



AGENDA MEMO

Needs Legal Review: Yes
Council Meeting Date: December 19, 2018
Agenda Item: Proposed Ordinance 2018-12-1031, Amending WSMC 5.04 Business Licenses
Presented By: Jan Brending, Clerk Treasurer

ACTION REQUIRED:

Approval of Ordinance 2018-12-1031, Amending WSMC 5.04 Business Licenses.

PROPOSED MOTION:

Motion to approve Ordinance 2018-12-1031, Amending WSMC 5.04 Business Licenses, Including Severability and an Effective Date.

Why is it a legislative issue:

City Council approves all ordinances.

Explanation of issue:

The Washington State Legislature made changes to the requirements for business licensing by cities and counties. The legislation is intended to simplify the administration of municipal general business license for the applicant. requires the city to update its business license ordinance by January 1, 2019.

The legislation provides that the city may only impose licensing requirements upon individuals or companies "engaging in business within the city" as defined by the model ordinance (attached) and that for businesses that engage in business within the city but are not physically located within the city, our ordinance establishes a minimum dollar threshold below which businesses are partially or fully exempted from licensing requirements. The model ordinance provides a minimum threshold of \$2,000. Businesses that are operate below the minimum dollar threshold can be exempted from the licensing requirements or require licensing but at no cost to the businesses.

In addition, the legislation requires the city to partner with either FileLocal or with the state's Business Licensing System through the Department of Revenue by 2022. These one-stop licensing will allow businesses to obtain local licensing for any city in the state via one or the other website.

The proposed ordinance before the council has the following changes:

- Defines "engaging in business"
- Establishes a threshold for fee-free license registration
- Deletes "Master License for Events" (this will need to be described as a permit and provided for in a separate code)
- Deletes the provision for business license renewals issued on or after July 1st being prorated to \$25



The city will need to amend its ordinance when it gets ready to partner with either FileLocal or the Department of Revenue for the "one-stop licensing" program. At this time I am proposing to work with the Department of Revenue as their program is free and currently there are costs associated with using FileLocal. I intend to establish contact with Department of Revenue and, if possible, make the transition to the BLS system next year.

Budget:

The provisions in the ordinance are expected to have only a minor impact on the city's budget. The revenues from business licenses are always projected conservatively.

Staff Recommendation:

Staff recommends adoption of Ordinance 2018-12-1031 amending WSMC 5.04 Business Licenses.

**CITY OF WHITE SALMON
ORDINANCE NO. 2018-12-1031**

**AN ORDINANCE OF THE CITY OF WHITE SALMON, WA,
AMENDING WSMC 5.04 BUSINESS LICENSES, INCLUDING
SEVERABILITY AND AN EFFECTIVE DATE**

WHEREAS, the Washington legislature adopted EHB2005 which requires cities changes in their business license regulations; and

WHEREAS, model business license language has been released for the use by cities and towns, and

WHEREAS, the city council of the City of White Salmon desires to amend WSMC 5.04 regarding business licenses to meet state requirements.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WHITE SALMON DO ORDAIN AS FOLLOWS: that the following amendments be made to the White Salmon Municipal Code Chapter 5.04, regarding business licenses:

Key: Deleted: ~~striketthrough~~
Added: underlined

SECTION 1 – WSMC 5.04 is hereby amended as follows:

Chapter 5.04 – Business Licenses

5.04.010 – Definitions.

Except as otherwise expressly declared or clearly apparent from the context in which used, the following definitions shall be applied in construing the provisions of this chapter.

A. “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.

1. This section sets forth of 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 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 paragraph above. 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.

- 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 and generating any income therefrom, whether in cash, cash equivalent, barter, trade or other boot.
- 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 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.
2. 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 meeting, 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.

3. 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 listed subsection 3.

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.

“Business” means and includes all services and activities engaged in with the object of pecuniary gain, benefit or advantage to the person, or to another person or class, directly or indirectly, whether part time or full time. Any enterprise that meets the general definition of “business” shall be considered a separate and distinct business subject to the requirements of this chapter; provided, that a component or incident part of a separate business shall not itself be considered a separate business. For the purposes of this chapter, nonprofit organizations shall also be included under the term “business.”

