

CITY OF NEWPORT  
ORDINANCE NO. 2030

AN ORDINANCE REPEALING AND RE-ENACTING CHAPTER 4.05 OF THE CITY OF  
NEWPORT MUNICIPAL CODE PERTAINING TO BUSINESS LICENSING

**Findings:**

1. The business license code requires updating to address difficulties with uniformly enforcing the code across the wide range of businesses throughout Newport.
2. The business license code requires modifications to more equitably assess business license fees to the wide range of businesses throughout Newport.

**THE CITY OF NEWPORT ORDAINS AS FOLLOWS:**

**Section 1.** The above findings are hereby adopted as support for the Council's following amendments.

**Section 2.** Chapter 4.05, Business Licenses, of the Newport Municipal Code is repealed in its entirety and replaced with the following:

**4.05.010      PURPOSE AND SCOPE**

The purpose of this Chapter is to provide revenue for municipal purposes and to provide for the health, safety, and welfare of the citizens of Newport through the regulation of businesses, occupations, and trades. A business need not be located within the city in order to be subject to the provisions of this Chapter. This Chapter serves the public interest by mandating that business will be carried on in compliance with applicable laws and in a manner that protects the public's health, safety, and welfare. The licensing provisions of this Chapter are enacted pursuant to the City Charter, Section 4, and the city's home rule authority as provided in the Oregon Constitution, Article XI, Section 2.

The business license fee shall be in addition to, and not in lieu of, any other license or permit fee, charge, or tax required under any other Municipal Code section or city ordinance. The business license required by this Chapter shall not be construed to constitute a permit to engage in any activity prohibited by law nor as a waiver of any other regulatory or license requirement imposed by the city or by federal, state, or local law.

**4.05.015      DEFINITIONS**

**Business** - Any enterprise, establishment, store, shop, activity, profession, or undertaking doing business of any nature within the city, whether conducted directly, indirectly, or cooperatively, including the rental of real property as defined in this

ordinance. "Business" does not include the on-premises sale of used household goods by a person who resides on the premises (a yard or garage sale), so long as the sale is conducted no more than four days in any calendar year. As used in this ordinance, the phrase "doing business" means an act or series of acts performed in the course or pursuit of a business activity for more than twenty (20) hours in one calendar year.

City Manager - The City Manager of the City of Newport or the City Manager's designee.

Consignment Store Merchants - Persons who own goods and enter into an agreement with a consignee/seller to sell or market those goods. Consignment store merchants occupy space within a fixed facility or building which is owned or operated by consignee/seller for the purpose of displaying and selling such goods.

Employee - Any person who works within the city in the service of another person (the employer) and whose work performance details are controlled by the employer. Employees may be part-time or full-time and the number of employees will be measured using a full-time equivalent computation, in accordance with any applicable city rules.

Endorsement - Standards established by the city which a business license applicant must satisfy or make progress toward satisfying prior to the city issuing a business license. Any city-approved endorsements will be clearly noted on the business license.

Not-for-Profit Entity - Any entity organized and operated exclusively for a religious, charitable, humanitarian, or educational purpose and for whom the United States or the State of Oregon has granted an exemption from the payment of income tax on that basis.

Person - Any and all natural and legal persons, including individuals or public or private corporations, firms, partnerships, associations, organizations, syndicates, joint ventures, societies, or any other group or entity acting as a unit of individuals.

Rental of Real Property - The rental or offering for rent of real property. Rental of real property includes, but is not limited to, the following types of properties rented or offered for rent: hotel or motel rooms, automobile or tourist courts, boarding houses, bed and breakfast rooms, mobile homes or trailer parks, residential or vacation homes, multi-family dwelling units, moorage units, and commercial properties. Notwithstanding anything to the contrary above, an owner's rental of no more than one residential dwelling unit for thirty (30) days or more shall not constitute the rental of real property.

Special Event Vendors - A person engaged in selling or offering for sale any food, beverage, merchandise, or service within the city during a special event for which the event organizer has obtained a valid business license. Special event vendors must possess all other necessary city, county, and state permits and authorizations.

#### **4.05.020 FEES; EXEMPTIONS**

This ordinance hereby establishes:

1. Business Application Fee; and

2. a Business License Annual Fee.

A. All persons applying for a new business license shall pay both the business application fee and the business license annual fee, unless otherwise exempt as provided in Section E. below. Persons renewing an existing, non-expired business license shall pay only the business license annual fee, unless otherwise exempt as provided in Section E. below.

B. The business application fee amount shall be charged when a new or expired business license application is processed and shall be limited to recovering the Finance Department's administrative cost of processing the application. The business application fee shall be set from time to time by resolution of the City Council. Persons holding expired business licenses will be charged a new business application fee to re-apply.

C. The business license annual fee shall be charged annually at a rate to be determined by resolution of the City Council, such rate being either a flat rate for all businesses or a progressive rate based on number of employees.

