



The City of Newport Working Group to Review the City's Business License Ordinance will hold a meeting at **3:00 P.M.**, on **Monday, September 8, 2014**, in the City Manager's Conference Room of the Newport City Hall, 169 SW Coast Highway, Newport, Oregon 97365. A copy of the meeting agenda follows.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Peggy Hawker, City Recorder 541.574.0613.

The Working Group to Review the City's Business License Ordinance reserves the right to add or delete items as needed, change the order of the agenda, and discuss any other business deemed necessary at the time of the work session and/or meeting.

CITY OF NEWPORT
WORKING GROUP TO REVIEW THE CITY'S BUSINESS LICENSE ORDINANCE
AGENDA
Monday, September 8, 2014
3:00 P.M.

- I. Call to Order
- II. Review of Proposed Changes to the Business License Ordinance
- III. Review of Draft Taxicab Ordinance Revisions
- IV. Public Comment
- V. Comments from Working Group
- VI. Establish Next Agenda and Meeting Date
- VII. Adjournment

MINUTES
Newport Business License
Work Group Meeting
City Manager Conference Room
Wednesday, August 6, 2014

Ad Hoc Members Present: Ralph Busby, Bob Berman, and Rod Croteau.

Ad Hoc Members Absent: Mark Saelens (*excused*).

City Staff Present: Community Development Director (CDD) Derrick Tokos, Finance Director Mike Murzynsky, and Executive Assistant Wanda Haney.

Guests: Bill Trope', owner of Yaquina Cab Company.

Busby called the meeting to order at 3:05 p.m. The minutes of the last meeting, July 22, 2014, were approved. Because of the guest attending, the order of the agenda was changed.

Review Taxicab Ordinance and Identify Whether Other Changes are Needed. Busby noted that the group had received a copy of the old ordinance as well as the proposed draft from four to five months ago. Trope' asked what Busby meant by the old ordinance. Busby said the ordinance that is currently in effect. Trope' said that he still needed clarification on that. Tokos said he believed it ties back to Ordinance No. 1935 from September 4, 2007. Trope' said that it actually goes back to Ordinance No. 1408. He said that is the underlying document, which is the cornerstone of the whole thing. Then it was codified into the code; and then there was an amendment to the codification. He said the original ordinance is 1408, and that is where the group needs to start. Busby said that is not where the group needs to start. He said the group first needs to consider if we want to continue forward with a taxicab ordinance. He said from discussion the question raised was whether the City needs to impose things on taxis that it doesn't impose on anyone else. He wondered if this group wanted to make a recommendation on that.

Tokos said that, looking at the taxicab ordinance and endorsement, the purpose of the endorsement is to ensure that those acting as taxicabs are licensed, insured, and are in a position where they are not putting the public at risk while riding in their taxis. He noted that we have taxis operating on a regular basis and also have short-term licensing done by the police for events like the Seafood and Wine Festival where they are doing it for funds during that period of time. Berman asked if there are any state regulations concerning taxi drivers specifically. Trope' said not specifically; it's up to the municipalities to handle that. Berman said, to Busby's point, this is a very specific ordinance that only applies to taxicabs and drivers. It excludes bus drivers, which also involves public safety. He said the school bus company carries a whole lot more people than taxis. There are the Lincoln County Transit buses and several other transportation-related businesses not even discussed in the code and have no regulations. Tokos said that it's his understanding that the last time when we had this conversation and the Police Department was here they noted that buses get picked up because of the required commercial drivers' licenses. The state fills that safety role. Taxis are not subjected to CDLs. Berman asked if vehicle inspections and insurance for buses are requirements of the CDL; and Busby said no. Berman said maybe everything in the transit business should comply. It refers to the single-use type taxi so we can see what kind of vehicles are being used. All of these things; the background checks, the insurance. Berman said that he doesn't do a background check on people he does business with. He doesn't see the distinction between taxis and other businesses.

Trope' wanted to give the background. He said if you go back to the early 80s before taxicabs were regulated, you had six to ten people driving taxis all over the place. There were complaints and nobody was happy. In 1984, the City Manager, Mayor, and Police Chief wanted to do something about it, and Ordinance 1408 was drafted giving the City the authority to regulate taxicabs in the community. It set out how to get approved for a license and what could and couldn't be done. In 1986 the owner of the only servicing cab company passed away, and his widow sold that company to Trope'. Since then we went up to 2007 when the City decided they had to do something to figure out how to charge the right licensing fees and streamline the process a little bit. A few applicants didn't meet the criteria and didn't get permits. During those sessions, it was brought up that the City didn't have a handle on what fees to charge and wanted to amend the ordinance for that. They wanted to codify it into the Municipal Code. During codification there were some changes made or additions made, fees added, etc. Originally the City wanted an ordinance to have control over the willy-nilly, fly-by-night taxis; and there ended up being just one company. He said whether somebody else was qualified or not is beside the point. He's been here for twenty years without any problems; and he still hasn't seen any problems about the concern of regulating cab companies. He said that Ordinance 1408 is good; it protects the infrastructure of the City. He said we all agree that it is good for the City to have a cab company that operates 24 hours 7 days a week; one that has reliable and safe vehicles, whose drivers are covered by workers comp, pays payroll taxes, and has an upstanding citizen at the helm. He said when the City gets a fly-by-night driver that doesn't qualify and you change the rules so that he can qualify, you go back to what we had in the 70s. Berman asked if when Trope' says fly-by-night, he means an individual that has a station wagon and wants to get into business himself; and Trope' confirmed that. He said he takes a hit

when someone cherry picks stuff whether they have insurance or not. Busby said that he still feels that we shouldn't be putting more of a burden on taxicabs than we do on any other business. Trope' said it is your infrastructure; not just a shop. If you have too many cab companies and people are cherry picking, like last fall; that lost him a couple of good drivers. He added that the other guy didn't have the where-with-all to make it in business anyway. Busby said we could debate that but he doesn't consider a cab any more infrastructure than a coffee kiosk.

Tokos said there are a couple of different issues. First, whether or not the City should be regulating cabs; and if we get beyond that, should it be an exclusive franchise. This is not drafted that there can't be other operators as long as they meet the City's rules. If there are others, they will take a bite out of Trope's business. Trope' said if they can qualify and get through Ordinance 1408 without having effects on the infrastructure of the City, then they should be licensed. Berman noted that Ordinance 1408 is no longer the law regulating taxicabs; it's Section 15 of the Municipal Code. It's whatever is in that section and the proposed language for that Section 15. He said that none of the group have read Ordinance 1408. Trope' said that part of the Municipal Code, Chapter 1.20.010 (Codification of Ordinances) and Chapter 1.20.020 (Effect on Existing Ordinances) address that issue. He read from those sections. He noted that it says that the Municipal Code doesn't appeal previously-adopted ordinances. The Municipal Code prevails over inconsistencies in previous ordinances; and on the same subject matter, the Code provisions prevail. He said that the adoption of the Municipal Code doesn't repeal Ordinance 1408, which is the cornerstone.

Busby said the group's job here is to make a recommendation to the City Council on whether we need the ordinance; and if so, what we recommend. He noted that the committee has a proposal for a revised ordinance in front of us. He asked, do we want one at all? If we do, then we'll work on the proposed ordinance. He said the question on the table is, "What does this group think of having an ordinance at all?" Do you endorse the idea or recommend that the City not have one? Tokos said that having been here for a period of time, he knows of a number of issues raised specific to the Seafood and Wine event. Shouldn't the City regulate public safety issues to ensure that people coming here for events have the opportunity to ride in safe cabs? Taxis that have liability insurance so that in the unfortunate event of an accident they are not having to deal with that themselves. He said that anybody expects that when they get into a cab. Berman said that when someone checks into a motel, they expect them to have liability insurance and property insurance so that in case of a fire their belongings are covered; but the City doesn't require that. Trope' said that when people come in, whether residents or visitors, they understand that taxicabs are part of the infrastructure of the City and are regulated by the City. They expect it will be good. If there is a problem, they will sue the cab company, the driver, and the City. He said if there are bed bugs in a hotel, people are not necessarily going to sue the City. He said this ordinance was to protect the City. Having insurance and naming the City as an additional insured is the infrastructure part of it. The City needs to protect itself from lawsuits that could happen.

Tokos said that he didn't see the difference between this and other things that are being very similarly regulated. Yes there's vehicle inspections. But he noted that we have the Fire Department that inspects hotels and motels to make sure the fire alarms work. We inspect them in the first place to make sure they are built to code. He said if we don't deal with taxis, we are not providing the same safety as with a hotel or a vacation rental. Vacation rentals are inspected to make sure they have operating smoke detectors, and that the decks are not going to fall down. Busby said that we don't do anything with car rentals, bicycle rentals, bus companies, air crafts, and charters. Tokos said the buses are a public transit district; and he expects that just by being public transit, they are regulated. Busby said that he was thinking of charter operators. Tokos said they do have CDLs. Busby thought that this is far and above requirements for other businesses. There are other businesses we don't regulate. Croteau said this is a business that is more prone to have "pirate" drivers. He said they used to call them "gypsy" cabs. He said you very seldom find gypsy bus drivers or airplane pilots. Taxis are prone for that; and if someone loses their stuff, unless they get a license number they can't track it down. He said that most cities of any size regulate cabs for that reason. Trope' said that you have to have the where-with-all to afford the fees and vehicles. When there's one or two doing it on their own schedule, like last time; they were racing him to his pickups. That is why he lost a couple of his drivers.

