

CHAPTER V. BUSINESS REGULATIONS

Merchants

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ARTICLE 1. GENERAL REGULATIONS AND LICENSES

5-101.

DEFINITIONS. Terms as used in this chapter shall be defined as follows:

- (a) Person - means any individual, partnership, corporation, firm, or gas station, association, joint stock company or syndicate who or which is engaged in any business, trade, occupation or profession, or rendering or furnishing any service for profit or livelihood and subject to the provisions of this article: Provided, That any individual in the direct employ of any person licensed under the provisions of this article is not a person unless such individual operates as a subcontractor; but if such individual performs any service or practices his or her skill for compensation for any person other than his or her licensed employer, he or she is a person and must pay the tax and obtain a license if such be required by the terms of this article.
- (b) Business - means and includes businesses, trades, occupations, professions, the renting or leasing (or the offering for rent or lease) of property for residential or business use, and also the rendering or furnishing of a service; provided, that the name of a business, trade, occupation or profession may be used, and when so used, shall refer to the particular business, trade, occupation or profession.
- (c) Business Property - Any property subject to licensure herein or upon which any commercial, business or professional activity is conducted, except as may be exempt by state law or other authority.
- (d) Home Business - Any business or activity operated out of the home, a material purpose for which is the conduct of commerce or some other business of commercial enterprise for profit or gain. Any declaration of income on any government tax form generated from a home-based enterprise is prima facie evidence of the establishment and operation of a business on the premises,
- (e) Tax - means an occupation or license fee for city revenue without regulations upon and for the privilege of engaging in business as herein defined.
- (f) License - means the documents issued by the city acknowledging payment of the required amount of tax, and stating the name of the licensee, the kind of business and where located, the period which the tax covers, such other matter as may be required and signed by the proper officer or officers.
(Ord. 339, Sec. 2; Ord. 734, Sec. 2; Code 2008)

5-102. LICENSE REQUIRED. It shall be unlawful for any person, firm, or corporation to conduct or pursue any occupation, business or profession, for which a license is required under this chapter, without having a valid license in possession or on the licensed premises. (Code 1983; Code 1993, 5-103)

5-103. PURPOSE. The licenses provided for herein are solely for the purpose of providing revenue to defray a part of the expenses of the city, and not for the purpose of regulation. (Ord. 339, Sec. 1; Code 1993, 5-301)

5-104. EXEMPTIONS. Nothing herein shall be construed as applying to or taxing:

- (a) The interstate portion of any business;
- (b) Any business the taxing of which by a city is prohibited by the statutes of the State of Kansas;
- (c) Instrumentalities of the government of the United States, unless authorized by laws of the United States;
- (d) Organizations of any kind or the employees thereof wholly for charitable, religious, benevolent, fraternal, civic, educational, military, municipal or similar purposes, and from which profit is not derived, either directly or indirectly by any individual.

The city clerk may require any business, instrumentality, or organization claiming to be exempt under this section to file with the city clerk a verified statement stating the facts upon which exemption is claimed.
(Ord. 339, Sec. 3; Code 1993, 5-302)

5-105. OCCUPATION FEES LEVIED. There are hereby levied occupation fees in the amounts and for the periods stated upon the business as hereinafter stated:

- (a) Any occupation of a service character conducted in a residence which occupation is clearly secondary to the main use of the premises as a dwelling place and does not change the character thereof, and does not change the appearance with signs, material, equipment, noise, odor or other nuisance or unusual pedestrian or vehicular traffic pertinent to such home occupation which shall be carried on by members of a family residing in the dwelling, and in connection with which there is kept no stock in trade or commodity for sale upon the premises shall pay an occupational fee of \$25.00 per year.
- (b) All indoor/outdoor recreational facilities shall pay an occupational fee of \$350.00 per location.
- (c) All callings, trades, professions, occupations, manufacturers, stores, industries, processors, wholesalers and similar activities, the occupation fee of which is not set forth in subsections (a) or (b) of this section, shall pay an occupation fee computed on the basis of five cents (\$.05) per square foot of the floor which it occupies which has the greatest area without regard to use; five cents (\$.05) per square foot of other floor areas when used for retail sales and five-tenths of one cent (\$.005) per square foot of outside display or drive-in service area occupied. When a business occupies multiple floors (except retail sales as provided herein above) the fee shall be calculated upon the floor which has the greatest area, the minimum occupation fee computed as herein provided shall not be less than \$50.00 per year.
- (d) Cereal malt beverages; alcoholic liquor.
 - (1) Sales of cereal malt beverages in original containers for consumption off the premises shall pay an occupational fee of \$50.00 per year, which shall be in

