

ORDINANCE NO. 841

AN ORDINANCE OF THE CITY OF SCAPPOOSE RELATING TO BUSINESS LICENSES

WHEREAS, the City of Scappoose requires all businesses operating in the City to obtain a business license; and

WHEREAS, pursuant to Article XI, Section 2 of the Oregon Constitution, the City of Scappoose is a “home rule” municipal corporation having the authority that the constitution, statutes, and common law of the United States and this State expressly or implicitly grant or allow over the civil affairs of its City; and

WHEREAS, modifications to Chapter 5.04 of the Scappoose Municipal Code, Business Licenses, are necessary to clarify the City’s Code; and

WHEREAS, although the State of Oregon has authorized the legal use of medical and recreational marijuana, marijuana remains illegal under federal law. The City’s licensing program attempts to reduce the risk to the public health, safety, and welfare related to marijuana facilities and the City’s actions shall not be construed as an endorsement of such facilities or as an authorization to engage in any activity prohibited by law.

NOW, THEREFORE, THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

Section 1. Chapter 5.04 of the Scappoose Municipal Code shall be amended to read as shown on the attached Exhibit A (additional language underlined and deleted language ~~stricken~~).

Section 2. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

APPROVED: Approved by the City Council of Scappoose this 20th day of July, 2015.


Scott Burge, Mayor

First Reading: July 6, 2015
Second Reading: July 20, 2015

ATTEST:



Susan M. Reeves, MMC
City Recorder

Exhibit A

Chapter 5.04

BUSINESS LICENSES GENERALLY

Sections:

- 5.04.010 Purpose.
- 5.04.020 Definitions.
- 5.04.030 Disclaimers--Exceptions--General requirements.
- 5.04.040 Exemptions.
- 5.04.050 License required.
- 5.04.060 Application.
- 5.04.070 License fees.
- 5.04.080 Transfers and relocations--Term of license-Renewal.
- 5.04.090 Approval, denial, revocation or suspension of license.
- 5.04.100 Appeal.
- 5.04.110 Specific requirements.
- 5.04.120 Violation--Penalty.

5.04.010 Purpose. The ordinance codified in this chapter is enacted, except as otherwise specified, to provide revenue for municipal purposes and to provide for the health, safety and welfare of the citizens of Scappoose through regulation of businesses, occupations and trade. (Ord. 563 §1, 1990)

5.04.020 Definitions. For the purpose of this chapter, certain words, terms and phrases are defined as follows:

"Applicant" means agent or owner of the named business.

"Auction" means the sale, or offer to sell, by public outcry or to the highest bidder.

"Business" means any profession, trade, occupation, shop and every type of calling wherein a charge is made for goods, materials or services.

"License" means the permission granted for the carrying on of a business, profession or occupation within the city limits.

"Licensee" means the business as specified and named by the applicant.

"Nonprofit organization" means a bona fide organization with tax exempt status.

"Peddler" means a person or persons, traveling from place to place, selling and delivering at the same time.

"Person" means all public and private corporations, including domestic and foreign corporations, firms, partnerships of every kind, associations, organizations, syndicates, joint ventures, societies, and any other group acting as a unit, and individuals transacting and carrying on any business within the city.

"Revocation (of any business license)" means withdrawal of approval to operate a business.

"Solicitor" means one who travels from place to place, not carrying his goods with him, but taking orders for future deliveries.

"Suspension (of business license)" means an official order to suspend business operations pending correction or ceasing of certain conditions or practices.

"Transient merchant" means a person who temporarily occupies a fixed location, sells and delivers from stock on hand, and does business in much the same manner as a permanent business. (Ord. 563 § 3, 1990)

5.04.030 Disclaimers--Exceptions--General requirements. A.

Disclaimers and Exceptions. The levy or collection of a license fee upon any business shall not be construed to be a license or permit by the city to the person engaged therein to carry on business if such business is unlawful, illegal or prohibited by the laws of the state or the United States or ordinances of the city.

