-54 by Ord. #1979-26; Ord. #1980-43, §48; SFCC 1981, §9-15-9)

### **18-6.56 Violations.**

Every owner of a taxicab business to which this section applies and every other person, who violates or who procures, aids or abets in the violating of any provisions of the City Taxicab Act, shall, upon conviction, be punished as provided in Section 1-3 SFCC 1987. Such conviction shall not preclude the suspension or revocation of any license or driver's identification card for any other violation of the provisions of this section. (Ordained as Code 1973, §33-55 by Ord. #1979-26; Ord. #1980-43, §49; SFCC 1981, §9-15-10)

## **18-7 CARNIVALS AND CIRCUSES.**

### **18-7.1 Operations.**

A. It is unlawful to operate a carnival or circus unless prior approval of the proposed operation is secured from the city manager.

B. It is unlawful for any person, firm or corporation to operate a carnival or circus for more than six (6) consecutive days.

(Ordained as Code 1973, §19-2 by Ord. #1978-48, §§1, 2; Ord. #1980-32, §1; Ord. #1981-64, §31; SFCC 1981, §9-5-1; Ord. #2003-9, §1)

### **18-7.2 Permit.**

A. Any person contemplating operating a carnival or circus shall apply to the city clerk's office for a permit to do so not less than forty-five (45) days prior to the contemplated day of beginning operation. The application shall be on a form available at the city clerk's office and accompanied by a nonrefundable fee of twenty-five dollars (\$25.00) to cover the city's administrative service charge in issuing a permit.

B. As a condition of issuance of a permit to operate a carnival or circus, the applicant shall show to the satisfaction of the city manager that it will assure:

- (1) Any food vending facilities meet the appropriate laws and regulations;
- (2) Adequate security is provided by the applicant;
- (3) Safety standards established by appropriate city staff will be complied with; and
- (4) Adequate public liability insurance shall be provided by the applicant.

C. At the time of submission by the applicant of information with regard to the size, nature and duration of the carnival or circus, the applicant shall pay to the city a fee established by the city manager to defray the cost of the cleanup after departure. The city manager shall refund any unexpended portions of the fee.

D. The city manager, in the interest of the public peace, health, welfare and safety may restrict any approved carnival or circus to specifically approved locations.

E. If the operation of the carnival or circus includes animals, the applicant shall obtain a special animal permit as set forth in subsection 5-10.1N. SFCC 1987.

F. The applicant shall obtain a business license as set forth in subsection 18-8.10 SFCC, 1987.

(Ordained as Code 1973, §19-2.1 by Ord. #1978-48, §§3 through 7; Ord. #1980-32, §2; Ord. #1981-64, §32; SFCC 1981, §9-5-2; Ord. #2003-9, §2)

**18-8 PUSH CART ON PRIVATE PROPERTY; STREET VENDORS.**

(Former subsections 18-8.1–18.8.8: Prior ordinance history includes portions of SFCC §§4-17-8.1–4-17-8.6 and 4-17-8.9 and Ordinance Nos. 1984-89, 1986-19, 1987-6, 1990-5 and 2002-41)

**18-8.1 Definitions.**

As used in this section:

*Courtyard* means a space open to the sky, bounded on three (3) sides by a building and within the lot of a place of business.

*Inside building* means a permanent structure enclosed by four (4) walls including multiple units for business purposes.

*Mall* means an enclosed area providing building structures for multi-purpose tenancy where vendors of goods are located. A mall includes a public walkway that gives access to vendors' locations.

*Pushcart* means a non-permanent, non-motorized cart, barrow or unit that can be pushed by hand. (Ord. #2009-49, §2)

**18-8.2 Pushcarts on Private Property.**

Pushcarts are permitted on private property, with the permission of the property owner; or as otherwise permitted by the city manager. Private property includes malls, courtyards or inside buildings. Pushcarts, as defined in subsection 18-8.1 SFCC 1987, are governed under the provisions of subsection 18-2 SFCC 1987, entitled Business Registration Fees. (Ord. #2009-49, §3)

**18-8.3—18-8.8 Reserved.**

**18-8.9 Street Vendors; Permit Requirements.**

In addition to the pushcart vendors permitted by the Pushcart Ordinance, and the Plaza Park vendors, special use permits for sales activity by motorized vehicles on public streets may be approved by the city manager, provided that:

- A. Use of parking zones and metered parking spaces is limited to a maximum of two (2) hours;
- B. Vendors are not permitted to be located adjacent to city parks during events scheduled by the city recreation division unless authorized by the city manager;
- C. Loudspeakers or amplification of sound are prohibited unless authorized by the governing body;
- D. In any calendar year, no more than ten (10) vendors selling food or drink items and five (5) vendors selling non-food or drink items shall be permitted;
- E. Street vendors are not permitted in the Plaza Park, or the Plaza periphery as defined by this Code;
- F. A permit shall be issued to a food or drink vendor only upon presentation of a food purveyor's permit from the food services section of the state environmental improvement division;
- G. An administrative fee of fifty dollars (\$50.00) is paid to the city, plus other license fees prescribed by law and requirements prescribed by subsection 23-4.7 SFCC 1987;
- H. If after fifteen (15) days written notice from the city of violations of the Santa Fe City Code or of state statutes, the vendor does not correct the violations, the permit shall be revoked by the city manager. The permittee may appeal the decision of the city manager to revoke a permit to the governing body within thirty (30) days. (Ord. #1981-39, §8; SFCC 1981, §4-17-8; Ord. #1982-10, §3; Ord. #1984-32, §1; Ord. #1984-90, §1; Ord. #1990-5, §11)

**Editor's Note:** §4-17-8 SFCC 1981 was repealed by Ord. #1984-90, §1, and a new §4-17-8 was ordained.

**18-8.10 Business License - Fees.**

A. Pursuant to Section 3-38-1 through 3-38-6 NMSA 1978, it is hereby declared by the governing body of the city of Santa Fe, that in order to protect the public health, general welfare and morals of the citizens of the city of Santa Fe, and for purposes of business regulation in the public interest, a business licensee fee shall be assessed as follows:

- (1) Adult bookstores, as defined in Section 14-12 SFCC 1987\*, fifty dollars (\$50.00) per year, for each place of business;
- (2) Adult motion picture theaters, as defined in Section 14-12 SFCC 1987\*, fifty dollars (\$50.00) per calendar year, for each place of business;
- (3) Alarm installation companies and alarm monitoring companies, seventy-five dollars (\$75.00) per calendar year, for each place of business.
- (4) Antique dealers, ten dollars (\$10.00) per year, for each place of business;
- (5) Artist/artisan, ten dollars (\$10.00) per calendar year;
- (6) Auctions, one hundred dollars (\$100.) per day;
- (7) Carnivals, under the conditions prescribed in Section 18-7 SFCC 1987, one hundred fifty dollars (\$150.) per day;