Busby asked if it was the consensus of the group that the City should have a taxicab code. Trope' wondered why Busby was asking when it was in effect in the 80s. He has owned his company for over 25 years and knows how it works. He said the group hasn't even read the ordinance. Busby said what we are addressing is what is in effect currently. Being fairly new to this, Murzynsky said we have a code in place already, so why are we looking at it? Busby explained that last year another company applied for a license and there were issues on how to proceed and what needs to be done. In the middle of that a proposed revision of the ordinance was prepared. In the process it was decided that we shouldn't be changing it then. This person was told that he could proceed with the existing code or back out and we would put in the new code. He did back out. Nothing has occurred for four to five months now. The question was brought up at a recent City Council meeting about what we are doing with this draft we have on the table. The discussion was whether we need this draft or whether to go forward with it. The Council referred it back to this committee. Berman asked what the issues were with the existing code. Tokos said what he understands is the existing ordinance required a public hearing before the City Council, which is different than any other business. This draft was to try to strip out that process piece and make it more akin to other endorsements, which is supplemental information you have to provide to get a business license. Busby agreed that the difference between the draft and the old ordinance currently in effect is that public hearing. The various qualifying actions are pretty much the same. What it does is place all activity for approval within the administrative staff of the City. Other than that, he believes things like the background checks and insurance

requirements were intended to be the same. Berman said that given the potential gypsy cab situation, which could have a detrimental effect on the City and other businesses, it would be fair to update the existing code to alleviate some of those concerns. He's still not convinced, however, that they are different from other types of tourist activities to justify this extra level; but he is willing to talk nuts and bolts. Croteau said there are lots of details in this ordinance; but it doesn't preclude competition. The bar is not terribly high. As long as it is open to competition, then he is comfortable with it. Murzynsky said this is more detailed than Albany's; but it is the same idea. He said he can say yes to getting away from a public hearing and putting it in administrative hands. He said that from the quick read that he did, he is good with it. Tokos suggested simplifying it as much as possible. We don't need to complicate things. He thought the group would be well advised to look at streamlining this.

Busby said in reading this, there is one significant issue he has. Under the temporary permitting, the Police Chief's approval can be appealed to the City Manager and then can be appealed to the City Council. Under the permanent permits, it says the same, but there is no appeal to the City Council. He thought that should probably be there. It was agreed that the same wording should be used there.

Trope' said that regarding the amendment to the code, the original ordinance didn't require any specific insurance; it just said you have to have insurance. The code adopted in 2007 requires \$1 million of insurance and to name the City as an additional insured. Prior to that he had \$500 thousand of insurance; and he had to increase it to \$1 million. He said a couple of years later, because of the Seafood and Wine Festival, the temporary permits were added. He said he would just as soon not operate during that week himself. He said the gypsy drivers are more than welcome to come in and take the load off him. When the City installed that they could have a temporary permit for those three days, it requires them to have \$500 thousand of insurance. For the experienced company, it requires \$1 million; but for the beginners it's only \$500 thousand. Busby agreed with Trope' that if we are going to put an amount in there, it should be equitable. The others agreed.

Berman asked how the group was going to proceed with this. Tokos said he is just taking notes and thought that Hawker would rework the draft and take it back to the Council. It was agreed that someone should compile the notes. Busby suggested collecting the notes and get with Hawker and let her take another shot at the draft. He thought most is fairly minor. He said the major thing is that the group wants to proceed with a revised ordinance; and the major thing with the revision is the removal of the public hearing. Trope' said that he had a problem with that. He thought that the public hearing is an important aspect of the whole regulation of the infrastructure. If the application is approved, there is nobody looking at the overall operation and what their qualifications are. Are they operating 24/7? Is it fair to just let them pick their hours and let those operating 24/7 suffer dings in their armor? They don't have enough money to repair their vehicles. Busby said there are no operating requirements in the ordinance; no number of hours. Tokos said that has to do in large part with aspects of Ordinance No. 1935. He said when the City adopts an ordinance with a new set of rules, it will commonly be set up so the new ordinance repeals the old language so there is a clear legislative record. He said this may be what it was with the ordinance in the 80s. Now we are changing and adopting something else. Tokos said that he doesn't have Ordinance 1935; but if it has that language then that is what would have happened. He said when the City did the full codification they were worried that they didn't pick up all ordinances. If it didn't get expressly zapped, it is still alive. Since that time, we made changes to put in the temporary permits under the watch of City Attorney McCarthy; which was after codification. He said that is the ordinance to be looking at. Did it repeal and replace the ordinance? If it did, it's a done deal; and we wouldn't look any further beyond that. He said we can take a look at that. We don't want the legislative record to be a mess. Busby agreed we can clear that up.

Busby confirmed that it is the consensus of the group to go ahead with the revised ordinance. Comments will be submitted to Hawker to come out with a new draft. The number one thing is the removal of the public hearing, and the rest is of lesser importance. Tokos said to direct comments to him, and he will coordinate them with Hawker. Busby asked the members to forward their comments to Tokos.

Confirmation of Revision Areas for Draft Ordinance Update: Tokos said what he was hoping to get out of this is a confirmation so he can put together language and an example of what other jurisdictions are doing in relation to this. It won't be resolved here. Tokos said the first one is the biggest issue. The others said yes to the definition of business. Berman said as far as the approach, have a general definition of business as all-inclusive and then get to exemptions. Tokos said he can bring examples. Busby said that under employees, it doesn't address volunteers or contractors, which probably should be included.

Busby said there are a lot of not-for-profits. We make a clear definition. Berman said we want to limit it to those that deserve it. Busby said on the next page for application, we need to address that everybody needs to apply. We charge everybody for the application, but the license fee is only charged to for-profit businesses. He asked if we should be charging the application fee to nonprofits. Croteau asked if the application fee is \$25. Murzynsky said that pays for staff time. Tokos noted that we have a nonprofit exemption for portable signs. The quilt show was last weekend, and they submitted an application for 43 portable signs. If it had been a for-profit business, that would have been a \$450 sign permit. He couldn't ask Mettle to drive around and make sure all signs are in the right spot. Tokos said there is a risk of being too generous; and they will take advantage of it. Busby said that he agrees with the other things that are noted on that last definitions page.

On the fees page, Busby said provisional licenses are a big deal and agreed that is an issue that has to be addressed. Berman thought the whole payment thing needs to be thought through in terms of Finance's procedures. He said, say they pay the application fee with their application, and then they pay the annual fee for the license; that is two financial transactions. Croteau said maybe if it's 30 days before they can qualify for the real license, and they can't operate. Berman said maybe they get a provisional license with an application fee. He thought we should eliminate refunds. Murzynsky said it's not as bad as you may think. Berman said we can talk about the nuts and bolts later. On the next page, under number 2 of the exemptions, Busby thought under item "d" we should add "when asked." He wondered if the bottom paragraph, "F (1)," is necessary. It's for special events like the Seafood and Wine Festival. Tokos said that's one master list, and they get the license on the organizer. He said it seems to have been working fairly well. Berman asked if it applies to the Farmers' Market too; and Tokos said yes, it should.

On the next page under "Multiple Locations," Busby agrees with the comments for item "A".

Under "Application" item "B" when it says all addresses and locations, Walmart would have to list all of their stores. Murzynsky said maybe just put "within the City." Busby said it's just an oversight. He said that he agrees with "C" and "D" on the next page.

Under "Issuance; Transfer" item "B" at the bottom of the page, there's actually a loophole in a sense. He said for example, say he applies for a business license and as soon as he gets it he sells the business. That is why they did it that way. It is a loophole. Berman suggested in item "B (4)" putting "within 30 days" for the new owner to contact the City. Then the City could revoke the license if that person didn't qualify. Busby agreed they should qualify the new person.

He said that he had no problem with the notes under "Administration."

Going back up to "Disclosure," Berman said that he didn't know why under item "B it is just 20% maximum. He wondered why stop at 20%. Tokos wondered if the City shouldn't be looking to approach all delinquencies as consistently as possible; like with water account delinquencies. Busby said maybe it should be "per City policy" and establish that policy; not 20%.

Back under "Administration", Berman asked about the difference between rules, procedures, and regulations. Tokos said getting rid of "administrative rules" is one suggestion and put how we process this. Put parameters, not refer to the administrative section, for what we do after we receive the application so it's very clear and people know what is going to happen after it's submitted. This was drafted as a basic code and defer to the administrative rules. Busby said it makes it all very clean.

Busby had no problems with the "Denial" section.

Busby said in item "C" under the "Violations" section it says "shall be personally subject to penalties." We can't go after someone like the president of Walmart. We probably shouldn't use "personally." That's a lawyer question.

