

To: Mayor Harris and the City Council
Fr: Ron Chandler/Bryan Steele
Dt: June 7, 2012
Re: Disproportionate Fee & Rental Fee

Background

In 2009/2010 the City hired Lewis, Young, Robertson and Burningham (LYRB) to study North Ogden's business license fees. Prior to the study, the base business license fee was \$100 for a commercial business and \$50 for a home occupation business. There was no distinction between a new business obtaining a license and an existing business renewing its license or between the sizes of the businesses.

LYRB's study recommended that the City divide the business license fee into 2 parts, a base fee and a disproportionate fee. LYRB recommended a new business license application base fee of \$82.34 and a renewal base fee for existing businesses of \$64. These fees were recommended based on costs for administering business licenses. In addition to the base fee, LYRB proposed a disproportionate fee that was based on indirect costs incurred by the City to provide services to businesses based on the number of police calls for certain categories of businesses. LYRB determined that certain categories of businesses required more police calls than other categories therefore a disproportionate fee was allocated to businesses based on their category.

The study also recommended implementing a fee for residential property rental units in the City, which had not been done prior to this time. It recommended charging the base fee of \$64.00 plus an additional regulatory fee of \$13.27. The study also suggested charging more for a regulatory fee and implementing a Good Landlord Program which would offer those landlords who attended the Good Landlord Program a reduced regulatory fee. The City did not implement the Good Landlord Program at that time due to lack of staffing.

The City Council in 2010/2011 determined that some of the recommended disproportionate fees were too high and too burdensome but the City should recoup some of the costs of providing services to businesses. A proposal was passed by the City Council in October 2011 and is attached to this memo. The basic formula for the disproportionate fee is as follows. The first \$250 of the disproportionate fee would be charged at 100% of the amount recommended by LYRB, the amount from \$251 to \$500 would be charged at 50% of the amount recommended by LRB and any amount over \$500 would be charged at 8% of the amount recommended by LYRB. So if the report recommended charging a disproportionate fee of \$1,000, the amount that North Ogden City would charge would be \$415. (\$250 for the first \$250, \$125 for the next \$250 and \$40 for the final \$500) (proposal – attachment a)

A representative of LYRB will attend the meeting to discuss the detail and methodology of their report.

We have also attached a report from the Utah League of Cities and Towns that gives an historical and legal background for these business license fees (attachment b)

Update

Paul Rhodes in the Police Department had been working on getting updated Police Call data for the years requested and has spent 40 hours on collecting and sorting the data and has stated that it would take an additional 80 hours to compile the rest of the data. The reason it takes so long to compile the data is because the data received from the Dispatch Center list addresses and types of the calls. The addresses then have to be matched up with a map of North Ogden Businesses. The call also has to be analyzed to see if it was an actual call to the business or to a call that was in front of the business (i.e. traffic stop).

Utah Cities that recently considered disproportionate fees include Provo, South Salt Lake, Taylorsville and Midvale. These Cities have adopted fees disproportionate fees that are less than the recommended rates. Midvale adopted only the base fee. Taylorsville capped their rates at \$2,000. South Salt Lake adopted a fee schedule similar to ours. Provo is proposing 100% of the base rate, 100% of the regulatory rate and 6% of the disproportionate fee.

Revenue

North Ogden received approximately \$54,360 in business license fees in FY2012 and \$54,845 in FY2011. Prior to the adoption of the disproportionate fee, North Ogden received \$30,621 in business license fees in FY2010 and \$31,715 in FY2009. We have attached the current business license fees as contained in the consolidated fee schedule (attachment c).

Attachment A

Business License Fee Proposal

From Councilmember Taylor

This is a comprehensive proposal for action on the LYRB Business License Fee Study. It addresses license base fees and disproportionate fees for businesses as well as license base fees and Good Landlord Program for landlords.

Creating this proposal has been a group effort. I worked closely with Shawn Maynard, President of the North View Business Alliance, to craft the original proposal and to make subsequent updates. Mayor Harris, Councilwoman Harris, and Ed Dickie, Dave Carlson, and Debbie Cardenas from the City Staff have all made invaluable contributions to this final proposal. I genuinely appreciate all of their input that greatly improved this proposal, but at the same time I do not presume to speak for any of them in putting forth this final proposal. This is not a perfect proposal—there rarely is such an animal. However, it represents a strong effort to balance the important issues here and to ensure that we value our city's businesses and landlords.