B. Powers of City Council. Nothing contained in this chapter shall be taken or construed as vesting any right in any licensee as a contract obligation on the part of the city. Business license fees, as set by council resolution, may be increased or decreased, and other or additional taxes or fees may be levied, increased or decreased, at any time by the city council. No person having paid the fee required, and having made application for a business license, shall be entitled to any refund unless the application is denied.

C. Fees in Addition to Ad Valorem Taxes. The license fees levied pursuant to this chapter shall be in addition to general ad valorem taxes now or hereafter levied pursuant to law.

D. ~~Municipalities--Public Bodies~~ Exempt. None of the fees, bonds or insurance requirements provided for in this chapter or the rules adopted under this chapter shall be required if the applicant is a ~~municipality~~public body as defined in ORS 174.109.

E. General License Requirements. In addition to any other requirement of this chapter, each licensee shall:

1. Conforms to all federal, state, and local laws and regulations, the provisions of this chapter, and any rules adopted hereunder, with the exception of the federal Controlled Substances Act as it pertains to marijuana legal under the laws of the State of Oregon;

2. Notify the city within ten days of any change in material information contained in the application, related materials, or license;

3. Display a business license upon request to any person with whom he/she is dealing as part of the licensed activity or to an officer or employee of the city. (Ord. 563 §10, 1990)

~~5.04.040 Exemptions. A. Nothing in this chapter shall be construed to apply to any person transacting and carrying on any business or activity within the city which is exempt from taxation or regulation by the City by virtue of the Constitution of the United States or the State of Oregon.~~

A. No person whose income is based solely on a wage or salary shall, for the purpose of this chapter, be deemed a person transacting or carrying on any business in the city, and it is the intention that all license taxes and fees will be borne by the employer.

B. Any business paying a franchise tax or fee under any city ordinance or resolution now existing is exempt from paying any fee under this chapter, but is subject to all other provisions of this chapter unless expressly exempted by ordinance or resolution.

C. Wholesalers making deliveries or taking orders from licensed retail outlets within the city are exempt from this chapter.

E. Any person sixteen years of age or younger who operates a business on a part-time basis, which business has an annual gross income of less than five hundred dollars or any public school sponsored business activity, is exempt from this chapter.

F. Except as provided in Section 5.04.110, nonprofit organizations are exempt from the provisions of this chapter.

G. Producers of farm products raised in Oregon, produced by themselves or their immediate families, who sell such products in the city by themselves or their immediate families are exempt from paying any fees under this chapter, but are subject to all other provisions of this chapter.

H. Any individual who rents or leases one living unit in his place of residence is exempt from this chapter, provided such place of residence is a single-family dwelling.

I. Any person who, when conducting business within the city, performs work or services only for the city is exempt from this chapter.

J. Any city, county, state agency, special district, school district or other municipality is exempt from this chapter.

K. Any in-home day care service providing such service to six or fewer children at any given time is exempt from this chapter.

L. Peddlers and solicitors, as such terms are defined in this Section, who peddle or solicit goods or services door-to-door, exclusively, are exempt from the requirements of this Chapter. (Ord. 750 §§1 and 2, 2004; Ord. 563 §2, 1990)

5.04.050 License required. A. A license fee is imposed on any business ~~not licensed by other ordinances of operating in~~ the city, and it is unlawful for any person to engage in any such business within the city without first having obtained a license for the current year as provided under this chapter.

B. The agent or agents of a nonresident proprietor engaged in any business for which a license is required by this chapter shall be liable for any failure to comply with the provisions of this chapter, or for any penalty assessed under this chapter, to the extent, and with the like effect, as if such agent, or agents, were themselves the proprietors or owners of the business.

C. A person engaged in business in more than one location, or in more than one business licensed under this chapter shall make a separate application and pay a separate license fee for each business or business location, except as otherwise provided in this chapter.

