

ORDINANCE NO. 4371

AN ORDINANCE OF THE CITY OF LIBERAL, KANSAS, ESTABLISHING A SYSTEM FOR ISSUANCE OF GENERAL BUSINESS REGISTRATION LICENSES, SETTING A DELINQUENT PENALTY, ESTABLISHING PENALTIES FOR FAILURE TO COMPLY, AND PROVIDING FOR SUSPENSION OR REVOCATION OF BUSINESS LICENSES

WHEREAS, pursuant to KS.A 12-137 and the home rule of authority granted to the City of Liberal ("City"), the City levies occupational taxes, also referred to as business license taxes, on persons and companies doing business in the City, unless preempted by the State; and

WHEREAS, the occupational tax is for the privilege of engaging in business occupations or providing services in the City, and the tax is not based upon gross receipts or income; and

WHEREAS, the City Commission finds that it would be beneficial and advantageous for the City of Liberal to have such regulations in place in order to assist the City in identifying the precise composition of its commercial community in order for the City to better determine how to enhance economic development within the city, incorporate land use regulations and other City regulations and ensure that all local sales taxes are being collected and remitted; and

WHEREAS, business licenses serve an important role in guiding new development by assuring businesses locate in the appropriate zoning category and buildings are designed to safely accommodate the businesses' activities:

NOW, THEREFORE, THE CITY COMMISSION OF THE CITY OF LIBERAL, KANSAS, DOES ORDAIN AS FOLLOWS:

Section 1. DEFINITIONS. The following words, terms, and phrases, when used in this ordinance, shall have the meanings ascribed in this section, except where the context clearly indicates a different meaning:

- (a) "Business" includes all activities, vocations, occupations, professions, enterprises, establishments, or pursuits located and/or otherwise doing business within the city, with the object of gain, benefit or advantage to the person engaging in the same.
- (b) "Person" includes any individual, partnership, corporation, firm, organization, association, joint stock company or syndicate who or which is engaged in any business, trade, occupation or profession or rendering or furnishing any service and subject to the provisions of this Ordinance. Any individual in the direct employ or any person licensed under the provisions of this Ordinance is not a

person, unless such individual operates as a subcontractor. But, if such individual operates or practices his skill for compensation for any person other than his licensed employer, he is a person and must pay the tax or fee and obtain a License if such be required by the terms of this Ordinance.

- (c) "Business license" means that document issued by the city licensing the transaction of the indicated business by the person whose name appears thereon for the stated period.
- (d) "Engaging in business" means commencing, conducting or continuing in any business within the city, whether or not an office or physical location for the business lies within the city. "Engaging in business" includes, but is not limited to, the following: (i) the performance of work or services by contractors, consultants, representatives, agents or other persons within the city, even though the office location of the contractor, consultant, representative, agent or other person is not within the city limits; (ii) the exercise of corporate or franchise powers, as well as the liquidation of a business when the liquidators hold themselves out to the public as conducting such business; (iii) acting as a solicitor or canvasser; and (iv) furnishing temporary employees and/or workers to other businesses.
- (e) "Place of business" or "office" includes, but is not limited to, the following: (i) maintaining, occupying, or using a permanent building or facility or fixed location as an office or location for conducting business; (ii) a location where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control; (iii) a location which includes a business sign, mailing address, and permanent phone.
- (f) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved. Persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in business, and sales made by them of the type of property which they hold themselves out as selling are not casual or isolated sales even though such sales are not made frequently.
- (g) "City" means the City of Liberal, Kansas.
- (h) "City Clerk" or "director" means the City of Liberal clerk or his/her designee.
- (i) "Year" means a calendar year, except where otherwise specified or when permission is obtained from the City Clerk to use a different fiscal year.

Section 2. BUSINESS LICENSE REQUIRED. Unless otherwise exempted from this Ordinance, it shall be unlawful for any person, to conduct, pursue carry on or operate

any calling, trade, profession or occupation in the city without first paying the license fee prescribed and procuring such a license from the City Clerk.

Section 3. SEPARATE LICENSES REQUIRED. A separate business license shall be obtained for each separate location within the city at which the business is conducted. A separate business license shall be obtained for each different and discrete business conducted within the city by any person, even if located at the same premises as another licensed business.

Section 4. CONTINUING REQUIREMENT FOR OTHER LICENSES. Any business or profession required to be licensed by any other provision of city, state, county, local or federal law shall continue to be responsible for obtaining and maintaining such licensure. Nothing in this ordinance excuses a business from obtaining all other necessary licenses, and the issuance of a business license under this ordinance shall not excuse a licensee from compliance with any other law.

Section 5. OTHER SPECIFIC LICENSES. Nothing in this ordinance shall, to repeal or be in conflict with any other provisions of this Code imposing or requiring the payment of a license fee or permit fee as a condition for carrying on or engaging in any other specific business, occupation or profession not licensed herein.

Section 6. NOT ASSIGNABLE OR TRANSFERABLE. No license granted by the City shall be assignable or transferable, nor shall such license authorize any person to do business or act under it but the person named therein, nor at more than one place. There shall be no refunds.

