

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY, OREGON

Ordinance No. 103

An ordinance relating to the imposition of business licenses for revenue; amending Ordinance No. 84, as amended by Ordinance No. 96; and declaring an emergency.

Multnomah County ordains as follows:

Section 1. Scope.

The provisions of Sections 2 through 18 of this ordinance amend the sections of Ordinance No. 84 respectively referred to and shall be incorporated in and be a part of the Business License Ordinance of Multnomah County.

Section 2. Section 2 is amended to read:

"Section 2. Definitions.

A. For the purpose of this ordinance, words in the present tense include the future, the singular number includes the plural and the plural number includes the singular; the word 'shall' is mandatory and not directory, the masculine gender includes the feminine, and the term 'this ordinance' shall be deemed to include the text of this ordinance, all amendments hereafter made and all rules adopted pursuant hereto. As used in this Section unless the context requires otherwise, the following terms are defined as follows:

1. Board: The Board of County Commissioners of Multnomah County.
2. a. City: The City of Portland, Oregon.
b. County: Multnomah County, Oregon.
3. Director: Director of the Office of County Management of the County, or any person authorized to act on his behalf.
4. Division: The Business Licenses Division of the Bureau of Financial Affairs of the City of Portland.
5. Do business; business:
 - a. To do business means to engage in any activity or activities in pursuit of gain, including but not limited to any transaction involving the sale or rental of property, the manufacture of goods, or the sale or rendering of services, other than as an employee, whether such business is conducted as an owner or by means of an officer, agent, manager, employee, servant or lessee or any of them.
 - b. Business means all such activities, whether related or unrelated, of a licensee.
 - c. Services performed by an individual for remuneration, whether or not paid directly by the employer, are deemed to be employment hereunder unless:

(1) Such individual is a licensee or is expressly exempt from license requirements under Section 6.B; or

(2) Such individual customarily is engaged in an independently established business of the same nature as that involved in the contract of service.

6. License year: The term of a license issued under this ordinance.

7. Licensee: A person licensed to do business within the County under this ordinance.

8. Person: A natural person, partnership, joint venture, solicitor, association, club, trust, estate, corporation, or any other entity capable of doing business, but not cities, municipal or quasi-municipal corporations."

Section 3. Section 3.A. is amended to read:

"A. Purpose. The Board has determined that it is necessary to raise additional revenues to provide those county services required for the health, safety and welfare of the people of Multnomah County; that the purpose for the imposition of taxes under this ordinance is to raise funds for the payment of those services within Multnomah County and, in accordance with this determination and purpose, all proceeds collected pursuant to this ordinance shall be general fund revenue."

Section 4. Section 3.C. is amended to read:

"C. Conformity to Other Tax Laws.

1. This ordinance shall be construed when practicable in conformity with the laws and regulations of the State of Oregon imposing taxes on or measured by net income as the same may be in effect from time to time. Should a question arise hereunder which has been determined under such state laws or regulations, such determination shall apply hereunder even though this ordinance omits all express coverage of the subject matter in question, provided the state determination is not in conflict with any provision hereof and is not otherwise clearly inapplicable.

2. This ordinance shall be construed, administered and applied in conformity with the Business License Law of the City, unless a contrary intention shall appear in express words, by necessary implication or from the context; and any rules and regulations adopted by the City under its Business License Law shall be deemed to apply under this ordinance unless repealed or amended by the Board pursuant to Section 4.A. of this ordinance."

Section 5. Section 4.C. is amended to read:

"C. Representation by Former Officer or Employee of

City or County. No former officer or employee of the City or County shall represent any applicant or licensee in any claim or controversy which was pending during his service with the City or County, nor shall he in any manner or by any means aid in the prosecution of any such claim within two years next after he has ceased to be such officer or employee."

Section 6. Section 5.A. is amended to read:

"A. Any person aggrieved by any determination of the Director under this ordinance may appeal such determination to the Business Licenses Appeals Board, established by ordinance of the City, if the City and County then have an existing agreement for the administration of this ordinance, by filing a notice of appeal with the Director within thirty (30) days of the date final notice of such determination was mailed or otherwise delivered to the appellant. Such notice shall state the name and address of the appellant and the nature of the determination being appealed."