- (8) Circuses, under the conditions prescribed in Section 18-7 SFCC 1987, one hundred fifty dollars (\$150.) per day;
- (9) Itinerant food vendors, as defined in subsection 18-1.2G, ten dollars (\$10.00) for each vendor per calendar year, per location. Prior to applying for an itinerant food vendors license, the applicant shall meet any applicable federal, state, and city requirements, and furnish the city with a copy of a valid food purveyors certificate issued by the state environmental division, and a certificate of occupancy issued by the city code enforcement department;
- (10) Itinerant vendors, ten dollars (\$10.00) per calendar year, per location;
- (11) Jewelry auctions as defined by subsections 18-5.4 through 18-5.23 SFCC 1987, one hundred dollars (\$100.) per day. These auctions shall be licensed per the provisions of subsections 18-5.4 through 18-5.23 SFCC 1987 and the provisions of this section shall not apply if they conflict with Section 18-5 SFCC 1987;
- (12) Massage parlors, fifty dollars (\$50.00) per year, for each place of business;
- (13) Mobile home parks, as defined by Section 14-12 SFCC 1987\*, two dollars (\$2.00) per space, with a minimum charge of fifty dollars (\$50.00) per park;
- (14) Pawnbrokers, as defined in subsection 18-4.1 SFCC 1987, under the conditions prescribed by Section 18-4 SFCC 1987, two hundred fifty dollars (\$250.) per year, for each place of business;
- (15) Private day-care nurseries, facilities and kindergartens, under the conditions prescribed in Section 14-6.2(B)(4) SFCC 1987\*, ten dollars (\$10.00) per year, for each place of business;
- (16) Private detectives or private detective agencies, as defined in subsection 20-24.1 SFCC 1987, and under the conditions prescribed by Section 20-24 SFCC 1987, fifty dollars (\$50.00) per year, for each place of business;
- (17) Sales of goods brought into the city temporarily by itinerant vendors, as described in Section 18-3 SFCC 1987, under the conditions prescribed in subsections 18-3.1 through 18-3.3 SFCC 1987, two hundred dollars (\$200.) per occurrence;
- (18) Secondhand dealers, as defined in subsection 18-4.1 SFCC 1987, under the conditions prescribed by Section 18-4 SFCC 1987, ten dollars (\$10.00) per year, for each place of business;
- (19) Special policemen or special police agencies as defined in subsection 20-24.1 SFCC 1987, under the conditions prescribed in Section 20-24 SFCC 1987, fifty dollars (\$50.00) per year. Those special police exempted under subsection 20-24.4 SFCC 1987 shall not be required to obtain a business license;
- (20) Septic tank cleaners or septage haulers, under the conditions prescribed in Section 22-2 SFCC 1987, fifty dollars (\$50.00) per year, for each place of business.
- (21) Street performers, as defined in subsection 23-8.3 SFCC 1987, thirty-five dollars (\$35.00) per year, unless a street performer will perform for no more than one thirty (30) day period per year, ten dollars (\$10.00).

B. Before a license is granted, the following businesses shall execute and deliver a bond to the city clerk to be approved by the clerk and the city attorney with a corporate surety authorized by the laws of the state to write surety bonds and conditioned for the lawful conduct of the businesses and for the true and faithful observance of applicable provisions of the SFCC 1987; such bond shall be for the benefit of the city and every person damaged by breach of any condition thereof;

- (1) Pawnbrokers, in the amount of five thousand dollars (\$5,000.); and
- (2) Jewelry auctions, as defined in subsections 18-5.4 through 18-5.23 SFCC 1987, in the amount of five thousand dollars (\$5,000.), as set forth in subsection 18-5.15 SFCC 1987.

C. It is unlawful for any person to engage in the businesses, professions or trades defined in this section as requiring a license, within the corporate limits of the city, without first obtaining a license as prescribed by this section and pursuant to Section 3-38-1 NMSA 1978.

D. The license fees established in this subsection are hereby declared to have been reviewed on a case-by-case basis by the governing body of the city of Santa Fe and are hereby found to bear a reasonable relationship to the costs of regulations of each business by the city of Santa Fe.

E. Prior to engaging in any business to which this section applies, there shall be paid to the city of Santa Fe the applicable license fee and in the event the fee is paid after the beginning of the calendar year, it shall not be prorated.

F. Any person filing an application for issuance or renewal of any business license shall include on the application his current revenue division taxpayer identification number or evidence of application for a current revenue division taxpayer identification number. No license shall be issued unless such number or application has been furnished.

(Ord. #1981-64, §3; Ord. #1983-38, §2; Ord. #1982-67, §1; SFCC 1981, §9-4-3; Ord. #1987-48, §8; Ord. #1987-51, §2; Ord. #1989-34, §24; Ord. #1990-5, §12; Ord. #1997-19, §1; Ord. #2009-33, §27; Ord. #2009-50, §10)

**\*Editor's Note:** The reference numbers have been changed to agree with revised Chapter 14, adopted December 31, 2001. Requirements for adult bookstores and adult motion picture theaters may be found in Section 14-6.2(C)(1). Requirements for mobile home parks may be found in Section 14-6.2(A)(5).

## **18-9 RESERVED.**

**Editor's Note:** Section 18-9, Plaza Park Vendors, previously contained herein, has been repealed in its entirety by Ordinance No. 1990-5, §13.

## **18-10 MUNICIPAL GROSS RECEIPTS TAX.**

### **18-10.1 Imposition of Tax.**

There is imposed on any person engaging in business in this municipality, for the privilege of engaging in business in this municipality, an excise tax equal to one

and one-quarter percent (1.25%) of the gross receipts reported or required to be reported by the person pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. The tax imposed under this section is pursuant to the Municipal Local Option Gross Receipts Taxes Act as it now exists or as it may be amended and shall be known as the "municipal gross receipts tax." (Ord. #1981-45, §1; SFCC 1981, §9-4-22; Ord. #1983-7, §1; Ord. #1987-19; Ord. #23-1991; Ord. #2007-5, §1)

**18-10.2 General Provisions.**

This section hereby adopts by reference all definitions, exemptions and deductions contained in the Gross Receipts and Compensating Tax Act as it now exists or as it may be amended. (Ord. #1987-19; Ord. #23-1991)

**18-10.3 Specific Exemptions.**

No municipal gross receipts tax shall be imposed on the gross receipts arising from:

A. Direct broadcast satellite services;

B. Transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or

C. A business located outside the boundaries of a municipality on land owned by the municipality for which a state gross receipts tax distribution is made pursuant to subsection C of Section 7-1-6.4 NMSA 1978.