Section 7. BUSINESS LOCATION. No business license for a particular location shall be issued unless the personal property and real estate taxes for that location are paid in full or timely under protest.

Section 8. CHANGE IN NATURE OR LOCATION OF BUSINESS. Each business license shall authorize a particular type of business at the designated location. Any change in the nature of the business shall necessitate a new request for a business license. A change of location shall be reported in writing to the City Clerk within ten (10) days of the change and, if in compliance with zoning and business regulatory ordinances, the existing business shall be transferred to the new location.

Section 9. CERTIFICATE OF OCCUPANCY REQUIREMENT. The issuance of a business license by the City does not constitute either approval of a business or the use of any particular parcel in the city for a business purpose. All businesses shall be required to obtain a certificate of occupancy prior to the issuance of a business license to protect public health, safety and welfare of the community. By issuing a business license, the City shall not be precluded from taking enforcement action against any use that is not authorized in the zone in which it is occurring. The procurement of a business license does not vest the licensee with any rights to continue a nonconforming or unsafe use.

Section 10. HOME OCCUPATION CERTIFICATE OR SPECIAL USE PERMIT. The issuance of a business license by the City does not constitute either approval of a business or the use of any particular parcel in the city for a business purpose. All Home Occupation businesses or Special Use business shall be required to obtain a Home Occupation Certificate or Special Use Permit prior to the issuance of a business license to protect public health, safety and welfare of the community. By issuing a business license, the City shall not be precluded from taking enforcement action against any use that is not authorized in the zone in which it is occurring. The procurement of a business license does not vest the licensee with any rights to continue a nonconforming or unsafe use.

Section 11. BUSINESS LICENSE EXEMPTIONS. The following shall be exempt from the provisions of this ordinance:

- (a) Casual or isolated sales made by persons who are not engaged in the on-going business of selling the type of property involved, or the provision of isolated services made by persons, to include but not be limited to minors, who are not in the on-going business of providing said services.
- (b) No producer or grower, or his or her agents or employees, selling in the city, farm or garden products or fruits grown by him or her in the state of Kansas shall be required to pay any business license fee imposed by the City. (K.S.A. 12-1617)
- (c) Any instrumentality of the United States, State of Kansas, Seward County or any political subdivision thereof, with respect to the exercise of governmental functions.
- (d) Non-profit organizations, including but not limited to religious, civic, charitable, benevolent, non-profit, and cultural or youth organizations. The exemption of a business license by the City does not constitute approval of a non-profit organizations use of any particular parcel in the city for a non-profit organizations purpose. All non-profit organizations shall be required to obtain a certificate of occupancy to protect public health, safety and welfare of the community. By this exemption, the City shall not be precluded from taking enforcement action against any use that is not authorized in the zone in which it is occurring. The exemption of a non-profit organization does not vest the organization with any rights to continue a nonconforming or unsafe use.
- (e) All scientific or literary or educational lectures and entertainments, or concerts or musicals or other entertainments exclusively given or sponsored by residents or established organizations of the city.
- (f) The interstate portion of any business.

Section 12. REQUIREMENTS FOR BUSINESS LICENSE. Every person, firm or corporation desiring to do business in the city shall contact the City Clerk for a license to operate such business, and in the case of new licenses and as otherwise required, shall obtain a certificate of occupancy before the commencement of business and issuance of the license. Upon proof that all requirements are met, the City Clerk shall issue to the applicant a license which shall be signed by the City Clerk. It shall be the duty of the City Clerk to pay over the amount so collected on each license issued, to the City Treasurer of the City.

The City Clerk shall issue business licenses in the name of the City to all persons or businesses qualified under the provisions of this ordinance and shall:

- (a) Adopt all forms and prescribe the information required. Such information shall include but not limited to the date on the day of issuance, the name of the licensee, the kind of business licensed, the amount paid, and the time such license shall expire; and the person having such license shall be authorized to carry on the business therein named.
- (b) Submit all requests to the Planning Division and Building Division; the Police Department; and/or the Fire department as necessary for their endorsements as to compliance by applicant with all City regulations which they have duty of enforcing.
- (c) Shall determine all requirements for obtaining a business license and shall provide a list of the same to all who inquire.
- (d) The City Clerk shall keep a record in which shall be entered the name of each person license, his or her address, the date of the license, the purpose for which it is granted, the amount paid therefore, and the time the same shall expire and within 24 hours after any license has expired, the City Clerk shall notify the person of such expiration unless the same shall have been renewed.

Section 13. BUSINESS LICENSE FEE. The fees for all licenses shall be established by the City of Liberal Fee Resolution, and may be changed from time to time. Any change in the license fee resolution shall apply to a licensee at the time of initial issuance or at the new renewal, but shall not apply retroactively to a license already in effect.

Section 14. TERM OF BUSINESS LICENSE. Unless otherwise provided, licenses shall commence and endure from January 1 and expire on December 31 of the same year. All business licenses shall be effective for the calendar year of issuance. Licenses issued during a given calendar year shall be effective from the date of issue until December 31 of the same year. Unless renewed, as provided in this ordinance, each business license shall expire and be of no force or effect on January 1 of the following year, unless sooner revoked as provided in this ordinance. Licenses shall not be prorated.