Section 7. Section 5.D. is amended to read:

"D. Any person aggrieved by any determination of the Business Licenses Appeals Board may appeal to the Board by filing a notice of appeal with the Director within thirty (30) days of the mailing of notice of such determination. Such notice shall state the name and address of the appellant and the date of

the determination being appealed. The Board shall proceed to hear and determine the appeal in accordance with Section 10. A. Ordinance No. 69, provided that for such an appeal the definition of 'Director' under this ordinance shall apply and the Health Officer shall not participate."

Section 8. Section 6.B. is amended by adding thereto the following:

"6. Persons whose only business consists of the tilling of the soil, the raising of crops or animal husbandry, including the production of milk for sale to processors; provided that a person whose business includes the processing of milk or milk products for retail or wholesale distribution shall not be entitled to this exemption."

Section 9. Section 6.E. is amended to read:

"E. Contents of License. Each license issued hereunder shall state upon its face the following:

1. The name of the licensee.
2. The address of the principal office of the licensed business, or if there is no such principal office, the address to which correspondence to the licensee shall be mailed.
3. The date of expiration of the license.
4. Such other information as the Director shall determine."

Section 10. Section 7.A. is amended to read:

"A. Fee; New Applications. Each application for a license other than a renewal application shall be accompanied by a reasonable estimate of the income of the business to be licensed for the first license year and by an estimated fee of 1.5 percent of such estimated income, provided that each such application shall be accompanied by a minimum fee of twenty-five dollars (\$25.00); provided, however, that persons doing business entirely within any city in the County which imposes fees in accordance with subsection C. of this Section are not required to pay a minimum fee; and provided, further, that persons doing business entirely within a city in the County which imposes fees in accordance with subsection C. of this Section may, in lieu of an application, submit such evidence as may be required by the Director that no fee is due the County. The Director shall refuse to accept any application accompanied by a minimum fee if he believes that the applicant has a basis for a reasonable estimate of income which would require payment of more than the minimum fee and has wilfully refused to submit the same.

1. Upon renewal of a license with respect to which an estimated fee has been paid, or within thirty (30) days of the expiration of such license if it is not renewed, the licensee shall file

an amended application showing the licensee fee computed on the basis of the actual income of the licensed business for the first license year. If the license fee so determine shall exceed the estimated fee previously paid, the amended application shall be accompanied by such additional fee plus interest thereon from the date on which the licensee commenced doing business to the date of payment at the rate specified in Section 11.A.2. If the estimated fee shall have exceeded the fee shown on the amended application, the overpayment shall be credited without interest against the license fee due from the licensee for the next license year, and any additional overpayment shall be promptly refunded to the licensee; provided, however, that the minimum fee required by this subsection shall not be credited or refunded."

Section 11. Section 7.B. is amended to read:

"B. Fee; Renewal Application.

1. Each application for renewal of a license shall be accompanied by a fee of 1.5 percent of the income of the licensed business for the last license year prior to that with respect to which the application is made, provided that each such application shall be accompanied by a minimum fee of twenty-five dollars (\$25.00)

if any is required in accordance with subsection A. of this Section.

2. If the renewal application is for a business that has been in operation for a period of less than one (1) year, the application shall be accompanied by an estimated fee of 1.5 percent of the income of the licensed business for the last license year multiplied by a fraction, the numerator of which shall be twelve (12) and the denominator of which shall be the number of months in the license year in which the business was conducted. This estimated fee shall be subject to adjustment pursuant to subsection A.1. of this Section."

Section 12. Section 7.C. is amended to read:

"C. Deductions From Fees. Applicants may deduct from the fee payable to the County under this ordinance, any fee paid or payable to any city in the County for the same license period, if such fee is lawfully required by and attributed to such city for revenue and is computed on the basis of sales, use, income, gross receipts, payrolls or similar method, provided that any such deductions shall not exceed the fee which would have been paid such city at the rate fixed by this ordinance. Such deductions must be accompanied by a certified copy of the documents filed with the appropriate cities showing the manner of computing the fee paid or payable to

the appropriate cities and such other information as may be required by the Director to verify the claimed deduction."