Berman didn't think the timing on item "B" under "Appeal" works given the frequency of City Council meetings. He thought it may have to be higher. Busby said they could still go three weeks because of the long months. Tokos asked if we should do 30 days. Croteau said that 30 would be plenty. Murzynsky said it covers the five Mondays.

Back at the beginning, Berman thought that the second paragraph doesn't belong there under "Purpose and Scope" and suggested moving it to exemptions. Tokos agreed it doesn't speak to purpose.

Establish Next Meeting Date. Tokos said he thought he had what he needed to go forward for next time, which he said needs to be no sooner than four weeks out. Since he's doing the work, it was suggested that Tokos set the date and email the group. The next meeting is when the committee will see the draft. Tokos said he may have optional language of examples from other jurisdictions. Croteau wondered if the group would get that to review well before the next meeting. The group is leaving the timing up to Tokos.

Adjournment. Having no further business, the meeting adjourned at 4:00 p.m.

Respectfully submitted,

Wanda Haney
Executive Assistant

Formatting Note: New language is shown with a double underline. Deleted language is in ~~strikeout~~. Staff comments are shown in *italics*.

4.05.010 PURPOSE AND SCOPE

The purpose of this Chapter is to provide revenue for municipal purposes and to provide for the health, safety, and welfare of the citizens of Newport through the regulation of businesses, occupations, and trades. A business need not be located within the city in order to be subject to the provisions of this Chapter. This Chapter serves the public interest by mandating that business will be carried on in compliance with applicable laws and in a manner that protects the public's health, safety, and welfare. The licensing provisions of this Chapter are enacted pursuant to the City Charter, Section 4, and the city's home rule authority as provided in the Oregon Constitution, Article XI, Section 2.

The business license fee shall be in addition to, and not in lieu of, any other license or permit fee, charge, or tax required under any other Municipal Code section or city ordinance. The business license required by this Chapter shall not be construed to constitute a permit to engage in any activity prohibited by law nor as a waiver of any other regulatory or license requirement imposed by the city or by federal, state, or local law.

4.05.015 DEFINITIONS

Business - Any for-profit or non-profit enterprise, establishment, store, shop, activity, profession, or undertaking ~~doing business~~ of any nature within the city, whether conducted directly, indirectly, or cooperatively, including the rental of real property as defined in this ordinance, carried on for the purpose of generating income. ~~“Business” does not include the on-premises sale of used household goods by a person who resides on the premises (a yard or garage sale), so long as the sale is conducted no more than four days in any calendar year. As used in this ordinance, the phrase “doing business” means an act or series of acts performed in the course or pursuit of a business activity for more than twenty (20) hours in one calendar year.~~

Staff: Eliminated reference to “doing business” as it is inappropriate to include it in a definition of the same term. Most definitions for business hinge upon the receipt of payment or income, so that has been worked into the

definition. Language addressing activities that do not qualify as a business have been moved to a new Exemptions section.

City Manager - The City Manager of the City of Newport or the City Manager's designee.

Consignment Store Merchants - Persons who own goods and enter into an agreement with a consignee/seller to sell or market those goods. Consignment store merchants occupy space within a fixed facility or building which is owned or operated by consignee/seller for the purpose of displaying and selling such goods.

Employee - Any person who works within the city in the service of another person (the employer) and whose work performance details are controlled by the employer. This definition includes contractors and persons volunteering their time to an employer. Employees may be part-time or full-time and the number of employees will be measured using a full-time equivalent computation, in accordance with any applicable city rules.

Staff: Language that picks up contractors and volunteers as employees has been added at the request of the work group for clarification purposes.

Endorsement - Standards established by the city which a business license applicant must satisfy or make progress toward satisfying prior to the city issuing a business license. Any city-approved endorsements will be clearly noted on the business license.

Not-for-Profit Entity - Any entity organized and operated exclusively for a religious, charitable, humanitarian, or educational purpose and for whom the United States or the State of Oregon has granted an exemption from the payment of income tax on that basis.

Person - Any and all natural and legal persons, including individuals or public or private corporations, firms, partnerships, associations, organizations, syndicates, joint ventures, societies, or any other group or entity acting as a unit of individuals.

Rental of Real Property - The rental or offering for rent of real property. Rental of real property includes, but is not limited to, the following types of properties rented or offered for rent:

hotel or motel rooms, automobile or tourist courts, boarding houses, bed and breakfast rooms, mobile homes or trailer parks, residential or vacation homes, multi-family dwelling units, moorage units, and commercial properties. ~~Notwithstanding anything to the contrary above, an owner's rental of no more than one residential dwelling unit for thirty (30) days or more shall not constitute the rental of real property.~~

Staff: Rental of one dwelling unit for 30 days or more has been moved to the exemption section.

Special Event Vendors - A person engaged in selling or offering for sale any food, beverage, merchandise, or service within the city during a special event for which the event organizer has obtained a valid business license. Special event vendors must possess all other necessary city, county, and state permits and authorizations.

4.05.020 BUSINESS LICENSE REQUIRED

No person shall do business within the city without a current, valid city business license, unless exempt from this ordinance. No person shall do business within the city as an employee, agent, or representative of another person unless the owner, principal, employee, agent, or representative is exempt or has a current, valid city license for that business, no matter where the principal offices of that business are situated.

Staff: The language listed is currently found in the exemptions and fees section of the code. It is not relevant to that section and could be overlooked as a result. This type of language is more typically placed as a lead paragraph to a code, as depicted here.

4.05.025 EXEMPTIONS

Persons engaged in the following activities are exempt from the business licensing requirements of this Chapter:

- A. On-premises sale of used household goods by a person who resides on the premises (a yard or garage sale), so long as the sale is conducted no more than four days in any calendar year.

- B. An act or series of acts performed in the course or pursuit of a business activity for not more than twenty (20) hours in one calendar year.
- C. Special Event Vendor and Consignment Store Merchants, as long as the following requirements are met:

 - 1. The organizer of the special event or the owner/operator of the consignment store obtains a valid business license which lists all special event vendors or consignment store merchants. Such list must be updated by the organizer of the special event or the owner/operator of the consignment store upon any significant change in the number or type of special event vendors or consignment store merchants;
 - 2. The special event vendor or consignment store owner/operator obtains all other necessary city, county, or state permits or licenses and complies with all applicable city, county, or state laws and regulations.
- D. Persons engaged in delivery of goods inside the city from points outside the city.
- E. Any city, county, state agency, special district, school district, or other government entity.
- F. A person's rental of no more than one residential dwelling unit for thirty (30) days or more.
- G. A person's rental of a dwelling unit, where rental of the unit is required to be managed by a single entity pursuant to a covenant or other binding legal instrument. In such cases, the owners of each dwelling unit shall be viewed as having an ownership interest in a common business and only the business (i.e. the entity managing the units) is required to obtain a business license.
- H. Any unincorporated business activity carried on by individuals under the age of 18.
- I. Any business operating under a city franchise.
- J. Any person transacting and carrying on any business within the city which is exempt from such regulation by

virtue of the Constitution or laws of the United States of America or the Constitution or laws of the State of Oregon.

Staff: New section containing exemptions that had been built into definitions or were listed elsewhere in the code. Four new exemptions are proposed. Persons required to rent a dwelling unit through a management agency by virtue of a covenant or other binding legal instrument are exempt from obtaining a business license. This is consistent with our existing practice, as is the proposed exemption for businesses operating under a city franchise agreement. An exemption is also added for individuals operating a business under the age of 18 (e.g. babysitting) as that is not currently; nor, has it ever been treated as a business by the City. Lastly, an acknowledgement has been added that the City will not require a business license if it is barred from doing so under state or federal law.

4.05.020030 FEES; EXEMPTIONS

A. This ordinance hereby establishes a Business Application Fee and a Business License Annual Fee. :

- ~~1. Business Application Fee; and~~
- ~~2. Business License Annual Fee.~~

~~A. All persons applying for a new business license shall pay both the business application fee and the business license annual fee, unless otherwise exempt as provided in Section E. below. Persons renewing an existing, non-expired business license shall pay only the business license annual fee, unless otherwise exempt as provided in Section E. below.~~

B. The business application fee amount shall be charged when a new or expired business license application is processed and shall be limited to recovering the Finance Department's administrative cost of processing the application. The business application fee is non-refundable and shall be set from time to time by resolution of the City Council. Persons holding expired business licenses will be charged a new business application fee to re-apply.

C. The business license annual fee shall be charged when a new business license application is processed or a person

renews an existing, non-expired business license. The amount of the business license annual fee shall annually
~~at a rate to be determined by resolution of the City Council, such rate being either a flat rate for all businesses or a progressive rate based on number of employees.~~

~~B. No person shall do business within the city without a current, valid city business license, unless exempt from this ordinance. No person shall do business within the city as an employee, agent, or representative of another person unless the owner, principal, employee, agent, or representative is exempt or has a current, valid city license for that business, no matter where the principal offices of that business are situated.~~

~~D. Exemptions from the Business License Annual Fee.~~

~~E.D. 1. Exempt persons listed in this subsection~~Not-for-Profit Entities ~~shall not be charged a business license annual fee. Such entities~~ Persons listed in this subsection and doing business within the city must still apply for a business license, on the forms provided by the city and must still pay the business application fee, and annually renew the license at no cost, unless specifically exempted from paying the business application fee below.

