

ORDINANCE NO. 210

AN ORDINANCE ADOPTING A BUSINESS LICENSE
TAX: DECLARING AN EMERGENCY

An ordinance relating to the imposition of business licenses for revenue; providing for administration and collection; and providing for all other matters relating thereto.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Section Title and Pleading.

This ordinance shall be known as the Business License Ordinance of the City of Troutdale, Oregon, may be so pleaded, and shall be referred to herein as "this ordinance."

Section 2. Definitions.

A. For the purpose of this ordinance, words in the present tense include the future, the singular number includes the plural and the plural number includes the singular; the word "shall" is mandatory and not directory, the masculine gender includes a feminine, and the term "this ordinance" shall be deemed to include the text of this ordinance, all amendments hereafter made and all rules adopted pursuant hereunder. As used in this Section unless the context required otherwise, the following terms are defined as follows:

1. Council: City Council of the City of Troutdale, Oregon.
2. City: The City of Troutdale, Oregon.
3. Recorder: City Recorder of the City of Troutdale, or his designee.
4. Do business; business:
 - a. To do business means to engage in any transaction involving the sale or rental of property, to manufacture goods, or to sell or render

services, other than as an employee, whether such business is conducted as an owner or by means of an officer, agent, manager, employee, servant or lessee or any of them.

b. Business means all such activities, whether related or unrelated, of a licensee.

c. Services performed by an individual for remuneration, whether or not paid directly by the employer, are deemed to be employment hereunder unless:

(1) Such individual is a licensee or is expressly exempt from license requirements under Section 6.B; or

(2) Such individual customarily is engaged in an independently established business of the same nature as that involved in the contract of service.

5. License year: The term of a license issued under this ordinance.

6. Licensee: A person licensed to do business within the City under this ordinance.

7. Person: A natural person, partnership, joint venture, solicitor, association, club, trust, estate, corporation, or any other entity capable of doing business.

Section 3. Policy Interpretation.

A. Purpose. The Council has determined that it is necessary to raise additional revenues to provide those City services required for the health, safety and welfare of the people of the City of Troutdale; that the purpose for the imposition of taxes under this ordinance is to raise funds for the payment of those services within the City of Troutdale and, in accordance with this determina-

tion and purpose, all proceeds collected pursuant to this ordinance shall be deposited in a General Fund.

B. Fees for Revenue. The term "license" as used in this ordinance shall not be construed to mean a permit. The fees prescribed herein are for revenue purposes, and are not regulatory permit fees. The payment of a license fee required hereunder and the acceptance of such fee and issuance of a license by the City shall not entitle a licensee to carry on any business not in compliance with all other legal requirements.

C. Conformity to State Income Tax Laws. This ordinance shall be construed when practicable in conformity with the laws and regulations of the State of Oregon imposing taxes on or measured by net income as the same may be in effect from time to time. Should a question arise hereunder which has been determined under such state laws or regulations, such determination shall apply hereunder even though this ordinance omits all express coverage of the subject matter in question, provided the state determination is not in conflict with any provision hereof and is not otherwise clearly inapplicable.

Section 4. Administration.

A. Rules and Regulations. The Recorder shall be responsible for the enforcement of this ordinance and the Council may, from time to time, promulgate appropriate rules and regulations.

1. The Recorder may, from time to time, issue interpretive rules and regulations necessary to assist licensees in complying with this ordinance.

B. Recognizing Representative. No attorney or public accountant shall be recognized as representing any applicant or licensee in regard to any matter relating to the fee of such applicant or licensee in any conference with the Recorder, or any member or agent thereof, unless there is first filed with

the Recorder a written authorization or unless it appears to the satisfaction of the Recorder that the attorney or public accountant does in fact have authority to represent the applicant or licensee.

C. Representation by Former Officer or Employee of City of Troutdale.

No former officer, clerk or employee of the City of Troutdale shall represent any applicant or licensee in any claim or controversy pending in the City during his employment by the City, nor shall he in any manner or by any means aid in the prosecution of any such claim within two years next after he has ceased to be such officer, clerk or employee.

