

CITY OF FIFE, WASHINGTON

ORDINANCE NO. 1991

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON AMENDING SECTIONS 5.01.010 AND 5.01.050 OF THE FIFE MUNICIPAL CODE REGARDING BUSINESS LICENSE DEFINITIONS AND EXEMPTIONS

WHEREAS, in 2017, the state legislature passed Engrossed House Bill 2005 (RCW 35.90), requiring local jurisdictions to adopt certain business license ordinance definitions and exemptions not later than October 17, 2018; and

WHEREAS, pursuant to EHB 2005, the Association of Washington Cities formed a task force to propose a model business License ordinance to comply with Engrossed House Bill 2005 which was transmitted to local jurisdictions; and

WHEREAS, the model was distributed by the WA State Department of Revenue to assist local jurisdiction to craft the proposed amendments; and

WHEREAS, on August 10, 2018 the City of Fife Planning Commission reviewed and recommended approval of the business license amendments transmitted by the state; and

WHEREAS, on August 27, 2018, pursuant to the City of Fife State Environmental Policy Act (SEPA), the Responsible Official determined that the proposed amendments are exempt from the State Environmental Policy Act (SEPA); and

WHEREAS, the City of Fife has fulfilled all procedural requirements for the adoption of business license regulations; now therefore

THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Section 5.01.010 of the Fife Municipal Code is hereby amended to read as follows:

5.01.010 Definitions.

For the purpose of this chapter the following terms, phrases, words and their derivations shall have the meanings given herein:

A. "Business" includes all activities, occupations, pursuits or professions located and/or engaged in within the city with the object of gain, benefit or advantage to the licensee or another person or class, directly or indirectly, and shall include not-for-

profit organizations. Each business location and each business name shall be deemed a separate business. The term "business" shall include the letting for rent or lease for residential occupancy four or more residential dwelling units within the city.

B. "Business Licensing Service" means the office within the State Department of Revenue that administers the application and renewal of the Fife business licensing requirement.

C. "Employee" means anyone employed by a person engaged in business within the city regardless of the amount of wage paid or the number of hours worked. It shall include the owner or owners of the business if they perform any work within the city.

D. "Engaging in business"

1. The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

2. This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the City without having to pay a business license fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1). If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

3. Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

(a) Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.

(b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.

(c) Soliciting sales.

(d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

(e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

(f) Installing, constructing, or supervising installation or construction of, real or tangible personal property.

(g) Soliciting, negotiating, or approving franchise, license, or other similar agreements.

(h) Collecting current or delinquent accounts.

(i) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

(j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

(k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

(l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

(m) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

(n) Investigating, resolving, or otherwise assisting in resolving customer complaints.

(o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

(p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

4. If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license.

(a) Meeting with suppliers of goods and services as a customer.

(b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

(c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

(d) Renting tangible or intangible property as a customer when the property is not used in the City.

(e) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

(f) Conducting advertising through the mail.

(g) Soliciting sales by phone from a location outside the City.

5. A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (D)(4) of this section.

6. The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the license fee under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

E. "License officer" is the city clerk of the city or his/her designee, who shall administer this code and is hereby authorized to adopt, publish and enforce, from time to time, such rules and regulations for the proper administration of this code as may be necessary. It shall be a violation of this code to fail to comply with any such rule or regulation lawfully promulgated hereunder.

F. "Licensee" includes any person who is engaged in business or who is required to have or is granted a license under this title.

G. "Nonprofit" means an exemption from federal taxation as evidenced by a letter from the Internal Revenue Service showing a current tax exempt status pursuant to the Internal Revenue Code section as most recently amended.

H. "Person" or "company," herein used interchangeably, means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, and the United States or any instrumentality thereof.

I. "Premises" means any location within the city in, at, or upon which a person engages in business.

J. "Residential dwelling unit" means any structure or part of a structure which is used as a home, residence or sleeping place by one or more persons, including but not limited to single-family residences and units of multiplexes, apartment buildings and mobile homes and similar living accommodations.

K. "Year" means the calendar year.

Section 2. Section 5.01.050 of the Fife Municipal Code is hereby amended to read as follows:

5.01.050 Exemptions.

The following persons and businesses shall be exempt from the registration, license and/or license fee requirements as outlined in this chapter:

- A. Any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than \$2,000 and who does not maintain a place of business within the city shall be exempt from the general business license requirements in this chapter. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.
- B. Any business qualifying as nonprofit shall be exempt from paying a business license fee; provided, however, an application shall be required and an exempt business license must still be obtained. In order to qualify for nonprofit fee exemption, proof of such nonprofit status must be provided at time of application to the license officer. The only acceptable proof is the tax exempt letter referenced in FMC 5.01.010 under the definition of “nonprofit.”
- C. No business license shall be required of vendors not otherwise engaged in business in the city who rent a booth or space, or are otherwise a participant, at a city-sponsored event with a duration of less than 24 hours or a city-operated farmers’ market.
- D. Pursuant to RCW 36.71.090, no business license shall be required of any farmer, gardener or other person to sell, deliver or peddle any fruits, vegetables, berries, eggs or any farm produce or edibles raised, gathered, produced or manufactured by such person.
- E. No business license shall be required of minors (persons under 18) doing business or operating a business concern where no other person is employed by the minor, such as babysitting, lawn mowing, car washing, and similar activities.
- F. No business license shall be required for casual or isolated sales or services made by persons who are not engaged in the ongoing business of selling the type of property involved. “Casual or isolated” is defined as not more than four such sales, not exceeding four consecutive days each, made during any calendar year. Examples include garage sales, yard sales, rummage sales, and bake sales by residents of a household where the exempt activity is taking place. Unless otherwise provided for in this section, vendors at flea markets, swap meets or other similar activities shall not be exempt.

G. Any independent contractor that provides instruction or teaches classes in a parks, recreation and aquatics department sponsored program, and who is not otherwise engaged in business in the city, shall be exempt from paying a business license fee; provided, however, an application shall be required and an exempt business license must still be obtained.

Section 3. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof provided the intent of this Ordinance can still be furthered without the invalid provision.

Section 4. This Ordinance shall be in full force and effect five (5) days after publication as required by law. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

Introduced the 11th day of September, 2018.

Passed by the City Council on the 25th day of September, 2018.



Hyun Kim, City Manager

Russ Blount, Acting City Manager

ATTEST:



Brodie Rota, City Clerk

APPROVED AS TO FORM:



Greg Amann, Assistant City Attorney

Published: Sept. 27, 2018
Effective Date: Oct. 2, 2018