addition to any other occupation licenses required in connection with any other business of the applicant.

(2) Cereal malt beverages at retail for consumption on the premises shall pay an occupational fee of \$100.00 per year.

(3) Sale of alcoholic liquor by the package at retail or for consumption on the premises shall pay an occupational fee of \$300.00 per year.

(e) Rental/Leasing Businesses. - Persons engaged in the business of owning residential rental properties shall pay an annual occupational fee of \$30.00 per structure, if the rental property is offered for lease by a leasing agent of the owner, then the fee required shall be made and paid by the leasing agent, unless paid by the owner, if any rental property is offered for lease by the owner of a property who is not a resident of Johnson County, the owner must designate a resident agent who resides in Johnson County. The agent shall be responsible for the payment of all fees and penalties as provided herein, If any person fails or refuses to pay any fee or penalties as provided by this section, the city may collect the amount due in the same manner as a personal debt of the property owner to the city by bringing an action in the District Court of Johnson County. Such actions may be maintained, prosecuted, and all proceedings taken, including any award of post-judgment interest to the same effect and extent as for the enforcement of any action for debt. All provisional remedies available in such actions shall be and are hereby made available to the city in the enforcement of the payment of such obligations. In such actions, the city also shall be entitled to recover interest at the rate provided in K.S.A 79-2968, and amendments thereto from and after the date a delinquency occurs in the payment of the fee. The amount owing may be assessed against the property and the city clerk may at the time of certifying other taxes to the county clerk, certify the aforesaid fees and penalties owing by the proper owner; and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner of a civil action as described herein, but only until the full cost and any applicable interest has been paid in full.

(Ord. 777; Sec. 1; Ord. 770, Sec. 1; Code 2008)

5-106. TWO OR MORE BUSINESSES, SAME LOCATION. A person engaged in two or more businesses at the same location shall not be required to obtain separate licenses for each business but shall be issued one license at the highest fee applicable. (Ord. 339, Sec. 5; Code 1993, 5-304)

5-107. LEASED DEPARTMENTS. Any person operating what is commonly known as a leased department in a business establishment shall pay the fee applicable to the business conducted by the department. (Ord. 339, Sec. 6; Code 1993, 5-305)

5-108. LICENSE APPLICATION: PROCEDURE. Any person shall before engaging in any business or before continuing such business after a license has expired, make application for a license and pay the proper fee. Application shall be made to the city clerk giving the name of the person, the kind of business, location and such other information as may be necessary, or directed by the city clerk, to determine the amount to be paid. All such information furnished the city clerk shall be true, to the knowledge of the person making such application and any such

false information as to the kind of business, location, use of the property and such other information as is required by the city clerk, shall subject such license to be declared void and subject such person to the penalty as set out in section 5-316 hereof. The city clerk may, in his or her discretion, cause an investigation to be made to determine the accuracy of such statements furnished the city clerk. (Ord. 548, Sec.1; Code 1993, 5-306)

