

ORDINANCE NO. 556

AN ORDINANCE REGULATING AND REQUIRING THE LICENSING OF BUSINESSES, REGULATING AMUSEMENT DEVICES AND ITINERANT MERCHANTS SOLICITORS, PEDDLERS, HAWKERS, AND TRANSIENT VENDORS OF MERCHANDISE WITHIN THE CITY OF WILLAMINA, REPEALING ORD. NO. 520,427,282,553 AND DECLARING AN EMERGENCY

The City of Willamina, Oregon, ordains as follows:

SECTION 1. Definitions.

As used in this ordinance, the following terms shall mean:

- (a) Person. Every natural person, firm, partnership, association, or corporation.
- (b) Business. Every business, calling, trade, profession, service, or employment, including both the premises and the activities.
- (c) Licensee. Every person issued a license for a business under the provisions of this ordinance.
- (d) Amusement Device. Any and all machines, devices and/or apparatus played or operated by the public for the purpose of exercising the skill, amusing or entertaining him or her, and which require the player to pay either through such device or to the owner or custodian thereof any money, check, token or other representative of value for the privilege of playing or operating the same, whether or not the player receives any money, check, token or other representative of value in connection with, or as a result of, the playing or operation of such amusement device.

SECTION 2. License Required.

- (a) It shall be deemed a violation of this ordinance for any person, firm or corporation, except as specifically exempted within this ordinance to conduct, carry on, or transact any business within the corporate limits of the City without first having obtained an annual license therefore and paid the annual license fee in advance in accordance with this ordinance.

- (b) No license shall be issued to any business owning, operating or displaying any amusement device which device by reason of the possession, playing or operation thereof shall violate the provisions of the laws of the State of Oregon or the ordinances of the City of Willamina with reference to gambling.

The proprietor of any place of business wherein any such device is operated or displayed shall be conclusively presumed to be the one in possession and control thereof.

- (c) Itinerant merchants, transient vendors of merchandise, solicitors, peddlers, hawkers, and those purporting to be surveytakers, going in and upon private property or calling at residences in the city and not having been requested or invited to do so by the owner/s, occupant/s of such property and/or residences, for the purpose of soliciting orders for the sale of goods, wares, services or merchandise and/or for the purpose of disposing of and/or peddling or hawking the same or soliciting orders is prohibited and hereby declared to be a nuisance and punishable as such.

The chief of police and/or any police officers of the City are hereby required and directed to suppress the same and to abate any such nuisance.

However, any agent, representative, or other reputable person who can show or produce credentials from a reputable concern may be licensed temporarily.

There shall be no discrimination of any kind as between any individuals or representatives of any outside concerns so long as they shall comply with the terms and conditions set forth in this ordinance, and otherwise conduct themselves so as not to be a nuisance or create any disturbance of any kind.

SECTION 3. License Term.

Any annual license issued hereunder shall be for the license fiscal year beginning on the first day of April of the year of issuance and expiring on the last day of March of the following year. Licenses issued for any part of the fiscal year shall expire at the end of the fiscal year ending March 31. No license fee shall be prorated for part of the fiscal year.

SECTION 4. License Fees.

Each person conducting or maintaining any business as defined in this ordinance shall pay a license fee of \$25.00 per year. This fee is non-refundable and due and payable by April 1 of each year.

Whenever any person shall be engaged in more than one business, a separate license shall be required for each business in which said person is engaged. If more than one related activity is combined under one business name and operated as a single business at one location, only one license is required.

Any agent, representative, or other reputable person who can show or produce credentials from a reputable, established concern which peddles and sells goods and/or services on a door-to-door itinerant basis may be licensed temporarily by paying a weekly license fee in advance of \$10.00.

Peddlers and sellers of magazines and/or vacuum cleaners shall pay in advance a license fee of \$15.00 per day.

This shall not apply to representatives of the local schools, church organizations, fraternal and service groups who wish to sell magazines, papers, pamphlets or goods or take subscriptions therefor.

Section 5. Procedure.

