

ORDINANCE NO. 2352

**AN ORDINANCE AMENDING TITLE XI OF THE HERMISTON MUNICIPAL CODE
BY ADDING CHAPTER 119 ENTITLED “BUSINESS LICENSE”**

WHEREAS, to ensure that business is conducted in compliance with applicable federal, state, and local laws, regulations, and ordinances and in a manner comporting with the public health, safety and general welfare; and

WHEREAS, to 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

WHEREAS, to obtain valuable information for emergency responders, planning and building personnel, and economic development; and

WHEREAS, the City does not currently have a business license fee for businesses operating in the City. Now therefore:

THE CITY OF HERMISTON ORDAINS AS FOLLOWS:

(New language is in red and underlined and repealed language has ~~a line through it.~~)

Section 1. Title XI of the Hermiston Municipal Code is amended by adding Chapter 119, “Business License” as follows:

- 119.01 Purpose
- 119.02 Applicability
- 119.03 Definitions
- 119.04 License Required
- 119.05 Exemptions
- 119.06 Business License Application Requirements
- 119.07 Posting and Display of License
- 119.08 Fees Imposed
- 119.09 Transfers and Relocations, Terms of License
- 119.10 Approval, Denial, Revocation and Suspension
- 119.11 Appeal
- 119.12 Trade Shows
- 119.13 Construction Project License
- 119.14 Violations and Penalties

119.01. Purpose. This ordinance is enacted, except as otherwise specified, to:

- A. Ensure that each business is conducted in compliance with applicable federal, 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.

119.02. Applicability. Nothing in this ordinance shall be construed to apply to any person transacting and carrying on any business within the City of Hermiston 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.

119.03. 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. "Employee" for the purposes of computing the business license fee, the term "Employee" includes the owner as well as his/her spouse if also engaged in the business.
- F. "Full-time equivalent employee" means the total number of hours worked by all employees working within the City of Hermiston divided by two thousand eighty hours, which equals the number of full-time equivalent employees working within the city.
- G. "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.
- H. "License" means the permission granted by the City under this ordinance to operate, engage, conduct or carry on a business within the City.
- I. "Licensee" means an applicant who has received a business license.

- J. “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.
- K. “Person” means an individual, partnership, corporation, limited company, joint venture, cooperative or any other entity in law or in fact.
- L. “Permanent Location” means professions, trades, occupations, shops and all and every kind of calling carried on for profit, personal gain, trade or barter and livelihood at a fixed or permanently established place of business maintained within the city.
- M. “Special event” means any special event receiving the prior approval of the City Manager to be exempt from the license requirements under this ordinance.

119.04. 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.
- 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.

- G. Persons and entities which are required to be licensed by the State Construction Contractors Board.

119.05. 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 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.
- E. Persons providing day care services for children in the person's home and in compliance with state law and the requirements of the Oregon Children's Care Licensing Program.
- F. Public utilities covered by franchise ordinances and paying fees under the franchise.
- G. Activities that qualify as hobbies or passive holding of property for investment purposes under the United States Internal Revenue Code.
- H. The following must obtain a business license but are exempt from payment of the license fee:

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

119.06. 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 Manager may prescribe. The application must be accompanied by the applicable license fee provided in Section 8 below. The application must be filed with the City Manager and, in addition to any other information reasonably required by the City Manager, 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 192.410-192.505) and other applicable laws; and
- M. Any other information necessary to enable the City Manager or designee to review the application to determine whether the application should be approved.

119.07. 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.

119.08. Fees Imposed.

- A. An annual license fee is imposed on the act of doing business within the City. The City Council may establish by resolution the fees provided for in this chapter.
- B. Fees are due at the time of the initial application. Renewal fees are due annually by January 1 of the respective year. The fee herein imposed shall not be subject to proration.

- 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.

119.09. 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 Manager. The City Manager 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 Manager to transfer the business license. The City Manager 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.

