

**CITY OF WHITE SALMON
ORDINANCE NO. 2020-12-1071**

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

WHEREAS, RCW 35.90 requires the city to partner with the Washington Department of Revenue for the issuance and renewal of business licenses; and

WHEREAS, the City of White Salmon entered into Business Licensing Services Agreement with the Washington Department of Revenue, Business Licensing Service in June 2020; 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: ~~strikethrough~~
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.

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.

~~12.~~ 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~~ 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 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.
- 24.** 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.
- 35.** 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 in 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.

"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 include employees of persons licensed pursuant to this chapter.

"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.

“Business Licensing Service” or “BLS” means the office within the Washington State Department of Revenue providing business licensing services to the city.

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 ~~owner is conducted~~ **conducts business** on a single premises, a separate license ~~shall be is~~ required for each separate business ~~owner conducted, operated, engaged in or practiced~~. If business is transacted at two or more places by a person within the city, a separate license shall be required for each place at which business is transacted.
- B. A nonprofit organization ~~shall complete the~~ **must obtain a** business license, ~~application form;~~ however, ~~if it shall be required to pay a license fee only as required by Section 5.04.090(B) submits proof of federal tax exemption under a provision of 26 USC § 501(c) it will be exempt from paying the city license therefor; provided that religious organizations, as defined in 26 USC § 501(c)3, when engaged solely in their core religious activities will be fully exempted from the licensing requirements of this chapter. When proof of tax exemption is required, the following are acceptable forms:~~
- 1. IRS Determination Letter; or**
 - 2. IRS Affirmation Letter.**
- 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~~ **Application for a city** business license ~~shall be issued except upon written application is made to the city clerk-treasurer or designee through the Business Licensing Service (BLS) and must include all information required for all licenses requested, the total fees due for all licenses, and the application handling fee per RCW 19.02.075. 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. Upon receipt of the application information from BLS, The the city clerk-treasurer or designee shall approve or deny the license will forward it to the appropriate city departments for review. The city administrator or designee and building inspector ~~shall will~~ 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 all departments confirm the application is in compliance with all requirements, the city clerk-treasurer will approve issuance of the business license through BLS. If an application is denied by the city clerk treasurer or designee, the city clerk-treasurer will provide the applicant the reason for denial ~~shall be stated.~~
- ~~DC.~~ 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 in the city 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 31 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 two thousand dollars 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~~ License fee – Change of location.

- A. The fee for the original license required by this chapter ~~shall be~~ is seventy-five dollars. The fee for annual renewal of the license ~~shall be~~ is 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~~ a business license under this chapter ~~must do so prior to commencing business in the city shall obtain the same and pay all fees required on or before January 31 of each respective year.~~ Any business which fails to obtain a license prior to engaging in business in the city, and pay the license fees prior to February 1 ~~shall~~, in addition to any other penalties provided in this chapter, ~~may~~ be assessed by the city 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~~ must notify the Business Licensing Service sufficiently prior to the change to allow the city to review and approve the new location prior to commencing business at the new location. Such a change may require submitting a new application for license as provided for in this chapter.

5.04.070 – ~~Term~~ License term and renewal - Penalties.

All ~~annual~~ business licenses issued pursuant to the provisions of this chapter ~~shall be~~ are valid ~~until December 31 of the year for which they are issued, and all renewals thereafter shall be for a period of~~ for one year ~~commencing January 1 of the year for which the license is issued and terminating and expiring December 31 of that year~~ unless otherwise prorated as provided for in this section. Business licenses issued by the city in 2020 shall expire January 31, 2021.

A. The city business license expires on the date established by the Business License Service (BLS) and must be renewed on or before that date in order to continue to engage in business in the city after that date.

B. Application for renewal of the license is made through BLS, and must include all information required to renew all licenses involved, the total fees due for all licenses being renewed, and the renewal application handling fee required by RCW 19.02.075.

C. The license term and respective fee therefore may be prorated as necessary to synchronize the expiration date with the expiration of the business license account maintained by BLS.

D. Failure to complete the renewal of the license by the expiration date will incur the late renewal penalty required by RCW 19.02.085 in addition to all other fees due.

E. Failure to complete the license renewal within 120 days after the expiration date will result in the cancellation of the license and will require submitting a new application for license, as provided for in this chapter, in order to continue to engage in business in the city.

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~~ **will** 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~~ **will** apply for and obtain a new business ~~license~~ **license** pursuant to the procedures by this chapter prior to engaging in, conducting or operating the business **in the city**.

5.04.090 - Fee—Temporary license.

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 **directly** to the city clerk-treasurer. The fee for this temporary license ~~shall be~~ **is** 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~~ **will** be issued free of charge.

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~~ **occupies** 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~~ **will** 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~~ **does** 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. Any 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 to 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 take effect five (5) days after its publication according to law.

PASSED by the City Council of the City of White Salmon at a regular meeting this 16th day of December, 2020



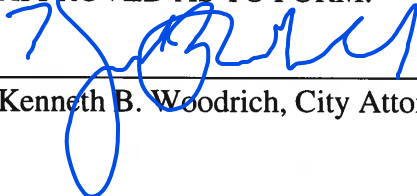
Marla Keethler, Mayor

ATTEST:



Jan Brending, Clerk/Treasurer

APPROVED AS TO FORM:



Kenneth B. Woodrich, City Attorney