Section 15. RENEWAL OF BUSINESS LICENSE. All business licenses shall be renewed on or before January 1 of the calendar year of issuance, if the business is to be continued. Request for renewal shall be made on forms prescribed by the City Clerk.

Section 16. PAYMENT OF FEES; RECEIPT. The City Clerk shall, upon payment of any license fee specified, give a receipt therefore stating the amount paid, the nature of the licenses issued, and if possible, the exact location where the business is to be carried on, and the kind of business. No license shall be issued until the fee is paid.

Section 17. DISPLAY OF BUSINESS LICENSE. It shall be unlawful for any person to engage in business at any location within the city without posting and displaying, prominently and in clear view, the valid business license authorizing such business at such location. All persons to whom licenses are issued not having a permanent place of business are required to carry their licenses with them and any licensee shall present the license for inspection when requested to do so by any citizen or officer of the City.

Section 18. INSPECTIONS – RIGHT OF ENTRY. The City Clerk or designee or authorized representative of the City of Liberal, specifically including the Building Official or Inspector, the Code Enforcement Officer, the Police Department or the Fire Department, are authorized to make such inspections of licensed premises and take such action as may be required to enforce the provisions of any business license or regulation ordinance.

Section 19. REVOCATION OF BUSINESS LICENSE. Once issued, all businesses must comply with all city, county, state and federal laws, and the existence of a City of Liberal Business license does not authorize a business to operate in violation of any other laws. A license issued under this ordinance may be revoked or suspended for any one or more of the following reasons:

- (a) Failure to comply with any federal, state, or local laws or regulations;
- (b) Failure to comply with any of the terms and conditions imposed by the City on the issuance of the business license.
- (c) Failure to operate the business or activity in accordance with any federal, state or local law or regulation.
- (d) When the license was procured by fraud or false representation of facts;
- (e) When the license was issued through mistake or inadvertence;
- (f) When the request contains false or misleading statements, evasions or suppression of material facts.

Section 20. EFFECT OF BUSINESS REVOCATION OR SUSPENSION. If any registrant has a business license revoked for any reason, a new business license shall not be granted to the applicant and/or any entity in which the applicant has an ownership interest until it is established that the basis for revocation or suspension no longer exists, and all business activity shall immediately cease from the date of such revocation or suspension.

Section 21. PENALTIES AND LEGAL REMEDIES.

(a) Criminal Penalties. If any business operates without a business license in violation of this Ordinance, said business will be given a 30 day "grace period" to cure said violation. Failure to cure said violation within 30 days of the date in which the business license should have been obtained and/or renewed will subject the business to criminal penalties under this section. For each thirty (30) day period in which a business operates without a business license, a separate violation occurs. Violation of this Section is a Class C violation. Upon a first conviction, the business shall be fined \$50.00. Upon a second conviction, the business shall be fined not less than \$100 nor more than \$500. Upon a third or subsequent conviction, a person shall be fined not less than \$250 nor more than \$500.

(b) Civil Penalties. Any person who fails to comply with the provision of this ordinance is, in addition to any criminal penalties, subject to a maximum civil penalty consistent with the criminal penalties set forth above. The payment of a fine or the serving of a jail sentence for failure to pay the required tax or fee and secure a License shall not constitute payment of the tax or fee nor excuse the person from making payment, and the City may proceed by civil action to collect the tax or fee and interest and penalties accrued thereon.

(c) Other Legal Remedies. Nothing in this ordinance limits the right of the City to pursue other lawful, criminal, civil or equitable remedies to abate, discontinue, correct or discourage unlawful acts under or in violation of this ordinance.

Section 23. MAILING OF NOTICES. Any notices required by this ordinance to be mailed to any registrant or applicant shall be sent by ordinary mail, addressed to the address of the registrant or applicant, as shown by records of the City Clerk; or if no such address is shown, to such address the City Clerk is able to ascertain by reasonable effort. Failure of the applicant to receive such mail notice shall not release the applicant from any fees or penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this ordinance.

Section 24. SEVERABILITY. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 25. DUE PROCESS. Should the City take any action which is deemed detrimental to the holder of the business license, said holder of the business license may appeal the City's decision to the City Commission by writing a letter stating the basis of his appeal. Any appeal must be taken within thirty (30) days of the challenged action. An appeal is deemed perfected by delivering a copy of the appeal letter to the City Clerk. Any such appeal will be heard at the next available regular City Commission meeting.

Section 24. PUBLICATION AND EFFECTIVE DATE. A summary of this ordinance consisting of its title shall be published in the official newspaper of the City. This ordinance shall be effective on January 1, 2010.

PASSED AND APPROVED by the Governing Body of the City of Liberal, Kansas, and signed by the Mayor this 10th day of March, 2009.

Joe Denoyer, Mayor

ATTEST:

Debra S. Giskie, CMC, City Clerk