

MODEL



SHOP



# Model Business License Ordinance

MARCH 2018

Last reviewed by LOC attorneys April 2023

## **FOREWORD**

A city's power to license derives from the home rule charter granted by Article XI, Section 2 of the Oregon Constitution. A city may impose a business or occupation license fee based on its police power alone or in combination with its taxing power. Business license ordinances are established either to raise revenue, to regulate business, or both. A city with this ordinance may intend to protect the health, safety and welfare of the general public. By raising revenue from business licenses—usually through an annual licensing fee—a city can more easily pay for services such as police and fire protection. A city can also use business licenses to maintain a list of existing businesses operating in the city. This allows the city to ensure that business activities comply with applicable city ordinances, state laws, and federal laws. It can also provide business contact information for city public safety officials in the event of local emergencies.

Although the power to license may include the authority to prohibit activities that may be harmful to the public welfare, health, or safety, there are certain limits to this power. The Oregon Supreme Court held that the power to regulate does not authorize an absolute prohibition of any legitimate business.<sup>1</sup> Enforcing a reasonable regulation may include securing a license to participate in a specific occupation. It may also be unlawful if there is a failure to pay a stipulated fee to procure the requisite evidence of authority to conduct said business.

A frequent claim raised by businesses is that a city's license fee violates either the Equal Protection or Due Process clauses of the United States and Oregon constitutions. These claims typically arise when cities charge different fees to different types of businesses. The Oregon Court of Appeals has noted that the constitutionality of an ordinance must be sustained against the Equal Protection and Due Process claims unless it is impossible to discern any substantial difference between the separate occupation classifications.<sup>2</sup>

## **DISCLAIMER**

Any model document provided by the League is intended to be used as a starting point in an individual city's development of its own documents. Each city is unique, and any adopted document or policy should be individually tailored to meet a city's unique needs.

This model is not intended as a substitute for legal advice. Cities should consult with their city attorney before adopting a business license ordinance to ensure that the ordinance submitted complies with all aspects of federal, state and local law.

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<sup>1</sup> *City of Portland v. Western Union Tel. Co.*, 75 Or 37 (1915).

<sup>2</sup> *City of Idanha v. Consumers Power*, 8 Or App 551 (1972).

## MODEL BUSINESS LICENSE ORDINANCE

### SECTIONS

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[Insert your City’s Ordaining Clause, e.g., “*The People of the City of \_\_\_\_\_ ordain as follows*”]

**Section 1. Purpose.** This ordinance is enacted, except as otherwise specified, to:

- A. Ensure that each business is conducted in compliance with applicable federal,<sup>3</sup> state, and local laws, regulations, and ordinances and in a manner comporting with the public health, safety, and general welfare;
- B. Secure revenue to assist in defraying the City’s cost of administering and enforcing its laws and ordinances and the City’s provision of certain municipal services; and
- C. Obtain valuable information for emergency responders, planning and building personnel, and economic development.

**Section 2. Applicability.** Nothing in this ordinance shall be construed to apply to any person transacting and carrying on any business within the City of [City] which is exempt from taxation or regulation by the city by virtue of the constitutions of the United States or the State of Oregon, or applicable federal or state law.

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<sup>3</sup> Compliance with federal law may not be an appropriate standard for those cities wishing to allow marijuana businesses. The League recommends seeking the advice of the city attorney to determine the appropriate language.

**Section 3. Definitions.** As used in this ordinance:

- A. “Applicant” means the person applying for a license to conduct a particular business within the City.
- B. “Business” means any activity, trade, profession, occupation, or pursuit operated, engaged, conducted, or carried on for profit, gain, livelihood, or any other purpose, regardless of the form under which the activity, trade, profession, occupation, or pursuit is operated, engaged, conducted or carried on within the City.
- C. “Day” means a calendar day unless otherwise noted.
- D. “Doing business” means to engage in any activity in pursuit of profit, gain, livelihood or any other purpose.
- E. “Income” means the net income arising from any business, as reportable to the State of Oregon for personal income, corporation excise or income tax purposes, before any allocation or apportionment for operation out of state, or deduction for net operating loss carry-forward or carry-back.
- F. “License” means the permission granted by the City under this ordinance to operate, engage, conduct or carry on a business within the City.
- G. “Licensee” means an applicant who has received a business license.
- H. “Non-profit organization” means any business or organization which is exempt from taxation under the United States Internal Revenue Code and produces a determination letter of proof thereof.
- I. “Person” means an individual, partnership, corporation, limited company, joint venture, cooperative or any other entity in law or in fact.
- J. “Special event” means any special event receiving the prior approval of the City Administrator to be exempt from the license requirements under this ordinance.

