



## ORDINANCE NO. 438

### AN ORDINANCE ADDING SECTION 112 TO THE DRAIN BUSINESS MUNICIPAL CODE ESTABLISHING A BUSINESS LICENSE PROGRAM AND REPEALING ORDINANCE 436, IN IT'S ENTIRETY.

**WHEREAS** this ordinance is enacted, except as otherwise specified, to:

1. Ensure that each business is conducted in compliance with Drain's Municipal Code; and
2. Secure revenue to assist in defraying the City's cost of administering and enforcing its laws and ordinances, community beautification projects, promoting local businesses, and the City's provision of certain municipal services; and
3. Obtain valuable information for emergency responders, planning and building personnel, and economic development.

**NOW, THEREFORE, THE CITY OF DRAIN ORDAINS AS FOLLOWS:**

#### Chapter 112 BUSINESS LICENSE

**Sections:**

<b>112.01</b>	<b>Applicability.</b>
<b>112.02</b>	<b>Definitions.</b>
<b>112.03</b>	<b>License Required.</b>
<b>112.04</b>	<b>Exemptions.</b>
<b>112.05</b>	<b>Business License Application Requirements.</b>
<b>112.06</b>	<b>Posting and Display of License.</b>
<b>112.07</b>	<b>Fees Imposed.</b>
<b>112.08</b>	<b>Transfers and Relocations, Terms of License.</b>
<b>112.09</b>	<b>Approval, Renewal, Denial, Revocation and Suspension.</b>
<b>112.10</b>	<b>Appeal.</b>
<b>112.11</b>	<b>Violations and Penalties.</b>

**112.01 - Applicability.** Nothing in this ordinance shall be construed to apply to any person transacting and carrying on any business within the City of Drain which is exempt from a business license or regulation by the city by virtue of the constitutions of the United States or the State of Oregon, or applicable federal or state law.

**112.02 - Definitions.** As used in this ordinance:

A. "Applicant" means the person applying for a license to conduct a particular business within the City.

B. "Business" means any activity, trade, profession, occupation, or pursuit operated, engaged, conducted, or carried on for profit, gain, livelihood, or any other purpose, regardless of the form under which the activity, trade, profession, occupation, or pursuit is operated, engaged, conducted or carried on within the City.

C. "Day" means a calendar day unless otherwise noted.

E. "License" means the permission granted by the City under this ordinance to operate, engage, conduct or carry on a business within the City.

F. "Licensee" means an applicant who has received a business license.

G. "Non-profit organization" means any business or organization which is exempt from taxation under the United States Internal Revenue Code and produces a determination letter of proof thereof.

H. "Person" means an individual, partnership, corporation, limited company, joint venture, cooperative or any other entity in law or in fact.

**112.03 - License Required.**

A. Except as exempt under Section 4 below, it shall be unlawful for any person to conduct business within the City without first having obtained a license for the current year as provided under this ordinance.

B. 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. Only one license under this ordinance is required for mobile businesses such as housekeeping services, food trucks, and other related businesses which travel throughout the city.

C. If more than one business is conducted on the same premises, each business must obtain a separate license.

D. A person representing him or herself, or exhibiting any sign or advertisement that he or 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.

E. 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.

**112.04 - Exemptions.** The following are exempt from the licensing requirement:

A. A service business operated by a person under the age of 18, such as a lawn mowing business, a newspaper delivery business, a lemonade stands, and the like.

B. Individuals who work only on the premises of, and as part of, a licensed business that includes the activity of the individual. Examples include barbers, beauticians, medical care providers, attorneys,

accountants, relators and others who perform services as part of the overall licensed business. This exemption does not apply if the overall business operation has not obtained a business license.

C. Garage sales, yard sales and other similar activity conducted, carried on or operated by an individual; provided, however, such exemption will not apply if either of the following conditions are met:

1. The individual conducts, carries on, or operates more than three such sales within any calendar year; or

2. Any one such sale has a duration of more than 96 consecutive hours (4 days).

D. An organizer or participant in a special event, but only with respect to that particular special event.

E. Activities that qualify as hobbies or passive holding of property for investment purposes under the United States Internal Revenue Code.

F. No business license shall be required for the operation of a "residential home" or a "residential facility," as those terms are defined in Oregon Revised Statutes 197.660.