- (a) All applications for licenses hereunder shall be made to the city recorder, who shall collect the license fee for every application received and granted, and issue a license upon payment of fee.
- (b) All license fees collected hereunder shall be deposited in the general fund of the City of Willamina and shall become a part thereof for the purpose of securing revenue to assist in defraying the costs of necessary municipal services and functions ordinarily required for the health, peace, safety and general welfare of the city.
- (c) The license issued for every business shall be kept and maintained in a conspicuous place where the licensee shall customarily transact or engage in the business so licensed and the licensee shall exhibit the license to any police officer of the city when requested to do so.

- (d) The city recorder shall keep a record of all licenses issued. This record shall include the name, address and type of business, name and address of owner and name and address of operator of business if other than owner, along with date of issue of license and fee paid.
- (e) If amusement devices as defined by this ordinance are a part of the business operation, a listing of the devices by type is to be included in the record.

Section 6. Revocation of License.

Any license hereafter granted may be revoked by the Council after due cause having been first shown at a hearing held before the Council. The Council shall be the judge of sufficiency of the cause or reason for such revocation, and no person shall conduct, carry on or transact any such business after its license shall have been revoked by the Council. All licenses shall be subject to the regulations imposed by the city.

Nothing contained in this ordinance shall be construed to create any vested right in any person to the assignment, renewal, reissuance, or continuance of any license. The right shall be and remain at all times vested in the Council, as herein provided, to revoke and cancel any license for any one or more of the following reasons:

- (a) The licensee, its predecessors in interests, its successors in interest, its employees, or anyone acting on its behalf engaging in fraud or misrepresentation in the process of procuring a license; or
- (b) The licensee or anyone acting on its behalf violating any of the provisions of this or any ordinance of the city or of any state or federal law; or
- (c) The licensee, its employees, or anyone acting on its behalf permitting any violation of any of the provisions of this or any other ordinance of the City or of any state or federal law on the premises where such business is conducted or adjacent thereto or in connection with said business or premises; or
- (d) The licensee, its employees, or anyone acting on its behalf engaging in any conduct or act or permitting any conduct or acts on the premises where such business is conducted or adjacent thereto or in connection with said business or premises said conduct or acts tending to render the business or the premises a public nuisance as determined by the Council or a menace to the health, peace, and/or general welfare of the city; or

- (e) Whenever, in the judgment of the Council, the public interest demands such revocation.

When the council desires to investigate or revoke any license issued by the city under this ordinance, it shall notify the licensee or cause it to be notified in writing of the time and place of the hearing or investigation. Such hearing or investigation shall be informal. Nothing shall operate to prevent the council from considering any evidence developed during such hearing or investigation touching or concerning the fitness of the licensee to retain its license.

If upon such hearing and investigation, the council shall find that cause exists for revocation of such license, the same may be revoked by a majority of the council upon motion of one of its members, such motion to be entered into the minutes of the meeting.

Section 7. Nonexclusivity.

Any and/or all license fees required hereunder shall be in addition to any other license fee or assessments now required from any person in the city.

Section 8. Exemptions.

The terms and provisions of this ordinance shall not apply to any individual conducting a business from their personal residence where such individual does not maintain any sign or signs indicating the existence of a business or otherwise advertise said business in any manner and which meets all the requirements of a "home occupation".

A home occupation is a small-scale business or professional operation conducted from a place of residence. The residential character is maintained and the home occupation is conducted in such a manner as not to give an outward appearance nor manifest any characteristic of a business in the ordinary meaning of the term. A home occupation shall not infringe upon the right of neighboring residents to enjoy the peaceful occupancy of their home.

No person shall be employed other than a resident of the home in which the home occupation is established. No structural alterations shall be made which affect the residential character of the building. The business or activity shall be conducted wholly within the home or within a small accessory building which is residential in character and not larger than 1/2 the floor area of the house. No dust or any other offensive action or material shall be emitted from the premises. Noise associated with the activity shall not exceed 60 DBA, measured at the property line, between the hours of 7:00 a.m. and 6:00 p.m. No noises shall be created by the home occupation between the hours of 6:00 p.m. and

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7:00 a.m. that is detectable to normal sensory perception off the premises of the home occupation. No storage of materials, produce, or supplies shall be permitted outside of the building. The home occupation shall not generate more than 20 vehicle trips in one day. A "trip" is a vehicle traveling in one direction to or from a source. Twenty trips is equivalent to ten round trips.

