

TITLE XI: BUSINESS REGULATIONS

Chapter

110. GENERAL LICENSING

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§ 110.01 PURPOSE.

(A) This chapter is to provide revenue for general municipal purposes and enforcement of this chapter. Business license issuance will also protect the health, safety and welfare of the public. This chapter will provide a list of existing businesses operating in the city. This will ensure that business

activities comply with applicable city ordinances, state laws and federal laws. The business list can provide business contact information for city public safety officials in the event of local emergencies. This chapter does not preclude other charges required under any ordinance of the city.

(B) This chapter is not intended to repeal, abrogate or annul or in any way impair or interfere with the existing provisions of other laws or ordinances, except those specifically repealed by the section codified in this chapter. Where this chapter imposes a greater restriction on persons, premises or personal property than imposed or required by such existing provisions of law, ordinance, contract or deed, the provisions of this chapter shall control.

(C) Nothing in this chapter shall be construed to apply to any person or legal entity transacting or carrying on any business within the city which is exempt from taxation, by the city, by virtue of the Constitution of the United States or the Constitution of the state or applicable statutes of the United States or the state.

(Ord. 2010-08, passed 12-15-2010)

§ 110.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. When consistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

BUSINESS. All legal vocations, occupations, professions, enterprises, establishments, trades, professions, shops and all kinds of activities and matters, profit or nonprofit, as hereinafter specifically mentioned, together with all devices, machines, vehicles and appurtenances used therein, any of which are conducted for private profit, or benefit, either directly or indirectly, on any premises in the city. It shall not include any business whose primary endeavor is supplying goods for resale by other businesses in the city.

CITY. The City of Wheeler, Oregon.

CITY COUNCIL. The City Council of the City of Wheeler, Oregon.

CONTRACTOR. Any person who undertakes to furnish labor and/or material necessary or required to construct, reconstruct, alter, repair or add to any building, bridge, ditch, flume, reservoir, well, fence, street, sidewalk, machinery and all other structures and super structures. **CONTRACTOR**, as used in this chapter, shall also include **SUBCONTRACTORS**.

GARAGE SALE. A commercial activity open to the public, conducted at a private residence where the resident sells or auctions personal property to others, provided the number of sale days at a particular event does not exceed three days, and the number of events during the calendar year is limited to two.

PERSON. Includes all domestic and foreign corporations, associations, syndicates, partnership, joint ventures, societies, individual natural persons, clubs, trustees or trusts. **PERSON** includes any officers, agents, employees, factors of any kind, or personal representatives thereof, in any capacity, either on that persons own behalf or for any other person, under either personal appointment or pursuant to law.

PREMISES. Includes all lands, structures, places and the equipment and appurtenances connected or used therewith in any business, and any personal property, affixed to or otherwise used in connection with any such business conducted to such premises.

(Ord. 2010-08, passed 12-15-2010)

§ 110.03 INTENT OF COUNCIL TO IMPOSE FEES, EXCLUSIONS AND LIABILITIES.

(A) In order that business, manufacturing pursuits, professions and trade be carried on and conducted in the city in a profitable and peaceful manner, it is necessary that the same be regulated and safeguarded and that the city provide police protection, street maintenance, water and other services.

(B) It is necessary that the city levy fixed license fees for securing revenue to assist in such regulation and in defraying the cost of such police and other municipal services.

(C) No person whose income consists of salary or wage paid to such person by an employer or agent thereof covered and defined by this chapter, and no person working as a domestic in a private home shall be deemed to be transacting or carrying on business in the city; however, if any person carries on business in the city and fails to pay the license fee, the agents of such person engaged in business in the city shall be liable for the payment of such fee or for penalties imposed for failure to comply with this chapter.

(Ord. 2010-08, passed 12-15-2010) Penalty, see § 110.99

§ 110.04 PROHIBITED BUSINESS OPERATION.

It shall be unlawful for any persons, either directly or indirectly, to engage in any business without having first paid the business license fee and be issued a license by the city as provided in this chapter. The levy or collection of a license fee upon any business, trade, profession or shop shall not be construed to be a license or permit of the city to the person to engage in business activities that are unlawful, illegal or prohibited. Furthermore, the city issues business licenses with the expectation that businesses shall abide by the laws of the state, the United States of America and the ordinances of the city.

(Ord. 2010-08, passed 12-15-2010) Penalty, see § 110.99

§ 110.05 ENGAGING IN BUSINESS.

All persons shall be deemed to be engaging in business, and thus subject to the requirement of § 110.03, when undertaking any activity that provides money, profit or the receipt of goods or services

by so doing. Conducting of business shall include all endeavors generally to be interpreted in the normal and usual understanding of the term "doing business".

