

## **ORDINANCE NO. 833**

### **AN ORDINANCE AMENDING CHAPTER 5.04 OF THE TROUTDALE MUNICIPAL CODE RELATING TO BUSINESS LICENSES.**

#### **THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. Under newly-created development code provisions, the City of Troutdale (City) will accept land use applications to approve permits to develop medical marijuana dispensary businesses in certain locations of the City.
2. Existing business license ordinances, with certain exceptions inapplicable here, require all persons to obtain city business licenses to conduct business in the City.
3. The city may deny business licenses where, among other things, a business operates in violation of federal law, and at present the federal Controlled Substances Act does not allow possession or transfer of marijuana in the way those activities are typically conducted at a medical marijuana dispensary.
4. On February 14, 2014, the United States Department of Justice issued guidance to federal law enforcement which, in cases involving marijuana, encouraged them to devote resources to more serious marijuana-related crimes.
5. The City Council acknowledges the tension between state dispensaries and federal laws, but believes that the least cost, most efficient solution is to amend the City Code in ways that allow state dispensary laws to operate under federal guidance toward cases involving marijuana.
6. The amendment below adds a provision to the municipal code that requires all dispensaries operating in the city to obtain a business license, and for the purpose of issuing a business license, allows the City to regard a medical marijuana dispensary as not violating federal law if the dispensary conducts its affairs in compliance with the standards outlined by the U.S. Justice Department.
7. The City also desires to conform the business license chapter to its new agreement for law enforcement services.

#### **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:**

Section 1. Chapter 5.04 of the Troutdale Municipal Code is amended to read as follows:

#### **5.04.010 - Purpose.**

The primary purpose of this chapter's licensing requirements is to regulate businesses in order to promote the health, safety and welfare of the public. Licensing helps ensure that all new business activities are conducted in compliance with applicable laws and ordinances. Licensing also allows the city to maintain an inventory of existing businesses operating and doing business within its limits. This inventory allows the city to ensure, through inspection, enforcement and other regulatory measures, that such business activities continue to comply with applicable laws and ordinances. The licensing fee required by this chapter is necessary to finance and provide for the licensing and regulation authorized by this chapter.

#### **5.04.020 - Definitions.**

As used in this chapter, unless the context requires otherwise:

"Business" means any occupation, profession or commercial activity engaged in for profit or livelihood in the city. This definition includes, but is not limited to, peddler and home occupation activity.

"City manager" means the city manager of Troutdale, or designee of the city manager.

"Computerized criminal history record" means the record that is available to the Troutdale police department via the Law Enforcement Data System pursuant to OAR 257-015-0060(2).

"Council" means the city council of the city of Troutdale.

"Garage sale" means a commercial activity open to the public, conducted at a private residence where personal property is sold to others provided that no more than four garage sales per residence per year shall occur and that no garage sale shall exceed three days in duration.

"Home occupation" means a business carried on within a dwelling, and which business is incidental to the use of the dwelling for dwelling purposes.

"Law enforcement agency" means a municipal police department, county sheriff's office, or other law enforcement agency established under state law.

"Law enforcement officer" means a sworn peace officer authorized by the city manager to perform the business license review functions within this chapter. The term may include a non-sworn employee of a law enforcement agency authorized by the agency and by the city manager

"License" means the permission granted by the city to engage in a business or activity regulated by this chapter.

"Licensee" means a person who has a valid license issued pursuant to this chapter.

"Peddler" means a person whose business activity consists of traveling to and from residences and businesses and offering for sale, selling, or taking orders for goods or services.

"Person" includes all natural and legal persons, including but not limited to, individuals, corporations, associations, partnerships and societies, whether or not engaged in a profit-making endeavor.

"Principal" means a person who would be directly involved in the management or operation of the business.

"Valid license" means a license issued pursuant to this chapter, and which license's effective period has not expired.

#### **5.04.030 - License—Required.**

No person shall conduct any business within the city without a valid license unless an exemption contained in Section 5.04.040 of this code applies.

#### **5.04.040 - Exemptions.**

The requirements contained in this chapter shall not apply to:

- A. Garage sales;
- B. An individual performing babysitting, nursery or child-care activities on a part-time basis;
- C. An individual who is employed by a business which has obtained a license;
- D. An individual hired or employed on an intermittent or casual basis by a household, business or other employer to supply only services;
- E. A person whose primary activity consists of delivering goods inside the city for a business located outside the city;
- F. Any conduct which is exempt from licensing by virtue of the constitution or laws of the United States or the state of Oregon;
- G. A person who leases two or fewer units of residential real estate within the city;

H. A contractor or landscape contractor (1) who possesses a contractor's license issued by Metro, (2) whose place of business is located outside the city, and (3) who earns less than two hundred fifty thousand dollars in annual gross revenues from business conducted within the city. For purposes of this subsection, "contractor" has the meaning provided in ORS 701.055(2), and "landscape contractor" has the meaning provided in ORS 701.015(6)(c);

I. Federally tax-exempt organizations and nonprofit religious organizations;

J. City-sponsored activities and business operating under a city franchise.

**5.04.050 - License—Application.**

A. A person shall apply for a license in the following manner:

1. Application for a license shall be made to the city manager on or before January 1st of each year for which a license is required; or
2. If the business goes into operation after January 1st, application shall be made at least thirty days before conducting business in the city.