D. Divulging Particulars of Applicants and Reports Prohibited. Ex-

cept as otherwise specifically provided by law, it shall be unlawful for the Recorder, any deputy, agent, auditor or other officer or employee, or for any person who has acquired information pursuant to subsection 1 of this subsection, to divulge or make known in any manner any particulars set forth or disclosed in any report or application required under this ordinance. Nothing in this Section shall be construed to prohibit the publication of statistics so classified as to prevent the identification of particular reports or applications and the items thereof.

1. Persons to Whom Information May be Furnished.

a. Notwithstanding Section 4.D. above, the Recorder may permit a proper officer of the Department of Revenue of the State of Oregon or the authorized representative of any such officer, to inspect the license applications of any licensee, or may furnish to such officer or his authorized representatives an abstract or copy of the license applications of any licensee, or supply him with information concerning any item contained in any return, or disclosed by the report of any investigation of the license applications of any licensee, but

such permission shall be granted or such information furnished to such officer or his representative only if the laws, regulations or practices of such other jurisdiction maintain the confidentiality of such information at least to the extent provided herein. The Recorder also may furnish any licensee or his authorized representative, upon request of the licensee or his representative, a copy of any license application of the licensee filed with the Recorder or a copy of any report filed by the licensee in connection with his application.

b. The Recorder also may disclose and give access to information to:

(1) The city attorney, the Multnomah County District Attorney, his assistants and their employees, or other legal representatives of the City or County, to the extent the Recorder deems disclosure or access necessary for the performance of the duties of advising or representing the City.

(2) Other employees of the City or the County to the extent the Recorder deems disclosure or access necessary for such employees to perform their duties under contracts or agreements between the City and any other department, bureau, agency or subdivision of any other city or any county relating to the administration of this ordinance.

(3) Other persons, partnerships, corporations and other legal entities and their employees to the extent the Recorder deems disclosure or access necessary for the performance of such others' duties under contracts or agreements between the City and such legal entities relating to the administration of this ordinance.

c. Each deputy, agent, auditor or other officer or employee of the City and each person described in subsection b. of this subsection to whom disclosure or access to information is given under subsection b. of this subsec-

tion, prior to beginning employment or the performance of duties involving such disclosure or access shall be advised in writing of the provisions of Section 10.C, relating to penalties and shall as a condition of employment or performance of duties execute a certificate for the Recorder in a form prescribed by the Recorder, stating in substance that the person has read these provisions of law, that he has had them explained to him and that he is aware of the penalties for the violation of Section 4.D.

E. Examining Books, Records or Persons. The Recorder for the purpose of ascertaining the correctness of any license application or for the purpose of making an estimate of any licensee fee, may examine or cause to be examined by an agent or representative designated by it for the purpose any books, papers, records, or memoranda, including state and federal income tax returns, bearing upon the matter required to be included in the application, and may require the attendance of a person required to be licensed under this ordinance, or officer or agent or any other person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to such persons. The Recorder shall have authority, by notice mailed to the last-known address of a person required to be licensed under this ordinance, to require the production at any reasonable time and place it may designate of any bonds, papers, accounts or other information necessary to the carrying out of the licensing requirements imposed by this ordinance.

1. The Recorder shall designate the employees of the City who shall have the power to administer oaths hereunder. Such employees shall be notaries public of the State of Oregon.

F. Records. It shall be the duty of every licensee to keep and preserve for a period of not less than three years such books and records as will

accurately reflect the amount of the income of such licensee for each lisenice year.

G. Accounting Methods. Computation of license fees under this ordinance shall be governed by the rules with respect to accounting methods applicable to the licensee under the laws of the State of Oregon imposing taxes on or measured by net income.