I. Overall Philosophy of this Proposal

North Ogden values our business community. Our local businesses are critically important to our city for several reasons. First, their presence in the city adds to our residents' quality of life because they can purchase goods and services locally. Second, businesses are important to our local economy, both in terms of employment and in terms of generating sales tax dollars to fund city government. Third, the business community members are important partners for the city; businesses make donations of time and money to contribute to city functions and activities such as Cherry Days and recreational programs. Businesses are an invaluable part of our community.

North Ogden charges business license fees to cover regulatory costs and municipal services cost. North Ogden charges business license fees to cover the cost of regulating business activities in the city. Additionally, the city currently charges certain business classes higher licensing fees because they are generally larger businesses that utilize more municipal services. The City hired the reputable firm of Lewis Young Robertson and Burningham, Inc. (LYRB) to review the current business license fees. LYRB's statistical analysis showed that certain business classes continue to utilize more municipal services (especially police services) than others. The LYRB study recommended lower base business license fees but significant increases in the disproportionate fees assessed on certain businesses that were shown to statistically use more municipal services. The concept of "disproportionate use of municipal services" comes from Utah State Law and is the legal concept that allows cities to charge certain business classes higher fees in order to recoup the costs of higher use of municipal services. While this study provides the legal basis for adjusting our fee structure, it is important to note that businesses are not viewed as a

liability. These fees are not punitive in nature and it is not our intent to punish businesses for using police or other municipal services. Rather, the disproportionate fee concept allows cities to recover the costs associated with this use of services.

Licensing Landlords. Licensing landlords makes sense from a fundamental perspective of equity. All other business entities in the city are licensed, even small home-based businesses with lower annual revenues than a rental property. However, landlords are also an important asset in our community and potential valuable partners, especially in terms of reducing crime. Landlords are a critically important part of the community in that they offer housing for a large number of our residents. This proposal recognizes the value that landlords bring to our city. The implementation of licensing fees on landlords should be the same fees as other businesses, and a Good Landlord Program must be adopted prior to implementing any disproportionate fees on landlords.

Overall Recommendations: This proposal recommends a comprehensive revision of the current fee structure, using the LYRB study as point of reference for determining these fees. The fees will not match the full recommendation of the LYRB study because of the following mitigating factors, including: 1) North Ogden views businesses as a valuable asset in our community and as important partners in city events; 2) businesses are victims of crime—they don't desire to use more police services; 3) businesses generate sales tax and pay higher property tax ratios than residents; and 4) North Ogden is working to strengthen partnerships with city businesses and to encourage more economic development in the city. Because of these factors, we recommend implementing only a fraction of the LYRB recommendations as outlined below:

II. Business License Fees

Proposal: Implement the LYRD recommended base fee for home and commercial business occupations of \$82.34 for new licenses and \$64.00 for renewals. Implement higher business license fees for certain business classes using the LYRB disproportionate fee recommendations as follows: 100% implementation of disproportionate fees as recommended in the LYRB study to a threshold of \$250, with 50% implementation of disproportionate fees in amounts between \$251 and \$500. Thereafter, any remaining fees recommended by the LYRB study will be implemented at a rate of 8% on the remainder of the recommended amount. See examples below.

Example 1: Small Retail. The LYRB study recommends a disproportionate fee for Small Retailers of \$59. Because that amount is smaller than the threshold of \$250, it will be fully implemented, resulting in the following business license fee for a Small Retailer in North Ogden:

Base fee \$64 (for renewal) + disproportionate fee of \$59 = \$123 total cost of business license

Example 2: Financial Institution. The LYRB study recommends a disproportionate fee for Financial Institutions of \$766. Therefore, the first \$250 of that \$766 will be implemented at 100%; the

recommended fee between \$251 and \$500 will be implemented at 50%, meaning \$125. The remaining \$266 of the recommended fee will be implemented at 8% (\$21.28), resulting in the following fee:

Base fee \$64 (renewal) + disproportionate fee of \$396.28 (\$250 + \$125+ \$26) = \$590 total cost

Example 3: Grocery Store. The LYRB study recommends a disproportionate fee for Grocery Stores of \$8,948. Therefore, the first \$250 of that \$8,948 will be implemented at 100%; the recommended fee between \$251 and \$500 will be implemented at 50%, meaning \$125. The remaining \$8,448 of the recommended fee will be implemented at 8% (\$675.84), resulting in the following fee:

Base fee \$64 + disproportionate fee of \$1,050.84 (\$250 + \$125 + \$675.84) = \$1,050.84 total

III. Landlord Licensing

Proposal: *Introduce business licensing requirement for landlords. This is fundamentally about equity: we require licenses for all other types of businesses in the city—including small home based businesses with lower annual gross revenues than many rental properties. Additionally, implement the recommended \$13.27 disproportionate regulatory fee on each landlord business license to cover additional code enforcement and regulatory compliance requirements. No disproportionate fees are assessed on landlords at this time, because the City does not have Good Landlord Program in place (a requirement to levy a disproportionate fee). See examples below.*

Example 1: New Rental Business Application:

Base fee \$82.34 (new application) + \$13.27 disproportionate regulatory = \$95.61 total cost

Example 2: Rental Property Renewal Application:

Base fee \$64.00 (renewal application) + \$13.27 disproportionate regulatory = \$77.27 total cost

Proposal Continued: *Pass a resolution that the City will begin implementation of a Good Landlord Program with a completion date of no later than October 15, 2011. This will give time for the City to work with landlords and other stakeholders (police, code enforcement) to implement a program that satisfies all parties involved. Landlords must have a strong voice in shaping the Good Landlord Program that is ultimately developed. The disproportionate rental fees will begin to be charged with the 2012 business license renewals, with the Good Landlord Program participants receiving a substantial fee reduction.*

IV. Licensing Fee Fund Allocation

All business license fees are placed into the city's General Fund to cover the expenses for which they were collected:

1. Base business license fees will be used to cover regulatory costs associated with licensing and regulating businesses (administrative costs, printing costs, code enforcement/regulatory, legislative, etc.).
2. Disproportionate fees are used to cover the general fund expenditures for the municipal services for which they were collected (i.e., police department expenses for calls to businesses).
3. Disproportionate administrative costs for landlords are used to cover the administrative expenses for which they were collected.

V. Additional Services to Businesses

This proposal holds to the philosophy that when we charge higher fees, we need to deliver a higher level of service. We do not want businesses or landlords to feel that they are viewed simply as sources of revenue for the city to be charged higher fees without a higher level of service. We want them to genuinely feel a part of our community. Of course they are expected to contribute to municipal services through licensing fees, but we want them to feel like the city is a partner, rather than a bill collector. As such, the proposal includes several important service enhancements for businesses and landlords:

1. Business Liaison Officer: As part of this proposal, the position of Business Liaison Officer/BLO (or similar title) will be established in the North Ogden Police Department. This will not be a new officer, but rather a duty assigned to an existing officer. This officer will serve as the liaison between businesses and the Police Department. The BLO will develop positive relationships with businesses by personally visiting businesses regularly and by serving as a point of contact when businesses want to contact the police for a non-emergency matter. For example, if a business were experiencing suspicious loitering, they could call the BLO and discuss their concern. The BLO could then coordinate with NOPD leadership for additional patrols in that area. The BLO will offer an enhanced and personalized degree of service to our businesses.
2. Rental Liaison Officer: A similar position should be established as a point of contact for landlords to report concerns and to discuss strategies for crime reduction. Once the city forms a Good Landlord Program there will be such a contact. However, identifying a liaison now for landlords is part of this proposal, because they are being charged license fees starting now.
3. Economic Development Fund: This proposal has stressed that businesses are viewed as an asset in North Ogden, and establishing an Economic Development Fund proves this. This proposal recommends establishing an Economic Development Fund financed by the city that would be equivalent to 20% of the total business license revenues (estimated as approximately \$15,000 the first year). This Fund would be used to finance economic development initiatives, such as the "Spend it in North Ogden" campaign or similar campaigns. It could also be used to finance initiatives such as those currently being considered by the Economic Development Committee, including GOV QA, economic development marketing, etc.

