

COUNCIL & STAFF PRESENT:

Richard Detweiler	Mayor
Tony Fajkus	Councilmember
Roger A. Edge	Councilmember
Jerry Mills	Councilmember
Robert L. Russell	Councilmember
Mari Macomber	City Manager
Vickie Brumbaugh	City Clerk
Sarah Halstead	Community Services Coordinator
Katie Myers	Finance Director
Melanie Smith	Assistant to City Manager

Absent: Howard Hickman City Attorney

The City Council of the City of Kirksville, Missouri, met in a Special Session on Monday, January 28, 2013, at 4:30 p.m. in the City Hall Council Chambers.

ORDER OF AGENDA

Councilmember Mills moved to approve the Order of the Agenda; seconded by Councilmember Edge. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Fajkus, Mills and Russell. Noes – 0.

INFORMATION PRESENTATION

None.

UNFINISHED BUSINESS

None.

ACTION PRESENTATIONS

BILL NO. 2013-04

AN ORDINANCE AMENDING CHAPTER 14, BUSINESS LICENSES, OF THE CITY CODE OF THE CITY OF KIRKSVILLE, MISSOURI, REGARDING WHO IS REQUIRED TO PAY GROSS RECEIPTS AND WHAT IS CONSIDERED A TAXABLE SERVICE.

Councilmember Fajkus moved to approve Bill No. 2013-04 on first reading; seconded by Councilmember Edge.

Currently a license fee is refunded if a business application is disapproved or if the applicant does not follow through with the application process. A change in the ordinance makes the fee non-refundable up to \$250. A State Statute limits the amount that can be charged for delinquent business license fees. The legal limitation from a flat \$20 fee to a calculated fee is addressed in this ordinance. Also clarifies who is required to pay gross receipts and what is considered a taxable service.

Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Fajkus, Mills and Russell. Noes – 0.

Insurance Provider Proposal – Midwest Public Risk

Councilmember Fajkus moved to approve a proposal from Midwest Public Risk as the insurance provider; seconded by Councilmember Edge.

The City had not bid out risk management insurance since 1998. Four companies responded to a recent request for proposals. MIRMA has been the City’s provider since 1987, and their quote was \$441,146. The lowest bid was from Midwest Public Risk at \$360,828 for the 2013-2014 coverage year. There was a sewer deductible of \$10,000 that was not included in the Midwest quote.

Matthew Brodersen and Kelly Beets of MIRMA were present. Mr. Brodersen addressed the Council that MIRMA deals only with municipalities, makes site visits and conducts training visits.

Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Fajkus, Mills and Russell. Noes – 0.

2nd Reading of Ordinance

BILL NO. 2013-04

ORDINANCE NO. 12040

AN ORDINANCE AMENDING CHAPTER 14, BUSINESS LICENSES, OF THE CITY CODE OF THE CITY OF KIRKSVILLE, MISSOURI, REGARDING WHO IS REQUIRED TO PAY GROSS RECEIPTS AND WHAT IS CONSIDERED A TAXABLE SERVICE.

NOW, THEREFORE, BE IT ORDAINED, by the City of Kirksville, that Chapter 14, Business Licenses, be amended as follows:

Section 1. Certain Sections of Chapter 14 be amended by adding or deleting the following:

Sec. 14-16. - Definitions.

~~Deceptive practices.~~ The misleading of others through intentional false statements or fraudulent actions.

~~Electrician.~~ Any person who installs, operates, maintains, or repairs electric devices or electrical wiring.

~~Deceptive practices.~~ The misleading of others through intentional false statements or fraudulent actions.

~~HVAC Technician.~~ An HVAC technician is any person who is responsible for installing and maintaining heating, air-conditioning and ventilation equipment. An HVAC Technician is not a Plumber.

Manufacturer. ~~Every~~ Any person, company or corporation who shall hold or purchase personal property for the purpose of adding to the value thereof by any process of manufacturing, refining, or by the combination of different materials. (Per RSMo. § 150)

Merchant. ~~Every~~ Any person, corporation, copartnership or association of persons, who shall deal in the selling of goods, wares and merchandise at any store, stand or place occupied for that purpose. Also, every person, corporation, copartnership or association of persons doing business in the State of Missouri who shall, as a practice in the conduct of such business, make or cause to be made any wholesale or retail sales of goods, wares and merchandise to any person, corporation, copartnership or association of persons, shall be deemed to be a merchant whether said sales be accommodation sales, whether they be made from a stock of goods on hand or by ordering goods from another source, or whether the subject of said sales be similar or different types of goods than the type, if any, regularly manufactured, processed or sold by said seller. (Per RSMo. § 150)

Plumber. A person who fits and repairs the pipes, fittings, and other apparatus of water supply, sanitation, or heating systems. A plumber is not an HVAC Technician.

