

ORDINANCE NO. 2018-____

AN ORDINANCE amending the City of Yakima Municipal Code Chapter 5.52 relating to engaging in business, business license fees and out-of-city businesses.

WHEREAS, the Yakima Municipal Code regulates businesses within the City, as well as requires a business license for businesses which are not located within the City but engage in business within the City; and

WHEREAS, in 2017, EHB 2005 was passed by the Legislature and later codified as RCW 35.60, which simplifies business licensing throughout the state; and

WHEREAS, EHB 2005 requires a number of actions during the next few years, including changes to city business license regulations which must be effective before January 1, 2019, or a city cannot exercise its authority under its regulations; and

WHEREAS, EHB 2005 requires that city ordinances be changed to adopt a definition of “engaging in business” that was created by a workgroup convened by the Legislature, which included the Association of Washington Cities (AWC); and

WHEREAS, EHB 2005 also requires that city ordinances be changed to adopt a threshold which applies a minimum threshold of gross income or sales before a city can be required to obtain a local business license if that business does not have a location within the city, and allows the city to require registration of all businesses, even if they don’t meet the threshold; and

WHEREAS, the members of the Economic Development Committee reviewed the materials regarding these mandatory changes, discussed the minimum threshold amount, and determined that increasing the minimum threshold to \$12,000.00 was appropriate for both businesses located outside the City and sole proprietors within the City for consistency; and

WHEREAS, the City Council of the City of Yakima finds that it is in the best interests of the City and its residents to amend Chapter 5.52 to comply with EHB 2005, amend the definition of “engaging in business” and adopt a minimum threshold for when an out-of-city business or sole proprietor needs to pay for a business license; now, therefore,

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. The City of Yakima Municipal Code Section 5.52.020 is hereby amended to read as follows:

5.52.020 Definitions.

In construing the provisions of this chapter, save when otherwise declared or clearly apparent from the context, the following definitions shall be applied:

- (a) “Year” means calendar year.
- (b) “Person” means any individual, firm, copartnership, company, corporation, association, receiver, assignee, trustee in bankruptcy, trust, estate, joint venture, club, joint-stock company, business trust, society, or any group of individuals acting as a unit.

(c) "Business" includes all activities, occupations, trades, pursuits or professions located and/or engaged in within the city of Yakima, with the object of gain, benefit or advantage to the taxpayer, or to another person or class, directly or indirectly. Each business location shall be deemed a separate business.

(d) "Engaging in business"

(1) The term "engaging in business" means commencing, conducting, or continuing in any business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators 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 employees, 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.

(i) 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.

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

(iii) Soliciting sales.

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

(v) 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.

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

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

(viii) Collecting current or delinquent accounts.

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

(x) 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.

(xi) 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.

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

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

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

(xv) 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.

(xvi) 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 for the following. It need not register and obtain a business license.

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

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

(iii) 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.

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

(v) 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, where applicable.

(vi) Conducting advertising through the mail.

(vii) 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 (4). 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 tax payer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

(e) "Employee" means any person employed at any business location within the city and/or any person furnishing or performing services within the city, and in addition includes all persons who are self-employed.

(f) "Taxpayer" includes any person who engages in business or who is required to have a business license hereunder, or who is liable for any license fee or tax hereunder, or who performs any act, for which a license fee or tax is imposed by this chapter. (Ord. 2837 § 1, 1985; Ord. B-2014 § 2, 1947).

Section 2. The City of Yakima Municipal Code Section 5.52.040 is hereby amended to read as follows:

5.52.040 Business located outside city.

(1) Threshold exemption.

For purposes of the license by this chapter, 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 \$12,000.00 and who does not maintain a place of business within the City, shall submit a business license registration to the Director or designee but not pay the business license fee.

The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

(2) As to businesses located outside the city of Yakima and furnishing or performing services within the city that are not exempt under section (1) above, the license fee or tax herein shall be measured by the number of employees of such business who perform any part of their duties within the city. (Ord. B-2014 § 4, 1957).

Section 3. The City of Yakima Municipal Code Section 5.52.050 is hereby amended to read as follows:

5.52.050 Exemptions.

In addition to the exemptions outlined in Section 5.52.020(d)(4), the provisions of this chapter shall not apply to:

- (a) Any person in respect to engaging in any of the following enumerated business activities: franchised electric power, telephone, gas and passenger transportation companies;
- (b) Fraternal benefit societies as defined by Section 48.36.010 of the Revised Code of Washington; fraternal mutual property insurers as defined by Section 48.36.410 of the Revised Code of Washington; and nonprofit corporations organized under or existing by virtue of Chapter 24.03 of the Revised Code of Washington if such nonprofit corporations provide in their bylaws for the assessment of each member of a fixed sum to be held by the corporation to be paid as death benefits on the death of a member for the purpose of assisting widows, orphans or other persons dependent on a deceased member;
- (c) Any religious society, association or corporation, through the operation of any hospital, clinic, resort or other institution devoted exclusively to the care or healing of human beings; provided, that no exemption is granted where the income therefrom inures to the benefit of any physician, surgeon, stockholder or individual by virtue of ownership or control of such hospital, clinic, resort or other institution;
- (d) Auctioneers licensed under Chapter 5.14;
- (e) Merry-go-rounds licensed under Chapter 5.02;
- (f) Any instrumentality of the United States, state of Washington, or political subdivision thereof;
- (g) Any farmer, gardener, or other person who sells, delivers or peddles any fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats, or any farm product or edibles raised, caught, produced or manufactured by such person within the state of Washington;
- (h) Any person, who is the holder of a valid permit under Section 8.52.070 of the city of Yakima Municipal Code, engaged in the business of curb number painting and who devotes no more than six hundred hours per year to said business;
- (i) Newsboys engaged in the sale or delivery of newspapers and magazines or periodicals to the reading public;
- (j) Any blind person engaged in business activities in the city;
- (k) Any person, firm or corporation which the city is prohibited from taxing under the laws of the United States or of the state of Washington;
- (l) Any person meeting the following threshold exemption:

For purposes of the license by this chapter, any sole proprietorship without full- or part-time employees whose annual value of products, gross proceeds of sales, or gross income of the business in the City is equal to or less than \$12,000.00 shall submit a business license registration to the Director or designee but shall not be required to pay the license fee. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

Section 4. Severability. If any section, subsection, paragraph, sentence or clause of this ordinance is declared invalid or unconstitutional for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of the ordinance.

Section 5. Effective Date. This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this 16th day of October, 2018.

Kathy Coffey, Mayor

ATTEST:

Sonya Claar Tee, City Clerk

Publication Date: _____

Effective Date: _____