

City of Fernley
Bill #242
Ordinance #2016-2014

An ordinance modifying Fernley Municipal Code Title 3 Business License Regulations, Chapter 1: General Business License Provisions: § 3.01.12 Expired License Appeals Process, § 3.01.13 Power to Audit, § 3.01.14 Information Confidential, § 3.01.15 Term of License, Renewal of License, § Multiple Enterprises Licensed As One, § 3.01.17 Denial, Suspension, Revocation of Standard Business License; Grounds; Procedure: Immediate Suspension: Cease and Desist Orders, § 3.01.18 Waiver By Council, § 3.01.19 Public Utilities. This Ordinance to be effective January 1, 2017.

THE CITY COUNCIL OF THE CITY OF FERNLEY DOES HEREBY ORDAIN AS FOLLOWS:

TITLE 3: BUSINESS LICENSE REGULATIONS

**3.01.12 EXPIRED LICENSE
(A) APPEALS; PROCESS**

1. Any person aggrieved by the imposition of the expired license penalty imposed by this title must first pay the penalty and then may submit a written appeal of the penalty to the city clerk within ten days after payment of the penalty. The written appeal must show good cause why the penalty should not be imposed or should be reduced. The city clerk shall review the appeal and issue a decision based on the written appeal to either uphold the penalty or reverse the penalty within 15 business days after receipt.
2. If the decision is upheld by the City Clerk, the appellant may request a formal hearing by City Council within 10 business days after receiving the decision. If a formal hearing is requested, the licensing department will place the request for appeal on the next available City Council agenda. The department shall, at least ten days prior to the hearing, notify the appellant of the time, date and place of the hearing by personal service or by certified mail, return receipt requested, to the address provided by the appellant. The appellant may bring only the evidence presented previously to the licensing department to support the appeal. Failure of the

3. aggrieved person to appear at the hearing shall result in a denial of the appeal.
4. Within ten days after a hearing, the city clerk or designee shall notify the applicant in writing the decision of the city council. The decision of the city council is final.

3.01.13: POWER TO AUDIT

(A) Records. Every holder of a business license issued pursuant to this title shall keep and maintain adequate records for the purpose of performing an audit to verify the accuracy of the business license fees paid and for assurance of compliance with other provisions of this title.

(B) For the purposes of this title, "adequate records" means records which show, or may indicate, the gross receipts of the business and includes, but is not limited to, the following:

1. Original or copies of all sales invoices and credit card receipts for a period of one year preceding the date of an audit;
2. All cash receipts journals, financial statements, ledgers, copies of business license renewal forms and related documentation supporting calculations of gross receipts for the previous four years; and
3. Income tax returns (Schedule C of 1040 Federal Tax Return for Sole Proprietorship; Form 1065 Federal Tax Return for Partnerships and LLC's; Form 1041 Fiduciary Income Tax Return and Form 1120 Federal Tax Return for Corporations) for the previous four tax years.

All records required to be kept and monitored pursuant to this section must be made available to the licensing officer or designee for the four-year period preceding an audit. The information received from a licensee under this section is hereby declared to be confidential and not a public record and is available only to city officials concerned with business licensing and revenue enforcement, to the city attorney in furtherance of prosecution under this title and to a court of competent jurisdiction in a criminal prosecution or civil action commenced under this title.

(C) Audits. The licensing department with prior approval from the city manager may, for the purpose of ascertaining gross receipts or to verify the accuracy of any other information reported to the city, audit any information declared by a licensee in an application for license or renewal, any information presented in a hearing or appeal or any other documentation provided to the city. After reasonable notice to the proprietor, books and records of the licensee must be made available to the license department during business hours. In accordance with Chapter 364 of the NRS, any audit of the amount due from the business must not include any period for the licensing of the business ending more than four years before the date of the audit.

1. The procedures for the proprietor of the business to obtain a review fo the results of an audit are as follows:

a. The city will disclose the results of the audit to the proprietor, discuss any relevant issues that have not previously been resolved and attempt to resolve those issues.

2. If those issues are not resolved through compliance with paragraph 1:

a. The proprietor can prepare documentation of those issues challenging to disprove the findings and submit the documentation to the city clerk; and

The city clerk or designee shall:

i. Within seven days after receiving the documentation, acknowledge their receipt; and

ii. Within 30 days after receiving the documentation, respond to the proprietor with a decision.