Basically, this fund says to businesses that the city will invest money and effort into creating a strong and healthy business climate in North Ogden.

4. Funding for a North Ogden Business Alliance: The Economic Development Fund would also be used to fund the North Ogden Business Alliance (currently the North View Business Alliance). This Alliance would bring city elected officials and staff together with business leaders in North Ogden to partner together for economic development in the city. The Alliance will serve as a format to bring city and businesses together to tackle problems facing the city's business community. This alliance also works to promote the shop local message and to help market local businesses through misc. events and marketing programs.

DRAFT

Business License Fees

Before 1997, a Utah municipality had the authority to license businesses for both revenue and regulatory purposes.¹ A revenue purpose is the raising of money for the general fund of the city. A regulatory purpose is the control of where, when, and how a business operates.

The Utah courts upheld this licensing authority. Examples of cases supporting Utah municipalities include *Davis v. Ogden City*, 215 P.2d 616 (Utah 1950), which upheld the City's right to license attorneys, and *Little America Hotel Corp. v. Salt Lake City*, 785 P.2d 1106 (Utah 1989), which upheld Salt Lake City's 1 percent room tax on the rental of hotel rooms.

The courts did not always side with the municipality. The courts struck down ordinances that discriminated between people engaged in the same businesses or ordinances that had fees that differed for substantially the same businesses. These decisions were based on the theory that it was a violation of equal protection the law under the state and federal constitutions. The fees had to be applied equally to all persons of a given class and be uniform and equal.

Various business licensing schemes were adopted by Utah municipalities including flat fees by class of business, fees based on the number of employees, fees based on the size of the business, and fees based on the gross receipts of the business. Since the municipality had authority to license for both revenue and regulation, there was no required link between the amount of the fee charged to the services supplied by the municipality to the business, or the burden created by the business on the municipality. All this changed in 1996.

A few municipalities had adopted a gross receipts business licensing scheme that appeared and was applied like a sales tax. Moab City was probably the most aggressive in this approach. The revenue from its business licenses was sufficient for the city to not have a local property tax levy. The gross receipts business license fee aroused the anger of the Utah Tax Payers Association and, therefore, the Utah Legislature. Once the legislature became aware of the municipalities broad power and discretion in business licenses, it determined to take the power and discretion away. In 1996, the legislature amended the Utah municipal code to create a "mother may I" system of revenue licensing. The state law is intended to limit a municipality's ability to license for revenue purposes to only those specific businesses or class of businesses allowed by the state legislature.

The state law specifically allows licensing for revenue purposes to certain parking services businesses, to a public assembly facility, to a business that causes a disproportionate cost of municipal services, to a business for which a city provides

¹ The enabling act was Utah Code 10-1-203.

enhanced levels of services,² to certain energy utility companies,³ to telephone utility companies,⁴ and hotel/motels.⁵ Each of these allowed revenue sources has its own special rules and definitions.

If a city or town is going to license for revenue purposes under the disproportionate services or enhanced level of services rubric, then it must do so by ordinance. The ordinance to justify a disproportionate cost of services must define what constitutes disproportionate costs and what “amounts are reasonably related to the costs of the municipal services provided by the municipality.”⁶

If a city or town is going to license for revenue purposes for enhanced level of services, the ordinance must define what is the base level of service and what amounts are reasonably related to the cost of providing the business for the enhanced level of services.⁷

Obviously, both the disproportionate costs and enhanced services ordinance require a study to generate the information to support the need and amount of the revenue to be raised by these ordinances. If a city or town enacts these ordinances without the underlying supporting data, the ordinances will not survive a court challenge.

Municipal services for both these types of business licensing ordinances are defined as including police, fire, storm water runoff, traffic control, parking, transportation, beautification, or snow removal.⁸

The energy utility companies can be taxed through the energy sales and use tax or under a franchise agreement. Cities can charge the telephone utilities a fee either through a business license ordinance or a franchise agreement. In either case, the limit on the tax or fee is 6 percent of the delivered value of the taxable energy⁹ for energy companies and 3.5 percent of the gross revenue of the telephone utility. Gross revenue for telephone utilities does not include private line services, long distance charges, carrier access services, and non-regulated telephone services.¹⁰ Both of these taxes require the passage of a specific ordinance. Model ordinances enacting these taxes can be obtained through the Utah League of Cities and Towns.

