

**CITY OF ABSECON**

**ORDINANCE 22-2014**

**AN ORDINANCE AMENDING CHAPTER 234 OF THE CODE OF THE CITY OF ABSECON AS THE SAME RELATES TO MERCANTILE LICENSES**

**WHEREAS**, from time to time certain sections of the Code of the City of Absecon are reviewed and updated; and

**WHEREAS**, certain amendments set forth in this Ordinance would help to promote the health, safety and welfare of businesses, residents and visitors of the City of Absecon.

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF ABSECON, NEW JERSEY THAT CHAPTER 234 OF THE CITY OF ABSECON SHALL BE AMENDED AS FOLLOWS:**

Section 234-1 shall remain unchanged.

Section 234-2 of the Code of the City of Absecon shall be amended as follows:

Subsection A - in the first line the words "Mercantile Tax Collector" shall be changed to the words "City Clerk".

Subsection B(1) - shall be amended to read as follows:

Each application for a new business, not previously licensed, shall be referred to the Chief of Police or his designee who shall undertake an investigation of the applicant and/or individuals associated therewith. Such investigation shall include a criminal background check to determine if there have been any violations of statutes as set forth in Section 234-12D(1) and (2) of this chapter. Any such violations shall automatically disqualify an Applicant for a Mercantile License or shall be grounds for revocation of an already Existing Mercantile License subject to right to demonstrate rehabilitation as set forth in 234-12D(3). The investigation shall also determine if the Applicant's background indicates there is a reasonable likelihood that conduct will occur at licensed premises that is dishonest, fraudulent or in violation of law.

Subsection 234-2B(2) - shall be amended to read as follows:

The investigation shall be completed as soon as possible and the findings provided to the City Clerk with a recommendation as to whether such license should be issued. If the investigation recommends against the issuance of the license, then the Mercantile License shall not be issued. The Applicant shall be notified of such denial and may request a review of the application by the Public Safety Committee of the Municipal Council, by submitting a written

request for a hearing within 10 days of written or telephonic notification of the denial. The letter shall be submitted to the City Clerk. The Public Safety Committee shall consider the matter at one of the next two regularly scheduled meetings of the Committee. The Applicant shall have the opportunity to appear before the Committee, may present witnesses and evidence on its behalf and may be represented by counsel of its own choosing at its own cost and expense. Within 10 business days after the hearing before the Public Safety Committee the Committee shall issue a written determination to the Applicant indicating whether the decision of the Police Chief or his designee shall be reversed or affirmed. The decision of the Public Safety Committee after the hearing shall be final. The process set forth in this subsection shall also be used in the event the Chief of Police or his designee recommends revocation of an already existing license.

Subsection 234-2B(3) - shall remain unchanged.

Subsection 234-2C - shall be amended to read as follows:

Temporary Mercantile License. In addition to the foregoing requirements, and without in anyway diluting them, an Applicant may be granted a temporary mercantile license if the Applicant denies any criminal history and any one of the following requirements are met:

- (1) The Applicant currently has a valid mercantile license for another business in the City of Absecon; or
- (2) The Applicant has had a full background check done by another Issuing Authority within two (2) years of his/her applying for the Mercantile License in the City of Absecon and the Applicant has been issued a mercantile license by that authority and has provided the results to the Chief of Police; or
- (3) The Applicant has met all other conditions required for the issuance of a Mercantile License and is in compliance with all statutes, ordinances, rules and regulations of the City of Absecon, County of Atlantic and State of New Jersey and any delay in the opening of the business establishment for which the Mercantile License is being issued would in the discretion of the City Administrator cause substantial injury to the Applicant.
- (4) The following shall be typed on all temporary licenses:

The Applicant acknowledges that it is proceeding at its own risk and is solely responsible for the decision to open the business. The Applicant understands that a permanent license may be denied. The Applicant by accepting this temporary license indemnifies and holds harmless the City of Absecon and any of its officers, agents and officials from any claim, damage or legal action regarding the issuance of this temporary license.

Subsection 234-2D - shall be amended to read as follows:

If the investigation which is completed pursuant to this chapter reveals information that would warrant a denial of a Mercantile License, then the Applicant's temporary Mercantile License shall be immediately revoked and the business shall be closed.