B. A license shall expire on the last day of the calendar year for which the license was issued.

C. Application for a license shall be on a form provided by the city and signed by the applicant. The application constitutes consent for the city to conduct an investigation of the application, including permission to obtain a computerized criminal record for the applicant and any employees that will be working for the applicant, and to enter the business property. An application shall request:

1. The name and address of the applicant;
2. The name and address of the business;
3. A description of the type of business to be licensed;
4. The number of persons regularly employed by the business;
5. Any other information the city manager or a law enforcement officer deems necessary to evaluate the application. Questions about the necessity of such other information shall initially be resolved by the official making the request, subject to final resolution by the city manager.

D. The city manager shall review an application according to Section 5.04.060 of this code. The city manager shall submit the application to appropriate city department heads for evaluation and comment, including submittal to a law enforcement agency for review

by a law enforcement officer. The city manager may adopt rules to carry out the provisions of this chapter and may prescribe forms for business license applications. Officials receiving applications to review under this section should review applications expeditiously and should communicate any questions or concerns to the city manager with reasonable timeliness.

**5.04.060 - License—Criteria for approval.**

A. The city manager shall either approve, approve with conditions or deny an application. Action on an application shall be based upon the consideration of all available information, including, but not limited to, a computerized criminal history record. An application may be denied on any of the following grounds:

1. Failure to provide requested information or any false, misleading or incomplete material statement made on the application form; however, if the statement is the result of excusable neglect, the applicant may resubmit an application with appropriate corrections;
2. The applicant, a principal or the business activity fails to meet the requirements of this code or is doing business in violation of this code or applicable state or federal law, including the building, health, mechanical, electrical, plumbing, development and fire codes of the city;
3. The applicant, a principal or the business activity would violate, or has violated, any ordinance or the charter of the city, any state or federal criminal statute, or any other law, as shown on a computerized criminal history record, unless the applicant proves that the violation has no bearing on the applicant's fitness or the ability of the business to undertake the licensed activity without endangering persons or property or the public health, safety or welfare. The city may consider a violation that did not result in a conviction;
4. The business activity would endanger, or has endangered, persons or property, such that the business activity is a menace to the health, safety and general welfare of the city.

B. The city manager shall notify the applicant in writing of a decision made under subsection A of this section. The written notice shall state the reason for the decision and explain that the decision is final unless either the applicant or council files a notice of appeal pursuant to Section 5.04.150 of this code. The written notice shall also be provided to the council.

C. When a license is approved or approved with conditions, the city manager shall issue a license to the applicant.

D. All persons operating a medical marijuana dispensary under Oregon law, whether organized or operating on a for-profit or not-for-profit basis, must maintain a business license from the city. For purposes of complying with Section 5.04.060(A)(2) of this code, the business activity conducted at a medical marijuana dispensary will be regarded as consistent with federal law so long as the licensee certifies, in a writing placed on file with the city recorder, that in the conduct of its medical marijuana business the licensee will:

1. Prevent the distribution of marijuana to minors;
2. Prevent revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Prevent the diversion of marijuana from Oregon to any other state;
4. Prevent state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5. Abstain from violence and the use of firearms in the cultivation and distribution of marijuana;
6. Discourage and, if necessary, prevent drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Prevent the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands;
8. Prevent marijuana possession or use on federal property; and
9. Operate its business in accordance with all Oregon laws existing now or in the future that authorize the licensee to operate a medical marijuana dispensary.

#### **5.04.070 - License—Fee—Amount.**

No license shall be issued under this chapter unless the applicant pays a license fee to the city in the amount set by resolution of the council. If an applicant has conducted business in the city without a license, the license fee shall include the license fee the applicant would have been required to pay if the applicant had been conducting business pursuant to a license, and a late fee.

#### **5.04.080 - License—Fee—Payment—Delinquencies.**

All license fees required by this chapter are due on the required application date. All license fees shall be deemed delinquent if not paid on or before thirty days after the

due date. Whenever any license fee is not paid within thirty days of the due date, a twenty-five dollar late fee shall be imposed.

**5.04.090 - License—Renewal.**

An application for renewal of a license shall be made and processed in the same manner as an initial application, pursuant to Sections 5.04.050 to 5.04.080 of this chapter.

**5.04.100 - License—Display.**

A. Except as provided in subsection B of this section, a license issued under this chapter shall be displayed in a conspicuous place on the business premises at all times during the license's effective period, available for inspection by any interested person.

B. If the licensee does not maintain a place of business within the city, the license or a copy thereof shall be in the possession of the licensee or the licensee's representative while that person is conducting business within the city. Upon the request of any police officer or city official, that person shall show the license or its copy.