3. If the proprietor wishes to appeal that decision, they must file an appeal within 10 days with the city clerk.

a. Within 5 days of the receipt of the appeal, the city clerk shall submit the documentation to the finance director; and

b. The finance director or designee shall, within 60 days after receipt of the documentation by the city clerk pursuant to subparagraph a, review the

documentation and inform the proprietor of the decision regarding the appeal. The decision of the finance director is final.

(D) If an audit is performed pursuant to the chapter:

1. The proprietor must be given notice, in writing, of the amount of any interest or penalties to be paid as a result of the audit.
2. In the event the audit finding reveal that the business failed to accurately declare or pay gross revenue to the city by ten percent or more, the audited business shall be required to reimburse the city for all expenses incurred for the audit, including, without limitation, consultants and other third-parties hired by the city to assist in the audit process
3. The information received from the license under this section shall be confidential and available only to those city officials concerned with such matters.

(E) Misrepresentation

Any willful misrepresentation of material fact in any application or report required by this title, or required by any officer in the performance of his duties pursuant hereto, is a violation of this title and, in addition to the punishment provided herein, is grounds for denial of a license or for suspension or revocation if a license has been issued.

3.01.14 INFORMATION CONFIDENTIAL

(A) The gross receipts statements filed pursuant to the provisions of this chapter shall be deemed confidential in character and shall not be subject to public inspection and shall be kept so that the contents thereof shall not become known except to the persons charged with the administration of this chapter. It shall not be improper, however, to release the name, address and phone number of licensed businesses as well as the type of business and other general information which is unrelated to the business gross receipts.

(B) Any officer or employee who willfully violates the provisions of this section shall be deemed guilty of a misdemeanor and may be punished as in this chapter provided, and such violation may also result in discipline up to and including termination.

3.01.15: TERM OF LICENSE, RENEWAL OF LICENSE:

(A) **TERM OF LICENSE:** All licenses shall be issued for a term of one year unless a provision is specifically made for the issuance of a daily, quarterly or temporary license. For the purpose of determining the yearly period, a license issued by the Department between the 1st and 15th days of the month shall be deemed to begin on the first day of the month. A license issued by the Department between the 16th and last day of the month shall be deemed active, but the start date, for renewal purposes, to be on the 1st day of the following month.

B) RENEWAL OF LICENSE:

- (1) A licensee shall be required to pay the renewal fee and complete the renewal form.
- (2) All businesses licensed under this Title receive a renewal notice before the due date of the next licensing period; however, the failure to notify any licensed business shall not be held to waive the payment of the license fee, and that the actual receipt of such notice is in no case required. The due date shall be the last day of the month of a licensing period.
- (3) The license officer may refuse to renew a business license, when it appears that any of the following circumstances exist:
 - a. A misrepresentation of a material fact has been made on the application;
 - b. The location of the proposed business substantially fails to meet requirements of the fire or building codes, or the zoning ordinance;
 - c. The applicant or any of its principals fails to satisfy any qualification or requirement imposed by this title or other local, state or federal laws or regulations that pertain to the particular business named on the application;
 - d. The proposed business is violating provisions of this code, or state or federal law;
 - e. The applicant has commenced operating the proposed business without obtaining a business license under circumstances indicating that the applicant intentionally failed or refused to obtain a business license;
 - f. The applicant or any principal has been convicted of a crime under any local state or federal law or regulation arising out of the operation of a similar business;
 - g. The applicant or any principal has been convicted of a crime as a result of having perpetrated deceptive practices upon the public within the last 10 years;
 - h. The applicant or any principal suffers from a legal disability under state or federal laws;
 - i. The applicant has refused entry to or obstructed a city, county or state inspector authorized to make an inspection;

- j. The applicant or any of its principals is in default on any payments owed to the city; or
- k. The applicant has made a material and intentional underreporting of the gross revenues of the business.

3.01.16: MULTIPLE ENTERPRISES LICENSED AS ONE:

- (A) Any business licensee who is issued a standard business license may have endorsed on the license more than one enterprise under the following conditions:
 - (1) All enterprises endorsed on the license must be operated:
 - (a) In the same building; and
 - (b) Under the same business name.
 - (2) All enterprises must be owned or operated by the business licensee. If the business licensee complies with the conditions set forth herein, the department shall issue one license endorsing each specific enterprise engaged in by the business licensee.
- (B) Any business licensee issued a license for multiple enterprises shall only be charged one fee. This fee shall be based on the business classification and/or gross receipts for the enterprises. This Section does not affect liquor, gaming, or any other licenses required by the City or County.

