

**CITY OF WINSTON
ORDINANCE NO. 594**

**AN ORDINANCE AMENDING ORDINANCE NO. 406, AS PREVIOUSLY
AMENDED REGARDING BUSINESS LICENSES**

The City of Winston Ordains as follows:

Ordinance No. 406, as amended, shall be further amended to read as is shown in Exhibit A, attached to this ordinance and a part of this ordinance. This amended ordinance shall be effective on the thirty-first day after its approval by the City Council.

FIRST READING BEFORE THE CITY COUNCIL THIS 15TH DAY OF DECEMBER,
2003;

SECOND READING, AND APPROVAL BY THE CITY COUNCIL THIS 5TH DAY
OF JANUARY, 2004.

Rex A. Stevens, Mayor

ATTEST:

Bruce Kelly, City Administrator/Recorder

EXHIBIT "A"
ORDINANCE 594

Winston Ordinances

ORDINANCE NO. 406

**AN ORDINANCE CONCERNING BUSINESS LICENSE REGULATIONS;
REPEALING ORDINANCE NO. 54 IN ITS ENTIRETY; AND DECLARING AN
EMERGENCY.**

The City of Winston ordains as follows:

SECTION 1. Purpose. This ordinance is enacted, except s otherwise specified, to provide revenue for municipal purposes and to provide for the health, safety and welfare of the citizens of Winston through regulation of businesses, occupations and trade.

SECTION 2. Exemptions.

- (1) Nothing in this ordinance shall be construed to apply to any person transacting and carrying on business within the City which is exempt from taxation or regulation by the City by virtue of the Constitution of the United States of the State of Oregon.
- (2) No person whose income is based solely on a wage or salary shall, for the purposed of this ordinance, be deemed a person transacting or carrying on any business in the City, and it is the intention that all license taxes and fees will be borne by the employer.
- (3) Any business paying a franchise tax or gee under any City ordinance or resolutions now existing is exempt from the requirement of this ordinance.
- (4) Wholesalers making deliveries or taking orders from duly licensed retail outlets within the City are exempt from this ordinance.
- (5) Any person 16 years or younger who operates a business on a pert-time basis, which business has an annual gross income of less than \$1500 is exempt from this ordinance.
- (6) Except as provided in Section 11 of this ordinance, non-profit organizations are exempt from this ordinance.
- (7) **Garage Sales, as defined in this ordinance, are exempt from this ordinance.**

SECTION 3. Definitions. For the purpose of this ordinance, certain words, terms and phrases are defined as follows:

- (1) Applicant. Agent or owner of the named business.

- (2) Auction. The sale, or offer to sell, by public outcry or to the highest bidder.
- (3) Business. Any profession, trade, occupation, shop and every type of calling wherein a charge is made for goods, materials or services.
- (4) License. The permission granted for the carrying on of a business, profession or occupation within the City limits.
- (5) Licensee. The business as specified and named by the applicant.
- (6) Nonprofit Organization. A bona fide organization with tax exempt status.
- (7) Peddler. A person or persons, raveling from place to place selling and delivering at the same time.
- (8) Person. All public and private corporations, including domestic and foreign corporations, firms, partnerships of every kind, associations, organizations, syndicates, joint ventures, societies, any other group acting as a unit, and individuals transacting and carrying on any business within the City.
- (9) Revocation (of any business license). Withdrawal of approval to operate a business.
- (10) Solicitor. One who travels from place to place, not carrying his goods with him, but taking orders for future deliveries.
- (11) Suspension (of business license). An official order to suspend business operations pending correction or ceasing of certain conditions or practices.
- (12) Transient Merchant. One who occupies a temporary fixed location, sells and delivers from stock on hand, and does business in much the same manner a s a permanent business.
- (13) Garage Sale. Any casual sale, display of goods for the sale or offer to sell, commonly known as a “garage sale,” and including any auction, antique, rummage, tailgate or any other sale similar in nature wherein all or part of the goods consist of used personal property which is advertised by any means whereby the public at large is or may be made aware of said sale and the sale is conducted within the City limits.
- (14) **Flea Market. Any casual sale, display of goods for the sale or offer to sell, commonly known as a ‘flea market’, “farmer’s market, “craft market”, “swap meet” or any similar term, and including any auction, antique, rummage, tailgate, or any other sale similar in nature wherein all or part of the goods consist of new or used property which is advertised by any means whereby the public at large is or may be made aware of said sale and the sale is conducted within the City limits. Individual booths may operate not more than three (3) consecutive days in any calendar week and during the other four (4) days merchandise for sale, booths, tents, portable awning, and tables must be removed.**

SECTION 4. License required.

