

ORDINANCE NO. 751

AN ORDINANCE PROVIDING FOR THE LICENSING OF BUSINESSES FOR THE PURPOSE OF CITY REVENUE; ESTABLISHING LICENSE FEES; PROVIDING PENALTIES FOR VIOLATIONS; REPEALER: AND DECLARING AN EMERGENCY.

THE CITY OF CANBY ORDAINS AS FOLLOWS:

Section 1. Purpose. The purpose of this ordinance is to provide revenue for general municipal purposes and to recoup the necessary expenses required to undertake the activities of the City in the administration and enforcement of this ordinance. These facts shall be in addition to, and not in lieu of, any license fee, or any other charges required under any ordinance of the City.

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or in any way impair or interfere with the existing provisions of other laws or ordinances, except those specifically repealed by the section codified in this ordinance.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

This ordinance shall not be construed or constitute a regulation of any business activity or as a permit of the City to persons engaged therein to undertake unlawful, illegal or prohibited acts. Nothing in this ordinance shall be construed to apply to any person transacting or carrying on any business within the City of Canby which is exempt from taxation by the City by virtue of the Constitution of the United States or the Constitution of the State of Oregon or applicable statutes of the United States or the State of Oregon.

Section 2. Definitions. For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent 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.

A. "Business" means all kinds of vocations, occupations, professions, enterprises, establishments, and all kinds of activities and matters, 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 persons whose primary endeavor is supplying goods for resale by other businesses in the City.

- B. "The City" means the City of Canby, Oregon.
- C. "City Council" means the City Council of the City of Canby, Oregon.
- D. "Contractor" means any person who undertakes to or offers to undertake for a consideration 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. The term "contractor" as used herein shall also include subcontractors.
- E. "Garage Sale" means a commercial activity, open to the public, conducted at a private residence where personal property is sold, or auctioned to others, provided the number of sale days at a particular residence does not exceed fourteen (14) days during the calendar year.
- F. "Person" means and includes individual natural persons, partnerships, joint ventures, societies, associations, clubs, trustees, trusts or corporations; or any officers, agents, employees, factors of any kind or personal representatives thereof, in any capacity, either on that person's own behalf or for any other person, under either personal appointment or pursuant to law.
- G. "Premises" means and includes all lands, structures, places and also the equipment and appurtenances connected or used therewith in any business, and also any personal property which is affixed to or is otherwise used in connection with any such business conducted on such premises.

Section 3. Intent of Council to Impose Fee 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, fire protection, street maintenance, street lighting and other services.
- B. It is necessary that license fees be levied and fixed for the purpose of securing revenue to assist in such regulation and in defraying the cost of such police and fire protection and costs of 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 ordinance and no person working as a domestic in a private home shall be deemed to be transacting or carrying on business in the City; provided, however, that

if any person defined in this ordinance fails to pay the license fee provided in this ordinance and such person has neither his residence nor place of business in the City but carries on business in the City, the agents or employees 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 ordinance.

Section 4. 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 issued a license as provided by this ordinance.

Section 5. One Act Constitutes Doing Business. For the purpose of this ordinance, any persons shall be deemed to be engaging in business or engaging in nonprofit enterprise, and thus subject to the requirement of Section 4, when undertaking one of the following acts:

1. selling any goods or service;
2. soliciting business or offering goods or services for sale or hire; and/or
3. acquiring or using any vehicle or any premises in the City for business purposes.

Section 6. Presumption of Engaging in Business. Any person that advertises or otherwise holds himself out to the public as 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 ordinance.

Section 7. License - Application - Time. The annual license fee prescribed in Section 22 of this ordinance shall be paid to the Canby City Recorder upon the filing of an application for a new business license, or upon the annual renewal of a previously obtained business application on the one-year anniversary date of the original application.

Section 8. License - Examination of Premises Required Prior to Issuance of License.

A. The Chief of Police, Chief of the Fire Department, Building Official and/or their agents and subordinates are empowered to investigate and examine such places of business licensed or subject to license within the scope and purpose of state and local codes and ordinances. Examination may be made at any and all reasonable times for the purpose of determining whether such places of business is reasonably safe, sanitary and suitable for the business so licensed or for which application for license is made.

B. In the event it is determined by such officers or their agents that any such place of business violates state or local codes or ordinances or is dangerous to public health, safety, welfare or is likely to become or is at that time a menace or public nuisance and if the concerned business refuses to correct all violations within a reasonable time as determined by such official or their agents, no business license shall be issued. If the concerned business requests in writing, a public hearing before the City Council, a report of such determination of denial and reasons therefor shall be made in writing to the City.

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 Recorder 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 be permitted to receive a City business license, or if the concerned business had previously been issued a City business license, should be suspended or revoked by the City Council.

E. The notification to the concerned business shall set forth the time and place of the public hearing and will cite specific incidents which constitute the basis for the determination by the Chief of Police, Chief of the Fire Department, Building Official or their subordinates, that the concerned business is in violation of state or local laws or is dangerous to either public health, safety, welfare or is likely to become or is at the present time a public menace or nuisance.

Section 9. License - Suspension or Issuance - Conduct of Public Hearing.

A. Public hearing for the purpose of determining whether a business license should be issued, or if previously issued whether it should be suspended or revoked, shall be conducted as a quasi-judicial proceeding before the City Council.

B. Evidence or testimony shall be received and considered by the City Council only when such evidence or testimony is relevant to the cited incidents or offenses contained in the notification to the concerned business.

