

ORDINANCE NO. 1288

AN ORDINANCE PROVIDING FOR A BUSINESS REGISTRATION UPON TRADES, PROFESSIONS, OCCUPATIONS, BUSINESSES AND SHOPS FOR THE PURPOSES OF PROVIDING FOR THE HEALTH, SAFETY AND WELFARE OF THE CITIZENS OF TILLAMOOK AND FOR RAISING REVENUE FOR MUNICIPAL PURPOSES; PROVIDING FOR THE METHOD OF ISSUING A BUSINESS REGISTRATION AND COLLECTING FEES AND PROVIDING PENALTIES FOR VIOLATION THEREOF AND REPEALING ORDINANCE NO. 1175, 1273, 1286 AND ANY OTHER PRIOR INCONSISTENT CITY RESOLUTIONS, ORDERS, AND/OR ORDINANCES, AND DECLARING AN EMERGENCY

The Common Council of the City of Tillamook ordains as follows:

Section 1: Purpose of Business Registration

This ordinance is enacted for the purposes of providing for the health, safety and welfare of the citizens of Tillamook by raising revenue for municipal purposes, to provide revenue to pay for the necessary expense required to issue the business registration and for business identification. The registration fees hereinafter imposed shall be in addition to all general ad valorem taxes now or hereafter levied pursuant to law, and shall be in addition to any and all other license or franchise fees otherwise imposed by the City of Tillamook under existing ordinances.

Section 2: Definitions

AUCTIONS AND AUCTIONEERS. Every person who shall by public outcry offer for sale, either as principal or agent, to the highest bidder on the spot, any article of merchandise or property, shall be deemed an AUCTIONEER, and every such sale shall be deemed an AUCTION; provided, however, that nothing in this section shall apply to judicial sales, nor to sales by executors, administrators or trustees under court order.

BUSINESS.

1. As a noun, shall mean all manufacturers, professions, trades, occupations and shops of all and every kind carried on for profit
2. As a verb shall mean any lawful activity or enterprise engaged in for gain, benefit, advantage or livelihood.
3. A business shall also be determined by the discrete location(s) which are encompassed by the enterprises accounting records.

CITY PROPERTY. For the purposes of this and other ordinance(s), property owned and/or controlled by the city as described in this or other ordinance(s). For example, city property include, but is not limited to, highways, roadways, public rights of way, sidewalks, alleys, parking lots, parks, open spaces and any other city owned property. (This does not include private parking lots or private property; either open to the public or controlled access).

EMPLOYEE/EMPLOYER. Any owner, operator, sales person, agent or worker whether paid by salary, bonus, commission, piecework or hourly wage and associated with or working for any

commercial, professional, fraternal or public establishment within the City of Tillamook, unless excluded through franchise agreement or Federal or State laws.

EMPLOYEE/EMPLOYER VOLUNTEER. Any person, who not for compensation, acting or serving willingly and with no constraint or guarantee of reward, performs any function(s) normally done by an Employee/Employer in any commercial, professional, fraternal or public establishment within the City of Tillamook, unless excluded through franchise agreement or Federal or State laws.

FISCAL YEAR. July 1 to June 30.

HAWKER. Any person who, for himself or as agent of another, carries for sale and offers for sale, or exposes for sale, any goods, wares, or merchandise, or any article or thing for which a price is asked, in or on the streets, to customers in or on the streets, or who offers or exposes for sale any such commodity from a doorway, recess, alleyway, vacant lot, or other place facing on the street, whether making outcry or not.

NON-PROFIT. For the purposes of this ordinance, the person which is:

1. Organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals
2. For which no part of the net earnings inures to the benefit of a private shareholder or individual
3. By which no substantial part of the person's activities is for carrying on propaganda or otherwise attempting to influence legislation and which does not participate in or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office and possessing a certificate from the Internal Revenue Service to that effect.

PEDDLE. Any sale, or offering for sale, or exposing for sale of any goods, wares, or merchandise, or any article or thing for which a price is asked by a peddler in pursuance of his occupation as a peddler, but shall not be construed to include any wholesaler selling directly to a licensed business.

PEDDLER. Any person who, for himself or as agent for another, goes from place to place, or from house to house within the City of Tillamook, carrying for sale and offering or exposing for sale at retail any goods, wares, or merchandise, or any article or thing for which a price is asked.

PERSON. All corporations, associations, syndicates, partnerships of every kind, joint ventures, societies and individuals, whether for profit or non-profit, transacting and carrying on business in the City of Tillamook, Oregon.

RETAIL. Any sale direct to the ultimate consumer or user for consumption or use and not for resale purposes; provided, however, that the above definition shall not be deemed to include persons engaged in the sale of goods, wares and merchandise to dealers by commercial travelers or sales agents in the usual course of business, nor bona fide sales of goods, wares or

merchandise by the same for future delivery in interstate commerce, or to the sale of staple products by the grower thereof or his employee.