**Section 4. License Required.**

- A. Except as exempt under Section 5 below, it shall be unlawful for any person to conduct business within the City without first having obtained a license for the current year as provided under this ordinance.
- B. A person engaged in business in more than one location, or in more than one business licensed under this ordinance shall make a separate application and pay a separate license fee for each business or location, except as otherwise provided in this ordinance. Only one license under this ordinance is required for mobile businesses such as housekeeping services, food trucks, and other related businesses which that travel throughout the city.

- C. If more than one business is conducted on the same premises, each business must obtain a separate license.
- D. A person representing him or herself, or exhibiting any sign or advertisement that he or she is engaged in a business within the City of which a license fee is levied by this ordinance shall be deemed to be actually engaged in such business and shall be liable for the payment of such license fee and subject to the penalties for failure to comply with the requirements of this ordinance.
- E. The City may require proof of state registration. An applicant shall possess any county or state license required or shall be awaiting final approval by the county or state, if City approval is a prerequisite, before a City license will be issued.<sup>4</sup>
- F. No person shall do business within the City as the employee, agent or representative of another person unless either the principal or the employee, agent or representative has a current, valid City business license for the business, no matter where the principal offices of that business are situated.

### **Section 5. Exemptions.**

The following are exempt from the licensing requirement:

- A. A service business operated by a person under the age of 18, such as a lawn mowing business, a newspaper delivery business, a lemonade stand, and the like.
- B. Individuals who work only on the premises of, and as part of, a licensed business that includes the activity of the individual. Examples include barbers, beauticians, medical care providers, attorneys, accountants, relators and others who perform services as part of the overall licensed business. This exemption does not apply if the overall business operation has not obtained a business license.
- C. Garage sales, yard sales, and other similar activity conducted, carried on, or operated by an individual; provided, however, such exemption will not apply if either of the following conditions are met:
  - 1. The individual conducts, carries on, or operates more than five (5) such sales within any calendar year; or
  - 2. Any one such sale has a duration of more than 72 consecutive hours.
- D. An organizer or participant in a special event, but only with respect to that particular special event.

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<sup>4</sup> Cities may also choose to require proof of bonding. Bonding acts as a form of insurance to protect the business and its customers from theft, damage and other losses.

- E. Activities that qualify as hobbies or passive holding of property for investment purposes under the United States Internal Revenue Code.

The following must obtain a business license but are exempt from payment of the license fee:

- A. Any business exempt from paying local business license fees or taxed by Federal or State constitution or law.
- B. Any business exempt from paying property tax.
- C. Any entity registered with the Oregon Secretary of State as a not-for-profit corporation.

**Section 6. Business License Application Requirements.** Each person desiring to engage in doing business must apply for a license to operate, engage, conduct or carry on the business on such forms and in such manner as the City Administrator may prescribe. The application must be accompanied by the applicable license fee provided in Section 7 below. The application must be filed with the City Administrator and, in addition to any other information reasonably required by the City Administrator, must contain the following information:

- A. The date of the application;
- B. The name and physical address of the business, the address where the business will be located or have its office within the City, and the address of the principal office of such business;
- C. A brief description of the nature of the business, including its primary or predominant business activity;
- D. The date that business operations will commence;
- E. The name and address of the applicant and, if the applicant is an entity, the name and address of the authorized agent submitting an application on behalf of the applicant;
- F. The average number of persons regularly employed;
- G. The person who may be contacted in case of an emergency and the phone number at which that person may be reached;
- H. The types of hazardous materials, if any, regularly maintained on the premises as defined under ORS 466.605;
- I. Whether any local, state or federal licenses, certificates, registrations or permits are required for the business and the identification of such licenses, certificates, registrations or permits;
- J. The license fee tendered with the application;

- K. A verification by signature of the applicant, or authorized agent submitting the application on behalf of the applicant of the following:
1. The information stated in the application is true, accurate, and complete;
  2. The business is in compliance with all applicable federal, state, and local laws, regulations and ordinances;
  3. The applicant or authorized agent has read, understands, and agrees to abide by this ordinance; and
  4. If the applicant is an entity, the authorized agent has the requisite power and authority to sign and submit the application on behalf of the applicant;
- L. A notice that the application is a public record and that the City will exempt from disclosure only information of a sensitive and confidential nature to the extent required by the Oregon Public Records Law (ORS 192.331-192.338<sup>5</sup>) and other applicable laws; and
- M. Any other information necessary to enable the City Administrator or designee to review the application to determine whether the application should be approved.