There shall be added a Section 234-2E of the Code of the City of Absecon which shall state as follows:

(E) By accepting a temporary Mercantile License, any Applicant acknowledges that they are proceeding at their own risk and are solely responsible for the decision to open their business with a temporary Mercantile license understanding that a permanent license may be denied. Any Applicant who accepts a temporary Mercantile License specifically, by acceptance of the same, indemnifies and holds harmless the City of Absecon and any of its officers, agents and officials concerning any claim, damages or legal action regarding the issuance of any temporary Mercantile License, Mercantile License, or any loss as a result thereof.

Section 234-3 of the Code of the City of Absecon shall remain unchanged.

Section 234-4 of the Code of the City of Absecon shall remain unchanged.

Section 234-5 of the Code of the City of Absecon shall be amended by deleting the words "Mercantile Tax Collector" and replacing them with the words "City Clerk".

Subsection 234-6A of the Code of the City of Absecon shall be amended by changing the Fee Schedule as follows:

(1)	Permanent location up to 15,000 sq ft	\$75.00
(2)	Permanent location 15,001 to 50,000 sq ft	\$125.00
(3)	Permanent location 50,001 to 75,000 sq ft	\$175.00
(4)	Permanent location over 75,000 sq ft	\$225.00
(5)	Towing License with impound lot	\$600.00
(6)	Towing License without impound lot	\$300.00
(7)	Mobile License	\$100.00
(8)	Hotel/Motel up to 15 rooms	\$75.00
(9)	Hotel/Motel 16 to 50 rooms	\$125.00
(10)	Hotel/Motel 51 to 100 rooms	\$175.00
(11)	Hotel/Motel 101 or more rooms	\$275.00

Section 234-7 of the Code of the City of Absecon shall be amended to read as follows:

A. No license shall be granted for any business until the Construction Official/Zoning Official certifies, in writing, to the City Clerk that the Applicant has complied with all ordinances, statutes, rules and regulations pertaining to said business.

Subsection B shall be deleted.

Subsection 234-7( C) of the Code of the City of Absecon shall be renumbered as Subsection 234-7(B).

Subsection 234-7(D) of the Code of the City of Absecon shall be renumbered 234-7( C) and shall be amended by adding the words “or temporary license” between the words “license” and “shall”.

Section 234-8 of the Code of the City of Absecon shall remain unchanged.

Section 234-9 of the Code of the City of Absecon shall be amended to read as follows:

Non-Compliance; Non-Tranfersability.

- A. No license issued pursuant to this chapter shall be transferred from one person or entity to another and no license shall be used for a place of business other than the place of business for which it was issued or reissued. An owner who transfers locations with the same business for which a license has already been issued can maintain the current license until time for renewal.

Subsection 234-9B of the Code of the City of Absecon shall be deleted.

Section 234-10 of the Code of the City of Absecon shall remain unchanged.

Section 234-11 of the Code of the City of Absecon shall be amended to read as follows:

Any Code Enforcement Officer of the City of Absecon or any member of the Absecon Police Department shall be authorized to take any and all actions necessary for the enforcement of this section.

Section 234-12 of the Code of the City of Absecon shall be amended to read as follows:

Subsection 234-12A shall be amended to read as follows:

- A. The use of the word “person” shall, for the purpose of this chapter, be deemed to include any person, partnerships, firms, co-partnership, proprietorships, limited liability companies, corporation or any other entity conducting business in the City of Absecon which is required to obtain a license pursuant to this chapter, excluding units of the local government.

Subsection 234-12B shall be amended to read as follows:

The use of the word “business” shall, for purposes of this chapter shall include all businesses, trades, professions, vocations or any other types of commercial establishments or activity, except that no Mercantile License is required for any person/business offering only a service which requires annual State licensing. If any person or business which requires annual State licensing sells any

merchandise or product, either retail, wholesale or at auction, then a license shall be required pursuant to this chapter.

Subsection 234-12C shall remain unchanged.

Subsection 234-12D of the Code of the City of Absecon shall be amended by deleting the word “disqualifying” from the first line.