B. “Person” means one or more natural persons of either sex, corporations, partnerships, associations of other entities capable of having an action at law brought against such entity, but shall not includes employees of persons licensed pursuant to this chapter.

C. “Special event” means any event or activity which is organized primarily for the purpose of promoting cultural, artistic or entertainment endeavors, including, but not limited to, arts and crafts fairs, cultural exhibitions, vocal or instrumental concerts, shows, festivals and camps, and is open to members of the public. Special events are not limited to those events conducted on public streets or in public buildings but may include events occurring entirely on private property.

5.04.020 – Required-Exceptions.

A. It is unlawful for any person to conduct, operate, engage in or practice any business in the city of White Salmon without first having obtained a business license from the city. If more than one business is conducted on a single premises, a separate license shall be required for each separate business conducted, operated, engaged in or practiced. If business is transacted at two or more places by a person with the city, a separate license shall be required for each place at which business is transacted.

- B. A nonprofit organization shall complete the business license application form; however, it shall be required to pay a license fee only as required by Section 5.04.090(B).
- C. 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. Furthermore, no business license shall be required of any minor engaging in a de minimis entrepreneurial venture with permission of the property owner, including, but not limited to such trade and activities as running a lemonade stand.

5.04.030 – Application-Procedure.

- A. No new business license shall be issued except upon written application made to the city clerk-treasurer or designee. Such application shall be signed by the person who intends to conduct, operate or engage in the business for which the license is to be issued, and shall state the nature and address of the business or proposed business of the applicant and such other information as may be required by the city clerk-treasurer.
- B. If the applicant is a partnership, the application must be made and signed by one of the partners; if a corporation, by one of the officers thereof; if a foreign corporation, partnership or nonresidential individual, by the resident agent or local manager of the corporation, partnership or individual.
- C. The city clerk-treasurer or designee shall approve or deny the license. The city ~~planner-director~~ city administrator or designee and building inspector shall indicate on the license application whether the proposed business meets all current zoning and building code requirements. If any city department recommends denial of the license, the department must submit the recommendation in writing to the city clerk-treasurer. If an application is denied by the city clerk treasurer or designee, the reason for denial shall be stated.
- D. Neither the filing of an application for a license nor the payment of the fee shall authorize a person to engage in or conduct a business until such license has been granted.

5.04.040 – Application-Form.

- A. Annual licenses to be issued pursuant to the provisions of this chapter shall be renewed by January 31st of each subsequent year.
- B. Neither the filing of an application for renewal nor the payment of a renewal fee shall, of itself, authorize a person to engage in or conduct a business.

- C. The city clerk-treasurer or designee shall send out renewal notices each year. If the information regarding the business has not changed from the original application or a later update, the renewal notice shall be returned to the city clerk-treasurer with the renewal fee as set forth in Section 5.04.060(A). If any of the information regarding the business has changed, such change(s) shall be submitted with the renewal notice and the renewal fee.

5.04.055 – Threshold exemption from free license/registration requirement.

To the extent set forth in this section, the following persons and business shall be exempt from the registration, license and/or license fee requirements 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 of this Chapter. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.**
- B. **Any person or business who meets the exemption requirements shall submit an application for a business license to the city clerk-treasurer but shall not be charged a fee for the business license.**
- C. **Non-profit organizations recognized by the Federal Government as a 501(c)(3) organization, with proper documentation are exempted from the requirement to pay fees associated with the issuance of a Business License as required by this Chapter. Applicants are required to provide one of the following:**
- 1. Form 1023, Application for Recognition of Exemption; or**
 - 2. IRS Determination Letter; or**
 - 3. IRS Affirmation Letter.**

However, non-profit organizations are still required to apply for and obtain a valid Business License and comply with all other provisions of this Chapter.

5.04.060 – Fee-Late payment-Reissuance.

- A. The fee for the original license required by this chapter shall be seventy-five dollars. The fee for annual renewal of the license shall be fifty dollars. **Businesses that meet the qualification under WSMC 5.04.055 shall not be charged a fee for a business license.**

- B. All businesses required to obtain annual licenses under this chapter shall obtain the same and pay all fees required on or before January 31st of each respective year. Any business which fails to obtain and pay the license fees prior to February 1st shall, in addition to any other penalties provided in this chapter, be assessed a sum of ten dollars per month as penalty for each month such late application and/or payment is over due until paid.
- C. Any business relocating to another address in the city shall pay no fee to have a new business license reissued to reflect the new address.
- ~~D. — Business license renewals issued on or after July 1st of a calendar year shall pay a prorated license fee of twenty-five dollars for licensing through December 31st of the year of licensing.~~

5.04.070 – Term.