**Section 7. Posting and Display of License.** Licensee shall post the license in a conspicuous place upon the business premises, available for inspection by the public and any employees and prospective employees of the business. When the licensee has no office, business premises or other established place of business within the City, the license must be in the possession of the agent or representative of the business who is present in the City at all times during which business is being transaction by the agent or representative in the City. If a licensed business is based in a motor vehicle, a photocopy of the license must be carried in the motor vehicle.

**Section 8. Fees Imposed.**

- A. An annual license fee is imposed on the act of doing business within the City according to the following table:

1-10 employees:	\$50.00
11-50 employees:	\$100.00
51 or more employees	\$200.00 <sup>6</sup>

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<sup>5</sup> Formerly numbered ORS 192.410-192.505. Renumbering effective January 1, 2018.

<sup>6</sup> The fees provided in this model ordinance are only a suggestion. Cities may choose to set their own fee schedule.

- B. Fees are due at the time of the initial application. Renewal fees are due annually by January 1 of the respective year.
- C. A person doing business in the City, for whom payment of a business license fee is delinquent, shall pay as a penalty for delinquency the additional sum of \$100.00 for each calendar month or fraction thereof for which payment remains delinquent.
- D. Nothing contained in this ordinance shall vest any right in a license as a contract obligation on the part of the city as the amount of the fee. The fees provided for in this ordinance may be increased or decreased, additional fees may be imposed, and classifications may be changed.
- E. A person operating more than one business shall pay the license fee prescribed for each of the businesses, except as specifically provided by ordinance.

### **Section 9. Transfers and Relocations, Terms of License.**

- A. Transfer of License. In the event of the transfer of ownership of a business, the applicable business license may be transferred by application to the City Administrator. The City Administrator may approve the transfer upon finding that the new applicant meets the requirements of this ordinance.
- B. Relocation of an Existing Business. In the event a business is relocated, the licensee shall reapply to the City Administrator to transfer the business license. The City Administrator may issue the license upon finding that the new location meets the requirements of this ordinance and other applicable federal, state, and local regulations.
- C. License Term. A business license issued under this ordinance shall be valid from the date of issuance until the following January 1.

### **Section 10. Approval, Denial, Revocation and Suspension.**

- A. Approval of Application.
  - 1. The City Administrator shall issue a decision on an application for a new business license within 30 days of the submission of a complete application and required fee upon a finding that the applicant has met all requirements of federal, state and local laws.
  - 2. The City Administrator shall issue a license renewal upon finding that the applicant has met all requirements of federal, state, and local law.
  - 3. If an application for a new license is approved, the City Administrator shall notify the applicant in writing. The notice shall state any condition or limitation placed on the license as a condition of maintaining the license which the city Council deems necessary to protect the public health, safety, or welfare which is required



by federal, state, or local law.

- B. Denial, Suspension, Revocation of Application. The City Administrator may deny, suspend or revoke a business license upon finding that:
1. The licensee fails to meet the requirements of, or is doing business in violation of federal, state, or local laws;
  2. The applicant has provided false or misleading material information, or has omitted disclosure of a material fact on the applications, related materials, or license;
  3. The applicant's past or present violation of law presents a reasonable doubt about his or her ability to perform the licensed activity without endangering property or the public health or safety;
  4. The information supplied for the review does not indicate that the applicant has the special knowledge or skill required to perform the licensed activity; or
  5. The licensed activity would endanger property or the public health or safety.
- C. Notice. The City Administrator shall provide written notice to the applicant or licensee of the denial, suspension or revocation. The notice shall state the reason for the action taken and shall inform the application or licensee of the right to appeal under Section 11 of this ordinance. The notice shall be given at least 15 days before the suspension or revocation becomes effective. If the violation ends within the 15 days, the City Administrator may discontinue the suspension or revocation proceedings.
- D. Reapplication. A person whose application for a business license that has been denied, suspended or revoked, may, after 90 days from the date of the denial, suspension or revocation, apply for a license or reinstatement upon payment of the application fee and submission of an application form and related documents.
- E. Disqualification. A person whose application for any business license that has been denied or whose license has been revoked for a total of two times within one year, or who has a total of four denials, suspensions or revocations, shall be disqualified from applying for a license or reinstatement for a period of two years from the date of the denial, suspension or revocation.
- F. Summary Suspension. Upon determining that a licensed activity presents an immediate danger to person or property, the City Administrator may summarily suspend the license for the activity. 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 a notice shall state the reason for the suspension and inform the licensee of the provisions for appeal under Section 11 of this ordinance. Within 15 days of the summary suspension the City

Council shall review the pertinent facts which resulted in the suspension and shall determine whether said facts deem it necessary to continue the suspension in order to protect the health, safety and welfare of the citizens of the city, or to otherwise ensure that the requirements of this ordinance are complied with. The City Council 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 11 of this ordinance.

