

ORDINANCE NO. 96-O-518

AN ORDINANCE LICENSING CERTAIN BUSINESSES, PROFESSIONS, PURSUITS, AND OCCUPATIONS IN THE CITY OF BROOKINGS FOR REVENUE PURPOSES; FIXING THE FEES THEREFOR; PROVIDING FOR AN INCREASE OR DECREASE OF THE SAME; FIXING THE PENALTY FOR VIOLATION THEREOF; PROVIDING FOR THE ENFORCEMENT THEREOF; PROVIDING CERTAIN DEFINITIONS; PROVIDING FOR A SAVINGS CLAUSE; REPEALING ORDINANCE NO. 80-O-334 EXCEPT AS PROVIDED; AND DECLARING AN EMERGENCY.

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The City of Brookings ordains as follows:

Section 1. Purpose and Scope. The business license fees imposed by the terms of this ordinance are for revenue purposes only. Neither the acceptance of the prescribed fee nor the issuance of the applicable license shall be construed to constitute a regulation of any business activity or a permit to engage in activity otherwise prohibited by law or ordinance, or a waiver of any regulatory licensing requirement imposed by any other ordinance of the City of Brookings.

Section 2. Definitions.

A. The term "person" as used in this ordinance shall be deemed to mean and include any person, firm, copartnership, association, joint venture, syndicate, society, or domestic or foreign corporation.

B. The term "business" as used in this Ordinance shall mean and include any trade, profession, occupation or pursuit of every kind conducted in the City of Brookings for gain including, but not limited to, those businesses hereinafter identified, except the following:

(1) Any business recognized as charitable by the Internal Revenue Service under the provisions of IRC Section 501.

(2) Any business filed as a non-profit corporation under the provisions of ORS Chapter 65.

C. The respective term "proprietor" and "employer" as used in this ordinance shall be deemed to mean and include any person, as herein defined, who is engaged in any "business" as herein defined. D. The use of any pronoun in this ordinance shall be construed as meaning and including the singular or plural thereof, and the masculine, feminine, and neuter gender, as the case may be.

E. The term "transient business" as used in this Ordinance shall be deemed to mean a business as defined in Section 2(B) above that operates from various locations in the City and has no fixed permanent location from which the business is conducted, and which shall not remain at any one location in the City, on public or private property, for more than 2 (two) hours on any single day.

F. The term "garage sale" as used in this ordinance shall be deemed to mean any public sale of new or used goods within the city limits by an individual or group of individuals from private property when the individual or group of individuals is not in the business of selling goods or is not licensed as a secondhand dealer, and when the property from which the sale is to be conducted is not within a zone permitting commercial business or if within a zone permitting commercial business is in residential use, or otherwise permitted under the provisions of this ordinance.

Section 3. Employee not deemed in business - Purposes. No person who is an employee, and whose income is based solely on an hourly, daily, weekly, monthly, or annual wage or salary shall, for the purposes of this ordinance, be deemed a person engaged in business in the City of Brookings. It is declared that the purpose of this ordinance is that all license fees levied hereby and hereunder shall be borne by employer for the privilege of doing business in the City of Brookings; and for providing revenue for municipal purposes generally; and to pay the necessary expenses for carrying out the provisions of this ordinance.

Section 4. Agents of nonresident proprietors. The agent or agents of a nonresident proprietor engaged in any business for which a license is required by this ordinance shall be liable for the payment of the license fee therefor and shall be subject to the penalties for failure to pay the same or to comply with the provisions of this ordinance to the same extent and with like effect as though such agent or agents were themselves the proprietors of such business.

Section 5. Representations - Advertisements. Any person representing himself or exhibiting any sign or advertisement to the effect that he is engaged in any of the businesses upon which a license fee is levied by this ordinance shall be deemed to be engaged in such business and shall be liable for the payment of the license fee levied hereby or hereunder, and shall be subject to the penalties for failure to pay the same or comply with the provisions of this ordinance.

Section 6. Ability to Conduct Business - License Required - Exemptions.

A. No person shall engage in, prosecute, or carry on any business within the corporate boundaries of the City of Brookings unless and until they have first obtained a license therefor and shall have paid to the City the fee required.

B. The issuance of a business license under the provisions of this Ordinance does not constitute authorization by the City to the licensee to conduct business in any manner in violation of any Ordinance or regulation of the City or any rule, regulation, order or law of the state or federal government.

C. The issuance of a license for a transient business does not constitute authorization for the conduct of that business on any public street or right of way of the City of Brookings, or other public property, unless specific authority is granted to the transient business licensee by the governing body of public entity which owns the public property. The City Manager shall have authority to grant approval for the conduct of transient business on public property and rights-of-way of the City of Brookings.

D. A business is exempt from the requirements of a business license if exempted by the provisions of any other Ordinance of the City, by the constitution and laws of the state or federal government or if exempted by the City Manager under the following circumstances:

(l) Special Events - An exemption to the business license requirements of this Ordinance may be granted by the City Manager of the City of Brookings to a business which is conducted in the City for a single annual special event only, if the business is not otherwise conducted within the City at any other time. The City Manager shall provide notice in advance of the designation of any special event qualifying for this exemption.