(Ord. #1981-45, §2; SFCC 1981, §9-4-23; Ord. #1983-7, §2; Ord. #1987-19; Ord. #23-1991; Ord. #2007-5, §2)

**18-10.4 Dedication.**

Revenue from the one and one-quarter percent (1.25%) municipal gross receipts tax will be used for the purpose(s) listed below:

A. Revenue from the first two (2) one-quarter percent (1/4%) increments of the municipal gross receipts tax is dedicated for the following purposes:

(1) Annual debt service for municipal gross receipts tax revenue bonds or other bonds for municipal projects issued for the construction, reconstruction, improvements and replacement of city facilities, parks, streets, sidewalks, utilities, and other public works projects including the related

**CHAPTER XVIII LICENSES AND TAXES**

- 18-1 Business Licenses
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- 18-18 Municipal Capital Outlay Gross Receipts Tax

**18-1 BUSINESS LICENSES.\***

**18-1.1 Short Title.**

This section may be cited as the "Business License Ordinance." (Ord. #1981-64, §1; SFCC 1981, §9-4-1)

**18-1.2 Definitions.**

As used in this section:

*Antique dealer* means a person whose primary business is buying and selling pieces of furniture, or decorative objects made at least one hundred (100) years ago.

*Artist/artisan* means any individual who displays or offers for sale his or her own hand-crafted products.

*Business* means any commercial activity or enterprise for financial gain, benefit, advantage or livelihood.

*Distress merchandise sale* means any offer to sell to the public, or sale to the public, of goods, wares or merchandise on the implied or direct representation that such sale is in anticipation of the termination of a business at its present location or that the sale is being held other than in the ordinary course of business. Distress merchandise sales shall include but are not limited to any sale advertised either specifically or in substance as a "fire sale," "smoke and water damage sale," "adjustment sale," "liquidation sale," "creditor's sale," "insolvent sale," "trustee's sale," "bankrupt sale," "save us from bankruptcy sale," "insurance salvage sale," "mortgage sale," "assignee's sale," "adjuster's sale," "must vacate sale," "quitting business sale," "receiver's sale," "loss of lease sale," "forced out of business sale," "removal sale," "change of ownership sale," "new location sale," or "everything must go."

*Itinerant food vendor* means any person associated with organizations that have been issued a city special use permit, and who offers for sale, occasionally or

temporarily, food products, or samples, in the city.

*Itinerant vendor* means any person with no established business location within the geographical boundaries of the city who brings into the city food products, stocks or samples of goods, wares and merchandise or goods crafted primarily of manufactured materials and processes and/or made by someone other than the vendor, and offers the same for sale, or who offers services, on private property of another person.

*Massage* means the practice, for compensation, of full body massage by hand through the use of any mechanical apparatus incorporating nonspecific stretching techniques, the use of oil rubs, heat lamps, salt glows, hot and cold packs, tubs, showers, or cabinet baths, steam baths and mineral water. Variations of the following procedures are employed: touch, stroking, friction, kneading, vibration, percussion and gymnastics, or any combination of equipment; masseurs or masseuses shall not diagnose or treat classified diseases, nor practice spinal or other joint manipulation, nor prescribe medicine or drugs.

*Massage parlor* means a place of business where massage is performed, which employs two (2) or more persons.

*Person* means any individual, estate, trust, receiver, cooperative association, association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity.

*Sexually oriented business* means an adult arcade, adult bookstore or adult video store, adult cabaret, escort agency, adult motel, adult motion picture theater, adult newsrack, or adult performance and encounters (live) business. See further definitions in Section 14-39 SFCC 1987. (Ord. #1981-64, §2; Ord. #1982-38, §1; SFCC 1981, §9-4-2; Ord. #1987-51, §1; Ord. #1990-5, §1; Ord. #1998-10, §17; Ord. #2000-9, §1; Ord. #2002-35, §1; Ord. #2007-17, §1; Ord. #2009-33, §25)

**18-1.3        Reserved.\***

**18-1.4        License Application; Information Required.**

A.        Applicants for licenses under this section shall file with the city a sworn application in writing, on a form to be furnished by the city, which shall include, but is not limited to the following:

- (1)        Name;
- (2)        Address;

(3) Current state revenue division taxpayer identification number or evidence of application for a current state revenue division taxpayer identification number;

(4) A brief description of the nature of the business;

(5) Proof of insurance coverage, when applicable; and

(6) Proof of bond, when applicable.

B. In addition to the information required in paragraph A, the following businesses shall also include the following information with their applications:

(1) Carnival operators shall submit a copy of their special use permit, as required by subsection 18-7.2 SFCC 1987;

(2) Circus operators shall submit a copy of their special use permit, as required by subsection 18-7.2 SFCC 1987;

(3) Itinerant vendors seeking to conduct sales as defined under subsection 18-5.1 SFCC 1987 shall submit a copy of their petition as approved by the governing body, as required in subsection 18-5.1 SFCC 1987;

(4) Jewelry auction operators, as defined in subsections 18-5.1 through 18-5.23 SFCC 1987, shall provide information required by subsections 18-5.12 and 18-5.14 SFCC 1987, including a notarization of the application;

(5) Mobile home park operators shall submit a copy of their certificate of occupancy;

(6) Private day-care nurseries, facilities and kindergarten operators, when approval is required by the board of adjustment, as per the provisions of Section 14-6.2 SFCC 1987(B)(4)\*, shall include a sworn affidavit stating that they have received such approval; and

(7) Septic tank cleaners shall submit a sworn affidavit stating that they have conformed to the requirements set forth in subsection 22-4.9 SFCC 1987.

(8) Flea market operators shall submit:

(a) A copy of a current certificate of occupancy. The certificate of occupancy shall be reissued annually; and

(b) A sworn affidavit stating that they have conformed to the requirements set forth in subsection 14-6.2 SFCC 1987(C)(4)\*.

(9) Alarm installation companies and monitoring companies, as defined in subsection 20-5.4 SFCC 1987, shall provide information required by subsection 20-5.8 SFCC 1987.

(Ord. #1981-64, §4; Ord. #1982-28, §3; SFCC 1981, §9-4-4; Ord. #1987-48, §9; Ord. #1998-10 §18; Ord. #2009-33, §26)

\***Editor's Note:** Reference numbers have been changed to agree with Revised Chapter 14, adopted December 31, 2001.

#### **18-1.5 Payment of License Fees Required; Assessments; Protest.**

A. On or before March 15 of each year, all businesses engaging in a type of business enumerated as requiring business licenses under this section shall apply for a business license for that year. These businesses shall include payment with the application and show proof of insurance and bond, if the business is so required.