Sale of business. A business will be considered sold if it is a sole ownership or partnership that has an ownership change.

Taxable Services. Services are generally presumed taxable unless specifically exempted by law.

Sec. 14-17. License required; Payment, duration; multiple businesses, premises.

(a) Every person doing business and engaged in any of the businesses, occupations, professions or services ~~described in this section~~ shall pay the license fees set forth in this ~~section~~ chapter which shall be annual and which shall be due and payable and issued on or before the first day of March of each year and be valid until the last day of February of the following year.

(b) All persons, merchants, agents, peddlers, salesmen, businesses, or their representatives, before offering any item, product, merchandise, service or commodity for sale shall make application for renewal or new annual license, and such person may commence business upon issuance of such license.

~~(b)~~ (c) Any person operating both a retail and wholesale business on the same premises, shall purchase both wholesale and retail licenses, however, such person shall compute the gross receipts fee collectively from their gross wholesale and gross retail receipts.

~~(e)~~ (d) Where two (2) or more retail licenses are required for a person to operate a business on one (1) premise, such person may combine all his gross receipts from all such retail transactions for computing the gross receipts fee thereon.

~~(e)~~ (e) Where an additional retail license is required for a person to operate his business on one (1) or more separate premises, such person may combine all his gross receipts from all such retail transactions from all premises for computing the gross receipts fee thereon.

(f) No renewal application will be accepted or renewal license issued unless in compliance with the provisions of subsection 14-33(c).

(eg) No refund shall be made on any gross receipts fee, license fee or investigation fee imposed under this chapter due to the cessation of the business during any license year.

~~(h) In the event that the license applied for is not issued, for any reason, whatsoever, then the license fee(s) and investigation fee(s) imposed under this chapter will not be refunded up to \$250. Fees over \$250 will be refunded.~~

Sec. 14-20. - Gross receipts fee required, no performance bond.

~~(a) All persons, merchants, agents, peddlers, salesmen, businesses, or their representatives, before offering any item, product, merchandise, service or commodity for sale shall make application for renewal or new annual license, and such person may commence business upon issuance of such license.~~

~~(b) No renewal application will be accepted or renewal license issued unless in compliance with the provisions of subsection 14-33(c).~~

(ea) Gross receipts fee shall be imposed upon all businesses located within the city engaged in the business of selling tangible personal property or rendering taxable services at retail or wholesale as set out in section 14-19.

(eb) The annual license fee applicable to all businesses subject to this section is ten dollars (\$10.00), with the following exceptions:

- (1) Billiard parlors, each table\$10.00
- (2) Bowling alleys, each alley\$10.00
- (3) Dairy products, wholesale distribution\$35.00

Sec. 14-21. - Performance bond required, no gross receipts fee.

~~(b) No renewal application will be accepted or renewal license issued unless in compliance with the provisions of subsection 14-33(c).~~

(eb) ~~Besides~~ In addition to the annual license fees set out below, each of the persons, merchants, agents, repairmen or their representatives listed below shall be required to post a performance bond or certificate of liability insurance with the city, but shall not be required to pay a gross receipts fee on their gross receipts as set out in section 14-19.

- (1) Plumbers, unless doing work for and employed by a licensed plumbing firm\$25.00
- (2) Contractors, general contractors, subcontractors, builders, or carpenters who perform work on, upon or within public rights-of-way and/or public property
\$25.00
- (3) Electricians, unless doing work for and employed by a licensed electrical firm\$25.00
- (4) Contractors, electricians, and plumbers. Testing is required for those persons applying for a new license. The cost for taking the first test of each occupation is included in the cost of the license, whether it be for an individual or for a company. If

the applicant does not pass the initial test, any subsequent test will require a ten dollar (\$10.00) fee.

(dc) Every person engaging in a business for which a performance bond shall be required shall, in addition to the license fee provided for in this section, deposit with the city clerk a surety bond in the sum of one thousand dollars (\$1,000.00), unless otherwise specified, executed by a surety company authorized to transact business in the state, conditioned upon the faithful compliance with the provisions of this article and other ordinances of the city. Such bond shall also be conditioned to indemnify or reimburse the city or any purchaser of goods, wares, merchandise or services in a sum equal to the amount of any payment for damage, which the city may suffer or which such purchaser may have been induced to make through misrepresentation or fraud.

(ed) In lieu of such a performance bond, every person engaging in a business for which a performance bond would otherwise be required, may deposit with the city clerk a certificate of liability insurance in an amount not less than twenty-five thousand dollars (\$25,000.00).

(fe) In the event that any such person shall fail to deposit such a performance bond or certificate of insurance with the city clerk as herein provided, or in the event that any such performance bond or certificate of insurance deposited with the city clerk shall be cancelled, then the license of such person to engage in such business shall be subject to immediate revocation.