119.10. Approval, Denial, Revocation and Suspension.

- A. Approval of Application.
 - 1. The City Manager 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 Manager 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 Manager 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 Manager 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 Manager 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 Manager 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 Manager

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.

119.11. 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 appeal shall state:
 - 1. The name and address of the applicant;
 - 2. The nature of the determination being appealed;
 - 3. The reason the determination is incorrect; and
 - 4. What the correct determination of the appeal should be.
- C. 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.
- D. The decision of the City Council on the appeal shall be final and conclusive.

119.12 Trade Shows and Carnivals

- A. A trade show is any profit or not-for-profit show within the City limits of the City of Hermiston which offers for sale or display merchandise of one (1) or more vendors at a location within the City. A Carnival is any a traveling amusement show, having sideshows, rides, and vendors etc.
- B. Trade shows and carnivals include those activities located at the Hermiston Community Center, Eastern Oregon Trade and Event Center (EOTEC) and other public and private buildings. The purpose of the license is to allow a number of

vendors together under one (1) common area for a short period of time to display and sell their merchandise and to be properly licensed within the City of Hermiston. Trade shows and carnivals for the purposes of this definition may not exceed:

1. One (1) week in duration in any one (1) calendar year; or
2. 26 periods of not more than three consecutive days in a single week. No license shall continue beyond that period specified in Section 5 of this Ordinance, without securing a second license. A trade show does not include the merchandising of goods and/or services of an already licensed Hermiston business or businesses.

C. Application Procedure for Trade Shows and Carnivals. Each promoter(s) wishing to put on a trade show or carnival shall apply for a license with the City on forms furnished by the City. The application shall be filed with the city and shall contain at least the following information:

1. A description of the trade show or Carnival and the businesses participating.
2. The name, address and date of birth of the applicant; if a partnership, the names, addresses and dates of birth of the partners; if the business is a corporation, its name and address of the home office, the name, address and date of birth of the registered agent in the State if a foreign corporation, and the name, address and date of birth of the local agent or agent or representative who will be in charge of the business in the City.
3. The address where the trade show or carnival will be located within the City of Hermiston.
4. The amount of license fee tendered with the application.
5. The date of the application.
6. A statement that the trade show or carnival will be for a period of seven (7) days or less in any one (1) calendar year and only the type of businesses described will participate.
7. Any other information the city determines necessary.
8. The signature of the promoter(s).

D. Promoter. Means any legal entity whether for profit or not-for-profit and whether a person, partnership, corporation or other legal entity which promotes a trade show or carnival.

E. License Duration. New licenses shall be valid for the duration of the trade show or

carnival, as described in subsection A of this section.

- F. Posting of License at all Times After the Issuance of the License. The license shall be posted in a conspicuous place upon the trade show or carnival premises available for inspection by the public and by employees and prospective employees of all businesses participating in a trade show or carnival. It shall be conclusively presumed that any trade show or carnival not complying with this section is operating without a business license.
- G. Registration. Trade show or Carnival participants shall be registered with the promoter(s) and the promoter(s) shall maintain a listing of all businesses which have participated or are participating in a trade show or carnival under the license.

119.13 Construction Project License

- A. A Construction Project is any activity for which registration with the Oregon Construction Contractor's Board (CCB) is required pursuant to Oregon Revised Statutes, Chapter 701, for which a building permit has been issued or which is undertaken pursuant to a construction contract with the owner.
- B. The prime contractor engaged in a Construction Project may obtain a Construction Project License for a project as an alternative to obtaining Business Licenses for each subcontractor engaged in the Construction Project. The Construction Project License is in lieu of Business Licenses for subcontractors only and is in addition to the Business License of the prime contractor.
- C. Application Procedure for Prime Contractors. Each prime contractor wishing to obtain a Prime Contractor's license with the City on forms furnished by the City. The application shall be filed with the City and shall contain at least the following information:
 - 1. A description of the Construction Project for which the Construction Project License is requested.
 - 2. The name and CCB registration number of the applicant and of each subcontractor engaged in the Construction Project.
 - 3. The location of the Construction Project.
 - 4. The amount of license fee tendered with the application.
 - 5. The date of the application.
 - 6. A signed statement by the prime contractor and each subcontractor engaged in the Construction Project that each signatory is registered under the provisions of this Oregon Revised Statutes, Chapter 701, and stating that the registration is in full force and effect. For the prime contractor and each subcontractor, a copy of a current

certificate of registration issued by the Oregon Construction Contractors Board.