~~2. The following persons shall not be charged the business license annual fee:~~

~~a. A not for profit entity, as defined in this ordinance.~~

~~b. A special event vendor, as defined by this ordinance.~~

~~c. A consignment store merchant, as defined in this ordinance.~~

~~dE.~~ Persons expressly exempted from paying a city business license application fee or business license annual fee under any other lawful provision of federal, state, or city law shall not be subject to such fees. City shall document claimed exemptions, and may require provided that the person claiming the exemption shall show provide proof of such exemption satisfactory to the City Attorney.

~~e. Persons engaged in delivery of goods inside the city from points outside the city.~~

~~f. Any city, county, state agency, special district, school district, or other government entity.~~

~~F. Special Event Vendor and Consignment Store Merchant Exemptions. In addition to any other exemption provided in this ordinance, special event vendors and consignment store merchants shall be exempt from all requirements of this ordinance, including but not limited to, the obligation to register, the obligation to pay a business application fee, the obligation to obtain a valid business license, and the obligation to pay the business license annual fee, as long as the following requirements are met:~~

- ~~1. The organizer of the special event or the owner/operator of the consignment store obtains a valid business license which lists all special event vendors or consignment store merchants. Such list must be updated by the organizer of the special event or the owner/operator of the consignment store upon any significant change in the number or type of special event vendors or consignment store merchants;~~
- ~~2. The special event vendor or consignment store owner/operator obtains all other necessary city, county, or state permits or licenses and complies with all applicable city, county, or state laws and regulations.~~

Staff: The clause stating that business licenses are required has been moved to a lead paragraph. Applicability of the business license application fee and the business license annual fee has been clarified. Exemptions have been moved and consolidated into a new section. A requirement has been added that Not-for-Profit Entities renew business license applications at no cost. New language also requires the city document exemptions and requires City Attorney review of the exemption claim upon request.

~~4.05.025035~~ **MULTIPLE LOCATIONS OR** **BUSINESSES**

~~A. A person who does the same or substantially similar business from more than one physical location, need only obtain one business license and under a different business name or as a different business entity at the separate location, shall obtain a separate business license for each such location, name and entity. A person who does~~

~~business as more than one business entity or whose businesses are not substantially similar in nature shall obtain separate business licenses and shall pay any applicable business license fees for each such entity or business.~~

B. An owner of real property for rent who rents or offers for rent more than one dwelling unit of real property need only obtain one business license.

C. In determining whether different business entities or activities should be categorized as only one business or as multiple businesses for the purposes of this ordinance, the City Manager shall consider the normal and ordinary customs and usages of business, including but not limited to: consideration of how the businesses are registered with other governmental agencies, such as the Oregon Secretary of State and the Internal Revenue Services.

Staff: This section has been amended to add clear and objective standards for determining when a business that is operated at multiple locations requires a business license for each location.

4.05.030040 APPLICATION

A. All persons doing business within the city shall, on a form provided by the city, apply for and maintain a business license unless exempt under this ordinance.

B. The application shall show: the corporate, trade, or registered name of the business; the complete address(es), email address(es), and telephone number(s) of the principal office of the business and any other locations or addresses within the city; the location or address of any real property offered for rent, including the number of dwelling units; the name(s), email address(es), and telephone number(s) of the owner(s) or principal(s); the number of employees; the state of incorporation if the business is a corporation; and any applicable endorsements. On the basis of that application, the city shall compute the business license annual fee for that license according to the schedule of fees that the City Council shall establish from time to time by resolution. The applicant shall warrant by his/her signature that all representations made on the application form are the truth to the best of his/her knowledge. Any misrepresentations

on the application shall constitute a violation of this ordinance.

- C. All applications shall be submitted before the person first does business in the city. A license shall be valid from the date of issuance until June 30th of the next calendar year. Applications received after December 31 will be charged one-half of the business license annual fee, as determined by City Council resolution.
- D. Upon receipt of a signed and completed application for a business license, the city shall inform the applicant of any business application fees and business license annual fees due and process the application within 30 days or notify the applicant in writing of the delay as to why the application cannot be processed within this timeframe and any steps that the applicant must take before the city will approve the application. Such fees shall be due and payable on the date the application is submitted or by July 1st for non-expired renewals. The city will endeavor to process all applications and renewals within the estimated time 30 days of the date they are received.

Staff: Changes in this section articulate how the city is to communicate with applicants when there are issues that prevent a timely review and issuance of a business license.

4.05.035045 ISSUANCE; DISPLAY; TRANSFER

- A. A.—The city shall issue a written receipt when a business license is approved and any applicable business application fees and business license fees are paid in full. The receipt shall ~~constitute~~ serve as a temporary business license effective for a period of forty-five (45) days while the city reviews the business license application. The temporary business license and shall be public notice that the person named thereon is licensed to do business in the city.
- B. A business license will be issued by the city to replace the temporary business license once the business license application has been approved by the City Manager, following referral to the Community Development, Public Works, Fire, and Police Departments.
- C. Upon receipt of a business license, A a person who is required by this ordinance to have a business license shall

cause the ~~receipt~~ license to be prominently posted in a place available to the public at the principal location or office of the business for which the license is issued. If the principal location or office of the business is not located within the city, the business' employee, agent or representative must possess a copy of the license when doing business within the city. For business licenses issued to persons who offer real property for rent, the license need not be posted, but shall be made available upon city's request.

A.D. Issuance of a business license, temporary or otherwise, shall not preclude enforcement against the licensee of any city ordinance, state statute, federal law or any other applicable law.

BE. A business license may be transferred to another party if: 1) the other party becomes the owner of the business; 2) no other significant change in the nature of the business has occurred; 3) if the existing business license contains no endorsements; and 4) if the new owner contacts the city to amend the business license application to accurately reflect the new ownership and any other new information. No other transfer or assignment of any license issued under this chapter shall be valid or permitted. Upon a significant change of the nature of the business, a new business license is required.

F. A duplicate license shall be issued upon application and payment of a fee to replace the license previously issued which was lost or destroyed. The fee for a duplicate license shall be set by Council resolution.

Staff: New language creates a temporary business license that is issued at the time an application is submitted and payment is made to the city. The 45 days affords the city time to review the application and issue the business license before the temporary authorization expires. This addresses issues where businesses such as contractors cannot wait a month or longer before beginning work. Language requiring referral to City Departments is included, which is consistent with current practice. Issuing a business license either before or without reviewing a business license application is something that a number of jurisdictions chose to do for the convenience of business owners. To protect themselves though, they include language stating that issuance of the business license does not constitute enforcement of city

ordinances, state statutes, or other laws. That may come about later as part of the business license review or at another point in time when it is discovered that there is a conflict. Appropriate language has been added.

4.05.040050 DISCLOSURE; DELINQUENCY

- A. Persons required to possess a business license shall, upon the city's request, make available all records, accounts and documents of every nature and in whatever media format which may tend to prove or disprove the applicant's statements on the business license application.

- B. A business license fee not paid in full within 30 days after it is due is delinquent and the city may avail itself of any and all remedies available to collect the fee, including but not limited to referring the delinquency to a collection agency and citing the person for a violation of the Newport Municipal Code. In addition, a delinquency charge may be imposed in an amount established by Council resolution. ~~delinquency charge of ten (10) percent of the business license fee due may be added to the fee that is otherwise due. This delinquency charge shall be charged for each successive 30-day period, or portion thereof, for which any amount is due and owing and remains unpaid, including any delinquency charges already imposed, up to a maximum penalty of twenty (20) percent of the license fee.~~

Staff: City imposes most fees by resolution and a delinquency charge should be handled in the same manner. That way all pertinent charges will be located in the same document (as opposed to having to shuffle between the ordinance and resolution).

4.05.045055 ADMINISTRATION

- A. The City Manager is responsible for the administration of this Chapter and ~~will~~ may adopt reasonable policies, procedures, administrative rules, or regulations to carry out the purpose and intent of this Chapter and to ensure that any health or safety issues related to the applicant's business are identified prior to the city issuing a business license. The City Manager shall provide the City Council with a report of any administrative rule adoptions or amendments regarding this ordinance. The city may initiate the process for remediating any health or safety

issues at any time, whether before or after the issuance of the business license.

~~B. Violations of this Chapter or of any rules and regulations adopted by the City Manager pursuant to this Chapter shall be subject to the penalties provided within this Chapter. No person shall willfully make any false or misleading statements to the City Manager regarding information relevant to the issuance of a business license.~~

Staff: These revisions eliminate the requirement that administrative rules be prepared, but leave open the possibility should the City Manager determine that they are needed for the proper administration of the ordinance. The last paragraph is not needed, in part because it is inappropriate to subject future, and as yet unwritten, administrative policies to enforcement and because adequate language addressing violations is contained in the section titled "Violations" below.