H. Time for Deficiencies and Refunds. Deficiencies may be assessed and refunds granted hereunder at any time within the period provided under the Oregon Corporation Excise Tax Law.

Section 5. Appeals.

A. Any person aggrieved by any determination of the Recorder under this ordinance may appeal such determination to the City Administrator by filing within thirty (30) days of mailing of the letter of determination to such person, a written notice of appeal with the Recorder. Such notice shall state the name and address of the appellant and the nature of the determination being appealed.

B. The Recorder within thirty (30) days of receipt of a notice of appeal shall deliver to the appellant and the City Administrator a written statement of the reasons for the determination, together with a copy of this Section. The appellant shall within ninety (90) days thereafter file with the City Administrator five (5) copies of a written statement indicating (1) the reasons the Recorder's determination is incorrect, and (2) what the correct determination of the matter should be. An appellant failing to file such a written statement within the time permitted shall be deemed to have waived his objections, and his appeal shall be dismissed.

C. The City Administrator shall proceed to hear and determine the appeal on the basis of the written statements and such additional testimony as he deems appropriate, provided that the appellant shall be given not less than

fourteen (14) days' prior written notice of the hearing date and shall have the opportunity to present relevant testimony and oral argument.

D. Any person aggrieved by any determination of the City Administrator may appeal to the Council by filing a notice of appeal with the Recorder within thirty (30) days of the mailing of notice of such determination. Such notice shall state the name and address of the appellant and the date of the determination being appealed. The Council shall proceed to hear and determine the appeal.

E. The Recorder may upon petition and for good cause shown extend the time for filing of statements under subsection B, provided such petition shall be received by the Recorder before the date on which the statement is due to be filed.

Section 6. License Requirement and Applications.

A. License Required. No person shall do business within the City unless such person shall have first paid a license fee under Section 7 and obtained a license under this ordinance, except for the first year as provided in subsection J of this Section. In the event that a court of competent jurisdiction determines that the requirement to obtain a license hereby imposed is unconstitutional with respect to any person, such person shall pay a tax determined as provided in Section 7 with respect to license fees.

1. Presumption Created by Advertising. Any person, who, by advertising or otherwise professes to be doing business within the City, shall be presumed to be doing business within the City.

B. Exemptions from License Requirements. The following persons are exempt from the license requirements imposed by this ordinance.

1. Persons whom the City is prohibited from licensing under the Constitution or laws of the United States, the Constitution or laws of the State of Oregon, or the charter of the City.

2. Persons defined as public utilities by state law.

3. Persons whose only business transactions in the City consist of the following:

a. The casual sale of real property not held primarily for sale to customers in the ordinary course of trade or business;

b. The sale of personal property acquired for household or other personal use by the seller;

c. Investments in business within and without the City on account of which such persons receive only interest and dividends; and

d. The renting or leasing of residential real property, provided that the beneficial owner of such real property does not rent or lease more than three dwelling units within the City, and that such renting or leasing is unrelated to any other licensed business of such beneficial owner.

4. Persons whose gross receipts from all business both within and without the City amount to less than two thousand five hundred dollars (\$2,500.00) in any one calendar year, provided that any such person shall file with the Recorder upon demand a statement indicating that he estimates his gross receipts for such year to be less than two thousand five hundred dollars (\$2,500.00). If such person shall have been exempt hereunder during the prior calendar year, he shall furthermore file a statement that his gross receipts for such year were less than two thousand five hundred dollars (\$2,500.00) or indicating the amount thereof.

5. Corporations exempt from the Oregon Corporation Excise Tax under ORS 317.080, provided that any such corporation subject to the tax on unrelated business income under ORS 317.910 to 317.950 shall obtain a license hereunder and shall pay a license fee based solely on such income.

C. Duplicate Licenses. A duplicate license shall be issued upon

application and payment of a fee of five dollars (\$5.00) to replace any license previously issued which has been lost or destroyed.