D. No person shall do business within the city without a current, valid city business license, unless exempt from this ordinance. No person shall do business within the city as an employee, agent, or representative of another person unless the owner, principal, employee, agent, or representative is exempt or has a current, valid city license for that business, no matter where the principal offices of that business are situated.

E. Exemptions from the Business License Annual Fee.

1. Exempt persons listed in this subsection shall not be charged a business license annual fee. Persons listed in this subsection and doing business within the city must still apply for a business license on the forms provided by the city and must still pay the business application fee, unless specifically exempted from paying the business application fee below.

2. The following persons shall not be charged the business license annual fee:

- a. A not-for-profit entity, as defined in this ordinance.
- b. A special event vendor, as defined by this ordinance.
- c. A consignment store merchant, as defined in this ordinance.
- d. Persons expressly exempted from paying a city business license fee under any other lawful provision of federal, state, or city law, provided that the person claiming the exemption shall show proof of such exemption satisfactory to the City Attorney.
- e. Persons engaged in delivery of goods inside the city from points outside the city.
- f. Any city, county, state agency, special district, school district, or other government entity.

F. Special Event Vendor and Consignment Store Merchant Exemptions. In addition to any other exemption provided in this ordinance, special event vendors and consignment store merchants shall be exempt from all requirements of this ordinance, including but not limited to, the obligation to register, the obligation to pay a business application fee, the obligation to obtain a valid business license, and the obligation to pay the business license annual fee, as long as the following requirements are met:

1. The organizer of the special event or the owner/operator of the consignment store obtains a valid business license which lists all special event vendors or consignment store merchants. Such list must be updated by the organizer of the special event or the owner/operator of the consignment store upon any significant change in the number or type of special event vendors or consignment store merchants;
2. The special event vendor or consignment store owner/operator obtains all other necessary city, county, or state permits or licenses and complies with all applicable city, county, or state laws and regulations.

#### **4.04.025 MULTIPLE LOCATIONS OR BUSINESSES**

- A. A person who does the same or substantially similar business from more than one location need only obtain one business license. A person who does business as more than one business entity or whose businesses are not substantially similar in nature shall obtain separate business licenses and shall pay any applicable business license fees for each such entity or business.
- B. An owner of real property for rent who rents or offers for rent more than one dwelling unit of real property need only obtain one business license. In determining whether different business entities or activities should be categorized as only one business or as multiple businesses for the purposes of this ordinance, the City Manager shall consider the normal and ordinary customs and usages of business, including but not limited to: consideration of how the businesses are registered with other governmental agencies, such as the Oregon Secretary of State and the Internal Revenue Services.

#### **4.05.030 APPLICATION**

- A. All persons doing business within the city shall, on a form provided by the city, apply for and maintain a business license unless exempt under this ordinance.
- B. The application shall show: the corporate, trade, or registered name of the business; the complete address(es), email address(es), and telephone number(s) of the principal office of the business and any other locations or addresses; the location or address of any real property offered for rent, including the number of dwelling units; the name(s), email address(es), and telephone number(s) of the owner(s) or principal(s); the number of employees; the state of incorporation if the business is a corporation; and any applicable endorsements. On the basis of that application, the city shall compute the business license annual fee for that license according to the schedule of fees that the City Council shall establish from time to time by resolution. The applicant shall warrant by his/her signature that all representations made on the application form are the truth to

the best of his/her knowledge. Any misrepresentations on the application shall constitute a violation of this ordinance.

- C. All applications shall be submitted before the person first does business in the city. A license shall be valid from the date of issuance until June 30<sup>th</sup> of the next calendar year. Applications received after December 31 will be charged one-half of the business license annual fee, as determined by City Council resolution.
- D. Upon receipt of a signed and completed application for a business license, the city shall inform the applicant of any business application fees and business license annual fees due and process the application within 30 days or notify the applicant of the delay. Such fees shall be due and payable on date the application is submitted or by July 1st for non-expired renewals. The city will endeavor to process all applications and renewals within the estimated time.

#### **4.05.035      ISSUANCE; DISPLAY; TRANSFER**

- A. The city shall issue a written receipt when a business license is approved and any applicable business application fees and business license fees are paid in full. The receipt shall constitute a business license and shall be public notice that the person named thereon is licensed to do business in the city. A person who is required by this ordinance to have a business license shall cause the receipt to be prominently posted in a place available to the public at the principal location or office of the business for which the license is issued. If the principal location or office of the business is not located within the city, the business' employee, agent or representative must possess a copy of the license when doing business within the city. For business licenses issued to persons who offer real property for rent, the license need not be posted, but shall be made available upon city's request.
- B. A business license may be transferred to another party if: 1) the other party becomes the owner of the business; 2) no other significant change in the nature of the business has occurred; 3) if the existing business license contains no endorsements; and 4) if the new owner contacts the city to amend the business license application to accurately reflect the new ownership and any other new information. No other transfer or assignment of any license issued under this chapter shall be valid or permitted. Upon a significant change of the nature of the business, a new business license is required.