For purposes of this section, the unsolicited oral recommendations of prior customers of the business does not constitute advertising.

The terms and provisions of this ordinance shall not apply to a property owner or householder holding or conducting occasional household sales or garage sales on his property or at his residence within a residential district, provided such sales are conducted for no longer than three (3) consecutive days, are kept on an occasional basis, and any posted advertising is removed within one week of the event. Any violation of these restrictions shall be deemed a violation of the terms and provisions of this ordinance and any dispute regarding the meaning of "occasional" shall be settled by Council based on evidence presented.

Any agents or representatives any business on which a license is levied by this ordinance shall be liable for the license fee herein levied and the penalties for failure to pay said license fees to the same extent as if such agent or representative were themselves the person engaged in business.

Section 9. Deemed Business.

Any person, representing by exhibiting any sign or advertisement that it is engaged in any business within the city on which a license is levied by this ordinance, shall be deemed to be actually engaged in such business and shall be liable for the payment of the applicable license fee.

Section 10. Severability.

Any ordinance or a part of any ordinance in conflict herewith is hereby repealed, and in the event any part or section of this ordinance shall be declared unconstitutional, it shall not effect any other portion or part hereof. In case an injunction may be issued against the city enjoining or restraining the collection of a license fee for any particular type of business hereunder, such injunction shall in no wise effect the validity or enforcement of this ordinance in all its provisions with respect to any other business to which said injunction or restraining order does not specifically apply.

Section 11. Assignment.

No transfer or assignment of any license issued hereunder shall be valid or permitted except whenever any person shall sell or transfer, in whole, a business for which such license has been paid. In that case, the buyer of such business shall not be required to pay any additional license fee for the balance of the license fiscal year in which he purchased the business. The buyer shall be required to inform the city of the transfer and provide the city with the usual applicant information and effective date of transfer.

Section 12. Amendment

Nothing herein contained shall be taken or construed as vesting any right in the licensee as a contract obligation on the part of the city as to amount or character of the license hereunder, and such license fee may be increased or decreased in any and all instances at any time by the city, and any business herein scheduled may be reclassified or subclassified at any time, and all license fees herein shall be due and payable in advance.

Section 13. Penalties.

Any person engaged in business or any officers, agents, representatives, or employes of any business, violating any of the provisions of this ordinance shall, upon conviction thereof before the municipal court of the city, be punished by a fine not to exceed \$100.00. If the person operating a business in violation of the provisions of this ordinance shall be a corporation, the officers and directors of said corporation shall be personally liable for said fines jointly and severally together with the corporation itself.

Each day's operation of a business in violation of any provision of this ordinance shall constitute a separate offense.

Section 14. Additional Remedies.

In addition to the penalties hereinabove provided, and as a separate, distinct, and concurrent remedy, the city may sue in any court of competent jurisdiction to obtain judgment and force collection thereof by execution for any license fee due under this ordinance and may also sue in addition thereto and at the same time bring suit for an injunction as against any person conducting such business herein scheduled and specified until such license fee together with all costs, including a reasonable attorneys' fee shall have been paid to the city, and thus restrain such person from operation of said business until all fees and costs have been paid.

Section 15. Repealer.

Ordinance No. 520, passed by the Council the 14th day of April, 1983 and submitted to and approved by the Mayor the 19th day of April, 1983, Ordinance No. 427, passed by the Council and approved by the Mayor the 29th day of July, 1976, Ordinance No. 282 passed by the Council and approved by the Mayor Dec. 8, 1959 and Ordinance No. 553 passed by the Council and approved by the Mayor June 27, 1991 are hereby repealed.

Secton 16. Emergency.

The council desires and deems it necessary for the preservation of the health, peace, safety and general welfare of the City of Willamina that this ordinance take effect at once, therefore an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage and approval.

Passed by the Council this 26th day of March, 1992.

AYES: Councilors Alger, Branson, Eddy, Greb, Horne, Tandecki

NAYS: None

Submitted to and approved by the Mayor on the 27th day of March, 1992.

Twila D. Baker
Mayor

ATTEST:

A. Chapman Brown
City Recorder