

ORDINANCE NO. 2022-__

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

AN ORDINANCE TO AMEND CHAPTER 110 GENERAL LICENSING PROVISIONS IN THE TONTITOWN MUNICIPAL CODE; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES.

WHEREAS, the City Council for the City of Tontitown has adopted regulations for the City's general licensing provisions for businesses codified in Chapter 110 of the Tontitown Municipal Code; and

WHEREAS, it has become apparent to the City Council for the City of Tontitown, that a need exists to amend Chapter 110 General Licensing Provisions for use by the City, in order to provide updated regulations and procedures; and

WHEREAS, after review and consideration of the proposed amendment, the Tontitown City Council determined that Chapter 110 General Licensing Provisions of the Tontitown Municipal Code should be amended and restated as incorporated in the attached Exhibit "A".

NOW THEREFORE, BE IT ENACTED, BY THE CITY COUNCIL FOR THE CITY OF TONTITOWN, ARKANSAS:

Section 1. Chapter 110 General Licensing Provisions of the Tontitown Municipal Code is hereby amended to read and attached hereto as Exhibit "A".

Section 2. The rest and remainder of the Tontitown Municipal Code not specifically amended herein remains in full force and effect.

Section 3. In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein provisions of this Ordinance shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

Section 4. Declaration of Emergency. It is hereby found and determined that Chapter 110 General Licensing Provisions of the Tontitown Municipal Code should be immediately amended in its entirety in order to clarify and amend the regulations pertaining to incidental subdivisions. Therefore, an emergency is declared to exist, and this act, being immediately necessary for the preservation and protection of the public peace, health, safety and welfare of the City and its citizens, shall become effective on the date of its passage and approval by the Mayor. If the Ordinance is neither approved nor vetoed by the Mayor, it shall become effective on the expiration of the period of time during which the Mayor may veto this Ordinance. If the Ordinance is vetoed by the Mayor and the veto is overridden by the City Council, it shall become effective on the date the City Council overrides the veto.

PASSED AND APPROVED this _____ day of _____ 2022.

APPROVED:

Angela Russell, Mayor

ATTEST:

Rhonda Ardemagni, City Clerk-Treasurer



CHAPTER 110: GENERAL LICENSING PROVISIONS

§ 110.01 PURPOSE.

In order to anticipate the needs of emergency personnel, to protect the city water system from contamination resulting from cross connections, to provide more efficient fire protection, identify the location of all commercial operations and determine the legality of business activities, a license shall hereafter be required of any person, firm, individual or corporation who shall engage in, carry on or follow any trade, business, profession, vocation or calling within the corporate limits of the City of Tontitown, Arkansas.

(Ord. 141A, passed 4-4-00)

§ 110.02 APPLICATIONS FOR LICENSES AND SUSPENSION OR REVOCATION.

(A) Applications for all licenses required by this chapter shall be made in writing to the city on using an application form that is provided by the City of Tontitown for that purpose. Each application shall state the name of the applicant, the names of all owners, all names used in business, state and federal tax identification numbers, address of principal location, addresses of all annexes or any other buildings related to business, the number of buildings occupying each address, the number of individuals employed at each address, the type of business, type of materials used or stored at each address, the time covered and the fee to be paid, and each application shall contain any such additional information as may be needed for the proper guidance of the city officials in issuing the license applied for.

(B) All applications required hereunder shall be kept and filed by the Code Enforcement Officer, Clerk-Treasurer or designee and bear the signature of the appropriate official.

(C) (1) Any person or entity which is granted a license under this chapter may have said license revoked or suspended if the Code Enforcement Officer or designee has reason to believe that grounds exist to justify the suspension or revocation of a business license. Such grounds that could support the suspension or revocation of a license includes:

- (a) The license holder is operating the business in a dangerously unsanitary or unhealthy manner, or in such a manner as to unreasonably and adversely affect the peace, health or safety of neighbors or others in the city.
- (b) The premises are a fire hazard or otherwise unsafe for occupancy because of violations of building, property maintenance or fire codes.
- (c) The business is being operated in violation of any federal, state or local law or regulation, including city ordinances and regulations, or has had a necessary state or city license suspended or revoked.
- (d) The business license was procured through fraud or misrepresentation.

If the Code Enforcement Officer or designee has reason to believe the grounds exist that could justify the suspension or revocation of a license, a letter sent by first class mail shall be sent to the business mailing address shown on the application notifying the business owner of the possible grounds to suspend or revoke the license and notifying

the business of the time and place of a due process hearing which shall be set not less than five (5) days and no more than ten (10) days of the date of the letter.