#### **4.05.040      DISCLOSURE; DELINQUENCY**

- A. Persons required to possess a business license shall, upon the city's request, make available all records, accounts and documents of every nature and in whatever media format which may tend to prove or disprove the applicant's statements on the business license application.
- B. A business license fee not paid in full within 30 days after it is due is delinquent and the city may avail itself of any and all remedies available to collect the fee, including but not limited to referring the delinquency to a collection agency and citing the person for a violation of the Newport Municipal Code. In addition, a delinquency charge of ten (10)

percent of the business license fee due may be added to the fee that is otherwise due. This delinquency charge shall be charged for each successive 30-day period, or portion thereof, for which any amount is due and owing and remains unpaid, including any delinquency charges already imposed, up to a maximum penalty of twenty (20) percent of the license fee.

#### **4.05.045 ADMINISTRATION**

- A. The City Manager is responsible for the administration of this Chapter and will adopt reasonable policies, procedures, administrative rules, or regulations to carry out the purpose and intent of this Chapter and to ensure that any health or safety issues related to the applicant's business are identified prior to the city issuing a business license. The City Manager shall provide the City Council with a report of any administrative rule adoptions or amendments regarding this ordinance. The city may initiate the process for remediating any health or safety issues at any time, whether before or after the issuance of the business license.
- B. Violations of this Chapter or of any rules and regulations adopted by the City Manager pursuant to this Chapter shall be subject to the penalties provided within this Chapter. No person shall willfully make any false or misleading statements to the City Manager regarding information relevant to the issuance of a business license.

#### **4.05.050 DENIAL OR REVOCATION**

- A. A license issued under the provisions of this chapter may be denied or revoked by the City Manager, after notice as provided below, for any of the following causes:
  - 1. Fraud, misrepresentation or false statement contained in the application for a license or failure to supply the requested application information;
  - 2. A violation of this Chapter or of any city, county, state, or federal law or regulation;
  - 3. Conducting the licensed activity in an unlawful manner or in such a manner so as to constitute a breach of the peace, or to endanger or risk the health, safety, or general welfare of the public;
- B. Notice of denial or revocation of a license shall be given in writing to the applicant or licensee, setting forth specifically the grounds of denial or revocation. A notice of denial may be given to the applicant at any time during the application review process. A notice of revocation shall be mailed to the licensee at the licensee's last known address at least ten (10) calendar days before the date of the revocation. The last known address is deemed to be the address provided to the city by the applicant on the business license application unless the applicant thereafter gives the city written notice of a different address.

#### **4.05.055 VIOLATIONS**

- A. A violation of this Chapter shall constitute a civil violation of the laws of Newport and

shall be prosecuted at the city's discretion by the filing of a complaint filed in municipal court or in an Oregon state court of proper jurisdiction. Any person found to have violated this Chapter shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00).

- B. The conviction of any person for violation of this Chapter shall not act or relieve such person from the requirement to register a business or obtain a business license. The penalties imposed by this section are in addition to and not in lieu of any other remedies available to the city.
- C. In the event any provision of this chapter is violated by a firm or corporation, the officer, officers or individuals responsible for the violation shall be personally subject to the penalties imposed by this section.

#### 4.05.060 APPEAL

- A. Any person aggrieved by the City Manager's (i) denial of a business license application; (ii) revocation of a business license; (iii) assessment of business application fee or business license annual fees; or (iv) application of any rules or regulations pertaining to this Chapter; shall have the right to appeal to the City Council. The applicant or licensee shall file with the City Council a written statement setting forth fully the grounds for the appeal within twenty (20) calendar days after either: (i) the day the notice of denial is issued or the day the of revocation is mailed; (ii) the day the disputed fees are assessed; or (iii) the day applicant or licensee alleges that the rules or regulations were misapplied.
- C. The City Council shall set a time and place for a hearing on the appeal within twenty (20) calendar days after receiving the appeal. Notice of the appeal hearing shall be mailed to the applicant or licensee's last known address at least ten (10) calendar days prior to the hearing. During the hearing, the applicant or licensee shall have an opportunity to present in writing or orally the grounds for the appeal. The decision and order of the City Council on such appeal shall be final and conclusive.

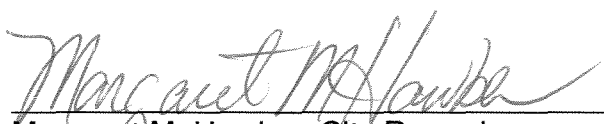
Section 3. This ordinance shall take effect July 1, 2012.

Read by title only and adopted by the City Council on March 19, 2012.

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Mark McConnell, Mayor

ATTEST:

  
Margaret M. Hawker, City Recorder