E. Garage sales may be conducted without obtaining a business license. However, no household may conduct more than three (3) garage sales in a one-year period, and no sale may last longer than three (3) days.

F. Sellers and purchasers of seasonally gleaned forest products such as mushrooms, wild berries, huckleberries, fern and fir boughs, cascara bark, etc., must hold a current city business license. A business license will only be issued to purchasers who transact business in conjunction with an existing commercial facility. Purchases shall be allowed either inside or outside the existing commercial structure, however, no temporary structures may be constructed to house this purchasing activity. A temporary business license will satisfy the business license requirement if the provisions of section 9 are met.

Section 7. Annual Fees.

The annual fee for a business license for established businesses shall be determined by the total number of employees reported on State Unemployment Report Form No. 132 by each business. New businesses licensees who have not yet filed a State Unemployment Report Form No. 132 will estimate the number of employees for the first license year.

BUSINESS LICENSE FEE SCHEDULE	
TOTAL EMPLOYEES REPORTED ON FORM NO. 132 IN APRIL OF EACH YEAR	BUSINESS LICENSE FEE FOR EACH FISCAL YEAR
0 - 10	\$ 60.00
11 - 25	\$ 100.00
26 - 50	\$ 150.00
51 - 75	\$ 300.00
76 - 100	\$ 600.00
101 - 200	\$ 1,000.00
200 +	\$ 1,500.00

For businesses located outside the City of Brookings, doing business within the City of Brookings, the fee is \$75.00.

Business license fees are due prior to July 31 of each year. For each month that the business license fee is late, a \$10.00 penalty fee will be added. No business license will be issued without the proper license fee (and penalties, if any) being paid in full.

Section 14. Required application statements - Renewal.

A. Before being issued a license, the applicant shall fill out a license application form provided by the City pursuant to Section 12. The form shall require a statement in writing, signed by the applicant, describing:

1. The type of business.
2. Its name and location.
3. The telephone number of the business.
4. The fire preventative measures to be taken and/or installed about the business premises location in the City of Brookings.
5. The number and location of sanitary facilities for business invitees, customers and other persons using the business premises which facilities shall be located on the site of the business being conducted in the City of Brookings, except that transient businesses shall be exempt from this requirement.
6. Other information reasonably needed to issue a license certificate.

B. Applicants who fail to pay the license fee in full or who hold a license certificate that is revoked, expired, or ceased for any reason are required to make a new and initial application.

C. So long as a business has been continually operated without interruption through June 30th of the licensing year, upon premises for which an original license certificate was issued, persons operating said business may renew a license certificate issued to them before June 30th. If a license certificate is so renewed, the certificate holder need not make a new license application; however, new applications are necessary if there has been any break in the business or its operation upon the premises during the preceding year or if there have been any changes of circumstances necessitating a correction or amendment to the information above-required as it may vary at the time of renewal from that so stated in the prior application.

D. Businesses as outlined in Subsection C of this section must pay their renewal by July 31st of each year. Failure to make full and proper payment will result in a \$10.00 per month late fee. If full and proper payment, including late fees, is not made by September 30th of the year, the City shall refer the matter of non-payment to the city attorney for enforcement of remedies under this ordinance.

Section 15. License Certificate - Appeal to City Council. Upon receipt of a completed application and the required fee, the City Recorder may request the assistance of the Chief of Police for investigation of the application with regard to the requirements of this Ordinance or with regard to the health, safety and welfare of the customers, business

invitees, and citizens of the City of Brookings who may be on or about the business premises. Within 30 days after the receipt of the completed application and required fee, if the application is in order and the issuance of the license is called for under the terms of this Ordinance, the application shall be accepted and the City Recorder shall issue a City of Brookings business license. The license certificate is evidence of the applicant's privilege to conduct business in the City of Brookings in accordance with the terms of this Ordinance, and the certificate shall bear the printed signature of the Mayor and be countersigned by the City Recorder.

If an application is incomplete or when the City Recorder determines that an applicant does not meet the requirements of the ordinance for the issuance of a business license in the City of Brookings, the City Recorder shall give notice of rejection of the license application to the applicant in writing mailed to the address shown on the application. An incomplete application may be supplemented by additional required information and submitted to the City Recorder within ten days of the date of mailing of the notice of application rejection, and such additional information shall be considered as part of the original application. Upon receipt of additional information to supplement an incomplete application, the application shall then be further reviewed by the City Recorder and accepted or rejected by the City Recorder as provided above within 30 days of receipt of the submittal of additional information.

If an application is rejected by the City Recorder, the applicant may appeal the decision of the City Recorder to the City Council by filing a written notice of appeal with the City Recorder not later than ten days after the date of mailing of the application rejected by the City Recorder. The written request for appeal shall recite the facts or circumstances upon which the appeal is based.