Subsection 234-12D(1) of the Code of the City of Absecon shall remain unchanged.

Subsection 234-12D(2) of the Code of the City of Absecon shall remain unchanged.

Subsection 234-12D(3) of the Code of the City of Absecon shall be amended to read as follows:

Notwithstanding the provisions of paragraphs (1) and (2) above, an Applicant shall not be disqualified for a license on the basis of any conviction disclosed by a criminal background check if the individual has demonstrated evidence of rehabilitation as determined by the Public Safety Committee at a hearing conducted in accordance with 234-2B(2). In making such determination, the following facts may be considered; the nature of the business being sought to be licensed, the nature and seriousness of the offense, circumstances under which the offense occurred, the date of the offense, the age of the Applicant when the offense was committed, whether the offense was repeated and other evidence of rehabilitation including subsequent conduct in the community and the acquisition of academic or vocational education.

Subsection 234-12E of the Code of the City of Absecon shall be amended to read as follows:

The use of the word “Applicant” shall, for the purpose of this chapter mean any person or individual, any partnership and all partners thereof, any limited liability company and all members thereof, any corporation or other business entities and all shareholders or other interest holders owning more than ten percent (10%) of the same.

Section 234-13 of the Code of the City of Absecon shall be amended to read as follows:

A requirement to the issuance of any and all licenses pursuant to this chapter is that said business shall be used and operated only for lawful purposes and in conformity with all municipal, county and state ordinances, rules, regulations and statutes. Failure to abide by any such ordinances, rules, regulations or statutes may be grounds for revocation of any license issued pursuant to this chapter as determined by the Chief of Police or his designee. Any person who has a license revoked may request a hearing before the Public Safety Committee as set forth in this chapter. Further, any untruthful, misleading or fraudulent information submitted

on the application for licensure, or as part of the application for licensure, or any renewal thereof, shall also be grounds for revocation. No commercial landlord shall permit any unlawful business to lease, and or otherwise use space in the landlord's property. It shall also be the obligation of all commercial landlords to advise their tenants that the City of Absecon has a Mercantile License ordinance that may require said tenant to obtain a license before operating their business.

Subsection 234-14A of the Code of the City of Absecon shall be amended by adding the following sentence at the end of same:

“Each day that a violation exists shall be considered a separate offense.”

Subsection 234-14B of the Code of the City of Absecon shall remain unchanged.

Subsection 234-14C of the Code of the City of Absecon shall remain unchanged.

Section 234-15 of the Code of the City of Absecon shall be amended to read as follows:

Every person conducting a business required to be licensed by this chapter shall permit any authorized representative of the City of Absecon to have access to any building for the purpose of ascertaining whether there has been compliance with the provisions of this chapter or to determine the fees to be paid pursuant to this chapter. Any refusal thereof shall be deemed a violation of this chapter and the violator shall be subject to the penalty set forth in this chapter and to revocation of any existing license. Any person whose license is revoked may request a hearing before the Public Safety Committee as set forth in this chapter.

Section 234-16 of the Code of the City of Absecon shall remain unchanged.

There shall be added to the Code of the City of Absecon Section 234-17 which shall state:

### **Severability**

If any section or part of this Chapter is deemed to be invalid or illegal in any Court of competent jurisdiction then said part is severable from this Chapter as a whole and the remaining sections or parts of this chapter shall remain in full force and effect.

### **Effective Date**

This ordinance shall become effective on January 1, 2015 conditioned upon passage and publication pursuant to law prior to that date.

**Repealer.** Any ordinance or section thereof, inconsistent with this ordinance shall be repealed upon passage and publication pursuant to law.

**DATED: November 20, 2014**

**SIGNED: \_\_\_\_\_**  
**John Armstrong, Mayor**

**ATTEST: \_\_\_\_\_**  
**Carie A. Crone, RMC, Municipal Clerk**

Passed on first reading at a regular meeting of the Municipal Council held on November 6, 2014. Laid over and advertised for public hearing and final adoption on November 20, 2014. Notice is hereby given that the foregoing Ordinance was approved for final adoption by the Municipal Council of the City of Absecon at a regular meeting held on November 20, 2014.