ORDINANCE NO. 243

CITY OF DEPOE BAY

AN ORDINANCE PROVIDING FOR THE LICENSING OF BUSINESSES, PROFESSIONS, TRADES AND OCCUPATIONS FOR REVENUE PURPOSES; PROVIDING A PENALTY FOR VIOLATION THEREOF; AND REPEALING ORDINANCE NO.'S 2, 143 AND 191; AND DECLARING AN EMERGENCY

The City of Depoe Bay ordains as follows:

Section 1. Purpose.

It is the purpose of this ordinance, except as otherwise specified, to provide revenue for municipal purposes and to provide for the health safety and welfare of the citizens of the City of Depoe Bay through the licensing of businesses as defined below.

Section 2. Definitions.

For purposes of this Ordinance and the Resolution establishing business license fees, the following definitions shall apply:

<u>Business:</u> Any activity or solicitation for consideration, profession, trade, occupation, enterprise or pursuit of every kind conducted in the city of Depoe Bay except as exempt pursuant to Section 10.

<u>Consideration</u>: Compensation, money, rent, or other bargained for consideration, direct or indirect, given in return for service, goods, or occupancy, possession or use of real property.

Flea Market: A business in which the operator/sponsor is responsible for the permanent business location and collectively advertises that a number of artisan, antique, clothing and special interest vendors are located in a common area, selling from booths of other defined limited space within the business location, typically under a single structure, and where the identity and mix of vendors change on a frequent basis, and the vendors do not normally individually advertise their product except as part of the "flea market".

Home Occupation: The regular or continuing use of a dwelling for business purposes, which business use is customarily incidental and subordinate to the residential use of the dwelling, subject to the standards prescribed in the Depos bay Zoning Ordinance No. 24 or any successor zoning ordinances.

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<u>Person:</u> Any public or private corporation, including domestic and foreign corporations, limited liability companies, firms, partnerships of every kind, associations, organizations, syndicates, joint ventures, societies, and individuals. Any person or entity required under state or federal law to obtain a social security or taxpayer identification number shall be a "person" under this definition.

Rental Property: Real property, whether residential or commercial use, offered for occupancy on a nightly, monthly or other term basis, to persons for direct or indirect consideration.

<u>Transparent Occupation:</u> The regular or continuing use of a dwelling for business purposes, which business use is customarily incidental and subordinate to the residential use of the dwelling, subject to the standards prescribed in the Depoe Bay Zoning Ordinance No. 24 or any successor zoning ordinances.

Section 3. License Fees.

- A. All business license and non-refundable application fees shall be determined by resolution of the city council and may be amended in like manner from time to time by the council. The annual fees shall be assessed on a calendar year basis, commencing January 1st and ending December 31st, or a portion thereof.
- B. All licenses shall expire on December 31st of each year following the date of issuance. Persons first required to obtain a license after July 1st and prior to December 31st shall pay a license fee equal to one half the annual fee. No rebate will be made should the licensee not remain in business for the entire period.
- C. All license fees for continuing businesses are due January 1st and shall be delinquent after January 31st. Delinquent license fees shall have a 20% delinquency penalty added. Administrative costs, established by resolution of the city council and which may be amended in like manner from time to time by the council, will be charged for each additional billing.

Section 4. License Required.

Any person engaging in any business within the limits of the city on four or more separate occasions in a calendar year, or on one single occasion for a period exceeding one week is subject to the license requirement unless exempted by this ordinance or expressly exempted by any other state or federal law. It shall be unlawful for any person to carry on or transact business pursuant to the requirements of this ordinance without first securing a license from the City Recorder and paying the fee prescribed by Council resolution.

Section 5. Application for Business License.

- A. Any person conducting any business required to be licensed shall, prior to engaging in that business, make application for a business license. Such application shall be made on forms provided by the City Recorder. There shall be collected at the time of application a nonrefundable application fee and the fee for the business license.
- B. The application shall include, but is not limited to, the following information: Name of the business, description of the type of business, location, owner's name, mailing address where mail for the business is received, date of application, signature of the applicant, and other information reasonably needed to issue a business license.
- C. For businesses renewing unexpired licenses, on or before January 1st of each year, persons doing business in the city shall fill out a license application form and pay the annual license fee for a license to engage in business during the next year. No application fee shall be imposed for renewing unexpired license applications.

Section 6. Certification of Business License.

- A. The City Recorder may withhold the issuance of a business license upon a determination that the applicant's proposed business or its proposed location would not be in compliance with city ordinances; provided however that the granting of the business license shall not be construed as a determination that the proposed business or its location would be in compliance with city ordinances.
- B. The license certificate is evidence of the applicant's privilege to conduct business in the city. The form of the license certificate shall be prescribed by the City Council and shall specify the name of the business, name of the licensee, type of business licensed, location of the business, the amount of the fee paid and shall bear the printed signature of the mayor and be countersigned by the recorder.
- C. When the recorder believes the application fails to meet the requirements of this or any other applicable city ordinance, written notice shall be mailed by regular mail to the address given by the applicant in the application that the license application has been denied and the reason(s) therefor. The applicant may appeal to the City Council by filing a written appeal with the recorder not later than 10 days after the date of mailing the notice of denial.

