

**MANTUA TOWN
ORDINANCE NO. 2017-04-03
BUSINESS LICENSE ORDINANCE**

I. DEFINITIONS:

As used in this Ordinance:

BUSINESS: All activities engaged in within the town carried on for the purpose of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in the term “business,” unless otherwise specifically provided.

EACH SEPARATE PLACE OF BUSINESS: Each separate establishment or place of operation, whether or not operating under the same name, within the town, including a home or other place of lodging if the same is held out by advertisements, listings or otherwise as the establishment or place of operation of a person engaging in the business of selling tangible, personal property at either retail or wholesale, or both, in the town.

EMPLOYEE: The operator, owner, or manager of a place of business and any person employed by such person in the operation of said place of business in any capacity and also any sales person, agent or independent contractor engaged in the operation of the place of business in any capacity.

ENGAGING IN BUSINESS: Means and includes, but is not limited to the sale of tangible personal property at retail or wholesale, the manufacturing of goods or property and the rendering of personal services for others for a consideration by persons engaged in any profession, trade, craft, business, occupation, or other calling, except the rendering of personal services by an employee to his employer under any contract of personal employment.

HOME BASED BUSINESS: Means a Home-Based Business that meets the definition and requirements of section 3.12 of the Mantua Town Land Management and Development Code.

Amended by ordinance no. 2016-04-07

PLACE OF BUSINESS: Each separate location maintained or operated by the licensee within the town from which business activity is conducted or transacted.

WHOLESALE: A sale of tangible personal property by wholesalers to retail merchants, jobbers, dealers, or other wholesalers for resale, and does not include a sale by wholesaler or retailers to users or consumers not for resale, except as otherwise specified.

WHOLESALER: A person doing a regularly organized wholesale or jobbing business and selling to retail merchants, jobbers, dealers, or other wholesalers, for the purpose of resale.

II. LICENSE ASSESSOR AND COLLECTOR:

The town recorder is designated and appointed as ex officio assessor of license fees for the town. Upon receipt of any application for a license, the town recorder shall assess the amount due thereon and shall collect all license fees based upon the rate established by ordinance or resolution of the town council. He shall enforce all provisions of this Ordinance, and shall cause to be filed complaints against all persons violating any of the provisions of this Ordinance.

III. LICENSE REQUIRED:

- A. License Required; Penalty:** ~~It is a class C misdemeanor, subject to penalty as provided in UCA 76-3-204(3), 76-3-301(I)(e), and any other applicable State law, for any person corporation, or other entity to transact, engage in or carry on any business, trade, profession or calling, or to operate a vending, pinball, or coin operated machine without first receiving the class or type of license required by the town. It is an infraction punishable by a fine of not less than \$200, for any person, corporation, or other entity to transact, engage in or carry on any business, trade, profession or calling or to operate vending, pinball, or coin operated machine without first receiving the class or type of license required by the town. Those required to obtain a business license and failing to do so after written notice, may be fined \$200 for each and every 7 days thereafter during which they continue in violation.~~
Amended by ordinance no. 2017-04-03

- B. Appearance Required; Renewal:** After receiving an application for a business license, as per section IV of this Ordinance, the applicant must appear before the town council for approval of the initial business license. Thereafter, at the beginning of the calendar year, the license will automatically be renewed unless the annual license fee is not paid by February 1 of the new calendar year or unless there is a change in the type of business being conducted, which would result in the applicant being required to appear before the town council for approval. If the license is not automatically renewed, it shall expire on December 31 of the immediately past calendar year. The license may thereafter be renewed by making payment of the annual license fee and any penalty payment due; or by appearing before the Town Council and obtaining its approval.

IV. APPLICATION FOR LICENSE:

- A. Information Required:** All applications for license shall include:

1. The name of the person desiring a license;
2. The kind of license desired, stating the business, calling, trade or profession to be performed, practiced, or carried on;
3. The class of license desired, if such licenses are divided into classes;
4. The place where such business, calling, trade, or profession is to be carried on, giving the street number if the business, calling, trade, or profession is to be carried on in any building or enclosure having such number;

5. The period of time for which such license is desired to be issued.

B. Coin Operated Machines: In the event that the license application relates to a coin operated machine or device, the application shall identify the machine or device to which it applies and the location thereof.

V. FEE FOR LICENSE; PAYMENT; DELINQUENCY:

A. Fee Schedule: The business, location, trade, calling or profession of every person engaged in a business in the town shall pay an annual license fee in such amount as established by ordinance or resolution of the town council.

B. Payment Dates: All license fees shall be due and payable as follows, except as may be otherwise provided:

1. Annual fees shall be payable before each calendar year in advance. The annual license shall date from January 1 of each year and shall expire on December 31 of each year, unless automatically renewed per subsection III.B and the annual license fee is paid on or before February 1 of each new calendar year. Failure to pay the annual license fee as required on or before February 1 of each new calendar year, will result in the expiration of the license on December 31 of the immediately prior calendar year.

2. Annual fees shall be due on the first day of each calendar year and shall become delinquent if not paid by February 1 of each year.

