CITY OF PHONEIX
PHOENIX, OREGON

ORDINANCE NO. 947

AN ORDINANCE OF THE CITY OF PHOENIX
ADOPTING AMENDMENTS TO TITLE 5 OF THE CITY MUNICIPAL CODE.

RECITALS:

WHEREAS, the City of Phoenix ("City") has enacted a business licensing ordinance, codified in Title 5, governing the issuance of business licenses and regulations of businesses within City jurisdictional limits (Ord. No. 942 §1 (Ex. A) 3-18-2013);

WHEREAS, it is legislatively decided in the best interest to enact the following modified provisions to Title 5;

NOW, THEREFORE BE IT RESOLVED, THE CITY OF PHOENIX ORDAINS AS FOLLOWS:

5.04.010 - Purpose and scope.

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

5.04.020 - Definitions.

The following words, terms and phrases, when used in this chapter shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Business" means, except as expressly excluded herein, any activity, trade, occupation, profession, undertaking or pursuit of any nature that generates revenue or gross receipts, whether for profit or non-profit, including, without limitation, the holding, sale, lease or rent of real property premises for rent as defined herein.

"Engaged in Business" includes, but is not limited to, activities carried on by a person or entity through offices, agents, or employees as well as activities carried on by a person on his or her own behalf but does not include wages earned as an employee.

"Employee" means a person having no ownership interest in the business other than the ownership of shares in a corporate owner of the business and who is regularly employed for

twenty (20) hours a week or more by and under the supervision and control of the owner or owners of the business or their representatives in the course of the business activities.

"Expense" means the cost of goods sold, the expense of services rendered, and all other expenses or disbursements, accrued or otherwise, ordinarily incidental to the operation of the business.

"Owner" means a person having an interest in a business, and actively engaged in the operation of said business.

"Person" includes a person, co-partner, corporation or other legal entity. Singular includes plural.

"Premises for rent" means a building, portion of a building, or a group of buildings within the City containing three or more dwelling units that are rented, leased, let or made available for compensation for sleeping or living purposes. The term "premises for rent" includes, without limitation, apartments, a hotel or motel, bed and breakfast facility, rental or boarding house, and mobile home, RV or trailer park. In the case of mobile homes, RV or trailer parks, the term dwelling unit means space or stall. A dwelling unit occupied by the owner of premises for rent shall not be included in the dwelling unit count for computing the business license fee for that location.

"Profit" means the excess gross receipts over expense.

5.04.030 - Business license required.

No person, for himself or as an agent or employee of another, shall engage in any business within the City unless:

A. Such business has been duly licensed within this chapter; and

B. The license is valid at the time of transaction.

5.04.040 - Issuance.

Upon receipt of an application duly signed and executed as prescribed in Section 5.04.060, the recorder or designee shall issue a business license to any applicant desiring to transact or conduct a lawful business with the City. Licenses so issued shall be valid until June 30th next following the date of issuance of the license.

No business license shall be issued to any person to engage in a business that does not comply with any applicable federal, state or city law.

5.04.050 - Posting of license.

A. Except as provided in Section 5.04.020 of this chapter, at all times after the issuance of the license, the licensee shall cause the license to be posted in a conspicuous place upon the

business premises, available for inspection by the public and by employees and prospective employees of the business.

B. Where the licensee has no office, business premises or other established place of business within the City, the license shall be in the possession of the representative of the business present within the City at all times during which business is being transacted by an employee or representative of the City.

5.04.060 - Applications.

A. Applications for business licenses shall be submitted on forms to be provided by the City. Every application shall be signed by the owner(s) or their duly authorized agent and shall contain the following information:

1. Name of person or persons owning business;

2. Assumed business name, if any;

3. Address of business premises and business mailing address;

4. Nature of business;

5. When business is located within City limits, number of employees as of date of application, if applicable;

6. Where the business includes activities classifiable in two or more categories, the primary or predominant activity;

7. Where the business premises of an applicant are situated outside of the City limits, the license issued on the basis of the application, shall be valid only to permit the specified number of employees to transact business within the City at any one time;

8. Business telephone number;

9. Contractor's construction board number, if applicable.

10. It is the business owner's responsibility to notify City Hall of any change in ownership, change in address or any other changes pertinent to their license.

B. License fees shall be effectuated by resolution and computed on the basis of information contained in the application, and no person shall knowingly sign or submit a business license application containing false information.

C. The City may request information or examine any books, papers, records or memoranda, including state and federal income or excise tax returns, to ascertain the correctness of any license registration or tax return, or to make an estimate of any business tax.