**5.04.110 - License—Nontransferable.**

A license issued pursuant to this chapter is a personal privilege and is not transferable.

**5.04.120 - License—Separate business.**

If a person conducts more than one business in the city, the person shall obtain a license for each business. A separate license is not necessary for a warehouse used in connection with a licensed business but at a separate location.

**5.04.130 - License—Grounds for revocation.**

A. If the city manager determines that a licensee is conducting or has conducted an activity, which would provide grounds for denial of an application for a license pursuant to Section 5.04.060 of this code, the city manager shall notify the licensee in writing that the city is revoking its license.

B. Upon making the determination in subsection A of this section, the city manager may include any other related, licensed business conducted by the licensee in the notice of revocation.

C. The notice of revocation shall be sent to the licensee's business or residential address shown on the application form, at least thirty days before the effective date of revocation. The notice of revocation shall state the grounds for revocation and inform the licensee of the provisions for appeal.

D. The council, upon making the determination contained in subsection A of this section, may direct the city manager to issue a notice of revocation. The city council may, on its own motion, vacate a notice of revocation issued by the city manager. The licensee shall be notified in writing if a notice of revocation is vacated.

**5.04.140 - License—Grounds for suspension.**

A. If the city manager determines that a licensee or any activity of the licensee presents an immediate danger to persons or property, the city manager may suspend such license by issuing a written notice of suspension.

B. The suspension shall become effective when the licensee receives the notice personally or when the notice is delivered to the licensee's business or residential address as shown on the application. The notice shall contain the grounds for suspension, the effective period of the suspension, and shall inform the licensee of the provisions for appeal.

C. The council, upon making the determination contained in subsection A of this section, may direct the city manager to issue a notice of suspension pursuant to this section. The council may, on its own motion and by resolution, vacate a notice of suspension issued by the city manager. The licensee shall be notified in writing if a notice of suspension is vacated.

**5.04.150 - Appeal.**

A. An applicant whose application has been conditioned or denied, or a licensee whose license has been suspended or who has received a notice of revocation, may appeal such matter to the city council by filing a written notice of appeal with the city manager. The notice of appeal must be filed within ten calendar days after the notice of denial, suspension, revocation or approval with conditions is mailed or delivered, whichever is earlier. The notice of appeal shall include:

1. The name and address of the appellant, and the business owner if different than the appellant;
2. The nature of the determination from which an appeal is taken and a copy of the determination;
3. The reason or reasons why the determination is alleged to be incorrect;
4. What the correct determination should be; and
5. An appeal fee of one hundred dollars.

B. The council, on its own motion, may review a decision of denial by the city manager made pursuant to Section 5.04.060 of this code. The council motion shall contain the



reason or reasons for review of the city manager's decision, and direct the city manager to place an appeal hearing on the city council agenda. The motion is out of order on and beyond the fifteenth day after the city manager's decision was mailed. The motion shall also direct the city recorder to create a written notice of appeal, including the reasons for review, and mail it to the applicant. The notice also shall state the time and place for city council's review of the city manager's decision.

C. The council shall designate a time to hear the appeal. The appellant shall be given written notice of the time, date and place of the hearing at least ten days in advance of the hearing.

D. Failure of the applicant or licensee to file a notice of appeal with the city manager within the time allotted, shall constitute a waiver of objections to the notice of suspension, revocation, denial or approval with conditions.

E. Filing a notice of appeal shall stay the effective date of revocation until a final determination is made on the appeal by the council.

F. Filing a notice of appeal does not stay the effective date of suspension.

#### **5.04.160 - Appeal—Hearing.**

A. A hearing on appeal to the council pursuant to Section 5.04.150 of this code shall afford the licensee or applicant, city staff and peace officers, members of the public and other interested parties the opportunity to give oral and written testimony and written materials to the council. The licensee or applicant may exercise the right to cross-examine witnesses who present evidence adverse to that person.

B. The council may affirm, modify, remand or reverse the city manager's decision. The council shall direct the city manager to provide the licensee or applicant with a written notice of the council's decision.

#### **5.04.170 - License—Reissuance.**

When a license has been revoked and the licensee or principal of the licensee reapplies for a license, a bond in the penal sum deemed necessary under the circumstances but not to exceed ten thousand dollars shall be filed with the city recorder. This bond shall be required for the term of the license and shall be forfeited to the city if the licensee is convicted of any violation of federal, state or city laws or ordinances for which such license may be revoked.

#### **5.04.180 - Violation—Penalty.**

Any person violating any of the provisions of this chapter, shall upon conviction thereof in municipal court, be punished by a fine not to exceed three hundred dollars for each offense or by imprisonment not to exceed ninety days, or both such fine and

imprisonment. A separate offense shall be deemed committed for each day a violation occurs.

**YEAS: 7**  
**NAYS: 0**  
**ABSTAINED: 0**



**Doug Daoust, Mayor**

**7/15/15**

**Date**



**Debbie Stickney, City Recorder**

**Adopted: July 14, 2015**