4.05.050060 DENIAL OR REVOCATION

- A. A license issued under the provisions of this chapter may be denied or revoked by the City Manager, after notice as provided below, for any of the following causes:
1. Fraud, misrepresentation or false statement contained in the application for a license or failure to supply the requested application information;
 2. A violation of this Chapter or of any city, county, state, or federal law or regulation;
 3. Conducting the licensed activity in an unlawful manner or in such a manner so as to constitute a breach of the peace, or to endanger or risk the health, safety, or general welfare of the public;
- B. Notice of denial or revocation of a license shall be given in writing to the applicant or licensee, setting forth specifically the grounds of denial or revocation. A notice of denial may be given to the applicant at any time during the application review process. A notice of revocation shall be mailed to the licensee at the licensee's last known address at least ten (10) calendar days before the date of the revocation. The last known address is deemed to be the address provided to the city by the applicant on the business

license application unless the applicant thereafter gives the city written notice of a different address.

C. An applicant shall be entitled to a refund of the business license annual fee in the event that their business license application is denied.

Staff: language has been added to require that the business license application fee be refunded if the associated application is denied.

4.05.055065 VIOLATIONS

A. A violation of this Chapter shall constitute a civil violation of the laws of Newport and shall be prosecuted at the city's discretion by the filing of a complaint filed in municipal court or in an Oregon state court of proper jurisdiction. Any person found to have violated this Chapter shall be subject to a civil penalty ~~not to exceed five hundred dollars (\$500.00)~~ in an amount established by Council resolution.

B. The conviction of any person for violation of this Chapter shall not act or relieve such person from the requirement to register a business or obtain a business license. The penalties imposed by this section are in addition to and not in lieu of any other remedies available to the city.

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

Staff: A fixed amount for penalties is being taken out in favor of the amount being established by resolution. A resolution will be prepared concurrent with the ordinance revisions. The term "personally" liable is used by other jurisdictions and staff should have an answer from the city attorney regarding the legality of the term by the September 8th Business License Work Group meeting.

4.05.070 EVIDENCE OF DOING BUSINESS

In the trial or hearing on any alleged violation of this Chapter, evidence of advertisements by newspaper, radio, television, internet or other medium or by signs displayed for public view, that a business activity was being conducted within the city, including expressly or implied offering to sell goods, services,

or lodging to the public or any segment thereof, shall constitute prima facie evidence that the defendant was conducting a business activity within the city on the day or date during which such representations were made.

Staff: Language of this nature has been requested by the Fire Marshall and is comparable to what the city adopted for vacation rentals. It addresses a known issue when cases are taken to municipal court. This type of language is used by other jurisdictions (e.g. Ashland and Medford).

4.05.060075 APPEAL

- A. Any person aggrieved by the City Manager's (i) denial of a business license application; (ii) revocation of a business license; (iii) assessment of business application fee or business license annual fees; or (iv) application of any rules or regulations pertaining to this Chapter; shall have the right to appeal to the City Council. The applicant or licensee shall file with the City Council a written statement setting forth fully the grounds for the appeal within twenty (20) calendar days after either: (i) the day the notice of denial is issues or the day the of revocation is mailed; (ii) the day the disputed fees are assessed; or (iii) the day applicant or licensee alleges that the rules or regulations were misapplied.
- B. The City Council shall set a time and place for a hearing on the appeal within ~~twenty-three~~ (20)30 calendar days after receiving the appeal. Notice of the appeal hearing shall be mailed to the applicant or licensee's last known address at least ten (10) calendar days prior to the hearing. During the hearing, the applicant or licensee shall have an opportunity to present in writing or orally the grounds for the appeal. The decision and order of the City Council on such appeal shall be final and conclusive.

Staff: Additional time has been provided for scheduling an appeal hearing as requested by the Business License Work Group.

4.05.010 PURPOSE AND SCOPE

The purpose of this Chapter is to provide revenue for municipal purposes and to provide for the health, safety, and welfare of the citizens of Newport through the regulation of businesses, occupations, and trades. A business need not be located within the city in order to be subject to the provisions of this Chapter. This Chapter serves the public interest by mandating that business will be carried on in compliance with applicable laws and in a manner that protects the public's health, safety, and welfare. The licensing provisions of this Chapter are enacted pursuant to the City Charter, Section 4, and the city's home rule authority as provided in the Oregon Constitution, Article XI, Section 2.

The business license fee shall be in addition to, and not in lieu of, any other license or permit fee, charge, or tax required under any other Municipal Code section or city ordinance. The business license required by this Chapter shall not be construed to constitute a permit to engage in any activity prohibited by law nor as a waiver of any other regulatory or license requirement imposed by the city or by federal, state, or local law.

4.05.015 DEFINITIONS

Business - Any for-profit or non-profit enterprise, establishment, store, shop, activity, profession, or undertaking of any nature within the city, whether conducted directly, indirectly, or cooperatively, including the rental of real property as defined in this ordinance, carried on for the purpose of generating income.

City Manager - The City Manager of the City of Newport or the City Manager's designee.

Consignment Store Merchants - Persons who own goods and enter into an agreement with a consignee/seller to sell or market those goods. Consignment store merchants occupy space within a fixed facility or building which is owned or operated by consignee/seller for the purpose of displaying and selling such goods.

Employee - Any person who works within the city in the service of another person (the employer) and whose work performance details are controlled by the employer. This

definition includes contractors and persons volunteering their time to an employer. Employees may be part-time or full-time and the number of employees will be measured using a full-time equivalent computation, in accordance with any applicable city rules.

Endorsement - Standards established by the city which a business license applicant must satisfy or make progress toward satisfying prior to the city issuing a business license. Any city-approved endorsements will be clearly noted on the business license.

Not-for-Profit Entity - Any entity organized and operated exclusively for a religious, charitable, humanitarian, or educational purpose and for whom the United States or the State of Oregon has granted an exemption from the payment of income tax on that basis.

Person - Any and all natural and legal persons, including individuals or public or private corporations, firms, partnerships, associations, organizations, syndicates, joint ventures, societies, or any other group or entity acting as a unit of individuals.

Rental of Real Property - The rental or offering for rent of real property. Rental of real property includes, but is not limited to, the following types of properties rented or offered for rent: hotel or motel rooms, automobile or tourist courts, boarding houses, bed and breakfast rooms, mobile homes or trailer parks, residential or vacation homes, multi-family dwelling units, moorage units, and commercial properties.

Special Event Vendors - A person engaged in selling or offering for sale any food, beverage, merchandise, or service within the city during a special event for which the event organizer has obtained a valid business license. Special event vendors must possess all other necessary city, county, and state permits and authorizations.

4.05.020 BUSINESS LICENSE REQUIRED

No person shall do business within the city without a current, valid city business license, unless exempt from this ordinance. No person shall do business within the city as an employee, agent, or representative of another person unless the owner, principal, employee, agent, or representative is exempt or has a current, valid city license for that business, no matter where

the principal offices of that business are situated.

4.05.025 EXEMPTIONS

Persons engaged in the following activities are exempt from the business licensing requirements of this Chapter:

- A. On-premises sale of used household goods by a person who resides on the premises (a yard or garage sale), so long as the sale is conducted no more than four days in any calendar year.
- B. An act or series of acts performed in the course or pursuit of a business activity for not more than twenty (20) hours in one calendar year.
- C. Special Event Vendor and Consignment Store Merchants, as long as the following requirements are met:
 - 1. The organizer of the special event or the owner/operator of the consignment store obtains a valid business license which lists all special event vendors or consignment store merchants. Such list must be updated by the organizer of the special event or the owner/operator of the consignment store upon any significant change in the number or type of special event vendors or consignment store merchants;
 - 2. The special event vendor or consignment store owner/operator obtains all other necessary city, county, or state permits or licenses and complies with all applicable city, county, or state laws and regulations.
- D. Persons engaged in delivery of goods inside the city from points outside the city.
- E. Any city, county, state agency, special district, school district, or other government entity.
- F. A person's rental of no more than one residential dwelling unit for thirty (30) days or more.
- G. A person's rental of a dwelling unit, where rental of the unit is required to be managed by a single entity pursuant to a covenant or other binding legal instrument. In such cases, the owners of each dwelling unit shall be viewed as having

an ownership interest in a common business and only the business (i.e. the entity managing the units) is required to obtain a business license.

- H. Any unincorporated business activity carried on by individuals under the age of 18.
- I. Any business operating under a city franchise.
- J. Any person transacting and carrying on any business within the city which is exempt from such regulation by virtue of the Constitution or laws of the United States of America or the Constitution or laws of the State of Oregon.