- (1) A license fee is hereby imposed on any business not licensed by other ordinances of the City, and it shall be unlawful for any person to engage in

- any such business within the City without first having obtained a license for the current year as provided under this ordinance.
- (2) 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 any failure to comply with the provision of this ordinance, or for any penalty assessed under this ordinance, to the extent, and with like effect, as if such agent or agents, were themselves the proprietors or owners of the business.
 - (3) A person engaged in business in more than one location, or in more than one business licensed under this ordinance shall make a separate application and pay a separate license fee for each business or location, except as otherwise provided in this ordinance.
 - (4) A person representing himself/herself, or exhibiting any sign or advertisement that he/she, is engaged in a business within the City of which a license fee is levied by this ordinance shall be deemed to be actually engaged in such business and shall be liable for the payment of such license fee and subject to the penalties for failure to comply with the requirements of this ordinance.
 - (5) The City may require proof of bonding or State registration. An applicant shall possess any County or State license required or shall be awaiting final approval by the County or State, if City approval is a prerequisite, before a City license will be issued.
 - (6) The City Council reserves the right to waive or reduce the fee for non-profit organizations having tax exempt status.

SECTION 5. Application.

- (1) Application for a new business license or for renewal of an existing business license shall be made to the City Recorder upon forms furnished by the City. Each application shall state:
 - a. The name of the proposed business.
 - b. A description of the trade, shop, business, profession, occupation or calling to be carried on.
 - c. The name and address of the applicant.
 - d. The address at which the business will be conducted or the address of its Winston office.
 - e. The amount of the license fee tendered with application and the basis for its calculation.
 - f. The signature of the applicant or agent making the application.
 - g. The date of the application.
 - h. Evidence of satisfaction of State registration, bonding or insurance if required, including registration number and expiration date.
 - i. The year for which application is made.
- (2) The City Recorder may require the applicant to supply any additional information necessary to determine, under Section 8, the applicant's qualifications for the license.

SECTION 6. License Fees. All business license fees shall be determined by resolution of the City Council.

SECTION 7. Transfers and Relocations, Terms of License.

- (1) **Transfer of License.** In the event of the transfer of ownership of any business, the applicable business license may be transferred by application to the City Recorder. The City Recorder may approve the transfer upon finding that the new applicant meets the requirement of this ordinance.
- (2) **Relocation of an Existing Business.** In the event a business relocates, the licensee shall reapply to the City Recorder to transfer the business license. The City Recorder may issue the license upon finding that the new location meets the requirement of this ordinance.
- (3) **License Term.** A business license issued under this ordinance shall be valid from the date of issuance until the following January 1.

SECTION 8. Approval, Denial, Revocation or Suspension of License.

- (1) **Approval of Application.**
 - (a) The City Council shall issue a decision on an application for a new business license within thirty (30) thirty days of the submission of a complete application and required fee upon a finding that the applicant has met all requirements of Federal, State, and County law, and the ordinance.
 - (b) The City Recorder shall issue a license renewal upon finding that the applicant has met all requirements of Federal, State and County law, and this ordinance.
 - (c) If an application for a new license is approved, the City Recorder shall notify the application in writing. The notice shall state any condition or limitation place on the license as a condition of maintaining the license which the City Council deems necessary to protect the public health, safety or welfare which is required by Federal, State, or County law, or this ordinance.
- (2) **Denial, Revocation or Suspension of License.** The City Council may deny, suspend or revoke a business license upon finding that:
 - (a) The licensee fails to meet the requirements of, or is doing business in violation of Federal, State, or County law or requirements of this ordinance.
 - (b) The applicant has provided false or misleading material information, or has omitted disclosure of a material fact on the application, related materials or license.
 - (c) The applicant's past or present violation of law or ordinance, presents a reasonable doubt about his/her ability to perform the licensed activity without endangering property or the public health or safety.