(Ord. 2010-08, passed 12-15-2010) Penalty, see § 110.99

§ 110.06 PRESUMPTION OF ENGAGING IN BUSINESS.

Any person that advertises or otherwise holds himself or herself out to the public to be engaged in any business, profession, trade or calling for which a license is required, shall be presumed to be so engaged and shall pay such license fee as is required by this chapter.

(Ord. 2010-08, passed 12-15-2010)

§ 110.07 LICENSE APPLICATION TIME.

(A) The annual license fee prescribed in § 110.23 shall be paid to the City Manager upon the filing of an application for a new business license, or upon the annual renewal of a previously obtained business license on July 1 following the anniversary date of the original application.

(B) Anyone defined in this chapter that is currently doing business in the city and is unlicensed, shall have days 90 within which to acquire such license. The 90-day period to obtain such license begins to run from the time the city serves the business owner or operator with written notice and a copy of this chapter. Failure to obtain a license and the payment of the fee therefor shall result in a fine of \$50 per day for each day such business is operated without a license.

(Ord. 2010-08, passed 12-15-2010)

§ 110.08 EXAMINATION OF PREMISES REQUIRED PRIOR TO ISSUANCE OF LICENSE.

(A) To provide for safety, public health and welfare of any patron or visitor, the Police Department, Fire Department, Building Official, City Manager and/or their agents (federal, state and local agencies) and subordinates thereof are empowered to inspect such places of business prior to the issuance of a business license. Officials may make the examination at all reasonable times for determining whether such places of business is safe, sanitary and complying with federal, state and local laws making the business suitable for the person so licensed to conduct business. Refusal by the business to allow such an inspection is sufficient grounds to request a search warrant to search for illegal business activities.

(B) The city shall not issue a business license if such officers or their agents determine that any such place of business violates state or local codes or ordinances or is dangerous to public health, safety or welfare. The City Manager shall make a report of the determination of denial and reasons made in writing to the City Council.

(C) The City Council, upon receipt of such determination of denial and reasons therefor, and written request by the concerned business for a public hearing, shall direct the City Manager to send by certified mail to the concerned business, notification of a public hearing to be held before the City Council.

(D) The purpose of the hearing shall be to determine whether the concerned business shall receive a city business license, or if the City Council should suspend or revoke a previously issued city business license the concerned business currently utilizes.

(E) The notification to the concerned business shall set forth the time and place of the public hearing and cite specific incidents which constitute the basis for the determination of violation by the Police, Fire Department, Building Official, City Manager or their subordinates. Furthermore, the notification to the concerned business will state the specific violation of state or local laws and what dangers exist to either public health, safety, welfare, is likely to become, or is at the present time a public menace or nuisance. (Ord. 2010-08, passed 12-15-2010)

§ 110.09 LICENSE ISSUANCE; ENFORCEMENT ACTIONS; CONDUCT OF PUBLIC HEARING.

(A) Any business which has been subject to enforcement action by the City Manager or had its business license suspended or revoked by action of the City Manager, Police, Building or Fire Department under the provisions of this chapter, shall have the right of appeal before the City Council.

(B) A public hearing for determining whether a business license should be issued, or if previously issued whether it should be suspended or revoked or city administrative enforcement action upheld shall be conducted as a quasi-judicial proceeding before the City Council.

(C) The City Council shall receive and consider evidence or testimony only when such evidence or testimony is relevant to the cited incidents or offenses contained in the notifications or enforcement actions to the concerned business.

(D) If the City Council determines that all or a portion of the incidents or offenses set out in the notification to the concerned business are supported by substantial evidence, the City Council may refuse to issue a business license to the concerned business, or if a business license has previously been issued, may suspend or revoke such license. (Ord. 2010-08, passed 12-15-2010)

§ 110.10 LICENSE ISSUANCE; REQUIREMENTS.

The City Manager, upon application, shall issue a business license in the name of the City Council, provided any investigation required by this chapter is conducted and has a satisfactory outcome. Determination by the officials set out in § 110.08 that the business is dangerous to public health, safety and welfare or likely to become so or is now a public menace or nuisance then the City Manager shall not issue a business license. Furthermore, if such determination has been so made, and if the City Council finds that such determination is not supported by substantial evidence, and if the fee is paid as provided by § 110.23 and resolution, the City Council may issue the business license. (Ord. 2010-08, passed 12-15-2010)

§ 110.11 LICENSE ISSUANCE; EFFECT AND TERM OF LICENSE.

(A) The issuing of a license pursuant to this chapter or the collection of a fee shall not permit any person to engage in any unlawful business.

(B) The fees levied and fixed by this chapter shall be in addition to the general ad valorem taxes now or hereafter levied pursuant to law.