**Section 11. Appeal.** In the event an application for a license under this ordinance is denied such license, or in the event a license is suspended or revoked, the applicant or licensee shall have the right to appeal.

- A. The written notice of appeal to the City Council shall be filed with the City Administrator within 15 days after the license denial, suspension or revocation.
- B. The City Council shall hear and make a determination in regard to the appeal at its next regular meeting immediately following the filing of the notice of appeal.
- C. The decision of the City Council on the appeal shall be final and conclusive.

**Section 12. Violations and Penalties.**

- A. Any person convicted of violating any of the provisions of this ordinance shall be punished by a fine not to exceed \$600.00 for any one offense, each day constituting a separate offense.
- B. **Inspection and Right of Entry.** Whenever they shall have cause to suspect a violation of any provisions of this ordinance, or when necessary to investigate an application to, or revocation of a license under any of the procedures prescribed in this ordinance, officials for the enforcement or administration of this ordinance, or their duly authorized representatives, may enter on any site, or into any structure, for the purpose of investigation providing they do so in a reasonable manner. If an owner or occupant denies access for an inspection, the city will seek a warrant. 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 shall be, and is hereby declared to be, unlawful and a public nuisance, and may be abated as such.
- D. **Legal Proceedings by City Attorney.** In addition to the enforcement provisions of this ordinance, upon request by the City Council, the City Attorney may institute any additional proceedings, including, but not limited to, seeking injunctive relief to enforce the provisions of this ordinance.

**Section 13. Severability Clause.** A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this ordinance shall not affect the validity of the remaining parts to this ordinance.

**Section 14. Savings Clause.** A prosecution that is pending on the effective date of this ordinance and arose from a violation of an ordinance repealed by this ordinance, or a prosecution started within one year after the effective date of this ordinance arising from a violation of an ordinance repealed by this ordinance, shall be tried and determine exactly as if the ordinance had not been repealed.

**Section 15. Effective Date.** This ordinance is effective on \_\_\_\_\_.

**SAMPLE – CITY BUSINESS LICENSE APPLICATION**

All information must be completed before the application will be accepted.

Business Name \_\_\_\_\_ Business Phone \_\_\_\_\_

Business Street Address \_\_\_\_\_

Business Mailing Address \_\_\_\_\_

Type of Business Conducted \_\_\_\_\_ Date Operations Will Commence \_\_\_\_\_

Applicant’s Full Name \_\_\_\_\_ Applicant’s Email Address \_\_\_\_\_

Applicant’s Residential Address \_\_\_\_\_ Home Phone \_\_\_\_\_

Number of Employees in Business (including owner) \_\_\_\_\_

Building Owner’s Name \_\_\_\_\_ Phone \_\_\_\_\_

Please attach copies of all other business licenses, certificates and registrations required by other local, state or federal jurisdictions.

**EMERGENCY CONTACT INFORMATION**

Name

Phone

1. \_\_\_\_\_

2. \_\_\_\_\_

Alarm System Company \_\_\_\_\_ Phone \_\_\_\_\_

Type: Audible \_\_\_\_\_ Silent \_\_\_\_\_ Hold-up \_\_\_\_\_ Fire \_\_\_\_\_ Other \_\_\_\_\_

Fire Insurance Company \_\_\_\_\_ Phone \_\_\_\_\_

Is this a home based business  Yes  No Does the building have a fire sprinkler system  Yes  No

Are there hazardous materials stored or used on premises?  Yes  No

If yes, please list materials and the location stored on a separate sheet.

**PLEASE RETURN THIS COMPLETED FORM TO City of [city] [address] WITH YOUR APPLICATION FEE**

NOTICE: The information provided on this application is public record. The City will exempt from disclosure only information of a sensitive and confidential nature to the extent require by state and other applicable law.

By signing this, I am representing that the information stated on this application is true, accurate and complete. I agree to comply with all applicable federal, state and local laws.

Date Submitted \_\_\_\_\_ Print Applicant’s Name \_\_\_\_\_ Applicant’s Signature \_\_\_\_\_