B. Upon payment of the business license fee, the city shall issue a business license to the applicant unless refused pursuant to Section 3-28-2 NMSA 1978.

C. Any business may protest the amount of the business license fee assessment by filing a written protest with the city clerk, on or before March 15. The finance committee shall give the protesting business no less than five (5) days notice of a hearing, at which time the protest shall be heard by the finance committee.

D. The finance committee shall have the same authority and power as that of the governing body as contained in subsection 18-1.6 SFCC 1987.

E. Any business which must have a business license as enumerated in this section, which begins operations after March 15, shall apply to the city for a business license prior to engaging in business.

(Ord. #1981-64, §5; SFCC 1981, §9-4-5; Ord. #1996-11, §1)

#### **18-1.6 Denial or Revocation of License; Hearing.**

A. For the purpose of regulation and when deemed in the public interest, the governing body may refuse to grant a license but no license shall be refused until the person seeking the license has been given the opportunity to be heard by the governing body. After such hearing, the majority of the governing body at the hearing may still refuse to grant a license. The license applicant shall be given not less than five (5) days notice of the hearing.

B. When a person is guilty of violating a regulation relating to the granting of a license, or in the judgment of the governing body the public welfare requires a license be revoked, the governing body may revoke the license.

C. The procedures set forth in subsection 20-24.5 SFCC 1987, shall govern revocation of licenses for special police and detectives insofar as those procedures conflict those set out herein.

(Ord. #1981-64, §6; SFCC 1981, §9-4-6)

#### **18-1.7 Notice of Violation; Penalty.**

A. If a person required to secure a business license and pay a business license fee is in violation of this section or any provision of SFCC 1987 or is operating in a manner contrary to the public welfare, the city shall:

(1) Send the person a notice of violation specifically stating the nature of the violation; or

(2) If there are past due fees, ordering that the past due fees plus a penalty which is double the amount due, be paid immediately.

B. The notice may further state that if the fee and penalty are not paid, and if the provisions of this section or other provisions of SFCC 1987 are not complied with or that the operation contrary to the public welfare is not discontinued within fifteen (15) days after receipt of the notice, the person shall appear before the finance committee to show cause why the business should not be closed. The notice shall set a date, time and place of the hearing by the finance committee. (Ord. #1981-64, §7; SFCC 1981, §9-4-7; Ord. #1996-11, §2)

#### **18-1.8 Enforcement; Hearing; Cease and Desist Order.**

A. If, at the hearing before the finance committee, the person fails to show cause why the business should not be closed, the finance committee shall issue a cease and desist order closing the business. Such cease and desist order shall prevent the owner or operator of the business from conducting any business in the building, structure, or on the land, until the terms of this section have been complied with.

B. The hearing before the finance committee shall not be less than thirty (30) days after the notice provided in subsection 18-1.7 of this section is mailed.

C. An appearance may be made by counsel and the person charged with violating this section may present evidence and call witnesses to show cause why his license should not be denied or revoked.

D. Any persons aggrieved by the decision of the finance committee may submit to the governing body a written petition for appeal. Such petition for appeal shall:

(1) Be submitted to the city clerk's office within thirty (30) days of the date the action appealed was taken by the finance committee.

(2) Set forth that such proceedings or assessments were in error in whole or in part, specifying the grounds of the appeal.

(3) Be included on the agenda of the next possible regularly scheduled meeting of the governing body, during the evening session. Verbal or written notice shall be given to the appellant at least five (5) calendar days prior to the meeting of the governing body.

(Ord. #1981-64, §8; SFCC 1981, §9-4-8; Ord. #1996-11, §3)

#### **18-1.9 Penalty.**

Any person who violates the provisions of this section or fails to comply with any of its requirements shall be liable for the amount of the license fee, in addition to a penalty which is double the amount due and shall be subject to revocation or denial of the license as set forth in Section 3-38-2 NMSA 1978. (Ord. #1981-64, §9; SFCC 1981, §9-4-9)

#### **18-1.10 Itinerant Businesses; Notice of Violation; Penalty.**

Persons operating itinerant businesses required to pay a business license fee, who are in violation of this section, may be served a written notice of violation by a uniformed police officer, specifically stating the nature of the violation and ordering that the past due fee, plus a penalty, which is double the amount due, be paid immediately, and that he discontinue operation until he is in compliance. (Ord. #1981-64, §10; SFCC 1981, §9-4-10)

#### **18-1.11 Alternate Enforcement Procedure.**

A. This section shall be enforced by the city attorney as other municipal regulations are enforced.

B. In addition, if any business is conducted in violation of this section or any ordinance, the city attorney shall institute any appropriate action or proceedings to:

(1) Prevent the conduct of the business;

(2) Restrain, correct or abate the violation; or

(3) Prevent the occupancy of the building, structure or land on which the business is located.

C. In addition to the remedies provided in paragraphs A and B of this subsection, the business license fee may be collected and Chapter 3, Article 38 NMSA 1978 shall be enforced by the city attorney by suit in district court or under such other regulation or ordinance or authority as the governing body may provide. (Ord. #1981-64, §11; SFCC 1981, §9-4-11)

#### **18-1.12 Lien Created.**

There is hereby created a lien on the personal property of each business licensed; such lien is in favor of the city and enforced pursuant to Section 3-38-6 NMSA 1978. (Ord. #1981-64, §12; SFCC 1981, §9-4-12)

#### **18-1.13 Record of Licenses.**

The city clerk, in conjunction with the appropriate city office, shall keep a record of all business licenses issued, including the names of the license holders, the date issued, the amount paid and other relevant information. (Ord. #1981-64, §13; SFCC 1981, §9-4-13)

#### **18-1.14 Savings Clause.**

This section does not apply to offenses committed prior to the effective date of the Business License Ordinance. Offenses committed prior to the effective date of this section are punishable as provided by the regulation in force at the time the offense was committed. Nothing in this section shall be construed as adversely affecting any prior obligations incurred under the former Sections 9-4-1 through 9-4-21 SFCC 1981. (Ord. #1981-64, §51; SFCC 1981, §9-4-14)

#### **18-1.15 Annual Review.**

It is the desire of the governing body that the city staff responsible for the administration of this section, review the amounts collected and report to the governing body annually as to any changes in the cost of administering this section. (Ord. #1981-64, §52; SFCC 1981, §9-4-15)

### **18-2 BUSINESS REGISTRATION FEE.**



### **18-2.1 Short Title.**

This section may be cited as the "Business Registration Ordinance". (Ord. #1981-63, §1; SFCC 1981, §9-4A-1)

### **18-2.2 Definition.**

As used in this section:

*Business* means an activity or enterprise for financial gain, benefit, advantage or livelihood.