5.04.070 - Contents of license.

Licenses shall be issued to the applicant in the name of the business to be licensed, the owner's name(s), the mailing and premises address, the date of issuance and expiration, the signature of the City recorder or designee, and other information required by the City.

5.04.080 - Home occupations.

All persons wishing to operate a business out of their homes, within the City limits of Phoenix, shall apply for a home occupation permit from the City's planning department and pay the appropriate fee for such application. A business license to operate a business from a person's home will not be issued by the recorder until the planning department has approved the home occupation permit.

5.04.090 - Two or more business premises—Two or more businesses on same premises.

The conducting of a business or businesses at two or more locations shall for the purposes hereof, be deemed to be separate businesses and each thereof shall be subject to the license fee herein provided for. If two or more differently classified but related businesses are carried on in the same premises by the same owners, one license issued in the name of the business to which the premises are primarily appropriated and based upon the total number of employees or other units on the whole premises shall be sufficient for all such activities; provided, any business activity lease under concession to or owned wholly or in part by a different person or persons on the same premises must be separately licensed. In determining whether different activities on the same premises are related to the primary use within the meaning of this section, normal and ordinary customs and usages of businesses of like nature shall be considered.

5.04.100 - Business license term and fee.

A. The business license term shall be the twelve-month period beginning on July 1st of each year and ending June 30th of the following year.

B. The license fee for any business taxed hereunder shall be established by general resolution of the City council.

C. The fee shall be in addition to and not in lieu of any other license or permit fee, charge or tax required under any other City ordinance.

5.04.110 - Delinquent penalty.

A. A late fee shall be imposed on all business licenses not renewed by August 1st of each year.

B. The late fee for any business taxed hereunder shall be established by general resolution of the City council.

C. Penalties imposed by this chapter are in addition to and not in lieu of any other remedies available to the City to enforce this chapter.

5.04.115 - License tax exemptions.

The following persons are exempt from the license requirements imposed by the Business License Law:

A. The sale of personal property acquired for household or other personal use by the seller, provided that the total length of sale is fewer than four days in any one calendar year.

B. The operation of a display space, booth or table maintained for displaying or selling merchandise at any trade show, convention, festival, fair, market, or swap meet provided that the sponsor of the event is licensed to do business.

C. Any family day care provider who regularly provides day care in the provider's home in the family living quarters, or any baby sitter who goes into a home of a child to give care during the temporary absence of the parent, legal guardian, or custodian.

D. Any unincorporated business activity carried on by individuals under the age of eighteen.

5.04.120 - Evidence and presumption of engaging in business.

In regard to any alleged violation of this chapter, the following shall constitute a presumption and prima facie evidence that a person has engaged in business within the City:

A. A public representation by way of advertisement by newspaper, radio, television, internet, telephone, or any other communication device or media, or by signs displayed for public view, that such business was being conducted, or by expressly or impliedly offering to sell goods or services in the course of such business to the public at large or any segment thereof.

B. Delivering goods or providing services to customers within the City.

C. Owning, leasing, or renting personal or real property within the City, subject to minimum unit requirements.

D. Engaging in any transaction involving the production of income from holding property or the gain from the sale of property, which is not otherwise exempted in this chapter. Property may be personal, including intangible or real in nature.

E. Engaging in any activity in pursuit of gain that is not otherwise expressly exempted in this chapter.

5.04.125 - Penalties.

A. Any person violating any provision of this chapter shall upon conviction thereof, be punished by fine of not more than five-hundred dollars.

B. Every full business day during which any business activity continues to be conducted in violation of this chapter shall be deemed a separate offense.

C. When a business fails to renew its license before August 1st, a late charge will be added.

D. No license shall be issued to any person hereunder if such person has, previous to making application therefore, conducted a business within the City while this chapter was in effect without a current, valid license issued hereunder, unless such person pays an additional amount equal to the license fee for the period during which such business was thus conducted.

E. The penalties and remedies identified in this chapter, including without limitation subsections A through D above, shall not be deemed exclusive and, at the option of the City, amounts due and payable hereunder by way of business license fees may be collected from the owner or owners of the business involved by action of law in any court of competent jurisdiction in the state.

5.04.130 – Remedies not exclusive and severability.

The remedies available under for a violation of this ordinance are not exclusive of any other remedies available under any applicable law. It is within the discretion of the City of Phoenix to seek cumulative remedies hereunder for continuing violations of this ordinance.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

PASSED AND ADOPTED by the City Council and signed by me in authentication of thereof on this 2nd day of June 2014.

Mayor

City Manager

Approved as to form:

City Attorney