C. 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.

Section 10. License - Issuance - Requirements. Upon application being made, any investigation required by this ordinance to be made having been satisfactorily completed without a determination by the City officials set out in Section 8 that the business is dangerous to public health, safety, welfare or likely to become or is now a public menace or nuisance, or 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 in Section 22, a license shall be issued by the City Recorder.

Section 11. License - Issuance - Effect.

- A. The issuing of a license pursuant to this ordinance or the collection of fee, shall not permit any person to engage in any unlawful business.
- B. The fees levied and fixed by this ordinance 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 ordinance pertaining to or covering any business, pursuit or occupation shall remain in full force and effect and in the event of a conflict or duplication of a license fee, then such other ordinance shall take precedence over the provisions of this ordinance to the end 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.

Section 12. License - Suspension or Revocation - Effect.

- A. If a business license is suspended or revoked, the concerned business shall immediately cease conducting any and all businesses 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 license for such business 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.

Section 13. 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 ordinance, shall have the right of a rehearing before the City Council for the purpose of reconsideration of such action of the City Council if, in the opinion of the City

Council, the concerned business has presented 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 request for rehearing shall be presented in writing by the concerned business to the City Council 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 Section 9 above 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, except that 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.

Section 14. 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 ordinance.

Section 15. 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.

Section 16. Separate Fee for Branch Establishments. A fee shall be paid in the manner prescribed in this ordinance for each branch establishment or location of the business engaged in, as if each such branch establishment or location were a separate business; provided, that warehouses and distributing plants used in connection with and incidental to a business licensed under the provisions of this ordinance shall not be deemed to be separate places of business or branch establishments. Separately franchised operations shall be deemed separate businesses even if operated under the same name.

Section 17. Joint Businesses. A person engaged in two or more businesses at the same location shall be required to pay separate fees for conducting each such business; but, when eligible, shall be issued one receipt which shall specify on its face all such businesses.

Section 18. No License Required for Mere Delivery. No license shall be required for any person for any 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.

Section 19. Exemptions.

A. The provisions of this ordinance shall not apply to garage sales, as described herein.

B. The provisions of this ordinance shall not apply to participants in all official City of Canby sponsored or sanctioned events including, but not limited to, General Canby Day and Peddler's Market.

C. The provisions of this ordinance shall not apply to any person engaged as a landlord in leasing or renting property to others, unless such person leases at any one time more than two (2) separate rental units, spaces, or parcels, whether it be land or buildings, or both, or residential or commercial, or both.

Section 20. License - Display Required. All licenses issued in accordance with this ordinance shall be openly displayed in the place of business or kept on the person or on the vehicle of the person licensed and shall be immediately produced and delivered for inspection to the Chief of Police, Chief of the Fire Department and their agents or subordinantes when requested by such individuals to do so. Failure to carry such license or produce the same on request shall be deemed a violation of this ordinance.

Section 21. Transfer or Assignment of License. No transfer or assignment of any license issued under this ordinance 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.

Section 22. Fee Schedule. The annual license fee required in this ordinance shall be the amount of twenty-five (\$25.00) dollars.

Section 23. Violation - Penalty.

A. Any person violating any of the provisions of this ordinance shall upon conviction thereof in the municipal court of the City, be punished by a fine not to exceed \$25.00. Each day of the violation of this ordinance shall constitute a separate violation.

B. A finding that a person has committed a violation of this ordinance 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 provision of this ordinance is violated by a firm or corporation, the officer or officers, or person or persons responsible for the violation shall be subject to the penalties imposed by this section.

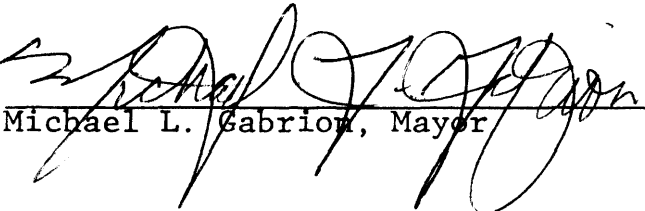
Section 24. Delinquency Charge. The fee required in Section 22 shall be paid within thirty (30) days after the anniversary date of the original issuance of a business license. A delinquency charge of five (\$5.00) dollars will be charged thereafter at thirty (30) day intervals until paid, not to exceed twenty-five (\$25.00) dollars in any one year.

Section 25. Conflicting Ordinances Repealed. Ordinance No. 439 enacted August 21, 1961 and Ordinance No. 484 enacted June 28, 1965 are hereby repealed.

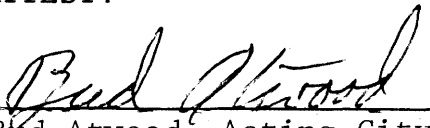
SUBMITTED to the Canby City Council and read for the first time at a regular meeting thereof on the 15th day of August, 1984, and ordered posted as provided by the Canby City Charter and scheduled for a second reading and action of the Canby City Council at a regular meeting thereof on Wednesday, September 5, 1984, commencing at the hour of 7:30 p.m., at the Council Chambers at Canby City Hall in Canby, Oregon.


Marilyn W. Perrett, Deputy Recorder

ENACTED BY THE CANBY CITY COUNCIL at the regular meeting thereof on September 5, 1984, by the following vote: YEA 6, NAY 0


Michael L. Gabriion, Mayor

ATTEST:


Bud Atwood, Acting City Administrator