(Ord. #1981-63, §2; SFCC 1981, §9-4A-2)

### **18-2.3 Imposition of Fee.**

There is imposed on each place of business conducted in the city and not licensed pursuant to Section 3-38-1, NMSA 1978, and Section 18-1, Business Licenses, an annual business registration fee in the amount of thirty-five dollars (\$35.00). The fee is imposed pursuant to Section 3-38-3, NMSA 1978, and shall be known as the "business registration fee". The business registration fee may not be prorated for businesses for a portion of the year. (Ord. #1981-63, §5; SFCC 1981, §9-4A-3; Ord. #1987-4, §1; Ord. #1993-19, §1)

### **18-2.4 Application; Required.**

Any person proposing to engage in business after the effective date of this section, shall apply to the city for a certificate of occupancy and pay a business registration fee of thirty-five dollars (\$35.00), for each outlet, branch, location, or person doing business in the municipal limits of the city, prior to engaging in business, unless such person is required to pay for and obtain a business license, as specified in Section 18-1, Business Licenses. (Ord. #1981-63, §6; SFCC 1981, §9-4A-4; Ord. #1987-4, §2; Ord. #1993-19, §2)

### **18-2.5 Renewal of Business Registration.**

Prior to March 16 of each year, any person engaging in a business within the city and subject to the business registration fee shall apply for renewal of his business registration with the city. (Ord. #1981-63, §5; SFCC 1981, §9-4A-5)

### **18-2.6 Taxpayer Identification Number Required.**

Any person filing an application for issuance or renewal of a business registration shall include in the application his current taxpayer identification number from the state taxation and revenue department, revenue division, or evidence of his application for a current revenue division taxpayer identification number, provided that the person is required to file for same. (Ord. #1981-63, §6; SFCC 1981, §9-4A-6)

### **18-2.7 Penalty.**

Any person who violates the provisions of the Business Registration Ordinance or fails to comply with any of its requirements shall be liable for the amount of the registration fee, in addition to a ten dollar (\$10.00) late fee. (Ord. #1981-63, §7; SFCC 1981, §9-4A-7; Ord. #1987-4, §3; Ord. #1993-19, §3)

### **18-2.8 Notice of Violations.**

A. If a person who is required to pay a business registration fee and register the business, fails to register or pay the fee, the city shall send the person a notice of violation:

- (1) Specifically stating the nature of the violation; and
- (2) Ordering that the past due registration fee plus a late fee of ten dollars (\$10.00) be paid immediately.

B. The notice shall further state that the city will order the person to appear before the finance committee to show cause why the business should not be closed if the fees are not paid within fifteen (15) days after receipt of the notice.

(Ord. #1981-63, §8; SFCC 1981, §9-4A-8; Ord. #1987-4, §4; Ord. #1993-19, §4; Ord. #1996-11, §4)

### **18-2.9 Hearing; Time for Compliance after Division.**

A. If the business is not registered or the registration fee is not paid by the deadline date set forth in the notice of violation, then the city shall send a notice to such person ordering them to appear before the finance committee to show cause why the city should not issue a cease and desist order closing the business.

B. The hearing before the finance committee shall not be less than thirty (30) days after the notice is mailed, and the notice shall include the date of the hearing. An appearance may be made by counsel, and the person charged with violating this section may present evidence and call witnesses to prove that there was no violation of this section.

C. If, at the hearing before the finance committee, the person fails to show cause why the business should not be closed, the finance committee shall issue a cease and desist order closing the business. Such cease and desist order shall prevent the owner or operator of the business from conducting any business in the building structure, or on the land, until the terms of this section have been complied with.

D. Any persons aggrieved by the decision of the finance committee may submit to the governing body a written petition for appeal. Such petition for appeal shall:

- (1) Be submitted to the city clerk's office within thirty (30) days of the date the action appealed was taken by the finance committee.
- (2) Set forth that such proceedings or assessments were in error in whole or in part, specifying the grounds of the appeal.

(3) Be included on the agenda of the next possible regularly scheduled meeting of the governing body, during the evening session. Verbal or written notice shall be given to the appellant at least five (5) calendar days prior to the meeting of the governing body.

(Ord. #1981-63, §9; SFCC 1981, §9-4A-9; Ord. #1996-11, §5)

### **18-2.10 Record of Businesses Registered.**

The city clerk, in conjunction with the appropriate city office, shall keep a record of all businesses registered, including the names of the owners of the businesses, the date issued, the amount paid and other relevant information. (Ord. #1981-63, §10; SFCC 1981, §9-4A-10)

### **18-2.11 Temporary Provision.**

Nothing in this section shall affect the collection of occupation taxes under Section 18-1, SFCC 1987 due and payable prior to July 1, 1981. Any taxpayer who has paid an occupation tax for a full 1981 calendar year shall not be required to pay a business registration fee for conducting the same business in the city from the effective date of this section through December 31, 1981. (Ord. #1981-63, §11; SFCC 1981, §9-4A-11)

### **18-2.12 Annual Review.**

It is the desire of the governing body that the city staff responsible for the administration of this section review the amounts collected and report to the governing body annually as to any charges in the cost of administering this section. (Ord. #1981-63, §12; SFCC 1981, §9-4A-12)

## **18-3 SOLICITATION. \***

**\*Editor's Note:** Prior ordinance history includes portions of 1973 Code §§19-6(21) and 19-27; SFCC 1981 §§9-6-1–9-6-4 and Ordinance Nos. 1956-35, 1974-25 and 1974-39.

### **18-3.1 Short Title.**

Article 18-3 SFCC 1987 shall be cited as the "Solicitation Ordinance." (Ord. #2010-23, §7)

### **18-3.2 Legislative Findings.**

A. The governing body is concerned for the health, safety, peace and welfare of the citizens of the city of Santa Fe.

B. Current city of Santa Fe laws consider the practice of going onto property by commercial solicitors or itinerant vendors a nuisance.

C. The Supreme Court of the United States and other federal courts have determined that door-to-door solicitation is commercial speech, protected under the First Amendment to the Constitution of the United States.

D. The Supreme Court also established a test for governmental regulation of commercial speech. In part, the test requires that "The governmental interest must be substantial, such as the need to (i) protect privacy, (ii) prevent crime and/or (iii) for consumer protection, *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980); 100 S. Ct. 2343.

E. The governing body recognizes the First Amendment protection door-to-door solicitors have; however, the governing body further recognizes the need to protect the health, safety, peace and welfare of the citizens of Santa Fe.