Sec. 14-22. - Neither performance bond nor gross receipts fee required.

~~(b) No renewal application will be accepted or renewal license issued unless in compliance with the provisions of subsection 14-33(c).~~

(eb) This section is applicable to businesses whose revenues are based on fees or commissions for services provided for hire or to a manufacturing business of any kind, with the exception of those professions so named under RSMo. § 71.620 and § 71.630. These businesses shall not be required to post any performance bond with the city nor pay any gross receipts fee on their gross receipts, unless otherwise specified.

(dc) The annual license fee applicable to all businesses subject to this section is ten dollars (\$10.00), with the following exceptions:

- (1) Advertising on walls, buildings, fences and billboards, per display\$10.00
 - (2) Auctioneers (who maintain a business office in the city)\$25.00
 - (3) Automatic selling machine or devices, each machine\$1.00
 - (4) Banks, banking corporations, trust companies, savings and loan associations, brokerages, brokers\$100.00
 - (5) Hairdressing shops and schools, manicurists, masseurs, annual fee and first chair\$10.00
- Each additional chair\$5.00

(6) Sale barns (cattle or general), stockyards\$100.00

(7) Contractors, general contractors, subcontractors, builders, repairmen or carpenters, who do not perform work on, upon or within public

right-of-way and/or public property...\$5.00

(8) Finance companies\$150.00

(9) Garbage and trash haulers, whether with established daily or weekly routes or for occasional hire,

~~Sanitary closed-in metal covered disposal bed or properly covered bed, each truck...\$250.00~~

~~Truck bed covered per ordinance, each truck...\$25.00~~

(10) Guarantors of land titles\$50.00

(11) Health school\$50.00

(12) Hotels and motels, each room\$1.00

(13) House movers (movers shall possess applicable state motor vehicle license, in addition to: purchase from the city an individual permit and license for each house, dwelling or building of six hundred fifty (650) square feet or more to be moved at a cost of one hundred dollars (\$100.00) for such structure; purchase from the city an individual permit and license for each garage, shed or small building of less than six hundred fifty (650) square feet at a cost of twenty-five dollars (\$25.00) for such structure. Such mover shall also provide a performance bond of two thousand five hundred dollars (\$2,500.00) for each structure of over six hundred fifty (650) square feet to be moved and a performance bond of one thousand dollars (\$1,000.00) for each structure under six hundred fifty (650) square feet to be moved as well as use of proper warning devices, flares and proceed only with a police escort and otherwise comply fully with the provision of chapter 15\$25.00

(14) Insurance agency, with up to two (2) member insurance agents\$10.00

Each additional resident member agent...\$5.00

Each additional itinerant or nonresident member agent...\$50.00

(15) Laundromats and self-service laundries, each laundry machine and dryer\$1.00

(16) Laundry agencies\$50.00

(17) Manufacturers and manufacturing business\$25.00

(18) Movie theaters and drive-ins (besides applicable concession license)

Each seat...\$.10

Each drive-in stall...\$.25

- (19) Newspaper publisher\$50.00
- (20) Radio station\$50.00
- (21) Real estate agencies maintaining a business office in the city with up to two (2) member realtors\$10.00
 - Additional local resident members or salesmen, each...\$5.00
 - Additional itinerant members of salesmen, each...\$05.00
- (22) Real estate agents (who maintain a business office in the city)\$10.00
- (23) Real estate brokers (who maintain a business office in the city)\$10.00
- (24) Real estate salesmen (who maintain a business office in the city)\$10.00
- (25) Slot machines, each machine\$1.00
- (26) Storage warehouses for rental, each unit\$10.00
- (27) Television stations\$100.00
- (28) Theatrical agents\$25.00
- (29) Vending machines, each machine\$1.00

Sec. 14-32. - Qualifications of all applicants generally.

The general standards herein set out relative to the qualifications of every applicant for a city license shall be considered and applied by the city clerk. The applicant shall:

- (1) *Character.* ~~Be of good moral character. In making such determination the city clerk shall consider:~~
 - a.—~~All convictions, the reason therefore and the demeanor of the applicant subsequent to the applicant's release. Any prior misdemeanor or felony conviction within five (5) years of the date of the application involving the offense of theft, stealing, fraud or deceptive practices, or involving an offense relating to the conduct of the business or occupation for which the license is sought will cause the city clerk to deny the applicant a business license.~~
 - b.—~~The license history of the applicant: Whether such person in previously operating in this or another state under a license, has had such license revoked or suspended, the reasons therefor and the demeanor of the applicant subsequent to such action.~~
- (5) *State sales tax license.* Present a valid Missouri sales tax license, if required by the state, showing that the business is authorized under Missouri law to operate within the Kirksville city limits and not be in default of payment of Missouri state sales tax.