Section 13. Section 7.D. is amended to read:

"D. Income. Except as hereinafter provided, 'income' as used herein means the net income of the licensee arising from the licensed business as required to be reported to the State of Oregon for income or excise tax purposes and before any allocation or apportionment for operation out of the state, or deduction for a net operating loss carry-over or carry-back. If one or more licensees are required to report their net income to the State of Oregon for income or excise tax purposes in a single unitary return then a single license shall be issued to the entity filing such unitary return and 'income' means the net income in such unitary return before any allocation or apportionment for operation out of the state.

1. In determining income hereunder no deduction shall be allowed for taxes based on or measured by net income.
2. In determining income hereunder for sole proprietorships, no deductions shall be allowed for any compensation for services rendered or interest paid to owners; provided, however, that seventy-five percent of income determined without such deductions shall be

allowed as an additional deduction.

3. In determining income hereunder for corporations, other than professional corporations or Subchapter S corporations, no deductions shall be allowed for any compensation for services rendered or interest paid to controlling shareholders in excess of seventy-five percent of the corporation's income determined without deduction of such compensation or interest. The term 'controlling shareholder' as used in this paragraph means any person who, together with his spouse, parents and children, is directly or indirectly the beneficial owner of more than five percent of any class of outstanding voting securities of the licensee.
4. Licensees shall not include in income hereunder income arising from the following transactions:
 - a. Transactions which the County is prohibited from licensing under the Constitution or laws of the United States, the Constitution or laws of the State of Oregon, or the charter of the County.
 - b. Other transactions described in Section 6 which are unrelated to a business on account of which the licensee is subject to the license requirements imposed by this ordinance."

Section 14. Section 7.E. is amended to read:

"E. Apportionment of Income.

1. Subject to the provisions of the Multistate Tax Compact, any licensee having income from doing business both within and without the County shall in computing the license fee hereunder determine the income apportioned to the County by multiplying the total net income from the applicant's business by a fraction, the numerator of which is the total sales of the applicant in the County during the license period, and the denominator of which is the total sales of the applicant everywhere during the license period. Sales of tangible personal property are in the County if the property is delivered or shipped to a purchaser within the County regardless of the f.o.b. point or other conditions of the sale. Sales other than sales of tangible personal property are in the County if the income producing activity is performed in the County or, the income producing activity is performed both in and outside the County and a greater portion of the income producing activity is performed in the County than is performed outside the County based on costs of performance.
2. The apportionment provided in subparagraph 1. of this subsection shall be made without regard to the deductions allowed under subsection C.

of this Section."

Section 15. Section 7.H. is amended to read:

"H. Fee; Completed Contract Method. A licensee using the completed-contract method of reporting income or gross sales shall, within four months of the end of a license year during which such licensee ceases to do business in the County, file an amended application for such licensee's last license year including in income or gross sales on the basis of which the fee is determined all income or gross sales apportioned to the County arising from contracts completed during such last license year."

Section 16. Section 9 is amended to read:

"Section 9. Separability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance."

Section 17. Section 11.D. is amended to read:

"D. Notwithstanding subsection A. of this Section, the Director is authorized to promulgate such formal or informal directives as he deems necessary and equitable to facilitate compliance with the requirements of this ordinance during the first eighteen (18) months after its original effective date,

including waiver of interest and penalties imposed
by subsection A. of this Section in whole or in
part."

Section 18. Section 12 is amended to read:

"Section 12. Review.

Review of any action of the Board taken pursuant to this ordinance, or the rules and regulations adopted pursuant thereto, shall be taken solely and exclusively by Writ of Review in the manner set forth in ORS 34.010 through 34.100."

Section 19. Section 9 of Ordinance No. 84, as amended by this ordinance, shall apply to the provisions of this ordinance.

Section 20. Adoption.

This ordinance being necessary to make possible the administration of Ordinance No. 84 and for the collection of the revenues provided thereby, an emergency is declared and this ordinance shall take effect immediately upon its adoption.

ADOPTED this 19th day of June, 1975, being the date of its first reading before the Board of County Commissioners of Multnomah County, Oregon.

BOARD OF COUNTY COMMISSIONERS

By Donald S. Clark
Chairman