D. License Transfer. Except as hereinafter provided, no license shall be transferable from one person to another.

1. Upon receipt of an application for transfer of license within sixty (60) days after the date upon which the successors of a business assume control or ownership accompanied by a fee of five dollars (\$5.00), and by such evidence of transfer of ownership or control as may be required by the Recorder, a license may be transferred to the name of such successor or transferee for the balance of the term of the license. Only the following successors shall be entitled to such transfer of license:

a. Duly qualified representative of licensees regularly appointed by courts of competent jurisdiction, assignees for benefit of creditors, spouses and children of deceased licensees.

b. A new partnership in which the majority of interests are owned by a surviving partner or partners of a dissolved proprietorship and which continues the business of the dissolved partnership or proprietorship.

c. A new partnership consisting of the members of a predecessor partnership plus the spouse or spouses of any such predecessor member.

d. A new partnership consisting of one or more individuals or partnerships previously licensed separately.

e. A corporation controlled by one or more licensees or by the stockholders of one or more corporate licensees for the purpose of acquiring and which has acquired the assets of the business or businesses previously owned and operated by such licensee or licensees.

f. The surviving corporation resulting from a merger of a

corporate licensee and another corporation or corporations.

2. The fee due for the license year following the license year during which the license was transferred pursuant to this Section shall be computed upon the income of both the transferor and transferee of the license during the entire preceding license year.

3. Whenever it shall appear necessary to avoid distortion of the measure of the license fee by a change in the legal entity of a business, without a change in the substance of a business licensed under this ordinance, the Recorder shall treat an application for a new license as an application for a transfer or renewal of an existing license.

E. Contents of License. Each license issued hereunder shall state upon its face the following:

1. The name of the licensee.
2. The address of the principal office of the licensed business in the City, or if there is no such principal office, the address to which correspondence to the licensee shall be mailed.
3. The date of expiration of the license.
4. Such other information as the Recorder shall determine.

F. License Term. Each license shall be dated as of the first day of the month in which such license is issued or was required to have been obtained and shall expire one year from that date or at the end of the current tax year on the basis of which the licensee computes net income under the applicable laws of the State of Oregon imposing taxes on or measured by net income, whichever shall first occur.

1. Notwithstanding the expiration of his license term, no person shall be deemed to be in violation of any provision of this ordinance on account

of such person not having renewed a license during the period of time permitted under subsection G of this Section for the filing of a renewal application, provided that such renewal application shall have been filed before the end of such period.

G. Applications for Licenses. All persons required to obtain licenses hereunder shall make applications therefor to the Recorder upon forms provided by the Recorder. Applications shall be in such form as the Recorder may from time to time prescribe and shall be filed, together with the fee hereinafter specified, before the applicant shall commence to do business in the City, or, in the case of an application for renewal of a prior license, within four (4) months after the end of the term of such prior license except as provided in subsection J. The Recorder may for good cause allow further time for filing applications, except that no extension may be granted for more than six (6) months.

1. There shall be annexed to the application a statement verified by a written declaration of the applicant to the effect that the statements made therein are true.

2. The Recorder shall prepare blank applications and make them available at his office upon request. Failure to receive or secure a form shall not relieve any person from the obligation to pay a license fee and obtain a license under this ordinance.

H. Interest on Delayed Application, Refunds. When the time for filing a license application is extended at the request of the applicant, interest at the rate specified in Section 11.A.2. shall be added and paid on the license fee or portion thereof not paid within the time originally allowed. When an applicant is entitled to a refund of a portion or all of a fee paid to the Recorder, he shall receive simple interest on such amount at the rate specified in Section 11.A.2. from the date he made payment to the Recorder until the date such

refund shall be made.

I. Change of State Return. If as a result of a determination made by the Oregon Department of Revenue the net income reported for the business of a licensee under the applicable Oregon law imposing a tax on or measured by income is changed, a report of such change shall be filed with the Recorder within sixty (60) days of receipt by the licensee of notice of final determination of such change. If such change is applicable to determination of income hereunder, such report shall be accompanied by an amended application with respect to such income and by any additional fee, penalty, and interest due thereunder.