(C) All ordinances of the city in force on the effective date of this chapter that pertain to or cover any, business, pursuit or occupation shall remain in full force and effect. In the event of a conflict or duplication of a license fee, then this chapter shall take precedence over the provisions the ordinance so that there will be no duplication of license fees for the same business, occupation, profession or pursuit. Zoning ordinance fees are in addition to business license fees.

(D) On or before July 1 of each year and every license year as herein provided, after the passage of this chapter, every person, as herein defined, engaged in business, in the city, will renew or file their business license application to the Council, through the City Manager. The person will use suitable forms furnished by the city, for a license to carry on his or her business for the license required. Said application shall be filed with the City Manager for use of the City Council and Planning Commission.

(E) The license will be issued to the applicant in the name or names of the businesses to be licensed, and will designate the nature of the business, the address, both street and mailing, and the date of issuance.

(F) At all times after the issuance of the license, the licensee will post the license in a conspicuous place upon the business premises, available for inspection by the public and by employees and prospective employees of the business.

(Ord. 2010-08, passed 12-15-2010)

§ 110.12 APPLICATION FORM AND INFORMATION REQUIRED.

Applications for business, trade, profession or shop license will be submitted on forms provided by the City Manager. Every application shall be signed by the owner or his or her authorized agent and will contain the following:

- (A) Name of person or persons owning business or businesses at same location;
- (B) Assumed name, if any;
- (C) Address of business premises, and business mailing address, if different;
- (D) Nature of business;
- (E) Number of employees as of date of application, if applicable;

(F) Number of seasonal employees as of date of application and length of employment season applicable thereto;

(G) Number of living space-rental units; if applicable;

(H) States that all parking requirements been met as described in the city zoning regulations, Ord. 79-2, revised 2010, Article 11, § 11.090;

(I) Has all sign requirements been met as described in the City Sign Ord. 99-02 (Chapter 153); and

(J) States that all requirements have been met for a home occupation as described in the city zoning regulations, Ord. 79-2, revised 2010, Article 11, § 11.060 (Ord. 2010-08, passed 12-15-2010)

§ 110.13 LICENSE SUSPENSION OR REVOCATION EFFECT.

(A) If the City Council suspends or revokes a business license, the concerned business shall immediately cease conducting all business within the city.

(B) Any business, which continues to conduct business within the city, subsequent to action by the City Council to suspend or revoke the city business license, shall be subject to the same fine and penalties as if such a business had never obtained a city business license and was carrying on business within the city without such a business license.

(C) The City Manager has full authority to enforce this chapter through administrative, civil or judicial means including the use of the Manzanita Police Department for such enforcement. Failure to comply with all application provisions of this chapter will subject the business to enforcement procedures as described herein and Chapter 36 of this code of ordinances including the use of prior contact and the city's *Enforcement Response Guide*. (Ord. 2010-08, passed 12-15-2010)

§ 110.14 LICENSE SUSPENSION OR REVOCATION REHEARING.

(A) Any business which has been denied a city business license or has had a city license suspended or revoked by action of the City Council under the provisions of this chapter, shall have the right of a rehearing before the City Council. The purpose of reconsideration of such action is to allow the City Council to be presented with substantial new evidence relevant to the refusal of the city to issue a business license or to the suspension or revocation of a previously issued business license.

(B) A concerned business shall request a rehearing in writing to the City Manager and shall set out the new evidence that the concerned business seeks to bring before the City Council.

(C) If the City Council grants a rehearing, it will be conducted in the same manner set forth in § 110.09 to determine whether a business license should be initially issued or whether, if one had previously been issued, if it should be suspended or revoked. The only evidence or testimony, which the City Council shall hear in the rehearing, is that which is relevant or material to the new evidence set forth in the request for rehearing by the concerned business.

(Ord. 2010-08, passed 12-15-2010)

§ 110.15 AGENTS RESPONSIBLE FOR OBTAINING A BUSINESS LICENSE RECEIPT.

The agents or other representatives of businesses doing business in the city shall be personally responsible for the compliance of their principals and of the businesses, they represent with the provisions of this chapter.

(Ord. 2010-08, passed 12-15-2010)

§ 110.16 CONTRACTORS AND SUBCONTRACTORS; FAILURE TO PAY.

It shall be the responsibility of all general contractors, utility companies and subcontractors working in the city to obtain a business license. It shall further be the responsibility of all general contractors and utility companies working in the city to provide a list of all names and addresses of subcontractors under their direction. Failure of any subcontractor to obtain a license may result in a "stop-work order" on any project within the city's jurisdiction.

(Ord. 2010-08, passed 12-15-2010)

§ 110.17 SEPARATE FEE FOR BRANCH ESTABLISHMENTS.

(A) A fee shall be paid in the manner prescribed in this chapter for each branch establishment or location of the business engaged in, as if each such branch establishment or location were a separate business.