The hotel/motel business license fee has been changed to a local option 1 percent transient room tax. It is a tax on room rents for short term (less than 30 days) rentals. This is enacted by ordinance and can be collected either by the city or town itself or through the Utah State Tax Commission at the city or town’s option. A special provision allows an additional 1/2 percent transient room tax for a city or town which had a

² Utah Code 10-1-203 as amended.

³ This is called the energy sales and use tax as authorized by Utah Code 10-1-301 et seq.

⁴ Utah Code 10-1-401 et seq.

⁵ Utah Code 59-12-351.

⁶ Utah Code 10-1-203(5)(c).

⁷ Utah Code 10-1-203(5) (d).

⁸ Utah Code 10-1-203(5) (b).

⁹ Utah Code 10-1-304.

¹⁰ Utah Code 10-1-402(10).

business license gross receipts tax on transient rooms before January 1, 1996, and had pledged the proceeds of that tax to bond repayment.

A city or town may still have business licenses for regulation purposes only. These licenses must be uniform as to class of business, and the fee amount must be rationally related to the actual costs of regulating the business. These costs may include things such as the paper work cost of processing the license and safety and fire inspection. These types of regulatory licenses should not be a profit center for the municipality and, if they are, would be subject to challenge.

Special rules apply to the licensing of apartment complexes. These include limitations on a municipalities' ability to require inspections of apartments (for a fee) before they are rented and limitations on the amount of the fee that can be charged and requirements to implement a good landlord program.¹¹ Of course a study is required to implement any such fee and an actual ordinance is required. There are certain provisions that do not apply if the city or town had already adopted its apartment ordinance before May 2, 2005, and it does not raise its fee.

¹¹ Utah Code 10-1-203(5)(e).

- Deposit for Off-Site Improvements\$500.00
(New Homes Charged with Building Permit)
- Excavation Permit/Road Cut Fee\$50.00 & Road Cut Fee/See Chart
 - Taxing Entities-e.g. special districts, government, will be charged 75% of normal fee.
 - Cash Bond\$300.00
 - Performance Bond\$2,000.00
- Blasting Permit.....\$50.00

BUSINESS LICENSES

- Commercial Business License
 - New Application Base Fee\$82.34
 - Renewal Base Fee\$64.00
- Home Occupation\$64.00
- Residential Rental License:
 - Residential Rental Base Fee\$64.00
 - Rental Residential Regulatory Fee\$13.27
- Temporary General\$64.14
- Temporary Outdoor\$80.54
- Fireworks Stands.....\$89.99
- Solicitor’s License \$80.29 each

In addition to the Base Business License Fees, the following Disproportionate Fees apply:

- Financial Institutions.....\$396.28
- Family Services.....\$21.00
- Automotive\$166.00
- Restaurant and Food Services.....\$79.00
- Fast Food.....\$427.72
- Small (Specialty) Retail\$59.00
- Large Retail.....\$485.08
- Grocery\$1,050.84
- Cinema.....\$490.60
- Video.....\$335.00
- Personal Services\$21.00
- Major Medical.....\$501.72
- Convenience.....\$795.64

In addition to the above Business License Fees, the following fees apply:

- Day Care Provider:
 - Annual Fire Inspection.....\$15.00
- Temporary license for Businesses with a combined display and building area covering more than 400 square feet.....License fee plus \$250.00 refundable deposit
- Temporary license for businesses with a combined display and building area covering less than 400 square feetLicense fee plus \$150.00 refundable deposit
- Late Fees:
 - Business License renewal fees are due Jan 15th at close of business. All payments on business license renewals received after January 15th will incur an additional 25% late fee.
 - A late fee of 50% of the total business license fee will be charged for all payments on business license renewals received after March 15th.
- Beer Licenses, Class “A” and “B”
 - New application\$31.79