F. This Solicitation Ordinance balances the First Amendment protection of commercial solicitors and the health, safety, peace and welfare of the citizens of Santa Fe.  
(Ord. #2010-23, §8)

### **18-3.3 Purpose.**

The purpose of this Article is to regulate solicitation on private property within the city of Santa Fe while protecting the health, safety and welfare of the residents of the city. (Ord. #2010-23, §9)

### **18-3.4 Definitions.**

As used in Section 18-3 SFCC 1987:

*Charitable* means the purpose of an organization which (i) has received a letter of determination approving tax exempt status under Title 26 of the United States Code Section 501(c)(3); or the purpose of a school organization, club or team, recognized and affiliated with a public or private school, having a program with annual campaigns to support the public or private school club.

*Chief of police* means the city's chief of police or the chief's designee.

*Office* means the city's accounts receivable office.

*Person* means any individual.

*Political* means on behalf of a political party or candidate or for the purpose of influencing legislation or personal belief.

*Religious* means on behalf of an established religion which means a particular system of faith and worship recognized and practiced by a particular church, sect or denomination.

*Solicitation*

A. Means the act of any person traveling by foot, vehicle or any other type of conveyance who goes on private property to:

(1) Request, either directly or indirectly, money, credit, funds, contributions, personal property or anything of value;

(2) Take or attempt to take orders for the sale of any goods, wares, merchandise or services of any kind, or description for future delivery or for services to be performed in the future, either in person or by distributing flyers and leaflets;

(3) Sell and make immediate delivery of any goods, wares, merchandise or services of any kind or description; or

(4) Communicating or otherwise conveying ideas, views or beliefs or otherwise disseminating oral or written information to a person willing to

directly receive such information, provided that such information is of a commercial nature.

B. Does not mean the following:

(1) A person communicating or otherwise conveying ideas, views or beliefs or otherwise disseminating oral or written information to a person willing to directly receive such information, provided that such information is of a political, religious or charitable nature;

(2) A person seeking to influence the personal belief of the occupant of any residence regarding any political or religious matter;

(3) A person seeking to obtain, from an occupant of any residence, an indication of the occupant's belief in regard to any political or religious matter;

(4) A person conducting a poll, survey or petition drive in regard to any political matter;

(5) A person carrying, conveying, delivering or transporting dairy products, newspapers or other goods to regular customers on established routes or to the premises of any person who had previously ordered such products or goods and is entitled to receive the same; and

(6) A person whose business is to solicit dealers or permanent merchants in the usual course of business.

*Solicitor* means any person, whether a resident of the city or not, engaged in solicitation.

**18-3.5 Solicitation for Charitable, Religious or Political Purposes Exempt.**

Solicitation for charitable, religious or political purposes is exempt from the licensing provisions set forth in subsection 18-3.6 SFCC 1987; however, the organization or person, if the solicitation is not on behalf of an organization, is required to comply with the provisions set forth in paragraphs 18-3.11 B., C., and D. SFCC 1987. (Ord. #2010-23, §11)

**18-3.6 License Required.**

A. Except as set forth in subsection 18-3.5 SFCC 1987 above, it is unlawful for any person to engage in solicitation within the city without a valid solicitation license issued by the city of Santa Fe.

B. Licenses are not assignable or transferable.

(Ord. #2010-23, §12)

**18-3.7 License Application.**

A. The application for a license shall be available at the city's accounts receivable office and shall include the following information:

(1) The name, permanent residence address of the applicant, date of birth, social security number, a brief description of the applicant and a photograph of the applicant;

(2) The applicant shall present a valid identification card issued by a state within the United States of America;

(3) Complete employment history for the past ten years;

(4) Disclosure of any criminal convictions, infraction or misdemeanor citations received, including any municipal code violations and criminal or civil cases pending. This shall include any cases dismissed or expunged pursuant to state law;

(5) A statement that the person is not currently under investigation for any crimes related to solicitation or other criminal offense including, but not limited to, violent crimes, sexual assault, possession of controlled substances, theft, fraud or burglary;

- (6) Name and addresses of employer if applicable;
- (7) Requested time and place to solicit within the city; and
- (8) Such other information as the office may require.

B. The application shall include the signature of the applicant acknowledging that the information contained in the application is true and correct to the best of the applicant's knowledge; that the applicant consents to a criminal background check at the expense of the applicant; and that the applicant will comply with all provisions of Section 18-3 and all applicable city, state and federal laws. The applicant's signature shall be notarized.

C. The application shall be submitted to the office at least fifteen (15) calendar days prior to the time the solicitor requests to engage in solicitation.

D. An application fee, as established by resolution of the governing body, shall be paid at the time the application is submitted.

E. The applicant shall maintain, at all times, accurate application information with the city. If there is any change, or modification to the information provided on the initial application, the applicant shall give written notification of such change to the office within two (2) weeks of the change.  
(Ord. #2010-23, §13)

**18-3.8 Criminal Background Check.**

A. Upon the request of the city's accounts receivable office, the chief of police shall initiate the criminal background check of prospective solicitors.

B. The chief of police is authorized to receive criminal history record information from any agency or department of the state of New Mexico or the United

D. The chief of police is authorized to receive criminal history records information from any agency or department of the state of New Mexico or the United States government.

C. The office shall not issue a license to a person who refuses to consent to or cooperate in the securing of a criminal background check subject to the provisions of this section.

D. The office shall not issue a license to a person that the chief of police has received a criminal background check revealing a conviction for any felony offense or serious misdemeanor including, but not limited to, violent crimes, sexual assault, possession of controlled substances, theft, fraud or burglary. Such person shall be disqualified from receiving a license.

E. The office shall promptly notify a person whose criminal background check reveals a disqualifying criminal conviction.  
(Ord. #2010-23, §14)

### **18-3.9 Renewal; Revocation.**

A. All licenses granted under the provisions of this section shall be valid for up to one (1) year and may be renewed thereafter, unless sooner revoked.

B. Prior to the expiration of a license and upon application for renewal of the license, the city's accounts receivable office shall determine if the solicitor has acted in compliance with the applicable provisions of this section and conditions of the license.

(1) If determined to have been in substantial compliance, the license shall be renewed upon payment of any applicable renewal fee.

(2) If a determination has been made that the solicitor is not in substantial compliance with this section, the license shall not be renewed and no other license shall be issued to the solicitor within one (1) year of the date of the determination.

C. Renewal fees shall be established by resolution of the governing body.

D. The office may revoke any license granted under the provisions of this section for any of the following reasons:

(1) The applicant provided false, misleading or misrepresented information in procuring license;

(2) The applicant or any person who worked on behalf of or with the applicant failed to comply with the requirements, regulations, laws and conditions of approval applicable to the license;

(3) The applicant or any person who worked on behalf of or with the applicant is convicted of violating any federal, state or local law while in the course of operating under the license; or

(4) The activities for which the license was granted were or are being conducted in a manner that is detrimental to the public health, safety, peace or welfare of the citizens of Santa Fe.