D. A person representing himself/herself as being a business or exhibiting any sign or advertisement that he/she is engaged in a business within the city on which a license fee is levied by this chapter shall be deemed to be actually engaged in such business and shall be liable for the payment if such license fee and subject to the penalties for failure to comply with the requirements of this chapter.

E. The city may require proof of bonding or state registration. An applicant shall possess any required county or state license or authorization, or, if city approval is a prerequisite, shall be awaiting final approval by the county or state, before a city license will be issued.

F. The city, at the city manager's discretion, may require bonding or insurance of any business which:(1) may be financially unstable; or (2) poses a public health or safety hazard. The city may refuse to grant a business license if compliance with the city manager's requirement of a bond or insurance is not proved.

G. The city manager may issue a special use permit as described in Section 5.04.110(F) or a temporary business license as described in Section 5.04.110(G). (Ord. 563 §4,1990)

5.04.060 Application. A. Application for a business license or for renewal of a business license shall be made to the office of the city manager upon forms furnished by the city. Each application shall state:

1. The name of the proposed business;
2. A description of the trade, shop, business, profession, occupation or calling to be carried on;
3. The name and address of the applicant;
4. The address at which the business will be conducted, or the address of its Scappoose office;
5. The amount of the license fee tendered with the application ~~and the basis for its calculation;~~
6. The signature of the applicant or agent making application;
7. The date of application;
8. Evidence of satisfaction of state registration, bonding or insurance if required, including registration number and expiration date;
9. The fiscal year for which the application is made.

B. Prior to approving or denying an application, the city manager may require the applicant to supply any additional information necessary to determine the applicant's qualifications for the license. Review of an application shall not begin until all requested information has been provided. (Ord. 563 §5, 1990)

5.04.070 License fees. All business license fees (including special use permits and temporary permits) shall be determined by resolution of the city council. No business license or permit required by this chapter may be issued unless the license or permit fee and all outstanding penalties are paid in full. (Ord. 563 §6, 1990)

5.04.080 Transfers and relocations--Term of license-Renewal. A. Transfer of License. In the event of transfer of ownership of any business, the applicable business license may be transferred by application to the city manager. The city may approve the transfer upon finding that the new applicant meets the requirements of this chapter.

B. Relocation of an Existing Business. In the event a business relocates, the licensee shall reapply to the city to transfer the business license and pay the fee provided by resolution of the council. The city may issue the new license upon finding that the new location meets the requirements of this chapter and any other applicable law or ordinance.

C. License Term. A business license issued under this chapter shall be valid from the date of issuance until the following December 31st, unless otherwise specified on the face of the license.

D. Removal of License. The city shall mail all business license holders a renewal notice prior to December 10th annually.

1. The notice shall be corrected to conform to the existing situation by the one holding the license and returned to the city with the appropriate fee by December 31st each year;

2. The renewal will be deemed delinquent on January 1st annually and applicant shall be subject to a penalty to be established by the council by resolution;

3. The city shall send a notice to applicant on or about January 10th informing applicant it has been assessed a penalty;

4. The police department shall issue citations on February 1st annually for failure to obtain a business license. The citation may include a notice of a fine pursuant to Section 5.04.120. The fine, if any, for such violations shall be in addition to the penalties provided in this chapter. (Ord. 563 §7, 1990)

5.04.090 Approval, denial, revocation or suspension of license. A. Approval of Application.

1. The city manager shall issue a decision on an application for a business license or for renewal of a business license within thirty days of the submission of a complete application, all requested additional information, and license fee. The city manager may request the planning department, the building department, the police department or other governmental agencies to inspect the premises or records of a business or applicant prior to issuing a business license or renewal of business license. The applicant's allowance of any inspections contemplated above is a requisite to obtaining a business license or renewal;

2. The city manager may issue a license upon finding that the applicant has met all requirements of federal and state law, with the exception of the federal Controlled Substances Act as it pertains to marijuana legal under the laws of the State of Oregon, and city and county ordinances;

3. If an application for a new or renewed license is approved, the city manager shall notify the applicant in writing. The notice shall state any conditions or limitations placed on the license as a condition of maintaining the license which the city manager deems necessary to protect the public health, safety or welfare, or which are required by federal, state, or county law, or this chapter;

4. Licenses or license renewals shall be kept and displayed at the licensed business premises and shall be supplied to any governmental agency upon request.