- (d) The information supplied for the review does not indicate that the applicant has the special knowledge or skill required to perform the licensed activity.
- (e) The licensed activity or device would endanger property or the public health or safety.

(3) Notice. The City Recorder shall provide written notice to the applicant or licensee of a denial, suspension or revocation. The notice shall state the reason for the action taken and shall inform the applicant of the right to appeal under Section 9 of this ordinance. The notice shall be given at least 15 days before the revocation becomes effective. If the violation ends within the 15 days, the City Recorder may discontinue the revocation proceedings.

(4) Reapplication. A person whose application for a business license has been denied or whose license has been revoked may, after 90 days from the date of denial or revocation, apply for a license upon payment of the application fee and submission of an application form and related documents.

(5) Disqualification. A person whose application for any business license has been denied or whose license has been revoked for a total of two times within one year or who has total of four denials or revocations, shall be disqualified from applying for a license for a period of two years from the date of the revocation or denial.

(6) Summary Suspension. Upon determining that a licensed activity or device presents an immediate danger to person or property, the City Recorder may summarily suspend the license for the activity or device. The suspension takes effect immediately upon notice of the suspension being received by the licensee, or being delivered to the licensee's business address as stated on the licensee's application for the license being suspended. Such a notice shall state the reason for the suspension and inform the licensee of the provisions for appeal under Section 9 of this ordinance. Within ten days of the summary suspension the City Council shall review the pertinent facts which resulted in the suspension and shall determine whether said facts deem it necessary to continue the suspension in order to protect the health, safety and welfare of the citizens of Winston, or to otherwise ensure that the requirements of this ordinance are complied with. The City Council may continue a suspension as long as the reason for the suspension exists or until a determination on appeal regarding the suspension is made under Section 9 of this ordinance.

SECTION 9. Appeal. In the event an applicant for a license under this ordinance is denied such license, or in the event a license is suspended or revoked, the applicant or license holder shall have the right of appeal. The written notice of appeal to the City Council shall be filed with the City Recorder within fifteen (15) days after the denial of license or license suspension or revocation. The City Council shall hear and make a determination in regards to the appeal at its next regular meeting immediately following the filing of the notice of appeal. The decision of the City Council on such appeal shall be final and conclusive.

SECTION 10. Disclaimers, Exceptions, General Requirements.

(1) Disclaimers and Exceptions. The levy or collection of a license fee upon any business shall not be construed to be a license or permit by the City to the person engaged therein in the event such business shall be unlawful, illegal or prohibited by the laws of the State of Oregon or the United States, or ordinances of the City.

Nothing herein contained shall be taken or construed to vesting any right in any license as a contract obligation on the part of the City. Business license fees, as set by Council resolution, may be increase or decrease, and other or additional taxes or fees may be levied, increased or decreased, at any time by the City Council. No person having paid the fee required, and having made application for a business license, shall be entitled to any refund.

None of the fees, bonds, or insurance requirement provided for in this ordinance or the rules adopted under this ordinance shall be required if the applicant is a municipality.

- (2) General License Requirements. In addition to any other requirement of this ordinance, each licensee shall:
- a. Conform to all Federal, State, and Local laws and regulations, the provision of this ordinance and any rules adopted hereunder.
 - b. Notify the City within ten (10) days of any change in material information contained in the application, related materials or license.
 - c. Display a business license upon request to any person with whom he/she is dealing as a part of the licensed activity or to an officer or employee of the City.

SECTION 11. Specific Requirements.

- (1) Business dealing in the purchase or trade of second-hand goods, such s, but not limited to, precious metals and jewelry, guns or electronic equipment, shall keep a record of the sales for inspection by the Chief of Police. Such a record shall include the name of the seller, the name of the buyer, the date of sale, a description of the merchandise sold, any serial numbers or distinguishing marks on the good being traded, as well as other information that would enable return of stolen goods.
- (2) Merchant Police, Security Services and Similar Businesses. Each individual shall agree to a complete background check by the Chief or Police to determine the qualifications and reliability of the individual for the proposed business. The City may require a bond and such insurance as may be deemed proper. The license shall be issued only upon the Police Chief's approval of each person involved; such approval to be based on the complete background check.
- (3) Peddlers, Solicitor. The applicant must supply the names, addresses, dates of birth and any other pertinent information regarding each individual intending to take part in the solicitation. Each individual shall agree to a complete background check by the Chief of Police to determine the qualifications and reliability of the individual. The City may require a bond and such insurance as may be deemed proper. The license shall be

issued only upon the Police Chief's approval of each person involved. Such approval to be based on the complete background check.