E. The office shall promptly notify a person whose license has not been renewed or has been revoked in writing certified mail to the last known address filed.

F. When a license is revoked, no other license for solicitation shall be issued under the provisions of this section to the same applicant within one (1) year of the date of revocation.  
(Ord. #2010-23, §15)

**18-3.10 Appeal; Hearing Officer.**

A. The applicant aggrieved by a decision of the city's accounts receivable office to deny an application for or renewal of a license or revocation of a license shall have thirty (30) calendar days from the receipt of a notice by the office to appeal such decision to a hearing officer appointed by the city manager.

B. The appeal shall be filed on forms provided by the office together with any applicable fee established by resolution of the governing body.

C. The appeal request shall set forth the appellant's reasons for asserting the decision was in error or in violation of any city of Santa Fe ordinance or other applicable law.

D. A hearing officer appointed by the city manager shall conduct a formal hearing within thirty (30) days of the receipt of the appeal. The office shall give written notice by certified mail to the appellant at least ten (10) days prior to the hearing.

E. The hearing officer shall make a decision on the basis of the preponderance of evidence presented at the hearing. The hearing officer shall render a decision within thirty (30) days after the date of the hearing. The hearing officer shall affirm or reverse the decision of the office.

F. The hearing officer's decision shall be final.

G. The failure of an appellant to appear at the appeal hearing shall extinguish the appeal.  
(Ord. #2010-23, §16)

**18-3.11 Solicitation Operating Requirements.**

A. All persons who engage in solicitation that are required to obtain a license shall comply with the following:

(1) Carry a photo identification and a copy of a valid license issued pursuant to this section; and if soliciting on behalf of another, carry written authorization to act on behalf of such third party and carry a copy of the license issued to such third party; and

(2) Immediately present a solicitation license, identification and authorization to act on behalf of a third party, if applicable, to any person approached for said solicitation and to any law enforcement official.

B. It is unlawful for any person to go upon, ring the bell, knock on the door of or attempt to gain admission to the premises of any residence in the city where the owner, adult occupant or other person in control of the property has expressed an objection to such activity either by explicit instructions, oral or written, or by posting a sign or decal bearing the words "No Solicitation" or similar words, unless prior to such entry, bell ringing or knocking, such person has been requested or invited by the owner or adult occupant or other person in control of the premises to be there for such purpose. The sign or decal may be one provided by the city or otherwise. Activities related to a service requested by the owner or occupant of the property and undertaken in the ordinary course of business, including but not limited to mail delivery, deliveries of utility notices, telephone directory deliveries, regular newspaper deliveries, work order notices and service inquiries, are presumed to be requested or invited for the purpose of this section.

C. No person shall engage in abusive solicitation. Such abusive activity shall mean to do one or more of the following while soliciting or immediately thereafter:

(1) Coming closer than three feet (3') to the person solicited unless and until the person solicited indicates that the person wishes to make a purchase or otherwise receive the solicitation;

(2) Blocking or impeding the passage of the person solicited;

(3) Repeating the solicitation after the person solicited has indicated an objection to the solicitation;

(4) Following the person solicited by proceeding behind, ahead or alongside such person after the person has indicated an objection to the solicitation;

(5) Threatening the person solicited with physical harm by word or gesture;

(6) Abusing the person solicited with words which are offensive and inherently likely to provoke an immediate violent reaction; or

(7) Touching the solicited person without the solicited person's consent.

D. It is unlawful for any person, while soliciting, to go upon, ring the bell, knock on the door of or attempt to gain admission to the premises of any residence, dwelling or apartment in the city after 8:00 p.m. or earlier than 10:00 a.m., unless such person has been requested or invited by the owner or adult occupant of the premises to be thereupon for such purposes.

(Ord. #2010-23, §17)

**18-3.12 Not an Endorsement.**



A license granted under this section is not an endorsement by the city of the solicitor or of any goods, wares, merchandise, services or information that may be sold or distributed by the solicitor, and it is unlawful for any person to represent that such an endorsement has been made. (Ord. #2010-23, §18)

**18-3.13 Public Education.**

The city shall engage in a continuing program to explain and clarify the purposes and requirements of the Solicitation Ordinance to the citizens of Santa Fe. (Ord. #2010-23, §19)

**18-3.14 Enforcement.**

A. The applicant or solicitor shall be responsible for the conduct of all persons acting with or on the behalf of the applicant or solicitor while in the course of operating under the license. All persons found working, helping, volunteering or in any way assisting in the activities for which the license was granted shall be considered employees of the applicant or solicitor. Any act or omission of any person acting with or on the behalf of the applicant or solicitor constituting a violation of the provisions of this section shall be deemed the act or omission of the applicant or solicitor for purposes of determining whether the applicant's or solicitor's license shall be granted, denied, renewed or revoked.

B. Any violation of this section shall be cause for revocation of a solicitation license and the violator will be ineligible to receive a new license for a period of one (1) year.

C. The police department may issue a citation or file a complaint against any person who violates any provision of the Solicitation Ordinance. Any person who violates any provision of the Solicitation Ordinance is guilty of a petty misdemeanor and is subject to the provisions of Section 1-3 SFCC 1987. Each violation is a separate and distinct offense. (Ord. #2010-23, §20)

**18-4 SECONDHAND DEALERS, PAWNBROKERS AND JUNK DEALERS.**

#### **18-4.1 Definitions.**

A. As used in this section:

*Junk dealer* means a person engaged in the business of purchasing or selling secondhand or cast-off material of any kind, which is commonly known as and is hereinafter designated and referred to as "junk" such as old iron, copper, brass, lead, zinc, tin, steel and other metals, metallic cables, wires, ropes, cordage, bottles, bagging, rags, rubber, paper and other like materials.

*Pawnbroker* means a person engaged in the business of lending money on the deposit or pledge of personal property or who purchases personal property with an expressed or implied agreement or understanding to sell it back at a stipulated price. If a pawnbroker also purchases used merchandise for resale, he must do so in accordance with the provisions of this section.

*Person* means any individual, partnership, corporation, firm or association or any combination thereof.

*Secondhand dealer* means a person whose primary business is conducting a secondhand store or dealing in secondhand goods, other than used car dealers and merchants taking furniture, appliances and like items, whether or not such person, in addition to or in connection with such secondhand business keeps in stock for retail, goods, wares or merchandise.