3.01.17: DENIAL, SUSPENSION, REVOCATION OF STANDARD BUSINESS LICENSE; GROUNDS; PROCEDURE; IMMEDIATE SUSPENSION; CEASE AND DESIST ORDERS: The provisions of this section are applicable to any license or permit issued or applied for, or pursuant to any Chapter of this Title. The provisions of this section are in addition to any grounds for denial, nonrenewal, suspension, limitation, and revocation set forth for specific businesses or trades in other Chapters of this Title.

- (A) **DENIAL:** Any license or permit application made pursuant to the provisions of this Title may be denied for good cause by the city clerk or the Council. Good cause for denial of a license or permit shall include, but is not limited to:
 - (1) The application or any other document is incomplete or contains false, misleading or fraudulent statements;
 - (2) All application, license, and/or investigation fees are not paid;
 - (3) Failure to obtain a license, permit or receive approval for required inspections of the premises as required by this Title and compliance with requirements of all other departments or divisions in the City, State or Federal laws and regulations that pertain to the particular business named on the application;
 - (4) The applicant or any principal has been subject, in any jurisdiction, to disciplinary action of any kind with respect to the license, or permit to the extent that such disciplinary action reflects upon the qualification, acceptability or ability of the applicant to conduct such a business;
 - (5) The applicant or any principal has been convicted of any crime that involves local, State or Federal law or regulation arising out of the operation of a similar business;

- (6) The applicant or any principal has been convicted of a crime as a result of having deceptive practices upon the public within the last ten (10) years;
- (7) The premises on which the business is proposed to be conducted does not satisfy all local, State, or Federal laws or regulations which relate to the activity that is to be licensed;
- (8) The applicant is in default on any payments owed to the City;
- (9) The applicant has made a material and intentional underreporting of the gross revenue of the business.

(B) **SUSPENSION OR REVOCATION:** Any business license issued under this Title may be suspended, or revoked for good cause by the City, after notice and opportunity to be heard as provided in this Title. Good cause for suspension or revocation shall include, but is not limited to:

- (1) Failure to pay business license fees within thirty (30) days of their due date and non-payment of any amounts owed to the City;
- (2) Failure to update the business license under the provisions of this Chapter;
- (3) Failure to maintain other licenses required by Federal, State, County, or City laws which are necessary to conduct the enterprise endorsed on the license;
- (4) Any act or omission by the licensee or his employees and agents, related to the operation of the business licensed, which is a threat to the public health, safety, morals or welfare.
- (5) Fraudulent practices or misrepresentations in the operation of the business, or concealment or misrepresentations in procuring this license;
- (6) Any violations of the provisions of the City of Fernley Municipal Code.
- (7) Any act in the operation of the business which is unlawful or prohibited by Federal, State, County, or City law;
- (8) Refusal by the applicant, employees or agent to make the books and records of the business available for inspection by the licensing department designated appointee as required by this title.
- (9) The applicant has made a material and intentional underreporting of the gross revenue of the business.
- (10) Any other cause that the City through its Department or its Council finds to be just or equitable reason.

(C) **SUSPENSION AND REVOCATION PROCEDURE:** The License Department may suspend the license, pending Council action on revocation, under the following procedures:

- (1) The Department shall notify the business licensee of the violation in person or by certified mail. The notice shall contain the following information:
 - (a) The name and address of the business licensee;
 - (b) The violation which has occurred;
- (4) The business licensee has five (5) days, excluding weekends and holidays, from the receipt of the notice to remedy the violation; and
- (5) If the business licensee fails to remedy the violation the business license will be suspended.

- (6) If the business licensee fails to remedy the violation, the Department shall send a second notice which shall contain the following information:
- (a) The name and address of the business licensee;
 - (b) The violation which has occurred;
 - (c) The date the suspension will be in effect; and
 - (d) A notice of revocation and hearing including the date and time regarding the intent to revoke the business license. The notice shall also inform the licensee that they have the right to present evidence in opposition regarding the revocation.
 - (e) This notice shall be served upon the business licensee at least ten (10) business days prior to the time specified for hearing by certified mail or personal service.

