

AN ORDINANCE IMPOSING A BUSINESS TAX, REPEALING ORDINANCES NUMBER 489, 535, 1075, 1186, and 1211, AND DECLARING AN EMERGENCY.

The City of Milwaukie does ordain as follows:

SECTION 1. Purpose and Scope. The business taxes imposed by this ordinance are for revenue purposes only. The fees shall be in addition to and not in lieu of any other license, permit fee, charge or tax required under any other ordinance of the City.

SECTION 2. Definitions: The following words or phrases except where the context clearly indicates a different meaning shall mean:

a. Business - An enterprise, establishment, store, shop, activity, profession or undertaking of any nature conducted directly or indirectly for private profit or benefit. Peddlers and solicitors are specifically included in this definition.

b. City - City of Milwaukie.

c. City Manager - City Manager or his designee.

d. Doing, engaging in, or transacting business - Any act or series of acts performed in the course of the pursuit of a business activity.

e. Non Profit Organization - A religious, philanthropic, patriotic and/or charitable organization. An organization shall be considered to be non-profit if it meets the tests of a tax exempt organization as specified by the Internal Revenue Service.

f. Person - An individual, partnership, association, firm or corporation.

g. Rental Property - A building, portion of a building or group of buildings within the City which are rented, leased, let or made available for compensation for sleeping or living purposes. The term "Rental Property" shall include a hotel or motel, automobile or tourist court, rooming or lodging house, and mobile home or trailer park. In the case of a mobile home or trailer park the term "dwelling unit" shall mean space or stall.

SECTION 3. Imposition of Tax.

a. No person shall maintain, operate, engage, conduct or carry on any business within the City without first having paid the business tax as established by resolution of the City Council.

b. It is the intention of this ordinance to impose a business tax upon the owner, partner or operator of the business and not upon a person whose income consists of a salary or wage paid to such person by the owner, partner, operator or employer. However, the employees, agents or representatives of a person who has no regular place of business within the City but engages in business within the City shall be personally responsible for the compliance of their principals and of the businesses they represent with this ordinance.

SECTION 4. Multiple Businesses or Premises.

If a person is engaged or doing business at more than one establishment, branch or location, each such establishment, branch or location shall be deemed a separate business and each such business shall be subject to the business tax. If two or more businesses are carried on at the same location each shall be required to pay a separate business tax except in situations where it can be shown where the individual businesses are in fact one business. In determining whether different activities at the same location are in fact one business normal and ordinary customs and usages of business shall be considered.

SECTION 5. Tax Year and Payments.

a. The business tax year shall be the calendar year with the first business tax year to begin on January 1, 1977.

b. The business tax shall be paid annually in advance of the business tax year. If a person begins engaging in business after the beginning of the business tax year the business tax shall be paid in advance as of the semi-annual period during which such activity begins.

c. Businesses commencing after July 1 of any year shall pay a tax of only 50% of the regular amount, provided, however, that such business was not doing business within the City prior to that time. Businesses shall be liable for the tax from the date they commence doing business within the City and not from the date of their application.

SECTION 6. Delinquency Charge.

a. The business license tax shall be deemed delinquent if not paid by February 1 of the applicable business tax year. If a person begins engaging in business after the start of the business tax year, the business tax shall be deemed delinquent if the tax is not paid within 30 days after commencement of the business activity.

b. Whenever the business tax is not paid on or before the delinquency date a delinquency charge equal to 10% of the original business tax due and payable shall be added for each 30 day period or fraction thereof during which the business tax and any accumulated delinquency charges remain unpaid. The total amount of the delinquency charge for any tax year shall not exceed 100% of the business tax due and payable for such year.

c. The date that the business tax is received by the City or the date of the postmark if remittance is made by mail shall be used in determining when the business tax is paid.

d. Notwithstanding the date of receipt of the business tax said tax shall be held to be delinquent if a complete information form has not been filed with the City. Completeness of the form will be judged by the completeness of the information requested on the form.

SECTION 7. Inspections of Business Records.

The City Manager is hereby empowered to investigate and examine pertinent records of businesses as required to determine violations of this ordinance.

SECTION 8. Transfer or Assignment of Tax Receipts.

No transfer or assignment of any tax paid hereunder shall be valid or permitted. Upon sale or other transfer of a business the new owner shall be liable for paying pertinent taxes.

SECTION 9. Issuance and Display of Receipt.

Upon payment of the business tax a person or business shall be issued a receipt by the City for such payment. The receipt shall be kept posted in a conspicuous place on the business premises at all times. If there is no regular place of business in the City the receipt shall be in the possession of a representative of the business present within the City at all times during which the business is being transacted by an employee, agent, or representative within the City.