SOLICITOR. Every person or individual who goes from house to house or from place to place within the City of Tillamook selling, offering to sell or taking orders for any products, wares, merchandise or any article or service whether payment is made prior to receiving purchased goods/services or delivery is made upon payment. The term “solicitor” shall not include any commercial traveler receiving orders for goods at wholesale from merchants nor shall said term include any person seeking customers for farm fresh products.

TRANSIENT MERCHANT. A person who temporarily occupies a fixed location, sells and delivers from stock on hand, and does business in much the same manner as a permanent business.

UMBRELLA REGISTRATION. A single business registration for a number of business or activities on special occasions. Examples include, but are not limited to, the following:

1. Insurance, real estate or other agency-type where brokers supervise independent agents
2. The Chamber of Commerce’s June Dairy Parade
3. Tillamook Revitalization Association’s **events and/or** Tillamook Farmers’ Market.

Section 3: Registration

1. On or after July 1, 2002, any person who operates a business or conducts business, to include peddlers, solicitors, hawkers and occult arts, within the jurisdiction of the City of Tillamook, Oregon, shall first obtain a business registration registering that business. The applicant shall apply on a form approved by the City and shall pay a fee for the registration in advance. Fees for this Ordinance shall be set by resolution of the Tillamook City Council.
2. Any person that carries on or engages in a business that does not comply with City, State, or Federal law is prohibited from being issued a business license. Additionally, currently held licenses may be revoked for violation of City, State, or Federal law.
3. Registrations shall be valid for one 365 day year, the period being July 1st to June 30th. Registrations are renewable on July 1st of each year, with renewal notices sent out in May of each year. A late fee will be assessed if not paid by July 1. Additional penalty and citation into Tillamook Municipal Court will be issued 15 days from the date of the written late notice.

Section 4: Penalties

1. Penalty(s) for violation of any section of this ordinance are to be set by resolution.
2. Each day’s violation of a provision of this Ordinance constitutes a separate violation.
3. A citation or other charging instrument filed in court shall include all violations from the date of any written warning notice (a.k.a. abatement) as cited in the charging instrument.

Section 5: Coverage and Rates

This ordinance shall apply to manufacturers, trades, professions, occupations, businesses and shops of every kind, unless otherwise exempted. All business registration fees shall be established by resolution of the Tillamook City Council.

Section 6: Non-Resident Proprietors

Any agent or agents of non-resident proprietors engaged in any business in the City of Tillamook shall be personally liable for the business registration fee required and shall be subject to the penalties hereof for the failure to pay that fee to the same extent as if they were themselves the proprietors of the business. The act of advertising within the city, of and by itself, shall not require a business registration under this ordinance.

Section 7: Transfer and Assignment of Registration

No transfer or assignment of any business registration issued here shall be valid or permitted, except as follows:

A business registration may be transferred or assigned for only the remainder of the registration period when the successive business continues the same use and level of use of the property, when the number of employees remains the same or less, and when City is notified and paid a transfer or assignment fee, as set by resolution.

Section 8: Business Registration Non-contractual

The registration application is not a contract between City and registrant or any other person. City may unilaterally at any time raise registration fees. However, the increased fee shall apply to the next fiscal year's registration fee and/or to registrations issued subsequent to the effective date of any new fee.

Section 9: Exempt Businesses

The following are exempt from the provisions of this ordinance:

1. Government agencies
2. Non-profit organizations which are federally tax exempt unless the non-profit organization is carrying an umbrella registration as defined in this ordinance.
3. Home based businesses operated solely by the owner with no employees (i.e. babysitting/childcare where the individual either goes to the person's home or does babysitting in their home, music teachers, house cleaning, cosmetic sales, yard care, odd jobs, mending, etc. if the average weekly hours for any given month do not exceed 10 hours) Daycare facilities as defined by the zoning ordinance do not qualify for this exemption.
4. Individuals below the age of 18 who do not operate a commercial business establishment or have other employees.
5. Garage sales permitted under City ordinance.
6. Non-resident businesses offering merchandise by catalog or by telecommunications for future delivery to the customer.
7. Construction subcontractors working under a general contractor who possess a valid business license.
8. Any agent or business specifically exempted by State Law.
9. Delivery services unless the deliverer operates from a facility based within the city's jurisdiction

Section 10: Payment of Business Registration Fees – non-refundable; Temporary Registration

It shall be unlawful for any persons to carry on any business, trade, occupation, profession, or calling, or transact any business as described in this ordinance, without first paying in advance the registration fee as set by resolution. For the purpose of fairness the City shall allow registration fees to be prorated for new applicants not applying on July 1. Fees shall be calculated for the remainder of the fiscal year by quarters. A business may register for a temporary license under this ordinance for up to three (3) months and the fee shall be *one third* of the yearly fee.