7. Any other information the City determines necessary.
 8. The signature of the prime contractor applicant.
- D. Supplements to Application. The applicant may supplement the business license application from time to time by providing a supplemental application containing at least the following information:
1. A description of the Construction Project to which the supplemental application applies.
 2. The name and CCB registration number of the applicant and of each additional subcontractor engaged in the Construction Project.
 3. The date of the supplement application.
 4. A signed statement by each additional subcontractor engaged in the Construction Project that such subcontractor is registered under the provisions of this Oregon Revised Statutes, Chapter 701, and stating that the registration is in full force and effect. For each additional subcontractor, a copy of a current certificate of registration issued by the Oregon Construction Contractors Board.
 5. Any other information the City Manager determines necessary.
 6. The signature of the prime contractor applicant.
- E. License Duration. New licenses shall be valid for the duration of Construction Project, or until the next March 1, whichever is earlier.
- F. Posting of License at all Times After the Issuance of the License. The license shall be posted in a conspicuous place upon the construction project premises available for inspection by the public. It shall be conclusively presumed that any contractor not complying with this section is operating without a business license.
- G. As an alternative to obtaining a Construction Project License, the prime contractor and each subcontractor may obtain a separate business license as provided in this Chapter.

119.14. 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 \$1000.00 for any one offense, each day constituting a separate offense.

- B. Offenses under this Chapter shall be tried in the Municipal Court as a violation and not as a crime. As a violation there is no right to a jury trial or court appointed counsel.
- C. Entity Responsibility. An individual person and other entities may act in violation of this ordinance. In the event that the party acting in violation of this ordinance is any entity, the entity shall be subject to fine, abatement or other penalties allowed by this ordinance and by law. In such case where an entity is the offending party, a citation may be served upon the entity by serving an owner, officer, a person in charge of the premises, or any person or firm designated as an official or agent of the entity. The entity shall be named on the citation. The citation shall require appearance by a representative of the entity at the time indicated on the citation. In the event that a representative fails to appear as required by the citation the city attorney may seek appropriate remedies for the failure to appear and default against the officers, owners and agents of the entity. For application of this section, the terms “entity” shall also include corporations, partnerships, limited liability companies or partnership, associations, sole proprietorships and other forms of entities.
- D. Evidence of Doing Business. In a prosecution for a violation of this Ordinance, evidence that the business made a public representation, by way of newspaper, radio, television or similar media advertisement or by signs conspicuously displayed for public view, that the business was being conducted, expressly or impliedly offering to sell goods or services in the course of the business to the public, shall constitute prima facie evidence that the business was transacting the business suggested by the public representation within the City on the date or dates during which the representations were made.
- E. 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.
- F. 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.

G. The City may seek an injunction to prohibit a person from engaging in business without complying with this ordinance.

Section 2. 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 3. All other provisions of the Hermiston Municipal Code remain unchanged and in full effect.

Section 4. The City Recorder is hereby authorized to correct any scrivener's errors and to conform the revisions to the Hermiston Municipal Code with appropriate numbering.

Section 5. Effective Date. This ordinance shall take effect on the 30th day after its adoption.

ADOPTED by the Common Council this 22nd day of January 2024.

SIGNED by the Mayor this 22nd day of January 2024.

Dr. David Drotzmann, Mayor

ATTEST:

Lilly Alarcon-Strong, CMC City Recorder