J. First Application. The first application and fee imposed by this ordinance must be submitted to the Recorder on or before April 15, 1975.

Section 7. License Fees. Each application for a licence other than a renewal application shall be accompanied by a reasonable estimate of the income of the business to be licensed for the first license year and by an estimated fee of 1.5 percent of such estimated income, provided that each such application shall be accompanied by a minimum fee of twenty-five dollars (\$25.00).

1. Upon renewal of a license with respect to which an estimated fee has been paid, or within thirty (30) days of the expiration of such license if it is not renewed, the licensee shall file an amended application showing the license fee computed on the basis of the actual income of the licensed business for the first license year. If the license fee so determined shall exceed the estimated fee previously paid, the amended application shall be accompanied by such additional fee plus interest thereon from the date on which the licensee commenced doing business to the date of payment at the rate specified in Section 11.A.2. If the estimated fee shall have exceeded the fee shown on the amended application, the overpayment shall be credited against the license fee due from

the licensee for the next license year, and any additional overpayment shall be promptly refunded to the licensee; provided, however, that the minimum fee required by this subsection shall not be credited or refunded.

B. Fee, Renewal Application. Each application for renewal of a license shall be accompanied by a fee of 1.5 percent of the income of the licensed business for the last license year prior to that with respect to which the application is made, provided that each such application shall be accompanied by a minimum fee of twenty-five dollars (\$25.00).

C. Income. Except as hereinafter provided, "income" as used herein means the net income of the licensee arising from the licensed business as required to be reported to the State of Oregon for income or excise tax purposes and before any allocation or apportionment for operation out of the state. If one or more licensees is required to report its net income to the State of Oregon for income or excise tax purposes in a single unitary return then a single license shall be issued to the entity filing such unitary return and "income" means the net income in such unitary return before any allocation or apportionment for operation out of the state.

1. In determining income hereunder no deduction shall be allowed for taxes based on or measured by net income.

2. In determining income hereunder for sole proprietorships, partnerships, professional corporations, and Subchapter S corporations, no deduction shall be allowed for salary or interest paid to owners; provided, however, that seventy-five percent of income determined without such deductions shall be allowed as an additional deduction.

3. In determining income hereunder for corporations, other than professional corporations of Subchapter S corporations, no deduction shall be al-

lowed for salaries or interest paid to controlling shareholders in excess of seventy-five percent of the corporation's income determined without deduction of such salaries and interest. The term "controlling shareholder" as used in this paragraph means any person who, together with his spouse, parents and children, is directly or indirectly the beneficial owner of more than five percent of any class of outstanding voting securities of the licensee.

4. Licensees shall not include in income hereunder income arising from the following transactions:

a. Transactions which the City is prohibited from licensing under the Constitution or laws of the United States, the Constitution or laws of the State of Oregon, or the charter of the City.

b. Other transactions described in Section 6 which are unrelated to a business on account of which the licensee is subject to the licensee requirements imposed by this ordinance.

D. Apportionment of Income. Subject to the provisions of the Multi-state Tax Compact, any licensee having income from business activity both within and without the City shall in computing the license fee hereunder exclude that portion of the income of such licensee not apportioned to the City in accordance with the principles established for determination of the "sales factor" under ORS 314.665; provided that (1) references in such statute to the state or to areas outside the state shall be deemed to be references to areas within and without the City respectively, and (2) ORS 314.665(2)(b) shall not apply hereunder.

E. Effect of Multistate Tax Compact. Any licensee electing in any year to report and pay a license fee on the basis of a percentage of sales volume, pursuant to Article III, Section 2 of the Multistate Tax Compact shall pay a fee computed at .17 of one percent of the dollar volume of gross sales in the City.