B. Denial, Revocation, or Suspension of License. The city manager may deny, suspend or revoke a business license upon finding that:

1. The licensee fails to meet all requirements of, or is doing business in violation of federal, state, county or municipal law including, but not limited to, all zoning, site design review and nuisance ordinances, or requirements of this chapter, but not including the federal Controlled Substances Act as it pertains to marijuana legal under the laws of the State of Oregon;

2. The applicant has provided false or misleading material information, or has omitted disclosure of a material fact on the application, related materials, or license;

3. The applicant's past or present violation of a law or ordinance, including a violation that does not lead to a conviction, presents a reasonable doubt about his/her ability to perform the licensed activity without endangering property or the public health or safety;

4. If the business poses a potential risk to the health, safety or welfare of the city or its citizens, the information supplied for the review does not indicate that the applicant has the special knowledge or skill required to perform the licensed activity;

5. The licensed activity or device would endanger property or the public health or safety;

6. The applicant refuses to allow a governmental agency to inspect the premises or records pursuant to subsection (A) (1) of this section.

C. Notwithstanding paragraph B.1 of this section, the City shall automatically revoke a license if federal or state statutes, regulations, or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials so as to prohibit operation of a business under this ordinance.

C-D. Notice. The city manager shall provide written notice to the applicant or licensee of a denial, suspension, or revocation. The notice shall state the reason for the action taken and shall inform the applicant of the right to appeal under Section 5.04.100. The notice shall be given at least fifteen days before a revocation becomes effective, unless the city manager determines that property, public health or safety is endangered if the business continues to operate during the fifteen-day notice period. If the violation ends within the fifteen days, the city manager may discontinue the revocation proceedings.

D-E. Reapplication. A person whose application for a business license has been denied or whose license has been revoked may, after ninety days from the date of denial or revocation, apply for a license upon payment of the application fee and submission of an application form and related documents.

E-F. Disqualification. A person whose application for any business license has been denied or whose license has been revoked twice within any twelve-month period or who has a total of four denials or revocations, shall be disqualified from applying for a license for a period of two years from the date of the last revocation or denial.

F-G. Summary Suspension. Upon determining that a licensed activity or device presents an immediate danger to a person or property, the city manager may summarily suspend the license for the activity or device. The suspension takes effect immediately upon notice of the suspension being received by the licensee, or being delivered to the licensee's business address as stated on the licensee's application for the license being suspended. Such notice shall state the reason for the suspension and inform the licensee of the provisions for appeal under Section 5.04.100. The city may continue a suspension as long as the reason for the suspension exists or until a determination on appeal regarding the suspension is made under Section 5.04.100. (Ord. 563 §8,

1990)

5.04.100 Appeal. In the event an applicant for a license under this chapter is denied such license, or in the event a license is suspended or revoked, the applicant or license holder shall have the right of appeal. A written notice of appeal to the city council shall be filed with the city manager within fifteen days after the denial of license or license suspension or revocation. The council shall hear and make a determination in regard to the appeal at its next regular meeting held not less than fifteen days after the filing of the notice of appeal. The decision of the council on such appeal shall be final and conclusive. (Ord. 563 §9, 1990)

5.04.110 Specific requirements. A. Businesses, including, but not limited to, pawn shops, dealing in the purchase or trade of secondhand goods, such as, but not limited to, precious metals and jewelry, guns or electronic equipment, shall keep a record of the purchases and sales for inspection by the chief of police. Such records, which shall be retained for not less than one year from sale, shall include the name of the seller, the name of the buyer, the date of the purchases and sales, a description of the merchandise sold, any serial numbers or distinguishing marks on the good being traded, as well as other information that might enable return of stolen goods.