All annual business licenses issued pursuant to the provisions of this chapter shall be valid until December 31st of the year for which they are issued, and all renewals thereafter shall be for a period of one year commencing January 1st of the year for which the license is issued and terminating and expiring December 31st of that year.

5.04.080 – Change of ownership-Reapplication.

Upon the sale or transfer of any business licensed pursuant to this chapter, the license issued to the prior owner or transferor shall automatically expire on the date of such sale or transfer and the new owner intending to continue such business in the city of White Salmon shall apply for and obtain a new business license pursuant to the procedures by this chapter prior to engaging in, conducting or operating the business.

5.04.090 – Fee-Temporary license and special events.

A. Temporary Business License.

1. Any person engaged in business within the city for a period not to exceed ten days within any three consecutive months may obtain a temporary business license upon application to the city clerk-treasurer. The fee for this temporary license shall be twenty dollars. The temporary license may not be renewed during that calendar year. **If a business that is seeking a temporary business license meets the qualifications under WSMC 5.04.055, a temporary business license shall be issued free of charge.**

~~**B. — Master License for Events.**~~

~~1. — A master license shall be required for all special events held within the city limits of White Salmon which must utilize multiple dealers or vendors. Requirements of the special event master license are as follows:~~

- a. ~~The promoter, sponsor or other person, firm, company, corporation or legal entity of whatsoever nature or kind organizing, managing, operating or conducting any convention, show or sale, circus, parade, carnival games/rides, street fairs, sidewalk sales or other promotional activity or special event within the city shall obtain a special event master license to cover all dealers/vendors involved in the activity/special event.~~
- b. ~~Dealers/vendors participating in a convention, show, sale or other promotional activity or special event shall be covered under the special event master license and shall not be required to have separate licenses for the event.~~
- c. ~~The city reserves the right to charge any sponsor of a special event direct costs incurred by the city as a result of the event. Such costs may include, but are not limited to, the cost of barricading streets, police officers to direct or block pedestrian or vehicular traffic, plan reviews, or other public safety involvement such as standby aid cars, fire protection services or cleanup.~~
- d. ~~The sponsor of the event shall provide the city clerk-treasurer with a list of all participating dealers/vendors at least ten days prior to the event. The list shall include the vendor's name, business name (if appropriate), mailing address, telephone number and state sales tax number. A map or layout of booths and booth numbers and the business in that booth shall also be provided, if appropriate. Only those dealers/vendors listed on the application or its amendments are approved under the special event master license.~~
- e. ~~No license shall be issued to any person, firm, company or corporation to run, operate, conduct or manage any show, exhibition, game or other special event within the city which is violation of any ordinance of the city or Klickitat County, or any statute of the state.~~
- f. ~~Any person, firm, company or corporation receiving a special event master license pursuant to this chapter shall be required to provide a certificate of insurance with a minimum liability coverage of five hundred thousand dollars combined single limit bodily injury and property damage, including products liability if food and/or beverage vending is part of the special event or public activity. Greater or lesser coverage may be required based upon an objective assessment of risk to the public health, safety and welfare of the special event. The certificate of insurance shall name the city as an additional insured if the license is for a special event held on city property or utilizing city employees.~~

~~g. The following special events shall be exempt from the requirements to obtain a special master license under this chapter (i) dances or other social events conducted by schools or churches; (ii) temporary sales conducted by businesses, such as holiday sales, grand opening/closing business sales or anniversary sales; (iii) one-day bazaars or arts and craft shows sponsored by churches, lodges or other nonprofit social groups; (iv) garage sales and rummage sales except as regulated under WSMC chapter 5.12; (v) organized amateur sporting events such as little league baseball, amateur soccer, and day camps sponsored by the city's recreation department; (vi) charitable, religious or nonprofit organizations on premises under their control; and (vii) other similar activities which do not directly affect or use city services.~~

~~h. All applications for a special event master license shall be accompanied by a nonrefundable application fee of twenty-five dollars; provided, that the application fee may be waived if, in the opinion of the city clerk-treasurer, the imposition of such fee will create an undue hardship for the applicant.~~

5.04.100 – Prohibitions upon issuance.