At its next applicable Council meeting, the City Council shall hear the appeal of the applicant to the City Recorder's rejection of the business license application. Upon hearing the appeal by the City Council, the Council may affirm, modify or reverse the decision of the City Recorder, and the City Council shall enter an order upon the Minutes of the meeting in accordance with its decision. If the decision of the City Recorder is reversed, the recorder shall issue a license certificate to the applicant within five (5) working days after the date the order is entered on the Minutes. In the event the City Council affirms the decision of the City Recorder, the Minute order shall stand as the final decision of the City on the applicant's request for a business license in accordance of the terms with the application received.

Section 16. Council to prescribe form of certificate. The form and wording of the license certificate to be issued by the city recorder shall be prescribed by the city council; and it shall specify the name of the licensee, the type of business licensed, the location of said business, and the amount of license fee paid.

Section 17. Investigation of business. The chief of police and his subordinate police officers are hereby directed and empowered to investigate and examine all places of business in the City of Brookings at any and all reasonable times for the purpose of determining whether or not such business is being conducted in accordance with the terms of this ordinance.

Section 18. Nontransferable - Exception. No transfer or assignment of any license issued hereunder shall be valid or permitted; except that whenever any person shall sell or transfer the whole of a business for which such license has been issued, the vendee thereof shall, unless otherwise provided by ordinance, be allowed to engage in said business under the vendor's license for the balance of the fiscal year for which the vendor's license was issued.

Section 19. License not vested right. Nothing in this ordinance contained shall be construed as vesting in the license any contract right, or creating any contract obligation on the part of the city as to the amount of the license fee, or as to the character of the license issued hereunder; but on the contrary, it shall be construed as reserving to the city the right to increase or decrease at any time any license fee prescribed herein and to change the character of the license and term thereof.

Section 20. Fees are additional revenue. The license fees fixed by and collected, or to be collected, under this ordinance shall be in addition to the general ad valorem taxes now or hereafter levied pursuant to law, and also in addition to any and all license fees prescribed by other ordinances pertaining to ~~or regulating~~ specific businesses, occupations, amusements, utilities, trades, and other pursuits for gain.

Section 21. Combination of certain businesses. The conduct of a business or businesses at two or more separate and distinct locations within the city of Brookings, shall, for the purposes of this ordinance, be deemed to be a separate business or businesses; and each business shall be subject to the license tax herein provided for.

Section 22. Certificate to be displayed. Every person who has obtained a license as required by this ordinance for the privilege of doing business in the city of Brookings shall display the license certificate issued to him in a conspicuous place in or upon the premises where said business is conducted, except in the case of contractors, subcontractors, cleaning and dyeing solicitors, wholesale delivery trucks, peddlers, and solicitors. In the case of contractors and subcontractors, said license certificate shall be conspicuously displayed at their principal places of business in the city of Brookings; and in the case of cleaning and dyeing solicitors, wholesale delivery trucks, peddlers, and solicitors, said license certificate shall be carried on the person of the licensee or conspicuously displayed in or upon any vehicle used in the conducting of such business.

Section 23. Concurrent cause of suit. In addition to the penalty provided in Section 24, and as separate and concurrent causes of action or suit, the city of Brookings may, in any court of competent jurisdiction, sue any person who has or is engaged in business in the city of Brookings without having complied with this ordinance, for the amount of license fee payable hereunder; and also the city may in the same or a separate suit seek an injunction prohibiting such person from engaging in such business in the city of Brookings in violation of this ordinance; and in any such action or suit the city shall, if it prevails, recover in addition to its costs and disbursements a reasonable attorney's fee to be set by the court.

Section 24. Penalty. Any person or persons, association of persons, firm, corporation, or any agent or representative thereof who shall engage in or carry on a

business within the corporate limits of the city of Brookings, without having first applied for a license, paid the fee therefor, and obtained a license certificate in accordance with the provisions of this ordinance, shall be deemed in violation of this ordinance and shall, upon conviction thereof, be punished by a fine of not more than \$500 and no license shall be issued to any person convicted hereunder until the full amount of any fine imposed hereunder shall have been first paid. Each business day during which any business activity continues to be conducted in violation of this ordinance shall be deemed a separate offense.

Section 25. Severability and Validity. If any section, subsection, sentence, clause or word in this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause and word thereof, irrespective of the fact that any one or more section, subsection, clause or word is later declared invalid.

Section 26. Repeal of Ordinance No. 80-O-334, except as provided. Ordinance No. 80-O-334 is hereby repealed, except to the extent that any person, entity or business may presently owe fees, late charges and penalties to the City of Brookings under Ordinance No. 80-O-334. In such instances Ordinance No. 80-O-334 shall remain effective as to such person, entity or business until all such delinquencies have been satisfied.

Section 27. Emergency clause. It is hereby determined that it is in the interest of public health, safety and welfare that immediate action be taken. Therefore, an emergency is declared to exist and this ordinance shall be in full force and effect immediately upon its passage by the city council and signing by the mayor.

First Reading: May 28, 1996
 Second Reading: May 28, 1996
 Passage: May 28, 1996
 Effective Date: May 28, 1996

Signed by me in authentication of its passage this _____ day of _____, 1996.

Tom Davis
 Mayor

ATTEST:

Beverly S. Shields
 City Recorder