

MEMORANDUM

TO: Honorable Mayor Kathy Coffey
Yakima City Councilmembers

FROM: Sara Watkins, Senior Assistant City Attorney
Glenn Denman, Supervising Code Inspector

DATE: September 25, 2018

SUBJ: Proposed Amendments to YMC 5.52

Mayor Coffey and Councilmembers:

The Washington State Legislature passed a statute that requires cities to amend their business license code section effective before January 1, 2019, in two ways. Staff is bringing you the options, as well as staff's recommendation with regards to the proposed language. This memorandum outlines the options (where there are options) and the reasoning behind choosing that option. Staff held a meeting with legal, the supervising code inspector, and members of staff who deal with business licensing within the City prior to making this recommendation, and then presented it to the Economic Development Committee, which sent this matter on to the full Council with a change (discussed below).

1. Required Change #1: The definition of "engaging in business."

The statute, RCW 35.90.080(2)(a) states:

A city that imposes a general business license requirement must adopt the mandatory provisions of the model ordinance by January 1, 2019. The following provisions are mandatory:

A definition of "engaging in business within the city" for purposes of delineating the circumstances under which a general business license is required.

The model ordinance language was created by a development committee, working through the Association of Washington Cities, as specifically required by the statute. RCW 35.90.080(1)(a). The statute also required that before the model ordinance was finalized that there be "substantial input from business stakeholders and other members of the public." The full model ordinance, for which City staff is not seeking adopting in full, can be found online. State statute

only mandates that two provisions be adopted by all cities which conduct business licensing.

The first provision mandated to be adopted is the definition of “engaging in business.” The AWC model definition is proposed to be adopted as required by the statute. Please see the redlined version of Yakima Municipal Code 5.52.010. As you can see, the definition is much more specific and provides examples of businesses that must be licensed, as well as some exemptions that must be taken into account. Please note that there is no recommendation from staff to eliminate the City’s additional exemptions from licensing found in YMC 5.52.050.

2. Required Change #2: Minimum threshold for license fees

RCW 35.90.080(2)(b) & (3) requires that all cities that impose business license requirements also adopt:

A uniform minimum licensing threshold under which a person would be relieved of the requirement to obtain a city’s general business license. A city retains the authority to create a higher threshold for the requirement to obtain a general business license but must not deviate lower than the level required by the model ordinance.

A city may require a person that is under the uniform minimum licensing threshold as provided...to obtain a city registration with no fee due to the city.

AWC provided two threshold options, of which cities are required to adopt one— with the acknowledgement that the City could change the minimum threshold amount to make it higher. The two options are as follows:

a. Option 1: Threshold exemption

To the extent set forth in this section, the following persons and businesses shall be exempt from the registration, license and/or license fee requirements as outlined in this chapter:

- (1) 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 (or higher threshold as determined by city) 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. Option 2: Threshold with Fee-free License/Registration-only

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 \$2,000 (or higher threshold as determined by city) and who does not maintain a place of business within the city, shall submit a business license registration to the Director or designee. The threshold does not apply to regulatory license requirements or activities that require a specialized permit.

City staff recommended that the City use option 2, extend it to all businesses (not limit it to out of town businesses) and increase the minimum threshold to \$7,000 (this was based on the number of hours exempted—600—multiplied by the minimum wage for that number of hours). After discussion at the Economic Development Committee meeting, the Committee increased the minimum threshold to \$12,000.00—an average of \$1,000.00 gross proceeds of sales or gross income.

a. Why staff recommends using option 2

Option 2 is recommended, which requires businesses (unless otherwise specifically exempted) to register with the City, and exempts some businesses from paying the license fee. This option is the preferred option because by issuing a business license to every business there is a record with the City of where businesses are located, the types of businesses being opened, and other data and information about businesses in Yakima. This is also consistent with the City's current practice to require businesses which are exempt to register, but not pay the business license fee. Further, by issuing a license, if a business were to violate any ordinance provisions, the license could be suspended or revoked. If the City provided for the exemption without requiring a cost-free license, it creates a situation where it is hard for the City to know where businesses are locating, ensure zoning regulations are followed, or hold businesses accountable for violations of code provisions.

b. Why staff recommends extending the definition to include in-City sole proprietorships, not just out-of-town businesses

Although the mandatory language is for businesses that do not maintain a place of business within the city limits, staff recommends that the definition be extended to both in-city sole proprietors and out-of-town businesses for consistency. Currently in-City sole proprietorships are exempt from licensing if they work less than 600 hours that year. To keep exemptions consistent, staff felt that the sole proprietorship exemption should also be based on gross sales or product, not on hours worked per year.

c. Why staff recommended increasing the minimum threshold.

Staff thought that the state's adopted minimum threshold would not be consistent with current exemptions, and was so low that it would not exempt very many businesses.

Currently, one of the City's exemptions is for sole proprietors who have no employees and operate less than 600 hours. YMC 5.52.050(I).

To create consistency, clarity and transparency, City staff recommends eliminating the exemption based on hours worked for sole proprietorships, and enacting the exemption based on gross sales or products across the board to both in-city sole proprietorships and out-of-town businesses.

A monetary minimum threshold amount is more easily verified if there is a complaint (compared to a threshold based on hours worked), and it provides a clear delineation that can be tracked and estimated at the time of licensing by business owners. Staff believed it was a clearer standard to explain and a clearer standard to understand. Further, the minimum threshold in a dollar amount is mandated for out-of-town businesses by EHB 2005, so it would be inconsistent to have a dollar amount threshold for out-of-town businesses, and a maximum hours worked for an in-city sole proprietor business. As such, staff recommended extending the mandated process of using gross sales to the in-city sole proprietorships as well.

3. Deadline

The state-mandated changes must be enacted and be in force before January 1, 2019. If the changes are not adopted by the City by that time, then the City cannot enforce its business licensing ordinances. As such, staff brought this to the Economic Development Committee in September rather than waiting until closer to the end of the year.

4. Anticipated future business license changes

To provide more context for this change, staff wants to provide some information about future business license changes within the City. The state, pursuant to RCW 19.02, is requiring all jurisdictions that have business license regulations to ultimately utilize the state Business Licensing System (BLS) by 2022. This will provide easy access to business owners to go online and apply for both their state and local business licenses at the same time. Business owners (except for those requiring City-required licenses under separate sections of the Yakima Municipal Code, such as, for example, Mobile Food Vendors (YMC 5.57) or Peddlers (YMC 5.56)) will be able to obtain all the necessary licenses online without having to come to City Hall, and can make payment directly online. This should streamline the majority of business licenses in the City for business owners.

City staff will need to amend the City's business license ordinance more than the mandated changes that are required right now. The City was recently notified that Yakima is slated to be added to the BLS in 2020. We look forward to bringing these proposed changes first to the Economic Development Committee for discussion in 2019.

5. Enclosures

With this memo in your packet are the following documents:

- a. Redlined version of 5.52.020 which changes the definition of “engaging in business” as mandated by state law.
- b. Redlined version of 5.52.040 which adds a section that specifies the minimum threshold for out-of-city businesses as mandated by state law (staff’s recommendation to choose Option 2).
- c. Redlined version of 5.52.050 which removes the exemption based on hours worked and changing it to an exemption based on minimum monetary thresholds for consistency with YMC 5.52.040.
- d. AWC short sheet “Final city business license model threshold.”
- e. Proposed ordinance adopting the changes to Chapter 5.52.