SECTION 10. Administration.

a. The City Manager shall be responsible for the administration of this ordinance. He may adopt reasonable rules and regulations relating to any matter pertaining to the administration of this ordinance, as well as preparing, adopting and making available to the taxpayer all forms necessary for compliance with this ordinance.

b. No person shall violate or fail to comply with any rule or regulation adopted by the City Manager; refuse to allow the examination of books, papers and records; or willfully make any false or misleading statements to the City Manager regarding the computation of the amount of business tax due and payable under this ordinance.

c. The City Manager shall keep all information furnished or secured under the authority of this ordinance in strict confidence. Such information shall not be subject to public inspection and shall be kept so that the contents thereof shall not become known except to the persons charged with the administration and enforcement of this ordinance.

SECTION 11. Exclusions.

The following situations are specifically excluded from the requirement of paying a business tax:

a. Wholesalers - Selling or delivering goods to merchants of the City for the purpose of resale. This exclusion pertains only if the wholesaler does not maintain a place of business within the City and also does not engage in retail trade within the City.

b. Non-profit organizations.

c. Persons engaged in delivery of goods or services from points outside the City, providing sales contacts and actual sales take place outside the City.

d. Newspaper carriers.

e. Representatives of public utilities.

f. Garage sales, yard sales and other similar activities. Such exclusion shall not apply, however, if either of the following conditions is met:

1. More than two such sales take place within any one calendar year at the same location.

2. The sale has a duration of more than 72 consecutive hours.

g. The sale of personal assets such as a personal automobile, residence, appliance or other articles. Such exclusion shall not apply when such sales are conducted on a regular and continuing basis. That will be assumed to be the case if an individual or family sells its personal residence more than twice or his personal automobile more than four times in any given calendar year. Other items shall be determined by the City Manager on the basis of reasonableness on a case by case basis.

SECTION 12. Penalties.

a. A violation of this ordinance shall be punishable by a mandatory fine not to exceed \$200.

b. Each violation of a separate provision of this ordinance shall constitute a separate offense and each day that a violation of this ordinance is committed or permitted to continue shall constitute a separate offense.

c. The conviction of any person for violation of this ordinance shall not act or relieve such person from payment of any unpaid business tax including delinquent charges for which such person is liable. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the City under other sections of this ordinance.

d. In the event any provision of this ordinance is violated by a firm or corporation, the officer or officers or person or persons responsible for the violation shall be personally subject to the penalties imposed by this section.

SECTION 13. Affect of Invalidity in Part.

If any clause, section, paragraph, sub-section, section or other part of this ordinance or the application thereof to any person or circumstances shall be held invalid, such holdings shall not effect, impair or invalidate the remainder of this ordinance or the application of such part held invalid to any other person or circumstances but shall be confined in its operation to the part thereof directly involved in such holding or to the person or circumstances therein involved.

SECTION 14. Repeal.

Ordinance Number 489, enacted November 25, 1946, Ordinance Number 535, enacted November 28, 1949, Ordinance Number 1075, enacted May 10, 1965, Ordinance Number 1186, enacted December 23, 1968, and Ordinance Number 1211, enacted December 8, 1969, are hereby repealed.

SECTION 15. Savings Clause.

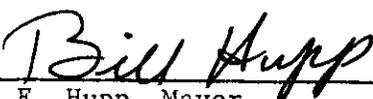
The repeal of any ordinance by Section 14 shall not preclude any action or prosecution against any persons who violated the ordinance prior to the effective date of this ordinance.

SECTION 16. It is hereby adjudged and declared that existing conditions are such that this ordinance is necessary for the immediate preservation of the public health, peace, safety and best interests of the inhabitants of the City of Milwaukie, Oregon, therefore an emergency is hereby declared to exist, and this ordinance shall take effect and be in full force and effect from and after its passage by the Council and signed by the Mayor.

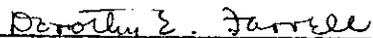
Read the first time this 6th day of December, 1976 and moved to its second reading by unanimous vote of the City Council.

Read the second time and adopted by the City Council this 6th day of December, 1976.

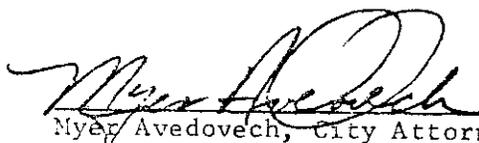
Signed by the Mayor this 6th day of December, 1976.


Bill E. Hupp, Mayor

ATTEST:


Dorothy E. Farrell, Recorder

Approved as to form:


Myer Avedovech, City Attorney