(D) HEARING OF REVOCATION: In order to revoke a business license under this Title, the Council shall conduct a hearing to determine whether to revoke the license. The Council shall permit any interested party, including the business licensee, to testify or otherwise submit evidence in favor of or opposition to the revocation. The Council shall consider all the evidence presented and cause to have entered in the minutes its findings, stating specifically any causes for revocation found by the Council and enter its order in the minutes. The order of the city council shall be binding. The failure by the licensee to appear at the time of hearing and place designated for the hearing shall, in and of itself, constitute sufficient grounds for revocation of the license. There shall be no reopening or review of the proceedings by the Council except when it subsequently appears to the satisfaction of the city council that the licensee's failure to appear was due to matter beyond his/her control, and not through negligence on the part of licensee.

(E) NOTICE OF REVOCATION: If the Council revokes the license, the business licensee shall be served notice of revocation within ten (10) business days by certified mail or personal service following the hearing. If the license is revoked or suspended, no business shall be conducted under that license until such time as an appeal has been heard and the revocation or suspension has been reversed.

(F) GROUNDS FOR IMMEDIATE SUSPENSION OF LICENSE

Any license issued pursuant to this title is subject to immediate suspension. The city clerk may immediately suspend a business license if the chief of police, fire chief, health inspector or the City of Fernley building official deems there is probable cause to believe that extraordinary circumstances have arisen which are an immediate threat to the public health, safety or welfare and that business operations pursuant to that license increase the level of that threat.

The license may be reinstated after all conditions warranting the suspension have ceased.

(G) CEASE AND DESIST ORDERS

1. The city clerk may issue a cease and desist order to any person who is transacting or conducting business in violation of Fernley Municipal Code.
2. A cease and desist order issued pursuant to this Title may be personally served on any owner, licensee, agent or employee of the business, either at the location of the business or at any other location in the City.
3. A cease and desist order may:
 - a. Inform the recipient that the business is in violation of FMC because it is being conducted without a valid business license or after a valid business license has expired.
 - b. Warn the recipient that each violation is a misdemeanor crime.
4. Any costs incurred by the city for personal service of a cease and desist order pursuant to this section shall be added to the business license fees and penalties must be paid prior to issuance or renewal of a license

(B) ENFORCEMENT:

- (1) Any person violating any of the provisions of this title or knowingly or intentionally misrepresenting to any officer or employee of the city any material fact in securing the license herein provided for is guilty of a misdemeanor and upon conviction thereof is punished as provided in Title One of the Fernley Municipal Code

3.01.18: WAIVER BY COUNCIL: Upon application to the Council, a business licensee may request that the Council waive any fees required on a business by this title.

3.01.19: PUBLIC UTILITIES:

All public utilities must obtain a business license and comply with all provision of this chapter.

(1) NOTIFICATION, REVENUE STATEMENT, PAYMENT, PENALTIES, AND INTEREST:

- (a) Each public utility to which this Ordinance applies or which derives or intends to derive intrastate revenue from customers located within the City shall, not later than sixty (60) calendar days after the effective date of this Ordinance or thirty (30) calendar days before the public utility begins to provide service to those customers, whichever occurs later, provide to the City:
 - (1) An acknowledgment that the public utility is operating or intends to operate within the City; and
 - (2) The date that the public utility began or intends to begin to derive revenue from customers located within the City.

- (b) Each public utility to which this Ordinance applies shall, not later than thirty (30) days after the end of each calendar quarter, provide to the City a statement of the amount of revenue the public utility derived during that calendar quarter from service to each of its customers located within the City.
- (c) The fee for the utility operator license is payable not later than thirty (30) calendar days after the end of each calendar quarter.
- (d) An operator license fee not received or postmarked within thirty (30) calendar days after the end of each calendar quarter shall be delinquent and the public utility shall pay, in addition to the operator license fee, a penalty of one percent (1%) of the delinquent amount per month and interest of one percent (1%) of the delinquent amount per month.

PROPOSED on September 21, 2016.

PASSED, APPROVED, and ADOPTED this 5th day of October, 2016, by the following vote of the Council:

Ayes: 5 Nays: 0 Abstentions: 0 Absent: 0

By: 
Roy Edgington, Mayor

Date: 5 Oct 2016

Attest By: 
Kimberly Swanson, City Clerk

Date: 10/6/2016