Notwithstanding any other provisions of this chapter, a license hereunder may not be issued to or held by any person who uses or occupies to use or occupy any real property or otherwise conducts or proposes to conduct any business in violation of the provisions of any ordinances of the city of White Salmon or the statutes of the state of Washington or any other applicable law or regulation. No license shall be issued to or renewed for any business object to payment of a business improvement area assessment of such assessment, any install thereof or interest thereon is delinquent. The granting of a business license shall not authorize any person to engage in any activity prohibited by federal, state or local law or regulation.

5.04.110 – Revocation or suspension-Grounds.

The city clerk-treasurer may, at any time, suspend or revoke any license issued under the provisions of this chapter whenever the licensee, or any officer, employee or partner thereof:

- A. Has violated any federal state or city statute, law, regulation or ordinance upon the business premises stated in the license or in connection with the business stated in the license, whether or not the licensee, or officer or partner thereof, has been convicted in any court of competent jurisdiction of such violation;
- B. Is or has conducted, engaged in or operated the business stated in the license upon premises which do not conform to the ordinances of the city of White Salmon;

- C. Has maintained or permitted the business stated in the license to be conducted, engaged in or operated in such a manner as to constitute a public nuisance;
- D. Has made any material false statement or representation in connection with obtaining the license.

5.04.120 – Appeal.

- A. Whenever the city clerk-treasurer determines that there is cause for suspending, denying or revoking any license issued pursuant to this chapter, the clerk-treasurer shall notify the person holding the license by registered or certified mail, return receipt requested, of the determination. Notice mailed to the address on the license shall be deemed received three days after mailing. The notice shall specify the grounds for suspension, denial or revocation.
- B. The licensee may appeal the decision of the city clerk-treasurer to deny or revoke a business license by filing a written notice of appeal to the city council within ten day so of the city clerk-treasurer's decision.
- C. Upon timely receipt of the notice of appeal, the city clerk-treasurer shall set a date for hearing the appeal. The city clerk-treasurer shall mail notice of the date of the hearing to the licensee at least twenty days prior to the hearing date.
- D. The hearing shall be De Novo. The city council shall affirm, reverse or modify the city clerk-treasurer's decision.
- E. The decision of the city council shall be final. Any person desiring to appeal must file an appropriate action in Klickitat County Superior Court within fourteen days of the city council's decision.
- F. Following revocation, no business license shall be issued for a period of twelve months to the person or business entity whose license was revoked, or to any business entity owned or controlled by such person or entity.

5.04.130 – Violation -Penalty.

- A. Any person, as defined in this chapter, and the officers, directors, managing agents, or partners of any corporation, firm, partnership or other organization or business violating or failing to comply with any of the provisions of this chapter shall have committed a civil infraction an, upon a determination by the White Salmon Municipal Court that such infraction has been committed, shall pay a civil monetary penalty to the city of a sum not to exceed two hundred dollars. In addition, each and every day during any portion of which a violation of any provision of this chapter is committed, continued or permitted constitutes a

separate infraction. Penalties collected pursuant to this section shall be deposited in the city's general fund to be used for general purposes of the city.

- B. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a public nuisance and all remedies given by law for the prevention and abatement of nuisances shall apply thereto.
- C. An person deemed to have committed a civil infraction under subsection A of this section who shall fail to come into compliance, or remain in compliance, with the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment in jail for a term not exceed ninety days or by a fine in an amount not more than one thousand dollars or by both such fine and imprisonment. Each day that such condition or violation continue shall be regarded as a new and separate offense and shall be punishable accordingly.

SECTION 2 - SEVERABILITY.

If any section, sentence, or phrase of this Chapter is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence or phrase of this Chapter.

SECTION 3 - EFFECTIVE DATE.

This ordinance shall become effective January 1, 2019.

PASSED in regular session this 7th day of November, 2018.

David Poucher, Mayor

Jan Breeding, Clerk/Treasurer

Approved as to form:

Kenneth B. Woodrich, City Attorney