(B) Warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this chapter shall not be deemed separate places of business or branch establishments. Separately franchised operations shall be deemed separate businesses even if operated under the same name.

(Ord. 2010-08, passed 12-15-2010)

§ 110.18 JOINT BUSINESSES.

A person engaged in more than one type of business at the same location or address will be required to have only one business license.

(Ord. 2010-08, passed 12-15-2010) Penalty, see § 110.99

§ 110.19 NO LICENSE REQUIRED FOR MERE DELIVERY.

No license shall be required for any person for mere delivery in the city of any property purchased or acquired in good faith from such person at the regular place of business outside the city.
(Ord. 2010-08, passed 12-15-2010)

§ 110.20 EXEMPTIONS.

(A) An individual or group of people are allowed a maximum of two garage sales per year with a maximum of three days per garage sale without being required to purchase a city business license.

(B) The provisions of this chapter shall not apply to participants in official city sponsored or sanctioned events.

(C) The provisions of this chapter shall not apply to utility companies that have a current franchise agreement with the city. The provisions of this chapter shall also not apply to utility companies providing essential services to the citizens of the city such as electric, water or sewer utilities.

(D) The provisions of this chapter shall not apply to a person that engages in less than five days of business per year in the city.

(E) The provisions of this chapter shall not apply to a person that is a city contract employee, unless his or her business office is within the city limits.
(Ord. 2010-08, passed 12-15-2010)

§ 110.21 LICENSE DISPLAY REQUIRED.

Persons issued business licenses, in accordance with this chapter, shall openly display all licenses in the place of business. The person shall immediately produce and deliver for inspection to the Police, Fire Department, City Manager, and their agents or subordinates the license when requested by such individuals. The city shall consider the failure to produce the same on request a violation of this chapter.
(Ord. 2010-08, passed 12-15-2010)

§ 110.22 TRANSFER OR ASSIGNMENT OF LICENSE.

No transfer or assignment of any license issued under this chapter shall be valid or permitted, except that whenever any person sells or transfers in whole a business for which such license has been paid, then the vendee thereof shall not be required to pay any additional license thereon for the balance of the license year.
(Ord. 2010-08, passed 12-15-2010)

§ 110.23 LICENSE CLASSIFICATIONS AND FEE SCHEDULE.

There are hereby imposed upon the businesses, trades, professions and shops specified by this chapter, license fees in the amount hereinafter prescribed. It will be unlawful for any person to transact and carry on any such business in the city without first having obtained a business license for the current year as herein provided. The City Council will establish and set fixed license fees for each business and set opposite of the name amounts paid by businesses, trades, professions and shops licensed. The City Council shall establish such fees by resolution and update such fees from time to time as needed. Also established by resolution is the standard application form for a city business license.

(Ord. 2010-08, passed 12-15-2010) Penalty, see § 110.99

§ 110.24 DELINQUENCY CHARGE.

A person shall pay the fee required in § 110.23 within 30 days after July 1 of the original issuance of a business license and each July 1 thereafter. A delinquency charge of \$10 will be charged thereafter at 30-day intervals until paid, not to exceed \$60 in anyone year. The city considers any license in violation after five months of non-payment and subject to fines or revocation.

(Ord. 2010-08, passed 12-15-2010) Penalty, see § 110.99

§ 110.25 CITY'S RIGHT TO RE-CLASSIFICATION AND AMENDMENT.

(A) The City Council shall take nothing herein contained as vesting any right in any license as a contract obligation on the part of the city, as to the amount or character of license hereunder.

(1) For cause shown, the City Council may increase or decrease such license fees in any or all instances.

(2) The City Council may reclassify or sub classify, at any time, any business, trade, profession or shop herein scheduled and all license fees herein described will be due and payable at the time of application issuance.

(B) Before the city makes an amendment part of this chapter, changing the amount of license fee, or fees, the city will follow the steps in the City Charter Chapter VIII, § 31 and the public be given the opportunity to be heard before the adoption of the proposed amendment.

(Ord. 2010-08, passed 12-15-2010)

§ 110.26 CONFLICTING ORDINANCES REPEALED.

Any ordinance or any section of an ordinance previously enacted which is in conflict of this chapter, is hereby repealed.

(Ord. 2010-08, passed 12-15-2010)

§ 110.99 PENALTY.

(A) Any person violating any of the provisions of this chapter shall pay a fine not to exceed \$25 for each violation. Each day a violation of this chapter occurs shall constitute a separate violation.

(B) A finding that a person has committed a violation of this chapter shall not act to relieve the person from payment of any unpaid business fee, including delinquent charges, for which the person is liable. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the city.

(C) If a firm or corporation violates a provision of this chapter, the officer or officers, or person or persons responsible for the violation shall be subject to the penalties imposed by this section.
(Ord. 2010-08, passed 12-15-2010)