The following must complete the business license application but are exempt from payment of the license fee:

A. Any business exempt from paying local business license fees or taxed by Federal or State constitution or law.

B. Any business exempt from paying property tax.

C. Any entity registered with the Oregon Secretary of State as a not-for-profit corporation.

**112.05 - Business License Application Requirements.** Each person desiring to engage in doing business must apply for a license to operate, engage, conduct or carry on the business on such forms and in such manner as the City Administrator may prescribe. The application must be accompanied by the license fee. The application must be filed with the City and, in addition to any other information reasonably required by the City Administrator, must contain the following information:

A. The date of the application;

B. The name and physical address of the business, the address where the business will be located or have its office within the City, and the address of the principal office of such business;

C. A brief description of the nature of the business, including its primary or predominant business activity;

D. The date that business operations will commence;

E. The name and address of the applicant and, if the applicant is an entity, the name and address of the authorized agent submitting an application on behalf of the applicant;

F. The average number of persons regularly employed;

G. The person who may be contacted in case of an emergency and the phone number at which that person may be reached;

H. Whether any local, state or federal licenses, certificates, registrations or permits are required for the business and the identification of such licenses, certificates, registrations or permits;

I. The license fee tendered with the application;

J. A verification by signature of the applicant, or authorized agent submitting the application on behalf of the applicant of the following:

1. The information stated in the application is true, accurate and complete;

2. The business is in compliance with all applicable federal, state and local laws, regulations and ordinances;

3. The applicant or authorized agent has read, understands and agrees to abide by this ordinance; and

4. If the applicant is an entity, the authorized agent has the requisite power and authority to sign and submit the application on behalf of the applicant;

K. A notice that the application is public record and that the City will be exempt from disclosure only of information of a sensitive and confidential nature to the extent required by the Oregon Public Records Law (ORS 192.311-192.431) and other applicable laws; and

L. The name of the business's insurance company, and phone number.

M. Any other information necessary to enable the City Administrator or designee to review the application to determine whether the application should be approved.

**112.06 - Posting and Display of License.** Licensee shall post the license in a conspicuous place upon the business premises, available for inspection by the public and any employees and prospective employees of the business. When the licensee has no office, business premises or other established place of business within the City, the license must be in the possession of the agent or representative of the business who is present in the City at all times during which business is being transaction by the agent or representative in the City. If a licensed business is based in a motor vehicle, a photocopy of the license must be carried in the motor vehicle.

**112.07 - Fees Imposed.**

A. An annual license fee, set by City Council, is imposed on the act of doing business within the City.

B. Fees are due at the time of the initial application. Renewal fees, which are set by City Council, are due annually by June 1 of the respective year.

C. A person doing business in the City, for whom payment of a business license fee is delinquent more than 30 days, shall pay a delinquency fee in the additional sum of \$100.00 for each calendar month or fraction thereof for which payment remains delinquent. After three (3) full delinquent months, the business license will be revoked.

D. Nothing contained in this ordinance shall vest any right in a license as a contract obligation on the part of the city as the amount of the fee. The fees provided for in this ordinance may be increased or decreased, via resolution by Council, and additional fees may be imposed.

E. A person operating more than one business shall pay the license fee prescribed for each of the businesses, except as specifically provided by ordinance.

F. The business license fees imposed by the terms of this chapter 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 an activity otherwise prohibited by law or ordinance or a waiver of any regulatory licensing requirement imposed by any other ordinance of the city.

**112.08 - Transfers and Relocations, Terms of License.**

A. Transfer of License. In the event of the transfer of ownership of a business, the applicable business license may be transferred by application to the City Administrator. The City Administrator may approve the transfer upon finding that the new applicant meets the requirements of this ordinance.

B. Relocation of an Existing Business. In the event a business is relocated, the licensee shall reapply to the City Administrator to transfer the business license. The City Administrator may issue the license upon finding that the new location meets the requirements of this ordinance and other applicable federal, state, and local regulations.

C. License Term. A business license issued under this ordinance shall be valid from the date of issuance until the following June 30<sup>th</sup>.

**112.09 - Approval, Renewal, Denial, Revocation and Suspension.**

A. Approval of Application.

1. The City Administrator or designee shall issue a decision on an application for a new business license within 10 business days of the submission of a complete application and required fee.