(2) The Mayor shall designate the appropriate city official or agent as the hearing officer to conduct the due process hearing, and this official or agent shall receive and hear evidence from city employees or others regarding the grounds to suspend or revoke the license. The license holder shall be provided a reasonable opportunity to explain or provide evidence to rebut any allegations and to show why the license should not be suspended or revoked. The hearing officer shall then make one of the following determinations based on the severity of the allegations:

- (a) Revoke the license.
- (b) Suspend the license for not more than thirty (30) days.
- (c) Place the license in probation statute for not more than ninety (90) days on condition that the grounds leading to the due process hearing will be remedied by the business owner and not allowed to reoccur. If the business is found to be compliance with the terms of the probation, the probation status shall be lifted by the hearing officer and no further action shall be taken. If the hearing officer determines that the business has failed to be in compliance with the terms of the probation or if new grounds for suspension or revocation have occurred, the hearing officer shall conduct a second due process hearing and consider all previous evidence, hear new any evidence, and shall provide the license holder a reasonable opportunity to explain or provide evidence to rebut the allegations. At the conclusion of the second due process hearing, the hearing officer shall decide whether or not the license shall be suspended or revoked.
- (d) Refuse to revoke or suspend the license.

(3) Any person or entity whose license has been suspended or revoked may appeal such suspension or revocation to the City Council by providing a letter to the City Clerk-Treasurer for the City Council to review the decision within ten (10) days of the issuance of the suspension or revocation. The City Council shall then hear the appeal at the next available City Council meeting following the receipt of the appeal. The license holder shall be notified by first class mail of the date and time of the hearing and shall be afforded a reasonable opportunity to present evidence, testimony and to provide explanations to the City Council on whether or not the license should be suspended, revoked or that no suspension or revocation is warranted.

(4) Any business or former license holder whose license granted under this chapter is revoked or suspended may not operate or conduct said business within the city limits, until such time as the license is reinstated or a new license is issued. In addition to any other remedy, fine, or enforcement available to the city, if any business or other license holder continues to operate or conduct business in the city limits, without the required license following revocation or suspension of said license, the city may seek an injunction in a court of competent jurisdiction to prevent the former license holder from operating without a license.

(5) Any business which operates or conducts business within the city limits without the license required by this chapter may be issued a Notice to Cease and Desist. Such Notice to Cease and Desist shall be issued by the Code Enforcement Officer, Clerk-Treasurer or designee and sent by first class mail shall be sent to the business mailing address shown on the application. The Notice of Cease and Desist may also be provided by to the business by personal delivery to the owner of the business or managing agent of the business as noted on the application, or by placing a copy of the Notice on the door of the business. In addition to any other remedy, due, or enforcement available to the city, if any business continues to operate or conduct business in the city limits, without the required license or following service of the Notice, the city may seek an injunction in a court of competent jurisdiction to prevent the business from operating without a license.

(Ord. 141A, passed 4-4-00; Am. Ord. 2012-01-03-386, passed 1-3-12)

§ 110.03 APPLICATION OF PROVISIONS.

(A) Any person, partnership, corporation or other entity shall be subject to the requirements of this chapter if by himself or herself or through an agent, employee or partner, he or she holds himself or herself forth as being engaged in a business or occupation, solicits patronage therefor, actively or passively, or performs or attempts to perform any part of such business or occupation in the city.

(B) As used in this chapter, the term "business" shall include any business, trade, vocation, occupation, profession, calling or enterprise.

(Ord. 141A, passed 4-4-00; Am. Ord. 2012-01-03-386, passed 1-3-12)

§ 110.04 LICENSES REQUIRED FOR EACH PLACE OF BUSINESS.

(A) Any person, partnership, corporation or other entity operating and having a place of business within the corporate limits of the city shall obtain a license for each place of business. A person, partnership, corporation or other entity operating and having a place of business within the corporate limits of the city shall not be required to have a business license if:

(1) Services are not provided at the residence which would require customers to travel to said residence for business purposes; and

(2) The business does not have any employees other than the owner of said entity, partnership, and/or corporation.

(B) For the purpose of construing this chapter, **MORE THAN ONE PLACE OF BUSINESS** shall mean any business operations conducted within two or more separate buildings or upon two or more separate tracts of real estate.

(C) Any person, partnership, corporation or other entity operating and having a business operated out of their residence is required to have requested a home occupation permit which will require a fee of \$50.

(D) All non-profit organizations, as defined and recognized by the Internal Revenue Service, must apply for a business license and the fee associated with this application shall be \$5.

(E) Additionally, every applicant requesting a business license is required to provide evidence of proper zoning for the use and scope of the intended business on the property prior to receiving a business license.

(Ord. 141A, passed 4-4-00; Am. Ord. 2010-10-359, passed 10-5-2010)

§ 110.05 LICENSE FEES.

(A) All fees and charges for licenses shall be paid at the time application is made. When an applicant has not engaged in the business until after the expiration of part of the current license year, the license fee shall be prorated by quarters and the fee paid for each quarter or fraction thereof during which the business has been or will be conducted. If the applicant has failed to renew the license on or before August 1st of the year, the fee for the license shall be doubled. All license fees shall become part of the City General Fund.

(B) The fee to be paid for all business licenses, unless otherwise stated in this chapter and regardless of the type of business to be licensed, shall be \$50, plus an additional \$5 for each full-time employee of the business.