4.05.030 FEES

- A. This ordinance hereby establishes a Business Application Fee and a Business License Annual Fee.
- B. The business application fee amount shall be charged when a new or expired business license application is processed and shall be limited to recovering the Finance Department's administrative cost of processing the application. The business application fee is non-refundable and shall be set from time to time by resolution of the City Council. Persons holding expired business licenses will be charged a new business application fee to re-apply.
- C. The business license annual fee shall be charged when a new business license application is processed or a person renews an existing, non-expired business license. The amount of the business license annual fee shall be determined by resolution of the City Council.
- D. Not-for-Profit Entities shall not be charged a business license annual fee. Such entities must still apply for a business license, pay the business application fee, and annually renew the license at no cost.
- E. Persons expressly exempted from paying a city business license application fee or business license annual fee under any other lawful provision of federal, state, or city law shall not be subject to such fees. City shall document claimed exemptions, and may require that the person claiming the exemption provide proof of such exemption satisfactory to the City Attorney.

- C. All applications shall be submitted before the person first does business in the city. A license shall be valid from the date of issuance until June 30th of the next calendar year. Applications received after December 31 will be charged one-half of the business license annual fee, as determined by City Council resolution.
- D. Upon receipt of a signed and completed application for a business license, the city shall inform the applicant of any business application fees and business license annual fees due and process the application within 30 days or notify the applicant in writing as to why the application cannot be processed within this timeframe and any steps that the applicant must take before the city will approve the application. Such fees shall be due and payable on the date the application is submitted or by July 1st for non-expired renewals. The city will endeavor to process all applications and renewals within 30 days of the date they are received.

4.05.045 ISSUANCE; DISPLAY; TRANSFER

- A. The city shall issue a written receipt when a business license is approved and any applicable business application fees and business license fees are paid in full. The receipt shall serve as a temporary business license effective for a period of forty-five (45) days while the city reviews the business license application. The temporary business license shall be public notice that the person named thereon is licensed to do business in the city.
- B. A business license will be issued by the city to replace the temporary business license once the business license application has been approved by the City Manager, following referral to the Community Development, Public Works, Fire, and Police Departments.
- C. Upon receipt of a business license, a person who is required by this ordinance to have a business license shall cause the license to be prominently posted in a place available to the public at the principal location or office of the business for which the license is issued. If the principal location or office of the business is not located within the city, the business' employee, agent or representative must possess a copy of the license when doing business within the city. For business licenses issued to persons who offer

real property for rent, the license need not be posted, but shall be made available upon city's request.

- D. Issuance of a business license, temporary or otherwise, shall not preclude enforcement against the licensee of any city ordinance, state statute, federal law or any other applicable law.
- E. A business license may be transferred to another party if:
1) the other party becomes the owner of the business; 2) no other significant change in the nature of the business has occurred; 3) if the existing business license contains no endorsements; and 4) if the new owner contacts the city to amend the business license application to accurately reflect the new ownership and any other new information. No other transfer or assignment of any license issued under this chapter shall be valid or permitted. Upon a significant change of the nature of the business, a new business license is required.
- F. A duplicate license shall be issued upon application and payment of a fee to replace the license previously issued which was lost or destroyed. The fee for a duplicate license shall be set by Council resolution.

4.05.050 DISCLOSURE; DELINQUENCY

- A. Persons required to possess a business license shall, upon the city's request, make available all records, accounts and documents of every nature and in whatever media format which may tend to prove or disprove the applicant's statements on the business license application.
- B. A business license fee not paid in full within 30 days after it is due is delinquent and the city may avail itself of any and all remedies available to collect the fee, including but not limited to referring the delinquency to a collection agency and citing the person for a violation of the Newport Municipal Code. In addition, a delinquency charge may be imposed in an amount established by Council resolution.

4.05.055 ADMINISTRATION

- A. The City Manager is responsible for the administration of this Chapter and may adopt reasonable policies, procedures, administrative rules, or regulations to carry out the purpose and intent of this Chapter and to ensure

that any health or safety issues related to the applicant's business are identified prior to the city issuing a business license. The City Manager shall provide the City Council with a report of any administrative rule adoptions or amendments regarding this ordinance. The city may initiate the process for remediating any health or safety issues at any time, whether before or after the issuance of the business license.

4.05.060 DENIAL OR REVOCATION

- A. A license issued under the provisions of this chapter may be denied or revoked by the City Manager, after notice as provided below, for any of the following causes:
1. Fraud, misrepresentation or false statement contained in the application for a license or failure to supply the requested application information;
 2. A violation of this Chapter or of any city, county, state, or federal law or regulation;
 3. Conducting the licensed activity in an unlawful manner or in such a manner so as to constitute a breach of the peace, or to endanger or risk the health, safety, or general welfare of the public;
- B. Notice of denial or revocation of a license shall be given in writing to the applicant or licensee, setting forth specifically the grounds of denial or revocation. A notice of denial may be given to the applicant at any time during the application review process. A notice of revocation shall be mailed to the licensee at the licensee's last known address at least ten (10) calendar days before the date of the revocation. The last known address is deemed to be the address provided to the city by the applicant on the business license application unless the applicant thereafter gives the city written notice of a different address.
- C. An applicant shall be entitled to a refund of the business license annual fee in the event that their business license application is denied.

4.05.065 VIOLATIONS

- A. A violation of this Chapter shall constitute a civil violation of the laws of Newport and shall be prosecuted at the city's

discretion by the filing of a complaint filed in municipal court or in an Oregon state court of proper jurisdiction. Any person found to have violated this Chapter shall be subject to a civil penalty in an amount established by Council resolution.

- B. The conviction of any person for violation of this Chapter shall not act or relieve such person from the requirement to register a business or obtain a business license. The penalties imposed by this section are in addition to and not in lieu of any other remedies available to the city.
- C. In the event any provision of this chapter is violated by a firm or corporation, the officer, officers or individuals responsible for the violation shall be personally subject to the penalties imposed by this section.

4.05.070 EVIDENCE OF DOING BUSINESS

In the trial or hearing on any alleged violation of this Chapter, evidence of advertisements by newspaper, radio, television, internet or other medium or by signs displayed for public view, that a business activity was being conducted within the city, including expressly or implied offering to sell goods, services, or lodging to the public or any segment thereof, shall constitute prima facie evidence that the defendant was conducting a business activity within the city on the day or date during which such representations were made.

4.05.075 APPEAL

- A. Any person aggrieved by the City Manager's (i) denial of a business license application; (ii) revocation of a business license; (iii) assessment of business application fee or business license annual fees; or (iv) application of any rules or regulations pertaining to this Chapter; shall have the right to appeal to the City Council. The applicant or licensee shall file with the City Council a written statement setting forth fully the grounds for the appeal within twenty (20) calendar days after either: (i) the day the notice of denial is issues or the day the of revocation is mailed; (ii) the day the disputed fees are assessed; or (iii) the day applicant or licensee alleges that the rules or regulations were misapplied.
- B. The City Council shall set a time and place for a hearing on the appeal within thirty (30) calendar days after

receiving the appeal. Notice of the appeal hearing shall be mailed to the applicant or licensee's last known address at least ten (10) calendar days prior to the hearing. During the hearing, the applicant or licensee shall have an opportunity to present in writing or orally the grounds for the appeal. The decision and order of the City Council on such appeal shall be final and conclusive.

CITY OF NEWPORT

ORDINANCE NO. 2058

AN ORDINANCE REPEALING AND RE-ENACTING
CHAPTER 4.15 OF THE NEWPORT MUNICIPAL CODE
PERTAINING TO TAXICABS

WHEREAS, the City of Newport Charter provides that the city has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant; and

WHEREAS, the above referenced grant of power has been interpreted as affording the city all legislative power under the home rule provisions of the Oregon Constitution; and

WHEREAS, it is the purpose of this ordinance to require that persons operating taxicabs do so in a safe, fair, and efficient manner; and

WHEREAS, the taxicab industry is an important part of the city's transportation system, and transportation fundamentally impacts the well-being of the citizens, and some regulation is necessary to ensure that the public safety is protected, the public need provided for, and the public convenience promoted; and

WHEREAS, the City Council adopted Ordinance No. 1935 pertaining to taxicabs on September 4, 2007 and the ordinance needs to be updated to address safety, equity, and efficiency.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. Chapter 4.15 of the Newport Municipal Code is repealed and re-enacted as shown in the attached Exhibit A.

Section 2. This ordinance will become effective thirty days from the date of adoption.

Adopted by the Newport City Council on the _____ day of _____, 2013.

Sandra N. Roumagoux, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

EXHIBIT A

ORDINANCE NO. 2058

4.15.010 Definitions

A. Except where the context clearly indicates otherwise, the following words shall mean:

1. "**City Manager**" means the City of Newport City Manager or his/her designee.
2. "**Driver**" means every person who is, or acts under or at the direction of, the owner, agent, or employee, and is in charge of operating any taxicab.
3. "**Endorsement**" means a taxicab endorsement to a business license to allow the business to operate a taxicab business in the city.
4. "**Flat rate**" is a fare which remains constant regardless of the distance traveled or time involved.
5. "**Limousine**" is a chauffeur-driven motor vehicle that carries passengers for hire where the minimum fare charged is at least \$50.00.
6. "**Nonemergency medical transport vehicle**" means a vehicle that carries a person for hire and such person requires nonemergency medical treatment or supervision by an emergency medical technician or first responder certified by the Oregon State Health Division while in the vehicle.
7. "**Operate**" means to drive a vehicle, to use a vehicle in the conduct of business, to receive money from the use of a vehicle, or cause or allow another person to do the same.
8. "**Owner**" means every person having use or control of any taxicab whether as owner, lessee, or otherwise.
9. "**Permit**" means Police Chief's authorization of a driver to operate a taxicab listed in an endorsement to the business license.
10. "**Police Chief**" means the City of Newport Police Chief or his/her designee.
11. "**Street**" means any street, alley, avenue, road, lane, highway, or public place in the city used for the purpose of public travel.
12. "**Taxicab**" means any vehicle that carries passengers for hire whose journey has originated in the city, where the destination and route may be controlled by a

passenger, and the fare is calculated on the basis of any combination of an initial fee, distance traveled, and delay, or the fare is a flat rate.