B. Any business defined herein which deals with or purchases gold, silver or platinum is subject to the specific requirements set forth in this article for these items.  
(SFCC 1981, §9-7-1; Ord. #1982-38, §4)

**Editor's Note:** For state law as to used merchandise generally, see Secs. 57-9-1 through 57-9-5 NMSA 1978. For state law as to junk dealers, see Secs. 57-7-1 through 57-7-7 NMSA 1978. For authority of city to license and regulate secondhand stores, see Sec. 3-18-24 NMSA 1978.

#### **18-4.2 License Required.**

It is unlawful for a person to engage in any business coming under the provisions of this section without first obtaining a license therefor as required by Section 18-2, Business Licenses. (SFCC 1981, §9-7-2; Ord. #1981-64, §33)

**Editor's Note:** For state law as to authority of city to require licenses, see Sec. 3-18-24 NMSA 1978.

#### **18-4.3 Applicant for Pawnbroker's License.**

An applicant for a license as a pawnbroker must be of good moral character and shall not have been convicted of any felony or crime involving moral turpitude. A license shall be denied to any applicant whose license was revoked for cause or who was a partner, officer, director, trustee, manager or stockholder of any corporation or unincorporated association the license of which was revoked for cause. (Ord. #1968-13, §2; Code 1973, §20-2; SFCC 1981, §9-7-3)

#### **18-4.4 Investigation of Applicant.**

Any application for license as a pawnbroker shall be referred to the police department for investigation as to the qualifications of the applicant and as to the truth of all statements in the application. In making their investigation, the police shall use current methods of police inquiry, including, without limitation, fingerprints and photographs. The police shall, as soon as practical, make their report to the city clerk who shall grant the license only if the report is favorable. The applicant may appeal a denial of his application to the governing body, as provided in Section 18-1, Business Licenses. (Ord. #1968-13, §3; Code 1973, §20-3; Ord. #1981-64, §34; SFCC 1981, §9-7-4)

#### **18-4.5 Bond Required.**

Before a license can be granted, a person seeking a license as a pawnbroker must execute and deliver a bond to the city clerk to be approved by the clerk and the city attorney in the penal sum of five thousand dollars (\$5,000) with a corporate surety authorized by the laws of the state to write surety bonds therein and conditioned for the conduct of such pawnbroker business according to the law and for the true and faithful observance of applicable provisions of the Santa Fe City Code of 1987 and ordinances pertaining thereto; such bond shall be for the benefit of the city and of every person damaged by breach of any condition thereof. (Ord. #1968-13, §4; Code 1973, §20-4; SFCC 1981, §9-7-5)

#### **18-4.6 Daily Report.**

A. It is the duty of every person engaged in the business of a pawnbroker to furnish an accurate and complete record each business day to the police department on forms to be furnished by the city, of all property received or purchased during the preceding business day.

B. Each item shall be listed on a separate form. The report shall include:

- (1) The name of the item;
  - (2) A description of the item, including make and model, if any;
  - (3) Serial numbers and other identifying marks;
  - (4) The date, time and type of transaction;
  - (5) The name and address of the person offering the item;
  - (6) A description of the person offering the item, including age, sex, complexion, hair color, approximate height and weight, and date of birth;
  - (7) The type of identification used by the person offering the item and identifying number of said identification. If the person presents a driver's license, the report shall also indicate the state of issuance; and
  - (8) Other information which may be required.
- (Ord. #1968-13, §6; Code 1973, §20-6; SFCC 1981, §9-7-6)

#### **18-4.7 Transfer of Pawnbroker's License.**

A pawnbroker's license may not be transferred to another location without the prior consent of the governing body. A license is not assignable or transferable to any other person. If the licensee sells, transfers or assigns the business, the succeeding owner shall obtain a new license. Any change in the members of a partnership, ten percent (10%) or more of the membership of an association, or ten percent (10%) or more of the voting stock of a corporation holding a pawnbroker's license will constitute a change in ownership of the business. (Ord. #1968-13, §13; Code 1973, §20-13; SFCC 1981, §9-7-7)

#### **18-4.8 When Junk Dealer Required to Obtain Secondhand Dealer License.**

Every junk dealer who, in addition to, or in connection with his junk business, carries on a regular secondhand business, or keeps in stock for retail any substantial quantity of new personal property for the sale of which either a license or an occupation tax is imposed shall, notwithstanding the license paid by him as a junk dealer, be subject to and shall pay the license or occupation tax as is prescribed for the particular business so conducted. (SFCC 1981, §9-7-8)

#### **18-4.9 Record of Business Transactions.**

A. It is the duty of every person engaged in the business of secondhand dealer, pawnbroker or junk dealer in the city to provide a well-bound book to be kept at his place of business in which a record of all transactions had by the person shall be kept. The record shall contain:

- (1) An accurate and complete description of every article taken in as a pledge or purchased, including serial numbers, if any;
- (2) An accurate and complete description of the person from whom the goods were received or purchased; and
- (3) The name of the person and his house and street address.

B. The record book shall be open at all times to the inspection of any member of the police department, county sheriff, state police or any person authorized by the chief of police.

(Ord. #1968-13, §5; Code 1973, §20-5; SFCC 1981, §9-7-9)

**Editor's Note:** For state law requiring records, see Sec. 57-7-2 NMSA 1978. For state law providing for inspection of records, see Sec. 57-9-4 NMSA 1978. See also Sec. 3-18-24 NMSA 1978.

#### **18-4.10 Time Period for Retaining Purchased Goods.**

A. No pawnbroker, secondhand dealer or junk dealer shall sell or remove from his place of business any secondhand goods other than furniture and household goods purchased by him until the same have been in his possession for not less than five (5) working days.

B. All gold, silver and platinum shall be retained by secondhand dealers, pawnbrokers and junk dealers in the form in which purchased for a period of five (5) working days.

(SFCC 1981, §9-7-10)

**Editor's Note:** For relevant state law, see Ch. 323, Laws 1981.

#### **18-4.11 Business Hours.**

Secondhand dealers, pawnbrokers and junk dealers may operate their businesses only between the hours of 6:00 a.m. and 7:00 p.m. each day and shall keep their businesses closed to the public at all other times. (Ord. #1968-13, §12; Code 1973, §20-12; SFCC 1981, §9-7-11)

#### **18-4.12 Premises to be Kept in Sanitary Condition.**

A. The place where articles are kept or stored by secondhand dealers, pawnbrokers and junk dealers within the city shall at all times be kept in a sanitary condition.

B. The place of business of any person coming under the provisions of this article shall at all reasonable times be open to inspection by the chief of police, the county sheriff or the public health officers of the state, district, county or city.

(SFCC 1981, §9-7-12)

#### **18-4.13 Location of Secondhand and Junk Dealers Restricted.**