B. Merchant Police. Any business providing merchant police, security services or similar services shall require each individual employed or applying for employment with said business to agree to a complete background check by the chief of police to determine the qualifications and reliability of the individual for the proposed business. The city manager may require a bond and such insurance as may be deemed proper. The license shall be issued and retained only upon the police chief's approval of each person employed by the business, such approval to be based on the complete background check.

C. Nonprofit Organizations.

1. A nonprofit organization which conducts or will conduct any activity within the city for which it must pay unrelated business income tax or any other tax to any federal, state or local authority shall make application to the city manager ~~upon suitable forms, furnished by the city,~~ for a license to carry on the business for the current year. The licensed nonprofit organization is subject to all the provisions of this chapter;

2. Approval of a business license for a nonprofit organization required in subsection (D)(1) of this section is subject to the following additional conditions:

a. The business license is only for activities conducted by members,

b. The nonprofit organization is required to obtain any and all county, state and federal permits for the business to be conducted.

D. In the event a licensed business contracts to sponsor an outside activity, i.e., rodeo, circus, carnival, etc., a regular city business license must be obtained for that specific activity and the prescribed business license fee must be paid.

Exhibit A

5.04.110--5.04.120

E. Special Use Permits. ~~No person carrying on business shall~~ A City business license shall not grant to the license holder the right to display goods or conduct a sale on public sidewalks or streets without a special use permit, valid for any period of time up to one year, as indicated in the permit. A special use permit shall also be obtained for any advertisement placed on the sidewalk or street outside of the premises of a business. Such permits shall be approved or denied by the city manager based upon consideration of public health, safety, welfare and appearance of the activity. Nonprofit organizations must apply and obtain a special use permit if any of the activities addressed in this paragraph are undertaken, but the city shall waive fees for such special use permit.

F. Temporary Business License. A nonresident business or contractor conducting business in the city on a temporary basis shall, unless otherwise exempt, obtain, in lieu of a business license described in Section 5.04.050(A) through (F), a temporary business license not to exceed seven consecutive days. The city manager may refuse to issue a temporary business license should such business or contractor commence work in violation of this chapter prior to being licensed. (Ord. 750 §4, 2004; Ord. 563 §11, 1990)

5.04.120 Violation--Penalty. A. Penalty. A violation of the provisions of this chapter shall constitute a civil violation of the laws of the city and shall be prosecuted by a complaint filed by the city, at the city attorney's discretion, in the municipal court of the city or in any other court of proper jurisdiction. Any person found to have violated this chapter shall pay a civil penalty not to exceed five hundred dollars for any one violation, each day constituting a separate violation, unless otherwise provided in this chapter.

B. Inspection and Right of Entry. Whenever there exists cause to suspect a violation of any provisions of this chapter, or when necessary to investigate an application for, or revocation or suspension of a license under any of the procedures prescribed in this chapter, officials responsible for enforcement or administration of this chapter, or their duly authorized representatives, may enter on any site, or into any structure, for the purpose of investigation, provided they do so in a reasonable manner. No secured building shall be entered without the consent of the owner or occupant unless under authority of a lawful warrant.

C. Abatement. Any business which is established, operated, moved, altered, enlarged or maintained contrary to the licensing requirements is, and is declared to be, unlawful and a public nuisance, and may be abated in the same manner provided by law for the abatement of other nuisances.

D. Legal Proceedings by City Attorney. In addition to the enforcement provisions of this chapter, upon request by the city manager, the city attorney may institute any additional proceedings, including, but not limited to, seeking injunctive relief to enforce the provisions of this chapter or obtaining a judgment and enforcing collection thereon. If legal action is filed, the prevailing party shall be awarded reasonable attorney fees in preparation for and at trial, as well as on appeal. (Ord. 563 §12, 1990)