F. Additional Apportionment Methods. If the apportionment provisions of subsections D and E above do not fairly represent the extent of the licensee's business activity in this City, the licensee may upon petition to and approval by the Recorder:

1. Utilize the method of allocation and apportionment used by the licensee under the applicable laws of the State of Oregon imposing taxes on or measured by net income; or

2. Utilize any other method to effectuate an equitable allocation and apportionment of the licensee's income.

G. Fee; Completed Contract Method. A licensee using the completed-contract method of reporting income or gross sales shall, within four months of the end of a license year during which such licensee ceases to do business in the City, file an amended application for such licensee's last license year including an income or gross sales on the basis of which the fee is determined all income or gross sales apportioned to the City arising from contracts completed during such last license year.

H. Credits for Prior Fees Paid. Business license fees paid to the City of Troutdale pursuant to Ordinance No. 206 shall be credited to the fee to be paid by the licensee hereunder.

Section 8. Fee as Debt.

The fee imposed by this ordinance and any interest and penalties thereon shall be a debt due and owing to the City of Troutdale and may be collected by civil action in the name of the City of Troutdale.

Section 9. Separability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of com-

petent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holdings shall not affect the validity of the remaining portions of this ordinance.

Section 10. Contracts.

The City may contract with any other municipality or state agency for the administration of any portion of this ordinance.

Section 11. Violations.

A. Penalty and Interest on Failure to Pay Fee.

1. If a person (1) fails to file a correct application at the time required by or under this ordinance, or (2) fails to pay a fee at the time the same becomes due, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of fee required to be shown on the application a penalty of five percent of the amount of such fee, but not less than ten dollars, if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which failure continues, provided that such additional penalties shall in no event exceed 20 percent of the fee.

2. Interest shall be collected on any unpaid fee at the rate of ten percent per annum, computed from the time the fee became due to the date of payment.

3. The case of a failure by a person to file an application on the date prescribed therefor (determined with regard to any extension for filing), the Recorder shall determine the fee payable according to the best of his information and belief and shall assess appropriate penalty and interest and notify such person of the determination and assessment.

4. For purposes of subsections 1 and 2 of this subsection, the

amount of fee required to be shown on the application shall be reduced by the amount of any part of the fee which is paid on or before the date prescribed for payment of the fee.

5. A person shall be deemed to have been notified under the Section when the Recorder shall have mailed a written notice to the last known address of such person.

B. Violations Not Excused by Compliance. It is not a defense in any prosecution for violation of a provision of this ordinance that the defendant has subsequently complied with the provisions hereof, nor does a conviction for doing business without a license excuse or exempt a person for the payment of any license fee and penalties due and unpaid at the time of conviction.

C. Penalties.

1. Any person violating any of the provisions of this ordinance shall upon conviction thereof be punished by a fine not exceeding five hundred dollars (\$500.00) or by imprisonment in the County jail for a period not exceeding six (6) months, or by both such fine and imprisonment. In the event that 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 penalty herein provided.

2. If any officer or employee of the City shall violate Section 4.D. he shall, in addition to the punishment provided in subsection 1 of this Section, be dismissed from office and shall be incapable of holding any public office in the City for a period of five years thereafter.

Section 12. Review.

Review of any action of the Council taken pursuant to this ordinance, or the rules and regulations adopted pursuant thereto, shall be taken solely and

exclusively by Writ of Review in the manner set forth in ORS 34.010 through 34.100, provided, however, that any aggrieved person may demand such relief by Writ of Review.

Section 13. Emergency.

The Council finds, and an emergency is hereby declared to exist in that the immediate passage of this ordinance is necessary for the health, peace and safety of the residents of the City of Troutdale, and this ordinance shall go into force and effect the 15th day of January, 1975.

Passed by the City Council of the City of Troutdale this 14th day of January, 1975.

Yeas: 5

Nays: 0

Signed by the Mayor this 17th day of January, 1975.

R.M. Stungis
MAYOR

ATTEST:

Betty J. Bergstrom
RECORDER