D. The appeal shall recite the facts upon which the appeal is based and shall be addressed to the City Council. Within 30 days after the date the appeal is filed with the recorder, the council, shall hear the evidence and arguments of the applicant and City Recorder. If the council finds for the applicant, it shall, by order, direct the recorder to issue the license certificate within 30 days of the date of the order. If the council finds for the recorder, a license certificate shall not be issued.

Section 7. Posting of License Certificate.

- A. At all times after the issuance of the business license certificate, the licensee shall cause the certificate to be posted in a conspicuous place upon the business premises, available for inspection by the public and by employees of the business.
- B. Where the licensee has no office, business premises, or other established place of business within the city, the license certificate or a copy thereof shall be in the possession of the representative of the business present within the city at all times during which business is being transacted within the city or shall have a copy of the certificate on file with the City Recorder.

Section 8. Transfers; Re-locations.

- A. In the event of transfer of ownership of any licensed business, the applicable business license may be transferred by application to the city recorder. The City Recorder may approve or deny the transfer for the reasons and by the procedure set forth in Section 6. The transfer shall be for the balance of the year for which the license was issued.
- B. In the event of a business relocation, the licensee shall apply to the city recorder to transfer the business location and pay the required application fee. The City Recorder may approve or deny the transfer for the reasons and by the procedure set forth in Section 6.

Section 9. Two or More Business Premises; Two or More Businesses on Same Premises.

A. The conducting of a business or businesses at two or more locations shall, for the purposes of this ordinance, be deemed to be separate businesses, and each business shall be subject to the license fees as set by council resolution and herein provided for.

B. 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 unless otherwise exempted by this ordinance.

Section 10. Exemptions.

The following are exempt from the requirements of this ordinance:

A. Any person transacting and carrying on business within the city which is exempt from taxation by the city by virtue of the Constitution of the United States, State of Oregon, or by federal or state law including but not limited to:

Tax exempt organizations which have tax exempt status per IRC 501(C)(3) shall be exempt from the fees required by this ordinance. However, the business license application shall be accompanied by proof of federal recognition of tax exempt status per IRC 501(C)(3).

- B. Persons engaging in commercial fishing unless they are selling (wholesale or retail) fish products within the City.
- C. Any business paying a franchise fee under any city franchise ordinance.
- D. Any person 16 years or younger who operates a business on a part-time basis, which business has annual gross receipts of less than \$1,500.00.
- E. Any person conducting judicial sales by executors or trustees under court order, or sales being held for the lawful execution of government.
- F. Individual vendors at flea markets shall be exempt from the requirement of obtaining a business license and paying any fee, provided the operator of the flea market business has obtained a business license and paid the applicable fees.
- G. Any person who is solely an "employee" for purposes of federal income taxation and wage deductions, i.e., employer income tax withholdings, social security, and Medicare, shall not be deemed a person transacting business in the city.
- H. Any activity conducted for which consideration is received but where such consideration is not "gross income" under Internal Revenue Code (IRC) Section 61.
- I. The delivery of goods, provided that the delivery business does not have a license to use or possess any real property nor lease; rent or own any real property within the City of Depoe Bay.

Section 11. Penalties.

- A. Any person required by this ordinance to obtain a business license who shall engage in any business in the city without having first applied for a license, paid the applicable fees and obtained a business license certificate in accordance with the provisions of this ordinance shall be deemed guilty of a violation of this ordinance, punishable by a fine in a sum not less than double the amount of the license fee as set by council resolution nor more than ten times the amount of the license fee. Each day of violation shall be a separate offense. In addition to any fine, the court shall impose reasonable court costs, including but not necessarily limited to reasonably attorney fees incurred by the city in prosecuting the defendant. No license shall be issued to any person convicted hereunder until the full amount of any fine imposed has first been paid.
- B. In addition to the penalty provided above, and as separate and concurrent causes of action or suit, the city may, in any court of competent jurisdiction, sue any person, who has or is engaged in business in the city without having complied with this ordinance, for the amount of the license fee payable; and also the city may in the same or separate suit seek an injunction prohibiting such person from engaging in such business in the city in violation of this ordinance; and in any such action or suit the city shall, if it prevails, recover in addition to its costs and disbursements a reasonable attorney's fee to be set by the court.

Section 12. Saving Clause.

The provisions of this ordinance are severable, and if any section or part of this ordinance is found to be invalid, all the rest and residue of this ordinance, and each part and provision therein, shall remain in full force and effect.

Section 13. Whereas, the adoption of this ordinance is necessary to preserve the peace, health, safety and welfare of the citizens of the City of Depoe Bay, an emergency is hereby declared to exist and this ordinance shall be in full force and effect immediately upon its adoption by the City Council of the City of Depoe Bay and approval by the Mayor.

Introduced and passed the first reading in a regular meeting of the City Council of the City of Depoe Bay, Oregon on this 17th day of November 997.

Passed at the second reading, placed on final passage, and adopted by the City Council of the City of Depos Bay, Oregon, on this 17th day of November 1997

Approved by the Mayor of	the City of Depoe Bay,	Oregon, this	s <u> </u>
November	_, 1997.		

Mayor

Attested: Let hunay
City Recorder