Section 11: Application

Business registration is effective from July 1 to June 30 of each year. On or before the first day of July of each and every business registration year after the passage of this ordinance, every person/business as defined in the ordinance, engaged in a business, in the City of Tillamook, Oregon, shall make application to the City upon a form furnished by the City, for a business registration to carry on his/her business for the year in question.

The applications shall be numbered consecutively; they shall have the year for which application for business registration is applied, printed or stamped thereon, and shall contain the following information:

1. Amount of business registration fee tendered with application
2. Signature of applicant or agent making application
3. Date of application
4. Type of business
5. Any other information the City Manager or City Recorder or common council deems said application should contain.

The same application standard shall apply for those making application during the business registration year. The City Manager, City Recorder or their designee shall be empowered to issue a business registration upon receipt of proper application and appropriate fee paid. If a question arises between the applicant for a business registration and the City, as to fee or otherwise, the same may be referred to the common council for its determination. This determination may be made by the common council at the next regularly scheduled council meeting. The determination of the council shall be final. Each business registration issued under the provisions hereof shall at all times be displayed in a conspicuous place in the business. Replacement license costs shall be established by resolution.

Section 12: Misrepresentation by Applicant

It shall be a violation of this ordinance for any person to willfully make any false or misleading statement in his/her application for the purpose of determining the amount of any business registration to be paid, or to fail or refuse to comply with any of the provisions of this ordinance. The penalty for violation of this section shall be set by resolution. The conviction of any person for violation of any of the provisions of this ordinance shall not relieve said person from paying any business registration fee or penalty for which said person shall be liable, nor shall the payment of any business registration fee be a bar to or prevent prosecution in the City Municipal Court of any complaint for the violation of any of the provisions of this ordinance.

Section 13: Use of Public Right of Way, City Property

It shall be a violation of this ordinance for any business, person conduction business, peddler, solicitor, hawker or other activity described in this ordinance as requiring a business registration, to conduct business, operate a business, solicit, peddle, hawk, or conduct any other activity described in this ordinance, on any public rights of way or city property, as defined in this ordinance, without written approval of the City of Tillamook. Penalty for violation of this ordinance shall be set by resolution.

Section 14: Regulations of Hours

No peddler, solicitor or hawker registered under this ordinance shall solicit before the hour of 9:00 a.m. or after the hour of 8:00 p.m.

Section 15: Violation

Upon conviction of a violation of this ordinance, the court shall order the defendant to pay any cost, disbursement, fee, fine, or penalty authorized by this ordinance or as amended.

Each day or distinct time period of a violation as described in this ordinance, shall be considered a separate violation, subject to a separate penalty as described in this ordinance and by resolution. Fees and fines identified in this ordinance shall be set by resolution.

Section 16: Concurrent Remedies

In addition to the penalties heretofore provided, and as separate and distinct remedies, the City of Tillamook may sue in any court of competent jurisdiction to obtain judgment and to enforce payment of any business registration fee due pursuant to the provisions of this ordinance and to seek injunctive relief against any person violating this ordinance. Attorney fees, costs, disbursements and/or prevailing party fees shall be awarded to the prevailing party, unless otherwise agreed or waived by City.

Section 17: Business Registration Fee Reduction or Waiver; Fee; Appeal

A person may apply for a reduction, or waiver, of the business registration fee by submitting a letter justifying the request and a non-refundable fee, set by resolution, to the City Manager. The City Council or City Manager may grant in writing, a reduction or waiver of the business registration fee for good cause shown, hardship or equity. City Manager may refer an application directly to the City Council. Applicant may appeal, without additional fee, City Manager's decision to City Council.

Section 18: Saving Clause

If any part, or all, of any phrase, sentence, paragraph or section of the ordinance shall be declared by a court of competent jurisdiction to be void or voidable, the remainder of the ordinance shall continue in full force and effect.

Section 19: Conflicting Ordinances

All ordinances or parts of ordinances in conflict herewith shall be and the same are hereby repealed.

Section 20: Effective Date.

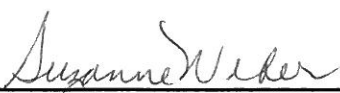
The City Council of Tillamook finds the health, safety and welfare of Tillamook citizens will best be served by this Ordinance taking immediate effect, whether by an emergency now declared or, alternatively, by its effective date retroactively applied to the date this ordinance is passed by this Council. Therefore, the City Council hereby declares this ordinance shall be in full force and effect from the time of its passage and approval.

PASSED FIRST READING by the Council this 7th day of April, 2014.

PASSED SECOND READING by the Council this 7th day of April, 2014.

ADOPTED by the Common Council this 7th day of April, 2014.

APPROVED by the Mayor this 7th day of April, 2014.



Suzanne Weber, Mayor

ATTEST:



Abigail Donowho, City Recorder