- (4) Non-Profit Organizations.
 - a. A non-profit organization which will conduct any type of business within the City on a continuous basis throughout the year shall make application to the City Recorder upon suitable forms, furnished by the City, for the license to carry on the business fro the current year. Upon submission of the applicant and payment of the fee, the City Recorder shall submit the application to the City Council at its next regular meeting. After once obtaining approval by the Council, subsequent annual renewals of the non-profit organization business license may be approved by the City Recorder. After once issued, the licensed business is subject to all of the provision of this ordinance.
 - b. Approval of a business license for a non-profit organization required in paragraph "a" of this subsection is subject to the following additional conditions:
 1. Business license is only for activities conducted by members.
 2. Non-profit organizations are requested to obtain any and all County, State and Federal permits for the business to be conducted.
- (5) In the event a licensed business contracts to sponsor an outside activity, i.e., rodeo, circus, carnival, etc., a regular City Business License must be obtained for that specific activity and the usual business license fee must be paid.
- (6) No person shall conduct a garage sale exceeding five (5)days duration, nor participate in more than three (3) garage sales in any one (1)calendar year, nor permit more than three (3)garage sales to be conducted on any one property under their control in any one (1)calendar year. The foregoing requirements shall not be in effect for the one day every year declared by the City Council to be "Trader Day". [Amended by Ordinance No. 498, January 18, 1994]

SECTION 12. Violations and Penalties.

- (1) Any person convicted of violating any of the provisions of this ordinance shall be punished by a fine not to exceed two hundred fifty dollars (\$250) for any one offense, each day constituting a separate offense.
- (2) Inspection and Right of Entry. Whenever they shall have cause to suspect a violation of any provisions of this ordinance, or when necessary to investigate an application for, or revocation of a license under any of the procedures prescribed in this ordinance officials responsible for enforcement or administration of this ordinance, or their duly authorized representatives, may enter on any site, or into any structure, for the purpose of investigation providing they do so in a reasonable manner. No secured building shall be entered without the consent of the owner or occupant unless under authority of a lawful warrant.

- (3) Abatement. Any business which is established, operated, moved, altered, enlarged or maintained contrary to the licensing requirements shall be, and is hereby declared to be, unlawful and a public nuisance, and may be abated as such.
- (4) Legal Proceedings by City Attorney. In addition to the enforcement provisions of this ordinance, upon request by the City Council, the City Attorney may institute any additional proceedings, including, but not limited to, seeking injunctive relief to enforce the provisions of this ordinance.
- (5) **Flea markets, farmers markets, craft markets, swap meets and similar uses. Any person convicted of violating any of the provisions of this ordinance relating to flea markets, etc., shall be punished by a fine of no less than fifty dollars (\$50) for any one offense, each day constituting a separate offense, nor any the fine for any one offense be more than two hundred fifty dollars (\$250).**

SECTION 13. Repeal. Ordinance No. 54 is repealed, as amended by Ordinance No. 144, 145, 179, 314, and those amendatory ordinances are repealed. Nothing contained herein shall be deemed to affect any obligations imposed or privileges granted thereunder, which shall remain in effect.

SECTION 14. Severability. The Council declares that should any section, paragraph, sentence or word of this ordinance be declared for any reason invalid, it is the intent of the Council that it would have passed all other portions of this ordinance, independent of the eliminations of any such portion as may be declared invalid.

SECTION 15. Emergency. Whereas, an emergency exists and it is necessary for the protection of public health, safety and welfare that this ordinance be effective immediately, and this ordinance shall be in full force and effect upon its passage by the Council and approval by the mayor.

Passed by the council and approved by the mayor September, 21, 1987.

Amended by the council and approved by the mayor January 18, 1994.