(1) The number of full-time employees shall be the average number employed by the applicant.

(2) It shall be the duty of the Code Enforcement Officer to determine the number of employees upon which to base said fee. The Code Enforcement Officer shall require of all applicants an affidavit stating the number of employees upon which such a fee shall be paid. In addition, the Code Enforcement Officer may require other proof in order to correctly determine the number of employees upon which the license fee shall be based.

(3) If the number of full-time employees cannot be determined through documentation, the applicant shall certify a number based upon their good faith estimate.

(Ord. 141A, passed 4-4-00; Am. Ord. 2006-06-261, passed 6-15-06; Am. Ord. 2015-08-533, passed 8-11-15)

§ 110.06 TERMINATION OF LICENSES ON JUNE 30 OF EACH YEAR.

All licenses shall terminate on June 30 of each year.

(Ord. 141A, passed 4-4-00)

§ 110.07 NO LICENSE ISSUED IF BUSINESS DOESN'T COMPLY WITH CITY REQUIREMENTS.

No license shall be issued for the conduct of any business, if the premises and building to be used for the purpose does not fully comply with the requirements of all city ordinances. No such license shall be issued for the conduct of any business or performance of any act which would involve a violation of any city ordinances or state statutes.

(Ord. 141A, passed 4-4-00)

§ 110.08 CHANGE OF LOCATION OF LICENSED BUSINESS.

The location of any licensed business or occupation, or of any permitted act, may be changed, provided that ten-days' notice thereof is given to the Code Enforcement Officer. All building, zoning and other ordinances of the City of Tontitown shall be complied with.

(Ord. 141A, passed 4-4-00)

§ 110.09 NUISANCES.

No business, licensed or not, shall be so conducted or operated as to constitute a nuisance in fact.

(Ord. 141A, passed 4-4-00)

§ 110.10 INSPECTIONS.

Whenever inspections of the premises used for, or in connection with the operation of a licensed business or occupation are required by ordinance, or are reasonably necessary to secure compliance with any ordinance provision or to detect violations thereof, it shall be the duty of the licensee, or the person in charge of the premises to be inspected, to admit any officer of the city who is authorized or directed to make such inspections at any reasonable time.

(Ord. 141A, passed 4-4-00)

§ 110.11 POSTING OF LICENSE.

It shall be the duty of any person conducting a licensed business in the city to keep his or her license posted in a prominent place on the premises used for such business at all times. The holder of a license shall show the license to any officer or agent of the city upon request.

(Ord. 141A, passed 4-4-00)

§ 110.12 EMPLOYEES.

(A) *Definition.* **EMPLOYEE**, for the purpose of construing this chapter only, is any partner, corporate officer or other individual who receives any direct or indirect compensation from any entity subject to the licensing under § [110.03](#).

(B) *Exception.* The sole proprietor of any unincorporated business is not an employee within the meaning of this chapter and shall not be counted for the purpose of computing the number of employees upon which the amount of any license fee shall be based.

(Ord. 141A, passed 4-4-00)

§ 110.13 LICENSES NONTRANSFERABLE.

A license issued under this chapter shall not be transferable or assignable.

(Ord. 141A, passed 4-4-00)

§ 110.14 EXCEPTIONS TO PROVISIONS.

The provisions contained herein do not affect the following existing ordinances:

(A) Any ordinance regulating, taxing or licensing businesses which manufacture, distribute or sell beer, wine or liquor;

(B) Ordinances licensing, regulating or controlling the operation of mobile home parks;

(C) Any franchise ordinance specifically, including, but not being limited to, utilities, sanitation service and telephone service.

(Ord. 141A, passed 4-4-00)

§ 110.15 CONFLICTS.

This chapter shall not be construed to alter, change or regulate in any unlawful way any business, trade, occupation, profession or vocation regulated or governed by the laws of the State of Arkansas when such laws are in conflict with the provisions herein. (Ord. 141A, passed 4-4-00)

§ 110.99 PENALTY.

(A) Any person or entity violating any provision of this chapter, upon conviction, shall be fined a sum of not less than the amount of the license fee provided for, nor more than double such amount for each offense. Each day of violation shall constitute a separate and distinct offense.

(B) Provided, however, that any person or entity who continues to operate or conduct its business without the required license after having said license revoked or suspended, or after service of a Notice to Cease and Desist, upon conviction, shall be fined not less than \$500 and not more than \$1,000 for each offense, with each day of violation constituting a separate and distinct offense.

(C) If a business entity continues to operate without a valid and current city business license beyond seven (7) days after the date of a Notice of Cease and Desist was sent to the business or otherwise delivered or posted, the Mayor may order the withholding of all city services, including water, sewer and solid waste, for the business premises. (Ord. 141A, passed 4-4-00; Am. Ord. 2012-01-03-386, passed 1-3-12; Am. Ord. 2017-09-650, passed 9-5-17)