3. Annual fees shall be payable for licenses issued after February 1 pursuant to application made for the time period indicated on the application. The time period will be from one day to one year, or part thereof. Licenses will expire on December 31 of the calendar year in which the license is issued unless automatically renewed per subsection III.B. and the annual license fee is paid on or before February 1 of each new calendar year. Failure to pay the annual license fee as required on or before February 1 of each new calendar year, will result in the expiration of the license on December 31 of the immediately prior calendar year. Payment shall be made upon the date of application approval and before license issue.

C. Penalty for Late Payment: If any license fee is not paid within thirty (30) days of the due date, a penalty of one hundred percent (100%) of the amount of such license fee shall be added to the original amount thereof. No license shall be issued until all penalties legally assessed have been paid in full.

Home Based Business: A license fee shall not be charged for a Home-Based Business unless the combined offsite impact of the Home-Based Business and the primary residential use materially exceeds the offsite impact of the primary residential use alone. Subject to this paragraph, license fees for licenses issued to Home Based Businesses shall be the same as set forth in section V.A. above.

Amended by ordinance no. 2016-04-07

VI. EXEMPTIONS TO LICENSE FEE:

- A. No license fee shall be imposed under subsection V(A) of this Ordinance on any person engaged in business for solely religious, charitable, eleemosynary or other types of strictly nonprofit purpose which is tax exempt in such activities under the laws of the United States and the state; nor shall any license fee be imposed on any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the state; nor shall any license fee be imposed upon any person not maintaining a place of business within the town who has paid a like or similar license tax or fee to some other taxing unit within the state and which taxing unit exempts from its license tax or fee, by reciprocal agreement or otherwise, businesses domiciled in the town and doing business in such taxing unit.
- B. The license assessor and collector may, with approval of the governing body, enter into reciprocal agreements with the proper officials of other taxing units, as may be deemed equitable and proper in effecting the exemption provided for in subsection A of this section.
- C. A business license shall not be required for a business that is operated only occasionally and by an individual who is under eighteen (18) years of age. The license assessor and collector shall evaluate the size, frequency, duration, visibility, and seasonality of the proposed business to determine whether the proposed business is considered occasional.

Amended by ordinance no. 2016-04-07

VII. FEE NOT TO CONSTITUTE UNDUE BURDEN ON INTERSTATE COMMERCE:

~~None of the license fees provided for by subsection V(A) of this Ordinance shall be applied as to occasion an undue burden on interstate commerce. In any case, where a license fee is believed by a license or applicant for license to place an undue burden upon such commerce, he may apply to the license assessor and collector for an adjustment of the fee so that it shall not be discriminatory, unreasonable, or unfair as to such commerce. Such application may be made before, at or within six (6) months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the license assessor and collector may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The license assessor and collector shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of fact from which he shall determine whether the fee fixed by V(A) of this Ordinance is discriminatory, unreasonable or unfair as to~~

applicant in an amount that is nondiscriminatory, reasonable and fair, and if the governing body is satisfied that such license is the amount that the applicant should pay, it shall fix the license fee in such amount. If the regular license fee has already been paid, the governing body shall order a refund of the amount over and above the fee fixed by the governing body. In fixing the fee to be charged, the license assessor and collector shall have the power to base the fee upon a percentage of gross sales, or employees, or may use any other method which will assure that the fee assessed shall be uniform with that assessed on businesses of like nature.

VII. FEE NOT TO CONSTITUTE UNDUE BURDEN ON INTERSTATE COMMERCE:

None of the license fees provide for by subsection V(A) of this Ordinance shall be applied as to occasion an undue burden on interstate commerce. State law requires local governments to establish license fees based on the cost to the town to regulate and license the businesses. The town has an interest in not bearing undue burden for licensing any type of business practice or enterprise. The fee structure approved by the town council shall be reasonably related to the actual cost to the town of the licensing process and uniformly assessed on businesses of like nature. In any case, where a license fee is believed by a licensee or application for license to place an undue burden upon such commerce, he may apply to the license assessor and collector for an adjustment of the fee so that is shall be discriminatory, unreasonable, or unfair as to such commerce. Such application may be made before, at or within six (6) months after payment of the prescribed license fee. The applicant shall, by affidavit and supporting testimony, show his method of business and the gross volume or estimated gross volume of business and such other information as the license assessor and collector may deem necessary in order to determine the extent, if any, of such undue burden on such commerce. The license assessor and collector shall then conduct an investigation, comparing applicant's business with other businesses of like nature and shall make findings of fact from which he shall determine whether the fee fixed by V(A) of this Ordinance is discriminatory, unreasonable or unfair as to applicant's business and shall recommended to the governing body a license fee for the applicant in an amount that is nondiscriminatory, reasonable and fair, and if the governing body is satisfied that such license fee is the amount that the applicant should pay, it shall fix the license fee in such amount. If the regular license fee has already been paid, the governing body shall order a refund of the amount over and above the fee fixed by the governing body. In fixing the fee to be charged, the license assessor and collector shall have the power to base the fee upon a percentage of gross sales, or employees, or may use any other method which will assure that the fee assessed shall be uniform with that's assessed on businesses of like nature.