13. **“Taxicab Driver Permit”** means a permit issued to an individual to operate a taxicab in conjunction with a business possessing a taxicab endorsement to its business license.

14. **“Temporary Taxicab Driver Permit”** means a permit issued to an operator for a special community event, such as the annual Seafood and Wine Festival. A temporary permit will be effective only for the special event for the particular year of the permit application from 12:00 P.M. on the first day of the event and ending at 12:00 A.M. immediately following the last day of the event.

B. Any vehicle that has an appearance similar to a taxicab is a taxicab for the purposes of this Chapter.

C. As used in this Chapter, “taxicab” does not include licensed ambulances, nonemergency medical transport vehicles, regular-route scheduled buses, state-approved buses engaged in charter service, limousines, courtesy vehicles operated by hotels and motels as a convenience for registered guests where no charges are made, vehicles operated for the exclusive use of senior citizens or persons with disabilities, vehicles contracted for special events by non-profit organizations.

4.15.020 Taxicab Endorsement or Temporary Taxicab Driver Permit Required

A. No person shall operate any taxicab business in the city without possessing a valid taxicab endorsement to the business license for that business and its vehicles issued pursuant to this Chapter, as well as any other license required by the city.

B. No person shall operate a taxicab during a special event without having first obtained a temporary taxicab driver permit.

4.15.030 Taxicab Endorsement Application Required

A. An application for a taxicab endorsement shall be filed with the Police Chief. The application must be verified under penalty of perjury and contain the following information and documentation:

1. The name, business address, and residence address of the owner or person applying.
2. The make, type, year of manufacture, and seating capacity of the vehicle(s) for which application for taxicab endorsement is made.
3. A description of the proposed color scheme, insignia, trade style, or any other distinguishing characteristics of the proposed vehicle design.

4. A statement whether the applicant or any officers of the applicant have been convicted of any felony, misdemeanor or violation of any municipal ordinance or state law, including non-moving traffic violations and parking offenses, the nature of the offense and the punishment or penalty assessed.
 5. A policy of insurance in the manner and form required under 4.15.150.
 6. Payment of a nonrefundable fee as provided by (B) of this section.
- B. The fee is to be set by resolution of the City Council.
- C. On receipt of an application for a Taxicab Endorsement, the Police Chief shall be responsible for conducting an investigation of the owner or applicant within 60 days from the date the application is filed. The following information is required:
1. Copy of driver license;
 2. Two (2) passport-sized copies of a recent photograph of the applicant;
 3. FBI "Applicant" fingerprint card (not required for renewal or Temporary Taxicab Driver's Permit application. These are obtained at the Lincoln County Sheriff's Office);
 4. Check payable to the Oregon State Police, at current rate (not required for renewal or Temporary Driver's Permit application);
 5. Copy of receipt from the city Finance Department.
 6. The applicant does not owe the city any monies due to unpaid traffic fines, parking fines, or any other fee.
- D. If the Police Chief denies an application for a taxicab endorsement, or the taxicab endorsement is revoked or suspended by the Police Chief, the denial may be appealed to the City Manager or his/her designee. The decision of the City Manager is subject to appeal to the City Council.
- E. All taxicab endorsements expire on June 30 of each calendar year, and may be renewed from year to year upon application to the Police Chief. The fee for a taxicab endorsement renewal shall be set by City Council resolution.

4.15.100 Issuance of Taxicab Endorsement

The Police Chief will issue a taxicab endorsement to operate a taxicab if the applicant has met the requirements of this Chapter.

4.15.110 Taxicab Driver Permit and/or Temporary Taxicab Driver Permit Required

It is unlawful for any person to operate a taxicab in the city without a taxicab driver permit, or a temporary taxicab driver permit which was issued by the Police Chief in accordance with the terms of this Chapter.

- A. Application for a Taxicab Driver Permit or a Temporary Taxicab Driver Permit. A person may apply for a taxicab driver permit or temporary taxicab driver permit by submitting a completed application to the Police Chief accompanied by the payment of a fee established by City Council resolution. The application must include:
 1. Copy of driver license;
 2. Two (2) passport-sized copies of a recent photograph of the applicant;
 3. FBI "Applicant" fingerprint card (not required for renewal or Temporary Taxicab Driver Permit application which can be obtained from the Lincoln County Sheriff's Office);
 4. Check payable to the Oregon State Police, at current rate (not required for renewal or Temporary Taxicab Driver Permit application);
 5. Copy of receipt for payment of fees from the city's Finance Department.
- B. Upon receipt of a taxicab driver permit or temporary taxicab driver permit application, the Police Chief shall be responsible for investigating the applicant's background as necessary to verify compliance with subsection C. of this section, including initiating a criminal background check.
- C. The Police Chief shall not issue a taxicab driver permit or a temporary driver permit unless the following applicant information has verified:
 1. Is 21 or more years of age;
 2. Possesses a valid Oregon driver's license;
 3. Has not had a driver's license revoked or suspended by any state within the last five years;
 4. Did not make any false statements in the application;
 5. Has been investigated by the Police Chief and found to have a satisfactory background.
 - a. In conducting the investigation of the applicant, the Police Chief shall verify that the applicant has not been convicted of any felony or misdemeanor involving a crime against persons as defined in ORS Chapter 163, including but not limited to homicide, manslaughter, assault, kidnapping, sexual offenses, harassment and stalking; or any violation of the Oregon Vehicle Code defined as a felony

or misdemeanor, including driving under the influence of intoxicants as defined in ORS Chapter 813; or any misdemeanor involving theft or fraud.

- b. Where the application or other information provided by the applicant indicates a conviction for violation of ORS Chapter 811, the Police Chief shall investigate the violation and determine whether the nature of the violation, when viewed in light of the circumstances of the violation and the city's duty to protect the public, is such that a reasonable person would believe the driver so convicted is an unacceptable risk to public safety. If the person making the investigation believes such a risk exists, and the applicant's background check is not satisfactory, and the Police Chief shall not issue a taxicab driver permit or temporary driver permit to the applicant.
 - c. The applicant does not owe the city any monies due to unpaid traffic fines, parking fines, or any other fee.
- D. If the Police Chief determines that the applicant meets the requirements of this Chapter, including paying any required fees, the Police Chief shall issue the taxicab driver permit or the temporary driver permit.
- E. If the application is denied, or a taxicab driver permit or temporary driver permit is revoked or suspended by the Police Chief, the denial may be appealed to the City Manager or his/her designee. The decision of the City Manager is subject to appeal to the City Council.
- F. All taxicab driver permits and temporary driver permits expire on June 30 of each calendar year, and may be renewed from year to year upon application to the Police Chief. The fee for a renewal permit shall be set by resolution of the City Council.
- G. As a condition of licensing, a taxicab driver and temporary taxicab driver shall agree in writing to notify the Police Chief within ten days of conviction of any crime included in subsection (C)(5)(a) or(c) of this section.

4.15.030 Reissuance, Transfer, Cancellation, Suspension, or Revocation of Taxicab Endorsement, Taxicab Driver Permit, or Temporary Taxicab Driver Permit

- A. No taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit may be sold, assigned, mortgaged, or otherwise transferred.
- B. Any taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit may be suspended or revoked by the Police Chief if any one or more of the following conditions exist:
 - 1. If the possessor of a taxicab endorsement ceases to operate any taxicab for a period of 15 consecutive days without obtaining permission to cease such operation from the Police Chief.

2. The taxicab endorsement, taxicab driver permit holder, or temporary taxicab driver permit holder fails to operate the taxicab in accordance with the applicable provisions of this Chapter.
 3. The taxicab endorsement, taxicab driver permit holder, or temporary taxicab driver permit holder fails to pay any of the fees or payments required to be paid by the provisions of this Chapter.
 4. The taxicab endorsement owner, taxicab driver permit holder, or temporary taxicab driver permit holder no longer qualifies for a taxicab endorsement, driver permit, or temporary driver permit under the provisions of this Chapter.
- C. After the city has issued a taxicab endorsement, any change in the driver name or vehicle list requires the applicant to notify the Police Chief within 30 days of the change. The expiration date of the taxicab endorsement will remain the same.

4.15.040 Surrender of Taxicab Endorsement, Driver Permit, or Temporary Driver Permit

Any taxicab endorsement, driver permit, or temporary driver permit that is suspended or revoked by the Police Chief shall be surrendered to the Police Chief and the operations of any taxicab shall cease.