2. The City Administrator or designee shall issue a license renewal within 10 business days of receiving the renewal fee.

3. If an application for a new license is approved, the City Administrator or designee shall notify the applicant by phone or in writing. The notice shall state any condition or limitation placed on the license as a condition of maintaining the license which the City Administrator or designee deems necessary to protect the public health, safety or welfare determined by local requirements.

B. Renewal is required with renewal payments due every June 1<sup>st</sup>. Renewal fees are the same as the annual fee's listed in Section 7.

C. Denial, Suspension, Revocation of Application. The City Council, City Administrator or designee may deny, suspend or revoke a business license upon finding that:

1. The licensee is in violation, as determined by the applicable governing jurisdiction, of applicable local requirements and such violation reasonably relates or has a nexus to the licensee's business activities.

2. The applicant has provided false or misleading material information, or has omitted disclosure of a material fact on the applications, related materials, or license;

3. The applicant's past or present violation of law, through credible evidence establishing probably cause, present reasonable doubt about his or her ability to perform the licensed activity without endangering property or the public health or safety;

4. The licensed activity would endanger property or the public health or safety; or

5. The business or their clientele create any of the following violations;

a. During any continuous sixty (60) day period, any combination of three or more nuisance activities as defined in the City's Code of Ordinance, Section 71.03, 71.08, 72.04(C)(3)(4), 93.02, 130, or 131 occurs that is related to or arising out of the business.

b. One or more nuisance activity as defined in the City Code of Ordinance, Section 134.02 or ORS Chapter 475.840 section (1) – (4), ORS 167.007, 163.005(2) or 163.095-163.149, 163.160(1)(b), 163.165(1)(c), 163.175(b)-(c), 163.185(a), 163.185(d), 163.165(b), 163.175(a), 163.195, 163.375-163.427 or 166.220 occurs that are related to or arising out of the business.

D. Notice. The City Administrator or designee shall provide written notice to the applicant or licensee of the denial, suspension or revocation. The notice shall state the reason for the action taken and shall inform the application or licensee of the right to appeal under Section 10 of this ordinance. The notice shall be given at least 15 days before the suspension or revocation becomes effective. If the violation ends within the 15 days, the City Administrator or designee may discontinue the suspension or revocation proceedings.

E. Reapplication. A person whose application for a business license that has been denied, suspended or revoked, may, after 60 days from the date of the denial, suspension or revocation, apply for a license or reinstatement upon payment of the application fee and submission of an application form and related documents.

F. Disqualification. A person whose application for any business license that has been denied or whose license has been revoked for a total of two times within one twelve-month period, or who has a total of four denials, suspensions or revocations, shall be disqualified from applying for a license or reinstatement for a period of two years from the date of the denial, suspension or revocation.

G. Summary Suspension. Upon determining that a licensed activity presents an immediate danger to person or property, the City Administrator may summarily suspend the license for the activity. 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 10 of this ordinance. Within 30 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 the city, 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 10 of this ordinance.

**112.10 - Appeal.** In the event an application for a license under this ordinance is denied such license, or in the event a license is suspended or revoked, the applicant or licensee shall have the right to appeal.

A. The written notice of appeal to the City Council shall be filed with the City Administrator within 15 days after the license denial, suspension or revocation.

B. The City Council shall hear and make a determination in regard to the appeal at its next regular meeting immediately following the filing of the notice of appeal.

C. The decision of the City Council on the appeal shall be the City's final decision.

**112.11 - Violations and Penalties.**

A. Any person convicted of violating any of the provisions of this ordinance shall be punished by a fine not to exceed \$200.00 for any one offense, each day constituting a separate offense.

B. 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 to, or revocation of a license under any of the procedures prescribed in this ordinance, officials for the 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. If an owner or occupant denies access for an inspection, the city will seek a warrant. No secured building shall be entered without the consent of the owner or occupant unless under authority of a lawful warrant.

C. 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.

D. Legal Proceedings by City. In addition to the enforcement provisions of this ordinance, the City may institute additional proceedings, including, but not limited to, seeking injunctive relief to enforce the provisions of this ordinance.

**Ordinance No. 436 is repealed.**

A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this ordinance shall not affect the validity of the remaining parts to this ordinance.

This ordinance is effective on March 15, 2023.



Mayor Erin, Sparhawk



City Administrator, Jeni Stevens