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VIII. CERTIFICATE OF LICENSE:

All certificates of license shall be signed by the mayor, attested by the town recorder, and shall contained the following information:

- A. The name of the person to whom such certificate has been issued;
- B. The amount paid;

- C. The type of license and the class of such licenses are divided into classes;
- D. The term of the license with the commencing date and the date of its expiration;
- E. The place where such business, calling, trade, or profession is to be conducted.

IX. DISPLAY REQUIRED:

- A. Requirements:** Every certificate of license issued under this Ordinance shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the place of business so that the same may be easily seen. When such certificate of license has expired, it shall be removed by the licensee from such place in which it has been posted, and no certificate of license which is not in force and effect shall be permitted to remain posted upon the wall or any part of any room within the place of business. If the licensee's business is such that a license cannot be displayed due to the transient or mobile nature of the business, then the licensee shall carry the license on his person ready to be shown on request by an authorized officer during all such time or times while the licensee is engaged in or pursuing the business for which a license is granted.
- B. Coin Operated Machines:** In the event the license is for a coin operated machine or device, the certificate shall be attached or displayed in the immediate vicinity of the machine for which it has been issued.

X. TRANSFERABILITY:

No license granted or issued under any ordinance of the town shall be assigned or transferred to any other person. It shall not be deemed to authorize any person other than therein named to do business or to authorize any other business, calling, trade or profession than is therein named unless by permission of the governing body.

XI. BRANCH ESTABLISHMENTS:

A separate license must be obtained for each separate place of business in the town and each license shall authorize the licensee to engage only in the business licensed thereby at the location or in the manner designated in such license; provided, that warehouses and distributing places used in connection with or incident to a business licensed under this Ordinance shall not be deemed to be separate places of business or branch establishments.

XII. JOINT LICENSE:

Whenever any person is engaged in two (2) or more businesses at the same location within the town, such person shall not be required to obtain separate licenses for conducting each of such

businesses, but shall be issued one license which shall specify on its face all such businesses. The license fee to be paid shall be computed at the highest license fee applicable to any of the businesses being conducted at such location. The sale of beer or any other product or service requiring an additional license shall be subject to such additional licensing requirement. Where two (2) or more persons conduct separate businesses at the same location, each such person shall obtain a license for such business and pay the required license fee for such business.

XIII. RECIPROCALL RECOGNITION OF LICENSES:

- A.** No license shall be required for operation of any vehicle or equipment in the town when:
1. Such vehicle is merely passing through the town;
 2. Such vehicle is used exclusively in intrastate or interstate commerce.
- B.** No license shall be required by this Ordinance of any person whose only business activity in the town is the mere delivery in the town of property sold by him at a regular place of business maintained by him outside the town, where:
1. Such person's business is at the time of such delivery licensed by the state or county in which such place of business is situated; and
 2. The authority licensing such business grants to licensees of the town making deliveries within its jurisdiction the same privileges, upon substantially the same terms, as are granted by this section; and
 3. Neither the property delivered nor any of the facilities by which it was manufactured, produced, or processed are subject to inspection by authority of the town for compliance with health or sanitary standards prescribed by the town; and
 4. The truck or other conveyance by which such delivery is made prominently displays at all times a license plate or symbol issued by said licensing authority to evidence such business license. Such plate or symbol shall identify the licensing authority by which it is issued, shall indicate that it evidences a license issued thereby, and shall specify the year or term for which it is effective.
- C.** The town recorder shall, at the request of any person, certify a copy of this section to any municipality or county of the state to which a copy has not previously been certified.
- D.** No provision of this Business License ordinance shall be read or interpreted as invalidating any provision of Town Ordinance 06-07-04 which regulates the registration of Off-Highway vehicles.

XIV. REVOCATION OR DENIAL OF LICENSE:

- A. Conditions:** Any license issued pursuant to the provisions of this Ordinance or of any ordinance of the town may be revoked and any application denied by the governing body because of:
1. The failure of the licensee or applicant to comply with the conditions and requirements of any ordinance of the town, of any conditions set at the time the business license of the licensee or applicant was approved and issued, of any laws and regulations of any governmental entity with jurisdiction, including, but not limited to, federal, state, or other local agency; and/or
 2. Unlawful activities conducted or permitted on the premises where the business is conducted.
- B. Notice Required:** Prior to the revocation of a business license or denial of an application to renew a business license or deny the automatic renewal of a business license, the licensee or applicant shall be given a notice which shall state in substance that the governing body intends to revoke the business license or deny the application to renew a business license or deny the automatic renewal of a business license, together with the reason or reasons therefore, at a regular or special meeting of the governing body (which shall be at least 10 days and not more than 30 days from the date notice is sent) and that the licensee or applicant has a right to appear, to be represented by counsel, to hear the evidence against him/her, to cross examine witnesses and to present evidence as to why the license should not be revoked or the application to renew or be automatically renewed denied.
- C. Nonapplicable:** The preceding subsection shall not apply to the applications for licenses for businesses which have not previously been licensed by the town, and such applicants need only be informed that their application has been denied.