4.15.050 Fees for Taxicab Endorsement, Taxicab Driver Permit, and Temporary Taxicab Driver Permit

No taxicab endorsement, driver permit, or temporary taxicab driver permit may be issued, or a taxicab business continue in operation, until the applicant has paid the city's fees as established by City Council resolution.

4.15.060 Inspection of Vehicles

- A. Prior to the operation of any vehicle under the provisions of this Chapter and at least annually thereafter, the vehicle shall be inspected by an automobile mechanic located within Lincoln County and shall be certified to be in safe operating condition. An inspection for safe operating conditions must include, but is not limited to, inspection of brakes including parking brake; all lights, signals and reflectors; exhaust system; steering system; wipers including washers; suspension components; mirrors; horn and other warning devices; tires and restraint system. Record of such inspections, clearly identifying the vehicle by license plate number and vehicle identification number, must be made available to the city upon initial application and annual renewal.
- B. In addition to the required initial and annual inspections, inspection or testing of all parts vital to the safe operation of the vehicle such as brakes, steering gear, tires, lights, and signaling devices shall be made at the beginning of each shift or each day

by the driver. Any condition found then or at any other time that will prevent the safe operation of the vehicle shall be corrected before the vehicle is used.

- C. In the event a record of vehicle inspection is not produced within 48 hours of request, or if the record produced indicates the inspection occurred more than 12 months prior to the current date, the city shall notify the holder of a taxicab endorsement to complete an inspection showing compliance with the standards of this Chapter and deliver the record to the city within 48 hours of the written request.
- D. Failure to timely produce a satisfactory record of inspection shall be grounds to deny, suspend, or revoke a taxicab endorsement and also constitutes a violation of this Chapter subject to enforcement under 4.15.170.
- E. A taxicab endorsement holder who permanently retires any taxicab from service must notify the Police Chief within 15 days from the date the taxicab is retired from service.

4.15.070 Operating Regulations

- A. Unless otherwise directed by the passenger, any taxicab driver, or temporary taxicab driver, hired to transport passengers to a definite point shall use the most direct route possible that will carry the passenger to that destination safely and expeditiously.
- B. Every taxicab driver or temporary taxicab driver, if requested, shall give a correct receipt upon payment of the correct fare.
- C. No person may refuse to pay a lawful taxicab fare after hiring a taxicab.
- D. Whenever a passenger occupies a taxicab, the driver must not permit any other person to occupy the taxicab without the consent of the original passenger.
- E. Every vehicle operating under this Chapter is to be kept in a clean, sanitary, and good operational condition.

4.15.080 Equipment

Every taxicab, with the exception of those vehicles used by permitted temporary taxicab drivers, is to be equipped with the following:

- A. Except for taxicabs charging flat rates, a taximeter in accurate operating condition with a lighted face which can be read at all times by the customer. Taxicabs charging flat rates must be equipped with a sign complying with 4.15.050 stating "Flat Rate" conspicuous to a passenger upon entering the taxicab, and outlining the flat rates to be charged. Temporary taxicab drivers shall comply with 4.15.050 outlining rates.
- B. A top light identifying it as a taxicab except for temporary taxicab drivers.

- C. The company name and telephone number where service can be requested displayed on the exterior of the vehicle except for temporary taxicab drivers.
- D. A mobile communication device with a hands-free accessory or state of the art taxi radio on a clear coordinated taxicab radio frequency for customer comfort and rapid dispatching of calls for service except for temporary taxicab drivers.
- E. The driver's approved city taxicab driver permit or temporary taxicab driver permit conspicuously displayed inside the vehicle where it can be easily viewed by a passenger.

4.15.120 Rates

- A. Except for a taxicab charging a flat rate, the rates to be charged to passengers are to be based on the following: the mileage from the point of origin to the point of destination by the more direct route, the time involved, and the number of passengers. Each taxicab must be equipped with a taximeter to compute the rate. In lieu of a computed rate, a flat rate may be charged.
- B. The rate schedule must be posted in each taxicab in a place where passengers may readily see the schedule. No taxicab may charge more than the posted rate.

4.15.130 Complaints

Taxicab endorsement holders and temporary taxicab drivers shall maintain a record of all complaints received in writing or by telephone and shall keep posted in a conspicuous place in the passenger compartment of each taxicab a statement setting forth the address and telephone number of the owners to which complaints should be directed, and a notice that a record of all complaints shall be open to inspection and review by the city at any time on its request.

4.15.140 Reports to the Police Chief

- A. Every taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder shall immediately report to the Police Chief, or his/her designee, as soon as any of the following events occur:
 1. The arrest or conviction for any criminal offense of any officer or principal managing employee of the taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder involving the operation of the taxicab business;
 2. Any taxicab accident required to be reported to the state involving a vehicle driven for the taxicab endorsement holder or by a temporary taxicab driver;
 3. The filing of a lawsuit against or on behalf of the taxicab endorsement holder related to the operation of the taxicab company;

4. The filing of a lawsuit against or on behalf of a temporary taxicab driver related to the operation of a temporary taxicab service;
 5. The initiation of bankruptcy proceedings or corporate or partnership dissolution by the taxicab company; (Why would we need this information?)
 5. Lapse, cancellation, or reduction of coverage of any insurance policy the Police Chief relied on in issuing a taxicab endorsement, taxicab driver permit, temporary taxicab driver permit or renewal of the taxicab endorsement or driver permit.
 6. Any information required to be disclosed by subsection (B) of this section.
- B. Every taxicab driver and temporary taxicab driver shall report to the Police Chief, and in the case of a taxicab driver to the taxicab endorsement holder for which he or she drives, the occurrence of the following:
1. Any arrest, charge, or conviction of the taxicab driver or temporary taxicab driver for any criminal offense, or any traffic violation, that occurs during, or arises out of, the taxicab driver's or temporary taxicab driver's operation of a taxicab;
 2. Any arrest, charge, or conviction of the taxicab driver or temporary taxicab driver for any criminal offense involving theft, robbery, burglary, assault, sex crimes, drugs, prostitution, traffic crimes, or any related offense;
 3. Any vehicle accident required to be reported to the state involving any taxicab operated by the taxicab driver or temporary taxicab driver;
 4. Any restriction, suspension, or revocation of the taxicab, or temporary taxicab, driver's motor vehicle driver's license;

4.15.150 Insurance Requirements

- A. No person may drive or operate, or cause to be driven or operated, any taxicab in the city unless the endorsement holder or temporary taxi driver has on file with the Police Chief a certificate of insurance written by a responsible and solvent insurance carrier authorized to write insurance policies in Oregon, that it has issued to or for the benefit of the taxicab endorsement holder or taxicab driver a commercial auto liability policy which is in full force and effect, and designating in such policy the taxicab(s) which may be driven or operated and the drivers who may operate such taxicab(s) under this Chapter. These requirements are intended to insure the vehicle and its operation by the driver.
- B. The taxicab liability insurance policy shall insure the taxicab endorsement holder, temporary driver, and any other person using or responsible for the use of any such taxicab against loss from the liability imposed upon such operation of such taxicab by law for injury to, or death of, any person, or damage to property growing out of the

maintenance, operation or ownership of any taxicab, in the amount of \$1,000,000 combined single limit for bodily injury and property damage.

- C. The policy required in this section shall include a statement that the policy is not cancelable nor the coverage reducible except on 20 days' prior written notice to the Police Chief.
- D. The owner shall provide the city with a certificate of insurance naming the city as an additional insured.
- E. The insurance minimum limits required by subsection (B) of this section apply when the city issues a new license, reissues, or renews a license or permit.

4.15.160 Indemnification

- A. Any recipient of a taxicab endorsement shall agree to pay all damages and penalties that the city may be legally be required to pay as a result of granting a taxicab endorsement and shall agree to defend and indemnify the city against all claims resulting from the granting of such a endorsement. These damages or penalties shall include, but not be limited to, damage arising out of the operation or maintenance of a taxicab as authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Chapter.
- B. The taxicab endorsement holder shall pay and, by its application and the granting of a taxicab endorsement to the business license, specifically agrees that it will pay all necessary and reasonable expenses incurred by the city in defending itself against all damages and penalties mentioned in subsection (A) of this section, including, but not limited to, reasonable attorney fees.

4.15.170 Violation - Enforcement

- A. A violation of any provision of this Chapter, including but not limited to operating a taxicab service from points originating within the city without holding a valid, approved taxicab endorsement, or operating a vehicle without a valid, approved driver permit, or temporary taxi driver permit shall be enforced under Chapter 1.50.010 of the Newport Municipal Code.
- B. Operating a taxi in violation of this Chapter is declared detrimental to the public health and safety and a nuisance as authorized by Chapter 8.10 of the Newport Municipal Code. As an alternative to any remedy provided for enforcement, the city may use the abatement procedures of Chapter 8.10 or institute injunctive or other appropriate proceedings to temporarily or permanently enjoin the operation of a taxi.
- C. Each day's violation of a provision of this Chapter constitutes a separate offense.