Sec. 14-33. - Issuance procedure generally.

(c) *Renewal licenses.* All licenses issued under this article shall be renewed upon the payment of the prescribed annual license fee and completion of the appropriate license renewal application. Such renewal shall require:

(1) The disclosure of such information concerning the applicant's demeanor and conduct in the operation of applicant's business during the preceding licensing period in order to determine the applicant's eligibility for a renewal license. This determination is subject to the same criteria as set in section 14-32.

(e) *Signature.* The application must be signed by the owner, if the business is a sole ownership; by a partner, if the business is a partnership; or by a reported officer or agent, if the business is a corporation or other legal entity. The signature must be of the owner, partner, officer, or agent reported on the application.

(ef) *Contractor testing.* Construction contractors, electricians, and plumbers are required to pass a written test showing competency in the field in which a business license is being applied for. The passing of the written test is necessary for final approval of a business license for these occupations.

(1) Tests will be scheduled and administered by the Codes Department.

(2) Tests will be graded on a pass/fail basis. Seventy (70) percent is the minimum passing grade for any test.

(3) Persons who fail the first test will be allowed to take a second test at any time. Persons who fail a test the second time will be required to wait two (2) weeks before taking a test again.

(4) Testing for the above occupations may be waived under the following conditions:

a. The plumber, electrician, or contractor is a card carrying member of an accredited state or national organization recognized for its members having the necessary skills for the license that has been requested. A journeyman's skill level would be accepted, while an apprentice level would not be accepted for a waiver of the test. The codes and planning director, or his designee, would decide any discrepancy in skill levels.

b. The person applying for the license can provide proof of a degree or diploma from an accredited college or other institution of higher learning that applies directly to the occupation that is being applied for. The codes and planning director, or his designee, would make any decision on application of the degree versus the license desired.

Sec. 14-35. - Procedures on non-approval of application.

When any license under this chapter is not approved, the following shall apply:

~~(1) *Certain fees refunded.* The city clerk shall, upon disapproval by the city council of any application submitted under the provisions of this chapter refund all fees paid~~

~~in advance, other than the investigation fee to the applicant; provided, that the applicant is not otherwise indebted to the city. If the applicant is indebted to the city, such fees tendered shall be retained by the city, to be applied against such indebtedness.~~

(12) *Engagement in business.* When the issuance of a license is denied and any action instituted by the applicant to compel its issuance, such applicant shall not engage in the business for which such license was refused, unless a license be issued to him pursuant to a judgment ordering the same.

(23) *Written notification.* If a license cannot be issued within sixty (60) days of a license application submission, the city clerk shall notify the applicant in writing with an explanation of the deficiency within five (5) days of such determination.

Sec. 14-36. - Duties of licensee generally.

(g) *Indefinite cessation of operations.* The licensee shall 1) notify the city in writing of sale of business or indefinite cessation of business operations in Kirksville, ~~and~~ 2) surrender the license within seven (7) days of doing so, and 3) if applicable, notify the new owner to file an application with the city. Failure to do so is a violation of this article.

Sec. 14-37. - Persons exempted from article.

(c) Any profession listed as exempt under RSMo. § 71.620 and § 71.630 will be exempt from this article.

Sec. 14-44. - Enforcement and penalties for nonrenewal of license and continuing business, etc.

(b) *Renewal delinquency.* If any person shall continue the business after the expiration of a license previously issued, without obtaining a new license, such person shall be subject to ~~interest and a twenty dollar (\$20.00) penalty~~ if a delinquent license is not renewed and issued prior to March 1. The interest shall be assessed on the amount due until it is paid using the Missouri Department of Revenue Statutory Interest Rate for Delinquencies, as required by RSMo. § 71.625, § 144.170, and § 32.065. The penalty shall be assessed according to RSMo. § 71.625 and § 144.250. The interest and penalty shall be assessed and paid along with the renewal license fee. Delinquent applications will not be processed until all amounts are paid in full.

Section 2. This Ordinance shall become effective on the date of its passage.

Councilmember Fajkus moved to approve Bill No. 2013-04 on second reading; seconded by Councilmember Edge. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Fajkus, Mills and Russell. Noes – 0.

Council Comments

None.

Adjournment

There being no further business to come before the Council, Councilmember Fajkus moved to adjourn; seconded by Councilmember Edge. Motion carried: Ayes – Mayor Detweiler; Councilmembers Edge, Fajkus, Mills and Russell. Noes – 0.

Mayor Detweiler adjourned the meeting at 4:53 p.m.

Vickie Brumbaugh, CMC MRCC
City Clerk