- 5-109. SAME; RECEIPT AND LICENSE. The city clerk shall, when satisfied of the accuracy of the information and the proper amount having been paid, issue a receipt stating the name of the person, kind of business, his, her or its location, the date of issuance, the amount paid, the duration and expiration. In addition to the receipt, the city clerk shall issue a license stating the name of the licensee, the nature of the business, the exact location, if possible, the amount paid and date, and date of expiration. The license shall be signed by the city clerk. (Ord. 339, Sec. 8; Code 1993, 5-307)
- 5-110. EXPIRATION OF LICENSE. All annual licenses shall expire on January 15 of each year: Provided, That when a business begins operation on or after July 1 of any year, the amount charged shall be one-half of the annual amount. (Ord. 727, Sec. 1; Code 1993, 5-308)
- 5-111. TRANSFERS. (a) There shall be no transfer of license from one person to another, except that where a business, including stock, if any, is sold and the new owner continues the business at the same location and under the same name, the license shall continue to expiration. If the holder of a license moves a stock of goods from the location stated on the license to another location and begins business at the new location, he or she may return the license to the city clerk and secure a substitute license upon payment of a fee set by the governing body and any additional prorated amount for the unexpired term, should a greater amount be required at the new location.
(b) The annual fee is non-refundable. No reduction in the fee will be refunded if a business should become subject to a smaller fee during a given year. (Ord. 339, Sec. 10; Code 2008)
- 5-112. LATE PAYMENT, PENALTY. Any person who, under the provisions of this article, is required to pay a fee, and who does not pay the fee within 30 days after it becomes due, shall pay, in addition to the fee, a penalty of 10% of the amount of the fee; and 10% of the fee shall be added as a penalty for each additional 30 days' delinquency. (Ord. 339, Sec. 11; Code 1993, 5-310)
- 5-113. DISPOSITION OF REVENUE. The revenue received under the provisions of this article shall be credited to the city general fund. (Ord. 339, Sec. 12; Code 1993, 5-311)
- 5-114. LICENSE TO BE DISPLAYED. All persons not having permanent location are required to carry their license with them. A licensee shall present his or her license for inspection when requested to do so by any officer of the city. (Ord. 339, Sec. 13; Code 1993, 5-312)

- 5-115. BUSINESS TRANSACTIONS NOT INVALID. The pursuing, conducting or carrying on of any business without the payment of the fee required and without having secured a license as provided by this article shall not affect the validity of any business transaction; which would otherwise be lawful.
(Ord. 339, Sec. 14; Code 1993, 5-313)
- 5-116. PAYMENT OF FINE DOES NOT PAY FEE; CIVIL ACTION. The payment of a fine or the serving of a jail sentence for failure to pay the fee and secure a license shall not constitute payment of the fee and does not excuse the person from making payment, and the city may proceed by civil action to collect the fee.
(Code 1983; Code 1993, 5-314)
- 5-117. PENALTY. Any person, as defined by this article who shall conduct, pursue, carry on or operate within the corporate limits of the city any business as defined by this article, and any individual who shall assist directly or indirectly, in so doing in any manner or to any extent, either as owner, proprietor, manager, superintendent, partner, agent, servant, or employee of any person after a fee should have been paid and a license obtained to conduct, pursue, carry on or operate such business and the fee has not been paid and a license obtained, shall be deemed to do so unlawfully and upon conviction thereof in the municipal court shall be punished by a fine of not more than \$500.00, or by imprisonment in the city jail for a period not exceeding 180 days, or by both such fine and imprisonment.
A separate offense shall be deemed committed on each day during or at which a violation occurs or continues.
(Code 1970, 5-316; Code 1993, 5-315)
- 5-118. SALES ON PUBLIC PROPERTY. No merchandise, goods, wares or edible products of any nature whatsoever may be displayed for sale or sold within and upon the city streets or public property, except upon proper application for a license for the use of public grounds as set forth in section 12-104 of this code.
(Code 1993, 5-102)
- 5-119. NEW GOODS PUBLIC AUCTION: LICENSE FEE. The license fee for the conduct of a new goods public auction shall be \$25.00 per day as provided in K.S.A. 58-1019. (Code 1983; Code 1993, 5-105)
- 5-120. RIGHT TO INSPECT BUSINESS PROPERTY. The city shall have the right to enter upon any business property to the extent permitted by law, to determine:
(a) The use of the property is in compliance with the applicable zoning laws.
(b) The property meets the requirements of the city's building and safety codes.
(c) No condition exists in the structure or on the property upon which it is located constituting a violation of any other code or ordinance of the city.
(Code 2008)